St. John's Law Review

Volume 56, Winter 1982, Number 2 Article 5

CPLR 3017: Postverdict Motion to Amend Ad Damnum Clause Should Be Granted in the Absence of Prejudice to Defendant

Steven M. Rapp

pear illogical not to find a continuity of treatment between two treating physicians.[37] Therefore, it is submitted that the accrual of a medical malpractice cause of action against any of a succession of treating doctors, all of whom are employed by the same medical professional service corporation, should not be deemed to occur until the cessation of the plaintiff-patient's treatment.

Louis J. Ragusa

Article 30—Remedies and Pleading

CPLR 3017: Postverdict motion to amend ad damnum clause should be granted in the absence of prejudice to defendant

CPLR 3017(a) empowers a court to grant any form of relief that is appropriate to the proof, irrespective of whether the relief to be granted was sought by the plaintiff.[38] Despite the broad language of this provision, the courts repeatedly have declined to exercise their authority to award money damages in excess of the amount requested in the plaintiff's relief[39] or "ad damnum" clause.[40] While the courts have granted preverdict motions to

---

N.Y.S.2d 359, 362 (Sup. Ct. N.Y. County 1976), imputation from one doctor to another is more appropriate. Otherwise, a physician aware of his negligence might pursue futile corrective action or refer his patient to a fellow physician of the professional service corporation in order to circumvent the statute of limitations. *See* County of Broome v. Vincent J. Smith, Inc., 78 Misc. 2d at 891, 358 N.Y.S.2d at 1001.

[37] Notably, the underlying rationale of the continuous treatment doctrine, as promulgated in *Borgia*, is that "[i]t would be absurd to require a wronged patient to interrupt corrective efforts by serving a summons on the physician or hospital superintendent." Borgia v. City of New York, 12 N.Y.2d 151, 156, 187 N.E.2d 777, 779, 237 N.Y.S.2d 319, 321-22 (1962); *see* Holdridge v. Heyer-Schulte Corp., 440 F. Supp. 1088, 1099 (N.D.N.Y. 1977); Fonda v. Paulsen, 46 App. Div. 2d 540, 544, 363 N.Y.S.2d 841, 845 (3d Dep't 1975); 1 WK&M ¶ 214-a.03, at 2-319.

[38] CPLR 3017(a) provides in part that "[e]xcept as provided in section 3215, the court may grant any type of relief within its jurisdiction appropriate to the proof whether or not demanded, imposing such terms as may be just." CPLR 3017(a) (McKinney Supp. 1980-1981). CPLR 3017(a) requires the pleader to set forth the relief which he seeks. It does not require the pleader to state the exact amount of damages sought, although this has become standard practice. *See* Silvestris v. Silvestris, 24 App. Div. 2d 247, 250, 265 N.Y.S.2d 173, 178 (1st Dep't 1965); CPLR 3017(a), commentary at 11 (1974).

[39] The claim for money damages contained in a complaint popularly is referred to as the "ad damnum" clause. Vincent v. Mutual Reserve Fund Life Ass'n, 75 Conn. 650, 55 A. 177, 179 (1903), *rev'd on other grounds*, 77 Conn. 281, 58 A. 963 (1904); *see* SIEGEL § 217.

[40] *E.g.*, Sponholz v. Stanislaus, 410 F. Supp. 286, 288 (S.D.N.Y. 1976); Michalowski v. Ey, 7 N.Y.2d 71, 75, 163 N.E.2d 863, 865, 195 N.Y.S.2d 633, 636 (1959); Litcom Div., Litton Sys. Inc. v. Suffolk Roofing Co., 52 App. Div. 2d 593, 593-94, 382 N.Y.S.2d 115, 117 (2d

amend the ad damnum clause when such action would not be prejudicial to the defendant,[41] they routinely have denied postverdict motions to amend, regardless of whether prejudice might ensue.[42] Recently, however, in *Loomis v. Civetta Corinno Construction Corp.*,[43] the Court of Appeals held that in the absence of prejudice to the defendant, a motion to amend the ad damnum clause, made before or after the verdict, may be granted.[44]

