2009

Annual Report of the Clerk of the Court

2009

ANNUAL REPORT OF THE CLERK OF THE COURT TO THE JUDGES OF THE COURT OF APPEALS OF THE STATE OF NEW YORK

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CONTENTS

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Court of Appeals

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March 2010

The year 2009, my first as Chief Judge, left me feeling more grateful than ever for the special privilege and opportunity I have been given to lead the finest state high court in the nation.

To use a metaphor favored by my predecessor, Judith S. Kaye, I entered "lawyer heaven" on February 11, 2009 when I stepped through the front doors of Court of Appeals Hall following my confirmation at the State Capitol. I was welcomed so warmly by my six new colleagues and the entire Court of Appeals staff assembled in the Court's beautiful rotunda. It is a memory I will always cherish.

It has been enormously satisfying to deliberate collectively with six diverse, strong intellects on issues of importance to our citizens and state, and to do so in an atmosphere of collegiality and mutual respect. Many of the most challenging and complex issues confronting our society arrive at the Court of Appeals because strong differences of opinion have prevented their resolution elsewhere. Here, every litigant, lawyer and citizen can be assured that those cases will be resolved in a principled, reasoned manner, through rigorous analysis and scholarship, in decisions that are written with clarity and integrity – and not just in a few high-profile cases but in every single one of the hundreds of appeals decided each year by the Court.

The Judges of the Court of Appeals are very fortunate to be supported by highly competent, dedicated professionals who care so deeply about this institution and the quality of its work product. The Court's reputation is rooted firmly in the professionalism of its nonjudicial staff – the clerk's office, central staff attorneys and supervisors, security officers and Court attendants. They all take visible pride in the high quality of service they provide to the public and the bar.

On May 1, 2009, I had the pleasure of presiding over my first Court of Appeals Law Day celebration. With the Governor present in Court of Appeals Hall, the legal community came together to celebrate the bicentennial of Abraham Lincoln's birth. In keeping with Lincoln's legacy of opposing injustice, on Law Day I announced the formation of The Justice Task Force, a permanent group of judges, lawyers and other professionals who will be working on an ongoing basis to eliminate the risk of wrongful convictions in New York State.

It is truly a privilege to sit in our august courtroom, surrounded by portraits of many of the greatest judges in American history, as we hear argument from some of the finest lawyers of our own day. In the midst of all these reminders of the Court's historic past, I am acutely aware of the great challenge I face in maintaining the high standards established by my predecessors and my current colleagues – Carmen Beauchamp Ciparick, Victoria A. Graffeo, Susan Phillips Read, Robert S. Smith, Eugene F. Pigott, Jr., Theodore T. Jones, Jr. In the years ahead, we will dedicate ourselves wholeheartedly to guiding this great institution to even better days.

It is, for all of us, the challenge of a lifetime. It is the privilege of a lifetime.

Jonathan Lippman

2009

ANNUAL REPORT OF THE CLERK OF THE COURT TO THE JUDGES OF THE COURT OF APPEALS OF THE STATE OF NEW YORK

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Introduction

In the introduction to last year's annual report I noted that the question of who would replace Chief Judge Kaye as Chief Judge of the Court of Appeals and the State of New York was answered in January 2009, when Jonathan Lippman was appointed. The transition could not have gone more smoothly due to Chief Judge Lippman's vast experience as a court administrator and his calm yet energetic administrative style. All of us who are covered by the Clerk's Office administrative umbrella offer heartfelt thanks to Chief Judge Lippman for making the transition to a new Chief Judge so seamless, as we do to former Chief Judge Kaye and former acting Chief Judge Ciparick for their past guidance and support.

2009 also is the year the Court transitioned to a new case management system ably designed and implemented by the Office of Court Administration's Division of Technology. In this day and age it is essential, of course, that the Court have a robust software application to process the large volume of motions, criminal leave applications, and appeals submitted to and decided by the Court. The old case management system, a pre-Windows DOS application first implemented in 1985, was at the end of its useful life, and the new, far more robust application should serve the Court well for many years to come.

The 2009 Annual Report is divided into four parts. The first section is a narrative, statistical and graphic overview of matters filed with and decided by the Court during the year. The second describes various functions of the Clerk's Office and summarizes administrative accomplishments in 2009. The third section highlights selected decisions of 2009. The fourth part consists of appendices with detailed statistics and other information.

I. The Work of the Court

The Court of Appeals is composed of its Chief Judge and six Associate Judges, each appointed by the Governor to a 14-year term. Similar to the Supreme Court of the United States and other state courts of last resort, the primary role of the New York Court of Appeals is to unify, clarify and pronounce the law of its jurisdiction for the benefit of the community at large. Reflecting the Court's historical purpose, the State Constitution and applicable jurisdictional statutes provide few grounds for appeals as of right. Thus, the Court hears most appeals by its own permission, or *certiorari*, granted upon civil motion or criminal leave application. Appeals by permission typically present novel and difficult questions of law having statewide importance. Often these appeals involve issues in which the holdings of the lower courts of the state conflict. The correction of error by courts below remains a legitimate, if less frequent, basis for this Court's decision to grant review. By State Constitution and statute, the Appellate Division also can grant leave to appeal to the Court of Appeals in civil cases, and individual Justices of that court can grant leave to appeal to the Court of Appeals in most criminal cases.

In addition to appellate jurisdiction, the State Constitution vests the Court of Appeals with power to answer questions of New York law certified to it by a federal appellate court or another state's court of last resort. Also, the Court of Appeals is the exclusive forum for review of determinations by the State Commission on Judicial Conduct.

The Judges of the Court collectively decide all appeals, certified questions, proceedings to review determinations of the State Commission on Judicial Conduct, and motions. Individually, the Judges decide applications for leave to appeal in criminal cases and emergency show cause orders. For most appeals, the Judges receive written and oral argument and set forth the reasons for their decisions in written opinions and memoranda.

The Court sits in Albany throughout the year, usually for two-week sessions. During these sessions, the Court meets each morning in conference to discuss the appeals argued the afternoon before, to consider and vote on writings circulated on pending appeals, and to decide motions and administrative matters. Afternoons are devoted to hearing oral argument, and evenings to preparing for the following day.

Between Albany sessions, the Judges return to their home chambers throughout the State, where they continue their work of studying briefs, writing opinions and preparing for the next Albany session. During these home chambers sessions, each Judge annually decides hundreds of requests for permission to appeal in criminal cases, prepares reports on motions for the full Court's consideration and determination, and fulfills many other judicial and professional responsibilities.

Each year, with the Appellate Division Departments, the Court of Appeals publishes a timetable for appellate review of primary election-related matters. In August of each year, the Court holds a special session to consider expedited appeals and motions for leave to appeal in cases concerning the September primaries. The Court reviews primary election mo-

tions and appeals on the Appellate Division record and briefs, and hears oral argument of motions for leave to appeal. When the Court determines an appeal lies as of right or grants a motion for leave to appeal, oral argument of the election appeal is usually scheduled for the same day. Primary election appeals are decided quickly, often the day after oral argument is heard.

In 2009, the Court and its Judges disposed of 3,962 matters, including 212 appeals, 1,370 motions and 2,380 criminal leave applications. A detailed analysis of the Court's work follows.

A. Appeals Management

1. Screening Procedures

The jurisdiction of the Court is narrowly defined by the State Constitution and applicable statutes. After filing a notice of appeal or receiving an order granting leave to appeal to this Court, an appellant must file an original and one copy of a preliminary appeal statement in accordance with Rule 500.9. Pursuant to Rule 500.10, the Clerk examines all preliminary appeal statements filed for issues related to subject matter jurisdiction. This review usually occurs the day a preliminary appeal statement is filed. Written notice to counsel of any potential jurisdictional impediment follows immediately, giving the parties an opportunity to address the jurisdictional issue identified. After the parties respond to the Clerk's inquiry, the matter is referred to the Central Legal Research Staff to prepare a report on jurisdiction for review and disposition by the full Court.

Of the 146 notices of appeal received in 2009, 84 were subject to Rule 500.10 inquiries. Of those, all but 22 were dismissed sua sponte or on motion, withdrawn or transferred to the Appellate Division. Fourteen inquiries were pending at year's end. The Rule 500.10 sua sponte dismissal (SSD) screening process is valuable to the Court, the Bar and the parties because it identifies at the earliest possible stage of the appeal process jurisdictionally defective appeals destined for dismissal or transfer by the Court.

2. Normal Course Appeals

The Court determines most appeals "in the normal course," meaning after full briefing and oral argument by the parties. In these cases, copies of the briefs and record are circulated to each member of the Court well in advance of the argument date. Each Judge becomes conversant with the issues in the cases, using oral argument to address any questions or concerns prompted by the briefs. At the end of each afternoon of argument, each appeal argued or submitted that day is assigned by random draw to one member of the Court for reporting to the full Court at the next morning's conference.

In conference, the Judges are seated clockwise in seniority order around the conference table. When a majority of the Court agrees with the reporting Judge's proposed disposition, the reporting Judge becomes responsible for preparing the Court's writing in the case.

If the majority of the Court disagrees with the recommended disposition of the appeal, the first Judge taking the majority position who is seated to the right of the reporting Judge assumes responsibility for the proposed writing, thus maintaining randomness in the distribution of all writings for the Court. Draft writings are circulated to all Judges during the Court's subsequent home chambers session and, after further deliberation and discussion of the proposed writings, the Court's determination of each appeal is handed down, typically during the next Albany session of the Court.

3. Alternative Track Appeals

The Court also employs the alternative track of sua sponte merits (SSM) review of appeals pursuant to Rule 500.11. Through this SSM procedure, the Court decides a number of appeals on letter submissions without oral argument, saving the litigants and the Court the time and expense of full briefing and oral argument; for this reason, the parties may request SSM review. A case may be placed on SSM track if it involves nonreviewable issues or issues decided by a recent appeal, or for other reasons listed in the Rule. As with normal-coursed appeals, SSM appeals are assigned on a random basis to individual Judges for reporting purposes and are conferenced and determined by the entire Court.

Of the 328 appeals filed in 2009, 65 (20%) were initially selected to receive SSM consideration, a slight increase from the percentage initially selected in 2008 (18%). Forty were civil matters and 25 were criminal matters. Fourteen appeals initially selected to receive SSM consideration in 2009 were directed to full briefing and oral argument. Of the 212 appeals decided in 2009, 25 (11.8%) were decided upon SSM review (13.7% were so decided in 2008; 14% were so decided in 2007). Seventeen were civil matters and eight were criminal matters.

Of the 65 appeals filed in 2009 and initially selected to receive SSM consideration, 27 were taken from orders or judgments of the Appellate Division, First Department. Six of these were appeals as of right based on a double dissent below, 17 were leave grants of the Appellate Division or a Justice of that court, and four were by leave of this Court or a Judge of this Court.

4. Promptness in Deciding Appeals

In 2009, litigants and the public continued to benefit from the Court's remarkable tradition of prompt calendaring, hearing and disposition of appeals. The average time from argument or submission to disposition of an appeal decided in the normal course was 36 days; for all appeals, the average time from argument or submission to disposition was 29 days. The average period from filing a notice of appeal or an order granting leave to appeal to calendaring for oral argument was approximately 7.5 months. The average period from readiness (all papers served and filed) to calendaring for oral argument was approximately three months.

The average length of time from the filing of a notice of appeal or order granting leave to appeal to the release to the public of a decision in a normal-coursed appeal decided

in 2009 (including SSM appeals tracked to normal course) was 275 days. For all appeals, including those decided pursuant to the Rule 500.11 SSM procedure, those dismissed pursuant to Rule 500.10 SSD inquiries, and those dismissed pursuant to Rule 500.16(a) for failure to perfect, the average was 208 days. Thus, by every measure, in 2009 the Court maintained its long tradition of exceptional currency in calendaring and deciding appeals.

B. The Court's 2009 Docket

1. Filings

Three hundred and twenty-eight (328) notices of appeal and orders granting leave to appeal were filed in 2009 (the same number as in 2008). Two hundred and twenty-six (226) filings were civil matters (compared to 251 in 2008), and 102 were criminal matters (compared to 77 in 2008). The Appellate Division Departments issued 65 of the orders granting leave to appeal filed in 2009 (44 were civil, 21 were criminal). Of these, the First Department issued 39 (28 civil and 11 criminal).

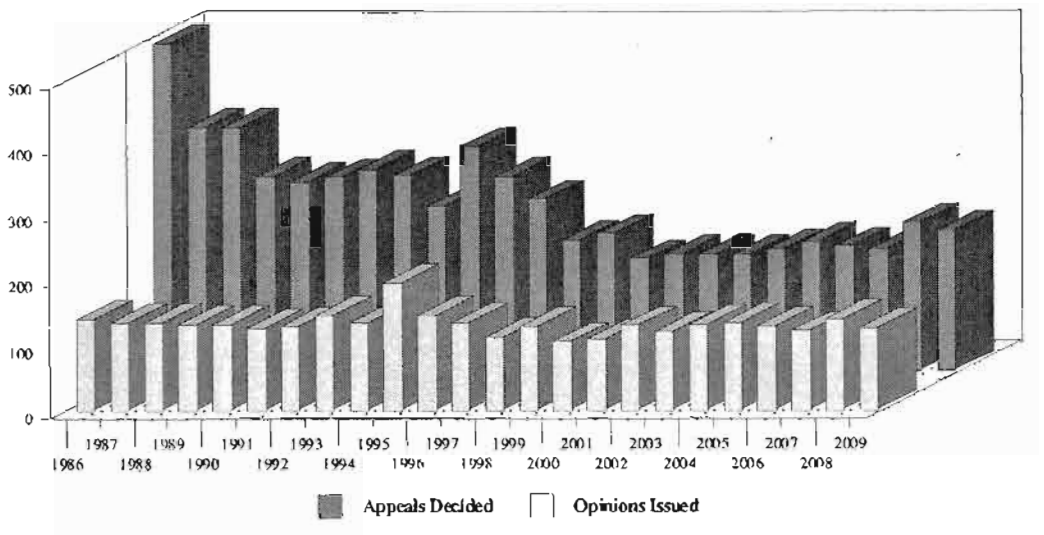
Motion filings decreased slightly in 2009. During the year, 1,397 motion numbers were used, a decrease of 1.7% from the 1,421 motion numbers used in 2008. Criminal leave applications also decreased in 2009. Two thousand three hundred and forty-seven (2,347) applications for leave to appeal in criminal cases were assigned to individual Judges of the Court during the year, 340 fewer than in 2008, a decrease of 12.7%. On average, each Judge was assigned 335 such applications during the year.

2. Dispositions

(a) Appeals and Writings

In 2009, the Court decided 212 appeals (146 civil and 66 criminal, compared to 172 civil and 53 criminal in 2008). Of these appeals, 161 were decided unanimously. The Court issued 124 signed opinions, 7 per curiam opinions, 45 dissenting opinions, 16 concurring opinions, 56 memoranda and 27 decision list entries (one of which was a concurring entry). The chart on the next page tracks appeals decided and full opinions (signed and per curiam) issued since Laws of 1985, chapter 300 narrowed the available predicates for appeals as of right and expanded the civil *certiorari* jurisdiction of the Court.

