

CPLR 5528(a)(5): Bar Advised To Reproduce Testimony in Logical Sequence When Utilizing the Appendix Method

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ment, maintaining that on the day in question he had a case load of 40 cases in 13 different parts. In denying the motion, the court ruled that "where no attempt was made to hire outside counsel, and there was indication that [the] case was prepared for trial"⁵⁹ the policy of deciding cases on the merits must yield to two superseding considerations: the inconvenience and loss caused the plaintiff and the responsibility of the bar to assist in ameliorating the court's calendar dilemma.⁶⁰

ARTICLE 55 — APPEALS GENERALLY

CPLR 5528(a)(5): Bar advised to reproduce testimony in logical sequence when utilizing the appendix method.

CPLR 5528(a)(5) permits an appeal to be prosecuted by the appendix method whereby the appellant submits only so much of the record as is material to the questions presented on appeal. This proviso is directed at reducing the appellant's costs and easing the court's burden.⁶¹ Moreover, a thoroughly prepared appendix by the appellant can obviate the appellee's need to print any part of the record in his own brief.⁶² Because of the benefits that could conceivably be derived by all concerned if the appendix is satisfactory, the courts have indicated that abuses will not be tolerated and have expressed their displeasure by withholding or imposing costs on the lax party.⁶³

In *Kimberly-Clark Corp. v. Power Authority*⁶⁴ the appellant submitted an appendix in which he presented the testimony of the witnesses in alphabetical order rather than in the order of their appearance at the trial. As a result of this illogical sequence, the appellate division was presented with a distorted record. Refusing to be subjected to the chore of untangling facts from the incoherent appendix, the court rejected it as inadequate and unacceptable.

ARTICLE 75 — ARBITRATION

CPLR 7502(b): Referral of "threshold" question to arbitrator ruled improper.

In *Blends, Inc. v. Schottland Mills, Inc.*⁶⁵ a spinner of yarn, Textiles, sold goods to a weaver, Schottland Mills, Inc. (Schottland), which

⁵⁹ 64 Misc. 2d at 500, 314 N.Y.S.2d at 760.

⁶⁰ Cf. *Herbert Land Co. v. Lorenzen*, 113 App. Div. 802, 99 N.Y.S. 937 (2d Dep't 1906).

⁶¹ See 7 WK&M ¶ 5528.01.

⁶² Cf. SECOND REP. 354.

⁶³ See, e.g., *Richard C. Mugler Co. v. A. C. Management Corp.*, 29 App. Div. 2d 548, 286 N.Y.S.2d 81 (2d Dep't 1967) *aff'd mem.* 24 N.Y.2d 814, 248 N.E.2d 446, 300 N.Y.S.2d 591 (1969); see also *Lo Gerfo v. Lo Gerfo*, 30 App. Div. 2d 156, 290 N.Y.S.2d 1005 (2d Dep't 1968), discussed in *The Quarterly Survey*, 43 ST. JOHN'S L. REV. 498, 527 (1969).

⁶⁴ 35 App. Div. 2d 330, 316 N.Y.S.2d 68 (4th Dep't 1970).

⁶⁵ 35 App. Div. 2d 377, 316 N.Y.S.2d 912 (1st Dep't 1970).