

**Columbia Law School**

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## Drafting NY Civil-Litigation Documents: Part 41—In Limine, Trial & Post-Trial Motions Cont'd

Gerald Lebovits



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# Journal

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## The Alter Ego Article Doctrine in New York

*By Edward P. Yankelunas*

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## Drafting New York Civil-Litigation Documents: Part XLI — In Limine, Trial, and Post-Trial Motions Continued

**T**he *Legal Writer* continues its series on civil-litigation documents. In the last issue of the *Journal*, we discussed motions in limine and trial motions, including motions to dismiss, motions based on admissions, and motions for a mistrial. In this issue, we'll continue to discuss trial motions. In the next issue, we will continue with trial motions and discuss post-trial motions.

### **Trial Motions Continued** **Motion for a Mistrial**

If you "deliberate[ly] . . . convey the idea to the jury" during voir dire, opening statement, trial, or closing statement that the defendant has liability insurance, a court will likely grant your adversary's motion for a mistrial.<sup>1</sup> But "[w]hen the fact of insurance or the existence of an insurer is properly or legitimately in the case," you have no grounds for a mistrial.<sup>2</sup> If a witness volunteers information that the defendant has insurance, a court might not declare a mistrial if it's an "isolated, unexpected, inadvertent statement . . . [and the court] promptly . . . [gives the jury] curative instructions."<sup>3</sup>

Instead of declaring a mistrial, "[c]ourts prefer to correct errors that could otherwise be grounds for a mistrial whenever possible, and a frequent vehicle to accomplish this is the 'cura-

**GERALD LEBOVITS** (GLEbovits@aol.com), an acting Supreme Court justice in Manhattan, is an adjunct professor of law at Columbia, Fordham, NYU, and New York Law School. He thanks court attorney Alexandra Standish for her research.

tive instruction."<sup>4</sup> Courts can cure an error by instructing juries to disregard it.<sup>5</sup>

If a jury returns an inconsistent verdict, a court may declare a mistrial "or require the jury to further consider its answers and verdict."<sup>6</sup>

A court order granting a mistrial before a jury has returned its verdict isn't appealable.<sup>7</sup>

An appellate court will be precluded from reviewing the jury's verdict if you didn't move for a mistrial at trial and you later appealed the jury's verdict "based on the jury's alleged [misconduct, such as] nonverbal postures, facial expressions, attitudes, and comments."<sup>8</sup>

For more information on mistrial motions, consult the *Legal Writer's* previous column in this series.

### **Motion for a Directed Verdict** **(Motion for a Judgment as a Matter of Law)**

Although practitioners call it a motion for a directed verdict, it's referred to under CPLR 4401 as a motion for judgment as a matter of law.

Move for a directed verdict "[a]fter the close of the evidence presented by an opposing party with respect to such cause of action or issue."<sup>9</sup> After a party with the burden to go forward "(normally the plaintiff, except if only counterclaims are being tried) has completed its case, the opposing party may move for a directed verdict."<sup>10</sup> The CPLR doesn't require a party to "move 'immediately after,' [a party completes its case] or otherwise state that the motion must be made no[] later than a given point in the trial."<sup>11</sup>

Requiring "each party [to] await the conclusion of the other's case before moving for judgment is designed to afford all parties a day in court."<sup>12</sup> A court's grant of a directed verdict will be premature if the court grants the motion "before the close of a party's evidence."<sup>13</sup>

**A court order granting a mistrial before a jury has returned its verdict isn't appealable.**

You may reserve your motion for a directed verdict at the close of your adversary's evidence: "[I]t is obviously safer, not to mention more polite, to request the court's permission to reserve making the motion."<sup>14</sup>

Your motion for a directed verdict after the court charges the jury will be timely if you've reserved your right to move for a directed verdict and the court agreed.<sup>15</sup>

You may move for a directed verdict in a bench trial or jury trial. Practitioners usually move orally for a directed verdict.