In *Loomis*, the plaintiff had commenced a property damage action against the defendant construction company.[45] In the ad damnum clause of her complaint, the plaintiff assessed her damages at $15,000.[46] At an assessment hearing conducted after the plaintiff's motion for summary judgment had been granted, the plaintiff made two motions to increase the amount of damages requested in the ad damnum clause.[47] The court denied the first mo-

---

Dep't 1976); Naujokas v. H. Frank Carey High School, 33 App. Div. 2d 703, 704, 306 N.Y.S.2d 195, 196 (2d Dep't 1969); *see* 3 WK&M ¶ 3017.06, at 30-371 (1980). "[CPLR 3017(a)] was not intended to annul or affect the existing cases which forbade a court from granting monetary awards in excess of the amounts demanded by the complaint, unless a proper amendment of the pleadings is first made." Garden Hill Estates, Inc. v. Bernstein, 24 App. Div. 2d 512, 512, 261 N.Y.S.2d 648, 650 (2d Dep't 1965), *aff'd*, 17 N.Y.2d 525, 215 N.E.2d 163, 267 N.Y.S.2d 906 (1966).

[41] *E.g.*, Drechsel v. Loblaw, Inc., 64 App. Div. 2d 1022, 1023, 409 N.Y.S.2d 467, 468 (4th Dep't 1978); Ceratto v. R.H. Crown Co., 58 App. Div. 2d 721, 721, 396 N.Y.S.2d 716, 717 (3d Dep't 1977); Finn v. Crystal Beach Transit Co., 55 App. Div. 2d 1001, 1001, 391 N.Y.S.2d 925, 926 (4th Dep't 1977); Bird v. Board of Educ., 29 App. Div. 2d 812, 812, 286 N.Y.S.2d 888, 889 (3d Dep't 1968); Soulier v. Harrison, 21 App. Div. 2d 725, 725, 250 N.Y.S.2d 141, 142 (3d Dep't 1964); Natale v. Great Atlantic & Pacific Tea Co., 8 App. Div. 2d 781, 781, 186 N.Y.S.2d 795, 796 (1st Dep't 1959).

[42] Conforming the ad damnum clause to the jury verdict through use of a postverdict motion has been held to be an "improvident exercise of discretion," Delgado v. Claudio, 47 App. Div. 2d 867, 868, 368 N.Y.S.2d 1013, 1013 (1st Dep't 1975), constituting prejudice to the defendant as "a matter of law." Wyman v. Morone, 33 App. Div. 2d 168, 170, 306 N.Y.S.2d 115, 117 (3d Dep't 1969). Moreover, the courts consistently have refused to allow a jury verdict to stand if it is greater than the amount of the ad damnum clause. *See, e.g.*, Zayas v. Lux Serv. Corp., 47 App. Div. 2d 867, 868, 368 N.Y.S.2d 1015, 1015 (1st Dep't 1975); Naujokas v. H. Frank Carey High School, 33 App. Div. 2d 703, 704, 306 N.Y.S.2d 195, 196 (2d Dep't 1969). At least one lower court, however, has granted a postverdict motion to amend the ad damnum clause in accordance with the jury's verdict. Douglas v. Latona, 61 Misc. 2d 859, 864, 306 N.Y.S.2d 992, 999 (Sup. Ct. Erie County 1970).

[43] 54 N.Y.2d 18, 429 N.E.2d 90, 444 N.Y.S.2d 571 (1981).

[44] *Id.* at 23, 429 N.E.2d at 92, 444 N.Y.S.2d at 573.

[45] *Id.* at 20-21, 429 N.E.2d at 90, 444 N.Y.S.2d at 571. The plaintiff alleged that the defendant had "entered upon her rear yard in 1976 and removed her patio, a brick wall and certain shrubbery in connection with its construction of a luxury high rise apartment building on the adjacent property." *Id.* at 20-21, 429 N.E.2d at 90, 444 N.Y.S.2d at 571.

