

July 2011

NEW FILINGS DIGEST - CUMULATIVE UPDATE

This report lists, by title and subject matter, pending appeals previously published as "Court of Appeals New Filings."

Contact the Clerk's Office for additional information.

ABACUS FEDERAL SAVINGS BANK v ADT SECURITY SERVICES, INC., et al.:  
NEGLIGENCE - BREACH OF CONTRACT - ACTION BY BANK TO RECOVER DAMAGES AGAINST SECURITY AND ALARM COMPANIES FOR LOSSES RESULTING FROM A BURGLARY - WHETHER PLAINTIFF STATED CAUSES OF ACTION FOR COMMON LAW GROSS NEGLIGENCE AND BREACH OF CONTRACT THAT ARE NOT BARRED BY EXCULPATORY CLAUSES IN THE ALARM CONTRACTS; DISMISSAL AND NONSUIT; WHETHER BANK HAS STANDING TO SUE FOR LOSSES INCURRED BY SAFE DEPOSIT CUSTOMERS AS A RESULT OF BURGLARY;

ADLER et al. v BAYER et al.: (Cal. Date - 10/19/11)  
INSURANCE - NO-FAULT AUTOMOBILE INSURANCE - SERIOUS INJURY - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT SUFFICIENT EVIDENCE DID NOT EXIST TO ALLOW A REASONABLE TRIER OF FACT TO FIND THAT PLAINTIFF SUSTAINED A SERIOUS INJURY UNDER THE "PERMANENT CONSEQUENTIAL LIMITATION CATEGORY" OF INSURANCE LAW § 5102(d) BECAUSE PLAINTIFF FAILED TO "SHOW THE DURATION OF THE ALLEGED INJURY AND THE EXTENT OR DEGREE OF THE LIMITATIONS ASSOCIATED THEREWITH" ;

ADMIRAL INSURANCE COMPANY v JOY CONTRACTORS, INC., et al.:  
INSURANCE - DUTY TO DEFEND AND INDEMNIFY - ADDITIONAL INSURED ENDORSEMENT - WHETHER LESSOR OF CRANE IS ENTITLED TO COVERAGE "WITH RESPECT TO LIABILITY ... CAUSED BY (CRANE OPERATOR LESSEE'S) ACTS OR OMISSIONS ... IN THE PERFORMANCE OF (ITS) ONGOING OPERATIONS FOR ADDITIONAL INSURED(S)"; WHETHER PRIMARY AND EXCESS INSURANCE POLICIES WERE "ISSUED FOR DELIVERY IN NEW YORK" WITHIN THE MEANING OF INSURANCE LAW § 3420(d); APPLICABILITY OF PROFESSIONAL SERVICES EXCLUSION; WHETHER THE APPELLATE DIVISION ERRED IN DETERMINING THAT A RESIDENTIAL CONSTRUCTION ACTIVITIES EXCLUSION DID NOT APPLY TO CRANE COLLAPSE BECAUSE BUILDING WAS INTENDED TO BE A MIXED-USE STRUCTURE; WHETHER LIABILITY COMPANIES SEEKING COVERAGE AS ADDITIONAL INSUREDS ARE SUBJECT TO AN EXCLUSION FOR LIMITED LIABILITY COMPANIES IN A POLICY PROVISION ADDRESSING "WHO IS AN INSURED"; REPRESENTATIONS BY INSURED - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT ALLEGED MATERIAL MISREPRESENTATIONS BY THE NAMED INSURED DID NOT PRECLUDE ADDITIONAL INSUREDS FROM RECOVERING UNDER THE POLICY;

AGINA (ALAA), PEOPLE v:

CRIMES - EVIDENCE - PRIOR BAD ACTS - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT PRIOR BAD ACTS WERE NOT ADMISSIBLE TO PROVE THE PERPETRATOR'S IDENTITY THROUGH A UNIQUE MODUS OPERANDI WHERE THE VICTIM WAS DEFENDANT'S WIFE BUT DEFENDANT DENIED INFLICTING THE INJURIES;

ALBANY LAW SCHOOL et al., MATTER OF v NEW YORK STATE OFFICE OF MENTAL RETARDATION and DEVELOPMENTAL DISABILITIES et al.:

DISCLOSURE - MEDICAL RECORDS AND REPORTS - ACCESS BY PROTECTION AND ADVOCACY AGENCIES TO MENTAL HYGIENE FACILITY CLINICAL RECORDS; MENTAL HYGIENE LAW §§ 33.13(c)(4) and 45.09(b) - COMBINED ARTICLE 78 PROCEEDING AND ACTION PURSUANT TO 42 USC § 1983; PARTIAL DISMISSAL OF PETITION/COMPLAINT;

ALEXANDER (HANS), PEOPLE v:

CRIMES - PLEA OF GUILTY - VOLUNTARINESS OF A GUILTY PLEA CONDITIONED ON THE WITHDRAWAL OF PENDING SPEEDY TRIAL CLAIM;

ALVAREZ (LUIS), PEOPLE v:

CRIMES - RIGHT TO PUBLIC TRIAL - CLOSURE OF COURTROOM - TRIAL COURT EXCLUDED DEFENDANT'S FAMILY MEMBERS FROM THE COURTROOM DURING THE JURY VOIR DIRE DUE TO LACK OF SEATING;

ASSURED GUARANTY (UK) LTD. &c. v J.P. MORGAN INVESTMENT MANAGEMENT, INC.:

INSURANCE - REINSURANCE - BREACH OF FIDUCIARY DUTY - FRAUD - WHETHER COMMON LAW CAUSES OF ACTION FOR BREACH OF FIDUCIARY DUTY AND GROSS NEGLIGENCE ARE PREEMPTED BY NEW YORK STATE'S MARTIN ACT (GENERAL BUSINESS LAW §§ 352-359) - ACTION AGAINST INVESTMENT MANAGER OF ASSETS OF REINSURANCE COMPANY;

ATTEA (ANTHONY), PEOPLE v:

CRIMES - JURISDICTION OF OFFENSES - WHETHER COUNTY COURT LACKED JURISDICTION TO ACCEPT DEFENDANT'S GUILTY PLEA TO HIGHER CHARGE THAN THAT FOR WHICH HE WAS ORIGINALLY ARRESTED;

BABA-ALI v STATE OF NEW YORK:

STATE - CLAIM AGAINST STATE - ACTION TO RECOVER DAMAGES FOR UNLAWFUL IMPRISONMENT - NONPECUNIARY DAMAGES - PAST AND FUTURE LOST EARNINGS; WHETHER PROSECUTOR'S FAILURE TO TURN OVER A POTENTIALLY EXCULPATORY DOCUMENT TO DEFENSE COUNSEL UNTIL DAY BEFORE TRIAL CAN CONSTITUTE "FRAUD OR MISREPRESENTATION" FOR PURPOSES OF COURT OF CLAIMS ACT SECTION 8-b;

BAKER, MATTER OF v POUGHKEEPSIE CITY SCHOOL DISTRICT, et al.:

ADMINISTRATIVE LAW - HEARING - CPLR ARTICLE 78 PROCEEDING TO REVIEW A DETERMINATION OF THE BOARD OF EDUCATION OF THE POUGHKEEPSIE CITY SCHOOL DISTRICT - WHETHER TWO BOARD MEMBERS WHO

TESTIFIED AT THE DISCIPLINARY HEARING OF THE SCHOOL DISTRICT'S BUSINESS MANAGER SHOULD HAVE DISQUALIFIED THEMSELVES FROM REVIEWING THE HEARING OFFICER'S DETERMINATION FINDING PETITIONER GUILTY OF MISCONDUCT AND/OR INCOMPETENCE; CIVIL SERVICE LAW § 75; BACK PAY AND BENEFITS;

BAYGOLD ASSOCIATES, INC. v CONGREGATION YETEV LEV OF MONSEY, INC. (AND ANOTHER ACTION):

LANDLORD AND TENANT - WHETHER A TENANT IS ENTITLED TO EQUITABLE RELIEF WHERE IT HAS FAILED TO COMPLY STRICTLY WITH THE RENEWAL PROVISIONS IN ITS LEASE;

BEAZER v NEW YORK CITY HEALTH AND HOSPITALS CORP., et al.:

NEGLIGENCE - DUTY - DUTY OF BAILOR TO BAILEE - PERSONAL INJURY ACTION ARISING FROM INJURIES PLAINTIFF SUSTAINED WHILE USING ALLEGEDLY DEFECTIVE, UNGUARDED POWER GRINDER OWNED BY DEFENDANT CONTRACTOR ON A PROJECT FOR WHICH PLAINTIFF'S EMPLOYER SERVED AS CONSTRUCTION MANAGER - EXISTENCE OF MATERIAL ISSUES OF FACT AS TO WHETHER THERE WAS A BAILMENT OF THE GRINDER AND, IF SO, WHETHER THE BAILMENT WAS GRATUITOUS OR FOR MUTUAL BENEFIT - DEFENDANT'S ENTITLEMENT TO SUMMARY JUDGMENT;

BECKER, et al., ESTATE OF v MURTAGH, et al.:

ADVERSE POSSESSION - HOSTILE POSSESSION; EASEMENT BY PRESCRIPTION; DISPUTE CONCERNING BOARDWALK AND DOCK ON BEACHFRONT LOT; DOCTRINE OF PRACTICAL LOCATION OF A BOUNDARY LINE;

BECOATS (COREY), PEOPLE v: (Cal. Date - 9/15/11)

CRIMES - TRIAL - ADJOURNMENT - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN REFUSING TO GRANT DEFENDANT AN ADJOURNMENT TO SECURE THE ATTENDANCE OF A WITNESS WHO WAS IN FEDERAL CUSTODY; CLAIM THAT ROBBERY COUNT WAS DUPLICITOUS BECAUSE DEFENDANT WAS CHARGED WITH STEALING "A BB GUN AND/OR A PAIR OF SNEAKERS" - PRESERVATION;

BEDESSIE (KHEMWATTIE), PEOPLE v:

CRIMES - EVIDENCE - HEARSAY EVIDENCE - ADMISSIBILITY OF STATEMENTS MADE TO A TREATING PHYSICIAN BY CHILD'S MOTHER AS TO WHAT HER SON TOLD HER TRANSPIRED WITH A DAY CARE CENTER EMPLOYEE; EXPERT TESTIMONY - FALSE CONFESSIONS - WHETHER TRIAL COURT'S EXCLUSION OF EXPERT TESTIMONY ON FALSE CONFESSIONS WAS AN ABUSE OF DISCRETION; CLAIMED INEFFECTIVE ASSISTANCE OF COUNSEL - FAILURE TO OBJECT TO BOLSTERING HEARSAY FROM COMPLAINANT'S MOTHER AND FAILURE TO IMPEACH CERTAIN WITNESSES;

BERAKA v BITON et al.:

DISCLOSURE - PENALTY FOR FAILURE TO DISCLOSE - DEFENDANT'S ANSWER STRICKEN;

BERNSTEIN (JOSHUA), MATTER OF:

CHALLENGE TO APPELLATE DIVISION ORDER DENYING MOTION FOR A "FINAL ORDER" ADDRESSING CONTENTION THAT THE ORDER DISBARRING ATTORNEY DID NOT ADJUDICATE HIS RETAINING LIEN DEFENSE;

BIRNBAUM, MATTER OF v NEW YORK STATE DEPARTMENT OF LABOR et al.:

(Cal. Date - 10/13/11)

CIVIL SERVICE - COMPENSATION AND BENEFITS - LEAVE FOR ORDINARY DISABILITY - WHETHER CIVIL SERVICE LAW § 72 APPLIES ONLY TO EMPLOYEES PLACED ON INVOLUNTARY LEAVE FROM AN "ACTIVE" STATUS OR ALSO TO EMPLOYEES PLACED ON INVOLUNTARY LEAVE FROM VOLUNTARY SICK LEAVE STATUS;

BISSELL, MATTER OF v TOWN OF AMHERST, et al.:

WORKERS' COMPENSATION - THIRD-PARTY ACTION - APPORTIONMENT OF LITIGATION COSTS - FUTURE MEDICAL PAYMENTS - WHETHER THE APPELLATE DIVISION ERRED IN DISALLOWING PETITIONER FROM PRESENTLY RECOVERING FROM THE NEW YORK STATE INSURANCE FUND THOSE LITIGATION COSTS TRACEABLE TO THE FUTURE MEDICAL EXPENSES THAT PETITIONER RECOVERED IN A PERSONAL INJURY ACTION - WORKERS' COMPENSATION LAW §§ 13(a), 29(1) - MATTER OF KELLY v STATE INS. FUND (60 NY2d 131 [1983]);

BLAUDZIUNAS, et al. v EGAN, et al.:

