St. John's Law Review

Volume 42
Number 1 *Volume 42, July 1967, Number 1*

Article 28

# CPLR 3101(a), (d): Disclosure of Names and Addresses of Witnesses

St. John's Law Review

Other courts, however, have allowed discovery of information relating to insurance where it was relevant to the issues in the case.[43]

In *Gold,* plaintiff wanted this information in order to induce settlement discussions. In support of this contention the plaintiff cited several federal decisions [44] which required disclosure of insurance amounts under the federal rules.[45] The federal position is based on the theory that if the policy limits are low, a party would tend to accept a settlement more readily, thus reducing the heavy automobile negligence dockets. However, the *Gold* court claimed that the CPLR is more restrictive in its approach to pretrial disclosure. Nevertheless, the court could have followed the federal decisions by applying CPLR 104.[46] By liberally construing CPLR 3101, the spirit of a "just, speedy and inexpensive determination" would be promoted.

### *CPLR 3101(a), (d): Disclosure of names and addresses of witnesses.*

While under the CPA a party was not generally required to disclose the names and addresses of witnesses,[47] the present trend under the CPLR has been toward such disclosure.[48]

CPLR 3101(a) allows disclosure where the identity of witnesses is "material and necessary." This provision would appear to be limited by subdivision (d)'s proviso that where the names are considered material prepared for litigation, they are conditionally immune from disclosure.[49] However, disclosure has been allowed, both under the CPLR and the CPA, where the witness was present at the time of the occurrence [50] or was an active

---

[43] Merchants Indem. Corp. v. Wallack, 14 App. Div. 2d 777, 219 N.Y.S.2d 1014 (2d Dep't 1961); Guilianelle v. Brownell, 7 App. Div. 2d 691, 179 N.Y.S.2d 344 (3d Dep't 1958).

[44] Ash v. Farwell, 37 F.R.D. 553 (D. Kan. 1965); Hurley v. Schmid, 37 F.R.D. 1 (D. Ore. 1965); Hill v. Greer, 30 F.R.D. 64 (D. N.J. 1961).

[45] FED. R. CIV. P. §§ 26(b), 33.

[46] In Hill v. Greer, *supra* note 44, the federal court applied FED. R. CIV. P. § 1 which is similar to CPLR 104 in order to justify disclosure of insurance limits under the federal rules.

[47] CPA § 288; Martyn v. Braun, 270 App. Div. 768, 59 N.Y.S.2d 588 (2d Dep't 1946).

[48] Rios v. Donovan, 21 App. Div. 2d 409, 250 N.Y.S.2d 818 (1st Dep't 1964); Matter of Pennino's Estate, 41 Misc. 2d 791, 246 N.Y.S.2d 348 (Surr. Ct. Westchester County 1963).

[49] *But see* 3 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶¶ 3101.11, 3101.48 (1966).

[50] Votey v. New York City Transit Authority, 46 Misc. 2d 554, 260 N.Y.S.2d 124 (Sup. Ct. N.Y. County 1965).

participant,[51] or where the names were necessary for the party to substantiate his claims.[52]

In *Rivera v. Stewart*,[53] plaintiff, at the examination before trial, sought the identity of witnesses to the accident known to the defendant. The defendant refused to disclose the requested information. The court required disclosure of the names and addresses of the passengers in the defendant's car as well as those witnesses who were found by the defendant through personal observation at the scene of the accident. Such witnesses were considered a part of the facts and circumstances of the accident. However, the court did not allow disclosure of the names and addresses of witnesses which were obtained by the defendant through an investigation after the accident since such information came within CPLR 3101(d) as "material prepared for litigation," and the plaintiff had not shown himself to be within one of the recognized exceptions.

*CPLR 3101(a), (d): Opinion questions of defendants permitted at an examination before trial.*

In *People* ex rel. *Kraushaar Bros. & Co. v. Thorpe*,[54] a tax certiorari case, the Court of Appeals held that a third party witness, a tax assessor, subpoenaed as an expert, was not required to give his expert opinion at the trial, although he could be questioned as to the facts he observed concerning the case.

In a similar case, *McDermott v. Manhattan Eye, Ear & Throat Hosp.*,[55] the defendant physicians objected to being called as expert witnesses on plaintiff's behalf in a malpractice case. However, the Court of Appeals held that the plaintiff was entitled to call the defendants to the stand at the trial and question them about both their factual knowledge of the case, and, if qualified, their knowledge as experts concerning the standards of skill and care ordinarily exercised by doctors in the community under similar circumstances. *McDermott* was distinguished from *Kraushaar* on the basis that in the former the expert opinion was elicited from a *defendant*, while in the latter it was elicited from a *third party* expert witness.

---

[51] Pistana v. Pangburn, 2 App. Div. 2d 643, 151 N.Y.S.2d 742 (3d Dep't 1956); Votey v. New York City Transit Authority, *supra* note 50.

[52] Majchrzak v. Hagerty, 49 Misc. 2d 1027, 268 N.Y.S.2d 937 (Sup. Ct. Erie County 1966); McMahon v. Hayes-73rd Corp., 197 Misc. 319, 98 N.Y.S.2d 84 (Sup. Ct. Queens County 1950); Matter of Pennino's Estate, *supra* note 48.

[53] 51 Misc. 2d 647, 273 N.Y.S.2d 644 (Sup. Ct. Monroe County 1966).

[54] 296 N.Y. 223, 72 N.E.2d 165 (1947).

[55] 15 N.Y.2d 20, 203 N.E.2d 469, 255 N.Y.S.2d 65 (1964).