In personal injury actions involving two or more tortfeasors who are jointly liable, a defendant’s right to apportionment of fault pursuant to Article 16 of the New York State Civil Practice Law and Rules is invaluable. Via apportionment, a defendant may be entitled to limit its share of liability for non-economic loss to its proportionate equitable share and significantly reduce the amount of monetary damages against it. The right to apportionment has been found to be so valuable, that it has been held to apply “automatically” in cases where a plaintiff sues multiple defendants. However, what becomes of a defendant’s right to apportion fault when a joint tortfeasor files for bankruptcy? In clear recognition of the value that defendants place on the right to apportion fault, New York state courts have resoundingly held that a defendant’s right to apportion fault against a joint tortfeasor survives the joint tortfeasor’s filing for, and subsequent discharge in, bankruptcy.

Pursuant to CPLR Article 16, a joint tortfeasor whose culpability is 50 percent or less is not jointly liable for all of plaintiff’s noneconomic damages, but is severally liable for its proportionate share. Article 16 further provides that “the culpable conduct of any person not a party to the action shall not be considered in determining any equitable share herein if the claimant proves that with due diligence he or she was unable to obtain jurisdiction over such person in said action.”

As the New York state courts have repeatedly held, “[t]he term ‘jurisdiction’ in CPLR 1601(1) refers to personal rather than to subject matter jurisdiction.” Personal jurisdiction is unaffected by a party’s bankruptcy filing; the party’s filing for bankruptcy merely suspends other court proceedings outside of the bankruptcy proceeding; it does not divest those courts of jurisdiction over the bankrupt entity. Professor David Siegel has stated in his practice commentaries that:

For the purposes of applying [CPLR 1601(1)], a tortfeasor absent from the proceedings because of bankruptcy is not to be considered beyond jurisdiction. The bankrupt’s share is therefore included in an Article 16 calculus.

The New York state courts that have addressed this issue have followed this approach. Specifically, in Kharmah v. Metropolitan Chiropractic Center, the Appellate Division, First Department, addressed how the liability shares of bank-
rupt tortfeasors are to be treated under Article 16. In Kharmah, the plaintiff brought claims for medical malpractice against a chiropractic clinic and an individual chiropractor (the chiropractic defendants), as well as against a hospital and three doctors (the medical defendants). During the course of the action, the chiropractic defendants filed for Chapter 7 bankruptcy protection. The First Department upheld the trial court’s severance of the action against the chiropractic defendants, pursuant to CPLR 603, finding it a proper exercise of the court’s discretion in order to prevent prejudice to the plaintiff stemming from any delay related to the bankruptcy proceedings. However, in so doing, the First Department modified the trial court’s severance order to preserve the medical defendants’ CPLR Article 16 equitable share allocation rights. The First Department stated, as follows:

New York state courts have resoundingly held that a defendant’s right to apportion fault against a joint tortfeasor survives the joint tortfeasor’s filing for, and subsequent discharge in, bankruptcy.

While the bankrupt defendants will not participate in the trial, equity requires that [the medical defendants] have the benefit of CPLR article 16 rights, even though there is an automatic stay by virtue of the bankruptcy. In accordance with the purpose of CPLR Article 16, if the defendants-appellants’ culpability is 50 percent or less, their exposure for non-economic damages should be limited proportionately to their share of fault.

Earlier this year, in Moy v. St. Vincent’s Hospital and Medical Center of New York, the Appellate Division, Second Department, addressed the same exact issue in the scope of Saint Vincent Catholic Medical Center’s bankruptcy proceedings and reached the same exact conclusion. In Moy, the plaintiff moved to sever the causes of action asserted against the defendant Michael G. Wayne from the causes of action asserted against the defendant St. Vincent’s Hospital and Medical Center of New York. The trial court denied the plaintiff’s motion, and the plaintiff appealed. The Second Department reversed and severed the respective causes of action against each defendant, subject to the preservation of the defendants’ CPLR Article 16 equitable share allocation rights. In so holding, the Second Department stated that:

...as Wayne correctly contends, equity requires that the defendants have the benefit of their rights under CPLR article 16, such that if their culpability is 50 percent or less, their exposure for economic damages should be limited proportionately to their share of fault.

Thus, while a codefendant-debtor’s filing for bankruptcy prohibits the commencement or continuation of an action against it and serves as a bar to a court’s subject matter jurisdiction over the controversy at issue (jurisdiction lies with the Bankruptcy Court until the bankruptcy stay is lifted), the bankruptcy filing is not a bar to the plaintiffs’ ability to obtain personal jurisdiction over the bankrupt debtor (a plaintiff can still serve the debtor or the debtor’s trustee with a summons and complaint and obtain personal jurisdiction over the debtor). As a result, a defendant finding itself in an action in which a codefendant has filed for bankruptcy, can rest assured that its right to apportion fault against the debtor pursuant to CPLR Article 16 remains viable.

1. See generally CPLR 1601.
3. CPLR 1601(1).
4. CPLR 1601(1).
12. Moy, 92 A.D.3d at 652, 938 N.Y.S.2d at 329 (2d Dept. 2012); see also Anderson v. House of Good Samaritan Hosp., 44 A.D.3d 135, 840 N.Y.S.2d 588 (4th Dept. 2007) (that the complaint against former defendant was dismissed as time-barred, former defendant was nevertheless someone to whom fault could have been assigned by the jury pursuant to CPLR 1601).