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CPLR 602: Degree of Responsibility Attributable to Each Defendant for Similar Injuries Suffered by a Plaintiff in Separate Automobile Accidents Held To Justify Joint Trial

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The *Caton* decision is properly strict, especially in view of the inherent weakness of service by publication in giving notice to the defendant of an impending action.[18]

ARTICLE 6 — JOINDER OF CLAIMS, CONSOLIDATION AND SEVERANCE

CPLR 602: Degree of responsibility attributable to each defendant for similar injuries suffered by a plaintiff in separate automobile accidents held to justify joint trial.

CPLR 602 bestows upon the courts broad discretionary power to join the trials of separate actions, upon motion, when they involve "a common question of law or fact."[19] *Thayer v. Collett*[20] illustrates the application of this permissive standard.[21] Therein, the Appellate Division, Third Department, held that where a plaintiff had instituted separate actions to recover for similar injuries allegedly sustained in two automobile accidents occurring a year apart, it was not an improper exercise of discretion to grant the motion of one of the defendants for a joint trial. The court found that the degree of responsibility attributable to each defendant for the alleged injuries constituted a common question of fact, and that a determination of this question by a joint trial would be fairer to both the plaintiff and the defendants since it would prevent a litigating defendant from seeking to cast blame for the injuries on the absent defendants.[22]

This decision is sound. When, as in *Thayer*, a joint trial will serve to preserve the rights of the parties, its use should be encouraged as an effective means of expediting litigation and avoiding the inconsistent verdicts that may result from a multiplicity of suits.[23]

CPLR 602: Second Department recommends trial preference when summary proceeding consolidated with action.

The CPLR appears to permit the consolidation of a plenary action with a special proceeding,[24] and a majority of New York courts have so

77 N.Y.S. 959 (4th Dep't 1902); Alfonso v. Alfonso, 99 Misc. 550, 165 N.Y.S. 1037 (Sup. Ct. Kings County 1917).

18 *See* Boddie v. Connecticut, 401 U.S. 371, 382 (1971).

19 CPLR 602(a). *See* 7B MCKINNEY'S CPLR 602, commentary at 116 (1963). *See generally* Boyea v. Lambeth, 33 App. Div. 2d 928, 306 N.Y.S.2d 481 (3d Dep't 1970) (mem.). Note that CPLR 602 liberalizes the CPA requirement for joinder, *i.e.*, that the actions grow out of the same set of facts. *Compare* CPA 96-a *and* Abbatepaolo v. Blumberg, 7 App. Div. 2d 847, 182 N.Y.S.2d 83 (2d Dep't 1959) (mem.), *with* CPLR 602(a) *and* Wyant v. Jensen, 25 App. Div. 2d 388, 270 N.Y.S.2d 156 (3d Dep't 1966).

20 41 App. Div. 2d 581, 340 N.Y.S.2d 16 (3d Dep't 1973) (mem.).

21 *See* Wyant v. Jensen, 25 App. Div. 2d 388, 270 N.Y.S.2d 156 (3d Dep't 1966); Potter v Clark, 19 App. Div. 2d 585, 240 N.Y.S.2d 495 (4th Dep't 1963) (mem.). *But see* Korn v Duhl, 22 App. Div. 2d 793, 253 N.Y.S.2d 874 (2d Dep't 1964) (mem.).

22 41 App. Div. 2d at 581, 340 N.Y.S.2d at 17.

23 *See* 2 WK&M ¶ 602.01.

24 CPLR 602(a) provides for the consolidation of "actions" involving common questions