

4.17. Payment by Joint Tortfeasor [CPLR 4533-b]

(1) In an action for personal injury, injury to property or for wrongful death, any proof as to payment by or settlement with another joint tortfeasor, or one claimed to be a joint tortfeasor, offered by a defendant in mitigation of damages, shall be taken out of the hearing of the jury.

(2) The fact, but not the amount, of a settlement may, however, form a proper basis for impeachment of a testifying witness.

Note

Subdivision (1) restates verbatim CPLR 4533-b, except for the omission of the last sentence of that statute which reads: “The court shall deduct the proper amount, as determined pursuant to section 15-108 of the general obligations law, from the award made by the jury.”

CPLR 4533-b was designed to abrogate decisional law to the extent it was contrary. (*See Livant v Livant*, 18 AD2d 383 [1963], *lv dismissed* 13 NY2d 894 [1963].)

While subdivision (1) prohibits the introduction of evidence of a settlement with a tortfeasor when offered by a defendant in mitigation of damages, the statute does not prohibit, and decisional law allows, as set forth in subdivision (2), the use of such evidence when relevant to impeach a tortfeasor. (*See Maldonado v Cotter*, 256 AD2d 1073, 1075 [4th Dept 1998] [defendants properly cross-examined “the recovery room nurse concerning the fact but not the amount of plaintiff’s settlement with the Hospital, pursuant to which that nurse also was released from liability. ‘It has long been recognized that a prior settlement might well have an impact upon the credibility of a witness called to testify on behalf of a former adverse party’ (*Hill v Arnold*, 226 AD2d 232, 233)’]; *compare Stevens v Atwal*, 30 AD3d 993, 994 [4th Dept 2006] [while recognizing that a prior settlement may be admissible to impeach a witness, held that on the facts of the case, “the settlements had no bearing on plaintiff’s credibility”].)