

MOTION NO. (417/03) KA 01-01972. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V SAMUEL LEFLORE, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis and other relief denied. PRESENT: LINDLEY, J.P., BANNISTER, MONTOUR, DELCONTE, AND KEANE, JJ. (Filed Sept. 27, 2024.)

MOTION NO. (231/15) KA 12-00793. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JOSE MEJIA, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SMITH, J.P., LINDLEY, CURRAN, NOWAK, AND HANNAH, JJ. (Filed Sept. 27, 2024.)

MOTION NO. (1337/18) KA 15-02050. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ANTHONY S. ORTIZ, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: WHALEN, P.J., SMITH, CURRAN, DELCONTE, AND HANNAH, JJ. (Filed Sept. 27, 2024.)

MOTION NO. (162/20) KA 19-00074. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V SAMMY L. BROWN, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SMITH, J.P., LINDLEY, BANNISTER, NOWAK, AND KEANE, JJ. (Filed Sept. 27, 2024.)

MOTION NO. (183/20) KA 18-01176. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V RASHAD J. MUHAMMAD, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: CURRAN, J.P., BANNISTER, GREENWOOD, KEANE, AND HANNAH, JJ. (Filed Sept. 27, 2024.)

MOTION NO. (932/20) KA 17-00556. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V CHRISTOPHER PEARSON, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: BANNISTER, J.P., OGDEN, DELCONTE, KEANE, AND HANNAH, JJ. (Filed Sept. 27, 2024.)

MOTION NO. (1180/20) KA 16-02366. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V TINA L. WAGONER, DEFENDANT-APPELLANT. -- Motion for reconsideration of motion for writ of error coram nobis and other relief denied. PRESENT: LINDLEY, J.P., CURRAN, BANNISTER, MONTOUR, AND KEANE, JJ. (Filed Sept. 27, 2024.)

MOTION NO. (909/22) CA 16-00350. -- HOI TRINH, PLAINTIFF-APPELLANT, V FATHER JOSEPH THIEN NGUYEN, DEFENDANT-RESPONDENT. -- Motion for leave to renew and other relief denied. PRESENT: WHALEN, P.J., CURRAN, BANNISTER, KEANE, AND HANNAH, JJ. (Filed Sept. 27, 2024.)

MOTION NO. (940/22) KA 18-00156. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V OSWALD MCPHERSON, JR., DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: LINDLEY, J.P., CURRAN, BANNISTER, MONTOUR, AND GREENWOOD, JJ. (Filed Sept. 27, 2024.)

MOTION NO. (970/23) CA 22-01908. -- AL 557 DOE, PLAINTIFF-RESPONDENT, V CENTRAL VALLEY CENTRAL SCHOOL DISTRICT, FORMERLY KNOWN AS ILION CENTRAL SCHOOL DISTRICT, CENTRAL VALLEY CENTRAL SCHOOL DISTRICT BOARD OF EDUCATION,

FORMERLY KNOWN AS ILION CENTRAL SCHOOL DISTRICT BOARD OF EDUCATION,
DEFENDANTS-APPELLANTS, AND EAST FRANKFORT SCHOOL, DEFENDANT. -- Motion
insofar as it seeks reargument denied and insofar as it seeks leave to
appeal to the Court of Appeals granted upon the certified question.
PRESENT: WHALEN, P.J., LINDLEY, BANNISTER, OGDEN, AND DELCONTE, JJ.
(Filed Sept. 27, 2024.)

MOTION NO. (7/24) CA 23-00416. -- BOGDAN MSCICHOWSKI, M.D.,
PLAINTIFF-APPELLANT, V MLMIC INSURANCE COMPANY, FORMERLY KNOWN AS MEDICAL
LIABILITY MUTUAL INSURANCE COMPANY, DEFENDANT-RESPONDENT. -- Motion for
reargument or leave to appeal to the Court of Appeals denied. PRESENT:
WHALEN, P.J., LINDLEY, OGDEN, NOWAK, AND DELCONTE, JJ. (Filed Sept. 27,
2024.)

MOTION NO. (50/24) CA 22-01021. -- KEVIN CONLEY AND DENISE CONLEY,
PLAINTIFFS-APPELLANTS, V PINELLI LANDSCAPING, INC., DEFENDANT-RESPONDENT.
-- Motion for reargument or leave to appeal to the Court of Appeals denied.
PRESENT: LINDLEY, J.P., CURRAN, MONTOUR, OGDEN, AND GREENWOOD, JJ. (Filed
Sept. 27, 2024.)

