

CPLR 327: Court of Appeals Dismisses on the Ground of Forum Non Conveniens Suit Arising from an Accident Occurring in New York

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offered by the opinion alone would not appear to warrant so strong a holding. However, in the absence of statutory authority to the contrary, the intent of the legislature seems clear that in order to interpose a claim against a defendant by means of substituted service under CPLR 308(4), literal compliance with both of the required acts of service must be achieved. As the court noted, a holding that nailing alone would effectively toll the statute of limitations would relegate the second act of mailing to a position of very minor importance.⁹⁷ Perhaps an even more serious consideration is the practical difficulty which would result from a contrary holding in this case. No time limit for performance of the second act of service would exist and the courts would be faced with the problem of determining in each case the effectiveness of the later service.⁹⁸ Such important procedural issues should not be left to determination on an ad hoc basis.

CPLR 327: Court of Appeals dismisses on the ground of forum non conveniens suit arising from an accident occurring in New York.

Prior to *Silver v. Great American Insurance Co.*,⁹⁹ New York maintained an inflexible *forum non conveniens* doctrine.¹⁰⁰ For example, as a result of the Court of Appeals' decision in *De La Bouillierie v. De Vienne*,¹⁰¹ New York courts were required to retain jurisdiction over foreign torts if either party was a New York resident.¹⁰² This rigid

commenced . . . [and] . . . it is usually the defendant's conduct which forces the plaintiff to use a double-edged service

Id. at 15.

It should be noted, however, that the plaintiff may avail himself of the sixty-day extension period pursuant to CPLR 203(b)(5). See H. WACHTELL, NEW YORK PRACTICE UNDER THE CPLR 76 (4th ed. 1973), wherein the author states:

If the statute of limitations is about to run out, the plaintiff can automatically gain an additional sixty days beyond the statutory period within which to serve the defendant or commence service by publication. This is accomplished in an action in a court of record by delivering the summons to the sheriff of the county where the defendant resides, is employed or is doing business; or, if these are not known after reasonable inquiry, to the sheriff of the county where the defendant is known to have last resided, been employed or been engaged in business.

⁹⁷ 44 App. Div. 2d at 93, 353 N.Y.S.2d at 510.

⁹⁸ See text accompanying note 78 *supra*.

⁹⁹ 29 N.Y.2d 356, 278 N.E.2d 619, 328 N.Y.S.2d 398 (1972).

¹⁰⁰ For a discussion of the development of the *forum non conveniens* doctrine in New York, see *The Quarterly Survey*, 46 ST. JOHN'S L. REV. 561, 588 (1972).

¹⁰¹ 300 N.Y. 60, 89 N.E. 15 (1949).

¹⁰² *De La Bouillierie* involved an action by a nonresident plaintiff against New York defendants for false imprisonment and conspiracy to defraud. These charges arose from activities carried on by the defendants in France. The defendants moved under CPA 107, the forerunner of CPLR 3211, to dismiss the action on the ground that France represented the proper forum for this suit. The Court of Appeals reversed the lower court's dismissal, because of a failure to consider the residence of the parties. *Id.* at 61, 89 N.E. at 15. In *De La Bouillierie*, Chief Judge Loughran reiterated the traditional

approach was abandoned in *Silver v. Great American Insurance Co.*¹⁰³ Henceforth, said the Court of Appeals, the *forum non conveniens* doctrine was to rest upon "considerations of justice, fairness and convenience, and not solely on the residence of one of the parties."¹⁰⁴ The *Silver* rule was codified in CPLR 327.¹⁰⁵

New York rule that whenever a party to a suit is a resident of this state, New York courts must retain jurisdiction over the action. *Id.* at 62, 89 N.E. at 15-16.

¹⁰³ 29 N.Y.2d 365, 278 N.E.2d 619, 328 N.Y.S.2d 398 (1972). In *Silver*, a Hawaiian physician brought suit in New York against a New York corporation, authorized to do business in Hawaii, alleging that it had conspired to injure his professional practice. Speaking for the Court, Chief Judge Fuld stated that the *De La Bouillerie* doctrine should be relaxed in light of the expanding bases of personal jurisdiction and newly emerging choice of law rules. 29 N.Y.2d at 361-62, 278 N.E.2d at 624, 328 N.Y.S.2d at 402-03.