Appeals Decided and Opinions Issued
1986-2009

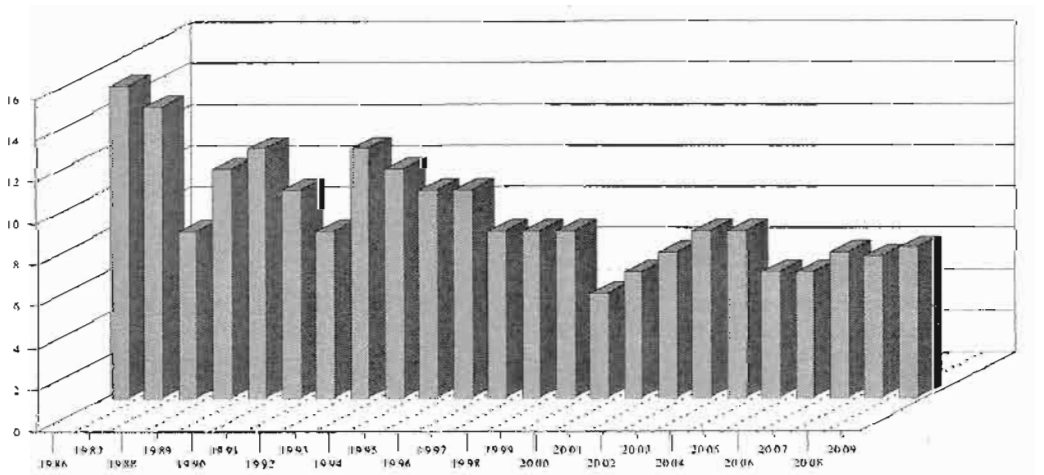


(b) Motions

The Court decided 1,370 motions in 2009—89 fewer than in 2008. Each motion was decided upon submitted papers and an individual Judge's written report, reviewed and voted upon by the full Court. The average period of time from return date to disposition for civil motions for leave to appeal was 57 days, while the average period of time from return date to disposition for all motions was 50 days.

The Court decided 1,070 motions for leave to appeal in civil cases during the year—23 fewer than in 2008. Of these, the Court granted 7.2% (up from 6.8% in 2008), denied 74.2% (down from 75.9% in 2008) and dismissed for jurisdictional defects 18.6% (up from 17.3% in 2008). The chart below shows the percentage of civil motions for leave to appeal granted since the expansion of the Court's certiorari jurisdiction in 1986.

Motions for Leave to Appeal Granted by Year
1986-2009



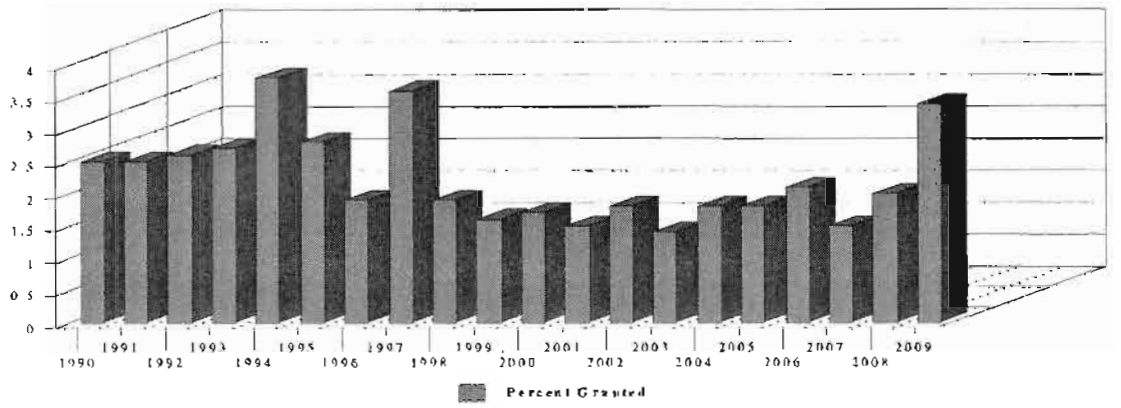
Seventy-seven motions for leave to appeal were granted in 2009. The Court's leave grants covered a wide range of subjects. The Court granted leave to address the recognition of foreign same-sex marriages and whether a domestic partner has standing to seek custody and visitation of a child. The Court granted leave in several election matters to address whether a Committee to Receive Notices is a necessary party to a proceeding, and granted leave in another election matter to address whether the Appellate Division properly determined that petitioners may seek to enforce party rules only by commencing a proceeding pursuant to Election Law § 16-102 after the County Committee had issued certificates. The Court granted leave in several proceedings commenced under the Sex Offender Registration Act (SORA) to address the use of certain factors of the Risk Assessment Instrument, including "living or employment situation" and "armed with a dangerous instrument."

Other matters covered the "homeowners' exemption" in Labor Law § 240 (1); whether the deposition of a testator's former attorney violated an in terrorem clause of the testator's will; the applicability of the infancy toll provision to personal injury claims where the decedent and the decedent's sole distributees are infants; whether the choice of method of random drug testing for New York City Police Department officers, as a matter of public policy, is excluded from collective bargaining; Mental Hygiene Legal Services' right of access to the mentally ill residents of a nursing home; whether a cause of action for legal malpractice in estate planning accrued at the time the alleged malpractice was committed; a hospital's alleged malpractice in failing to comply with a decedent's "Do No Resuscitate" order; the statutory requirements to obtain a stay of a foreclosure sale; the enforceability of a foreign judgment; the Department of Correctional Services' refusal to provide "off-label" use of a medication to an inmate; whether CPLR 909 authorizes an award of counsel fees and expenses to counsel for an objectant to a class action settlement when the objectant's intervention results in benefits to the class; whether failure to comply with the out-of-state service of process requirements of CPLR 313 is a jurisdictional defect or a mere irregularity; the scope of a FOIL exemption for personnel records; the voluntariness of a juvenile's confession; and, in litigation relating to a Tobacco Master Settlement Agreement, whether interpretation of the term "units sold" in Public Health Law § 1399-oo (10) is subject to arbitration.

(c) CPL 460.20 Applications

Individual Judges of the Court granted 81 of the 2,380 applications for leave to appeal in criminal cases decided in 2009—up from 53 in 2008. Two hundred and three applications were dismissed for lack of jurisdiction, and three were withdrawn. Fourteen of 48 applications filed by the People were granted. The chart on the next page reflects the percentage of applications for leave to appeal granted in criminal cases over the past 20 years.

Criminal Leave Applications Granted by Year
1990-2009



Laws of 2002, chapter 498 amended the criminal jurisdiction of the Court of Appeals to allow appeals by permission from intermediate appellate court orders determining applications for writs of error coram nobis. In 2009, 202 applications for leave to appeal from such orders were assigned to Judges of the Court, down from 229 in 2008. Four such applications were granted.

Review and determination of applications for leave to appeal in criminal cases constitute a substantial amount of work for the individual Judges of the Court during home chambers sessions. The period during which such applications are pending usually includes several weeks for the parties to prepare and file their written arguments. In 2009, on average, 65 days elapsed from assignment to Judges to disposition of applications for leave to appeal in criminal cases.

(d) Review of Determinations of the State Commission on Judicial Conduct

By Constitution and statute, the Court of Appeals has exclusive jurisdiction to review determinations of the State Commission on Judicial Conduct and to suspend a judge, with or without pay, when the Commission has determined that removal is the appropriate sanction, or while the judge is charged in this state with a crime punishable as a felony. In 2009, the Court reviewed three determinations of the State Commission on Judicial Conduct, accepting the recommended sanction of removal in one case; rejecting the recommended sanction of removal and imposing the sanction of admonition in one case; and modifying the Commission's determination in one case by denying the administrator's cross motion for summary determination and remitting to the Commission for a hearing on the charge contained in the formal written complaint and, as so modified, accepting the determination. Pursuant to Judiciary Law § 44 (8), the Court ordered the suspension of two judges with pay.

(e) Rule 500.27 Certifications and the State-Federal Judicial Council

In 1985, to promote comity and judicial efficiency among court systems, New York voters passed an amendment to the State Constitution granting the New York Court of Appeals discretionary jurisdiction to review certified questions from certain federal courts and other courts of last resort (NY Const, art VI, § 3 [b] [9]). Thereafter, this Court promulgated Rule 500.17, providing that whenever it appears to the Supreme Court of the United States, any United States Court of Appeals or a court of last resort of any other state that determinative questions of New York law are involved in a case pending before it for which no controlling precedent from this Court exists, that court may certify the dispositive questions of law to this Court. The Annual Report for 1998 contains a detailed discussion of the history of Rule 500.17 certifications to this Court. In September 2005, the rule was recodified as Rule 500.27.

After a court certifies a question to this Court pursuant to Rule 500.27, the matter is referred to an individual Judge, who circulates a written report for the entire Court analyzing whether the certification should be accepted. When the Court of Appeals accepts a certified question, the matter is treated similarly to an appeal. Although the certified question may be determined in the normal course, by full briefing and oral argument, or pursuant to the Court's alternative procedure (*see* Rule 500.11), the preferred method of handling is full briefing and oral argument on an expedited schedule. In 2009, the average period from receipt of initial certification papers to the Court's order accepting or rejecting review was 27 days. The average period from acceptance of a certification to disposition was 6.6 months.

Seven cases involving questions certified by the United States Court of Appeals for the Second Circuit remained pending at the end of 2008. In 2009, the Court answered the questions certified in those cases. Also in 2009, the Court accepted four new cases involving questions certified by the United States Court of Appeals for the Second Circuit. Two cases were decided during the year and two remained pending at the end of 2009.

As an additional aid to comity and judicial economy, the Chief Judge of the New York State Court of Appeals and the Chief Judge of the United States Court of Appeals for the Second Circuit reactivated the New York State-Federal Judicial Council to address issues of mutual concern and to sponsor educational programs for the Bench and Bar. Senior Associate Judge Carmen Beauchamp Ciparick serves as the New York State Court of Appeals representative on the Council.

C. Court Rules

There were no changes to any Court rules during 2009 (*see* 22 NYCRR part 500 through part 540).

II. Administrative Functions and Accomplishments

A. Court of Appeals Hall

Court of Appeals Hall has been the Court's home for over 90 years. This classic Greek Revival building, originally known as State Hall, formally opened in 1842 with offices for the Chancellor, the Register of Chancery and the State Supreme Court. On January 8, 1917, the Court of Appeals moved across the park, from the State Capitol, into the newly refurbished building at 20 Eagle Street. The Court's beloved Richardson Courtroom was reassembled in an extension to State Hall built to accommodate both the courtroom and the Court's library and conference room. Major renovations in 1958-1959 and 2002-2004—the latter including two additions to the building faithful to its Greek Revival design—produced the architectural treasure the Court inhabits today.

The Building Manager and the Deputy Building Superintendent oversee all services and operations performed by the Court's maintenance staff and by outside contractors at Court of Appeals Hall.

B. Case Management

The expressions of gratitude I regularly receive from litigants and the Bar attest to the expertise and professionalism of the Clerk's Office staff. Counsel and self-represented litigants will find a wealth of Court of Appeals practice aids on the Court's website (http://www.nycourts.gov/courts/appeals). Additionally, Clerk's Office staff respond—in person, by telephone and in writing—to inquiries and requests for information from attorneys, litigants, the public, academicians and court administrators. Given that practice in the Court of Appeals is complex and markedly different from that in the Appellate Division, the Clerk's Office encourages such inquiries. Members of the Clerk's Office staff also regularly participate in, and consult on, programs and publications designed to educate the Bar about Court of Appeals practice.

The Clerk, Deputy Clerk, Consultation Clerk, Assistant Consultation Clerk, two Assistant Deputy Clerks, Chief Motion Clerk, Prisoner Applications Clerk, several secretaries, court attendants and clerical aides perform the myriad tasks involved in appellate case management. Their responsibilities include receiving and reviewing all papers, filing and distributing to the proper recipients all materials received, scheduling and noticing oral arguments, compiling and reporting statistical information about the Court's work, assisting the Court during conference and preparing the Court's decisions for release to the public. In every case, multiple controls ensure that the Court's actual determinations are accurately reported in the written decisions and orders released to the public. The Court's document reproduction unit prepares the Court's decisions for release to the public and handles most of the Court's internal document reproduction needs. Security attendants screen all mail. Court attendants deliver mail in-house and maintain the Court's records room, tracking and

distributing all briefs, records, exhibits and original court files. During the Court's Albany sessions, the court attendants also assist the Judges in the courtroom and in conference.

The Court's new electronic case management system was successfully inaugurated in 2009—the result of a five-year development collaboration between the Clerk's Office and the Office of Court Administration's Department of Technology. Personnel from both entities worked hard to achieve a smooth system transition and ensure the accuracy of case data. Further development and enhancement of the system, including electronic provision of data to the New York State Law Reporting Bureau, continued throughout the year. Project Managers were Susan Dautel for the Court and Jennifer Hobbs for the Office of Court Administration's Department of Technology.

C. Public Information

The Public Information Office distributes the Court's decisions to the media upon release and answers inquiries from reporters about the work of the Court. For each session, the office prepares descriptive summaries of cases scheduled to be argued before the Court. The summaries are posted on the Court's website and are available in print at Court of Appeals Hall. The office arranges for live television coverage of oral arguments at the Court.

The Public Information Office also provides information concerning the work and history of New York's highest court to all segments of the public—from school children to members of the Bar. Throughout the year, the Public Information Officer and other members of the Clerk's staff conduct tours of the historic courtroom for visitors. The Public Information Office maintains a list of subscribers to the Court's "hard copy" slip opinion service and handles requests from the public for individual slip opinions.

Under an agreement with Albany Law School's Government Law Center and Capital District public television station WMHT, the Public Information Office supervises the recording of all oral arguments before the Court and of special events conducted by the Chief Judge or the Court. The tapes are preserved for legal, educational and historical research in an archive at the Government Law Center, and copies are available for purchase by the public. The recordings may be ordered from the Law Center at (518) 445-3287.

The Court's comprehensive website (http://www.nycourts.gov/courts/appeals) posts information about the Court, its Judges, history, summaries of pending cases and other news, as well as more than a year's worth of Court of Appeals decisions. The latest decisions are posted at the time of their official release. During Court sessions, the website offers live webcasts of all oral arguments heard by the Judges. Beginning in January 2010, these webcasts will be preserved in a permanent archive on the website to allow users to view the arguments at their convenience.

The website provides helpful information about the Court's practice—including its rules, civil and criminal jurisdictional outlines, session calendars, and a form for use by pro se litigants—and it provides links to other judiciary-related websites. The text and webcast

of the Chief Judge's most recent State of the Judiciary address are posted on the home page and the text of prior addresses can be reached through the "Court News" link. Archived webcasts of some older oral arguments, prior Annual Reports and other materials also are available through that link.

Over 801,000 visits to the website were recorded in 2009, averaging approximately 2,175 visits per day. This represents a 10% increase over 2008.

Launched in 2002 and chartered by the State of New York, the Historical Society of the Courts of the State of New York also performs a public information service. The Society fosters scholarly understanding and public appreciation of the history of the New York State courts, and collects and preserves artifacts of the State's judicial history. The Society's website address is http://www.courts.state.ny.us/history.

D. Office for Professional Matters

The Court Attorney for Professional Matters manages the Office for Professional Matters. A Court Analyst provides administrative support for the office.

The office has access to information on each attorney admitted to practice in the State. Court of Appeals records complement the official registry of attorneys maintained by the Office of Court Administration, which answers public inquiries about the status of attorneys. The Court's Office for Professional Matters prepares certificates of admission upon request and maintains a file of certificates of commencement of clerkship.