MOTION NOS. (120-121/24) CA 22-01891. -- PB-20 DOE, PLAINTIFF-APPELLANT, V
ST. NICODEMUS LUTHERAN CHURCH, UPSTATE NEW YORK SYNOD OF THE EVANGELICAL
LUTHERAN CHURCH IN AMERICA, DEFENDANTS, AND EVANGELICAL LUTHERAN CHURCH IN
AMERICA, DEFENDANT-RESPONDENT. (ACTION NO. 1.) CA 22-01894. -- PB-21 DOE,

PLAINTIFF-APPELLANT, V ST. NICODEMUS LUTHERAN CHURCH, UPSTATE NEW YORK
SYNOD OF THE EVANGELICAL LUTHERAN CHURCH IN AMERICA, DEFENDANTS, AND
EVANGELICAL LUTHERAN CHURCH IN AMERICA, DEFENDANT-RESPONDENT.

(ACTION NO. 2.) (APPEAL NO. 1.) -- Motions for reargument or in alternative
leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P.,
MONTOUR, OGDEN, DELCONTE, AND KEANE, JJ. (Filed Sept. 27, 2024.)

MOTION NOS. (120-121/24) CA 22-01891. -- PB-20 DOE, PLAINTIFF-APPELLANT, V
ST. NICODEMUS LUTHERAN CHURCH, DEFENDANT-RESPONDENT, UPSTATE NEW YORK SYNOD
OF THE EVANGELICAL LUTHERAN CHURCH IN AMERICA,

DEFENDANT-RESPONDENT-APPELLANT, EVANGELICAL LUTHERAN CHURCH IN AMERICA,
DEFENDANT. (ACTION NO. 1.) CA 22-01894. -- PB-21 DOE,

PLAINTIFF-APPELLANT, V ST. NICODEMUS LUTHERAN CHURCH, DEFENDANT-RESPONDENT,
UPSTATE NEW YORK SYNOD OF THE EVANGELICAL LUTHERAN CHURCH IN AMERICA,
DEFENDANT-RESPONDENT-APPELLANT, EVANGELICAL LUTHERAN CHURCH IN AMERICA,

DEFENDANT. (ACTION NO. 2.) (APPEAL NO. 2.) -- Motions for reargument or in
alternative leave to appeal to the Court of Appeals denied. PRESENT:
SMITH, J.P., MONTOUR, OGDEN, DELCONTE, AND KEANE, JJ. (Filed Sept. 27,
2024.)

MOTION NO. (207/24) CA 23-00749. -- TERRI VIGLIETTA, INDIVIDUALLY AND AS
EXECUTOR OF THE ESTATE OF BENEDICT VIGLIETTA, DECEASED,
PLAINTIFF-RESPONDENT, V ASBESTOS CORPORATION LIMITED, ET AL., DEFENDANTS,

AND HEDMAN RESOURCES LIMITED, DEFENDANT-APPELLANT. (APPEAL NO. 2.) --

Motion for reargument or leave to appeal to the Court of Appeals denied.

PRESENT: WHALEN, P.J., LINDLEY, GREENWOOD, NOWAK, AND KEANE, JJ. (Filed Sept. 27, 2024.)

MOTION NO. (263/24) CA 22-01732. -- BARBARA KEEM, INDIVIDUALLY AND AS EXECUTOR OF THE ESTATE OF JAMES KEEM, DECEASED, PLAINTIFF-APPELLANT, V FORD MOTOR COMPANY, PIONEER FORD-MERCURY, INC. AND TOWNE FORD, INC., DEFENDANTS-RESPONDENTS. -- Motion for reargument or leave to appeal to the Court of Appeals, and for other relief,

Now, upon reading and filing the affirmation of Richard J. Montes, dated June 14, 2024, the exhibits annexed thereto, the notice of said motion with proof of service thereof, the affirmation in opposition of Marc C. Panepinto, dated June 25, 2024, the reply affirmation of Richard J. Montes, dated June 28, 2024, and due deliberation having been had thereon,

It is hereby ORDERED that said motion be and the same hereby is granted and, upon reargument, the memorandum and order entered May 10, 2024 (227 AD3d 1526 [4th Dept 2024]) is amended by deleting the third and fourth paragraphs of the memorandum and substituting the following paragraphs:

We agree with plaintiff that Ford Motor failed to meet its burden on the motion with respect to the strict products liability and negligence causes of action. It is well settled that a strict products liability cause of action may be established by circumstantial evidence, and thus a plaintiff " 'is not required to prove the specific defect' " in the product