Specify the grounds that form the basis of your motion for a directed verdict.<sup>16</sup> A motion for a directed verdict mustn't be based on "anything as flighty as indecisive statements in jury openings; it is based on the evidence itself."<sup>17</sup>

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Your burden in moving for a directed verdict is that your adversary hasn't made out its prima facie case.<sup>18</sup>

Not moving for a directed verdict means that you believe, or are conceding, that the jury must resolve an issue of fact.<sup>19</sup>

On a motion for a directed verdict, a court must consider "the facts adduced at trial in the light most favorable to the non-moving party and the non-moving party is entitled to every favorable inference that may be properly drawn from those facts."<sup>20</sup>

In granting a directed verdict during a jury trial, a judge must be "convinced that the jury could not find for the other party by any rational process; when, in support of the party against whom it proposes to order judgment, the court can find 'no evidence and no substantial inferences.'"<sup>21</sup> A judge will likely grant your motion for a directed verdict "when reasonable minds reacting to the evidence could not differ and would have to conclude just one way."<sup>22</sup> In deciding a motion for a directed verdict, "[t]he court must accept as true all of the evidence offered by the [non-moving] party against whom the motion for judgment aims, and must even resolve in that [non-moving] party's favor all questions relating to the credibility of witnesses."<sup>23</sup>

The court may not grant a motion for a directed verdict if "question[s] of fact and credibility [exist] for the jury."<sup>24</sup> The "proper procedure . . . [is] to reserve decision on the motion and submit the case to the jury."<sup>25</sup>

In a bench trial, a judge "must view the evidence in its most favorable light for the non-moving party."<sup>26</sup>

In a jury or bench trial, a judge deciding a motion for a directed verdict may not weigh the evidence.<sup>27</sup>

A court may grant a motion for a directed verdict on "parts of a [party's] claim that ha[ve] not been supported by evidence adduced at trial."<sup>28</sup> The court may, thus, grant your motion for a directed verdict if the plaintiff has failed to prove its damages for its past

lost wages but deny your motion if the plaintiff proved its damages for past medical expenses.<sup>29</sup>

Generally, issues such as whether a party was negligent or whether an act was foreseeable — "subject of varying inferences"<sup>30</sup> — are for a fact finder to resolve. A jury need not decide every negligence action; the evidence a party presents at trial is key: "[I]t is just as much error to submit a case to the jury where no question of fact is involved as it is to deny a litigant his right to a determination by the jury where a question of fact has been presented."<sup>31</sup>

Although proximate cause is a question for the fact finder, "when only one conclusion may be drawn from the established facts, the question of legal cause may be decided [by the court] as a matter of law."<sup>32</sup>

You "do[] not waive trial by jury or the right to present further evidence" if the court denies your motion.<sup>33</sup> At one time, moving for a directed verdict was "deemed a concession that no fact issue existed. This meant that even if the motion was denied, the moving by its mere making was held to waive all further right to trial by jury. That is no longer the case."<sup>34</sup>

If issues of comparative fault exist, "presentation of all evidence must be completed before a directed verdict for plaintiff is proper."<sup>35</sup>

Move for a directed verdict if the plaintiff sought punitive damages in its complaint but doesn't prove punitive damages at trial.<sup>36</sup>

A court may reserve ruling on a motion for a directed verdict until after the jury has returned a verdict.<sup>37</sup> If a court grants a motion for a directed verdict after a jury returns the verdict and the court is reversed on appeal, the jury's verdict may be reinstated.<sup>38</sup> A new trial isn't necessary.<sup>39</sup> If the court grants a directed verdict before a jury returns the verdict and the court is reversed on appeal, "there is no jury verdict to reinstate and no alternative [exists for the appellate court] but to order a new trial."<sup>40</sup>

A trial court commits error if a jury can't reach a verdict (hung jury) and

the court grants a directed verdict for the defendant.<sup>41</sup>

In opposing a motion for a directed verdict, explain that you've made out your prima facie case. Demonstrate to the court that issues of fact exist for the fact finder to decide. Point out all the issues of fact. You should also apply the standard, set forth above, to your case: After taking the facts in the light most favorable to you (the non-moving party), the court must make every favorable inference in your favor. Explain the facts in the light most favorable to you. Point out the favorable inference the court must draw. If any credibility issues exist, remind the court that the fact finder must assess those credibility issues.