Additionally, the Court Attorney drafts reports to the Court on matters relating to (1) attorney admission and disciplinary cases, (2) petitions for waivers of certain requirements of the Court's Rules for the Admission of Attorneys and Counselors at Law and the Rules for the Licensing of Legal Consultants, and (3) proposed rule changes ultimately decided by the Court. The Court Attorney for Professional Matters continues to serve on the New York State Bar Association's Committee on Legal Education and Admission to the Bar.

Before her retirement in 2009, an assistant to the Office worked to complete a database project which began in 1998. The internal database now includes archived records on waiver petitions dating back to 1949 and for filed Certificates of Commencement of Clerkship dating back to 1935.

E. Central Legal Research Staff

Under the supervision of the individual Judges and the Clerk of the Court, the Central Legal Research Staff prepares draft reports on motions (predominantly civil motions for leave to appeal), requests to answer certified questions and selected appeals for the full Court's review and deliberation. From December Decision Days 2008 through December Decision Days 2009, Central Staff completed 1,077 motion reports, 71 SSD reports, 30

SSM reports and four reports regarding certified questions. Throughout 2009, Central Staff remained current in its work.

Staff attorneys also write and revise research materials for use by the Judges' chambers and Clerk's staff, and perform other research tasks as requested. In 2009, the Senior Deputy Chief Court Attorney updated the Court's internal jurisdictional outline.

Attorneys usually join the Central Legal Research Staff immediately following law school graduation. The staff attorneys employed in 2009 were graduates of Albany, the State University of New York at Buffalo, Cornell University, the University of Florida, the University of California (Hastings), Pace University, the City University of New York at Queens, St. John's University, Touro and the University of Wisconsin law schools. Staff attorneys hired for work beginning in 2010 will represent law schools from Albany, the State University of New York at Buffalo, Fordham University, New York University and Syracuse University.

F. Library

The Chief Legal Reference Attorney provides legal and general research and reference services to the Judges of the Court, their law clerks and the Clerk's Office staff. During 2009, commercial and in-house databases played an ever-increasing role in the provision of legal and non-legal information. The Court has subscriptions to the major legal research databases, the New York State Library gateway provides access to academic and news databases, and the Court's library continues to expand in-house databases. The ISYS databases that provide full-text access to the Court's internal reports now contain approximately 33,000 documents, and the hyperlinked intranet databases include the legislative documents frequently used by the Court.

The Chief Legal Reference Attorney is a member of the Court's CLE Committee and provides programs on constitutional, statutory and regulatory intent and on the wide array of legal and non-legal research databases. These programs are CLE certified, and are updated and offered to Judges' law clerks and staff attorneys annually.

In 2009, the Chief Legal Reference Attorney continued as Secretary of the Board of Trustees of The Historical Society of the Courts of the State of New York. Among the several ongoing projects with which she is involved on behalf of the Society is the annual law-related essay competition for New York community college students. The prize winners are honored at the Law Day ceremony in Court of Appeals Hall.

G. Continuing Legal Education Committee

The Continuing Legal Education (CLE) Committee was established in 1999 to coordinate professional training for Court of Appeals, Law Reporting Bureau, and Board of Law Examiners attorneys. The Committee is currently chaired by Margery Corbin Eddy, Princi-

pal Court Attorney. Other members include the Deputy Clerk of the Court, the Chief Court Attorney, the Chief Legal Reference Attorney, two Judges' law clerks, and two attorneys from the Law Reporting Bureau. A Central Legal Research Staff secretary manages CLE records and coordinates crediting and certification processes with the New York State Judicial Institute (JI).

During 2009 the CLE Committee provided 12 programs for Court of Appeals attorneys—including new staff training and orientation—totaling 22.5 credit hours. Law Reporting Bureau and Board of Law Examiners attorneys participated in many of the offered programs. Attorneys also attended classes offered by the New York Supreme Court, Appellate Division, Third Department; Albany Law School; and the New York State Bar Association. Several experienced/non-transitional attorneys viewed recorded programs from the JI and other sources at their desktops. In addition, many attorneys at the Court of Appeals, the Law Reporting Bureau, and the Board of Law Examiners took advantage of the JI's Legal Update seminar, where 12 credit hours were available over a two-day period at various locations across the state.

H. Management and Operations

Aided by a Senior Management Analyst and two secretarial assistants, the Director of Court of Appeals Management and Operations is responsible for supervising fiscal and personnel systems and functions, including purchasing, inventory control, fiscal cost recording and reporting, employee time and leave management, payroll document preparation, voucher processing, benefit program administration and annual budget request development. A supplies manager is responsible for distributing supplies, comparison shopping and purchasing office supplies and equipment.

I. Budget and Finance

The Director of Court of Appeals Management and Operations is responsible for initial preparation, administration, implementation and monitoring of the Court's annual budget. The proposed annual budget is reviewed by the Clerk and Deputy Clerk before submission to the Judges of the Court for their approval.

1. Expenditures

The work of the Court and its ancillary agencies was performed within the 2009-2010 fiscal year budget appropriation of $16,064,636, which included all judicial and nonjudicial staff salaries (personal services costs) and all other cost factors (nonpersonal services costs), including in-house maintenance of Court of Appeals Hall.

2. Budget Requests

The total request for fiscal year 2010-2011 for the Court and its ancillary agencies is $16,269,002, an increase of 1.2% over the current year's appropriation. The 2010-2011 personal services request of $13,171,921 reflects an increase of $138,723 from the current year's appropriation, which provides funding for all authorized judicial positions. The funding request for nonjudicial positions reflects the projected impact of a stringent vacancy control program, along with funding for increments, general salary increases and longevity bonuses for eligible nonjudical employees.

The 2010-2011 nonpersonal services request of $3,097,081 reflects an increase of $65,643 over the current year's adjusted appropriation. The nonpersonal services request includes inflationary and expenditure-based increases in travel ($6,309), utilities ($50,000), conferences and training, supplies, repairs to equipment, electronic data processing and telecommunications, printing ($3,164) and other general services ($7,518). These increases are offset by a reduction in legal reference (-$1,348).

Notwithstanding necessary increases in travel, administration and support services, and building maintenance operations, the budget request for fiscal year 2010-2011 illustrates the Court's diligent attempt to perform its functions and those of its ancillary agencies economically and efficiently. The Court will continue to maximize opportunities for savings to limit increases in future budget requests.

3. Revenues

In calendar year 2009, the Court reported filing fees for civil appeals totaling $40,670. Also, the Court reported filing fees for motions totaling $38,431. The funds were reported to the State Treasury, Office of the State Comptroller and Office of Court Administration pursuant to the Court Facilities Legislation (L 1987, ch 825). Additional revenues were realized through the slip opinion distribution service ($4,200) and miscellaneous collections ($2,857). For calendar year 2009, revenue collections totaled $86,158.

J. Computer Operations

The Information Technology Department oversees all aspects of the Court's computer and web operations under the direction of a Principal LAN Administrator, assisted by a LAN Administrator and a PC Analyst. These operations include all software and hardware used by the Court, and a statewide network connecting six remote Judges' chambers with Court of Appeals Hall.

The Department maintains a hands-on help desk to assist employees with hardware and software issues as they arise. Training on software and hardware is provided as needed, either within the Courthouse or via outside agencies, depending on the situation. Maintenance calls to the help desk are estimated at approximately 300 for the year. The Depart-

ment also arranged simulcast presentations and teleconferences throughout the year to bring meetings and Continuing Legal Education (CLE) information from all over the state to Court employees in Albany.

The Department is also responsible for the upkeep of two websites: an intranet website available to Court employees only and the Court's internet site located at http://www.nycourts.gov/courts/appeals. The Court of Appeals internet site offers immediate access to the Court's latest decisions of appeals and motions, and other pertinent information such as the Court's rules of practice and its calendar.

In 2009, the Court successfully transitioned to a new case management system with the assistance of the Office of Court Administration Division of Technology. In addition, all Court laptops used by Judges and their staff were replaced in accordance with Office of Court Administration guidelines and specifications. The old equipment was recycled to other locations within the Unified Court System.

K. Security Services

The Court Security Unit is comprised of the Chief Security Attendant, Deputy Chief Security Attendant, six Senior Court Security Attendants, and eight Senior Court Building Guards. The Chief, Deputy Chief and Court Security Attendants are sworn court officers and have peace officer status throughout New York State. The officers provide security at Court of Appeals Hall by screening all persons who come to the Court, as well as all mail and packages received. Regular patrols of the area in and around the courthouse are conducted to ensure the safety and security of the Judges, staff and visitors.

The Court's building guards are present and maintain a watchful eye over the Court, its employees and the many visitors to the Court 24 hours a day, seven days a week. Additionally, the officers provided security escorts, when necessary, to the Judges of the Court throughout the state. Building guards conduct tours of the Courtroom for members of the public visiting Court of Appeals Hall.

The members of the Security Unit completed several training programs during 2009. In addition to the mandatory firearms, pepper spray, and baton training attended by all the Court Security Attendants, one completed Emergency Medical Technician training and received his State certification as an EMT.

L. Personnel

The following personnel changes occurred during 2009:

APPOINTMENTS:

Alvarez-Smith, Angie - employed as Stenographer, Court of Appeals in June 2009.

Bleshman, Joseph - employed as Counsel to Chief Judge in August 2009.

Cunningham, Kathleen A. - employed as Assistant Secretary to Chief Judge in February 2009.

Danner, Scott M. - employed as Law Clerk to Court of Appeals Judge in August 2009.

Fortugno, John J. - employed as Senior Security Attendant, Court of Appeals in November 2009.

Kornreich, Mollie - employed as Law Clerk to Court of Appeals Judge in September 2009.

Michaels, Alexander - employed as Law Clerk to Court of Appeals Judge in August 2009.

Moxley, D. Cameron - employed as Law Clerk to Chief Judge in March 2009.

Nina, Eddie - employed as Senior Security Attendant, Court of Appeals in March 2009.

O'Friel, Jennifer A. - employed as Executive Assistant to Chief Judge in February 2009.

Rudykoff, Nathaniel T. - employed as Senior Principal Law Clerk to Chief Judge in February 2009.

Stowell, Allison M. - employed as Law Clerk to Court of Appeals Judge in August 2009.

Villari-Murphy, Claudia T. - employed as Secretary to Chief Judge in February 2009.

PROMOTIONS:

Ata, David W. - promoted to Senior Law Clerk to Court of Appeals Judge in August 2009.

Bowman, Jennifer L. - promoted to Senior Court Building Guard in April 2009.

Fitzpatrick, Rosemarie - promoted to Principal Court Analyst in February 2009.

Galvin, Martin C. - promoted to Senior Law Clerk to Court of Appeals Judge in February 2009.

Garcia, Heather A. - promoted to Senior Security Attendant, Court of Appeals in February 2009.

Gaston, Johnny L. - promoted to Senior Court Building Guard in April 2009.

Hartnagle, Mary C. - promoted to Senior Custodial Aide in January 2009.

Irby, Sandra H. - promoted to Principal Law Clerk to Court of Appeals Judge in September 2009.

Irwin, Nancy J. - promoted to Principal Stenographer, Court of Appeals in January 2009.

Kane, Suzanne M. - promoted to Senior Stenographer, Court of Appeals in July 2009.

MacVean, Rachael M. - promoted to Principal Law Clerk to Court of Appeals Judge in August 2009.

Nyland, Margaret P. - promoted to Senior Law Clerk to Chief Judge in February 2009, and to Principal Law Clerk to Chief Judge in August 2009.

Waithe, Nelvon H. - promoted to Senior Court Building Guard in May 2009.

RESIGNATIONS AND RETIREMENTS:

Donelin, Annemarie - Secretary to Chief Judge, transferred in March 2009.

Dunne, Brian J. - Senior Law Clerk to Court of Appeals Judge, resigned in July 2009.

Elkind, Diana - Senior Law Clerk to Court of Appeals Judge, resigned in August 2009.

Fernandez, Cristina - Principal Law Clerk to Court of Appeals Judge, resigned in October 2009.

Fitzpatrick, Rosemarie - Principal Court Analyst, retired in September 2009.

Fitzpatrick, J. Brian - Director, Court of Appeals Management and Operations, retired in September 2009.

King, Bradley T. - Senior Law Clerk to Court of Appeals Judge, resigned in August 2009.

McCoy, Marjorie S. - Deputy Clerk of the Court, retired in January 2009.

Minshell, Janice L. - Principal Stenographer, Court of Appeals, retired in July 2009.

Pollack, Lee M. - Principal Law Clerk to Court of Appeals Judge, resigned in August 2009.

Tang, Douglas L. - Law Clerk to Court of Appeals Judge, resigned in August 2009.

CENTRAL LEGAL RESEARCH STAFF

APPOINTMENTS:

Sardar M. Asadullah, Andria L. Bentley, Jane H. Lee, Allyson B. Levine, Christopher A. Liberati-Conant and Henry M. Mascia were appointed Court Attorneys in August 2009.

PROMOTIONS:

Katherine G. Breitenbach, John Althouse Cohen, Mark G. Mitchell, Robert S. Rosborough, IV, Molly J. Timko and Anne E. Wilson were promoted to Senior Court Attorneys in August 2009. Margaret P. Nyland was promoted from Senior Court Attorney to Senior Law Clerk to Chief Judge in February 2009, and to Principal Law Clerk to Chief Judge in August 2009. Sandra H. Irby was promoted from Senior Court Attorney to Principal Law Clerk to Court of Appeals Judge in September 2009. Rachael M. MacVean was promoted from Senior Court Attorney to Principal Law Clerk to Court of Appeals Judge in August 2009.

COMPLETION OF CLERKSHIPS:

Senior Court Attorney Scott Fusaro completed his Central Staff clerkship in July 2009. Senior Court Attorneys Rebecca Green and Justin Pfeiffer completed their Central Staff clerkships in October 2009.

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ACKNOWLEDGMENT

As are all tasks at the Court of Appeals, the production of the Annual Report is a team effort. Each year, members of the Clerk's staff contribute numerical data, narrative reports, and editing and proofreading services. I thank each of them, and mention especially Andrea Ignazio and Bryan Lawrence, who prepared the detailed appendices; Lisa Bohannon, who designed the cover and took the photograph; and Richard Reed, who edited the Report. I also thank the many members of the Clerk's staff who proofed the Report, particularly James Costello, Heather Davis, Margery Corbin Eddy, Hope Engel, Paul McGrath and Inez Tierney. Finally, I thank Brian Emigh, who oversaw production.

Serving the public through the Judicial branch is a privilege and a profound responsibility. I commend the entire staff for providing exemplary service to the Judges of the Court, the Bar and the public throughout the year. A complete list of Clerk's Office, Building Maintenance and Judges' staffs appears in Appendix 11.

A number of staff left the Court's employ in 2009. I particularly thank Marge McCoy, who retired from the position of Deputy Clerk after over 22 years of dedicated and talented service to the Court in that position and others, including Chief Court Attorney and Senior Law Clerk to Judge Richard D. Simons; also, J. Brian Fitzpatrick, who retired from the position of Director, Court Management and Operations, after serving the Court in various positions beginning in 1963; and Jan Minshell and Rosemarie Fitzpatrick, who served the Court in secretarial and court analyst positions for 22 and 15 years, respectively.

Finally, I acknowledge the countless individuals in the Office of Court Administration and throughout the Unified Court System who, year in and year out, provide expert assistance and timely information to the Court of Appeals, its Judges and its staff.

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III. 2009: Year in Review

This section—a summary of Court of Appeals decisions handed down in 2009—reflects the range of constitutional, statutory, regulatory, and common-law issues reaching the Court each year.

