

CPLR 3101(d): State's Authority to Examine Not Barred

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nevertheless allowed disclosure under CPLR 3101(a) of reports made by the insured to his insurer. The court distinguished *Kandel* by pointing out that it involved automobile *liability* insurance, while the situation before it involved *non-liability* fire insurance. As Justice Breital had noted in *Kandel*,¹⁴¹ the reports there came within the purview of 3101(d) because automobile liability insurance was essentially bought in contemplation of litigation. Fire insurance, on the other hand, was not so bought.

Thus, where there is a non-liability insurer, it appears that the party seeking to preclude disclosure must show that such statements or reports were in fact prepared *expressly* for the litigation and did not arise merely out of the regular course of business.

CPLR 3101(d): State's authority to examine not barred.

Court of Claims Rule 25(a)(1) provides that within six months from the date of filing an appropriation claim, the parties shall file copies of their appraisals with the clerk of the court. The purpose of this rule is to encourage the early settlement of these claims and to compel a full and adequate disclosure so as to enable all parties to prepare for the trial of the issues.¹⁴²

In *Route 304 Realty Corp. v. New York*,¹⁴³ the state gave notice of an examination before trial wherein it sought additional information to aid it in making an appraisal. Claimant thereupon moved for an order vacating the state's notice and for an associated protective order pursuant to CPLR 3103.¹⁴⁴ Plaintiff contended that rule 25(a) limited the scope of authority of the state to examine under Section 17(1) of the Court of Claims Act.¹⁴⁵ However, the court dismissed this argument and held that rule 25(a) did not usurp the rights of the state to seek examination "for any cause whatever" when it would help them arrive at a more accurate and realistic appraisal.¹⁴⁶

Thus, while material prepared for litigation is conditionally privileged from disclosure under CPLR 3101(d), the court in the instant case held that the state may examine such material pursuant to Section 17(1) of the Court of Claims Act, and that Court of Claims Rule 25(a) did not limit the state's power to obtain such disclosure.

¹⁴¹ *Kandel v. Tocher*, 22 App. Div. 2d 513, 515, 256 N.Y.S.2d 898, 899-900 (1st Dep't 1965).

¹⁴² 29A MCKINNEY'S CT. CL. ACT 25a(8) (Supp. 1965).

¹⁴³ 49 Misc. 2d 438, 267 N.Y.S.2d 530 (Ct. Cl. 1965).

¹⁴⁴ *Ibid.*

¹⁴⁵ This section provides that upon the filing of a notice of claim for any cause whatever, the attorney-general may require the claimant "to answer orally as to any facts relative to the justness of such claim."

¹⁴⁶ *Route 304 Realty Corp. v. New York*, 49 Misc. 2d 438, 439, 267 N.Y.S.2d 530, 532 (Ct. Cl. 1965).