

# CPLR 4111: Used to Specifically Provide a Means of Interpreting a Jury Verdict

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right to make a jury demand within ten days of filing.<sup>234</sup> The appellate court, however, concluded that the defendant had not waived his right to a jury trial<sup>235</sup> and, carrying out its duty under CPLR 4103, afforded the defendant thirty days in which to demand a jury. This case illustrates how, as a matter of practice, CPLR 4103 is to be applied.

*CPLR 4111: Used to specifically provide a means of interpreting a jury verdict.*

The courts should employ CPLR 4111 in cases wherein two conflicting theories of liability are presented to the jury. In *Dore v. Long Island R.R.*,<sup>236</sup> the case was presented to the jury on the issues of ordinary negligence and last clear chance.<sup>237</sup> The jury rendered a general verdict and the appellate court was unable to determine upon which theory the verdict rested. It was obvious that the evidence produced would not support both theories. In rendering, the court stated that when inconsistent theories are presented to the jury, the trial court should utilize the procedure available under CPLR 4111, which permits either the rendition of a special verdict<sup>238</sup> or a general verdict accompanied by written answers to written interrogatories.<sup>239</sup>

#### ARTICLE 42 — TRIAL BY THE COURT

*CPLR 4213: Properly utilized when essential fact absent from record on appeal.*

CPLR 4213(b) provides that in a nonjury trial, the decision of the court shall state the facts it deems essential.<sup>240</sup> However, on appeal, when the record does not contain essential facts, the court has three possible alternatives: (1) reverse and remand for a new trial; (2) make de novo findings of fact; or (3) remand to the court of original instance for the essential findings of fact.<sup>241</sup> In *Conklin v. State*,<sup>242</sup> the lower court failed to allocate specific

<sup>234</sup> CPLR 4102(a).

<sup>235</sup> See *Micro Precision Corp. v. Brochi*, 4 App. Div. 2d 697, 164 N.Y.S.2d 454 (2d Dep't 1957).

<sup>236</sup> 23 App. Div. 2d 502, 256 N.Y.S.2d 425 (2d Dep't 1965).

<sup>237</sup> *Jasinski v. New York Cent. R.R.*, 21 App. Div. 2d 456, 461-63, 250 N.Y.S.2d 942, 947-49 (4th Dep't 1964).

<sup>238</sup> CPLR 4111(b); see *Martin Fireproofing Corp. v. Maryland Cas. Co.*, 45 Misc. 2d 354, 257 N.Y.S.2d 100 (Sup. Ct. 1965).

<sup>239</sup> CPLR 4111(c).

<sup>240</sup> CPLR 4213; see 4 WEINSTEIN, KORN & MILLER, *op. cit. supra* note 216, ¶ 4213.09.

<sup>241</sup> 4 WEINSTEIN, KORN & MILLER, *op. cit. supra* note 216, ¶ 4213.09.

<sup>242</sup> 22 App. Div. 2d 481, 256 N.Y.S.2d 477 (3d Dep't 1965).