In support of his position, Chief Judge Fuld cited, *inter alia*, the Court's decision in *Seider v. Roth*, 17 N.Y.2d 111, 210 N.E.2d 312, 269 N.Y.S.2d 99 (1966), wherein the attachment of an insurer's obligation to defend and indemnify a nonresident defendant was held to afford a basis of quasi-in-rem jurisdiction.

Indeed, in *Vaage v. Lewis*, 29 App. Div. 2d 315, 288 N.Y.S.2d 521 (2d Dep't 1968), discussed in *The Quarterly Survey*, 43 St. JOHN'S L. REV. 305, 341 (1968), the Appellate Division, Second Department, dismissed on the ground of *forum non conveniens* a *Seider* action wherein neither party was a New York resident. Two decisions by the United States Court of Appeals for the Second Circuit would restrict the *Seider* doctrine to New York plaintiffs, although in neither opinion was *forum non conveniens* formally offered as the reason for such a limitation. See *Minichiello v. Rosenberg*, 410 F.2d 106 (2d Cir. 1968), *aff'd en banc*, 410 F.2d 117 (2d Cir.), *cert. denied*, 396 U.S. 844 (1969); *Farrell v. Piedmont Aviation, Inc.*, 411 F.2d 812 (2d Cir.), *cert. denied*, 396 U.S. 840 (1969) (dictum). *But see* *McHugh v. Paley*, 63 Misc. 2d 1092, 314 N.Y.S.2d 208 (Sup. Ct. N.Y. County 1970) (permitting *Seider* action by nonresident plaintiff against nonresident defendant and New York co-defendant).

¹⁰⁴ 29 N.Y.2d at 361, 278 N.E.2d at 622, 328 N.Y.S.2d at 402. It should be observed that the *Silver* Court merely disavowed local residence as the determinative factor; courts were admonished to continue giving residence some weight in passing upon a motion to dismiss on the ground of *forum non conveniens*. *Id.*

In view of the approach articulated by the *Silver* Court, considerations other than the residency of the parties take on added significance. At one point, the Court of Appeals had declared that in deciding whether or not to retain jurisdiction over a suit in which the residency of the parties was not a factor, the principal criterion is the convenience of the court, rather than that of the parties. See *Bata v. Bata*, 304 N.Y. 51, 105 N.E.2d 623 (1952). Subsequently, in an apparent modification of its position, the Court identified several factors in addition to the convenience of the court that should be considered. They include (1) the hardships likely to be encountered by the defendant in a New York suit; (2) the existence of another forum in which a remedy for the plaintiff may be obtained; and (3) the probability of adequately protecting the plaintiff's interest in a New York forum. See *Varkonyi v. S.A. Empresa De Viacao A.R.G.*, 22 N.Y.2d 333, 239 N.E.2d 542, 292 N.Y.S.2d 670 (1968).

In addition, the United States Supreme Court, in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947), set forth other considerations to be taken into account where *forum non conveniens* is asserted, including:

[T]he relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive.

Id. at 508.

¹⁰⁵ CPLR 327 became effective on September 1, 1972. See 7B MCKINNEY'S CPLR 327, *supp. commentary* at 40 (1973); WK&M ¶ 327.01. Rule 327 provides:

When the court finds that in the interest of substantial justice the action should

In *Martin v. Mieth*,¹⁰⁶ the Court of Appeals considered the applicability of the *forum non conveniens* doctrine to a negligence suit arising from an accident which had occurred within the state and involving nonresident parties. Heretofore, it appeared that New York courts were required to retain jurisdiction over any suit arising from a tort committed within the state, irrespective of the residence of the parties.¹⁰⁷ In an opinion by Judge Wachtler, the Court disavowed any continuing validity of this inflexible approach.

Martin arose from an automobile collision in Chautauqua County, New York. Plaintiff, a Canadian resident, was a passenger in a car owned and operated by the defendant, also a Canadian resident. Plaintiff commenced a negligence action in New York County, acquiring personal jurisdiction over the defendant pursuant to New York's nonresident motorist statute, section 253 of the Vehicle and Traffic Law.¹⁰⁸ Prior to trial, defendant moved to dismiss the suit on the ground of *forum non conveniens* pursuant to CPLR 3211(a)(2).¹⁰⁹ When this motion was denied, defendant moved for a change of venue from New York County to Chautauqua County.¹¹⁰ The Appellate

be heard in another forum, the court, on the motion of any party, may stay or dismiss the action in whole or in part on any conditions that may be just. The domicile or residence in this state of any party to the action shall not preclude the court from staying or dismissing the action.