ADMINISTRATIVE LAW

Godfrey v Spano and *Lewis v New York State Department of Civil Service* (13 NY3d 358)

Plaintiffs challenged a Westchester County executive order and a New York State Department of Civil Service policy memorandum directing the recognition of out-of-state same-sex marriages for purposes of public employee health insurance coverage and other benefits. The Court held that plaintiffs' actions were properly dismissed. The Godfrey plaintiffs' suit against the Westchester County Executive, based on General Municipal Law § 51, did not lie because plaintiffs failed to specify a circumstance where taxpayer funds were expended as a result of the Executive Order that would not have been expended in its absence. The Lewis plaintiffs failed to state a cause of action against the Department of Civil Service and its Commissioner, under State Finance Law § 123-b, for similar reasons; they failed to allege specific expenditures that otherwise would not have been incurred. Finally, the Lewis plaintiffs' claim that defendants acted in violation of Civil Service Law § 164 was refuted both by legislative history and by the plain language of the statute, which expressly gives the President of the Civil Service Commission the authority to define "spouse," for health insurance coverage purposes. Because the cases could be resolved on these grounds, the majority of the Court found it unnecessary to reach the question whether New York's common law marriage recognition rule is a proper basis for the recognition of out-of-state same-sex marriages.

ASSIGNMENTS

Trust for the Certificate Holders of the Merrill Lynch Mortgage Investors, Inc. Mortgage Pass-Through Certificates, Series 1999-C1 v Love Funding Corp. (13 NY3d 190)

In response to certified questions from the United States Court of Appeals for the Second Circuit, the Court held that a corporation or association that takes an assignment of a claim does not violate Judiciary Law § 489 (1) if its purpose is to collect damages, by means of a lawsuit, for losses on a debt instrument in which it holds a pre-existing proprietary interest. The Court, surveying New York cases, observed that the prohibition of champerty in New York has always been limited in scope and largely directed toward preventing attorneys from filing suit merely as a vehicle for obtaining costs. If a party acquires a right for the purpose of enforcing it, that is not champerty simply because the party intends to do so by litigation. Finally, the Court held that it is not champerty to acquire, as part of a settlement, indemnification rights for reasonable costs and fees that were incurred in past legal actions, or to settle a dispute by accepting a transfer of rights that has the potential for a larger recovery than had been demanded as a cash settlement.

ATTORNEY DISCIPLINE

Amalfitano v Rosenberg (12 NY3d 8)

In order to answer certified questions from the United States Court of Appeals for the Second Circuit, the Court was required to interpret Judiciary Law § 487. This provision—which descends with little change from the first Statute of Westminster, adopted by the Parliament summoned by King Edward I of England in 1275—exposes an attorney who "is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party" to criminal (misdemeanor) liability and forfeiture of treble damages to the injured party, to be recovered in a civil action. The attorney-defendant argued that a § 487 claim was analogous to fraud, and therefore no recovery could be had for an attempted but unsuccessful deceit practiced on the court. The Court disagreed, observing that the operative language of § 487 focuses on the attorney's intent to deceive, not the deceit's success.

CIVIL PROCEDURE

Bazakos v Lewis (12 NY3d 631)

Plaintiff Bazakos sued defendant Lewis alleging that Lewis had harmed him while conducting an independent medical examination pursuant to CPLR 3121. Defendant moved to dismiss on the ground that the claim was governed by the 2.5-year statute of limitations applicable to medical malpractice actions under CPLR 214-a. Plaintiff argued that this statute of limitations should not apply because defendant, as an independent medical examiner, was not under a duty to provide medical care to plaintiff. The court rejected plaintiff's argument. CPLR 214-a, the Court explained, is meant to increase the availability and affordability of malpractice insurance, and this policy goal applies to independent medical examiners just as it applies to doctors with more traditional physician-patient relationships.

CIVIL SERVICE

Matter of Gomez v Stout (13 NY3d 182)

Civil Service Law § 75 requires a decision to sanction a civil servant be made by an officer or a body maintaining the power to remove the employee. When an officer or body becomes conflicted, the authority to decide appropriate disciplinary measures must be delegated to an individual within the same governmental agency's chain of command. The Court declined to expand the judicially created exception to allow a personally involved officer or body unfettered discretion to designate a municipal department head to conduct such disciplinary review, where that body lacks supervisory authority over the affected employee.

Matter of County of Erie v State of New York Public Employment Relations Board (12 NY3d 72)

Two unions separately representing correction officers and deputy sheriffs charged with guarding sentenced and unsentenced inmates, respectively, filed improper practice

charges against Erie County and the Erie County Sheriff for allegedly transferring exclusive bargaining unit work to non-unit employees. The County asserted that the Correction Law required it to establish a classification system to alleviate overcrowding at the two jails. The end result of this classification system was the commingling of sentenced and unsentenced inmates, which the unions claimed constituted the unilateral transfer of exclusive bargaining unit work to non-unit employees. The administrative law judge agreed with the unions and ordered the County and the Sheriff to cease and desist. The decision was affirmed by the Public Employment Relations Board (PERB), prompting the County and Sheriff to bring a CPLR article 78 proceeding to annul PERB's determination. This Court held that because the Sheriff had a statutory duty to maintain and implement a formal and objective classification system, PERB's finding that the County and Sheriff committed an improper employment practice was not entitled to deference. The Court noted, however, that once the classification system was implemented, the impact of that decision, if any, upon the union contracts, was subject to bargaining.

CLASS ACTIONS

Wyly v Milberg Weiss Bershad & Schulman, LLP (12 NY3d 400)

This case is an offshoot of several related securities class action lawsuits in the United States District Court for the Eastern District of New York. Absent class members (two individuals and entities connected with them) became dissatisfied with the class settlement. They moved to vacate the final judgment as to them on the grounds of new evidence, misconduct and fraud upon the court, and asked for expedited discovery from the law firms representing the class. While their motion was pending in federal court, the absent class members also commenced a CPLR article 4 special proceeding in Supreme Court, seeking to force the law firms to turn over their case files. The Court decided that the absent class members—unlike a represented party in traditional litigation—did not enjoy a presumptive right of access to the law firms' case files upon the representation's termination, and that the Appellate Division did not abuse its discretion when it denied access to the requested records.

CONSTITUTIONAL LAW

Skelos v Paterson (13 NY3d 141)

Challenged in the litigation culminating in this appeal was the constitutionality of Governor David Paterson's appointment of Richard Ravitch to fill a vacancy in the office of State Lieutenant Governor. The Court held that the appointment was authorized, since article XIII, § 3 of the state Constitution commands the Legislature to provide for the filling of vacancies in public office, and the Legislature in furtherance of this command enacted provisions of the Public Officers Law, one of which, § 43, empowers the Governor, without relevant qualification, to fill vacancies in elective office. The Court held that the gubernatorial power to fill vacancies accorded by the Public Officers Law was not limited by the devolution mandated by article IV, § 6 of the State Constitution, under which the President of the Senate, during a vacancy in the office of Lieutenant Governor, performs the duties of

the Lieutenant Governor. The Court expressed the view that the article IV, § 6 devolution was intended as a stopgap to assure continuity of service during a vacancy, but did not fill the vacancy in accordance with the command of article XIII, § 3.

Matter of Parkhouse v Stringer (12 NY3d 660)

Petitioner Virginia Parkhouse read a letter from the Manhattan Borough President into the record at a Landmarks Preservation Commission (LPC) hearing, altering the letter in a way that arguably changed the content of the message. LPC received complaints from the Borough President, as well as an Assembly member who claimed to have been misrepresented by another individual belonging to the same organization as petitioner. LPC then complained to the New York Department of Investigations (DOI), and the DOI issued a subpoena to petitioner. Petitioner began this proceeding to quash the subpoena, claiming, among other things, that the subpoena violated her First Amendment rights. The Court found DOI was acting within its power under the New York City Charter in issuing the subpoena. It held, next, that DOI was within its authority to subpoena petitioner in regard to the alleged deceptive conduct of another member of the organization of which she was part. The Court also held that it did not violate petitioner's First Amendment rights to issue a subpoena to question her about the content of her testimony before the LPC because DOI had a "strong and probative basis for investigation."

Matter of 10 East Realty v Incorporated Village of Valley Stream (12 NY3d 212)

This case involved the sale of real property by a municipality to a private individual and the taking of a purchase money mortgage by the municipality to secure payment of the purchase price over 15 years at an interest rate of five percent per annum. This Court held that article VII, § 1 of the New York Constitution, which prohibits gifts or loans by a municipality to a private individual, did not invalidate the transaction because, rather than a loan, the purchase money transaction was a deferred payment plan and the interest provision constituted part of the consideration for the sale.

Anonymous v City of Rochester (13 NY3d 35)

The issue in this case was whether a juvenile nighttime curfew adopted by the City of Rochester violated the Federal and New York Constitutions. Recognizing the state's interest in the welfare of minors and that children have a diminished right to freedom of movement under the Constitution, the Court applied an intermediate scrutiny analysis with respect to both the minor's and the parent's constitutional rights. The Court held that although the City had an important governmental interest, the curfew was not substantially related to its stated goals. The overbroad crime statistics from the City, the high profile incidents involving minor victims, and data from other cities did not support the objective of preventing victimization of minors. Nor did the provisions of the ordinance substantially relate to promoting parental supervision where parents could not allow their children to be in public areas at night. The Court invalidated the curfew applying an intermediate scrutiny standard.

Matter of Walton v New York State Dept. of Correctional Servs. (13 NY3d 475)

From 1996 to 2007, the Department of Correctional Services (DOCS) contracted with MCI Worldcom Communications to provide telephone services to inmates in state

prisons. Under the terms of the agreement, MCI charged the recipients of inmate collect calls a set rate and, from that charge, paid a percentage of the revenues to DOCS as a commission. In this combined declaratory judgment action and CPLR article 78 proceeding, two legal services providers as well as friends and family members of inmates challenged the imposition of the commission, asserting that it was an illegal tax, a governmental taking without just compensation, a violation of the Equal Protection Clause and an abridgement of their freedom of association under the State Constitution. During the pendency of this action/proceeding, the Governor discontinued the collection of these commissions and a new statute was enacted that made it unlawful for DOCS to receive revenue in excess of the reasonable cost of administering the inmate calling system. Although these governmental actions rendered plaintiffs'/petitioners' demand for injunctive relief academic, the Court was asked to decide whether the former practice violated the State Constitution, entitling plaintiffs/petitioners to refunds of the commission portion of the telephone charges they paid. The Court determined that despite the questionable policy decision underlying the design of this inmate calling system, petitioners' claims were properly dismissed since DOCS' contractual arrangement did not violate plaintiffs'/petitioners' constitutional rights.

CONTRACTS

IDT Corp. v Tyco Group (13 NY3d 209)

The issue in this breach of contract action was whether a settlement agreement made the negotiation and execution of further agreements a precondition to the parties' obligation. The Court held that it did. Tyco and IDT entered into a settlement agreement to drop their pending lawsuits (which arose from a dispute over their joint venture to construct a fiber optic communications network). Under the settlement agreement, Tyco was to provide IDT with an "indefeasible right of use" (IRU) of certain fiber optic capacity free of charge for a 15 year period. The settlement agreement stated that "the IRU shall be documented pursuant to definitive agreements to be mutually agreed upon and, in any event, containing terms and conditions consistent with those described herein." Further, the IRU was to be in writing and consistent with Tyco's standard agreements with similarly situated customers. These standard agreements were not in existence at the time of the settlement. Tyco claimed that IDT breached the settlement when it submitted a proposed IRU which had terms and conditions inconsistent with the settlement agreement. The Court held that Tyco had not breached any of its obligations: the settlement agreement was a fully enforceable contract which bound the parties. However, Tyco's obligation to furnish fiber optic capacity never became enforceable because agreed upon conditions were not met. Specifically, the settlement agreement contemplated the occurrence of numerous conditions, including the execution of additional agreements and the IRU.

CRIMINAL LAW

People v Romeo (12 NY3d 51)

A 12 year post-indictment delay, following the People's decision to defer their prosecution and allow defendant to be extradited to Canada where he was prosecuted for the

murder of a Canadian constable, violated defendant's speedy trial rights. Applying *People v Taranovich* (37 NY2d 442 [1975]), the Court stated that an evaluation of speedy trial rights involves a sensitive balancing of several factors: the extent of the delay, the reason for it, the nature of the charges, an extensive period of incarceration and impairment of the defense. The delay of 12 years was lengthy; the fact that it was caused by the People's decision to forgo their prosecution in favor of a prosecution in Canada for murder was significant; and the People did not file an extradition warrant or make other diligent efforts to secure defendant's presence at trial. Finally, it was highly probable that defendant suffered an impairment of his defense.

People v Davis (13 NY3d 17)

The Court considered whether Criminal Procedure Law § 350.20, which permits class B misdemeanors to be tried by a Judicial Hearing Officer (JHO) "upon the agreement of the parties," is constitutional. The Court also considered the issue of whether defendant's written agreement and defense counsel's participation in the JHO proceeding constituted a valid consent to engage in this form of adjudication. The Court first rejected defendant's constitutional challenges to CPL 350.20, observing that defendant failed to overcome the presumption of constitutionality of the duly enacted statute. The Court then concluded that defendant had no due process interest in having his case adjudicated by a "judge," but rather was entitled to a fair trial, which he received. Finally, the Court rejected defendant's argument that his consent to JHO adjudication was ineffective because the trial court did not engage him in an oral colloquy.

People v Brown (13 NY3d 332)

The admission of a DNA report, processed by a subcontractor laboratory of the Office of the Chief Medical Examiner (OCME), through the testimony of a forensic biologist from OCME, did not violate defendant's Sixth Amendment right of confrontation under *Crawford v Washington* (541 US 36) and the recent case of *Melendez-Diaz v Massachusetts* (557 US _, 129 S Ct 2527), because the portions of the report produced by the subcontractor laboratory were "nontestimonial." In *Melendez-Diaz*, the objectionable laboratory reports were "testimonial" because they were plainly affidavits offered in lieu of the testimony from "analysts" who made the critical conclusion that a substance was a controlled substance and of a certain weight. Here, the forensic biologist from OCME who made the comparison of the DNA extracted from the victim's rape kit and determined that it matched defendant's DNA testified at trial. The same expert was familiar with the testing procedures of the subcontractor laboratory.

People v Wrotten (14 NY3d 33)

Supreme Court had the inherent authority to permit an elderly and infirm witness to testify at trial in real-time, two-way television. The witness was physically unable to travel to New York from California to testify and he was a necessary witness. In light of the court's individualized determination that this televised testimony was necessary to further a public policy, the testimony was not precluded by the Confrontation Clause of either the Federal or State Constitution.

People v Mattocks (12 NY3d 326)

After intentionally bending Metro cards in a manner that permitted them to be used for free entry into the subway and then charging passengers for use of the cards, defendant was indicted on multiple counts of possession of a forged instrument in the second degree. The issue presented was whether the bent Metro cards constituted "falsely altered" instruments under Penal Law § 170.00 (6) and (7). The Court concluded that the cards met that definition and therefore upheld defendant's felony conviction.

People v Mingo; *People v Balic* (12 NY3d 563)

These cases presented the Court with the opportunity to explain what constitutes "reliable hearsay" in proceedings to determine the appropriate risk level of a convicted sex offender under the Sex Offender Registration Act (SORA). For SORA purposes, hearsay is reliable if, based on the circumstances surrounding development of the proof, a reasonable person would deem it trustworthy. Applying this standard, the Court remitted in *Mingo* since the People did not establish a proper foundation to demonstrate the reliability of certain internal documents prepared by the District Attorney's office. However, in *Balic* the Court upheld the determination, concluding that the sworn criminal complaint of a police officer, which recounted statements of the complaining child victim made on the day of the crime, constituted reliable hearsay for purposes of adjudicating the defendant's risk level.

