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MVAIC: No Exception to Filing Requirements Except Those Found in Statute

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The court granted judgment for the defendant, holding that it lacked jurisdiction since plaintiff's claim was equitable in nature.[158] The court found that Article 10 of the Debtor and Creditor Law dealing with fraudulent conveyances was, both in origin and upon principle, equitable in character. Plaintiff's request for the ordinary remedy of money damages as opposed to the equity remedy of setting the conveyance aside, the court stated, did not alter the basically equitable nature of the action.

The present case suggests a reminder to attorneys that they be especially clear in framing their pleadings so as to accurately reflect the nature of the remedy they seek. Furthermore, in a case where the law-equity distinction is somewhat beclouded, the practitioner should not rely on form pleadings, but, rather, should draft his own. As an additional safeguard against mistakenly dismissing an action where the pleadings lack clarity, the court might ask the plaintiff's attorney to submit a signed memorandum affirming that he is requesting solely legal relief, before deciding on whether there is jurisdiction over the subject matter.

MVAIC

MVAIC: No exception to filing requirements except those found in statute.

In *Jones v. Motor Vehicle Accident Indemnification Corporation*,[159] the Court of Appeals held that the failure of an injured party to file a claim with MVAIC within ninety days after an accident with an uninsured driver, as prescribed by Section 608(a) of the Insurance Law,[160] *absolutely* precludes recovery from MVAIC. Thus, the only exceptions to this ninety-day filing requirement are those expressly provided in the statute, viz., "where the qualified person is an infant or is mentally or physically incapacitated or is deceased, and by reason of such disability or death is prevented from filing as provided. . . ." [161]

This decision upholds an inequity of the law. Section 608 provides three sets of filing requirements to cover three situations: first, where the victim is in an accident with an uninsured driver;

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[158] 53 Misc. 2d at 226, 278 N.Y.S.2d at 140. *See* Davis v. Wilson, 150 App. Div. 704, 135 N.Y.S. 825 (1st Dep't 1912).

[159] 19 N.Y.2d 132, 224 N.E.2d 883, 278 N.Y.S.2d 382 (1967).

[160] For a general discussion of filing requirements for recovery from state accident funds (New York as well as others) *see generally* Annot., 2 A.L.R.3d 760 (1965). For a general discussion of MVAIC *see generally* Note, *MVAIC Six Years Later—A Practical Appraisal*, 39 ST. JOHN'S L. REV. 321 (1965).

[161] N.Y. INS. LAW § 608.

second, where the victim is injured by an unknown driver; and third, where the driver of the car is insured at the time of the accident, but the insurance company subsequently *disclaims* liability due to some act or omission by the insured.[162] In the third situation, section 608(c) requires filing within ten days after receiving notice of disclaimer, irrespective of the expiration of a ninety-day period following the accident. The courts have generally held that a disclaimer of liability necessarily means that there was an insurance policy in force at the time of the accident.[163] Consequently, if the other driver is uninsured at the time of the accident, the injured party does not come under 608(c), but must comply with the requirements of 608(a). This has caused the unfortunate situations, acknowledged in *Jones*, where the injured party is told by the other driver that he is insured[164] and the Department of Motor Vehicles confirms that he is insured, or the insurance company itself may initially indicate a willingness to accept liability,[165] and, as a result, the injured party does not file. Subsequently, if it turns out that the driver was not insured, and the ninety-day filing period has lapsed, the injured party has no recourse against MVAIC. The decision in *Jones* effectively overrules those few cases where courts have applied section 608(c) in spite of the fact that there was no insurance in effect at the time of the accident.[166] This means that these inequitable situations will continue until the legislature amends section 608.

Thus, as the courts themselves have indicated,[167] the practitioner should file in every case where there is *any* degree of doubt as to whether the other party is insured. And, as the *Jones* case demonstrates, a claim should be filed even where there appears to be no doubt.

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[162] Application of Johnson, 218 N.Y.S.2d 289 (Sup. Ct. Kings County 1961).

[163] Brucker v. MVAIC, 41 Misc. 2d 281, 245 N.Y.S.2d 640 (Sup. Ct. Kings County 1963); Application of Johnson, 218 N.Y.S.2d 289 (Sup. Ct. Kings County 1961); Uline v. MVAIC, 28 Misc. 2d 1002, 213 N.Y.S.2d 871 (Sup. Ct. Saratoga County 1961).

[164] *Cf.* Matter of Jefferson, 34 Misc. 2d 48, 226 N.Y.S.2d 523 (Sup. Ct. Kings County 1962).

[165] Matter of Roeder v. MVAIC, 42 Misc. 2d 519, 248 N.Y.S.2d 512 (Sup. Ct. Queens County 1964).

[166] Krouner v. MVAIC, 44 Misc. 2d 99, 253 N.Y.S.2d 22 (Sup. Ct. Albany County 1964); Matter of MVAIC, 28 Misc. 2d 899, 214 N.Y.S.2d 470 (Sup. Ct. Nassau County 1961).

[167] *See* Brucker v. MVAIC, 41 Misc. 2d 281, 245 N.Y.S.2d 640 (Sup. Ct. Kings County 1963). *But see* Application of Cappiello, 44 Misc. 2d 152, 253 N.Y.S.2d 69 (Sup. Ct. Queens County 1964) (dictum).