[46] *Id.*

[47] *Id.* Prior to the assessment hearing, the plaintiff's attorneys notified the defendant that the plaintiff's total damages were about $23,000. *Id.*, 429 N.E.2d at 90, 444 N.Y.S.2d at

tion on the basis of "surprise,"[48] and reserved decision on the second motion.[49] Thereafter, implicitly granting the plaintiff's second motion, the court awarded the plaintiff a judgment of $26,118.[50] The Appellate Division, First Department, modified the award to conform to the amount demanded in the plaintiff's ad damnum clause, holding that although the court may grant an amendment to the pleadings "at any time," postverdict amendments to the ad damnum clause are impermissible.[51]

On appeal, the Court of Appeals reversed.[52] Judge Gabrielli, writing for a unanimous Court,[53] noted two rationale which had been proffered in support of the blanket prohibition against postverdict amendments to the ad damnum clause.[54] The Court observed that a defendant who believed that his maximum liability was limited to the amount specified in an ad damnum clause might either rely upon counsel paid for by an insurance company[55] or be "lull[ed] . . . into a false sense of security."[56] Judge Gabrielli reasoned that these problems arise infrequently and provide insufficient justification for a broad prohibition against postverdict ad damnum clause amendments.[57] Focusing, instead, upon the stated objective of the CPLR to liberalize pleadings[58] and upon the clear

---

571. In addition, the defendant's expert was permitted to inspect the plaintiff's property and question the plaintiff and her attorneys regarding the alleged damages. *Id.*, 429 N.E.2d at 90, 444 N.Y.S.2d at 571.

[48] Loomis v. Civetta Corinno Constr. Corp., 78 App. Div. 2d 845, 845, 433 N.Y.S.2d 156, 156 (1st Dep't 1980), *rev'd*, 54 N.Y.2d 18, 429 N.E.2d 90, 444 N.Y.S.2d 571 (1981).

[49] 54 N.Y.2d at 21, 429 N.E.2d at 90, 444 N.Y.S.2d at 571. The Court noted that while special term did not clearly respond to the plaintiff's second motion, it was apparent that it had reserved its decision. *Id.*, 429 N.E.2d at 90, 444 N.Y.S.2d at 571.

[50] 78 App. Div. 2d at 845, 433 N.Y.S.2d at 156. The Appellate Division noted that by entering judgment in an amount higher than that demanded, the trial court had granted plaintiff's second motion to amend. *Id.*

[51] *Id.* at 845, 433 N.Y.S.2d at 156-57.

[52] 54 N.Y.2d at 24, 429 N.E.2d at 92, 444 N.Y.S.2d at 573.

[53] Judge Gabrielli was joined by Chief Judge Cooke, and Judges Jasen, Jones, Wachtler, Meyer, and Fuchsberg.

[54] 54 N.Y.2d at 22, 429 N.E.2d at 91, 444 N.Y.S.2d at 572.

[55] *Id.*

[56] *Id.*

[57] *Id.*

[58] *Id.* at 23, 429 N.E.2d at 91, 444 N.Y.S.2d at 572. *See* SIEGEL § 217. The CPLR is to "be liberally construed to secure the just, speedy and inexpensive determination of every civil judicial proceeding." CPLR 104 (1972). This section is designed to make a "sharp cleavage" with the rigid formality of common-law pleadings. CPLR 104, commentary at 36 (1972). Thus, liberal amendment of pleadings is authorized unless such amendment would prejudice the opposing party. Fahey v. Ontario County, 44 N.Y.2d 934, 935, 380 N.E.2d 146, 147, 408 N.Y.S.2d 314, 315 (1978); Karras v. Westchester County, 71 App. Div. 2d 878, 878,

language of CPLR 3017 and CPLR 3025,[59] the Court concluded that in the absence of prejudice to the defendant, a motion to amend the ad damnum clause may be granted even if it is made after trial.[60] Since, in the instant case, the defendant was unable to indicate any significant prejudice, the Court held that Special Term did not abuse its discretion by entering judgment in excess of the amount originally set forth in the ad damnum clause.[61]