People v Dorm (12 NY3d 16)

In this domestic violence case, defendant was convicted on assault charges upon which the jury in a previous trial was deadlocked. In defendant's first trial, evidence of prior and subsequent bad acts of defendant toward the victim were precluded, but in defendant's second trial on the deadlocked charges that same evidence was admitted, with limiting instructions, to prove motive and provide necessary background and context for the jury. This Court held that the decision of whether to admit the evidence rests in the discretion of the trial judge and that the fact that two judges ruled differently on the same evidence in the two trials did not suggest an abuse of discretion. The outcome of a trial has no bearing on whether a judge properly exercised his discretion in admitting evidence.

People v Quinones (12 NY3d 116)

This appeal required the Court to determine whether, in light of *Cunningham v California* (549 US 270 [2007]), New York's discretionary persistent felony offender sentencing scheme (Penal Law § 70.10; CPL 400.20) violates *Apprendi v New Jersey* (530 US 466 [2000]) and defendant's due process and Sixth Amendment rights. This Court concluded that *Cunningham*, in which the Supreme Court held that California's determinate sentencing law violated the defendant's Sixth Amendment right to a trial by jury, and *Apprendi*, because it authorized the sentencing judge to find facts exposing defendant to an elevated upper term sentence, did not render New York's discretionary persistent felony offender sentencing scheme unconstitutional. This Court noted a key difference between the New York scheme and sentencing schemes the Supreme Court has struck down. Specifically, the New York sentencing scheme is a recidivist scheme under which a defendant is subject to an enhanced sentence based solely on the existence of two prior felony convictions. Once a defendant's eligibility for an enhanced sentence is determined, the sentencing judge has the discretion to choose the appropriate sentence within the sentencing range prescribed by statute.

People v Gomez (13 NY3d 6)

Defendant was stopped and arrested after New York City police officers saw him driving erratically and determined, through a computer search, that his driver's license had been suspended. One of the officers recognized defendant from a prior incident in which defendant had threatened to shoot the officer and himself. At the scene of the stop, the officers impounded defendant's car and began to conduct an inventory search. One officer opened the trunk and found drugs and drug paraphernalia. Because a crowd was gathering, the officers decided to continue the search at the precinct. While driving defendant's car to the station, an officer discovered 45 empty plastic "baggies" in the driver's side door panel. Supreme Court denied defendant's motion to suppress the evidence, concluding it had been recovered in the course of a valid inventory search. Defendant pleaded guilty and was sentenced to a determinate prison term of three and one-half years. The Appellate Division reversed the conviction, suppressed the evidence and dismissed the indictment. This Court affirmed and held that the People failed to meet their initial burden of establishing a valid inventory search. In so holding, this Court noted: (1) an inventory search should be conducted pursuant to an established, standardized procedure that clearly limits the conduct and discretion of individual officers—courts may take judicial notice of the standardized search procedure; (2) although a standardized, written procedure governing inventory searches, with which the arresting officer was familiar, existed, there was no evidence that the officers conducted the instant search in accordance with the procedure; and (3) the search here was not designed to produce a meaningful inventory as required by this Court's jurisprudence. The Court also noted that the failure of an officer to use the inventory search form prescribed under the Police Guide protocol is not fatal to the establishment of a valid inventory search as long as the search, in accordance with the "standardized procedure," is designed to produce an inventory and the search results are fully recorded in a usable format.

People v Sanchez and *People v Mynin* (13 NY3d 554)

In these appeals involving New York's "gang assault" statutes, the Court held that for purposes of the element "aided by two or more other persons actually present," the other persons need not share the criminal intent of the defendant. The Court reasoned that the statute, on its face, speaks only to the intent of the defendant and not to his or her aiders. Furthermore, the interpretation is consistent with the purpose of the statute to recognize that when a victim is confronted by a group of individuals, rather than one individual, he or she is confronted with a more threatening, intimidating and dangerous situation that increases the possibility of escalating violence and physical harm.

People v Knox; People v Cintron; People v Jackson (12 NY3d 60)

Defendants, who met the Sex Offender Registration Act (SORA) definition of a "sex offender" despite committing crimes that the People conceded contained no sexual element, challenged their designation as such under the Due Process clauses of the New York and Federal Constitutions. The Court held that although the claimed liberty interest was not constitutionally insignificant, it did not rise to the level of a "fundamental right." Thus, the Court reviewed the SORA designations under the minimally demanding rational basis test. The Court found that the Legislature could rationally conclude that non-parent adults who commit kidnapping and false imprisonment against children are more likely to be sexually motivated, and therefore warrant the SORA designation and its attendant monitoring requirements.

People v Alemany (13 NY3d 424)

As a consequence of a guilty plea for attempted first-degree sexual abuse (Penal Law §§ 110.00 and 130.65 [1]) defendant, who was homeless, was required to register as a sex offender pursuant to the Sex Offender Registration Act (SORA). He was assigned 10 points under risk factor 15, "Living or Employment Situation," of the Risk Assessment Instrument, which resulted in a presumptive risk assessment of level two. Commenting that there is no per se rule that a homeless sex offender must always be assessed points under risk factor 15, the Court ruled in this case that the hearing court properly assessed these points because there was clear and convincing evidence that defendant was undomiciled and that he lacked any history of living in shelters or having community ties.

People v D'Alessandro (13 NY3d 216)

Defendant petitioned the Appellate Division for a writ of error coram nobis on the ground that his appellate counsel had been ineffective for failing to raise a speedy trial argument on the direct appeal from his judgment of conviction. The Appellate Division deemed the application a motion to reargue an order of that court denying defendant's previous coram nobis application, brought by defendant pro se nine years earlier. Exercising its inherent authority to look beyond the Appellate Division's characterization of the order, the Court concluded that, although the second application raised the same general legal claim as the first, the Appellate Division erred in denominating the second application a motion to reargue because it raised new arguments that had not been previously advanced. The Court further concluded that, rather than reviewing the merits of defendant's application on the appeal, the proper remedy was to remit the matter to the Appellate Division for consideration of defendant's claims.

People v Guerrero (12 NY3d 45)

At sentencing, the judge did not mention that defendant was required to pay a mandatory surcharge and a crime victim assistance fee as a result of his conviction, and defendant sought to be relieved of these obligations as a result. Although the Criminal Procedure Law commands that a defendant's "sentence" must be "pronounced" by the court in the defendant's presence, it gives no guidance as to which consequences of a conviction are covered by this requirement. The Court therefore examined the text and legislative history of Penal Law § 60.35 (1), the statute imposing mandatory surcharge and crime victim assistance fees, and concluded that because these items were not made "an additional punishment component" by the statute, the judge was not required to pronounce them at sentencing.

People v Marte (12 NY3d 583)

After the victim was shot, defendant claimed responsibility for the shooting when speaking with the victim's sister. The sister told the victim that she thought she knew who shot him, and convinced him to go to the police. The victim then identified defendant, both in a lineup and at trial. Defendant appealed on the ground that the evidence of his identification should have been excluded because it was obtained under unduly suggestive circumstances. The Court held that the New York State Constitution did not require a per se rule excluding the testimony of individuals whose identification occurred under suggestive circumstances if the circumstances were not created by the police. The primary purpose of the

exclusionary rule in this case is to deter police from creating situations unfair to criminal defendants, and per se exclusion would not affect the conduct of a civilian. Although a future case may involve circumstances where the prejudice outweighed the probative value of admitting evidence, there was not a sufficient reason to exclude the victim's testimony identifying the defendant in this case.

People ex rel. Gill v Greene (12 NY3d 1)

Although Anthony Gill could only receive a sentence for criminal possession of stolen property that ran consecutively to his prior unfinished sentence under Penal Law § 70.25 (2-a), the court sentenced him without mentioning that his prison term would run either consecutively or concurrently. The Court of Appeals held that where a statute makes consecutive sentences mandatory and the court is silent in regard to the type of sentence imposed, the "court is simply deemed to have complied with the statute." In *Matter of Garner v New York State Dept. of Correctional Servs.* (10 NY3d 358) and *Earley v Murray* (451 F3d 71 [2d Cir 2006]), the courts held that the Department of Correctional Services (DOCS) could not itself modify an illegal sentence—in effect adding a term of post-release supervision—and that the courts would have to re-sentence in order to remedy the problem. Here, the Court of Appeals distinguished those two cases on the grounds that Gill was informed of his full sentence at sentencing and DOCS correctly interpreted the sentence he received, in contrast to *Garner* and *Earley*, in which the post-release supervision term was not announced at sentencing.

DOMESTIC RELATIONS

Fuentes v Board of Education of the City of New York (12 NY3d 309)

In this certified question case, the Court was asked to decide whether a non-custodial parent retains the right to make decisions regarding the child's education where the divorce decree and custody order are silent. The Court held that analogous to other aspects of a child's upbringing, the custodial parent has the exclusive authority to make educational decisions unless the custody order provides otherwise. However, nothing prevents a non-custodial parent from remaining interested in and keeping apprised of the child's educational progress, as such participation does not constitute decision making.

EDUCATION LAW

Consedine v Portville Cent. School Dist. (12 NY3d 286)

This appeal required the Court to determine: (1) whether a school district can waive its statutory right to discharge a probationary school administrator at any time during the three-year probationary term (*see* Education Law § 3012 [1] [b]) by entering into a durational, three-year employment contract; and (2) if so, whether defendant school district in fact waived that statutory right by executing the contract at issue here. The Court answered the first question in the affirmative, but held that defendant school district did not waive its statutory right by executing a contract which provided that defendant "shall pay the Assistant Principal for his services at an annual salary of $52,000[,] for the period of January 1,

2003 through December 31, 200[5]." Regarding the first question, the Court considered the statutory text and legislative history of § 3012 (1) (b), as well as *Matter of Cohoes City School Dist. v Cohoes Teachers Assn.* (40 NY2d 774), and determined that a school district retains its statutory rights under the Education Law unless it expressly waives such rights. Answering the second question, the Court determined that the operative contractual language was too equivocal to establish that defendant school district consciously and expressly agreed to waive its statutory right under the Education Law. Moreover, the trial testimony did not yield compelling evidence that such a waiver was contemplated by the parties.

EMINENT DOMAIN

Hargett v Town of Ticonderoga (13 NY3d 325)

The question on this appeal was whether Eminent Domain Procedure Law § 702 (B) provided for reimbursement of attorney's fees and costs when a condemnee successfully challenged a condemnor's authority to acquire real property in proceedings pursuant to EDPL 207 (A), i.e., after the first step of the EDPL's two-step process whereby a condemnor may obtain title to real property for public use. Under the EDPL, to obtain title to property through an exercise of the power of eminent domain, generally a condemnor first follows the procedures of EDPL 203 and 204 and determines to condemn the property after holding a hearing and making factual findings. The second step of the process is what is known as a vesting proceeding, a judicial proceeding the condemnor initiates in accordance with article 4 of the EDPL. The Court concluded that EDPL 702 (B) provides for reimbursement when a condemnee successfully challenges a condemnor's authority to acquire property after the first step of the process, before the vesting proceeding. Since the appeal was limited to whether there was an entitlement to reimbursement after the first step of the process, the Court expressly took no view concerning whether fees incurred in advance of an adverse determination were reimbursable under the statute.

Matter of Goldstein v New York State Urban Development Corp. (13 NY3d 511)

Petitioners challenged the State's proposed exercise of eminent domain on behalf of a private developer's extensive mixed use development to be situated on and in the vicinity of the Atlantic rail yards in Brooklyn. Relying on article I, § 7 of the state Constitution, petitioners contended that there was not a sufficient public use to support the taking. They also argued that the development to be furthered by the proposed exercise of the State's condemnation power was unconstitutional since the project was to receive state funding but was not to be restricted in its residential occupancy to persons of low income in accordance with the restriction set forth in article XVIII, § 6 of the State Constitution. After determining that the petition had been timely brought, since petitioners, subsequent to the dismissal of their supplemental state claims in prior federal litigation, had been entitled to recommence their state claims pursuant to and within the time frame set forth in CPLR 205-a, the Court rejected petitioners' claims on the merits, reaffirming the State's broad legislative power to define public use and holding that the article XVIII, § 6 occupancy restriction was not applicable where, as in this case, substantial slum clearance giving rise to a need for replacement housing was not involved.

ENVIRONMENTAL LAW

Matter of Save the Pine Bush, Inc. v Common Council of the City of Albany (13 NY3d 297)

Petitioners sued the Common Council of the City of Albany after it issued a State Environmental Quality Review Act (SEQRA) determination permitting the development of a property adjacent to the Albany Pine Bush Preserve. Petitioners claimed the Council had failed to conduct a sufficient inquiry into the effect of the development on certain wildlife. Respondents claimed that petitioners had no standing to challenge the SEQRA determination as the petitioners did not live near the actual development. The Court held that petitioners had standing to bring suit, because their injury was different from the sort of injury faced by most members of the public. The Court also held that for an agency to comply with SEQRA, it did not need to investigate every environmental problem, and only had to "use its discretion in selecting which ones are relevant." The City had properly exercised its discretion in investigating the impact of the development on the Karner Blue Butterfly and did not abuse its discretion in failing to investigate the impact of the development on other species not known to be present in the near vicinity of the project site.

ESTATES, GIFTS & TRUSTS

Matter of Singer (13 NY3d 447)

Appellant Alexander Singer was a beneficiary under his father's will, which left the bulk of the father's estate to Alexander's sister, Vivian. The will contained two in terrorem clauses: a general clause seeking to prevent any beneficiary from contesting or attempting to contest the will and a clause specifically pertaining to Alexander, directing him not to contest the will and not to commence any court proceedings against Vivian. After the will was submitted to probate, Alexander sought to depose certain witnesses, including his father's former attorney. The Court concluded that the statutory safe harbor provisions of EPTL 3-3.5 and SCPA 1404, permitting the deposition of certain individuals without violating an in terrorem clause, were not exclusive. Construing the in terrorem clauses narrowly, the Court then determined that Alexander's conduct, deposing his father's former attorney who had prepared several prior wills on the father's behalf, did not constitute an attempt to contest the will and did not violate the in terrorem clauses.

Golden Gate Yacht Club v Société Nautique de Genève (12 NY3d 248)

The Court determined that the Deed of Gift—the trust instrument governing the prestigious regatta and match race, the America's Cup—requires that a challenger seeking to compete for the right to act as trustee of the trophy must have held an annual regatta on the sea prior to submitting a notice of challenge. The Court, following *Mercury Bay Boating Club, Inc. v San Diego Yacht Club* (76 NY2d 256 [1990]), held that the phrase "having for its annual regatta" was unambiguous when read in the context of the entire deed of gift, and thus it was inappropriate to look outside of the four corners of the document to establish the donor's intent.

FRAUD

Kerusa Co. LLC v W10Z/515 Real Estate Ltd. Partnership (12 NY3d 236)

Plaintiff sought damages for common-law fraud as a result of alleged construction and design defects in a 42-story, 39-unit luxury condominium building located in Manhattan. Plaintiff complained generally that various construction and design defects caused significant water damage to the building and led to substantial water leaks, system failures, widespread condensation, and levels of mold posing serious health risks. The Court held that a purchaser of a condominium apartment may not bring a claim for common-law fraud against the building's sponsor when the fraud is predicated solely on alleged material omissions from the offering plan amendments mandated by the Martin Act (General Business Law art 23-A) and the Attorney General's implementing regulations (13 NYCRR part 20).