A court that grants a directed verdict under CPLR 4401 is a decision on the merits. Res judicata applies.<sup>42</sup>

### Motion for a Continuance

A court may order a continuance, or a trial adjournment, "at any time during [a] trial, on [a] motion of any party . . . 'in the interest of justice on such terms as may be just.'"<sup>43</sup>

Move for a continuance to adjourn the trial for a "brief period."<sup>44</sup> A party moves for a continuance when it is "presenting evidence . . . [and] a witness or other item of evidence is temporarily unavailable, and the party is unable to go forward."<sup>45</sup> A continuance might be appropriate if a witness, or a party, doesn't appear in time, can't appear for a few days or is temporarily ill.<sup>46</sup> A continuance might also be appropriate if a party's "[c]ounsel has withdrawn or been discharged."<sup>47</sup>

Practitioners usually move orally for a continuance.

Make an offer of proof: If you're moving for a continuance because a witness is unavailable, tell the court what the witness will say.<sup>48</sup> Explain why the witness's testimony is important to your case.<sup>49</sup> Also explain how you've been diligent in attempting to produce the witness timely.<sup>50</sup>

A court has discretion in deciding a motion for a continuance. The court "'must indulge in a balanced consideration of all relevant factors.'"<sup>51</sup> A court

will consider (1) the length of the continuance you're seeking; (2) the materiality of the evidence you're seeking to procure; (3) whether your request for a continuance is designed merely to delay the trial; and (4) whether your need for the continuance was caused by your lack of diligence.<sup>52</sup> Courts will grant a motion for a continuance to give a party the opportunity to obtain material evidence and to prevent miscarriages of justice.<sup>53</sup>

**A court that refuses to adjourn a trial "when it is reasonable to do so will meet appellate censure."**

The court's "discretion is limited and narrowly construed when the . . . continuance requested is brief and made with a showing of movant's diligence and good faith to secure the attendance of a crucial witness."<sup>54</sup> The length of the continuance is within the court's discretion.<sup>55</sup>

If the court denies your motion for a continuance — and the basis for your motion was that you wanted to secure a witness — "be absolutely certain that . . . no other evidence [exists that] you can present before resting."<sup>56</sup> If another witness exists, call that witness to testify.<sup>57</sup>

A court that refuses to adjourn a trial "when it is reasonable to do so will meet appellate censure."<sup>58</sup>

Your poor trial preparation isn't a good ground for moving for a continuance.<sup>59</sup>

Consider whether to oppose your adversary's motion for a continuance. If your adversary's request is reasonable and the court will likely grant the request, you might want to consent to the continuance.<sup>60</sup> In deciding whether to oppose your adversary's motion, consider that you might also need a continuance during the trial (if you haven't yet presented your case)

and likewise you'd want your adversary to consent to your request.<sup>61</sup> But if your client will be prejudiced by a continuance, oppose the motion.<sup>62</sup> Explain how your client will be prejudiced if the court were to grant a continuance.<sup>63</sup> If your adversary seeks a lengthy continuance, explain how the delay will prejudice your client. If your adversary seeks a continuance to secure evidence, explain how that evidence isn't material. If your adversary's motion for a continuance is designed merely to delay the trial, explain the circumstances to the court. Also, tell the court about your adversary's lack of diligence, if any exists.

### **Motion to Strike**

Move to strike when you want the court to "remove evidence from the record."<sup>64</sup> Practitioners usually move orally to strike.