RELIGIOUS CORPORATIONS AND ASSOCIATIONS - DETERMINATION OF CLAIM TO REAL PROPERTY - RELIGIOUS CORPORATION LAW § 5 - DECISION OF ROMAN CATHOLIC ARCHBISHOP AND TRUSTEES OF SUPPRESSED INCORPORATED PARISH TO DEMOLISH CHURCH BUILDING; STANDING OF PARISHIONERS;

BOARD OF EDUCATION OF THE GARRISON UNION FREE SCHOOL DISTRICT v GREEK ARCHDIOCESE OF INSTITUTE OF ST. BASIL:

SCHOOLS - TUITION FOR NONRESIDENTS - RESPONSIBILITY OF SCHOOL DISTRICT FOR COSTS OF EDUCATING CHILDREN WHO ARE NOT RESIDENTS OF THE SCHOOL DISTRICT BUT ARE PLACED AT A PRIVATE RESIDENTIAL CHILD CARE FACILITY LOCATED IN THE SCHOOL DISTRICT - SCOPE OF EDUCATION LAW § 4002(1);

BOARD OF MANAGERS OF COPLEY COURT CONDOMINIUM, MATTER OF v TOWN OF OSSINING:

TAXATION - ASSESSMENT - JUDICIAL REVIEW - FAILURE TO SERVE SCHOOL SUPERINTENDENT - WHETHER PETITIONER'S "GEOGRAPHICAL MISTAKE" IN SERVING PETITIONS ON THE SUPERINTENDENT OF SCHOOLS OF A NEIGHBORING SCHOOL DISTRICT, RATHER THAN ON THE SUPERINTENDENT OF SCHOOLS OF THE SCHOOL DISTRICT IN WHICH IT OWNS CERTAIN REAL PROPERTY, CONSTITUTED "GOOD CAUSE" TO EXCUSE ITS FAILURE TO SERVE THE CORRECT SCHOOL DISTRICT AND TO ALLOW IT TO EFFECT SUCH SERVICE NUNC PRO TUNC - RPTL 708(3);

BONOMONTE v CITY OF NEW YORK:

NEGLIGENCE - DUTY - PROXIMATE CAUSE - PLAINTIFF CITY EMPLOYEE, ALREADY ON SICK LEAVE DUE TO SURGERY ON HIS ARM, SLIPPED AND FELL ON HIS WAY TO MANDATED DOCTOR'S APPOINTMENT AT THE EMPLOYER'S CLINIC; SUMMARY JUDGMENT;

BORDELEAU et al. v STATE OF NEW YORK et al.:

(Cal. Date - 10/12/11)

STATE - APPROPRIATIONS - DECLARATORY JUDGMENT ACTION BY TAXPAYERS SEEKING TO ENJOIN DEFENDANTS FROM DISTRIBUTING OR RECEIVING STATE FUNDS APPROPRIATED IN PURPORTED VIOLATION OF THE NEW YORK STATE CONSTITUTIONAL PROHIBITION AGAINST GIFTS OR LOANS OF STATE MONEY TO PRIVATE ENTITIES (ARTICLE VII, § 8[1]) AND REQUIREMENT THAT APPROPRIATIONS DISTINCTLY SPECIFY THE OBJECT OR PURPOSE OF THE FUNDS APPROPRIATED (ARTICLE VII, § 7) - APPROPRIATIONS OF STATE FUNDS TO PUBLIC BENEFIT CORPORATIONS THAT PROVIDE GRANTS TO PRIVATE ENTITIES FOR ECONOMIC DEVELOPMENT - WHETHER DEFENDANTS WERE ENTITLED TO DISMISSAL OF THE COMPLAINT PURSUANT TO CPLR 3211(a)(1) AND (7);

BRADSHAW (JAY JOMAR), PEOPLE v:

CRIMES - APPEAL - WAIVER OF RIGHT TO APPEAL - WHETHER DEFENDANT'S WAIVER OF HIS RIGHT TO APPEAL WAS KNOWING AND VOLUNTARY;

BROWN (NADIRAH), PEOPLE v: (Cal. Date - 9/8/11)

CRIMES - ASSAULT - SUFFICIENCY OF EVIDENCE TO ESTABLISH THAT DEFENDANT ACTED RECKLESSLY - HOT WATER THROWN ON DEFENDANT'S NEPHEW; ALLEGED PROSECUTORIAL MISCONDUCT;

BUENO (CHRISTIAN), PEOPLE v: (Cal. Date - 10/11/11)

CRIMES - ASSAULT - ASSAULT OF UNIFORMED EMERGENCY MEDICAL TECHNICIAN GETTING INTO AMBULANCE - REQUISITE INTENT - PENAL LAW § 120.05(3) - SUFFICIENCY OF EVIDENCE THAT DEFENDANT INTENDED TO INTERFERE WITH THE TECHNICIAN'S PERFORMANCE OF A LAWFUL DUTY;

BURKHART v MODICA, et al.:

ATTORNEY AND CLIENT - ATTORNEY'S LIEN - ACTION ASSERTING CAUSES OF ACTION BASED ON, AMONG OTHER THINGS, JUDICIARY LAW §§ 487(1) AND 475 AND SEEKING TO RECOVER DAMAGES BASED ON ALLEGATIONS THAT PLAINTIFF WAS UNLAWFULLY DEPRIVED OF ATTORNEYS' FEES CLAIMED TO HAVE BEEN EARNED BY REPRESENTING A CLIENT IN A FEDERAL ACTION; SANCTIONS; CLAIMED DUE PROCESS VIOLATIONS;

BUKOWSKI v CLARKSON UNIVERSITY et al.:

NEGLIGENCE - ASSUMPTION OF RISK - ACTION BY COLLEGE PITCHER TO RECOVER DAMAGES FOR INJURIES SUSTAINED WHILE PARTICIPATING IN BASEBALL PRACTICE IN AN INDOOR TRAINING FACILITY - WHETHER THERE WAS EVIDENCE FROM WHICH A JURY COULD CONCLUDE THAT THE RISK OF

INJURY WAS UNREASONABLY ENHANCED BY THE CONDITIONS EXISTING IN THE TRAINING FACILITY - INHERENT COMPULSION TO PRACTICE WITHOUT L-SCREEN SAFETY DEVICE; DISMISSAL AND NONSUIT;

BUSSEY (MONROE B.), PEOPLE v:

CRIMES - MURDER - DEPRAVED INDIFFERENCE MURDER - WHETHER THE TRIAL COURT ERRED IN SUBMITTING COUNTS OF BOTH INTENTIONAL MURDER AND DEPRAVED INDIFFERENCE MURDER TO THE JURY; MERGER DOCTRINE - WHETHER MERGER DOCTRINE APPLIES TO CHARGE OF KIDNAPPING IN THE FIRST DEGREE;

BUXENBAUM, MATTER OF v FULMER:

PARENT AND CHILD - CUSTODY - MODIFICATION OF CUSTODY - FAMILY COURT ORDER PROHIBITING MOTHER FROM TELLING HER CHILD CERTAIN INFORMATION ABOUT THE CHILD'S PATERNITY; INDIGENT MOTHER'S RIGHT TO COUNSEL;

CAPELLINO, MATTER OF v BAUMANN & SONS BUS COMPANY et al.:

WORKERS' COMPENSATION - CAUSAL RELATION - WHETHER AN EMPLOYER THAT DOES NOT TIMELY FILE A NOTICE OF CONTROVERSY PURSUANT TO WORKERS' COMPENSATION LAW § 25(2)(b) MAY CONTEST BEFORE THE WORKERS' COMPENSATION BOARD (WCB) THE CAUSAL RELATIONSHIP BETWEEN THE DEATH OF CLAIMANT'S DECEDENT AND HIS EMPLOYMENT; CHALLENGE TO WCB'S DECISION THAT CLAIMANT'S APPLICATION FOR REVIEW OF AN ADMINISTRATIVE LAW JUDGE'S PRECLUSION OF TESTIMONY FROM CLAIMANT'S MEDICAL EXPERT WAS UNTIMELY; LEGAL STANDARD APPLICABLE TO WORKERS' COMPENSATION CLAIMS ARISING FROM HEART ATTACK FATALITIES; EXISTENCE OF SUBSTANTIAL EVIDENCE SUPPORTING WCB'S DECISION;

CASS (MICKEY), PEOPLE v:

CRIMES - EVIDENCE - PRIOR BAD ACTS - WHETHER THE TRIAL COURT ERRED IN ADMITTING INTO EVIDENCE DEFENDANT'S STATEMENT REGARDING HIS ROLE IN A PRIOR HOMICIDE WHERE ANOTHER MALE VICTIM WAS STRANGLERED, FOR THE PURPOSE OF DISPROVING DEFENDANT'S CLAIM THAT HE WAS ACTING UNDER THE INFLUENCE OF EXTREME EMOTIONAL DISTURBANCE WHEN HE STRANGLERED THE VICTIM IN THIS CASE; CLAIMED VIOLATION OF DUE PROCESS AND INEFFECTIVE ASSISTANCE OF COUNSEL;

CHAZON, LLC v MAUGENEST:

LANDLORD AND TENANT - LOFT LAW - EJECTMENT - WHETHER LANDLORD CAN MAINTAIN AN EJECTMENT ACTION AGAINST TENANT PROTECTED BY MULTIPLE DWELLING LAW ARTICLE 7-C (THE LOFT LAW), EVEN THOUGH LANDLORD HAS NOT COMPLIED WITH MULTIPLE DWELLING LAW § 285(1) REGARDING MINIMUM HOUSING MAINTENANCE STANDARDS;

THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK v McGRAHAM:

(Cal. Date - 10/12/11)

ARBITRATION - CONFIRMING OR VACATING AWARD - AWARD FINDING TEACHER GUILTY OF SERIOUS MISCONDUCT UNBECOMING A PERSON IN THE POSITION

OF TEACHER AND IMPOSING A PENALTY OF 90 DAYS SUSPENSION WITHOUT PAY AND REASSIGNMENT - CHALLENGE TO APPELLATE DIVISION ORDER HOLDING THAT NO BASIS EXISTED "UPON WHICH [SUPREME] COURT SHOULD HAVE DISTURBED THE HEARING OFFICER'S DETERMINATION" REGARDING THE PENALTY IMPOSED;

CLYDE (RAYMOND), PEOPLE v: (Cal. Date - 10/20/11)

CRIMES - ATTEMPTED RAPE IN THE FIRST DEGREE - SUFFICIENCY OF THE EVIDENCE; TRIAL - PHYSICALLY RESTRAINED DEFENDANT - LEG SHACKLES - APPLICABILITY OF HARMLESS ERROR ANALYSIS; WITNESS - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT THE TRIAL COURT ABUSED ITS DISCRETION IN REFUSING TO PRECLUDE THE PROSECUTOR FROM QUESTIONING MEDICAL EXPERTS ON THE ISSUE WHETHER THE VICTIM'S INJURIES MET THE LEGAL DEFINITIONS OF PHYSICAL INJURY AND SERIOUS PHYSICAL INJURY SET FORTH IN THE PENAL LAW;

COLEMAN v DAINES &c, et al.:

SOCIAL SERVICES - PROCEEDING AGAINST BODY OR OFFICER - PETITION SEEKING RELIEF AS A RESULT OF RESPONDENTS' HANDLING OF PETITIONER'S APPLICATION FOR MEDICAID HOME CARE SERVICES; SOCIAL SERVICES LAW § 133; MOOTNESS - EXCEPTION TO MOOTNESS DOCTRINE; ADMINISTRATIVE LAW - FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES;

COLLINS, MATTER OF v DUKES PLUMBING & SEWER, INC.:

(Cal. Date - 10/18/11)

WORKERS' COMPENSATION - AGGREGATE TRUST FUND - WHETHER THE 2007 AMENDMENTS TO WORKERS' COMPENSATION LAW § 27(2) REQUIRE EMPLOYERS TO DEPOSIT THE PRESENT VALUE OF UNCAPPED PERMANENT PARTIAL DISABILITY (PPD) AWARDS INTO THE AGGREGATE TRUST FUND - APPLICATION TO CLAIMS WITH A DATE OF DISABILITY/INJURY PRIOR TO JULY 1, 2007 BUT WITH A PPD CLASSIFICATION AFTER THAT DATE;

COLVILLE (DELROY), PEOPLE v:

CRIMES - JURORS - JURY INSTRUCTIONS - COUNSEL'S WITHDRAWAL, IN DEFERENCE TO CLIENT'S WISHES, OF REQUEST TO CHARGE MANSLAUGHTER IN THE FIRST AND SECOND DEGREES AS LESSER INCLUDED OFFENSES TO MURDER IN THE SECOND DEGREE - WHETHER THE DECISION TO SUBMIT LESSER INCLUDED OFFENSES TO THE JURY IS A STRATEGIC DECISION TO BE MADE BY COUNSEL OR A FUNDAMENTAL DECISION TO BE MADE BY THE CLIENT - EFFECTIVE ASSISTANCE OF COUNSEL; JUSTIFICATION DEFENSE - DUTY TO RETREAT;

