

MOTION NO. (586/05) KA 03-00322. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V WALLACE DRAKE, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: WHALEN, P.J., SMITH, PERADOTTO, TROUTMAN, AND WINSLOW, JJ. (Filed June 8, 2018.)

MOTION NO. (933/14) KA 12-01069. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V CLARENCE E. SCARVER, ALSO KNOWN AS "C," DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: CENTRA, J.P., CARNI, LINDLEY, AND WINSLOW, JJ. (Filed June 8, 2018.)

MOTION NO. (343/15) KA 11-02364. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DENYS ALMEIDA, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: WHALEN, P.J., SMITH, CARNI, CURRAN, AND WINSLOW, JJ. (Filed June 8, 2018.)

MOTION NO. (994/15) KA 11-01119. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MARQUIS PARKER, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: WHALEN, P.J., SMITH, LINDLEY, CURRAN, AND TROUTMAN, JJ. (Filed June 8, 2018.)

MOTION NO. (131/17) KA 10-00287. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V FRANK GARCIA, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: CENTRA, J.P., PERADOTTO, DEJOSEPH, CURRAN, AND TROUTMAN, JJ. (Filed June 8, 2018.)

**MOTION NO. (411/17) CA 16-01124. -- COUNTY OF JEFFERSON,
PLAINTIFF-RESPONDENT, V ONONDAGA DEVELOPMENT, LLC, DEFENDANT-APPELLANT. --**

Motion for reargument be and the same hereby is granted in part and, upon reargument, the memorandum and order entered June 16, 2017 (151 AD3d 1793) is amended by deleting the ninth paragraph of the memorandum and replacing it with the following paragraph:

To the extent that the County contends that the encroachment was permissible under the doctrine of lateral support, the County's submissions in support of its motion do not contain that contention, and thus that contention is not properly before us (see *Ciesinski*, 202 AD2d at 985). Although the County asserts that it raised that contention in the memoranda of law that it submitted in support of its motion, we note that the memoranda of law are not part of the record on appeal, and the County failed to object to defendant's submitted appendix and failed to submit its own appendix containing those memoranda (see CPLR 5528 [b]; 22 NYCRR 1000.4 [d] [2] [ii]; *Lyndaker v Board of Educ. of W. Can. Val. Cent. Sch. Dist.*, 129 AD3d 1561, 1564-1565 [4th Dept 2015]; see generally *Zawatski v Cheektowaga-Maryvale Union Free Sch. Dist.*, 261 AD2d 860, 860 [4th Dept 1999], *lv denied* 94 NY2d 754 [1999]).

PRESENT: CENTRA, J.P., CARNI, LINDLEY, CURRAN, AND TROUTMAN, JJ. (Filed June 8, 2018.)

**MOTION NO. (1098/17) CA 15-02155. -- PATRICIA A. RICKICKI, INDIVIDUALLY,
AND AS EXECUTRIX OF THE ESTATE OF DAVID P. RICKICKI, DECEASED,
PLAINTIFF-APPELLANT, V BORDEN CHEMICAL, DIVISION OF BORDEN, INC., ET AL.,
DEFENDANTS, UNIMIN CORPORATION AND U.S. SILICA COMPANY,
DEFENDANTS-RESPONDENTS. (ACTION NO. 1.) MICHAEL C. CROWLEY AND SHARON M.**

CROWLEY, PLAINTIFFS-APPELLANTS, V C-E MINERALS, INC., ET AL., DEFENDANTS, UNIMIN CORPORATION, UNIMIN SPECIALTY MINERALS, INC., MEYERS CHEMICALS, U.S. SILICA COMPANY, MALVERN MINERALS COMPANY, FERRO CORPORATION, NYCO MINERALS COMPANY AND CHARLES B. CHRYSTAL CO., INC., DEFENDANTS-RESPONDENTS. (ACTION NO. 2.) (APPEAL NO. 1.) -- Motions for reargument or leave to appeal to the Court of Appeals, and other relief denied. PRESENT: WHALEN, P.J., SMITH, CARNI, DEJOSEPH, AND CURRAN, JJ. (Filed June 8, 2018.)

MOTION NO. (1099/17) CA 15-02156. -- PATRICIA A. RICKICKI, INDIVIDUALLY, AND AS EXECUTRIX OF THE ESTATE OF DAVID P. RICKICKI, DECEASED, PLAINTIFF-APPELLANT, V BORDEN CHEMICAL, DIVISION OF BORDEN, INC., ET AL., DEFENDANTS, UNIMIN CORPORATION AND U.S. SILICA COMPANY, DEFENDANTS-RESPONDENTS. (ACTION NO. 1.) MICHAEL C. CROWLEY AND SHARON M. CROWLEY, PLAINTIFFS-APPELLANTS, V C-E MINERALS, INC., ET AL., DEFENDANTS, UNIMIN CORPORATION, UNIMIN SPECIALTY MINERALS, INC., MEYERS CHEMICALS, U.S. SILICA COMPANY, MALVERN MINERALS COMPANY, FERRO CORPORATION, NYCO MINERALS COMPANY AND CHARLES B. CHRYSTAL CO., INC., DEFENDANTS-RESPONDENTS. (ACTION NO. 2.) (APPEAL NO. 2.) -- Motions for reargument or leave to appeal to the Court of Appeals, and other relief denied. PRESENT: WHALEN, P.J., SMITH, CARNI, DEJOSEPH, AND CURRAN, JJ. (Filed June 8, 2018.)