Move to strike if your adversary asked an improper question but you didn't respond quickly enough with an objection and the witness already answered the question.<sup>65</sup>

Move to strike if your adversary asked a proper question but the witness's answer was unresponsive or "contained inadmissible [information] or material."<sup>66</sup>

Move to strike when a witness's answer to a question "initially appeared proper, but later was shown to have been improper."<sup>67</sup>

Move to strike if the court admits a witness's testimony subject to connection but your adversary never connects that witness's testimony.<sup>68</sup>

Move to strike when a witness testifies on direct examination but is unavailable for cross-examination.<sup>69</sup>

Move to strike when a witness's testimony goes beyond the pleadings.<sup>70</sup>

Move to strike when a witness's testimony is "incredible as a matter of law."<sup>71</sup>

Move to strike "as soon as possible after the improper[] . . . testimony becomes evident" to you.<sup>72</sup>

Move to strike an expert's opinion "based on facts not in evidence."<sup>73</sup>

Move to strike your adversary's question.<sup>74</sup> Move to strike a witness's

answer. Move to strike a witness' testimony in its entirety, or move to strike only a portion.

Consider whether you'll oppose the motion to strike. Sometimes the court will rule so quickly on a motion to strike that you don't even have an opportunity to oppose the motion.<sup>75</sup> You won't want to oppose a motion that's "well founded," such as when a witness's answer to a question is "blatant hearsay."<sup>76</sup> If your adversary seeks to strike evidence that's important to you, oppose the motion.

In opposing a motion to strike, argue that the evidence is proper.<sup>77</sup> Argue that striking the evidence from the record would prejudice your client. Ask the court for an opportunity to "lay further foundation for the evidence."<sup>78</sup> You might want to move for a "short continuance to obtain further evidence or witnesses."<sup>79</sup> If you need the evidence to prove your prima facie case, explain that to the court.<sup>80</sup> Explain "what steps you would take, if the court allowed, [for the court] to render the evidence admissible."<sup>81</sup>

Make sure that all your grounds in opposing the motion to strike are on the record. Preserve the record for an appeal.

A court that grants your motion to strike will give a curative instruction to the jury. It will tell the jury to disregard the evidence that was stricken and not consider it during deliberations.<sup>82</sup> If the court doesn't give a curative instruction to the jury on its own, ask the court to give one.<sup>83</sup> A court's striking of the evidence and giving a curative instruction "may adequately serve the purpose."<sup>84</sup>

A court's curative instruction to a jury to disregard improper evidence might not be enough. Asking a jury to disregard what it has seen or heard is like trying to "'unring a bell."<sup>85</sup> Move for a mistrial if the evidence is highly prejudicial to your client.<sup>86</sup> Consider moving for a mistrial even if the court strikes the evidence from the record and gives a curative instruction.<sup>87</sup> Moving for a mistrial will preserve your objection for the record on appeal.



If the court grants your motion to strike evidence from the record, consider moving for a directed verdict: “If the testimony was the only vehicle for [your adversary in] proving a critical element of the prima facie case, and that testimony is stricken, a critical hole is left in [your adversary’s] case. This could occur if critical testimony turns out to lack foundation.”<sup>88</sup>

## Motion to Reopen the Case

A party with the burden of proof must introduce all evidence in its case before resting. To offer additional evidence after you’ve rested, move to reopen. A court might allow you to “reopen and cure defects that have inadvertently occurred in the evidence.”<sup>89</sup>

Move to reopen “immediately when the situation presents itself.”<sup>90</sup> Move before the court rules on the relevant issue. If you wait too long to move, a court will likely deny your motion.<sup>91</sup>

Practitioners move to reopen orally. If it’s a bench trial, you might have time to prepare motion papers and a memorandum of law to explain why the court should grant your motion. Jury trials pose a greater urgency.<sup>92</sup> During a jury trial, you might not have the time to prepare motion papers or a memorandum of law because a “jury [will be] waiting.”<sup>93</sup> If you move to reopen your case during a jury trial, tell the court that you’ll prepare a memorandum of law, if the court wants one.<sup>94</sup> A court has the “discretion to allow a party to reopen, but that discretion ‘should be sparingly exercised.’”<sup>95</sup>