¹⁰⁶ 35 N.Y.2d 414, 321 N.E.2d 777, 362 N.Y.S.2d 853 (1974).

¹⁰⁷ See, e.g., *De La Bouillierie v. De Vienne*, 300 N.Y. 60, 62, 89 N.E.2d 15, 16-17 (1949) ("It is only when an action is brought by one nonresident against another for a tort committed outside the State that our courts may refuse to take cognizance of the controversy"); *Creegan v. Szyanko*, 24 App. Div. 2d 756, 263 N.Y.S.2d 878 (1st Dep't 1965). See also *Ginsburg v. Hearst Publishing Co.*, 5 App. Div. 2d 200, 170 N.Y.S.2d 691 (1st Dep't 1958), *aff'd mem.*, 5 N.Y.2d 894, 156 N.E.2d 708, 183 N.Y.S.2d 77 (1959).

¹⁰⁸ N.Y. VEH. & TRAF. LAW § 253 (McKinney 1966).

¹⁰⁹ CPLR 3211(a) provides:

(a) Motion to dismiss cause of action. A party may move for judgment dismissing one or more causes of action asserted against him on the ground that:

.....
2. the court has not jurisdiction of the subject matter of the cause of action

The motion to dismiss in *Martin* was made pursuant to CPLR 3211(a)(2) (lack of subject matter jurisdiction) because plaintiff's action was initiated on May 12, 1972, three months in advance of the effective date of CPLR 327, which deals specifically with the ground of "inconvenient forum." See note 105 *supra*. Prior to the adoption of CPLR 327, CPLR 3211(a)(2) had traditionally been used as the basis for a *forum non conveniens* motion. See 7B MCKINNEY'S CPLR 3211, commentary at 17-18 (1970), wherein Professor David D. Siegel comments:

For the procedural purpose of moving to dismiss on the *conveniens* ground, the ground qualifies as a defect of subject matter jurisdiction and may be predicated on CPLR 3211(a)(2).

This placement of the *conveniens* ground under the category of subject matter jurisdiction is solely for the procedural purpose of bringing the objection into court.

See also WK&M ¶ 3211.10.

¹¹⁰ Defendant moved for the change of venue to Chautauqua County for the convenience of the witnesses. 35 N.Y.2d at 416, 321 N.E.2d at 778, 362 N.Y.S.2d at 855.

Division, First Department, affirmed the denial of both motions.¹¹¹ Appeal to the Court of Appeals was taken by leave of the First Department on a certified question of law, and the Court restricted its decision to the issue of *forum non conveniens*.¹¹²

The "entire record which was before the Appellate Division" was examined by the Court,¹¹³ and, as a result, it was found that contradictory and inconsistent statements by the plaintiff revealed the absence of a "substantial nexus" with New York.¹¹⁴ Thus, dismissal on the ground of *forum non conveniens* was held appropriate.¹¹⁵

In response to defendant's motion to dismiss the action on the ground of *forum non conveniens*, plaintiff had submitted an affidavit which alleged that it was necessary for New York to retain jurisdiction over the suit because both her hospital records and witnesses to the accident were present in the Chautauqua County vicinity and would not be subject to subpoena in Canada.¹¹⁶ Subsequently, contradictory statements were made by plaintiff's counsel in an affidavit submitted in response to the defendant's motion for a change of venue to Chautauqua County.¹¹⁷ According to the latter affidavit, the witnesses' testimony was not material to the issues; the New York State Police reports concerning the accident were not probative of any material fact; and the New York hospital records were not needed, since plaintiff was now under the care of a physician in a Toronto hospital.¹¹⁸ In thus negating Chautauqua County as an appropriate forum, plaintiff likewise demonstrated that the only connection the suit had with New

¹¹¹ 42 App. Div. 2d 892, 347 N.Y.S.2d 590 (1st Dep't 1973).

¹¹² The Court interpreted the certified question as relating to "whether or not the motion to dismiss on the ground of *forum non conveniens* should have been denied as a matter of law." 35 N.Y.2d at 417, 321 N.E.2d at 779, 362 N.Y.S.2d at 856. Certified questions of law are provided for in CPLR 5713, which states in pertinent part: "When the appellate division grants permission to appeal to the court of appeals, its order granting such permission shall state that questions of law have arisen which in its opinion ought to be reviewed."

¹¹³ 35 N.Y.2d at 417, 321 N.E.2d at 779, 362 N.Y.S.2d at 856.

