

**Guerrero v New York Downtown Orthopaedic Assoc.
of Manhattan**

2026 NY Slip Op 30264(U)

January 20, 2026

Supreme Court, New York County

Docket Number: Index No. 805126/2018

Judge: John J. Kelley

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JOHN J. KELLEY PART 56M

Justice

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ELIZABETH GUERRERO,

Plaintiff,

- v -

NEW YORK DOWNTOWN ORTHOPAEDIC ASSOCIATES
OF MANHATTAN and NEW YORK DOWNTOWN
ORTHOPAEDIC ASSOCIATES,

Defendants.

-----X

BIK ORTHOPEDICS, P.C. (doing business as NEW YORK
DOWNTOWN ORTHOPAEDIC ASSOCIATES
OF MANHATTAN and NEW YORK DOWNTOWN
ORTHOPAEDIC ASSOCIATES),

Third-Party Plaintiff,

-against-

ELIZABETH MELVIN, P.T., and WOJCIECH KARPINSKI,

Third-Party Defendants.

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**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 006) 153, 154, 157, 158, 159, 160, 161, 162

were read on this motion to/for REARGUMENT/RECONSIDERATION.

In an order dated October 8, 2015 (MOT SEQ 004), this court granted in part and denied in part the motion of the defendant third-party plaintiff, BIK Orthopedics, P.C., doing business as New York Downtown Orthopaedic Associates of Manhattan, and as New York Downtown Orthopaedic Associates (BIK) for summary judgment dismissing the complaint in this medical malpractice action. BIK now moves pursuant to CPLR 2221(d) for leave to reargue those branches of its prior motion that had been denied in the October 8, 2015 order. The motion is denied as academic, since the plaintiff has now informed the court, in email correspondence

dated January 16, 2026, and which was uploaded to the New York State Court Electronic Filing system as Docket Entry No. 163, that she has settled the main action against BIK for the gross sum of \$32,500.00.

In that same order that determined BIK's summary judgment motion, the court granted the motion of the third-party defendant Elizabeth Melvin, P.T., for summary judgment dismissing BIK's third-party complaint insofar as asserted against her (MOT SEQ 005). Moreover, General Obligations Law § 15-108(c) provides that "[a] tortfeasor who has obtained his own release from liability shall not be entitled to contribution from any other person." The third-party defendant Wojciech Karpinski failed to answer the third-party complaint, and the court, in an order dated December 9, 2022 (MOT SEQ 002), had granted BIK's motion for leave to enter a default judgment against him on the issue of liability on its third-party causes of action for both contribution and common-law indemnification. By settling with the plaintiff, however, BIK has waived its third-party cause of action for contribution against Karpinski, and that third-party cause of action must be dismissed insofar as asserted against him (*see generally Diversified Group, Inc. v Marcum & Kliegman, LLP*, 129 AD3d 552, 552-553 [1st Dept 2015]).

Nonetheless, General Obligations Law § 15-108(c) "has no application to indemnity claims," since "one who settles a tort action against him may continue to pursue a cause of action for indemnification, unencumbered by section 15-108" (*McDermott v City of New York*, 59 NY2d 211, 220 [1980]). "[Even] upon a cursory reading of the statute, it becomes evident that section 15-108 is meant to be read in conjunction with the contribution rights set forth in article 14" of the CPLR (*Riviello v Waldron*, 47 NY2d 297, 306 [1979] *see Rock v Reed-Prentice Div. of Package Mach. Co.*, 39 NY2d 34, 38-39 [1976]).

As the Court of Appeals has explained,

"[i]n the classic indemnification case, the one seeking indemnity 'had committed no wrong, but by virtue of some relationship with the tort-feasor or obligation imposed by law, was nevertheless held liable to the injured party. In other words, where one is held liable solely on account of the negligence of another,

indemnification, not contribution, principles apply to shift the entire liability to the one who was negligent”

(*Glaser v M. Fortunoff of Westbury Corp.* 71 NY2d 643, 646 [1988] [citations and internal quotation marks omitted). Based on the facts adduced in connection with BIK’s and Melvin’s summary judgment motions, the court concludes that the burn that the plaintiff sustained during electrical stimulation therapy was caused solely by Karpinski’s conduct, since he was the only person who actually applied the electrical stimulation device to the plaintiff’s body. As such, BIK’s liability for negligence was only vicarious, and it thus is entitled to recover, from Karpinski, the full amount of its settlement with the plaintiff (see *SSDW Co. v Feldman-Misthopoulos Assocs.*, 151 AD2d 293, 296 [1st Dept 1989] [“the predicate of common-law indemnity is vicarious liability without actual fault on the part of the proposed indemnitee”]; *Trustees of Columbia Univ. v Mitchell/Giurgola Assocs.*, 109 AD2d 449, 453 [1st Dept 1985]). BIK is thus entitled to enter a judgment on its third-party cause of action for common-law indemnification against Karpinski, without the necessity of an inquest, in the principal amount of its settlement with the plaintiff, that is, in the sum of \$32,500.00.

Since all of the plaintiff’s claims against BIK and BIK’s third-party claims against Melvin and Karpinski have now been resolved, the action must be marked disposed.

Accordingly, it is,

ORDERED that the motion of the defendant third-party plaintiff, BIK Orthopedics, P.C., doing business as New York Downtown Orthopaedic Associates of Manhattan, and as New York Downtown Orthopaedic Associates, for leave to reargue portions of its motion for summary judgment dismissing the complaint is denied as academic; and it is further,


ORDERED that, on the court’s own motion, the third-party cause of action for contribution insofar as asserted against the third-party defendant Wojciech Karpinski by the defendant third-party plaintiff, BIK Orthopedics, P.C., doing business as New York Downtown

Orthopaedic Associates of Manhattan, and as New York Downtown Orthopaedic Associates, is dismissed; and it is further,

ORDERED that, on the court’s own motion, the Clerk of the court is directed to enter judgment in favor of the defendant third-party plaintiff, BIK Orthopedics, P.C., doing business as New York Downtown Orthopaedic Associates of Manhattan, and as New York Downtown Orthopaedic Associates, and against the third-party defendant Wojciech Karpinski, on its third-party cause of action for common-law indemnification against him, in the principal sum of \$32,500.00, plus statutory prejudgment interest at 9% per annum from December 9, 2022, the date when the court determined that Wojciech Karpinski was liable for common-law indemnification.

This constitutes the Decision and Order of the court.

1/20/2026
DATE



JOHN J. KELLEY, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	