CORSELLO et al. v VERIZON NEW YORK, INC., &c., et al.:

EMINENT DOMAIN - INVERSE CONDEMNATION - MULTI-PROPERTY TELEPHONE SERVICE TERMINALS AFFIXED TO INDIVIDUAL BUILDINGS - WHETHER INDIVIDUAL PROPERTY OWNERS HAVE A CAUSE OF ACTION FOR DAMAGES FOR INVERSE CONDEMNATION OR FOR A VIOLATION OF GENERAL BUSINESS LAW § 349; STATUTE OF LIMITATIONS; PARTIES - CLASS CERTIFICATION;

CPS OPERATING COMPANY LLC v PATHMARK STORES, INC.:

(Cal. Date - 10/11/11)

LANDLORD AND TENANT - LEASE - RIGHT TO SUBLEASE OR ASSIGN - LEASEHOLD ASSIGNMENT CONTRACT BETWEEN COMMERCIAL TENANT AND COMPANY FORMED BY REAL ESTATE DEVELOPER TO ACQUIRE TENANT'S RIGHTS UNDER THE LEASE - COMPANY'S RIGHT TO TERMINATE THE CONTRACT BASED UPON TENANT'S ALLEGED BREACH - WHETHER TENANT WAS REQUIRED TO OBTAIN CITY'S CONSENT TO ASSIGNMENT PURSUANT TO A LAND DISPOSITION AGREEMENT BETWEEN THE CITY AND LANDLORD WHERE SUCH AGREEMENT WAS INCLUDED AS A "PERMITTED EXCEPTION" IN THE LEASEHOLD ASSIGNMENT CONTRACT - EFFECT OF ESTOPPEL CERTIFICATE REQUIREMENT;

CRAMPE (ALEXANDER), PEOPLE v: (Cal. Date - 9/15/11)

CRIMES - RIGHT TO REPRESENTATION PRO SE - RIGHT TO COUNSEL - STANDBY COUNSEL - WHETHER THE TRIAL COURT ERRED IN ALLOWING DEFENDANT TO REPRESENT HIMSELF - WHETHER DEFENDANT'S ACCESS TO STANDBY COUNSEL WAS SO LIMITED AS TO BE AN INFRINGEMENT ON HIS RIGHT TO COUNSEL OR DUE PROCESS;

CREDLE (DONDI), PEOPLE v: (Cal. Date - 9/6/11)

GRAND JURY - RESUBMISSION OF CHARGES - WHETHER THE PEOPLE ARE REQUIRED TO OBTAIN COURT AUTHORIZATION UNDER CPL 190.75 TO PRESENT THE CASE TO A DIFFERENT GRAND JURY WHERE THE PEOPLE WITHDREW A FULLY PRESENTED CASE TO A FIRST GRAND JURY WHICH VOTED "NO AFFIRMATIVE ACTION" (i.e., NOT ENOUGH VOTES TO INDICT OR DISMISS);

CRUZ (GERALDO), PEOPLE v: (Cal. Date - 10/20/11)

TRIAL - PHYSICALLY RESTRAINED DEFENDANT - LEG SHACKLES - WHETHER TRIAL COURT CONDUCTED SUFFICIENT INQUIRY ON FACTS WARRANTING RESTRAINT; JURY NOTE - WHETHER TRIAL COURT GAVE MEANINGFUL RESPONSES TO JURY'S WRITTEN REQUESTS DURING DELIBERATIONS;

CUOMO, PEOPLE &c, By v FIRST AMERICAN CORPORATION, et al.:

(Cal. Date - 10/11/11)

STATUTES - FEDERAL PREEMPTION - RESIDENTIAL REAL ESTATE APPRAISALS - WHETHER (1) THE HOME OWNER'S LENDING ACT OF 1933 (12 USC § 1461 ET SEQ.), (2) THE FINANCIAL INSTITUTIONS REFORM, RECOVERY AND ENFORCEMENT ACT OF 1989 (Pub. L 101-73, 103 Stat 183), AND (3) THE REGULATIONS AND GUIDELINES IMPLEMENTED PURSUANT THERETO PREEMPT STATE REGULATIONS IN THE FIELD OF REAL ESTATE APPRAISALS; ATTORNEY GENERAL - ENJOINING FRAUDULENT OR ILLEGAL ACTS - WHETHER THE COMPLAINT STATES A CAUSE OF ACTION UNDER GENERAL BUSINESS LAW § 349 WITH RESPECT TO ALLEGEDLY FRAUDULENT RESIDENTIAL REAL ESTATE APPRAISALS;



CUSTODI et al. v MUFFOLETTO et al.:

NEGLIGENCE - ASSUMPTION OF RISK - ACTION SEEKING DAMAGES FOR INJURIES SUSTAINED BY PLAINTIFF WHILE ROLLERBLADING WHEN SHE ALLEGEDLY TRIPPED OVER A TWO-INCH HEIGHT DIFFERENTIAL BETWEEN APRON AT END OF INDIVIDUAL DEFENDANTS' DRIVEWAY AND CULVERT THAT SEPARATED DRIVEWAY FROM PUBLIC ROADWAY - WHETHER THE APPELLATE DIVISION ERRED IN CONCLUDING THAT, UNDER THE CIRCUMSTANCES OF THIS CASE, THE DOCTRINE

DAHAR v HOLLAND LADDER & MANUFACTURING CO., et al.:

LABOR - SAFE PLACE TO WORK - PERSONAL INJURY ACTION SEEKING DAMAGES FOR INJURIES ALLEGEDLY SUSTAINED WHEN A PLAINTIFF FELL FROM A LADDER AT HIS EMPLOYER'S SHOP WHILE HE WAS READYING A FABRICATED COMPONENT PART FOR SHIPMENT - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT PLAINTIFF WAS NOT PERFORMING AN ACTIVITY PROTECTED BY LABOR LAW § 240(1) BECAUSE HE WAS ENGAGED IN THE NORMAL MANUFACTURING PROCESS AT A FACTORY AND WAS NOT PERFORMING WORK ON THE BUILDING ITSELF - WHETHER PLAINTIFF'S WORK ON A FABRICATED COMPONENT PART CONSTITUTED THE PROTECTED ACTIVITY OF "CLEANING" A "STRUCTURE" - PLAINTIFF'S ENTITLEMENT TO PARTIAL SUMMARY JUDGMENT ON LIABILITY UNDER LABOR LAW § 240(1) AGAINST OWNER OF PROPERTY AND OWNER OF FABRICATED COMPONENT PART;

DAIS (QUINTON), PEOPLE v:

CRIMES - SENTENCE - WHETHER COURT RESENTENCING DEFENDANT UNDER THE DRUG LAW REFORM ACT HAS AUTHORITY TO ADJUDICATE DEFENDANT A SECOND FELONY DRUG OFFENDER PREVIOUSLY CONVICTED OF A VIOLENT FELONY WHERE DEFENDANT WAS ONLY ADJUDICATED AS A SECOND FELONY OFFENDER AT HIS ORIGINAL SENTENCING PROCEEDING;

DAVIS (MAKEDA), PEOPLE v: (Cal. Date - 9/6/11)

GRAND JURY - RESUBMISSION OF CHARGES - WHETHER THE APPELLATE DIVISION ERRED IN CONCLUDING THAT RESUBMISSION OF DEFENDANT'S CASE TO A SECOND GRAND JURY WITHOUT LEAVE OF COURT VIOLATED CPL 190.75 AND REQUIRED DISMISSAL OF THE INDICTMENT;

DELAMOTA (SEBASTIAN), PEOPLE v: (Cal. Date - 10/11/11)

CRIMES - IDENTIFICATION OF DEFENDANT - EYEWITNESS IDENTIFICATION; SUPPRESSION HEARING;

DICKINSON (ROBERT GUY), PEOPLE v:

CRIMES - RIGHT TO SPEEDY TRIAL - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT A CERTAIN TIME PERIOD WAS "NOT CHARGEABLE TO THE PROSECUTION [FOR SPEEDY TRIAL PURPOSES] BECAUSE THE PARTIES WERE INVOLVED IN ONGOING PLEA DISCUSSIONS AND DEFENDANT [DID] NOT DENY THAT HE AND HIS COUNSEL ACTIVELY PURSUED AND PARTICIPATED IN THESE NEGOTIATIONS";

DOHERTY et al. &c. v MERCHANTS MUTUAL INSURANCE COMPANY:

(Cal. Date - 9/14/11)

INSURANCE - ACTION AGAINST INSURER - ACTION ALLEGING THAT INSURER ACTED IN BAD FAITH BY FAILING TO SETTLE AN UNDERLYING PERSONAL INJURY ACTION WITHIN THE POLICY LIMITS, THEREBY EXPOSING THE DEFENDANT IN THE UNDERLYING ACTION TO PERSONAL LIABILITY FOR THE DIFFERENCE BETWEEN THE VERDICT AMOUNT AND THE POLICY LIMIT; SUMMARY JUDGMENT;

DOMBROWSKI v BULSON:

ATTORNEY AND CLIENT - MALPRACTICE - WRONGFUL CRIMINAL CONVICTION - AVAILABILITY OF NONPECUNIARY DAMAGES FOR PLAINTIFF'S LOSS OF LIBERTY;

DOOMES v BEST TRANSIT, et al. (AND TWO RELATED ACTIONS):

(Cal. Date - 9/14/11)

STATUTES - FEDERAL PREEMPTION - WHETHER THE NATIONAL TRAFFIC AND MOTOR VEHICLE SAFETY ACT OF 1966 AND FEDERAL MOTOR VEHICLE SAFETY STANDARD 208 PREEMPT STATE LAW TORT CLAIMS AGAINST BUS MANUFACTURER FOR FAILURE TO EQUIP BUS WITH PASSENGER SEATBELTS - WHETHER SUFFICIENT EVIDENCE IN THE RECORD SUPPORTED JURY'S FINDING THAT BUS MANUFACTURER WAS LIABLE FOR ACCIDENT BASED UPON ITS LENGTHENING OF BUS CHASSIS, THEREBY CREATING AN IMPROPER DISTRIBUTION OF WEIGHT;

EASTSIDE EXHIBITION CORP. v 210 EAST 86<sup>TH</sup> STREET CORP.:

LANDLORD AND TENANT - EVICTION - UNAUTHORIZED TAKING OF DEMISED PREMISES - RENT ABATEMENT - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT A COMMERCIAL TENANT WHO IS SUBJECTED TO A PARTIAL, ACTUAL EVICTION IS NOT ENTITLED TO A TOTAL RENT ABATEMENT BUT RATHER TO A PARTIAL RENT ABATEMENT IN THE AMOUNT OF ITS ACTUAL DAMAGES;

ECHOSTAR SATELLITE CORP., MATTER OF v TAX APPEALS TRIBUNIAL:

TAXATION - SALES AND USE TAXES - WHETHER SATELLITE TELEVISION PROGRAMMING PROVIDER'S PURCHASES OF EQUIPMENT IT THEN SUPPLIES TO CUSTOMERS TO ALLOW THEM ACCESS TO SATELLITE PROGRAMMING CONSTITUTE PURCHASES FOR RESALE WITHIN THE MEANING OF TAX LAW § 1101(b)(4)(i), WHICH EXEMPTS SUCH PURCHASES FOR RESALE FROM SALES AND USE TAXES;

ELRAC, MATTER OF v EXUM:

INSURANCE - AUTOMOBILE INSURANCE - UNINSURED MOTORIST ENDORSEMENT - EMPLOYEE DRIVING MOTOR VEHICLE OWNED BY SELF-INSURED EMPLOYER IN ACCIDENT WITH UNINSURED MOTORIST - UNINSURED MOTORIST CLAIM ASSERTED BY EMPLOYEE AGAINST EMPLOYER - WHETHER EXCLUSIVITY PROVISIONS OF WORKERS' COMPENSATION LAW PRECLUDE EMPLOYEE FROM ARBITRATING CLAIM AGAINST EMPLOYER;

EXTALE (JAMES), PEOPLE v:

CRIMES - ASSAULT - WHETHER COUNTY COURT ERRED IN ALLOWING THE PROSECUTION TO WITHDRAW THE INDICTMENT COUNT CHARGING DEFENDANT WITH VEHICULAR ASSAULT IN THE FIRST DEGREE;

FEDERAL INSURANCE COMPANY v INTERNATIONAL BUSINESS MACHINES CORP., et al.:

