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CPLR 4533-a: Amendment

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the defendant in a subsequent suit. However, in *Israel v. Wood Dolson Co.*,[87] the Court of Appeals held that where the doctrine of collateral estoppel is asserted defensively, "the test to be applied is that of 'identity of issues.' "[88] In such a case the mutuality requirement is abandoned.

While *Israel* only required that the issues in the subsequent action be identical, the Court in *Cummings* not only noted an identity of issues, but also an identity of parties. It seems, therefore, that the Court was reluctant to apply the "identity of issues" test as the *sole* criterion for the defensive assertion of collateral estoppel in negligence cases. There is a fundamental policy consideration behind this reluctance by the Court, which can be illustrated by a situation wherein there is more than one possible plaintiff. In such an instance, there is always the possibility of a collusive suit, wherein a favorable judgment obtained by the defendant could be used to collaterally estop subsequent plaintiffs.

While *Cummings* does not overrule *Israel*,[89] it evidences an apparent reluctance on the part of the Court of Appeals to apply the "identity of issues" test as the sole criterion for the defensive assertion of collateral estoppel. It appears that future cases will be decided on their own merits, within the guidelines set up by *Israel* and *Cummings*. The test may very well now be "identity of issues plus . . . ."

ARTICLE 45 — EVIDENCE

CPLR 4504: Amendment.

The section, as amended, declares that a person authorized "to practice medicine, registered professional nursing, licensed practical nursing or dentistry" cannot disclose confidential information acquired from a patient while acting within his professional capacity.

CPLR 4533-a: Amendment.

As a result of this new rule, an itemized repair bill—which is receipted and marked paid—for property damage to a motor vehicle in an amount of *less than three hundred dollars* is now *prima facie evidence* of the reasonable value of the repairs itemized in an action or counterclaim for such damages.

The repair bill must be verified by a proper party. It must state (1) that no refund has or will be made to the claimant,

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[87] 1 N.Y.2d 116, 134 N.E.2d 97, 151 N.Y.S.2d 1 (1956).
[88] *Id.* at 120, 134 N.E.2d at 100, 151 N.Y.S.2d at 5. See *The Quarterly Survey of New York Practice,* 41 ST. JOHN'S L. REV. 121, 148 (1966).
[89] It is to be noted that Chief Judge Desmond, who wrote the majority opinion in *Cummings,* concurred in the majority opinion in *Israel.*

and (2) that the cost of the repairs itemized is usual and customary. Finally, the bill must be served upon the adverse party's attorney at least five days prior to the trial.

ARTICLE 52 — ENFORCEMENT OF MONEY JUDGMENTS

CPLR 5201: Insurer's contractual obligation to defend and indemnify is a "debt" and capable of attachment.

CPLR 5201(a) provides that a money judgment can be enforced against any debt, whether incurred within or without the state or whether incurred by a resident or nonresident. There is no express provision requiring that service of process be possible on the party before the debt can be subject to enforcement, since "jurisdiction over the judgment debtor or garnishee is an implicit requirement for using any enforcement proceeding." [90]

One area of litigation involving this section has been developing a definition of the word "debt" in relation to the contractual obligations of defendant insurance companies.[91] In *Matter of Riggle,*[92] petitioner, a New York resident, was injured by decedent, a resident of Illinois, in Wyoming. He moved to have an administrator of Riggle's property appointed in New York. Basing its decision on Section 47 of the Surrogate's Court Act,[93] the Court held that even though no judgment had been obtained against Riggle or his estate, he was considered a creditor, and the insurance carrier was held to be a debtor within the meaning of the statute.[94]

In *Seider v. Roth,*[95] the plaintiffs, residents of New York, were allegedly injured in an accident in Vermont through the negligence of the defendant, a Canadian domiciliary. The defendant was insured by a company doing business in New York, however, the policy was issued in Canada. An order of attachment[96] directed

[90] 6 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 5201.04 (1965).

[91] See also CPLR 6202, which provides that "any debt or property against which a money judgment may be enforced as provided in section 5201 is subject to attachment."

[92] 11 N.Y.2d 73, 181 N.E.2d 436, 226 N.Y.S.2d 416 (1962).

[93] This section provides that a debt owing to a defendant by a resident of New York is regarded as personal property the situs of which is within the county where the debtor resides.

[94] Although not confronted with similar jurisdictional problems since the accident occurred in New York, another court has stated that a nonresident insurer's "contractual obligation to defend and indemnify defendant is a debt or cause of action capable of being attached . . . ." Fishman v. Sanders, 18 App. Div. 2d 689, 235 N.Y.S.2d 861 (2d Dep't 1962), *rev'd on other grounds,* 15 N.Y.2d 298, 206 N.E.2d 326, 258 N.Y.S.2d 380 (1965).

[95] 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966).

[96] CPLR 6202.