

## CPLR Amendments

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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.<sup>276</sup>

#### 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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<sup>276</sup> 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).

*Chs.*

- 195 Amends rule 1208(c) to make clear that the affidavit of a single physician suffices under the provision (regarding an infant's settlement).
- 252 Amends § 101 to permit each CPLR provision to be cited without indicating whether the particular provision is a statute or rule. This should solve the time problem the Bar has met in this regard; no time need be spent in double-checking to determine whether a provision, whose number is known, is a "§" or a "Rule."
- 262 Amends § 2703 to strike out its last sentence, which is then made into a separate new provision numbered § 5107. It relates to requiring the sheriff to convey real property.
- 263 Amends § 6313 to add a subdivision (c), which allows the court in its *discretion* to require that a plaintiff furnish an undertaking as a condition to the granting of a temporary restraining order (the remedy used to retain the status quo while a motion for a preliminary injunction is being brought on).
- 279 Amends § 5229 to permit the enforcement remedies provided therein to be used in *any* court. Without the amendment only the courts specified in § 5221 could entertain such remedies.
- 286 Amends § 8018(a) to clarify that an action is not to be deemed pending in supreme or county court simply because a transcript (such as a transcript of a lower court judgment) has been filed there.
- 287 Amends § 2309 to enable the clerk or his deputies to swear jurors.
- 290 Amends § 3215(e) to do that which § 105(q) has done all the while anyway: to permit a verified complaint to be used as proof of the cause of action, relieving a separate affidavit of that job in connection with default judgment.
- 291 Amends § 3044 to clarify that where a pleading is verified, a bill of particulars or a copy of account items of that pleading must also be verified.
- 292 Amends § 5018(a) so that in cases against multiple parties the clerk must, when docketing a judgment, write "not summoned" next to the name of a person not summoned instead of writing "summoned" next to the names of those who were.
- 298 Amends § 5201(c)(4) to clarify who the garnishee should be in certain instances that will involve the impending Uniform Commercial Code.

*Chs.*

- 322 Amends § 7701 regarding special proceedings as to express trusts.
- 342 Amends § 6218(b) to give the sheriff fifteen instead of ten days to file his inventory in connection with an attachment.
- 347 Amends § 5236(c) to make certain changes in the time provisions applicable to the publishing of notice in connection with a sheriff's sale of realty.
- 349 Amends § 2105 to permit an attorney to certify papers only if he is admitted to practice in New York.
- 388 This is a big bill submitted by the Judicial Conference. It consists of mechanical corrections in the CPLR which were overlooked at the 1963 session of the Legislature.
- 405 Amends § 6111 to wipe out the last vestige of the body execution from New York practice. It provides that an order of arrest *after* judgment is available only in an equity action, and not in a law action (where an order of arrest *is* allowed prior to judgment).
- 422 Amends § 2701 to insert a subdivision regarding court disposition of property which is in the possession of a party.
- 477 Amends § 408 to make it clear that disclosure in a surrogate court, where most litigation consists of "proceedings," is not to be governed by § 408, *i.e.*, does not require a court order. The usual notice procedures of Article 31 of the CPLR may be used.
- 485 Amends § 5014(2) regarding when an action on a judgment may be maintained.
- 511 Amends § 321(b) to require that other parties be notified of a change of attorney.
- 519 Amends § 2302(a) to allow the attorney general to issue subpoenas.

*The Amendment of CPLR Rule 3216—The 45-Day Demand*

On April 24, 1964, the eve of the expiration of the 30-day bill period, the Governor signed into law an amendment to rule 3216 which the plaintiffs' bar had been advocating for many months. It is Chapter 974 of the Laws of 1964. The amendment is chiefly the result of efforts by the New York State Association of Trial Lawyers and the association's president, Herman B. Glaser, Esq.; it was in great measure motivated by the impact of the *Sortino* decision on the disposition of rule 3216 motions. The main survey article to which this list of amendments is appended treats the *Sortino* case.