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CPLR 5004: Interest on Judgments Fixed at 6%

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division, in the exercise of its discretion, finds that facts warrant review in the "interests of justice."[144]

Reaffirming this rule in *Schein v. Chest Service Co.*,[145] the Appellate Division, First Department, conditionally reversed,[146] on the law and the facts, an order setting aside a jury verdict in favor of the plaintiff and granting a new trial. The Supreme Court, New York County, had made the order on the basis of certain prejudicial testimony by the plaintiff. Noting that the record indicated that the defendants' counsel had not objected to the admission of this testimony, the court held that the defendants had waived their objection by not timely moving for a mistrial.[147]

The strict, but not inflexible, mandate of CPLR 4017[148] and decisional law requiring an immediate objection to prejudicial rulings prevents the unfairness to the court and to the opposing party of unnecessary re-trials.[149]

ARTICLE 50 — JUDGMENTS GENERALLY

CPLR 5004: Interest on judgments fixed at 6%.

CPLR 5004 has been amended to fix the maximum interest rate payable on judgments at 6% instead of at the "legal rate."[150] Difficulties arose under the former CPLR 5004 as to whether the "legal rate" meant the established 6% rate or the legal interest rate established by the State Banking Board pursuant to General Obligations Law section 5-501. The Banking Board had set the rate at 7.25%, and then at 7.5%, and most courts had held that the rate established by the Banking Board was the proper interest rate payable on judgments.[151]

It is hoped that this amendment will not "have the incidental effect of making it harder to collect judgments since the judgment debtor

144 7 WK&M ¶ 5501.11. Note that the instant court disagreed with the trial court's finding that the "interests of justice" mandated a new trial. Schein v. Chest Serv. Co., 38 App. Div. 2d 929, 330 N.Y.S.2d 147, 148 (1st Dep't 1972) (mem.).

145 *Id.*, 330 N.Y.S.2d 147.

146 The court concurred in the lower court's finding that the verdict in the instant case was excessive. It therefore held that the jury verdict would be set aside and a new trial ordered unless plaintiff stipulated to accept $5,000 in lieu of the verdict of $15,000 within twenty days of service of the instant order. *Id.*, 330 N.Y.S.2d at 148.

147 *Id., citing* Hough v. Doersch, 257 App. Div. 842, 12 N.Y.S.2d 50 (2d Dep't 1939), *appeal dismissed*, 282 N.Y. 675, 26 N.E.2d 807 (1940); Collins v. Ward, 240 App. Div. 985, 268 N.Y.S. 142 (2d Dep't 1933).

148 CPLR 4017 states that "[f]ailure to so make known objections may restrict review upon appeal. . . ."

149 *See* 4 WK&M ¶ 4017.03.

150 L. 1972, ch. 358, at 790, eff. Sept. 1, 1972.

151 Trimboli v. Scarpaci Funeral Home Inc., 37 App. Div. 2d 386, 326 N.Y.S.2d 227 (2d Dep't 1971), *discussed in The Quarterly Survey*, 46 ST. JOHN'S L. REV. 561, 577 (1972); Rachlin & Co. v. Tra-Mar, Inc., 33 App. Div. 2d 370, 308 N.Y.S.2d 153 (1st Dep't 1970).

has only to pay 6 per cent interest upon his judgment debt while he can earn a better return on his money in the open market."[152]

CPLR 5015(b): Amendment to allow vacatur by mere stipulation.

CPLR 5015(b) has been amended to permit a default judgment to be vacated by the clerk, without application to the court, whenever the parties so stipulate. There is no time limit on such a stipulation.

ARTICLE 57 — APPEALS TO THE APPELLATE DIVISION

CPLR 5704(a): Review of ex parte *orders by appellate division.*

CPLR 5704(a) has been amended to authorize the appellate division to vacate or modify an *ex parte* order granted by any court from which an appeal to the appellate division would lie, and to issue an *ex parte* order or provisional remedy if it is refused by any such court.[153] Under the former CPLR 5704(a), the appellate division was authorized to vacate or modify an *ex parte* order of the supreme court only, and could grant an *ex parte* order or provisional remedy only if it had been refused by the supreme court.

ARTICLE 75 — ARBITRATION

CPLR 7503(a): Mere conclusory allegations in support of a stay of arbitration proceedings under MVAIC statute deemed insufficient.

The Motor Vehicle Accident Indemnification Corporation[154] (MVAIC) was established to compensate innocent traffic victims or their survivors for injuries or deaths sustained in accidents involving hit-and-run drivers or uninsured vehicles.[155] All motor vehicle liability insurers authorized to do business in New York are members of the Corporation,[156] which is charged by statute with investigating claims and appearing on behalf of financially irresponsible motorists.[157] Liability is limited to $10,000 for injury or death of one person and $20,000 in the event of an accident injuring two or more persons;[158] no provision is made for compensating property damage.[159]

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152 McLaughlin, *New York Trial Practice*, 168 N.Y.L.J. 8, July 13, 1972, at 1, col. 1.

153 L. 1972, ch. 435, at 909, eff. Sept. 1, 1972.

154 N.Y. INS. LAW §§ 167(2)(a), 600-26 (McKinney 1966).

155 Compulsory automobile insurance went into effect in New York on Feb. 1, 1957 (N.Y. VEH. & TRAF. LAW art. 6 (McKinney 1960)). This legislation did not provide compulsory insurance for accidents involving uninsured nonresident drivers, hit-and-run drivers, those driving stolen vehicles or vehicles operated without consent, and vehicles whose insurers disclaimed liability or denied coverage.

156 N.Y. INS. LAW § 602 (McKinney 1966).

157 *Id.* § 609.

158 *Id.* § 610.

159 For a discussion of the general background of MVAIC and the problems of the