¹¹⁴ *Id.* at 418, 321 N.E.2d at 780, 362 N.Y.S.2d at 857. See note 120 *infra*.

¹¹⁵ The dismissal in *Martin* was conditional, in that the defendant had to agree to accept service of summons in Canada and waive any statute of limitations defense otherwise available in Canada. It would appear to be the accepted practice that when a court grants a motion to dismiss on the ground of *forum non conveniens*, it imposes conditions similar to those found in *Martin*. See, e.g., *Aetna Ins. Co. v. Creole Petroleum Corp.*, 27 App. Div. 2d 518, 275 N.Y.S.2d 274 (1st Dep't 1966), *aff'd mem.*, 23 N.Y.2d 717, 244 N.E.2d 56, 296 N.Y.S.2d 363 (1968); *Michels v. McCrory Corp.*, 44 Misc. 2d 212, 253 N.Y.S.2d 485 (Sup. Ct. N.Y. County 1964); *Winnil Co. v. American Cent. Ins. Co.*, 35 Misc. 2d 187, 230 N.Y.S.2d 289 (Sup. Ct. N.Y. County 1962).

¹¹⁶ 35 N.Y.2d at 416, 321 N.E.2d at 778, 362 N.Y.S.2d at 855.

¹¹⁷ See note 110 and accompanying text *supra*.

¹¹⁸ 35 N.Y.2d at 416-17, 321 N.E.2d at 778-79, 362 N.Y.S.2d at 856.

York was the occurrence of the accident within the state.¹¹⁹ The Court of Appeals concluded that the mere happening of the accident in the state was not a nexus substantial enough¹²⁰ to require New York to retain jurisdiction over the suit.¹²¹

The Court noted that under prior case law, the mere occurrence of an accident within the state might very well have required New York to retain jurisdiction over the ensuing action.¹²² More recently, Judge Wachtler stated, inflexible standards relating to the *forum non conveniens* doctrine have been superseded by a "more flexible analysis."¹²³ *Silver* was cited by the Court as indicative of the increasing liberalization displayed by New York courts in this area.¹²⁴ Given this liberalization by the *Silver* Court in the application of the doctrine of *forum non conveniens* to suits in which a New York resident is a party, the Court concluded that "[a] parity of reasoning dictates that *forum non conveniens* be available even though the accident occurs in this State."¹²⁵

¹¹⁹ In view of the plaintiff's egregious contradictory statements, the dissenters in the Appellate Division, First Department, concluded that "[i]t would be hard to visualize a more unabashed instance of forum shopping." 42 App. Div. 2d at 893, 347 N.Y.S.2d at 592 (Stevens, P.J., & Steuer, J., dissenting). See generally *Rayco Mfg. Co. v. Chicopee Mfg. Co.*, 148 F. Supp. 588, 592-93 (S.D.N.Y. 1957), wherein the court stated that "a litigant . . . is open to the charge of forum shopping whenever he chooses a forum with slight connection to the factual circumstances surrounding his suit."

¹²⁰ "Substantial nexus" is used in some cases, such as *Silver v. Great Am. Ins. Co.*, 29 N.Y.2d 356, 278 N.E.2d 619, 328 N.Y.S.2d 398 (1972), and *Varkonyi v. S.A. Empresa De Viacao A.R.G.*, 22 N.Y.2d 333, 239 N.E.2d 542, 292 N.Y.S.2d 670 (1968), as the determinative measure of the connection between the suit and the forum. Other cases use "substantial justice" as the proper measure. See, e.g., *Wedemann v. United States Trust Co.*, 258 N.Y. 315, 179 N.E. 712 (1932); *Barry v. American Home Assurance Co.*, 38 App. Div. 2d 928, 329 N.Y.S.2d 911 (1st Dep't), *aff'd*, 31 N.Y.2d 684, 289 N.E.2d 180, 337 N.Y.S.2d 259 (1972); *Propulsion Sys., Inc. v. Avondale Shipyards, Inc.*, 77 Misc. 2d 259, 352 N.Y.S.2d 749 (Sup. Ct. N.Y. County 1973).

Courts have traditionally expressed an unwillingness to exercise jurisdiction over suits that contain only minimal contacts with New York, in the belief that to do otherwise would encourage the commencement of unnecessary lawsuits here, thereby impeding the efficient administration of justice in the state. See, e.g., *Vaage v. Lewis*, 29 App. Div. 2d 315, 318, 288 N.Y.S.2d 521, 524 (2d Dep't 1968).