A court will consider the following factors in deciding a motion to reopen:<sup>96</sup> (1) whether the court has already ruled on the relevant issue; (2) whether the movant disclosed the nature of the omitted evidence; (3) whether the evidence that the movant seeks to introduce is “newly discovered or whether there was no way for the party to anticipate that it should have put on the evidence in its case in chief”;<sup>97</sup> (4) whether the opposing party will be prejudiced if the court grants the motion to reopen; and (5)

whether the trial will be delayed if the court grants the motion to reopen.

Move to reopen your case if your adversary moves for a directed verdict on the basis that you’ve failed to make out a prima facie case.<sup>98</sup> Absent prejudice, a court might grant your motion.<sup>99</sup>

If your adversary prepared motion papers, consider submitting opposition papers, including a memorandum of law. Even if your adversary moved to reopen orally, ask the court for permission to submit written opposition papers and a memorandum of law. Consider whether you need to move for a continuance to research the issue and prepare opposition papers.

In opposing a motion to reopen, explain how your client will be prejudiced if the court were to reopen the case. Merely arguing that “allowing your opponent to reopen will deprive you of a victory is not sufficient prejudice.”<sup>100</sup> Argue that your adversary hasn’t disclosed the nature of the omitted evidence.<sup>101</sup> Argue that the court has already ruled on the relevant issue.<sup>102</sup> Argue that the evidence your adversary seeks to introduce isn’t newly discovered. Argue that your adversary should’ve anticipated introducing the evidence in its case in chief. Argue that reopening the case will delay the trial.

In the next issue of the *Journal*, the *Legal Writer* will continue with trial motions and discuss post-trial motions. ■

1. Aaron J. Broder, *Trial Handbook for New York Lawyers* § 27.3, at 513 (3d ed. 1996).

2. *Id.* § 27.3, at 514.

3. *Id.*

4. 2 Edward L. Birnbaum, Carl T. Grasso & Ariel E. Belen, *New York Trial Notebook*, § 36:04, at 36-3 (2010).

5. *Id.* § 36:04, at 36-3.

6. *Id.* § 36:43, at 36-10.

7. *Id.* § 36:110, at 36-16.

8. Broder, *supra* note 1, § 27.2, at 152 (Supp. 2014).

9. CPLR 4401.

10. Birnbaum et al., *supra* note 4, § 35:30, at 35-6.

11. *Id.* § 35:32, at 35-6.

12. David D. Siegel, *New York Practice* § 402, at 705 (5th ed. 2011).

13. Birnbaum et al., *supra* note 4, § 35:30, at 35-6.

14. *Id.* § 35:32, at 35-7.

15. Broder, *supra* note 1, § 28.3, at 521.

16. Siegel, *supra* note 12, § 402, at 702.

17. *Id.* § 402, at 704.

18. Birnbaum et al., *supra* note 4, § 35:40, at 35-7.

19. Broder, *supra* note 1, § 28.1, at 517-18.

20. Birnbaum et al., *supra* note 4, § 35:41, at 35-7.

21. Siegel, *supra* note 12, § 402, at 704.

22. *Id.*

23. *Id.*; Birnbaum et al., *supra* note 4, § 35:41, at 35-7.

24. Broder, *supra* note 1, § 2.3, at 26.

25. *Id.* § 2.3, at 27.

26. Birnbaum et al., *supra* note 4, § 35:42, at 35-7, 35-8.

27. Broder, *supra* note 1, § 28.2, at 518.

28. Birnbaum et al., *supra* note 4, § 35:33, at 35-7 (citing *Thomas v. 14 Rollins St. Realty Corp.*, 25 A.D.3d 317, 318, 807 N.Y.S.2d 56, 58 (1st Dep’t 2006)).