INSURANCE - DUTY TO DEFEND AND INDEMNIFY - EXCESS COVERAGE - WHETHER A BREACH OF FIDUCIARY DUTY IS REQUIRED FOR THE COMMISSION OF A "WRONGFUL ACT" COVERED BY AN EXCESS INSURANCE POLICY WHERE "WRONGFUL ACT" IS DEFINED IN PERTINENT PART AS "ANY BREACH OF THE RESPONSIBILITIES, OBLIGATIONS OR DUTIES BY AN INSURED WHICH ARE IMPOSED UPON A FIDUCIARY OF A BENEFIT PROGRAM BY THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 [ERISA], OR BY THE COMMON OR STATUTORY LAW OF THE UNITED STATES" - ENTITLEMENT TO COVERAGE BY INSURED WHO IS FIDUCIARY OF A BENEFIT PROGRAM BUT WHO WAS NOT ACTING AS FIDUCIARY WITH RESPECT TO ITS ALLEGED BREACH OF ERISA - AMBIGUOUS CONTRACTS;

FLOYD v THE STATE OF NEW YORK DIVISION OF HUMAN RIGHTS:

APPEAL - CHALLENGE TO APPELLATE DIVISION ORDERS REGARDING APPEAL TAKEN FROM A COURT OF CLAIMS ORDER DISMISSING A CLAIM AS UNTIMELY;

FISHER (AARON RICHARD), PEOPLE v:

CRIMES - FAIR TRIAL - COURSE OF SEXUAL CONDUCT AGAINST A CHILD - ALLEGED PROSECUTORIAL MISCONDUCT - PRESERVATION; RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - ALLEGED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL;

FREEMAN (JOHN), PEOPLE v: (Cal. Date - 10/13/11)

CRIMES - ROBBERY - WHETHER STUN GUN USED REPEATEDLY ON ROBBERY VICTIM WAS A "DANGEROUS INSTRUMENT" (PENAL LAW § 160.15[3]); PROOF OF INJURY BASED ONLY ON VICTIM'S TESTIMONY;

FUREY (SCOTT C.), PEOPLE v:

JURY - SELECTION OF JURY - WHETHER TRIAL COURT ERRED IN DENYING DEFENDANT'S CHALLENGE FOR CAUSE OF A PROSPECTIVE JUROR MARRIED TO THE CAPTAIN OF THE POLICE DEPARTMENT AND SOCIALLY ACQUAINTED WITH EIGHT POLICE OFFICERS ON THE PROSECUTION'S WITNESS LIST - WHETHER TRIAL COURT ERRED IN DENYING DEFENDANT'S CHALLENGE FOR CAUSE OF A PROSPECTIVE JUROR WHO WAS UNABLE TO STATE UNEQUIVOCALLY THAT SHE COULD RENDER AN IMPARTIAL VERDICT;

GAMBLE (COREY), PEOPLE v:

CRIMES - EVIDENCE - WHETHER TRIAL COURT ERRED IN PRECLUDING CERTAIN EVIDENCE ABOUT ONE OF THE MURDER VICTIMS; RIGHT TO COUNSEL - WHETHER DEFENDANT WAS DENIED HIS RIGHT TO COUNSEL

WHEN COURT OFFICERS, FOR SECURITY REASONS, WERE SEATED BEHIND DEFENDANT'S CHAIR, WHERE THEY MIGHT HEAR DEFENSE COUNSEL'S CONVERSATION WITH DEFENDANT; ALLEGED MISCONDUCT OF PROSECUTOR DURING TRIAL;

GAMMON (BRIAN), PEOPLE v:

CRIMES - SENTENCE - RESENTENCE OF ADDITIONAL TIME IN JAIL TO REMEDY ERROR BY JAIL PERSONNEL RESULTING IN DEFENDANT'S RELEASE; SEARCH OF THE RECORD BY APPELLATE TERM TO DETERMINE WHAT SENTENCE ORIGINALLY INTENDED BY DISTRICT COURT - CPL 430.10; INCREASE IN SENTENCE BY TRIAL COURT AFTER SENTENCE PRONOUNCED AND AFTER DEFENDANT REMANDED TO CORRECTIONAL FACILITY; DOUBLE JEOPARDY;

GARDNER (DAMIAN), PEOPLE v: (Cal. Date - 9/8/11)

CRIMES - APPEAL - ABSENCE OF DEFENDANT - INVOLUNTARY DEPORTATION - WHETHER THE APPELLATE DIVISION ERRED IN DISMISSING DEFENDANT'S APPEAL ON THE GROUND THAT HE HAD BEEN DEPORTED AND WAS NO LONGER AVAILABLE TO OBEY THE MANDATE OF THE COURT WHERE DEFENDANT SERVED HIS SENTENCE, HAD BEEN PAROLED TO THE CUSTODY OF IMMIGRATION AND CUSTOMS ENFORCEMENT, AND ARGUED ON APPEAL THAT THE EVIDENCE WAS LEGALLY INSUFFICIENT TO SUPPORT HIS CONVICTION;

GAUSE (DERRICK), PEOPLE v:

CRIMES - DOUBLE JEOPARDY - WHETHER DOUBLE JEOPARDY CLAUSES OF STATE AND FEDERAL CONSTITUTIONS BAR APPELLANT'S FURTHER PROSECUTION FOR INTENTIONAL MURDER (NOT CONSIDERED BY THE FIRST JURY) AFTER APPELLATE DIVISION DISMISSED THE DEPRAVED INDIFFERENCE MURDER COUNT UPON WHICH HE WAS CONVICTED; COLLATERAL ESTOPPEL - ACCOMPLICE LIABILITY; EFFECTIVE ASSISTANCE OF COUNSEL;

GEORGE (WILLIAM), PEOPLE v:

CRIMES - RIGHT TO PUBLIC TRIAL - CLOSURE OF COURTROOM - TRIAL COURT EXCLUDED SPECTATORS, INCLUDING DEFENDANT'S MOTHER, FROM THE COURTROOM DURING THE JURY VOIR DIRE DUE TO LACK OF SPACE AND PROXIMITY TO PROSPECTIVE JURORS; PRESERVATION;

GLACIAL AGGREGATES LLC v TOWN OF YORKSHIRE:

MUNICIPAL CORPORATIONS - ZONING - NONCONFORMING USE - CHALLENGE TO APPELLATE DIVISION ORDER HOLDING THAT SUPREME COURT PROPERLY DENIED DEFENDANT'S MOTION TO DISMISS OR FOR SUMMARY JUDGMENT DISMISSING THE AMENDED COMPLAINT - CAUSE OF ACTION PURSUANT TO 42 USC § 1983;

GLOBAL REINSURANCE CORPORATION - U.S. BRANCH &c. v EQUITAS, LTD., et al.:

INSURANCE - REINSURANCE - ACTION BY REINSURANCE COMPANY SEEKING RELIEF FOR, AMONG OTHER THINGS, CONSPIRACY TO VIOLATE NEW YORK'S ANTITRUST LAW (GENERAL BUSINESS LAW § 340 et seq. [THE DONNELLY ACT]), AND INJUNCTIVE RELIEF; RETROCESSIONAL REINSURANCE - CLAIMS HANDLING AND PREMIUMS CHARGED;

GRAVIUS v COUNTY OF ERIE:

DISCLOSURE - EXAMINATION BEFORE TRIAL - MUNICIPAL LAW § 50-h - PLAINTIFF INCARCERATED IN FLORIDA - WHETHER PLAINTIFF'S FAILURE TO COMPLY WITH MUNICIPAL LAW § 50-h WAS EXCUSED BY "EXCEPTIONAL CIRCUMSTANCES"; MUNICIPAL CORPORATIONS - NOTICE OF CLAIM;

GREENBERG, TRAGER & HERBST, LLP v HSBC BANK USA et al.:

(Cal. Date - 9/7/11)

BANKS AND BANKING - COUNTERFEITED BANK CHECK DEPOSITED BY PLAINTIFF LAW FIRM - COLLECTING BANK INVOKED RIGHT TO CHARGE BACK SUM TO PAYOR BANK AFTER ALLEGEDLY ADVISING LAW FIRM THAT CHECK HAD "CLEARED"; UNIFORM COMMERCIAL CODE; DISMISSAL OF LAW FIRM'S ACTION AGAINST BANKS;

GRONSKI, et al. v COUNTY OF MONROE: (Cal. Date - 10/12/11)

NEGLIGENCE - EMPLOYEE OF COMPANY OPERATING RECYCLING FACILITY OWNED BY DEFENDANT COUNTY INJURED AT THE FACILITY - WHETHER COUNTY RETAINED SUFFICIENT CONTROL OVER RECYCLING FACILITY TO INCUR LIABILITY; SUMMARY JUDGMENT - WHETHER PLAINTIFFS RAISED TRIABLE ISSUE OF FACT CONCERNING COUNTY'S CONTROL OVER FACILITY; EFFECT OF DEC PERMIT;

GROVE v CORNELL UNIVERSITY, et al.:

LABOR - SAFE PLACE TO WORK - WHETHER DEFENDANTS WERE ENTITLED TO SUMMARY JUDGMENT DISMISSING PLAINTIFF'S LABOR LAW § 240(1) CLAIM UPON THE GROUND THAT HIS "OWN NEGLIGENT CONDUCT WAS, AS A MATTER OF LAW, THE SOLE PROXIMATE CAUSE OF HIS INJURIES";

GRUCCI v GRUCCI:

TORTS - MALICIOUS PROSECUTION - ELEMENTS REQUISITE TO CAUSE OF ACTION - WHETHER THE APPELLATE DIVISION PROPERLY DETERMINED THAT PLAINTIFF WAS NOT PREJUDICED BY ANY ERROR SUPREME COURT MAY HAVE COMMITTED IN EXCLUDING CERTAIN EVIDENCE - AUDIOTAPE NOT ADMITTED ON THE GROUND THAT IT COULD NOT PROPERLY BE AUTHENTICATED;

GUAY (DEAN), PEOPLE v: (Cal. Date - 10/12/11)

CRIMES - JURORS - SELECTION OF JURY - BATSON CHALLENGE - WHETHER THE TRIAL COURT ERRED IN GRANTING THE PEOPLE'S CHALLENGE FOR CAUSE WITH RESPECT TO PROSPECTIVE JUROR WITH A SLIGHT HEARING IMPAIRMENT - DEFENDANT'S STANDING TO INVOKE THE

AMERICANS WITH DISABILITIES ACT ON PROSPECTIVE JUROR'S BEHALF;  
ALLEGED PROSECUTORIAL MISCONDUCT; ALLEGED INEFFECTIVE  
ASSISTANCE OF TRIAL COUNSEL;

HAFFIZ (FEOID), PEOPLE v:

CRIMES - PLEA OF GUILTY - WITHDRAWAL OF PLEA - ALLEGED  
INEFFECTIVE ASSISTANCE OF COUNSEL BASED ON ATTORNEY'S STATEMENT  
CONCERNING THE DEPORTATION CONSEQUENCES OF DEFENDANT'S GUILTY  
PLEA - VOLUNTARINESS OF GUILTY PLEA;

HAHN AUTOMOTIVE WAREHOUSE, INC. v AMERICAN ZURICH INSURANCE  
COMPANY et al.:

CONTRACTS - BREACH OF CONTRACT - ACTION BY INSURED SEEKING  
DETERMINATION THAT ANY CLAIMS BY INSURERS FOR PAYMENTS PURSUANT  
TO SEVERAL INSURANCE CONTRACTS WERE TIME-BARRED - COUNTERCLAIM  
BY INSURERS SEEKING DETERMINATION THAT INSURERS WERE ENTITLED  
TO SATISFY ANY PART OF INSURED'S OUTSTANDING DEBT FROM  
PREVIOUSLY ISSUED LETTER OF CREDIT - CONSTRUCTION OF CONTRACT  
TERMS; SUMMARY JUDGMENT; STATUTE OF LIMITATIONS;

HALL (MICHAEL), PEOPLE v: (Cal. Date - 10/13/11)

CRIMES - ROBBERY - WHETHER STUN GUN USED REPEATEDLY ON ROBBERY  
VICTIM WAS A "DANGEROUS INSTRUMENT" (PENAL LAW 160.15[3]);  
PROOF OF INJURY BASED ONLY ON VICTIM'S TESTIMONY;

HALSTEAD v BROKAW, et al.:

LIBEL AND SLANDER - ACTIONABLE WORDS - OPINIONS - SUMMARY  
JUDGMENT - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT  
DEFENDANTS MADE A PRIMA FACIE SHOWING OF ENTITLEMENT TO  
JUDGMENT AS A MATTER OF LAW BY ESTABLISHING THAT THEIR ALLEGED  
STATEMENTS CONSTITUTED STATEMENTS OF OPINION RATHER THAN OF  
FACT - WHETHER THE APPELLATE DIVISION HOLDING IS INCONSISTENT  
WITH MANN v ABEL (10 NY3d 217 [2008]) AND STEINHILBER v  
ALPHONSE (68 NY2d 283 [1986]);