¹²¹ 35 N.Y.2d at 418, 321 N.E.2d at 780, 362 N.Y.S.2d at 857. The Court went on to note that "on the facts that are not self-contradicted there would be no rational basis for a discretionary retention of jurisdiction." *Id.*

¹²² 35 N.Y.2d at 417, 321 N.E.2d at 779, 362 N.Y.S.2d at 856, *citing* *De La Bouillerie v. De Vienne*, 300 N.Y. 60, 89 N.E.2d 15 (1949); *Robinson v. Oceanic Steam Navigation Co.*, 112 N.Y. 315, 19 N.E. 625 (1889); *Creegan v. Sczynko*, 24 App. Div. 2d 756, 263 N.Y.S.2d 878 (1st Dep't 1965); *Serralles v. Viaders*, 285 App. Div. 947, 139 N.Y.S.2d 896 (1st Dep't 1955).

¹²³ 35 N.Y.2d at 418, 321 N.E.2d at 779, 362 N.Y.S.2d at 857.

¹²⁴ *Id.*

¹²⁵ *Id.* The Court of Appeals did not eliminate the requirement that as a precon-

It is clear that in the future courts will be required to scrutinize all the circumstances surrounding a suit between nonresidents resulting from an accident within the state. As the *Martin* decision indicates, no longer will the "mere adventitious circumstance that the accident occurred here"¹²⁶ mandate retention of jurisdiction by a New York court. Application of the *forum non conveniens* principle to such personal injury suits¹²⁷ is a movement toward judicial consistency, since New York courts have for some time exercised flexibility in dismissing on the ground of *forum non conveniens* suits based on contracts that were made, to be performed or breached in New York.¹²⁸

Clearly, the Court of Appeals used sound discretion in refusing to retain jurisdiction in *Martin*.¹²⁹ The sole New York contact in this suit was the accident itself, a purely fortuitous occurrence. Undeniably, Ontario represented a more appropriate forum, since both parties were residents of that province. By examining all the factors surrounding a suit which is the object of a motion to dismiss on the ground of *forum non conveniens*, the New York Court of Appeals has adopted a stance which results in substantial justice to all parties.

dition to dismissal on the ground of *forum non conveniens*, it must be assured that there exists a second, more appropriate forum to which the plaintiff can turn for relief. See, e.g., *Fertel v. Resorts Intern, Inc.*, 43 App. Div. 2d 241, 350 N.Y.S.2d 913 (1st Dep't 1974); *Hubbell v. Insurance Co. of N. America*, 40 App. Div. 2d 696, 336 N.Y.S.2d 310 (2d Dep't 1972); *Gilchrist v. Trans-Canada Air Lines*, 27 App. Div. 2d 524, 275 N.Y.S.2d 394 (1st Dep't 1966) (per curiam).

¹²⁶ 35 N.Y.2d at 418, 321 N.E.2d at 780, 362 N.Y.S.2d at 857.

¹²⁷ The *Martin* decision was foreshadowed in a previous holding of the Appellate Division, First Department. In *Hernandez v. Cali, Inc.*, 32 App. Div. 2d 192, 301 N.Y.S.2d 397 (1st Dep't 1969), *aff'd mem.*, 27 N.Y.2d 903, 265 N.E.2d 921, 317 N.Y.S.2d 625 (1970), the plaintiff, a Columbian seaman, brought suit for injuries he sustained while working on the Panamanian defendant's vessel as it was docking in New York harbor. The First Department affirmed a lower court dismissal of the action, reasoning that in light of all the facts associated with the accident, including the occurrence of the injury in this state, Panama would be a more appropriate forum. 32 App. Div. 2d at 196, 301 N.Y.S.2d at 401-02. *Hernandez* was affirmed without opinion by the Court of Appeals. 27 N.Y.2d 903, 265 N.E.2d 921, 317 N.Y.S.2d 625 (1970) (mem.). It is worthy of note, that of the five-member First Department panel in *Hernandez*, two justices, Presiding Justice Stevens and Justice Steuer, also participated in *Martin*. In *Hernandez*, Justice Steuer joined Presiding Justice Stevens in his majority opinion. 32 App. Div. 2d at 197, 347 N.Y.S.2d at 402. Both justices subsequently dissented from the First Department's decision in *Martin*. 42 App. Div. 2d at 892, 347 N.Y.S.2d at 591.