29. Birnbaum et al., *supra* note 4, § 35:33, at 35-7.

30. Broder, *supra* note 1, § 28.3, at 521 (citing *Muhammad v. Negron*, 86 A.D.2d 836, 838, 447 N.Y.S.2d 457, 459 (1st Dep’t 1982)).

31. *Id.* § 28.5, at 526 (citing *Conroy v. Saratoga Springs Auth.*, 259 A.D. 365, 368, 19 N.Y.S.2d 538, 541 (3d Dep’t 1940), *aff’d*, 284 N.Y. 723, 723, 31 N.E.2d 197, 197 (1940)).

32. *Id.* § 28.3, at 522.

33. Siegel, *supra* note 12, § 402, at 704.

34. *Id.*

35. Birnbaum et al., *supra* note 4, § 35:31, at 35-6.

36. *Id.* § 35:62, at 35-10.

37. *Id.* § 35:51, at 35-8.

38. *Id.*

39. *Id.*

40. *Id.* § 35:50, at 35-8.

41. *Id.* § 35:51, at 35-8.

42. Siegel, *supra* note 12, § 402, at 705 (noting that a “dismissal against a plaintiff before the close of the plaintiff’s evidence [under CPLR 5013] is not on the merits”; thus, res judicata doesn’t apply unless the court exercises its discretion to “give res judicata effect”).

43. Birnbaum et al., *supra* note 4, § 37:21, at 37-6 (quoting CPLR 4402).

44. *Id.* § 37:20, at 37-5.

45. *Id.*

46. Siegel, *supra* note 12, § 403, at 706.

47. Birnbaum et al., *supra* note 4, § 37:20, at 37-6.

48. *Id.* § 37:22, at 37-6.

49. *Id.*

50. *Id.*

51. *Id.* § 37:24, at 37-6 (quoting *Cuevas v. Cuevas*, 110 A.D.2d 873, 877, 488 N.Y.S.2d 725, 728 (2d Dep’t 1985)).

52. *Id.* (citing *Balogh v. H.R.B. Caterers Inc.*, 88 A.D.2d 136, 141, 452 N.Y.S.2d 220, 224-25 (2d Dep’t 1982)).