It is evident that the *Loomis* Court, by identifying "prejudice" as the dispositive factor in determining whether to grant a motion to amend the ad damnum clause,[62] has eliminated the traditional distinction between motions to amend made prior to a verdict and

---

419 N.Y.S.2d 653, 655 (2d Dep't 1979).

[59] Loomis v. Civetta Corinno Constr. Corp., 54 N.Y.2d at 23, 429 N.E.2d at 91, 444 N.Y.S.2d at 572. A motion under CPLR 3017(a) to increase the ad damnum clause after the verdict has been rendered is technically made under CPLR 3025(c), which provides that "[t]he court may permit pleadings to be amended before or after judgment to conform them to the evidence, upon such terms as may be just." CPLR 3025(c) (McKinney Supp. 1980-1981). The *Loomis* Court observed that the unambiguous language of CPLR 3017(a) and CPLR 3025(c) clearly evinces that it is within the sound discretion of a court to allow a postverdict amendment to the ad damnum clause and to award an amount greater than that originally sought. 54 N.Y.2d at 23, 429 N.E.2d at 91, 444 N.Y.S.2d at 572.

[60] *Id.*, 429 N.E.2d at 92, 444 N.Y.S.2d at 573.

[61] *Id.* at 24, 429 N.E.2d at 92, 444 N.Y.S.2d at 573. The *Loomis* Court noted that merely subjecting a defendant to increased liability is not prejudicial. *Id.* at 23, 429 N.E.2d at 92, 444 N.Y.S.2d at 573. Rather, a finding of prejudice involves a showing that the defendant was hampered in preparing his case or the defendant neglected to take some measure in his defense due to his reliance upon the amount originally demanded in the ad damnum clause. *Id.* The *Loomis* Court observed that the defendant was notified of the greater damages several months prior to the hearing. *Id.* at 24, 429 N.E.2d at 92, 444 N.Y.S.2d at 573. Moreover, noted the Court, the defendant's expert was permitted to inspect all of the property which had been damaged. *Id.* Finally, the Court observed that the defendant was unable to point to any real prejudice accompanying the increase in the amount of damages specified in the ad damnum clause. *Id.*

[62] *Id.* Prejudice has been defined as a form of detrimental reliance whereby the defendant has abstained from taking action to support his case adequately. Wyman v. Morone, 33 App. Div. 2d 168, 172, 306 N.Y.S.2d 115, 119 (3d Dep't 1969) (Cooke, J., dissenting); *see* Burden v. Cadillac Developers Massapequa Corp., 34 Misc. 2d 37, 38, 227 N.Y.S.2d 453, 454 (Sup. Ct. Nassau County 1962), *rev'd on other grounds*, 19 App. Div. 2d 716, 242 N.Y.S.2d 425 (2d Dep't 1963), *aff'd mem.*, 14 N.Y.2d 523, 197 N.E.2d 628, 248 N.Y.S.2d 234 (1964); 3 WK&M ¶ 3025.15, at 30-594 to 30-596 (1980). The absence or presence of prejudice has been viewed as a significant factor in determining whether to grant a motion to amend the ad damnum clause. *See* Barner v. Shook, 51 App. Div. 2d 855, 855, 379 N.Y.S.2d 565, 566 (4th Dep't 1976) (amendment granted since opposing party was unable to show prejudice); Vitiello v. Consolidated Edison Co., 51 App. Div. 2d 523, 523, 379 N.Y.S.2d 403, 404 (1st Dep't 1976) (motion to increase amount of damages specified in ad damnum clause denied due to possible prejudice to defendant). *But see* note 69 and accompanying text *infra* (prejudice not a factor under federal law).

