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MVAIC Entitled to Recover from Insured Person's Action Arising from the Same Accident as Prior Arbitration Award--But Intervention Under CPLR 1013 Denied

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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,[294] 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." [295]

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.[296] 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 arbitraton award — but intervention under CPLR 1013 denied.

In *McGee v. Horvat*,[297] 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.[298] Since the statutory purpose of the MVAIC law was to allow recovery as if the tortfeasor were covered by a $10,000 liability policy,[299] a double benefit, which would be effected

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[294] This was admitted by the majority in the instant case. *Ibid.* See N.Y. INS. LAW § 610.

[295] U.S. CONST. amend. XIV, § 1.

[296] 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).

[297] 23 App. Div. 2d 271, 260 N.Y.S.2d 345 (2d Dep't 1965).

[298] 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.

[299] See materials cited note 296 *supra*.

by a contrary ruling herein, is improper. The court further stated that defendant's claim was insufficient as a matter of law since plaintiff paid an additional premium for this coverage and such could not inure to the benefit of a tortfeasor. Thus, the MVAIC award is strictly limited to those cases where injured persons can get no liability recovery from *anyone* involved in the accident.

MVAIC's motion to intervene, however, was denied upon the ground that the claim had no "common question of law or fact" [300] with the main action. Although CPLR 1013 involves permissible intervention which necessarily is discretionary relief, it is not clear that MVAIC's position did not fall thereunder. In any event, it appears that MVAIC might have intervened as of right under CPLR 1012(a)(2) since "the representation of the person's [MVAIC's] interest . . . may be inadequate" and the person may be affected adversely by the judgment.[301]

Despite obvious factual differences between the two cases considered, the treatment of common issues is susceptible of comparison. *Durant* ignored and *McGee* relied upon the statutory purpose of MVAIC (*i.e.*, recovery as if the unreachable tortfeasor were covered by a $10,000 liability policy) to mitigate MVAIC's liability to an insured person. In the former, the court failed to note that in an ordinary action for negligence, workmen's compensation benefits would not reduce an award. In the latter, however, this purpose was used to prevent a double benefit and was also a supporting ground for denying the remission of a tortfeasor's liability. In the *McGee* case, the court relied upon the insured's payment of an additional premium as a possible mitigation of damages by a tortfeasor. In *Durant*, however, this fact was ignored so as to refuse an award to an insured which is guaranteed by statute to a qualified person.

The sole element which ties the cases together is that, in both, every effort is extended to find in favor of MVAIC. Whether or not this tendency is appropriate is beyond the scope of this analysis. It is clear, however, that certain changes need be effected to offer a degree of consistency and stability to the judicial treatment of MVAIC legislation.

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[300] CPLR 1013.
[301] CPLR 1012(a)(2).