CPLR 3018: Joint Tortfeasor May Offset Medical Insurance Payments Given to Plaintiff by Other Defendant's Insurer

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over, the ability to have both causes heard before the same judge will expedite the disposition of the cases being heard.

**ARTICLE 30 — REMEDIES AND PLEADING**

**CPLR 3018: Joint tortfeasor may offset medical insurance payments given to plaintiff by other defendant’s insurer.**

The general rule in the United States is that payments made to a plaintiff from a collateral source, *e.g.*, payments made pursuant to a policy of insurance, do not reduce the amount recoverable from the tortfeasor whether or not the plaintiff has himself provided for such payments.\(^\text{78}\) New York, however, follows the stricter minority rule which requires that the plaintiff must have in some way paid for his benefits, is absolutely or conditionally liable to repay his benefactor, or has subrogated his right to sue for specified payments to his benefactor, before these payments will be considered “collateral.”\(^\text{79}\)

It is clear that insurance proceeds are “owed” to a plaintiff and, hence, “collateral” under the New York rule when the plaintiff himself has paid for the premiums.\(^\text{80}\) But it is not as clear when the plaintiff is a beneficiary of an insurance policy procured by a third person not a party to the litigation. In *Silinsky v. State-Wide Insurance Co.*,\(^\text{81}\) plaintiff was covered by her father’s insurance policy as a member of the insured’s household. The court indicated that the plaintiff may have been “owed” the insurance proceeds as a third-party beneficiary of the insurance contract between her father and the insurer.

However, plaintiff’s claim to be a third-party beneficiary of an insurance contract cannot always be successfully employed. In *Moore v. Leggette*,\(^\text{82}\) for example, the plaintiff was the beneficiary of an in-

\(^{78}\) Report of the N.Y. Law Revision Comm., N.Y. Leg. Doc. No. 65, at 221, 225 (1957): “[Otherwise] the practical effect . . . is to give the wrongdoer an undeserved windfall.”

\(^{79}\) New York’s minority view was established by Drinkwater v. Dinsmore, 80 N.Y. 390 (1880) and was recently followed in Coyne v. Campbell, 11 N.Y.2d 372, 183 N.E.2d 891, 230 N.Y.S.2d 1 (1962) (plaintiff physician, treated gratuitously by his colleagues as a professional courtesy, cannot claim medical expenses in action against the defendant). In 1957, the New York Law Revision Commission proposed an amendment to the CPA which would have implemented the majority view. However, the Legislature declined to act on the proposal. *Id.* at 374, 183 N.E.2d at 891-92, 230 N.Y.S.2d at 2.


\(^{81}\) 30 App. Div. 2d 1, 289 N.Y.S.2d 541 (2d Dep’t 1968).

\(^{82}\) 24 App. Div. 2d 891, 256 N.Y.S.2d 765 (2d Dep’t), aff’d, 18 N.Y.2d 864, 22 N.Y.2d 787, 276 N.Y.S.2d 118 (1960). “Where such wrongdoer is a person prudent enough to take out a policy of insurance to indemnify the plaintiff . . . [the wrongdoer] is entitled
surance policy procured by the defendant, and the court permitted the
defendant to plead his insurer's payments in reduction of damages.

This exception to the third-party beneficiary argument was
recently extended by Grynbal v. Grynbal.\textsuperscript{83} In that case the plaintiff,
a passenger in the defendant's car, was injured in an accident with a
joint tortfeasor. The defendant, relying upon Moore, claimed an offset
for his insurer's medical payments to the plaintiff.

However, in a cross-motion, the joint tortfeasor claimed an offset
for these same payments. The court allowed the joint tortfeasor to
offset the damages but stated that in the event the plaintiff prevails,
contribution of one-half of these medical payments would have to be
made to the co-defendant or his insurance carrier in accordance with
CPLR 1401.\textsuperscript{84} Furthermore, the court held that, in the event that the
plaintiff does not recover from the defendant, the joint tortfeasor's
offset of medical payments would be disallowed.

The offset allowance to the joint tortfeasor is an important
extension of the Moore rationale since, as between the plaintiff and the
joint tortfeasor, the medical payments are nongratuitous, and hence
collateral, benefits. It appears that the joint tortfeasor's right to the
offset is a derivative right since Salinsky suggests that the court should
disallow any offset when the co-defendant is removed from the litiga-
tion.

\textit{CPLR 3020: Verification of answer permitted by associate of attorney of record.}

In Teichman v. Ker,\textsuperscript{85} the Supreme Court, Nassau County, con-
fronted with an original question arising under CPLR 3020, inter-
preted the section in a practical manner. The court denied a motion
to treat verification of an answer by other than an attorney of record
or an attorney of counsel as a nullity. Rather, verification by an as-
sociate of the attorney of record was held to be sufficient compliance
with the section.

The court noted that the New York Advisory Committee had
suggested that "where a firm of attorneys desires the name of the firm

\textsuperscript{83} 32 App. Div. 2d 427, 302 N.Y.S.2d 912 (2d Dep't 1969).

\textsuperscript{84} CPLR 1401 enables a defendant, who has paid more than his pro rata share, to
obtain contribution from the other defendants with respect to the excess paid over and
above his pro rata share.

\textsuperscript{85} 60 Misc. 2d 789, 303 N.Y.S.2d 985 (Sup. Ct. Nassau County 1969).