INSURANCE

Matter of Central Mut. Ins. Co. (Bemiss) (12 NY3d 648)

This case called upon the Court to examine the interplay of the consent-to-settle, exhaustion, and subrogation protection provisions in the standard supplementary uninsured/underinsured motorists (SUM) endorsement prescribed by the New York State Department of Insurance for automobile liability insurance policies. The vehicle driven by the insured was struck twice in the rear—once by an automobile driven by motorist one, and again when the car driven by motorist two rear-ended motorist one's automobile, pushing it into the back of the insured's vehicle a second time. After notifying the insurer, the insured settled with motorist one for policy limits. Without notifying the insurer, the insured later settled with motorist two for less than policy limits and signed a release that did not preserve the insurer's right to subrogation. The Court ruled that the insured violated the SUM policy by settling with motorist two for less than policy limits without the insurer's written consent, such that the insurer's subrogation rights were impaired; therefore, the insured forfeited SUM benefits.

Executive Risk Indem. Inc. v Pepper Hamilton LLP (13 NY3d 313)

Law firm defendants failed to inform their excess insurers that they had represented and were closely involved with the clients involved in securities fraud. Three excess insurers disclaimed coverage and commenced this declaratory judgment action. This Court was asked to determine, under Pennsylvania law, whether the excess insurers were entitled to summary judgment declaring that they had no obligation to indemnify the law firm defendants in actions asserted against them for, among other claims, professional malpractice. Each excess insurer issued a "claims made" policy, which provides continuous and uninterrupted coverage during the life of a policy irrespective of when the act giving rise to the claim occurred. The policies contained prior knowledge exclusions, which required that the insured report any act or circumstance "occurring prior to the effective date of the policy if any [insured] at the effective date knew or could have reasonably foreseen that such act . . . [or] circumstance . . . might be the basis of a claim." The law firm defendants knew of the securities fraud no later than March 2002. One insurer sought rescission of its policy, which began coverage in April 2001. The other two insurers, which issued policies starting Octo-

ber 2002, relied upon the prior knowledge exclusions contained in the law firm defendants' "claims made" policy. With respect to the rescission claim, the Court, applying settled principles of Pennsylvania law, concluded that the insurer failed to demonstrate by clear and convincing evidence that the applicant knowingly made a false statement which was material to the risk and made in bad faith. In concluding that the prior knowledge exclusions applied, the Court determined that the insurers satisfied Pennsylvania's two-pronged test that the insured knew prior to the effective date of the policy of acts which occurred and that a reasonable attorney in possession of those facts would have expected such facts to be the basis of a claim against that insured.

Green v William Penn Life Ins. Co. of New York (12 NY3d 342)

Following her husband's death, plaintiff filed a $500,000 life-insurance claim, but the insurance company denied it on the ground that plaintiff's husband had committed suicide. The dispute proceeded to a non-jury trial, and the trial judge dismissed the complaint after finding that plaintiff's husband had committed suicide. The Appellate Division, citing the presumption against suicide in litigation regarding life-insurance policies, reversed and directed entry of judgment for plaintiff. It held that even though there was evidence supporting the conclusion that plaintiff's husband had committed suicide, Supreme Court had erred as a matter of law in reaching that conclusion because it was not the only reasonable conclusion suggested by the evidence. The Court reversed the Appellate Division's order. After acknowledging that the relevant New York Pattern Jury Instruction tells jurors to make a finding of suicide "only if you are satisfied from the evidence, and taking into consideration the presumption against suicide, that no conclusion other than suicide may reasonably be drawn," the Court stressed that this instruction is addressed to juries finding facts, not to courts applying law. The Appellate Division therefore should not have overridden the finding of fact merely because more than one conclusion regarding the suicide issue was reasonably possible.

Matter of Allstate Insurance Company v Rivera; Matter of Clarendon v National Insurance Company (12 NY3d 602)

Passengers in the insureds' vehicles were injured when the vehicles were struck by the tortfeasors' vehicles. At issue in these appeals was whether supplementary uninsured/underinsured motorists (SUM) coverage was triggered. The Court answered in the negative and held that the passengers were not entitled to SUM benefits from the respective insureds' insurers after the respective tortfeasors' insurers tendered their coverage limits to the injured passengers, inasmuch as the bodily injury liability insurance coverage limits provided under the respective tortfeasors' policies were equal to the third-party bodily injury liability limits of the insureds' policies. Under the plain language of Insurance Law § 3420 (f) (2) (A), SUM coverage is only triggered where the bodily injury liability insurance limits of the policy covering the tortfeasor's vehicle are less than the third-party liability limits of the policy under which a party is seeking SUM benefits. Further, Insurance Department Regulation 35-D (11 NYCRR subpart 60-2) provides that the "payments to other persons" that may be deducted from the tortfeasor's coverage limits for purposes of rendering the tortfeasor "uninsured" under a SUM endorsement do not encompass payments made to anyone who is an insured under the endorsement. Construing the relevant portions of Insurance Department Regulation 35-D, the Court determined that the injured passengers fell within the en-

dorsement's definition of an "insured," which encompasses all passengers in the covered vehicles.

Kassis v The Ohio Casualty Insurance Company (12 NY3d 595)

On this appeal, whether a landlord was an additional insured under an insurance policy obtained by his tenant turned on what level of insurance coverage the tenant was obligated to obtain for the landlord under the lease. The lease called for the tenant to obtain a general liability insurance policy for the tenant's and landlord's "mutual benefit." The Court, examining this commonly used phrase for the first time, concluded that the "mutual benefit" language required the tenant to obtain an insurance policy that would provide the tenant and the landlord with the same level of coverage. Accordingly, the landlord was an additional insured under the insurance policy, requiring the insurer to defend and, if appropriate, indemnify him. That the insurer was unaware that the landlord was an additional insured under the policy was not an impediment to coverage because the insurance policy did not require the tenant policyholder to provide notification to the insurer of those persons or organizations who it was required to name as additional insureds.

JUDGMENTS

Koehler v Bank of Bermuda Ltd. (12 NY3d 533)

In response to a certified question from the United States Court of Appeals for the Second Circuit, the Court held that a court sitting in New York may order a bank over which it has personal jurisdiction to deliver stock certificates owned by a judgment debtor (or cash equal to their value) to a judgment creditor, pursuant to CPLR article 52, when those stock certificates are located outside New York. The Court distinguished post-judgment turnover orders under article 52 from pre-judgment attachment under article 62. Attachment operates on, and is typically based on jurisdiction over, property. Post-judgment enforcement, on the other hand, involves a proceeding against a person and requires only personal jurisdiction. Moreover, a recent amendment to CPLR 5224 supports the Court's view that the Legislature intended article 52 to have extraterritorial reach. The Court analyzed CPLR 5225 (a), governing enforcement of money judgments with respect to property in the possession of the judgment debtor, and 5225 (b), governing the same with respect to property not in the possession of the judgment debtor, and concluded that a New York court has the authority to issue a turnover order pertaining to extraterritorial property, if it has personal jurisdiction over the person in possession of the property, regardless of whether that person is a judgment debtor or a garnishee.

Rondack Construction Services v Kaatsbaan International. Dance Center, Inc. (13 NY3d 580)

Plaintiff Rondack secured a default judgment against defendant Kaatsbaan and delivered an execution to the Sheriff directing a judicial sale of realty to satisfy the judgment. Before the Sheriff's Department started the bidding at the auction, defendant's agent proffered a cashier's check for the full amount owed, including interest and all fees. The check was rejected and the auction proceeded. Defendant moved to vacate the sale. Reaffirming its 1875 decision in *Tiffany v St. John* (65 NY 314 [1875]), the Court concluded that the

judgment debtor's tender prior to the auction bidding discharged the execution lien, thereby terminating the sheriff's authority to sell the property.

Duffy v Vogel (12 NY3d 169)

At issue was the validity of a medical malpractice verdict evidently exonerating defendants while purporting to award damages "for the plaintiff" in the amount of $1.5 million. Upon the announcement of the verdict, plaintiff requested that the jury be polled. The request was denied and the issue on appeal was whether the concededly erroneous denial of the poll could be deemed harmless. The Court adhered to the ancient principle derived from the common law that in the absence of a requested jury poll there could be no valid verdict, and accordingly concluded that the error could not be deemed harmless. In so holding, the Court recognized that the persistence of the common-law rule was justified by its demonstrated utility in assuring what could not otherwise be ascertained, namely, that an announced verdict was in fact a true expression of the jurors' intent.

LABOR AND EMPLOYMENT

Runner v New York Stock Exchange (13 NY3d 599)

In response to certified questions by the United States Court of Appeals for the Second Circuit, the Court held that a worker injured as a direct result of the application of gravitational force to a heavy object could recover under Labor Law § 240 (1)—even where the worker did not fall and was not struck by the object as it fell—where the injury was caused by the absence of statutorily required protective devices.

LIENS

Gletzer v Harris (12 NY3d 468)

A second 10-year lien on a property is not valid until it is court ordered and thereupon registered in the public record. The judgment creditor filed a CPLR 5014 (3) action for a second 10-year lien just one day before the first lien was to expire, even though the statute allows the creditor a full year to seek a renewal. The Court held that, although CPLR 5014 clearly provides for a one-year period where a creditor can seek a second lien on a property, nowhere in the statute does it permit the second lien to have retroactive effect to the date of the first lien's expiration to ensure the priority status of the expired lien over intervening mortgagees, where a protracted "lien gap" ensued. Nor is nunc pro tunc treatment appropriate to reset the date of the second lien to the date that the original lien expired, since intervening lenders who relied on the public record had acquired rights to the secured property once their liens became effective.

MATRIMONIAL LAW

Johnson v Chapin (12 NY3d 461); *Mahoney-Buntzman v Buntzman* (12 NY3d 415)

In these divorce actions, the Court resolved several equitable distribution issues.

The Court held that payments made to a former spouse and/or children of an earlier marriage, even if made pursuant to court order, are not entitled to recoupment by the current spouse. Further, when payments are made during the lifetime of the marriage, and there is no fraud or concealment, courts should not look back and try to compensate for the fact that the net effect of the payments, in some cases, may have resulted in the reduction of marital assets.

PRODUCTS LIABILITY

Jaramillo v Weyerhaeuser Co. (12 NY3d 181)

Plaintiff injured his hand in a 38-year-old box-making machine, which his employer bought used 16 years earlier from Weyerhaeuser, which, in turn, had purchased the machine used from a third party rather than new from the manufacturer. The United States Court of Appeals for the Second Circuit asked the Court whether Weyerhaeuser was a "regular seller" of used box-making machines such that it could be held strictly liable under New York law. Construing the evidence in the light most favorable to plaintiff, the Court concluded that Weyerhaeuser was a casual or occasional, rather than a regular, seller of these machines. The Court observed that this outcome followed from its decision in *Sukljian v Ross & Son Co.* (69 NY2d 89 [1986]) and the policy considerations underlying the holding in that case, specifically, the "onerous" burden of strict liability is only imposed on "certain sellers" because of "continuing relationships with manufacturers" and a "special responsibility to the public, which has come to expect [these sellers] to stand behind their goods" (*Sukljian*, 69 NY2d at 95).

RENT REGULATION

Roberts v Tishman Speyer Props, L.P. (13 NY3d 270)

The Court considered whether a landlord in New York City could simultaneously implement the luxury decontrol provisions of the Rent Stabilization Law (RSL) and accept tax incentives from the City's J-51 program. At issue was a provision of the Rent Regulation Reform Act of 1993 which provided, "this exclusion [i.e., luxury decontrol] shall not apply to housing accommodations which became or become subject to [the RSL] (a) by virtue of receiving tax benefits pursuant to section . . . four hundred eighty-nine of the real property tax law [J-51 benefits]." The Court held that the language of the statute and its legislative history established that landlords were not entitled to take advantage of the luxury decontrol provisions of the Rent Stabilization Law while simultaneously receiving tax benefits under the City of New York's J-51 program for rehabilitation and major capital improvement and conversion projects.

SEARCHES AND SEIZURES

People v Weaver (12 NY3d 433)

Defendant Scott Weaver was convicted of burglary in the third degree and attempted grand larceny in the second degree based largely upon evidence obtained from a global po-

sitioning system (GPS) tracking device. The device had been placed on his vehicle by the police without his knowledge and had remained in place tracking his movements for 65 days. The Court held that defendant had a reasonable expectation of privacy in his vehicle that was violated by the prolonged surveillance and that the continuous monitoring amounted to a search under the State Constitution. The Court further held that, in the absence of exigent circumstances, a warrant supported by probable cause was required before law enforcement could attach and employ a GPS device to track an individual's whereabouts.

SECURED TRANSACTIONS

Matter of Peaslee (13 NY3d 75)

In response to a certified question from the United States Court of Appeals for the Second Circuit, this Court held that the portion of an automobile retail installment sale attributable to a trade-in automobile's "negative equity" (i.e., where the trade-in vehicle is subject to a lien that exceeds the vehicle's value) is a part of the "purchase money obligation" arising from the purchase of a new car as defined by the New York Uniform Commercial Code. The Court held that "negative equity" constitutes "an obligation . . . incurred as all or part of the price of the collateral" and that a lender, by paying off the "negative equity," gives value to enable the debtor to acquire rights in or use the vehicle. The lender's financing of the "negative equity" was "inextricably linked" to the financing of the new vehicle, thereby establishing a "close nexus" between the acquisition of the vehicle and the secured obligation.

SOCIAL SERVICES

Khrapunskiy v Doar (12 NY3d 478)

Plaintiffs are aged, blind or disabled persons and are legal resident aliens of New York State who became ineligible for Supplemental Security Income (SSI) and Additional State Payments (ASP) because they did not become United States citizens in the time frame mandated by Congress under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 USCA 1601 et seq.), also known as the "Welfare Reform Act," or were never eligible for those benefits by virtue of the Act. The issue before the Court was whether, under the State and Federal Constitutions, plaintiffs were entitled to receive from the State the same level of benefits received by aged, blind or disabled United States citizens from the federal Social Security program. In holding that plaintiffs were not entitled to such benefits, the Court noted that article XVII, § 1 of the State Constitution requires that the State provide for the aid, care and support of the needy. However, it is the prerogative of the Legislature to determine who is needy and to allocate public funds (*see Brownley v Doar*, 12 NY3d 33, 43-44 [2009]). Regarding plaintiffs' equal protection claim, the Court noted that the alienage restriction found in Social Services Law § 209 (1) (a) (iv) was mandated by the federal Welfare Reform Act. Thus, because the State did not create a suspect classification, nor did it establish a program of benefits which excluded plaintiffs, there is no basis for the equal protection claim.

STATUTE OF FRAUDS

Snyder v Bronfman (13 NY3d 504)

This case required the Court to decide whether plaintiff's claims were barred by New York's Statute of Frauds as embodied in General Obligations Law § 5-701. Plaintiff claimed that he and defendant had agreed to undertake a joint venture involving the acquisition and operation of media companies. After plaintiff assisted defendant in acquiring Warner Music, defendant told plaintiff that he no longer wished to work with him. Plaintiff sued on various grounds including quantum meruit and unjust enrichment. The Court held that the suit was barred by General Obligations Law § 5-701 (a) (10), which dictates that any contract "implied in fact or in law to pay reasonable compensation" for assistance "in negotiating the purchase, sale, exchange, renting or leasing . . . of a business opportunity [or] business" be unenforceable if not in writing.