HALTER (ROBERT), PEOPLE v:

CRIMES - EVIDENCE - VICTIM'S PRIOR SEXUAL CONDUCT - APPLICATION  
OF RAPE SHIELD LAW (CPL 60.42) - ALLEGED DENIAL OF DEFENDANT'S  
RIGHTS TO CONFRONT ACCUSER AND PRESENT A DEFENSE;

HARDY, MATTER OF v TRICO, et al.:

WORKERS' COMPENSATION - WHETHER THE 2007 AMENDMENTS TO THE  
WORKERS' COMPENSATION LAW REQUIRE EMPLOYERS TO DEPOSIT THE  
PRESENT VALUE OF THE UNCAPPED PERMANENT PARTIAL DISABILITY  
AWARD INTO THE AGGREGATE TRUST FUND FOR CLAIMS WITH DATES OF  
INJURY PRIOR TO MARCH 14, 2007 - WORKERS' COMPENSATION LAW §  
27(2);

HELD, &c., et al. v STATE OF NEW YORK WORKERS' COMPENSATION BOARD:

WORKERS' COMPENSATION - DECLARATORY JUDGMENT ACTION BY EMPLOYER GROUPS THAT HAVE ADOPTED A PLAN FOR SELF INSURANCE UNDER THE WORKERS' COMPENSATION LAW - WHETHER CERTAIN ANNUAL ASSESSMENTS AGAINST PLAINTIFFS TO COVER THE COST OF THE WORKERS' COMPENSATION BOARD'S PAYMENT OF THE COMPENSATION LIABILITIES OF DEFAULTED GROUPS VIOLATE PLAINTIFFS' DUE PROCESS RIGHTS UNDER THE U.S. OR NEW YORK CONSTITUTIONS OR CONSTITUTE UNCONSTITUTIONAL TAKINGS - WORKERS' COMPENSATION LAW § 50(5);

HERRING (CARLOS), PEOPLE v:

CRIMES - JURORS - DISCHARGE OF JUROR - DENIAL OF DEFENDANT'S MOTION FOR MISTRIAL DUE TO JUROR WHO ALLEGEDLY SLEPT DURING TRIAL AND DELIBERATIONS; DISCLOSURE - FAILURE TO PRODUCE ROSARIO MATERIAL - WHETHER A SANCTION HAD TO BE IMPOSED FOR THE LOSS OF NOTES OF A FLORIDA LAW ENFORCEMENT OFFICER AS TO, AMONG OTHER THINGS, THAT OFFICER'S EFFORTS TO LOCATE DEFENDANT; SENTENCE - CONCURRENT AND CONSECUTIVE TERMS - WHETHER SENTENCE ON CONVICTION OF CRIMINAL POSSESSION OF A WEAPON IN THE THIRD DEGREE WAS PROPERLY IMPOSED TO RUN CONSECUTIVELY TO SENTENCE ON CONVICTION OF MURDER IN THE SECOND DEGREE;

HIGHTOWER (JOSEPH), PEOPLE v:

CRIMES - LARCENY - SUFFICIENCY OF FACTUAL ALLEGATIONS IN ACCUSATORY INSTRUMENT CHARGING DEFENDANT WITH PETIT LARCENY (PENAL LAW § 155.05[1]) FOR SELLING A SWIPE ON AN UNLIMITED-FARE METROCARD, THUS ALLOWING THE PURCHASER TO ENTER THE SUBWAY STATION BEYOND THE TURNSTILES WITHOUT PERMISSION OR AUTHORITY TO DO SO;

HOLLAND (DAVID), PEOPLE v:

CRIMES - SUPPRESSION HEARING - EVIDENCE SEIZED AFTER POLICE STOP - WHETHER ANY ALLEGEDLY UNLAWFUL POLICE CONDUCT IN STOPPING AND QUESTIONING DEFENDANT WAS ATTENUATED BY DEFENDANT'S ACTION IN STRIKING ONE OFFICER;

HOLMES (WILLIE, JR.), PEOPLE &c.:

CRIMES - UNLAWFUL SEARCH AND SEIZURE - STANDING - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT THE PEOPLE MAY RAISE THE ISSUE OF STANDING FOR THE FIRST TIME ON APPEAL;

HUSSEIN, &c., et al., MATTER OF v STATE OF NEW YORK:

COURTS - RIPENESS DOCTRINE - APPEAL - ACADEMIC AND MOOT QUESTIONS - ACTION FOR DECLARATORY AND INJUNCTIVE RELIEF BASED UPON CLAIMS THAT PLAINTIFFS' CHILDREN ARE BEING DEPRIVED OF THE RIGHT TO A SOUND BASIC EDUCATION IN VIOLATION OF NY CONSTITUTION, ARTICLE XI, § 1, BECAUSE THE SCHOOL DISTRICTS WHERE THEY ATTEND SCHOOL, ALL OF WHICH ARE LOCATED OUTSIDE NEW YORK CITY, ARE SUBSTANTIALLY UNDERFUNDED - WHETHER PLAINTIFFS'

CLAIMS ARE NOT RIPE FOR REVIEW BECAUSE THEY ARE BASED UPON DATA OBTAINED BEFORE THE ENACTMENT OF EDUCATION AID REFORM LEGISLATION IN 2007 (L 2007, ch 57, as amended) OR ARE MOOT BECAUSE OF THE ENACTMENT OF SUCH LEGISLATION;

IDX CAPITAL, LLC, et al. v PHOENIX PARTNERS GROUP LLC, et al.:  
TORTS - COMPLAINT ALLEGING, AMONG OTHER THINGS, CAUSES OF ACTION FOR TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONSHIP, LIBEL, INJURIOUS FALSEHOOD, AND AIDING AND ABETTING BREACH OF FIDUCIARY DUTIES - WHETHER THE APPELLATE DIVISION CORRECTLY GRANTED SUMMARY JUDGMENT DISMISSING THE COMPLAINT AS TO CERTAIN DEFENDANTS AND DISMISSING CLAIM FOR EARN-OUT DAMAGES AS SPECULATIVE;

IMPERATO v THE MOUNT SINAI MEDICAL CENTER, et al.:  
DISCLOSURE - PRECLUSION ORDER - WHETHER A PARTY PRECLUDED FROM OFFERING EXPERT TESTIMONY AT TRIAL IS REQUIRED TO FILE AN EXPERT AFFIDAVIT OF MERIT TO SUPPORT THE GRANT OF A MOTION TO VACATE THE PRECLUSION ORDER;

INGRAM (TECOY), PEOPLE v:  
CRIMES - UNLAWFUL SEARCH AND SEIZURE - TRAFFIC STOP - WHETHER DRUGS RECOVERED FROM DEFENDANT AND STATEMENTS HE MADE TO POLICE AFTER HIS ARREST FOR FALSE PERSONATION (PENAL LAW § 190.23) SHOULD HAVE BEEN SUPPRESSED UPON THE GROUND THAT HE WAS UNLAWFULLY DETAINED;

JACKSON (SAMUEL), PEOPLE v:  
CRIMES - COMPLAINT - CRIMINAL POSSESSION OF MARIHUANA IN THE FIFTH DEGREE (PENAL LAW § 221.10[1]) - WHETHER ACCUSATORY INSTRUMENT WAS JURISDICTIONALLY DEFECTIVE BECAUSE IT DID NOT ALLEGE THAT THE MARIHUANA WAS "OPEN TO PUBLIC VIEW" OR THAT IT WAS "BURNING" PRIOR TO THE STOP; SEARCH AND SEIZURE;

JOHNSON CITY PROFESSIONAL FIREFIGHTERS LOCAL 921 et al. and VILLAGE OF JOHNSON CITY, MATTER OF (PROCEEDING NO. 1); VILLAGE OF JOHNSON CITY and JOHNSON CITY FIREFIGHTERS ASSOCIATION LOCAL 921 IAFF, MATTER OF (PROCEEDING NO. 2):

(Cal. Date - 10/12/11)

ARBITRATION - MATTERS ARBITRABLE - ARBITRABILITY OF VILLAGE'S ALLEGED VIOLATION OF COLLECTIVE BARGAINING AGREEMENT WITH FIREFIGHTERS UNION PROVIDING THAT THE "VILLAGE SHALL NOT LAY-OFF ANY MEMBER OF THE BARGAINING UNIT DURING THE TERM OF THE CONTRACT" - ALLEGED APPLICATION OF LEGAL STANDARD THAT DOES NOT COMPORT WITH THE STANDARD ANNOUNCED IN YONKERS SCHOOL CROSSING GUARD UNION OF WESTCHESTER CO., CSEA v CITY OF YONKERS (39 NY2d 964 [1976]);



KAHN v NEW YORK CITY DEPARTMENT OF EDUCATION, et al.:  
SCHOOLS - TEACHERS - TERMINATION OF PROBATIONARY EMPLOYMENT -  
TIMELINESS OF CHALLENGE - WHETHER A CPLR ARTICLE 78 PETITION  
CHALLENGING THE TERMINATION OF PROBATIONARY EMPLOYMENT ON  
SUBSTANTIVE GROUNDS IS TIME-BARRED WHERE IT IS NOT COMMENCED  
WITHIN FOUR MONTHS AFTER THE EFFECTIVE DATE OF TERMINATION BUT  
IS COMMENCED WITHIN FOUR MONTHS AFTER THE PETITIONER EXHAUSTS  
AVAILABLE ADMINISTRATIVE REMEDIES;

KANE v GALTIERI:

APPEAL - CHALLENGE TO ORDER DENYING MOTION TO THE EXTENT IT  
SOUGHT WAIVER OF PAYMENT OF THE FILING FEE AND FOR FREE  
TRANSCRIPTS;

KARLSERG, MATTER OF v TAX APPEALS TRIBUNAL OF THE STATE OF NEW  
YORK, et al.:

TAXATION - PERSONAL INCOME TAX - CHALLENGE TO APPELLATE  
DIVISION JUDGMENT THAT, AMONG OTHER THINGS, DECLARED THAT LAX  
LAW § 615(f) WAS NOT SHOWN TO BE UNCONSTITUTIONAL AS APPLIED TO  
PETITIONER AND CONFIRMED THE TAX APPEALS TRIBUNAL'S  
DETERMINATION THAT NEW YORK'S ITEMIZED DEDUCTION FOR GAMBLING  
LOSSES IS REDUCED PURSUANT TO TAX LAW § 615(f) FOR TAXPAYERS  
WITH HIGHER INCOME LEVELS - WHETHER THE DOCTRINE OF FEDERAL  
CONFORMITY APPLIES TO NEW YORK'S TREATMENT OF THE ITEMIZED  
DEDUCTION FOR GAMBLING LOSSES - ALLEGED EQUAL PROTECTION  
VIOLATION;

KEATING (PADRAIC), PEOPLE v:

APPEAL - EFFECTIVENESS OF APPELLATE COUNSEL - DENIAL OF  
APPELLANT'S APPLICATION FOR WRIT OF ERROR CORAM NOBIS;

KELLEY (RICHARD), PEOPLE v:

CRIMES - EVIDENCE - DNA IDENTIFICATION TESTS - WHETHER TRIAL  
COURT ERRED IN (1) ALLOWING DNA EVIDENCE, NOT OBTAINED UNTIL  
AFTER THE PEOPLE HAD COMPLETED THEIR DIRECT CASE, TO BE  
INTRODUCED AGAINST DEFENDANT, AND (2) DENYING DEFENDANT'S  
REQUEST FOR A MISTRIAL - CPL 240.20; EFFECTIVENESS OF DEFENSE  
COUNSEL;

KENT (JAMES D.), PEOPLE v:

CRIMES - PROMOTING (INCLUDING PROCURING) A SEXUAL PERFORMANCE  
BY A CHILD (PENAL LAW § 263.15) - POSSESSING A SEXUAL  
PERFORMANCE BY A CHILD (PENAL LAW § 263.16) - LEGAL SUFFICIENCY  
OF EVIDENCE BASED UPON DIGITAL COMPUTER IMAGES OBTAINED FROM  
DEFENDANT'S WORK COMPUTER; INDICTMENT - AMENDMENT - WHETHER  
AMENDMENT AT CLOSE OF PEOPLE'S CASE TO CHANGE DATE OF CRIME  
RELATING TO CHILD PORNOGRAPHY VIDEO MATERIALLY CHANGED THE  
PROSECUTION'S THEORY THAT DEFENDANT USED HIS OFFICE COMPUTER TO

PROCURE THE VIDEO; RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - WHETHER TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO MOVE TO SUPPRESS EVIDENCE COLLECTED FROM THE HARD DRIVE OF DEFENDANT'S COMPUTER;

KHAN (SALEEM), PEOPLE v:

CRIMES - LARCENY - HEALTH CARE FRAUD - INTERPRETATION OF TERMS "MATERIAL" AND "PERSON" IN HEALTH CARE FRAUD STATUTE (PENAL LAW § 177.00 et seq.) - PRESCRIPTIONS FILLED BY PHARMACY FOR SPOUSE OF PERSON SUBMITTING PRESCRIPTION - SUFFICIENCY OF EVIDENCE FOR CONVICTION UNDER HEALTH CARE FRAUD STATUTE; RIGHT TO SPEEDY TRIAL;

LESHER, MATTER OF v HYNES et al.:

RECORDS - FREEDOM OF INFORMATION LAW (FOIL) - MATERIALS EXEMPT FROM DISCLOSURE - WHETHER DOCUMENTS EXCHANGED BETWEEN DISTRICT ATTORNEY'S OFFICE AND THE FEDERAL GOVERNMENT, WHICH RELATE TO THE EXTRADITION FROM ISRAEL OF INDIVIDUAL INDICTED IN KINGS COUNTY ON MULTIPLE COUNTS OF SEXUAL ABUSE OF A CHILD, ARE EXEMPT FROM DISCLOSURE UNDER PUBLIC OFFICERS LAW § 87(2)(e), AS DOCUMENTS THAT WOULD INTERFERE WITH LAW ENFORCEMENT INVESTIGATIONS OR AS DOCUMENTS SPECIFICALLY EXEMPTED FROM DISCLOSURE BY STATE STATUTE, NAMELY CIVIL RIGHTS LAW § 50-b, WHICH PROHIBITS DISCLOSURE OF DOCUMENTS THAT WOULD IDENTIFY THE VICTIMS OF A SEX OFFENSE;

LIFSON v CITY OF SYRACUSE et al.: (Cal. Date - 9/8/11)

NEGLIGENCE - ACTION ALLEGING THAT DECEDENT WAS KILLED WHEN VEHICLE STRUCK HER WHILE SHE WAS CROSSING THE STREET - EMERGENCY DOCTRINE - WHETHER THE TRIAL COURT ERRED IN GIVING THE JURY AN EMERGENCY DOCTRINE INSTRUCTION WHERE DRIVER ASSERTED THAT HE FAILED TO OBSERVE DECEDENT BECAUSE HE WAS SUDDENLY BLINDED BY SUN GLARE; DISMISSAL OF COMPLAINT AGAINST DRIVER; DECEDENT'S NEGLIGENCE;

LIDEN (SCOTT), PEOPLE v:

CRIMES - SEX OFFENDERS - SEX OFFENDER REGISTRATION ACT - DETERMINATION BY BOARD OF EXAMINERS OF SEX OFFENDERS (BOARD) THAT PERSON MUST REGISTER AS A SEX OFFENDER ON THE BASIS OF AN OUT-OF-STATE CONVICTION - WHETHER THE APPELLATE DIVISION ERRED IN CONCLUDING THAT THE BOARD'S DETERMINATION IS REVIEWABLE ONLY IN A CPLR ARTICLE 78 PROCEEDING AND THAT SUPREME COURT LACKED JURISDICTION TO MAKE A DIFFERENT DETERMINATION WITH RESPECT TO THE REGISTRATION REQUIREMENT - ALLEGED DUE PROCESS AND EQUAL PROTECTION VIOLATIONS; CHALLENGE TO RELIABILITY OF HEARSAY EVIDENCE SUPPORTING A LEVEL THREE DESIGNATION;

LUYSTER CREEK LLC, MATTER OF v NEW YORK STATE PUBLIC SERVICE COMMISSION et al.:

PUBLIC UTILITIES - PUBLIC SERVICE COMMISSION (PSC) - PROPERTY TRANSFER ORDER - CHALLENGE TO PSC DETERMINATION CONFIRMING THAT THE DEVELOPMENT OF CERTAIN REAL PROPERTY AS AN ENVELOPE MANUFACTURING FACILITY WAS AN ESSENTIAL FACTOR UNDERLYING THE PUBLIC INTEREST FINDING IN PSC'S PRIOR ORDER APPROVING THE TRANSFER OF THE PROPERTY - PSC'S CONSIDERATION OF ECONOMIC DEVELOPMENT BENEFITS - SCOPE OF PSC'S STATUTORY AUTHORITY;

MACK (JASON), PEOPLE v:

CRIMES - INDICTMENT - SUFFICIENCY OF EVIDENCE BEFORE GRAND JURY - SEXUAL ABUSE IN THE FIRST DEGREE - SUFFICIENCY OF EVIDENCE OF FORCIBLE COMPULSION;

MAKI v BASSETT HEALTHCARE, et al.:

CONTEMPT - APPELLATE DIVISION DENIED APPELLANT'S MOTION FOR CONTEMPT;

MAKI v BASSETT HEALTHCARE et al.:

JUDGMENTS - SUMMARY JUDGMENT - CHALLENGE TO APPELLATE DIVISION ORDER THAT AFFIRMED THE GRANT OF SUMMARY JUDGMENT DISMISSING THE COMPLAINT AGAINST DEFENDANTS IN AN ACTION ALLEGING A VARIETY OF NEGLIGENCE-BASED AND INTENTIONAL TORTS, AND THAT AFFIRMED THE DENIAL OF PLAINTIFF'S MOTION FOR, AMONG OTHER THINGS, RECUSAL; CHALLENGE TO APPELLATE DIVISION ORDERS DENYING MOTIONS FOR SUMMARY JUDGMENT, A DECLARATORY JUDGMENT AND BIFURCATION;

MANKO v LENOX HILL ANESTHESIOLOGY PLLC:

APPEAL - CHALLENGE TO APPELLATE DIVISION ORDER THAT, AMONG OTHER THINGS, DISMISSED PLAINTIFF'S APPEAL ON THE COURT'S OWN MOTION FOR FAILURE TO COMPLY WITH THE COURT'S RULES AND PRIOR ORDER;

MARTINO v STOLZMAN, et al. (AND ANOTHER ACTION):

MOTOR VEHICLES - COLLISION - DUTY OF SOCIAL HOSTS TO CONTROL AND SUPERVISE INTOXICATED GUESTS LEAVING THEIR PREMISES; NEGLIGENCE; DISMISSAL OF CLAIMS;

McALPIN (CHRIS), PEOPLE v: (Cal. Date - 10/20/11)

CRIMES - PLEA OF GUILTY - VACATUR - POST-RELEASE SUPERVISION (PRS) - WHETHER COURT WAS REQUIRED TO ADVISE DEFENDANT OF PRS DURING PLEA ALLOCUTION WHERE DEFENDANT WAS TOLD THAT HE WOULD RECEIVE A "DEFERRED SENTENCE" WITH A POSSIBILITY OF PROBATION AND YOUTHFUL OFFENDER TREATMENT IF HE ENROLLED IN AND SUCCESSFULLY COMPLETED A CERTAIN PROGRAM OR, IF HE FAILED TO DO SO OR WAS ARRESTED FOR ANOTHER CRIME IN THE INTERIM, THAT HE WOULD BE SENTENCED TO A MINIMUM OF THREE YEARS AND A MAXIMUM OF

15 YEARS IN PRISON - COLLATERAL OR DIRECT CONSEQUENCES OF PLEA;  
PRESERVATION - WAIVER - SUFFICIENCY OF RECORD FOR APPELLATE  
REVIEW;

McCABE et al. v ST. PAUL FIRE AND MARINE INSURANCE COMPANY:  
INSURANCE - DUTY TO DEFEND AND INDEMNIFY - INSURANCE COMPANY'S  
OBLIGATION UNDER A CLAIMS-MADE PROFESSIONAL LIABILITY POLICY TO  
INDEMNIFY ATTORNEY IN UNDERLYING MALPRACTICE ACTION - WHETHER  
INSURANCE LAW § 3240(a)(4) APPLIES TO THE REPORTING REQUIREMENT  
CONTAINED IN A CLAIMS-MADE POLICY SO THAT COVERAGE EXISTS EVEN  
THOUGH THE CLAIM WAS REPORTED TO THE INSURANCE COMPANY ONLY  
AFTER THE POLICY PERIOD EXPIRED;

McCAIN v STATE OF NEW YORK:  
APPEAL - APPELLATE DIVISION - DENIAL OF MOTION TO WAIVE PAYMENT  
OF FILING FEE AND FOR FREE TRANSCRIPTS;

McDOUGALL, MATTER OF v SCOPPETTA:  
CIVIL SERVICE - FIREFIGHTERS - DISCIPLINARY PROCEEDINGS -  
WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT THE  
TERMINATION OF PETITIONER'S EMPLOYMENT AS A FIREFIGHTER AND THE  
ATTENDANT FORFEITURE OF HIS PENSION AFTER TESTING POSITIVE FOR  
THE PRESENCE OF COCAINE IN HIS SYSTEM WAS SO DISPROPORTIONATE  
TO THE OFFENSE THAT IT SHOCKS THE JUDICIAL CONSCIENCE - PENALTY  
FOR VIOLATING FIRE DEPARTMENT'S "ZERO TOLERANCE" POLICY  
REGARDING THE USE OF PROHIBITED SUBSTANCES;

McINTOSH (FAYOLA), PEOPLE v: (Cal. Date - 9/6/11)  
GRAND JURY - RESUBMISSION OF CHARGES - WHETHER THE PEOPLE ARE  
REQUIRED TO OBTAIN COURT AUTHORIZATION UNDER CPL 190.75 TO  
PRESENT THE CASE TO A DIFFERENT GRAND JURY WHERE THE PEOPLE  
WITHDREW THE CASE PRESENTED TO A FIRST GRAND JURY DUE TO  
WITNESS UNAVAILABILITY;

McMANUS, PEOPLE ex rel. v HORN:  
BAIL - RIGHT TO BAIL - RIGHT TO HAVE BAIL SET WITH AT LEAST TWO  
FORMS OF PAYMENT SPECIFIED - WHETHER CPL 520.10(2) LIMITS THE  
DISCRETION OF A JUDGE TO DIRECT THAT BAIL BE POSTED IN ONE FORM  
ONLY - "CASH ONLY" BAIL;

MEDINA (JUAN), PEOPLE v:  
CRIMES - INSTRUCTIONS - CHALLENGE TO INSTRUCTION NOT CONTAINING  
THE STATUTORY DEFINITIONS OF "DEPRIVE" AND "APPROPRIATE" SET  
FORTH IN SUBDIVISIONS (3) AND (4) OF PENAL LAW § 155.00; TRIAL  
- MISTRIAL - CHALLENGE TO APPELLATE DIVISION HOLDINGS THAT  
TRIAL COURT PROPERLY EXERCISED ITS DISCRETION (1) "WHEN IT  
DENIED DEFENDANT'S MISTRIAL MOTIONS MADE AFTER NOTES FROM  
DELIBERATING JURY INDICATED IT WAS DEADLOCKED ... AND INSTEAD

DELIVERED SEVERAL ALLEN CHARGES" AND (2) "BY NOT ASKING THE JURY ABOUT THE LIKELIHOOD OF A VERDICT OR CONDUCTING A SEPARATE COLLOQUY WITH A POSSIBLE HOLDOUT JUROR";

MILLER (JEFFREY H.), PEOPLE v.:

CRIMES - JURORS - JURY INSTRUCTIONS - WHETHER ANNOTATIONS ON THE VERDICT SHEET INSTRUCTING THE JURY THAT, IF IT CONVICTED DEFENDANT OF INTERNATIONAL MURDER, IT WAS TO DETERMINE WHETHER "THE DEFENDANT ESTABLISHED BY A PREPONDERANCE OF THE EVIDENCE THAT HE ACTED UNDER EXTREME EMOTIONAL DISTURBANCE," EXCEEDED THE BOUNDS OF CPL 310.20(2) - IF SO, WHETHER THE CORRECT REMEDY WAS REVERSAL OF THE COUNTS UNRELATED TO THE MURDER CHARGE; HARMLESS ERROR;

MIRVISH v MOTT, &c., et al.:

GIFTS - INTER VIVOS GIFT - DEAD MAN'S STATUTE - TESTIMONY BY PERSON FROM WHOM PETITIONER DERIVES INTEREST AS EVIDENCE OF GIFT DELIVERY - CHALLENGE TO APPELLATE DIVISION RULING THAT SUCH TESTIMONY WAS INADMISSIBLE UNDER CPLR 4519 AND COULD NOT BE USED TO SUPPORT PETITIONER'S MOTION FOR SUMMARY JUDGMENT - EFFECT OF HANDWRITING ON BACK OF PHOTOGRAPH OF SCULPTURE BY WHICH DECEDENT PURPORTEDLY GAVE THE SCULPTURE TO PETITIONER'S ASSIGNOR; LIMITATION OF ACTIONS - WHETHER PETITIONER'S CONVERSION CLAIM IS BARRED BY THE APPLICABLE THREE-YEAR STATUTE OF LIMITATIONS;

