

## MVAIC Endorsement Reducing Award to Insured to Extent of Workmen's Compensation Benefits Held Valid

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issue was academic and at most, petitioner was entitled to a declaratory judgment. Special term rejected this contention, holding that petitioner should not be denied what would otherwise be appropriate relief<sup>284</sup> on the sole ground that he had complied with an administrative determination. Standing was justified by the fact that petitioner was still amenable to further sanctions.<sup>285</sup>

It has long been settled that some form of review is available to one who has complied with an administrative penalty. Declaratory judgment has been the most obvious form of relief, but certiorari<sup>286</sup> and direct appeal<sup>287</sup> have likewise been allowed. This case clarifies the fact that Article 78, which is most expedient, may serve as an alternative to declaratory judgment to review administrative penalties which have been served.<sup>288</sup>

### MVAIC

*MVAIC endorsement reducing award to insured to extent of workmen's compensation benefits held valid.*

In the case of *Durant v. MVAIC*,<sup>289</sup> petitioner sought arbitration as an "insured person" under the terms of an MVAIC endorsement contained in his motor vehicle insurance policy. This endorsement, which is required in all New York motor vehicle policies,<sup>290</sup> provided that workmen's compensation benefits would serve to reduce any MVAIC award. The appellate division held that the statutory power of MVAIC to prescribe "terms and conditions"<sup>291</sup> did not include the authority to so limit the award.<sup>292</sup> The Court of Appeals reversed, construing the statute as authorizing MVAIC to "prescribe the conditions of coverage" and thus to limit the arbitration award.<sup>293</sup>

<sup>284</sup> See generally 8 WEINSTEIN, KORN & MILLER, *op. cit. supra* note 267, ¶ 7801.02.

<sup>285</sup> *Leo Newman's Theatre Ticket Office, Inc. v. DiCarlo*, *supra* note 283, at 551, 260 N.Y.S.2d at 223.

<sup>286</sup> See *People ex rel. Albrecht v. Harnett*, 221 App. Div. 487, 224 N.Y. Supp. 97 (4th Dep't 1927).

<sup>287</sup> See *People v. Marks*, 64 Misc. 679, 120 N.Y. Supp. 1106 (Gen. Sess. 1909).

<sup>288</sup> By this decision, the court necessarily held that declaratory judgment is inadequate alternative relief. Otherwise, CPLR 7801(1) would have required dismissal of the petition.

<sup>289</sup> 15 N.Y.2d 408, 207 N.E.2d 600, 260 N.Y.S.2d 1 (1965).

<sup>290</sup> N.Y. INS. LAW § 167(2-a).

<sup>291</sup> *Ibid.* See N.Y. INS. LAW § 606 for the expressly delegated powers of MVAIC.

<sup>292</sup> *Durant v. MVAIC*, 20 App. Div. 2d 242, 246, 246 N.Y.S.2d 548, 553 (2d Dep't 1964); see *The Biannual Survey of New York Practice*, 38 Sr. JOHN'S L. REV. 406, 458 (1964).

<sup>293</sup> *Durant v. MVAIC*, 15 N.Y.2d 408, 411, 207 N.E.2d 600, 260 N.Y.S.2d 1, 2 (1965).

The basic claim of the appellate division and the dissent in the Court of Appeals was that since "qualified persons" are not subject to this reduction,<sup>294</sup> there is no reason to believe that the legislature deemed it allowable to so limit the insured. Moreover, logic would seem to dictate that the insured be afforded greater benefits since he, and not the qualified person, has paid a premium. This inconsistency of treatment might even be said to be so basic as to deny the insured "equal protection of the laws."<sup>295</sup>

It is clear that the framers of Article 17-A of the Insurance Law intended no greater benefit to qualified persons in this regard. Each person coming within the purview of this statute was to be afforded the same benefits as if his tortfeasor were covered by a \$10,000 liability policy.<sup>296</sup> Perhaps, as the Court of Appeals has stated, MVAIC's authority was meant to extend beyond mere technicality to a broad scope of discretion in determining coverage. However, the authority exercised by MVAIC herein and its affirmance by the courts, would seem to be contrary to the basic purpose of the statute.

*MVAIC entitled to recover from insured person's action arising from the same accident as prior arbitration award—but intervention under CPLR 1013 denied.*

In *McGee v. Horvat*,<sup>297</sup> plaintiff, an insured person, recovered a \$10,000 arbitration award for injuries inflicted by a hit-and-run driver. Thereafter, plaintiff brought suit against two insured motorists who were involved in the same accident. MVAIC moved to intervene under CPLR 1013 on the ground that it was entitled to recover from any judgment to the extent of the payment made to plaintiff. Defendant cross-moved to amend his answer to the effect that his liability should be reduced by the arbitration award.

The second department held that MVAIC was entitled to recover as of right.<sup>298</sup> Since the statutory purpose of the MVAIC law was to allow recovery as if the tortfeasor were covered by a \$10,000 liability policy,<sup>299</sup> a double benefit, which would be effected

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<sup>294</sup> This was admitted by the majority in the instant case. *Ibid.* See N.Y. INS. LAW § 610.

<sup>295</sup> U.S. CONST. amend. XIV, § 1.

<sup>296</sup> *McCarthy v. MVAIC*, 16 App. Div. 2d 35, 38, 224 N.Y.S.2d 909, 913 (4th Dep't 1962), *aff'd*, 12 N.Y.2d 922, 188 N.E.2d 405, 238 N.Y.S.2d 101 (1963); see also N.Y. INS. LAW § 600(2).

<sup>297</sup> 23 App. Div. 2d 271, 260 N.Y.S.2d 345 (2d Dep't 1965).

<sup>298</sup> *McGee v. Horvat*, 23 App. Div. 2d 271, 274-75, 260 N.Y.S.2d 345, 349-50 (2d Dep't 1965). MVAIC's failure to appeal the unconditional affirmance of the arbitrator's award was held insignificant. *Id.* at 275, 260 N.Y.S.2d at 349.

<sup>299</sup> See materials cited note 296 *supra*.