those made after a verdict.[63] Moreover, it is suggested that although *Loomis* arose in a postverdict context, it will have the beneficial effect of reconciling the discordant case law surrounding preverdict ad damnum clause amendments.[64] Notably, although several cases have held that delay absent prejudice to the defendant is not a sufficient ground for denial of motion to amend the ad damnum clause made before or during trial,[65] other cases have

---

[63] *See* notes 41-42 and accompanying text *supra*. Notably, the *Loomis* decision was foreshadowed in W.T. Grant Co. v. Srogi, 52 N.Y.2d 496, 420 N.E.2d 953, 438 N.Y.S.2d 761 (1981), a proceeding to review tax assessments. The *Grant* Court reversed its prior position in People *ex rel.* Interstate Land Holding Co. v. Purdy, 206 App. Div. 606, 198 N.Y.S. 940 (1st Dep't), *aff'd*, 236 N.Y. 609, 142 N.E. 303 (1923), and held that relief in a tax review proceeding should not be limited to the sum demanded in the petition. 52 N.Y.2d at 512-13, 420 N.E.2d at 960-61, 438 N.Y.S.2d at 768-69. Although disclaiming any consideration of this rule in an ordinary civil case, *id.* at 513 n.2, 420 N.E.2d at 961 n.2, 438 N.Y.S.2d at 769 n.2, the Court reasoned that the granting of appropriate relief should not be defeated by a "pleading technicality." *Id.* at 513, 420 N.E.2d at 960, 438 N.Y.S.2d at 768. Noting that since the taxing authority had adequate notice, and no prejudice had been alleged or proven, the Court concluded that "[there was] no good reason to adhere blindly to a rule which precludes a court from granting the relief justified by the proof." *Id.* at 513, 420 N.E.2d at 961, 438 N.Y.S.2d at 769. In a dissenting opinion, Judge Gabrielli found little to distinguish the application of the rule in a tax context from that of an ordinary civil case, *id.* at 519, 420 N.E.2d at 964, 438 N.Y.S.2d at 772 (Gabrielli, J., dissenting), and no compelling reason to reverse the rule as a mere "pleading technicality." *Id.* (Gabrielli, J., dissenting). The dissent noted that the holding would inject uncertainty into the budgetary decisions of the municipality because the municipality would be unable to determine the amount of money available for essential services if the amount of revenue from local property taxes could not be clearly ascertained. *Id.* at 521, 420 N.E.2d at 965, 438 N.Y.S.2d at 773 (Gabrielli, J., dissenting). Indeed, Judge Gabrielli observed a "disturbing tendency" within the courts to "brush aside well-settled rules of law when application of the rules would not produce the desired result." *Id.* at 520 n.*, 420 N.E.2d at 965 n.*, 438 N.Y.S.2d at 773 n.*(Gabrielli, J., dissenting). Citing to the principle of *stare decisis*, Judge Gabrielli admonished the majority, stating that the "re-examination of existing precedent" should be undertaken only "with the greatest caution" in order to avoid "jurisprudential scandal." *Id.* at 520-21 n.*, 420 N.E.2d at 965 n.*, 438 N.Y.S.2d at 773 n.* (Gabrielli, J., dissenting). Nevertheless, only 7 months later, Judge Gabrielli precipitated the demise of the heretofore "well-settled" rule of law, prohibiting postverdict amendments to the ad damnum clause. *See* Loomis v. Civetta Corinno Constr. Corp., 54 N.Y.2d 18, 23, 429 N.E.2d 90, 92, 444 N.Y.S.2d 571, 573 (1981).

[64] *See* notes 65 & 66 and accompanying text *infra*. One commentator has observed that the liberality with which motions to amend the ad damnum clause are granted shifts from department to department. CPLR 3025, commentary at 485-86 (1974).

