

# CPLR 4110-b: New York Adopts Federal Pre-Charge Conference Procedure

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Since *C* was never required to address himself to the issue of *A*'s negligence, he may argue with considerable force that *A*'s subsequent use of collateral estoppel denies him a "full and fair opportunity to contest" the question.<sup>120</sup>

Dissimilarity of issues is another possible ground for denying collateral estoppel in the *Walsdorf* case. Conceivably a party to an accident may be responsible for injuries to others without being negligent with respect to his own injuries. In such a case, he should recover as a plaintiff but be held liable as a defendant. In many cases, of course, the two issues will be indistinguishable.

These considerations illustrate the fallacy of applying mechanical rules in determining the availability of collateral estoppel.<sup>121</sup> Each case must be examined individually on its facts to determine whether the broad requirements set out in *Schwartz* and *Nesbitt* have been met. Only a case by case approach will prevent inconsistent adjudications while ensuring that a party is not denied his day in court.

#### ARTICLE 41 — TRIAL BY A JURY

*CPLR 4110-b: New York adopts federal pre-charge conference procedure.*

The newly added CPLR 4110-b<sup>122</sup> substantially adopts Rule 51 of the Federal Rules of Civil Procedure. It allows counsel at trial to submit written jury-charge requests at the close of the evidence or at such earlier time as the court may request. The provision contemplates that court and counsel will confer out of the hearing of the jury before the closing arguments so that counsel can be informed of the charge to be given. The new section further provides that the jury must be charged after counsels' closing arguments and that any objection forming the basis for an assignment of error on appeal must be made before the jury retires to deliberate. The new provision should benefit all concerned. Counsels' written requests will assist the trial judge in preparing his charge by forewarning him of objections. Additionally, the pre-charge conference will give attorneys an opportunity to structure their summations around the charge.

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<sup>120</sup> Perhaps a party in *C*'s position should be treated as a stranger to the *A-B* action. Cf. *Neenan v. Woodside Astoria Transp. Co.*, 261 N.Y. 159, 184 N.E. 744 (1933).

<sup>121</sup> See *Rosenberg, Collateral Estoppel in New York*, 44 *ST. JOHN'S L. REV.* 165, 195 (1969).

<sup>122</sup> L. 1973, ch. 233, at 312, eff. Sept. 1, 1973.