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CPLR 3101(a): Courts Continue To Grant Liberal Disclosure of Witnesses' Names

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court.[115] Nevertheless, by analogy, CPLR 2212(a) should be utilized by the civil court in those instances where motion practice in the supreme court would warrant its application. The jurisdictional justification is present; a literal interpretation of CPLR 2212(a) should not be employed to prevent its adoption in the New York City Civil Court.

ARTICLE 31 — DISCLOSURE

CPLR 3101(a): Courts continue to grant liberal disclosure of witnesses' names.

Prior to the enactment of the CPLR, the names of witnesses were rarely the proper subject of disclosure.[116] Nevertheless, various exceptions to this stringent approach arose.[117] In recognition of the logic underlying these exceptions, CPLR 3101(a), as originally proposed,[118] emulated the "relevancy" standard utilized in the federal courts.[119] Although rejected legislatively, the federal standard was gradually adopted by the judiciary. This liberal construction of the disclosure article was ultimately sanctioned by the New York Court of Appeals' decision in *Allen v. Crowell-Collier Publishing Co.*[120] where "material and necessary" was virtually interpreted to mean "relevant."[121] In short, the trend is now clearly toward an interpretation of CPLR 3101 providing for prolific disclosure.[122]

Continuing this trend, the New York City Civil Court, in *Beyer v. New York Telephone Co.*,[123] recently permitted disclosure of the identity of a witness who, though not present at the time of the accident, arrived five to ten minutes thereafter and drove the plaintiff home. The witness was deemed to be so closely related to the occur-

115 Discretion permits the "motion court" to transfer the motion to the trial court in a supreme court action. *See* Baker, Voorhis & Co. v. Heckman, 28 App. Div. 2d 673, 280 N.Y.S.2d 940 (1st Dep't 1967); 7B MCKINNEY'S CPLR 2212, supp. commentary 14 (1969).

116 Hartley v. Ring, 58 Misc. 2d 618, 620, 296 N.Y.S.2d 394, 395 (Sup. Ct. Queens County 1969). *See The Quarterly Survey*, 44 ST. JOHN'S L. REV. 140 (1969).

117 For example, in Pistana v. Pangborn, 2 App. Div. 2d 643, 151 N.Y.S.2d 742 (3d Dep't 1956), disclosure was permitted on the theory that the witness was an "active participant" in the events upon which plaintiff relied.

118 *See* FIRST REP. 117.

119 *See* FED. R. CIV. P. 26(b): "the deponent may be examined regarding any matter, not privileged, which is *relevant* to the subject matter involved in the pending action . . . including . . . the identity . . . of persons having knowledge of *relevant* facts." (Emphasis added.) *See also* 4 J. MOORE, FEDERAL PRACTICE ¶ 26.19, at 1241-42 (2d ed. 1968).

120 21 N.Y.2d 403, 235 N.E.2d 430, 288 N.Y.S.2d 449 (1968). *See also The Quarterly Survey*, 43 ST. JOHN'S L. REV. 324 (1968).

121 *See* 7B MCKINNEY'S CPLR 3101, commentary 11 (1970).

122 *See* 3 W. K. & M. ¶ 3101.11.

123 61 Misc. 2d 222, 305 N.Y.S.2d 265 (N.Y.C. Civ. Ct. Queens County 1969).

rence that his testimony was material, necessary, and possibly essential in aiding the parties in the preparation of their case.[124] Although the decision is one of first impression,[125] the reasoning is undeniably sound.

Previous cases dealing with disclosure of witnesses' names spoke only of those "present at the scene, who saw the accident,"[126] or "who were right there,"[127] or who were "present at the time of the accident" and were witnesses "of the event itself."[128] However, one notable authority analyzed the implications of these holdings and forecast that these phrases "can reasonably be regarded as embracing all of those who witnessed at first hand any element that reflects on the liability issue in the case."[129] As evidenced by the decision, Judge Boyers obviously concurs in this analysis. Moreover, federal practice would undoubtedly sanction the result reached.[130] *Beyer* is therefore a welcome addition to the other recent decisions which strive to make the test for disclosure one of usefulness and reason.[131]

ARTICLE 32 — ACCELERATED JUDGMENT

Collateral Estoppel: Texas judgment against common carrier given collateral estoppel effect in subsequent action brought by other plaintiffs in New York.

Although it is now well established in New York that a party need not be given a day in court against a *particular* litigant[132] provided that there is an "identity of issue which has necessarily been

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124 *Id.* at 223, 305 N.Y.S.2d at 267.

125 *See* Affidavit in Opposition to Defendant's Motion at 2, Beyer v. New York Tel. Co., 61 Misc. 2d 222, 305 N.Y.S.2d 265 (N.Y.C. Civ. Ct. Queens County 1969).

126 Sanfilipo v. Baptist Temple, Inc., 52 Misc. 2d 767, 768, 276 N.Y.S.2d 936, 937 (Sup. Ct. Monroe County 1967).

127 Newton v. Board of Educ., 52 Misc. 2d 259, 262, 275 N.Y.S.2d 494, 497 (Sup. Ct. Suffolk County 1966).

128 Rios v. Donovan, 21 App. Div. 2d 409, 414, 250 N.Y.S.2d 818, 823 (1st Dep't 1964).

129 7B MCKINNEY'S CPLR 3101, commentary 46-47 (1970). Accordingly, Professor Siegel would include among those whose identity is disclosable the "bartender or drinking companion who saw the party drunk" prior to the accident and "the witness around the corner or a few blocks away who did not see the accident but saw one of the parties driving out of control or at a high speed." *Id.* at 46.

130 For example, in Cannaday v. Cities Serv. Oil Co., 19 F.R.D. 261 (S.D.N.Y. 1956), interrogatories were permitted not only as to names and addresses of persons witnessing the accident, but also as to persons otherwise having knowledge of the circumstances of the accident, of plaintiff's injuries, and of the equipment used on the ship where the accident occurred.

131 *See, e.g.*, Peretz v. Blekicki, 31 App. Div. 2d 934, 298 N.Y.S.2d 805 (2d Dep't 1969); Hartley v. Ring, 58 Misc. 2d 618, 296 N.Y.S.2d 394 (Sup. Ct. Queens County 1969).

132 *See* Israel v. Wood Dolson Co., 1 N.Y.2d 116, 134 N.E.2d 97, 151 N.Y.S.2d 1 (1956).