MOUNT VERNON CITY SCHOOL DISTRICT v NOVA CASUALTY COMPANY:

CONTRACTS - PUBLIC WORKS CONTRACTS - BONDS - PERFORMANCE BOND - ACTION ALLEGING THAT DEFENDANT CASUALTY COMPANY BREACHED PERFORMANCE BOND PROCURED FROM IT BY CONTRACTOR THAT PERFORMED CERTAIN WORK FOR PLAINTIFF SCHOOL DISTRICT BUT FAILED TO COMPLETE ALL CONTRACT WORK - WHETHER CASUALTY COMPANY WAS ENTITLED TO SUMMARY JUDGMENT ON ITS DEFENSE THAT PLAINTIFF'S PAYMENT TO THE DEPARTMENT OF LABOR (DOL) OF \$214,000 EARNED BY CONTRACTOR, MADE TO DOL TO SATISFY UNPAID WAGE CLAIMS ON AN UNRELATED PROJECT INVOLVING ANOTHER SCHOOL DISTRICT, CONSTITUTED A FORBIDDEN DIVERSION OF TRUST FUND ASSETS UNDER LIEN LAW ARTICLE 3-a THAT DISCHARGED CASUALTY COMPANY OF ITS OBLIGATIONS UNDER THE PERFORMANCE BOND; WHETHER PLAINTIFF'S \$214,000 PAYMENT TO DOL CONSTITUTED A REDUCTION OF THE BALANCE OF THE CONTRACT PRICE IN VIOLATION OF THE TERMS OF THE PERFORMANCE BOND; "PYRAMIDING" BY CONTRACTOR; DAMAGES - COUNSEL FEES - WHETHER CONSTRUCTION CONTRACT AND/OR PERFORMANCE BOND ENTITLED PLAINTIFF SCHOOL DISTRICT TO AWARD OF ATTORNEYS' FEES INCURRED IN THIS LITIGATION;

MUHAMMAD (SHAHID), PEOPLE v.: (Cal. Date - 9/13/11)

CRIMES - VERDICT - WHETHER JURY VERDICT FINDING DEFENDANT GUILTY OF ASSAULT IN THE FIRST DEGREE IN CONNECTION WITH THE USE OF A WEAPON WHILE SIMULTANEOUSLY FINDING DEFENDANT NOT

GUILTY OF CRIMINAL POSSESSION OF A WEAPON IS REPUGNANT; EXPERT WITNESS - DENIAL OF DEFENDANT'S REQUEST TO PRESENT EXPERT TESTIMONY ON THE RELIABILITY OF EYEWITNESS IDENTIFICATION;

NASH, MATTER OF v BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK:

LIMITATION OF ACTIONS - FOUR-MONTH STATUTE OF LIMITATIONS - CHALLENGE TO TERMINATION OF PROBATIONARY EMPLOYMENT - TIMELINESS OF CHALLENGE - WHETHER A CPLR ARTICLE 78 PETITION CHALLENGING THE TERMINATION OF PROBATIONARY EMPLOYMENT ON SUBSTANTIVE GROUNDS IS TIME-BARRED WHERE IT IS NOT COMMENCED WITHIN FOUR MONTHS AFTER THE EFFECTIVE DATE OF TERMINATION BUT IS COMMENCED WITHIN FOUR MONTHS AFTER THE PETITIONER EXHAUSTS AVAILABLE ADMINISTRATIVE REMEDIES;

NERONI (FREDERICK J.), MATTER OF, A DISBARRED ATTORNEY:

ATTORNEY AND CLIENT - DISCIPLINARY PROCEEDINGS - CHALLENGE TO APPELLATE DIVISION ORDERS THAT DENIED RESPONDENT ATTORNEY'S MOTIONS TO VACATE PRIOR APPELLATE DIVISION ORDERS AND DISBARRED HIM;

NEW YORK CITY HEALTH & HOSPITALS CORPORATION, MATTER OF v NEW YORK STATE COMMISSION ON CORRECTION:

PRISONS AND PRISONERS - COMMISSION OF CORRECTION - SUBPOENA SEEKING MEDICAL RECORDS OF DECEASED INMATE - WHETHER THE PHYSICIAN-PATIENT PRIVILEGE IN CPLR 4504 PROTECTS THE MEDICAL RECORDS OF A DECEASED INMATE FROM DISCLOSURE TO A STATE AGENCY THAT SUBPOENAED SUCH RECORDS PURSUANT TO ITS STATUTORILY-MANDATED INVESTIGATIVE FUNCTIONS INTO THE CAUSE OF AND CIRCUMSTANCES SURROUNDING AN INMATE'S DEATH - CORRECTION LAW § 47;

NEW YORK COALITION FOR QUALITY ASSISTED LIVING, INC. v MFY LEGAL SERVICES, INC., et al.: (Cal. Date - 9/6/11)

HEALTH - ADULT CARE FACILITIES - ACTION BY ASSOCIATION OF MEMBERS WHO OPERATE ASSISTED LIVING FACILITIES AND ADULT HOMES FOR A DECLARATION THAT ITS PROPOSED GUIDELINES FOR VISITOR ACCESS ARE ENFORCEABLE IN ADULT CARE FACILITIES;

NEW YORK STATE PSYCHIATRIC ASSOCIATION, et al. v NEW YORK STATE DEPARTMENT OF HEALTH:

HEALTH - MEDICARE REIMBURSEMENT - CONSTITUTIONALITY OF PROVISIONS IN THE 2008 BUDGET BILL (L 2008, Ch 58, part C) PROVIDING THAT LICENSED PSYCHIATRISTS ARE NOT ENTITLED TO BE PAID THE FULL MEDICARE PART B COINSURANCE AMOUNT FOR SERVICES RENDERED BETWEEN APRIL 1, 2007 AND APRIL 11, 2008 TO CERTAIN INDIVIDUALS WHO ARE ELIGIBLE FOR BOTH MEDICAID AND MEDICARE BENEFITS AND/OR FOR CLAIMS PROCESSED BETWEEN APRIL 1, 2007 AND APRIL 11, 2008;

NEW YORK STATE SUPERFUND COALITION, INC., MATTER OF v NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION:

ENVIRONMENTAL CONSERVATION - HAZARDOUS WASTE - VALIDITY OF REGULATION - WHETHER RESPONDENT DEPARTMENT OF ENVIRONMENTAL CONSERVATION EXCEEDED ITS AUTHORITY IN PROMULGATING 6 NYCRR 375-2.8(a) AND 375-1.8(f)(9) - REGULATIONS WITH A STATED GOAL OF RESTORING CONTAMINATED INACTIVE HAZARDOUS WASTE SITES TO "PRE-DISPOSAL CONDITIONS" - WHETHER APPELLATE DIVISION CORRECTLY DEFERRED TO AGENCY INTERPRETATION OF STATUTE;

NORTH SYRACUSE CENTRAL SCHOOL DISTRICT, MATTER OF v NEW YORK STATE DIVISION OF HUMAN RIGHTS:

CIVIL RIGHTS - DISCRIMINATION BASED ON RACE AND DISABILITY - CPLR ARTICLE 78 PROCEEDING TO PROHIBIT THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (NYSDDR) FROM HOLDING A HEARING ON A DISCRIMINATION COMPLAINT FILED ON BEHALF OF A STUDENT AGAINST THE SCHOOL DISTRICT - WHETHER THE SCHOOL DISTRICT MUST EXHAUST ALL ADMINISTRATIVE REMEDIES PRIOR TO SEEKING JUDICIAL RELIEF - EXECUTIVE LAW § 296(4);

FORECLOSURE OF TAX LIENS BY ORANGE COUNTY COMMISSIONER OF FINANCE, MATTER OF v HELSETH:

TAXATION - TAX LIENS - FORECLOSURE OF TAX LIENS - ADEQUACY OF NOTICE TO FORMER PROPERTY OWNERS OF OPPORTUNITY TO PAY DELINQUENT REAL PROPERTY TAXES AND FEES TO RELEASE THE COUNTY'S INTEREST IN THE FORECLOSED PROPERTY;

OMOWALE (AKINLOWO), PEOPLE v:

CRIMES - UNLAWFUL SEARCH AND SEIZURE - WHETHER THE POLICE HAD PROBABLE CAUSE TO ARREST DEFENDANT FOR FALSE IMPERSONATION; SEARCH OF VEHICLE'S;

ORTIZ v VARSITY HOLDINGS, LLC, et al.:

LABOR - SAFE PLACE TO WORK - RENOVATION LABORER INJURED IN FALL FROM DUMPSTER LEDGE - WHETHER WORKER WAS ENGAGED IN A PROTECTED ACTIVITY UNDER LABOR LAW § 240(1); SUMMARY JUDGMENT;

OVADIA, et al., MATTER OF v OFFICE OF THE INDUSTRIAL BOARD OF APPEALS, et al.:

EMPLOYMENT RELATIONSHIPS - WAGES - CPLR ARTICLE 78 PROCEEDING TO REVIEW DETERMINATION OF THE INDUSTRIAL BOARD OF APPEALS AFFIRMING AN ORDER OF THE COMMISSIONER OF LABOR DIRECTING PETITIONERS TO PAY THE CLAIMANTS' UNPAID WAGES - WHETHER THE GENERAL CONTRACTOR ON A PRIVATE CONSTRUCTION SITE WAS THE "EMPLOYER" OF A SUBCONTRACTOR'S WORKERS AND THEREFORE LIABLE TO THOSE WORKERS FOR UNPAID WAGES WHEN THE SUBCONTRACTOR DISAPPEARED;

OVITZ v BLOOMBERG, L.P., et al.:

CONTRACTS - AUTOMATIC RENEWAL OF SUBSCRIBER CONTRACT - WHETHER A PRIVATE RIGHT OF ACTION EXISTS PURSUANT TO GENERAL OBLIGATIONS LAW §§ 5-901 AND 5-903 REGARDING REQUIRED RENEWAL NOTICE, AND WHETHER PLAINTIFF STATED A CLAIM UNDER GENERAL BUSINESS LAW § 349 WHERE PLAINTIFF WAS NOT DECEIVED IN NEW YORK; CLASS ACTION;

PAGAN (DEBRA), PEOPLE v:

CRIMES - ROBBERY - FORCIBLE TAKING OF CASH - LEGAL SUFFICIENCY OF EVIDENCE OF INTENT WHERE DEFENDANT ASSERTS THAT SHE FOUGHT WITH CAB DRIVER FOR MONEY UNDER THE MISTAKEN BELIEF THAT IT BELONGED TO HER - "NEGATIVE CLAIM OF RIGHT" CHARGE - TRIAL COURT'S ALLEGED ERROR IN CHARGING THE JURY THAT "THE LAW DOES NOT PERMIT ONE PERSON TO USE FORCE TO TAKE MONEY FROM ANOTHER PERSON, EVEN WHERE THE PERSON DOING THE TAKING HONESTLY BELIEVES HE OR SHE IS ENTITLED TO THE MONEY," AND IN DENYING DEFENDANT'S REQUEST FOR AN INSTRUCTION THAT WOULD ALLOW THE JURY TO FIND THAT DEFENDANT'S MISTAKE OF FACT AS TO THE OWNERSHIP OF THE MONEY NEGATED THE ELEMENT OF INTENT - PENAL LAW § 15.20(1)(a), § 155.15(1);

PAGAN (JORGE), PEOPLE v:

CRIMES - UNLAWFUL SEARCH AND SEIZURE - ORDER ENLARGING CONDITIONS OF PROBATION TO INCLUDE WARRANTLESS SEARCHES OF DEFENDANT'S HOME - CPL 410.20 and 410.50(3) - ISSUANCE OF HOME SEARCH ORDER IN ABSENCE OF REASONABLE CAUSE TO BELIEVE THAT DEFENDANT VIOLATED CONDITIONS OF PROBATION;

PARADA (LUIS), PEOPLE v: (Cal. Date - 9/7/11)

CRIMES - SEXUAL CONDUCT AGAINST A CHILD - ADMISSIBILITY OF STATEMENTS OF CHILD TO NURSE EXAMINER DURING EXAMINATION REQUESTED BY PROSECUTOR MORE THAN ONE YEAR AFTER ALLEGED ABUSE - WHETHER STATEMENTS MADE BY CHILD TO AUNT AND COUSIN WERE ADMISSIBLE UNDER THE "PROMPT OUTCRY" HEARSAY EXCEPTION - WHETHER DEFENSE COUNSEL'S CROSS-EXAMINATION OF POLICE DETECTIVE OPENED THE DOOR TO THE ENTIRETY OF THE CHILD'S STATEMENT TO THE DETECTIVE; EXPERT TESTIMONY REGARDING CONSISTENCY OF VICTIM'S BEHAVIOR WITH THAT OF ABUSE VICTIMS; HARMLESS ERROR;