(*Speller v Sears, Roebuck & Co.*, 100 NY2d 38, 41 [2003]; see *Ramos v Howard Indus., Inc.*, 10 NY3d 218, 223 [2008]; *Codling v Paglia*, 32 NY2d 330, 337 [1973]; *Saunders v Farm Fans, div. of ffi Corp.*, 24 AD3d 1173, 1175-1176 [4th Dept 2005]). "In order to proceed in the absence of evidence identifying a specific flaw, a plaintiff must prove that the product did not perform as intended and exclude all other causes for the product's failure that are not attributable to defendants" (*Speller*, 100 NY2d at 41; see *Ramos*, 10 NY3d at 223). " 'Proof that will establish strict liability will almost always establish negligence' " (*Saunders*, 24 AD3d at 1174-1175).

In order to meet its initial burden of establishing entitlement to judgment as a matter of law, Ford Motor was required to submit evidence that its product was not defective (see *Ramos*, 10 NY3d at 221; *Cassatt*, 161 AD3d at 1550), and that it was reasonably safe for its intended use (see *Meanear v Kwik Fill*, 174 AD3d 1354, 1355-1356 [4th Dept 2019]). Although the airbag system was not available for testing and inspection after the accident, Ford Motor submitted the affidavit and deposition testimony of its expert, who testified that the supplemental safety systems and frontal crash deployable devices of the vehicle, including the airbag system, were not defective at the time of the sale of the vehicle, and that those systems were designed and manufactured in compliance with applicable industry standards (see *Ramos*, 10 NY3d at 223-224). Nonetheless, Ford Motor also submitted the deposition testimony of decedent, which raises an issue of fact whether the product was defective inasmuch as decedent's testimony describing the deployment of the airbag contradicts the evidence that Ford Motor's testing and quality control measures were, in fact, so robust to render it " 'virtually impossible for a [product] with the relevant defect to leave [its] plant' " (*id.* at 224). Because Ford Motor failed to establish its prima facie entitlement to judgment as a matter of law, we need not consider the sufficiency of the opposing papers (see *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

PRESENT: SMITH, J.P., BANNISTER, MONTOUR, NOWAK, AND KEANE, JJ. (Filed Sept. 27, 2024.)

MOTION NO. (393/24) CA 23-01602. -- UTICA FIRST INSURANCE COMPANY, PLAINTIFF-RESPONDENT, V COTE AGENCY INC., ET AL., DEFENDANTS, BALDES PROTECTION AGENCY, INC., BALDES PROTECTION AGENCY, INC., DOING BUSINESS AS COTE AGENCY, AND BALDES PROTECTION AGENCY, INC., DOING BUSINESS AS COTE INSURANCE AGENCY, DEFENDANTS-APPELLANTS. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., BANNISTER, MONTOUR, DELCONTE, AND HANNAH, JJ. (Filed Sept. 27, 2024.)

KA 23-00469. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V FELIX APONTE, DEFENDANT-APPELLANT. -- Judgment unanimously affirmed. Counsel's motion to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38 [4th Dept 1979]). (Appeal from Judgment of Wyoming County Court, Michael M. Mohun, J. - Attempted Assault, 2nd Degree). PRESENT: WHALEN, P.J., CURRAN, GREENWOOD, NOWAK, AND KEANE, JJ. (Filed Sept. 27, 2024.)

KA 23-00947. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DOMINIC CAVE, DEFENDANT-APPELLANT. -- Judgment unanimously affirmed. Counsel's motion to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38 [4th Dept 1979]). (Appeal from Judgment of Wyoming County Court, Michael M. Mohun, J. - Assault, 2nd Degree). PRESENT: WHALEN, P.J., CURRAN, GREENWOOD, NOWAK, AND KEANE, JJ. (Filed Sept. 27, 2024.)

KA 23-00343. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V
BARRINGTON HARVEY, DEFENDANT-APPELLANT. -- Judgment unanimously affirmed.
Counsel's motion to be relieved of assignment granted (*see People v
Crawford*, 71 AD2d 38 [4th Dept 1979]). (Appeal from Judgment of Wyoming
County Court, Michael M. Mohun, J. - Assault, 2nd Degree). PRESENT:
WHALEN, P.J., CURRAN, GREENWOOD, NOWAK, AND KEANE, JJ. (Filed Sept. 27,
2024.)