53. *Id.* § 37:25, at 37-6 (citing *Balogh*, 88 A.D.2d at 141, 452 N.Y.S.2d at 225).
54. *Id.* (quoting *Halloran v. Spina Floor Covering, Inc.*, 185 A.D.2d 149, 149, 586 N.Y.S.2d 786, 787 (1st Dep't 1992)).
55. *Id.* § 37:26, at 37-7 (citing *Bruce v. Hosp. for Special Surgery*, 34 A.D.2d 963, 964, 312 N.Y.S.2d 765, 766 (2d Dep't 1970)).
56. *Id.* § 37:25, at 37-7 (citing *Brown v. Data Commc'n, Inc.*, 236 A.D.2d 499, 499, 653 N.Y.S.2d 693, 694 (2d Dep't 1997)).
57. *Id.*
58. Siegel, *supra* note 12, § 403, at 706.
59. Birnbaum et al., *supra* note 4, § 37:29, at 37-10.
60. *Id.* § 37:23, at 37-6.
61. *Id.*
62. *Id.*
63. *Id.*
64. *Id.* § 37:40, at 37-12.
65. *Id.* § 37:41, at 37-13.
66. *Id.*
67. *Id.* (citing *People v. Rawlings*, 220 A.D.2d 541, 541-42, 632 N.Y.S.2d 206, 207 (2d Dep't 1995), *appeal after new trial*, 220 A.D.2d 541, 632 N.Y.S.2d 206 (2d Dep't 1995), *lv. denied*, 87 N.Y.2d 1024, 644 N.Y.S.2d 157, 666 N.E.2d 1071 (1996)).
68. *Id.*
69. *Id.* (citing *Notrica v. North Hills Holding Corp., LLC*, 43 A.D.3d 1119, 1120, 842 N.Y.S.2d 577, 577 (2d Dep't 2007); § 37:11, at 37-17 (citing *Diocese of Buffalo, N.Y. v. McCarthy*, 91 A.D.2d 213, 220 (4th Dep't), *lv. denied*, 59 N.Y.2d 605, 605, 466 N.Y.S.2d 1025, 1025, 453 N.E.2d 550, 550 (1983)).
70. *Id.* § 37:41, at 37-13.
71. *Id.* § 37:42, at 37-14.
72. *Id.*
73. *Id.* § 37:49, at 37-17.
74. *Id.* § 37:50, at 37-17.
75. *Id.* § 37:43, at 37-14.
76. *Id.*
77. *Id.*
78. *Id.*
79. *Id.*
80. *Id.*
81. *Id.*
82. *Id.* § 37:40, at 37-12.
83. *Id.* § 37:44, at 37-14.
84. *Id.* § 37:45, at 37-14.
85. *Id.* (quoting *People v. Griffin*, 242 A.D.2d 70, 73, 671 N.Y.S.2d 34, 36 (1st Dep't 1998), *appeal dismissed*, 93 N.Y.2d 955, 955, 694 N.Y.S.2d 345, 345, 716 N.E.2d 181, 181 (1999)).
86. *Id.* § 37:46, at 37-15.
87. *Id.* § 37:46, at 37-16.
88. *Id.* § 37:47, at 37-14.
89. *Id.* § 37:01, at 37-3.
90. *Id.* § 37:02, at 37-3.
91. *Id.* § 37:06, at 37-4.
92. *Id.* § 37:02, at 37-3.
93. *Id.*
94. *Id.*
95. *Id.* § 37:04, at 37-3 (quoting *King v. Burkowski*, 155 A.D.2d 285, 286, 547 N.Y.S.2d 48, 49 (1st Dep't 1989)).
96. *Id.* § 37:05, at 37-3, 37-4.
97. *Id.*
98. *Id.* § 37:01, at 37-3.
99. Broder, *supra* note 1, § 2.4, at 29 (citing *Iulio v. Ford Motor Co.*, 31 A.D.2d 820, 821, 298 N.Y.S.2d 33, 34 (2d Dep't 1969) (holding that court improvidently denied motion to reopen case)).
100. Birnbaum et al., *supra* note 4, § 37:03, at 37-3.
101. *Id.* § 37:05, at 37-3 (citing *Oregon Leopold Day Care Ctr. Ass'n, Inc. v. Di Marco Constr. Corp.*, 104 A.D.2d 719, 719, 480 N.Y.S.2d 661, 662 (4th Dep't 1984) ("[P]laintiff neither identified the witness nor the curative proof the witness would supply.")).
102. *Id.* ("Special Term properly denied plaintiff's motion to reopen the case because plaintiff moved to only [sic] after the court ruled on defendant's motion for judgment.").

## Estate Planning and Will Drafting in New York

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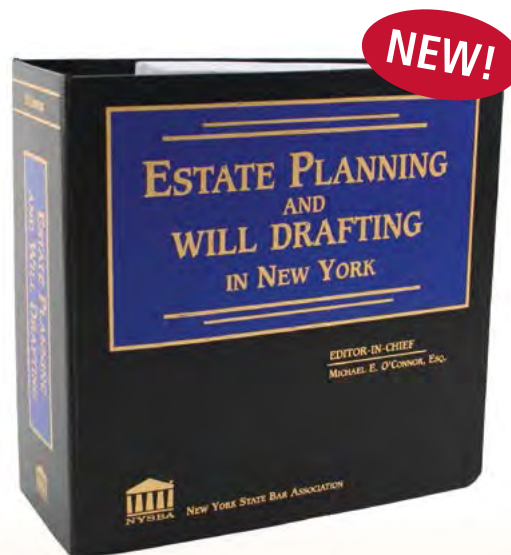
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