¹²⁸ See, e.g., *Bata v. Bata*, 304 N.Y. 51, 105 N.E.2d 623 (1952); *Wedemann v. United States Trust Co.*, 258 N.Y. 315, 179 N.E. 712 (1932); *Field v. Jordan*, 14 App. Div. 2d 845, 220 N.Y.S.2d 899 (1st Dep't 1961) (per curiam).

¹²⁹ It is interesting to note that a substantial number of cases in which dismissal on the ground of *forum non conveniens* has been sought were brought in New York County. See cases cited in notes 120, 122, 125 & 127 *supra*. This may be because New York County

ARTICLE 10 — PARTIES GENERALLY

CPLR 1005: Court of Appeals liberalizes availability of class actions.

CPLR 1005 authorizes a representative suit "[w]here the question is one of a common or general interest of many . . ."¹³⁰ Although the social utility of class suits has long been recognized,¹³¹ the restrictive case law development of class action procedure has nonetheless operated as a bar to its employment in the public interest fields.¹³² While legislative action would be preferable in reforming class action law,¹³³ the continued efforts of the Judicial Conference to enact proposed article nine, which would substantially revise class action procedure to accord with practice under the Federal Rules of Civil Procedure, have been unavailing.¹³⁴ Accordingly, the Court of Appeals has undertaken the task of liberalization in *Ray v. Marine Midland Grace Trust Co.*¹³⁵

is reputed for generosity in its judgments. See *Simpson v. Loehmann*, 21 N.Y.2d 305, 316, 234 N.E.2d 669, 675, 287 N.Y.S.2d 633, 641 (1967) (Breitel, J., concurring).

¹³⁰ CPLR 1005(a) provides:

Where the question is one of a common or general interest of many persons or where the persons who might be made parties are very numerous and it may be impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.

Although the use of the disjunctive "or" seems to authorize a class suit in two separate instances, the practice of the courts has been to construe the provision in the conjunctive. See Homburger, *State Class Actions and the Federal Rule*, 71 COLUM. L. REV. 609 (1971).

¹³¹ See generally Kalven & Rosenfield, *The Contemporary Function of the Class Suit*, 8 U. CHI. L. REV. 684 (1941); Weinstein, *The Class Action is Not Abusive*, 167 N.Y.L.J. 84, May 1, 1972, at 1, col. 3.

¹³² The doctrine of separate wrongs, see notes 143-46 and accompanying text *infra*, has consistently precluded the utilization of the class action as a remedy in the fields of consumer and civil rights. For example, in *Hall v. Coburn Corp.*, 26 N.Y.2d 396, 259 N.E.2d 720, 311 N.Y.S.2d 281 (1970), a class action was brought to recover the statutory penalty for illegal credit service charges. Alleging that the contracts the defendant finance company acquired were illegal in that certain printed parts of the contracts were less than the required size, the class was comprised of parties who made separate agreements with different sellers but pursuant to the same written installment form. The Court of Appeals dismissed the representative action. Adhering to the doctrine of separate wrongs, the Court held that the mere allegation of identical facts was not sufficient to create a common right. *Id.* at 400, 259 N.E.2d at 721, 11 N.Y.S.2d at 282-83.

¹³³ See *Moore v. Metropolitan Life Ins. Co.*, 33 N.Y.2d 304, 313, 307 N.E.2d 554, 558, 352 N.Y.S.2d 433, 439 (1973), wherein the Court stated:

Because . . . [legislative action] would assure limitations and safeguards which would be highly desirable in broadening the jurisdiction of the courts of this State over class actions, legislation in this area is highly preferable to the alternative of judicial development . . .

¹³⁴ Article nine of the CPLR has been proposed annually by the Judicial Conference since 1972. See TWELFTH ANNUAL REPORT OF THE JUDICIAL CONFERENCE TO THE LEGISLATURE ON THE CPLR, appearing in 2 N.Y. SESS. LAWS 1797-1803 (McKinney 1974) [hereinafter cited as TWELFTH ANNUAL REPORT]. On January 21, 1975, numerous state senators and assemblymen reintroduced article nine to the 1975 Legislature. See N.Y.S. 1309, N.Y.A. 1252, 1975-76 Sess. At present, the outcome of the proposal remains uncertain.

¹³⁵ 35 N.Y.2d 147, 316 N.E.2d 320, 359 N.Y.S.2d 28 (1974).