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endorsement[271] to reduce the amount of the award. Petitioner sought to confirm the award. The appellate division, in reversing the lower court and confirming the arbitrator's award, held that the Legislature in enacting the MVAIC law intended that all innocent victims of uninsured motorists should receive uniform recoveries and since the MVAIC statute does not reduce the recovery of "qualified" persons,[272] the recoveries of "insured" persons cannot be so reduced. Moreover, the endorsement is not a private contract between MVAIC and the insured; a supervening public interest is involved which nullifies a unilateral provision inserted by MVAIC limiting the insured's recovery.[273] The case will have wide implications in view of the fact that the disputed MVAIC clause involved at bar is virtually identical to the one found in almost all uninsured motorist endorsements.

Passenger's Right to Collect Under MVAIC Endorsement Not Affected by Insured's Failure to Notify Insurer

In *Garcia v. MVAIC*,[274] the claimant sustained personal injuries when an automobile in which he was a passenger struck a wall. At the time of the accident, the vehicle was insured by the All State Insurance Company, whose policy contained the New York Automobile Accident Indemnification endorsement. Subsequently, the company disclaimed liability because of the failure of the owner to notify it of the accident within the allotted time. Thereafter, the passenger filed a notice of claim with MVAIC as an "insured person"[275] (the victim of an accident in an uninsured vehicle) under the MVAIC endorsement. The MVAIC then applied for a permanent stay of arbitration, contending that claimant did not have the status of an "insured person" because the disclaimer by the insurance company rendered the vehicle uninsured, thereby rendering the policy and the endorsement contained

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[271] N.Y. INS. LAW §§ 167(2a), 606(b); see Matthews v. American Cent. Ins. Co., 154 N.Y. 449, 456, 48 N.E. 751, 752 (1897).

[272] N.Y. INS. LAW §§ 601(b), 610.

[273] MVAIC also contended that the claimant would get a double recovery if he were permitted both the workmen's compensation and full MVAIC awards. The court said that there cannot be a double recovery, because the claimant's recovery is "subject to the lien of his employer for reimbursement of the sum of the workmen's compensation benefits received." That is, the employer, and thereby his workmen's compensation carrier, are in effect to be given the right of subrogation against MVAIC. The workmen's compensation carrier is entitled to be reimbursed from the MVAIC proceeds and not vice versa. *But see* Commissioners of State Insurance Fund v. Miller, 4 App. Div. 2d 481, 166 N.Y.S.2d 777 (1st Dep't 1957) (wherein it was held that the employer's workmen's compensation carrier had no lien on insurance proceeds received by the employee).

[274] 41 Misc. 2d 858, 246 N.Y.S.2d 841 (Sup. Ct. 1964).

[275] N.Y. INS. LAW § 601(i).

therein entirely inapplicable to the accident. The court held that the endorsement is independent of the main policy to the extent that even if the insurance company legitimately disclaims liability to the owner of the policy, the endorsement remains effective as to the passenger. Accordingly, the court ordered the arbitration to proceed.

In so deciding, the court affords the passenger the financial protection of MVAIC and carries out what appears to be the clear intent and purpose of the MVAIC law, *i.e.*, to protect an innocent person injured by an uninsured motorist.

The *Durrant* case is consistent in theory with *Garcia.* In *Durrant,* MVAIC could not limit the right given to the insured by the MVAIC law by inserting a condition in the MVAIC endorsement. Surely, then, the insured's rights could not be abrogated by an act of the owner of the automobile in failing to notify his insurance company of the accident within the allotted time.[276]

APPENDIX

Conflicts in time involving printing obligations preclude the inclusion here of a complete list of the 1964 changes in the CPLR, the CCA, the UDCA, the UCCA, the RPAPL and in such other provisions as relate to practice and procedure. But a useful purpose will be served by setting forth such amendments and additions as had already become law (upon approval of the Governor) at the time of this compilation. The practitioner is asked to bear in mind that the following list, except for the Judicial Conference's 1964 CPLR rules changes, which are set forth at the end of this Appendix, is not exhaustive. The amendment of rule 3216, the dismissal for want of prosecution, is treated under the separate heading of "The Amendment of CPLR 3216 — The 45-Day Demand," further on in this Appendix.

CPLR Amendments

The following changes in the CPLR had become law when this was written; the changes are set forth in the order of their chapter numbers in the Laws of 1964:

Chs.

75 Amends rule 4542(c) to change "governor" to "secretary of state."

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276 See In the Matter of MVAIC, 39 Misc. 2d 142, 240 N.Y.S.2d 347 (Sup. Ct. 1963); In the Matter of MVAIC, 33 Misc. 2d 703, 227 N.Y.S.2d 882 (Sup. Ct. 1961).