TAXATION

City of New York v Smokes-Spirits.Com, Inc. (12 NY3d 616)

In this action arising out of the City of New York's claims that defendants' alleged illegal marketing and shipping of cigarettes into this State deprived the City of tax revenues, the United States Court of Appeals for the Second Circuit certified two questions to this Court. First, the Court was asked to determine whether the City had standing under General Business Law § 349 (a) to pursue its claims. Answering in the negative, the Court held that the City failed to establish standing because its claimed injury—lost tax revenue—was merely derivative of injuries allegedly suffered by misled consumers who purchased defendants' cigarettes over the internet. Second, the Court was asked to determine whether the City could predicate a common law public nuisance claim against defendants on New York Public Health Law § 1399-ll. Again answering in the negative, the Court held that, while Public Health Law § 1399-ll was intended to prevent young people from becoming addicted to smoking, nothing in the legislative history or statutory text indicated that the Legislature intended the statute to support a public nuisance claim.

Matter of Lackawanna Community Development Corp. v Krakowski (12 NY3d 578)

The Court was called upon to determine whether property owned by a local development corporation organized under Not-For-Profit Corporation Law § 1411 was subject to taxation. The local development corporation had leased the real property at issue to a for-profit corporation that carried out for-profit manufacturing activities on the property. The Court noted that local development corporations pursue laudable goals that better the State's communities, but under Real Property Tax Law § 420-a (1) (a) it is the actual or physical use of the property that the Legislature was concerned with, and because the property in this case was not being "used" for an exempt purpose, it was taxable.

Matter of Garth v Board of Assessment Review for Town of Richmond (13 NY3d 176)

Petitioner commenced an RPTL article 7 proceeding to challenge the assessment of his real property, but did not include a return date on the notice of petition as required by CPLR 403 (a). The Town moved to dismiss the petition for lack of personal jurisdiction

based on the omission. Relying on prior case law holding that mere technical irregularities in the commencement process should be disregarded if a substantial right of a party is not prejudiced, the Court concluded that personal jurisdiction is not lacking in an RPTL article 7 proceeding where the petitioner fails to include the return date in the notice of petition. Any other conclusion, the Court held, would be overly harsh and conflict with the Court's traditionally liberal construction of pleading and procedure in these proceedings.

TORTS

Shulman v Hunderfund (12 NY3d 143)

Plaintiff alleged that he was defamed during his campaign for reelection to the Commack Board of Education, when defendant published a flier claiming that plaintiff broke the law by awarding a lucrative contract to a friend and failing to disclose the conflict. Following trial, the jury found that defendant had made false statements with actual malice, and awarded plaintiff $100,000. Supreme Court set aside the verdict, but the Appellate Division reinstated it, holding that legally sufficient evidence supported the jury's finding of "actual malice." The Court of Appeals reversed, holding that the deference usually paid by appellate courts to jury verdicts does not apply in cases subject to the *New York Times Co. v. Sullivan* rule, which requires that actual malice be proved by clear and convincing evidence. Scrutinizing the record, the Court held that it failed to establish that defendant either knew the defamatory statements were false or made the statements with reckless disregard for their truth or falsity, and therefore dismissed the complaint.

McLean v City of New York (12 NY3d 194)

Plaintiff's daughter suffered a brain injury under the supervision of a child care provider registered with the City of New York. Due to several substantiated complaints, the child care provider was precluded by law from being re-registered; nevertheless, she was re-registered, allegedly through the City's negligence. Plaintiff brought suit against the City, alleging that it violated a "special duty" to plaintiff by referring her to the child care provider, notwithstanding plaintiff's specific request for a registered provider with no history of complaints. After the lower courts denied the City's motion for summary judgment, this Court reversed, noting that a municipality is immune from negligence liability arising from the performance of a "discretionary" function. It is only when the alleged negligence arises from performance of a "ministerial" function that the municipality may be liable under the "special duty exception," which applies when, among other things, the municipality specifically assumes a duty that generates reliance by the person who benefits from the duty. In this case, the Court held, even assuming that the City's function in recommending the child care provider was ministerial, the special duty exception was not satisfied, where plaintiff failed to show a duty to her and her daughter different from the one owed to the public generally.

Lee v Astoria Generating Co., L.P. (13 NY3d 382)

Plaintiff, a millwright, injured his back while performing work on a turbine located on defendant's barge. Plaintiff claimed and was awarded benefits under the Longshore and

Harbor Workers' Compensation Act (LHWCA), which provides workers' compensation to land-based maritime employees, and subsequently pursued New York State Labor Law §§ 240 (1) and 241(6) claims. The LHWCA, 33 USC § 905 (b), permits an injured person covered under that Act to bring an action in negligence against a vessel, but provides that such remedy "shall be exclusive of all remedies against the vessel." The Court was asked to determine whether a barge containing an electricity generating turbine is a vessel under the LHWCA and whether § 905 (b) preempts plaintiff's strict liability claims. The Court, applying the federal definition of a "vessel," held that the barge is a vessel under the LHWCA. The Court concluded that, because Congress expressly limited claims against vessel owners to negligence, plaintiff's Labor Law §§ 240 (1) and 241 (6) claims are preempted.

Eurycleia Partners, LP v Seward & Kissel, LLP (12 NY3d 553)

As a result of the collapse of a hedge fund, a group of limited partners commenced this action pursuing causes of action in fraud and breach of fiduciary duty against the fund's attorneys on the basis that the law firm failed to disclose improper fund activities and made misrepresentations in offering statements. The Court examined the pleading requirements for fraud and aiding and abetting fraud and concluded that neither the allegations in the complaint nor the surrounding circumstances gave rise to a reasonable inference that the law firm participated in a scheme to defraud or had knowledge regarding the falsity of statements in the offering statements. Furthermore, after analyzing whether a fiduciary duty owed by an attorney to a limited partnership client extends to the individual limited partners, the Court determined that the cause of action for breach of a fiduciary duty was properly dismissed because the law firm's representation of the limited partnership did not establish that the firm owed a fiduciary duty to the individual limited partners.

Fasso v Doerr (12 NY3d 80)

In this medical malpractice lawsuit, plaintiff did not object when her health insurance carrier moved to intervene in the action to assert its equitable subrogation claim against the defendant doctor for reimbursement of approximately $780,000 it had paid for plaintiff's medical expenses. During the course of the trial, plaintiff and defendant entered into a settlement whereby plaintiff would receive $900,000 and the health insurer's subrogation claim would be dismissed. Relying on well established subrogation precedent, the Court determined that the parties could not extinguish the health insurer's subrogation rights without its consent, but expressed concern regarding the conflicting interests that would emerge between insureds and their insurers in such situations, presenting obstacles to settlement. In light of this consequence, the Court suggested there was a need for legislation specifically addressing the recovery of health care expenditures by health insurance carriers in personal injury cases. The Legislature responded by enacting chapter 494, Part F, § 8 of the Laws of 2009, which added General Obligations Law § 5-335, a statute that precludes certain health insurers from seeking reimbursement of medical expenses from the proceeds its insured recovered as a result of settlement of a personal injury action.

Salm v Moses (13 NY3d 816)

The Court was asked in this case whether it was permissible to present evidence in a dental malpractice trial that the defendant and his expert witness were both shareholders of and insured by the same dental malpractice insurance company. The Court decided that in

this case there was no abuse of discretion by the trial court in precluding such cross-examination of the expert witness since the plaintiff did not request a voir dire and merely suggested that the witness could receive a $100 benefit at the time of his death, disability or retirement based on his shareholder's status. Absent proof that the witness had a more substantial connection to the malpractice carrier indicative of bias, beyond the de minimis monetary interest identified by plaintiff, the trial court did not err in refusing to allow the testimony.

ZONING

Buffalo Crushed Stone, Inc. v Town of Cheektowaga (13 NY3d 88)

A property owner established a prior nonconforming use to quarry certain subparcels of its 280-acre property, and thus was relieved from the requirements of the Town's zoning ordinances as to those areas. Applying *Matter of Syracuse Aggregate Corp. v Weise* (51 NY2d 278 [1980]), the Court noted the unique manner in which many quarrying companies utilize their land by leaving large tracts as reserves for future excavation. The Court noted that the quarrying company and its predecessors had manifested an intention to use the land for mining in that they had dedicated the land and used it exclusively for such purposes for decades. They had constructed a processing structure in its center and roads to move the materials extending from the center to the outer limits of the property, and had undertaken various measures to plan the excavation of the outer portions of the land. Such overt measures manifested an intent to use the entire property even though the principal excavation had been limited to more central areas.

IV. Appendices

APPENDICES

APPENDIX 1

JUDGES OF THE COURT OF APPEALS

Hon. Jonathan Lippman
Chief Judge of the Court of Appeals

Hon. Carmen Beauchamp Ciparick
Senior Associate Judge of the Court of Appeals

Hon. Victoria A. Graffeo
Associate Judge of the Court of Appeals

Hon. Susan Phillips Read
Associate Judge of the Court of Appeals

Hon. Robert S. Smith
Associate Judge of the Court of Appeals

Hon. Eugene F. Pigott, Jr.
Associate Judge of the Court of Appeals

Hon. Theodore T. Jones
Associate Judge of the Court of Appeals

APPENDIX 2

CLERK'S OFFICE TELEPHONE NUMBERS

Court of Appeals Switchboard: (518) 455-7700

Questions Concerning Motions:
Heather Davis, Esq. (518) 455-7705

Questions Concerning Criminal Leave Applications:
Cynthia D. Byrne (518) 455-7784

Questions Concerning Civil and Criminal Appeals:
Susan S. Dautel, Esq. (518) 455-7701
James A. Costello, Esq. (518) 455-7702

Questions Concerning Attorney Admission and Discipline:
Hope B. Engel, Esq. (518) 455-7758

General Information and Courthouse Tours:
Gary Spencer, Public Information Officer
(518) 455-7711

Court of Appeals internet web site
http://www.nycourts.gov/courts/appeals

SUMMARY OF TOTAL APPEALS DECIDED IN 2009 BY JURISDICTIONAL PREDICATE
January 1, 2009 through December 31, 2009

BASIS OF JURISDICTION: ALL APPEALS

	TYPE OF DISPOSITION					
	Affirmance	Reversal	Modification	Dismissal	Other	Total
Dissents in Appellate Division	14	13	2	0	0	29
Permission of Court of Appeals or Judge thereof	61	28	9	1	0	99
Permission of Appellate Division or Justice thereof	26	20	5	0	1	52
Constitutional Question	6	2	0	1	0	9
Stipulation for Judgment Absolute	0	0	0	0	0	0
Other [1]	0	2	2	0	19	23
Totals	**107**	**65**	**18**	**2**	**20**	**212**

BASIS OF JURISDICTION: CIVIL APPEALS

	TYPE OF DISPOSITION					
	Affirmance	Reversal	Modification	Dismissal	Other	Total
Dissents in Appellate Division	14	13	2	0	0	29
Permission of Court of Appeals	27	19	6	1	0	53
Permission of Appellate Division	13	15	3	0	1	32
Constitutional Question	6	2	0	1	0	9
Stipulation for Judgment Absolute	0	0	0	0	0	0
Other [1]	0	2	2	0	19	23
Totals	**60**	**51**	**13**	**2**	**20**	**146**

BASIS OF JURISDICTION: CRIMINAL APPEALS

	TYPE OF DISPOSITION					
	Affirmance	Reversal	Modification	Dismissal	Other	Total
Permission of Court of Appeals Judge	34	9	3	0	0	46
Permission of Appellate Division Justice	13	5	2	0	0	20
Other [1]	0	0	0	0	0	0
Totals	**47**	**14**	**5**	**0**	**0**	**66**

[1] Includes anomalies which did not result in an affirmance, reversal, modification or dismissal (e.g. judicial suspensions, acceptance of a case for review pursuant to Rule 500.27).

APPENDIX 4

COMPARATIVE STATISTICAL ANALYSIS FOR APPEALS DECIDED IN 2009

ALL APPEALS - % CIVIL AND CRIMINAL

	2005	2006	2007	2008	2009
Civil	70% (137 of 196)	67% (127 of 189)	73% (135 of 185)	76% (172 of 225)	69% (146 of 212)
Criminal	30% (59 of 196)	33% (62 of 189)	27% (50 of 185)	24% (53 of 225)	31% (66 of 212)

CIVIL APPEALS - TYPE OF DISPOSITION

	2005	2006	2007	2008	2009
Affirmed	49%	57%	46%	42%	41%
Reversed	31%	21%	22%	37%	35%
Modified	9%	8%	14%	8%	9%
Dismissed	--	--	--	1%	1%
Other (e.g. judicial suspension; Rule 500.27 certified question)	11%	14%	18%	12%	14%

CRIMINAL APPEALS - TYPE OF DISPOSITION

	2005	2006	2007	2008	2009
Affirmed	69%	69%	66%	70%	71%
Reversed	24%	16%	30%	7%	21%
Modified	5%	12%	4%	23%	8%
Dismissed	2%	3%	--	--	--

CIVIL APPEALS DECIDED - JURISDICTIONAL PREDICATES

	2005	2006	2007	2008	2009
Appellate Division Dissents	12.4% (17 of 137)	15% (19 of 127)	16% (22 of 135)	15.7% (27 of 172)	20% (29 of 146)
Court of Appeals Leave Grants	50.4% (69 of 137)	42.5% (54 of 127)	39% (53 of 135)	42% (72 of 172)	36.3% (53 of 146)
Appellate Division Leave Grants	19.7% (27 of 137)	21% (27 of 127)	21% (28 of 135)	25.6% (44 of 172	21.9% (32 of 146)
Constitutional Question	5.8% (8 of 137)	8.7% (11 of 127)	6% (8 of 135)	4.7% (8 of 172)	6.1% (9 of 146)
Stipulation for Judgment Absolute	.6% (1 of 137)	--	--	--	--
CPLR 5601(d)	--	--	1.5% (2 of 135)	.6% (1 of 172)	1.4% (2 of 146)
Supreme Court Remand	--	--	--	--	2% (3 of 146)
Judiciary Law § 44 [1]	5.1% (7 of 137)	2% (3 of 127)	3.7% (5 of 135)	4% (7 of 172)	3.4% (5 of 146)
Certified Question from Federal Court (Rule 500.27) [2]	5.8% (8 of 137)	10% (13 of 127)	12.6% (17 of 135)	7.6% (13 of 172)	8.9% (13 of 146)
Other	--	--	--	--	--

[1] Includes judicial suspension matters.

[2] Includes decisions accepting/declining certification.

APPENDIX 6

CRIMINAL APPEALS DECIDED - JURISDICTIONAL PREDICATES

	2005	2006	2007	2008	2009
Permission of Court of Appeals Judge	85% (50 of 59)	85% (53 of 62)	76% (38 of 50)	72% (38 of 53)	70% (46 of 66)
Permission of Appellate Division Justice	13% (8 of 59)	15% (9 of 62)	22% (11 of 50)	28% (15 of 53)	30% (20 of 66)
Other	2% (1 of 59)	--	2% [1] (1 of 50)	--	--

[1] People v Taylor, capital appeal.

