

# CPLR 325(d): Damages Sought Not Limited by Monetary Jurisdiction in Lower Court After Transfer by Supreme Court Without Plaintiff's Consent

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*CPLR 325(d): Damages sought not limited by monetary jurisdiction in lower court after transfer by supreme court without plaintiff's consent.*

Article VI, section 19(a) of the New York State Constitution empowers the supreme court to transfer actions and proceedings over which it does not have exclusive jurisdiction, independent of the amount of damages sought, to any other court in the judicial department possessing jurisdiction of the subject matter and over the parties. It has been noted that this provision is self-executing, thus permitting the supreme court to ease its calendar congestion directly.<sup>75</sup>

The constitution further permits the state legislature to provide that verdicts or judgments in such transferred actions shall not be subject to the lower monetary jurisdiction of the court to which the action is transferred.<sup>76</sup> Accordingly, CPLR Rule 325(d) was enacted in 1968, and the legislature thereby delegated this power to the appellate division.<sup>77</sup> To date, calendar conditions in the state have been such that transfer rules have only been adopted by the appellate divisions in the third<sup>78</sup> and fourth<sup>79</sup> judicial departments.

*Kloc v. Cissell*<sup>80</sup> affords a recent illustration of the operation of the transfer rule in the fourth department. The trial court transferred plaintiff's action to recover damages for personal injuries to a city court because the potential recovery was, in the court's view, within the monetary jurisdiction of the city court. However, the trial court had neglected to consider any of plaintiff's medical testimony. The appellate division nevertheless affirmed in light of the fact that plaintiff would not be aggrieved by such transfer since his recovery would not now be limited by the monetary ceiling in the city court.

#### ARTICLE 10 — PARTIES GENERALLY

*CPLR 1007: Premature suit for indemnification not permitted.*

Under CPLR 1007, third party indemnity suits are permitted by defendant "after the service of his answer." However, a premature in-

<sup>75</sup> *Frankel Associates, Inc. v. Dun & Bradstreet, Inc.*, 45 Misc. 2d 607, 610, 257 N.Y.S.2d 555, 558 (Sup. Ct. N.Y. County 1965); 1 WEINSTEIN, KORN & MILLER, *NEW YORK CIVIL PRACTICE* ¶ 325.04 (1968).

<sup>76</sup> N.Y. CONST. art. VI, § 19(k).

<sup>77</sup> See 7B MCKINNEY'S CPLR 325, *supp. commentary* 218 (1968).

<sup>78</sup> 22 NYCRR 861.18 (1969).

<sup>79</sup> N.Y. STANDARD CIVIL PRACTICE DESK BOOK, *supp.* 108 (3d ed. 1969). See 7B MCKINNEY'S CPLR 325, *supp. commentary* 218, 219 (1968): "In view of the congestion in the lower courts of the first and second departments, implementing provisions in these departments do not seem to be in the offing."

<sup>80</sup> 31 App. Div. 2d 885, 298 N.Y.S.2d 107 (4th Dep't 1969).