[65] *E.g.*, Finn v. Crystal Beach Transit Co., 55 App. Div. 2d 1001, 1001, 391 N.Y.S.2d 925, 926 (4th Dep't 1977); Taggart v. United States Lines, Inc., 53 App. Div. 2d 569, 570, 384 N.Y.S.2d 816, 817 (1st Dep't 1976); Ryan v. Collins, 33 App. Div. 2d 966, 966, 306 N.Y.S.2d 777, 779 (3d Dep't 1970); Smith v. University of Rochester Medical Center, 32 App. Div. 2d 736, 736-37, 301 N.Y.S.2d 933, 934 (4th Dep't 1969); Bird v. Board of Educ., 29 App. Div. 2d 812, 812, 286 N.Y.S.2d 888, 889 (3d Dep't 1968); Calautti v. National Transp. Co., 10 App. Div. 2d 955, 955, 201 N.Y.S.2d 558, 559 (2d Dep't 1960).

held that unjustifiable delay is a sufficient basis for denying such a motion.[66] The latter cases also mandate that the cause for delay be established before prejudice to the defendant may be assessed.[67] It is submitted that the *Loomis* decision, by shifting judicial attention to the prejudice visited upon the defendant, effectively has eliminated the element of delay as a significant factor in determining whether to grant a motion to amend the ad damnum clause.[68]

Of course, it is arguable whether retention of the prejudice bar itself is warranted. Federal case law permits a judgment to be conformed to the verdict *irrespective* of prejudice to the defendant.[69] Moreover, New York statutory law does not appear to mandate the prejudice check adopted by the New York judiciary.[70] In addition,

---

[66] *E.g.*, Harris v. Pullman's Bar & Grill, Inc., 74 App. Div. 2d 818, 819, 425 N.Y.S.2d 355, 356 (2d Dep't 1980) (extended and unjustified delay in amending the ad damnum clause requires that motion be denied); Luongo v. Hollander Assocs., 54 App. Div. 2d 858, 858, 388 N.Y.S.2d 301, 302 (1st Dep't 1976) (in a personal injury case, an affidavit showing merits of the case and reasons to justify delay must be presented or motion to amend the ad damnum clause will be denied); Boehm Dev. Corp. v. New York, 42 App. Div. 2d 1018, 1018, 348 N.Y.S.2d 251, 253 (3d Dep't 1973) (since the plaintiff failed to explain "inordinate delay" in supporting affidavits, motion to amend the ad damnum clause must be denied); Osborne v. Miller, 38 App. Div. 2d 298, 300, 328 N.Y.S.2d 769, 771 (1st Dep't 1972) (when supporting affidavit does not allege injuries "recently . . . [coming] to the attention of the plaintiff," motion to amend the ad damnum clause must be denied).

[67] *See* Peterson v. Spartan Indus., Inc., 64 App. Div. 2d 958, 959, 408 N.Y.S.2d 794, 795 (1st Dep't 1978); Kind v. Rose Serebreny Corp., 28 App. Div. 2d 988, 988, 283 N.Y.S.2d 889, 889 (1st Dep't 1967); Jimenez v. Seickel & Sons, 22 App. Div. 2d 643, 643, 252 N.Y.S.2d 891, 892 (1st Dep't 1964); note 66 *supra*.

[68] The *Loomis* Court's emphasis upon prejudice, rather than upon delay, is reminiscent of Judge Cooke's dissent in Wyman v. Morone, 33 App. Div. 2d 168, 171-75, 306 N.Y.S.2d 115, 118-22 (3d Dep't 1969). In response to a finding by the majority of prejudice "as a matter of law," *id.* at 170, 306 N.Y.S.2d at 117, the dissent in *Wyman* argued that the defendant had not indicated any inability to prepare his case adequately or any reliance upon the amount in the original ad damnum clause, *id.* at 172, 306 N.Y.S.2d at 119 (Cooke, J., dissenting). The dissent contended that the "legislatively stated policy of liberality should be observed so long as there is no real prejudice to an adversary." *Id.* (Cooke, J., dissenting).