MOTION STATISTICS (2005 - 2009)

Motions Undecided as of January 1, 2009 - 169

Motions Numbers Used in 2009 -1397

Motions Undecided as of December 31, 2009 - 197

Motion Dispositions During 2009 - 1370

	2005	2006	2007	2008	2009
Motion Numbers Used/Motions Filed for Calendar Year	1344	1401	1481	1421	1397
Motions Decided for Calendar Year	1289	1397	1440	1459	1370
Motions for leave to appeal	967*	1021*	1100*	1097*	1074*
granted	61	61	77	74	77
denied	697	764	824	830	794
dismissed	203	192	192	189	199
withdrawn	6	4	7	4	4
Motions to dismiss appeals	6	8	11	8	7
granted	3	4	6	1	4
denied	2	4	4	6	2
dismissed	0	0	1	1	1
withdrawn	1	0	0	0	0
Sua Sponte and Court's Own motion dismissals	81	92	89	97	90
TOTAL DISMISSAL OF APPEALS	84	96	95	98	94
Motions for reargument of appeal	21	16	27	28	28
granted	0	0	1	0	0
Motions for reargument of motion	38	62	41	61	38
granted	1	1	2	0	0
Motions for assignment of counsel	44	52	48	48	55
granted	43	51	47	46	55
Legal Aid	10	9	8	13	12
denied	1	0	0	2	0
dismissed	0	1	1	0	0

* Because more than one relief request may be decided under a single motion number, the total of decisions by relief requests is greater than the total of motions decided.

APPENDIX 7

APPENDIX 7 (continued)

	2005	2006	2007	2008	2009
Motions to waive rule compliance	1	0	0	0	2
granted	0	0	0	0	0
Motions for poor person status	140	177	213	182	191
granted	0	0	4	8	8
denied	1	0	0	0	0
dismissed	139	177	209	174	183
Motions to vacate dismissal/preclusion	1	3	4	6	14
granted	0	3	2	4	12
Motions for calendar preference	4	0	1	0	1
granted	0	0	0	0	1
Motions for amicus curiae status	95	119	108	110	116
granted	93	114	100	102	112
Motions for Executive Law § 71 Order (AG)	0	2	2	0	0
Motions for leave to intervene	2	2	3	3	0
granted	1	2	3	2	0
Motions to stay/vacate stay	22	21	17	30	20
granted	1	2	2	1	4
denied	4	0	1	4	1
dismissed	17	17	14	25	15
withdrawn	0	2	0	0	0
Motions for CPL 460.30 extension	33	32	27	27	25
granted	25	27	20	26	22
Motions to strike appendix or brief	7	6	8	12	3
granted	2	1	3	4	1
Motions to amend remittitur	1	1	2	0	0
granted	0	0	0	0	0
Motions for miscellaneous relief	5	6	14	6	12
granted	1	0	2	1	0
denied	4	5	9	4	7
dismissed	0	1	2	1	5
withdrawn	0	0	1	0	0
Withdrawals/substitution of counsel	2	1	0	0	0
granted	1	1	0	0	0
denied	1	0	0	0	0

CRIMINAL LEAVE APPLICATIONS ENTERTAINED BY COURT OF APPEALS JUDGES

	2005	2006	2007	2008	2009
TOTAL APPLICATIONS ASSIGNED:	2473	2458	2382	2687	2347
TOTAL APPLICATIONS DECIDED: [1]	2383	2436	2371	2637	2380
TOTAL APPLICATIONS GRANTED:	42	52	36	53	81
TOTAL APPLICATIONS DENIED:	2109	2166	2126	2355	2093
TOTAL APPLICATIONS DISMISSED:	228	212	205	220	203
TOTAL APPLICATIONS WITHDRAWN:	4	6	4	9	3
TOTAL PEOPLE'S APPLICATIONS:	44	47	46	60	48
(a) GRANTED:	5	5	3	7	14
(b) DENIED:	37	35	40	51	32
(c) DISMISSED:	1	3	2	1	0
(d) WITHDRAWN:	1	4	1	1	2
AVERAGE NUMBER OF APPLICATIONS ASSIGNED TO EACH JUDGE	353	355	349 [2]	400 [3]	335
AVERAGE NUMBER OF GRANTS FOR EACH JUDGE	6	7	5	8	12

[1] Includes some applications assigned in previous year.

[2] This average was calculated by dividing the total number of applications assigned during ten and one-third months of the year by seven and dividing the total number assigned during one and two-thirds months by six, because only six Judges were receiving assignments for the first one and two-thirds months.

[3] This average was calculated by dividing the total number of applications assigned during eight and one-half months of the year by seven and dividing the total number assigned during three and one-half months by six, because only six Judges were receiving assignments for the last three and one-half months.

APPENDIX 9

2009

THRESHOLD REVIEW OF SUBJECT MATTER JURISDICTION BY THE COURT OF APPEALS

SSD (sua sponte dismissal) - Rule 500.10

	2005	2006	2007	2008	2009
Total Number of Inquiry Letters Sent	90*	74	75	70	84
Appeals Withdrawn on Stipulation	1	1	5	3	2
Dismissed by Court sua sponte	55	52	44	52	54
Transferred sua sponte to Appellate Division	5	4	3	1	6
Appeals allowed to proceed in normal course (A final judicial determination of subject matter jurisdiction to be made by the Court after argument or submission)	5	5	9	8	7
Jurisdistion Retained - appeals decided	1	1	2	2	1
Inquiries Pending	21	11	12	4	14

* Following inquiry letters sent in For the People Theatres of New York, Inc. v City of New York and Ten's Cabaret, Inc. v City of New York, the Appellate Division, First Department, granted appellants leave to appeal and the Court of Appeals discontinued the review of subject matter jurisdiction.

COMPARATIVE ANALYSIS OF OFFICE FOR PROFESSIONAL MATTERS STATISTICS

2005-2009

TOPIC	2005	2006	2007	2008	2009
Attorneys Admitted (OCA) [1]	8,515	8,643	8,906	9,686	10,203
Certificates of Admission	119	134	75	130	74
Clerkship Certificates	3	2	7	7	8
Petitions for Waiver	191 [2]	189 [3]	195 [4]	241 [5]	208 [6]
Written Inquiries	102	67	104	91	94
Disciplinary Orders/Name Changes	899 [7]	1,921 [7]	1,565 [7]	1,207 [7]	4,451 [7]

[1] The Office of Court Administration maintains the Official Register for Attorneys and Counselors at Law (see Judiciary Law § 468).

[2] Includes correspondence to 7 law schools reviewing their LL.M. programs under Rule 520.6.

[3] Includes correspondence to 11 law schools reviewing their LL.M. programs under Rule 520.6.

[4] Includes correspondence to 5 law schools reviewing their LL.M. programs under Rule 520.6.

[5] Includes correspondence to 14 law schools reviewing their LL.M. programs under Rule 520.6.

[6] Includes correspondence to 8 law schools reviewing their LL.M. programs under Rule 520.6.

[7] Includes orders involving multiple attorneys' violation of the registration requirements (Judiciary Law § 468-a). In 2009, almost 3,000 attorneys were suspended for registration violations.

APPENDIX 10

APPENDIX 11

NONJUDICIAL STAFF

Ali, Vivian - Principal Stenographer, Court of Appeals

Alvarez-Smith, Angie - Stenographer, Court of Appeals

Asadullah, Sardar, Court Attorney, Court of Appeals

Asiello, John P. - Assistant Consultation Clerk, Court of Appeals

Ata, David W. - Senior Law Clerk to Judge Smith

Atwell, Angela M. - Senior Services Aide

Austin, Louis C. - Senior Court Building Guard

Bentley, Andria L. - Court Attorney, Court of Appeals

Bleshman, Joseph M. - Counsel to the Chief Judge

Bohannon, Lisa - Senior Court Analyst

Bowman, Jennifer L. - Senior Court Building Guard

Branch, Jr., Clifton R. - Principal Law Clerk to Judge Jones

Breitenbach, Katherine G. - Senior Court Attorney, Court of Appeals

Brizzie, Gary J. - Principal Custodial Aide

Byrne, Cynthia D. - Criminal Leave Applications Clerk

Calacone, Stephen F. - Clerical Research Aide

Carro, Christine - Secretary to Judge Ciparick

Cleary, Lisa M. - Principal Stenographer, Court of Appeals

Appendix 11 (Continued)

Cohen, John Althouse - Senior Court Attorney, Court of Appeals

Cohen, Stuart M. - Clerk of the Court of Appeals

Coleman, Lillian M. - Principal Custodial Aide

Conley, Paul F. - Senior Clerical Assistant, Court of Appeals

Costello, James A. - Assistant Deputy Clerk, Court of Appeals

Cross, Robert J. - Senior Court Building Guard

Danner, Scott M. - Law Clerk to Judge Smith

Dautel, Susan S. - Assistant Deputy Clerk, Court of Appeals

Davis, Heather A. - Chief Motion Clerk

Donelin, AnneMarie - Secretary to Chief Judge Kaye (resigned March 2009)

Donnelly, William E. - Assistant Building Superintendent I

Dragonette, John M. - Senior Court Building Guard

Drury, Lisa A. - Principal Law Clerk to Judge Read

Duncan, Priscilla - Secretary to Judge Read

Dunn, Matthew R. - Senior Principal Law Clerk to Judge Graffeo

Dunne, Brian J. - Senior Law Clerk to Judge Read (resigned July 2009)

Eddy, Margery Corbin - Principal Court Attorney, Court of Appeals

Elkind, Diana - Senior Law Clerk to Judge Smith (resigned August 2009)

Emigh, Brian J. - Building Manager

Engel, Hope B. - Senior Deputy Chief Court Attorney, Court of Appeals; Court Attorney for Professional Matters

Farrell, Laurence - Deputy Chief Security Attendant, Court of Appeals

Fernandez, Cristina L. - Law Clerk to Judge Ciparick (resigned October 2009)

Appendix 11 (Continued)

Fitzpatrick, J. Brian - Director, Court of Appeals Management and Operations (retired September 2009)

Fitzpatrick, Rosemarie - Assistant Secretary to Chief Judge Kaye; Principal Court Analyst (retired September 2009)

Fitzpatrick, William J. - Assistant Printer, Court of Appeals

Fix-Mossman, Lori E. - Principal Stenographer, Court of Appeals

Fludd, Christopher - Senior Court Building Guard

Fortugno, John J. - Senior Security Attendant, Court of Appeals

Fusaro, Scott M. - Senior Court Attorney, Court of Appeals (resigned July 2009)

Galvin, Martin C. - Senior Law Clerk to Judge Ciparick

Garcia, Heather A. - Senior Security Attendant, Court of Appeals

Gaston, Johnny L. - Senior Court Building Guard

Gilbert, Marianne - Principal Stenographer, Court of Appeals

Green, Rebecca A. S. - Senior Court Attorney, Court of Appeals (resigned October 2009)

Grogan, Bruce D. - Senior Principal Law Clerk to Judge Pigott

Haas, Tammy L. - Principal Assistant Building Superintendent

Hancock, Dora N. - Secretary to Judge Jones

Hartnagle, Mary C. - Senior Custodial Aide

Heaney, Denise C. - Senior Security Attendant, Court of Appeals

Herrington, June A. - Principal Stenographer, Court of Appeals

Irby, Sandra H. - Senior Court Attorney, Court of Appeals; Principal Law Clerk to Judge Jones

Ignazio, Andrea R. - Principal Stenographer, Court of Appeals

Irwin, Nancy J. - Principal Stenographer, Court of Appeals

Kaiser, Warren - PC Analyst

Appendix 11 (Continued)

Kane, Suzanne M. - Senior Stenographer, Court of Appeals

Kearns, Ronald J. - HVAC Assistant Building Superintendent

King, Bradley T. - Senior Law Clerk to Judge Ciparick (resigned August 2009)

Klein, Andrew W. - Consultation Clerk, Court of Appeals

Kong, Yongjun - Principal Custodial Aide

Kornreich, Mollie M. - Law Clerk to Judge Ciparick

Lawrence, Bryan D. - Principal Local Area Network Administrator

LeCours, Lisa A. - Senior Principal Law Clerk to Judge Graffeo

Lee, Jane H. - Court Attorney, Court of Appeals

Levine, Allyson B. - Court Attorney, Court of Appeals

Liberati-Conant, Christopher - Court Attorney, Court of Appeals

Lyon, Gordon W. - Principal Law Clerk to Judge Pigott

MacVean, Rachael M. - Senior Court Attorney, Court of Appeals; Principal Law Clerk to Judge Ciparick

Mascia, Henry M. - Court Attorney, Court of Appeals

Mayo, Michael J. - Deputy Building Superintendent

McCormick, Cynthia A. - Senior Management Analyst, Court of Appeals

McCoy, Marjorie S. - Deputy Clerk of the Court of Appeals (retired January 2009)

McGrath, Paul J. - Chief Court Attorney, Court of Appeals

McMillen, Donna J. - Secretary to the Clerk, Court of Appeals

Michaels, Alexander - Law Clerk to Judge Smith

Minshell, Janice L. - Principal Stenographer, Court of Appeals (retired July 2009)

Mitchell, Mark G. - Senior Court Attorney, Court of Appeals

Appendix 11 (Continued)

Moore, Travis R. - Senior Security Attendant, Court of Appeals

Moxley, D. Cameron - Law Clerk to Chief Judge Lippman

Muller, Joseph J. - Senior Security Attendant, Court of Appeals

Mulyca, Jonathan A. - Clerical Assistant, Court of Appeals

Murray, Elizabeth F. - Chief Legal Reference Attorney, Court of Appeals

Nina, Eddie A. - Senior Security Attendant, Court of Appeals

Nyland, Margaret P. - Senior Court Attorney, Court of Appeals; Principal Law Clerk to Chief Judge Lippman

O'Friel, Jennifer A. - Executive Assistant to Chief Judge Lippman

Paglia, Daisy F. - Principal Law Clerk to Judge Read

Pepper, Francis W. - Principal Custodial Aide

Pfeiffer, Justin D. - Senior Court Attorney, Court of Appeals (resigned October 2009)

Pollack, Lee M. - Principal Law Clerk to Judge Smith (resigned October 2009)

Reed, Richard A. - Deputy Clerk of the Court of Appeals

Rosborough, IV, Robert S. - Senior Court Attorney, Court of Appeals

Rudykoff, Nathaniel T. - Senior Principal Law Clerk to Chief Judge Lippman

Sherwin, Stephen P. - Senior Principal Law Clerk to Judge Graffeo

Somerville, Robert - Senior Court Building Guard

Spencer, Gary H. - Public Information Officer, Court of Appeals

Spiewak, Keith J. - Local Area Network Administrator

Stevens, Mark P. - Chief Security Attendant, Court of Appeals

Stowell, Allison M. - Law Clerk to Judge Read

Stromecki, Kristie L. - Principal Law Clerk to Judge Pigott

Appendix 11 (Continued)

Tang, Douglas L. - Law Clerk to Judge Jones (resigned August 2009)

Taylor, Janice E. - Senior Principal Law Clerk to Judge Jones

Tierney, Inez M. - Principal Court Analyst

Timko, Molly J. - Senior Court Attorney, Court of Appeals

VanDeloo, James F. - Senior Assistant Building Superintendent

Villari-Murphy, Claudia - Secretary to Chief Judge Lippman

Waddell, Maureen A. - Secretary to Judge Pigott

Waithe, Nelvon H. - Senior Court Building Guard

Warenchak, Andrew R. - Principal Custodial Aide

Wasserbach, Debra C. - Secretary to Judge Graffeo

Welch, Joseph H. - Senior Clerical Assistant, Court of Appeals

Wilson, Anne - Senior Court Attorney, Court of Appeals

Wodzinski, Esther T. - Secretary to Judge Smith