MOTION NO. (1417/17) CA 16-01639. -- JEFFREY'S AUTO BODY, INC.,
PLAINTIFF-APPELLANT, V ALLSTATE INSURANCE COMPANY AND ALLSTATE PROPERTY AND
CASUALTY INSURANCE COMPANY, DEFENDANTS-RESPONDENTS. (APPEAL NO. 1.) --
Motion for reargument or leave to appeal to the Court of Appeals denied.
PRESENT: WHALEN, P.J., SMITH, LINDLEY, NEMOYER, AND TROUTMAN, JJ. (Filed
June 8, 2018.)

MOTION NO. (1418/17) CA 16-01640. -- NICK'S GARAGE, INC.,
PLAINTIFF-APPELLANT, V ALLSTATE INSURANCE COMPANY, ALLSTATE INDEMNITY
COMPANY, AND ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY,
DEFENDANTS-RESPONDENTS. (APPEAL NO. 2.) -- Motion for reargument or leave
to appeal to the Court of Appeals denied. PRESENT: WHALEN, P.J., SMITH,
LINDLEY, NEMOYER, AND TROUTMAN, JJ. (Filed June 8, 2018.)

MOTION NO. (50/18) KA 16-00046. -- THE PEOPLE OF THE STATE OF NEW YORK,
RESPONDENT, V SHEILA M. KOWAL, DEFENDANT-APPELLANT. -- Motion for
reargument denied. PRESENT: WHALEN, P.J., SMITH, DEJOSEPH, NEMOYER, AND
WINSLOW, JJ. (Filed June 8, 2018.)

MOTION NO. (191/18) CA 17-01429. -- RANDAL D. SMITH AND ALICIA SMITH,
PLAINTIFFS-APPELLANTS, V SAFECO INSURANCE COMPANY OF AMERICA,
DEFENDANT-RESPONDENT, ET AL., DEFENDANT. -- Motion for leave to appeal to
the Court of Appeals denied. PRESENT: SMITH, J.P., PERADOTTO, LINDLEY,

CURRAN, AND WINSLOW, JJ. (Filed June 8, 2018.)

MOTION NO. (218/18) KAH 17-00592. -- THE PEOPLE OF THE STATE OF NEW YORK EX
REL. JOHN A.J. HINSPETER, II, PETITIONER-APPELLANT, V DALE A. ARTUS,
SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY, RESPONDENT-RESPONDENT. --
Motion for reargument denied. PRESENT: WHALEN, P.J., SMITH, LINDLEY,
DEJOSEPH, AND NEMOYER, JJ. (Filed June 8, 2018.)

MOTION NO. (222/18) KA 11-01135. -- THE PEOPLE OF THE STATE OF NEW YORK,
RESPONDENT, V MUZZAMMIL S. HASSAN, ALSO KNOWN AS MO HASSAN,
DEFENDANT-APPELLANT. -- Motion for reargument denied. PRESENT: WHALEN,
P.J., SMITH, LINDLEY, DEJOSEPH, AND NEMOYER, JJ. (Filed June 8, 2018.)

MOTION NO. (361/18) CA 17-01554. -- LORNA FORBES, AS EXECUTOR OF THE ESTATE
OF HUGH FORBES, DECEASED, PLAINTIFF-RESPONDENT, V CARIS LIFE SCIENCES,
INC., CARIS DIAGNOSTICS, INC., MIRCA LIFE SCIENCES, INC., AND MIRACA
HOLDING GROUP, INC., DEFENDANTS-APPELLANTS. -- Motion for leave to appeal
to the Court of Appeals denied. PRESENT: WHALEN, P.J., PERADOTTO,
LINDLEY, DEJOSEPH, AND WINSLOW, JJ. (Filed June 8, 2018.)

MOTION NO. (363/18) CA 17-01248. -- JONATHAN R. GUSTKE,
PLAINTIFF-APPELLANT-RESPONDENT, V JONATHAN T. NICKERSON, BRIAN H. FOLEY,
DEFENDANTS-RESPONDENTS, MARY BETH LIPOME AND MARY A. HOURT,

DEFENDANTS-RESPONDENTS-APPELLANTS. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: WHALEN, P.J., PERADOTTO, LINDLEY, DEJOSEPH, AND WINSLOW, JJ. (Filed June 8, 2018.)