[69] *E.g.*, Steinmetz v. Bradbury Co., 618 F.2d 21, 24 (8th Cir. 1980); Riggs, Ferris & Geer v. Lillibridge, 316 F.2d 60, 63 (2d Cir. 1963); Roorda v. American Oil Co., 446 F. Supp. 939, 948 (W.D.N.Y. 1978); *see* FED. R. CIV. P. 54(c) ("final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings").

[70] Given that CPLR 3017(a) does not require accurate specification of damages in an ad damnum clause, *see* note 38 *supra*, and that CPLR 3017(c) expressly *prohibits* the pleader from indicating any amount in the ad damnum clause in a medical malpractice action, CPLR 3017(c) (McKinney Supp. 1980-1981), it would appear illogical to conclude that the legislature intended to permit defendants to rely upon the statement of damages contained in an ad damnum clause. Of course, absent reliance by a defendant upon an ad damnum clause, an amendment of such clause cannot be prejudicial.

both state and federal courts have asserted that the ad damnum clause exists solely to enable courts to assess whether they have jurisdiction over particular matters.[71] Consequently, the legitimacy of the prejudice bar to ad damnum clause amendments clearly is suspect.

Notably, the *Loomis* decision did not address the issue whether, absent a motion by the plaintiff, a court may act *sua sponte* to award more damages than requested in the ad damnum clause. The federal courts consistently have conformed judgments to verdicts in the absence of motions to amend.[72] Moreover, the explicit language of CPLR 3017(a) would seem to compel similar action by the New York courts.[73] Nevertheless, because the *Loomis* Court did not resolve this question, it is suggested that counsel for the plaintiff would be well-advised to move to amend the ad damnum clause to conform to the verdict, and not rely upon a court to act *sua sponte.*

Steven M. Rapp

DEVELOPMENTS IN NEW YORK LAW

Fellow servant rule held an inadmissible defense to an employee's action against his employer for injuries sustained due to the negligence of a coemployee

---

[71] One federal court has noted that the ad damnum clause is "totally irrelevant" to the amount of money damages which a plaintiff may be awarded. Zuckerman v. Tatarian, 418 F.2d 878, 880 (1st Cir. 1969), *cert. denied,* 397 U.S. 1069 (1970). Indeed, the significance of the ad damnum clause has been addressed persuasively:

> The purpose of the *ad damnum* is only to establish jurisdiction. It has no bearing on what should be awarded to the plaintiff by the verdict. . . . [I]t is immaterial what the plaintiff thinks he should be awarded. It is immaterial what the defendant thinks should be awarded to the plaintiff.

Mitchell v. American Tobacco Co., 28 F.R.D. 315, 318 (M.D. Pa. 1961) (quoting AMERICAN BAR ASSOCIATION, PROCEEDINGS OF THE SECTION OF INSURANCE, NEGLIGENCE AND COMPENSATION LAW 163, 179-81 (1959)). The singular jurisdictional significance of the ad damnum clause also has been noted by several New York courts. "[T]he *ad damnum* clause has no other relevance or probative weight . . . except to confirm that plaintiff has in fact chosen the proper court, in a jurisdictional sense, to determine his action." Gold v. Huntington Town House, 64 App. Div. 2d 885, 887, 407 N.Y.S.2d 907, 909 (2d Dep't 1978) (Suozzi, J., dissenting).

[72] *E.g.,* Steinmetz v. Bradbury Co., 618 F.2d 21, 24 (8th Cir. 1980); Southwestern Inv. Co. v. Cactus Motor Co., 355 F.2d 674, 678 (10th Cir. 1966); United States *ex rel.* Bachman & Keffer Constr. Co. v. H.G. Cozad Constr. Co., 324 F.2d 617, 620 (10th Cir. 1963); Riggs, Ferris & Geer v. Lillibridge, 316 F.2d 60, 63 (2d Cir. 1963).

[73] *See* CPLR 3017(a) (McKinney Supp. 1980-1981); note 38 *supra.*