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CPLR 3101(a): Disclosure Extends to All Relevant Information Calculated to Lead to Relevant Evidence

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through contribution from Rohde's estate, the difference between two-thirds and one-half of the judgment.

In reversing the special term and granting the motion, the appellate division, second department, following the case of *Wold v. Grozalsky*,[113] held that CPLR 1401 did not contemplate a strictly mathematical computation of liability for payment between joint tort-feasors.[114] "Rather . . . the whole pattern of litigation out of which the judgment was rendered is considered and the relative duties of the tort-feasors toward the injured party are assessed. The process is essentially equitable and not mathematical." [115]

The court stated that, for purposes of contribution, there were two distinct causes (one active and one passive) of the plaintiff's injuries, and, therefore, payment should be apportioned "not per capita but per stirpes." [116] The court consolidated the liability of Grupenel and Queens Park as one such cause since both had failed to perform *identical duties* arising from different sources, *i.e.*, their respective obligations as landlord and owner. In addition to this similarity of duties, the court noted that Grupenel and Queens Park were subsidiaries of the same parent, and were represented by the same employees and by the same attorneys. "Their interests and their positions were for all purposes the same. Except for reasons of corporate convenience, either could have executed the functions of the other." [117]

ARTICLE 31 — DISCLOSURE

CPLR 3101(a): Disclosure extends to all relevant information calculated to lead to relevant evidence.

Prior to *Beyer v. Keller*,[118] in order for materials to be the subject of an order for discovery and inspection, they had to be "evidence in chief," viz., admissible at trial.[119] *Beyer*, however, did away with this "evidence in chief" requirement.

With the adoption of Article 31 of the CPLR, it was felt that pretrial discovery practices would be liberalized and that more material would be made available to both parties. With the deci-

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[113] 277 N.Y. 364, 14 N.E.2d 437 (1939).

[114] *Id.* at 366-67, 14 N.E.2d at 438.

[115] McCabe v. Century Theatres, Inc., 25 App. Div. 2d 154, 156, 268 N.Y.S.2d 48, 50 (2d Dep't 1966).

[116] *Supra* note 115, at 158, 268 N.Y.S.2d at 52.

[117] *Ibid.*

[118] 11 App. Div. 2d 426, 207 N.Y.S.2d 591 (1st Dep't 1960).

[119] "Documents are not subject to inspection for the mere reason that they will be useful in supplying a clue whereby evidence can be gathered. Documents to be subject to inspection must be evidence themselves." People *ex rel.* Lemon v. Supreme Court, 245 N.Y. 24, 29, 156 N.E. 84, 85 (1927). See also Peters v. Marquez, 21 Misc. 2d 720, 196 N.Y.S.2d 840 (Sup. Ct. Westchester County 1959) and cases cited therein.

sion of the first department in *Rios v. Donovan*,[120] many believed that a liberal trend had been set when the court stated that:

> The disclosure provisions of article 31 of the Civil Practice Law and Rules were intended to enlarge the permissible use of pretrial procedure. The purpose of disclosure procedures is to advance the function of a trial to ascertain truth and to accelerate the disposition of suits. Apart from the express provision of Civil Practice Law and Rules 104 that the Civil Practice Law and Rules 'shall be liberally construed to secure the just, speedy and inexpensive determination of every civil judicial proceeding,' the courts would in any event construe the new statute broadly to effectuate its purpose.[121]

However, CPLR 3101(a) has retained the phraseology of CPA § 288 and, thus, confusion has arisen.[122] A recent lower court case, *West v. Aetna Cas. & Sur. Co.*,[123] is helpful in eliminating this confusion.

In *West*, the plaintiff, by notice, sought an examination of all books, papers and records relating to the funeral expenses of anyone insured by the defendant. In denying the defendant's motion for a protective order,[124] the court stated:

> CPLR 3101 provides that there shall be full disclosure of all evidence, material and necessary in the prosecution of an action. . . . The word 'evidence' as used in the statute has not been held equivalent to that evidence which might be admissible upon the trial of the action. *Disclosure extends to all relevant information calculated to lead to relevant evidence.* . . . If the information is sought in good faith for possible use as evidence in chief or in rebuttal or for cross-examination, it should be considered material and necessary. . . .[125]

Thus, it appears that in using the phrase "all relevant information calculated to lead to relevant evidence," the court is adopting the approach long used in the federal courts.[126]

It is submitted that if this line of reasoning is adopted by other New York courts, the liberal disclosure practice intended by the drafters will become a reality.

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[120] 21 App. Div. 2d 409, 250 N.Y.S.2d 818 (1st Dep't 1964).

[121] *Id.* at 411, 250 N.Y.S.2d at 820.

[122] 3 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 3101.07 (1965).

[123] 49 Misc. 2d 28, 266 N.Y.S.2d 600 (Sup. Ct. Onondaga County 1965).

[124] CPLR 3103.

[125] West v. Aetna Cas. & Sur. Co., 49 Misc. 2d 28, 29, 266 N.Y.S.2d 600, 602-03 (Sup. Ct. Onondaga County 1965). (Emphasis added.)

[126] FED. R. CIV. P. 26(b) provides that examination may include any matter "which is relevant to the subject matter involved in the pending action." Furthermore, the fact that such evidence is inadmissible at trial is not grounds for an objection if the evidence sought appears to be reasonably calculated to lead to the discovery of admissible evidence.