PARKHURST, MATTER OF v UNITED RENTALS AERIAL EQUIPMENT, INC. et al.:

(Cal. Date - 10/18/11)

WORKERS' COMPENSATION - WHETHER THE 2007 AMENDMENTS TO THE WORKERS' COMPENSATION LAW REQUIRE EMPLOYERS TO DEPOSIT THE PRESENT VALUE OF THE UNCAPPED PERMANENT PARTIAL DISABILITY AWARD INTO THE AGGREGATE TRUST FUND - WORKERS' COMPENSATION LAW § 27(2);



PERINO (CHRISTOPHER), PEOPLE v:

CRIMES - PERJURY - MATERIALITY OF PERJURED TESTIMONY BY DEFENDANT FORMER POLICE OFFICER REGARDING HIS QUESTIONING OF A SUSPECT - PENAL LAW § 210.05; INTENT - SUFFICIENCY OF EVIDENCE OF DEFENDANT'S INTENT TO COMMIT PERJURY;

PERL, et al. v MEHER, et al.:

INSURANCE - NO-FAULT AUTOMOBILE INSURANCE - SERIOUS INJURY - WHETHER THE AFFIDAVIT OF PLAINTIFF'S TREATING PHYSICIAN RAISED A QUESTION OF FACT TO DEFEAT SUMMARY JUDGMENT IN PERSONAL INJURY ACTION ARISING OUT OF MOTOR VEHICLE ACCIDENT - "SERIOUS INJURY" WITHIN THE MEANING OF INSURANCE LAW § 5102(d); SUMMARY JUDGMENT; DISMISSAL AND NONSUIT;

PERRY (JAMES), PEOPLE v:

CRIMES - JURORS - JURY INSTRUCTIONS - WHETHER THE TRIAL COURT ERRED IN DENYING DEFENDANT'S REQUEST TO CHARGE CRIMINAL POSSESSION OF A WEAPON IN THE FOURTH DEGREE AS A LESSER INCLUDED OFFENSE OF CRIMINAL POSSESSION OF A WEAPON IN THE SECOND DEGREE;

PESA, et al. v YOMA DEVELOPMENT GROUP, INC., et al.:

CONTRACTS - BREACH OF CONTRACT - REAL ESTATE PURCHASE AGREEMENTS - WHETHER BUYERS ARE REQUIRED TO PROVE THAT THEY WERE READY, WILLING AND ABLE TO PERFORM UNDER THE CONTRACTS IN ORDER TO SUCCEED IN AN ACTION SEEKING DAMAGES FOR SELLER'S ANTICIPATORY BREACH;

PORCO (CHRISTOPHER), PEOPLE v: (Cal. Date - 9/13/11)

CRIMES - EVIDENCE - WHETHER TRIAL COURT ERRED IN ADMITTING TESTIMONY CONCERNING VICTIM'S HEAD NOD IN RESPONSE TO POLICE INQUIRY AT CRIME SCENE AND TESTIMONY CONCERNING AN ALLEGED PRIOR "STAGED BURGLARY" BY DEFENDANT - WHETHER TRIAL COURT ERRED IN FAILING TO CONDUCT A HEARING REGARDING EVIDENCE CHALLENGED AS DERIVED FROM DEFENDANT'S SUPPRESSED STATEMENT TO THE POLICE; CLAIMED PROSECUTORIAL MISCONDUCT;

POSNER v LEWIS et al.:

TORTS - PRIMA FACIE TORT - TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS - CLAIM FOR DAMAGES AS A RESULT OF DENIAL OF ELEMENTARY SCHOOL TEACHER'S APPLICATION FOR TENURE;

PUTNAM/NORTHERN WESTCHESTER BOCES, MATTER OF v WESTCHESTER COUNTY HUMAN RIGHTS COMMISSION et al.:

CIVIL RIGHTS - DISCRIMINATION BASED ON MARITAL STATUS - HEALTH PLAN PROVIDING BENEFITS ONLY TO SAME-SEX DOMESTIC PARTNERS - DISCRIMINATION AGAINST OPPOSITE-SEX DOMESTIC PARTNERS - CHALLENGE TO APPELLATE DIVISION RULING THAT (1) COMPLAINANT FAILED TO MEET HER BURDEN TO ESTABLISH A PRIMA FACIE CASE OF DISCRIMINATION

BASED UPON MARITAL STATUS BECAUSE ELIGIBILITY FOR DOMESTIC PARTNER HEALTH CARE BENEFITS DID NOT TURN ON EMPLOYEES' MARITAL STATUS, AND (2) HEALTH PLAN MET ITS BURDEN TO SET FORTH A LEGITIMATE, NONDISCRIMINATORY REASON FOR EXTENDING DOMESTIC PARTNER BENEFITS ONLY TO SAME-SEX COUPLES WHERE THE REASON WAS THAT, UNLIKE OPPOSITE-SEX DOMESTIC PARTNERS, SAME-SEX DOMESTIC PARTNERS CANNOT OBTAIN BENEFITS OFFERED TO EMPLOYEES' SPOUSES BY BECOMING LAWFULLY MARRIED IN THIS STATE;

QOSHJA (ERMAL), PEOPLE v: (Cal. Date - 10/13/11)

CRIMES - APPEAL - APPEAL WAIVER DOCUMENTS EXECUTED IN CONNECTION WITH GUILTY PLEA - APPELLATE DIVISION DID NOT SPECIFY WHETHER ITS AFFIRMANCE OF DEFENDANT'S JUDGMENT OF CONVICTION AND SENTENCE WAS BASED ON THE VALIDITY OF THE APPEAL WAIVER OR ITS REVIEW AND REJECTION OF DEFENDANT'S SUBSTANTIVE CLAIM REGARDING HIS SENTENCE;

QUINTO (SANTOS), PEOPLE v:

CRIMES - TIMELINESS OF PROSECUTION - TOLL APPLICABLE TO SEX CRIMES AGAINST CHILD LESS THAN 18 YEARS OLD (CPL 30.10[3][f]) - WHETHER COMPLAINANT "REPORTED" THE SEX CRIMES CHARGED IN THE INDICTMENT IN 2002 WHEN SHE FALSELY TOLD POLICE, INITIALLY, THAT ONE OF HER CLASSMATES RAPED HER AND, THEREAFTER, THAT SHE HAD CONSENSUAL SEX WITH THAT CLASSMATE - TOLL DURING PERIOD WHEN WHEREABOUTS OF DEFENDANT CONTINUOUSLY UNKNOWN AND UNASCERTAINABLE BY THE EXERCISE OF REASONABLE DILIGENCE (CPL 30.10[4][a][ii]) - CHALLENGE TO APPELLATE DIVISION HOLDING THAT TOLL PROVIDED BY CPL 30.10[4][a][ii] WAS INAPPLICABLE TO NON-SEX-RELATED MISDEMEANORS AND VIOLATIONS;

RAMIREZ v SHOATS:

NEGLIGENCE - PLAINTIFF INJURED WHEN PIECE OF CORRUGATED METAL COVERING THE UNFINISHED LANDING OF A NEWLY CONSTRUCTED STAIRWAY SLIPPED UNDER HIS FEET, CAUSING HIM TO FALL TO THE BASEMENT LEVEL OF A BUILDING UNDER CONSTRUCTION - WHETHER STAIRWAY WAS PLAINTIFF'S SOLE MEANS OF ACCESS TO AND FROM HIS WORK AREA AND THUS WAS A SAFETY DEVICE WITHIN THE MEANING OF LABOR LAW § 240(1); RECALCITRANT WORKER; SUMMARY JUDGMENT;

RAMOS (LUIS), PEOPLE v:

CRIMES - MANSLAUGHTER - SUFFICIENCY OF THE EVIDENCE TO ESTABLISH DEFENDANT'S GUILT OF MANSLAUGHTER IN THE FIRST DEGREE (PENAL LAW § 125.20[1]);

REDFORD et al. v CUOMO and BITTON, et al.:

STATE - CLAIM AGAINST STATE - CHALLENGE TO ORDERS OF COURT OF CLAIMS DISMISSING VARIOUS CLAIMS;

REGIONAL ECONOMIC COMMUNITY ACTION PROGRAM, INC. v ENLARGED CITY SCHOOL DISTRICT OF MIDDLETOWN:

TAXATION - ASSESSMENT - ACTION TO RECOVER TAXES PAID TO SCHOOL DISTRICT PURSUANT TO ILLEGAL ASSESSMENT - TAXES PAID UNDER LETTER THAT PROTESTED ONLY CITY TAX PAYMENTS, NOT SCHOOL DISTRICT TAX PAYMENTS - EDUCATION LAW § 3813;

REID (LAMARR), PEOPLE v:

CRIMES - RIGHT OF CONFRONTATION - ALLEGED BRUTON VIOLATION - WHETHER DEFENDANT OPENED THE DOOR TO ADMISSION OF TESTIMONY THAT OTHERWISE WOULD HAVE BEEN BARRED BY THE CONFRONTATION CLAUSE;

RIVERS (SHERMAN), PEOPLE v: (Cal. Date - 10/20/11)

CRIMES - HARMLESS AND PREJUDICIAL ERROR - MOLINEAUX ERROR - FIRE MARSHAL'S TESTIMONY REGARDING THE ORIGIN OF A FIRE;

ROBERTS &c, et al. v PATERSON &c, et al.:

INJUNCTIONS - PRELIMINARY INJUNCTION - LIKELIHOOD OF SUCCESS ON THE MERITS - WHETHER SUPREME COURT PROPERLY DENIED PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION REQUIRING DEFENDANTS TO FUND HEALTH INSURANCE BENEFITS FOR RETIREES OF THE NEW YORK CITY OFF-TRACK BETTING CORPORATION (NYC OTB); EMPLOYMENT RELATIONSHIPS - RETIREMENT AND PENSION BENEFITS;

ROBINSON (TERRANCE D.), PEOPLE v: (Cal. Date - 9/8/11)

CRIMES - POSSESSION OF WEAPON - AUTOMOBILE DRIVER CHARGED WITH POSSESSION OF GUN FOUND UNDER DRIVER'S SEAT - TRIAL COURT'S LIMITATION OF DEFENDANT'S DIRECT EXAMINATION - CLAIMED DUE PROCESS VIOLATION; HARMLESS ERROR; SUPPRESSION OF WEAPON - INVENTORY SEARCH;

RODRIGUEZ (ISIDRO), PEOPLE v: (Cal. Date - 9/14/11)

CRIMES - POSSESSION OF FORGED INSTRUMENT IN THE SECOND DEGREE - FORGED IDENTITY DOCUMENTS, SOME BEARING DEFENDANT'S PHOTOGRAPH - SUFFICIENCY OF THE EVIDENCE OF INTENT "TO DEFRAUD, DECEIVE OR INJURE ANOTHER" (PENAL LAW § 170.25);

RODRIGUEZ (RAFAEL), PEOPLE v:

CRIMES - EAVESDROPPING WARRANTS - WRITTEN NOTICE REQUIREMENT (CPL 700.50[3]) - CHALLENGE TO APPELLATE DIVISION ORDER UPHOLDING SUMMARY DENIAL OF DEFENDANT'S MOTION TO SUPPRESS EAVESDROPPING EVIDENCE UPON THE GROUND THAT "SUPPRESSION OF WIRETAP EVIDENCE ... NOTICE REQUIREMENT IS NOT WARRANTED WITHOUT A SHOWING OF PREJUDICE"; WHETHER DEFENDANT WAS ENTITLED TO A MISTRIAL UPON THE GROUND THAT THE TRIAL COURT UNDULY INTERFERED WITH DEFENSE COUNSEL'S CROSS-EXAMINATION OF AN ACCOMPLICE WHO WAS COOPERATING WITH AND TESTIFYING FOR THE PROSECUTION AND THEREBY CONVEYED TO THE JURY ITS BELIEF IN THE WITNESS'S CREDIBILITY; EVIDENCE - WHETHER THE TRIAL COURT ERRED IN ADMITTING INTO EVIDENCE THE ON-LINE BOOKING SHEET CONTAINING DEFENDANT'S ALLEGED PHONE NUMBER;

RODRIGUEZ (SERGIO), PEOPLE v:

CRIMES - SENTENCE - CONCURRENT AND CONSECUTIVE TERMS - ILLEGAL CONSECUTIVE SENTENCE VACATED AND MATTER REMANDED TO TRIAL COURT FOR RESENTENCING - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT THE TRIAL COURT ON REMAND MAY ARRIVE LAWFULLY AT THE AGGREGATE SENTENCE IT INTENDED TO IMPOSE BY RESTRUCTURING CONCURRENT SENTENCES TO RUN CONSECUTIVELY - WHETHER RESTRUCTURING OF SENTENCES WOULD VIOLATE CPL 430.10, PENAL LAW §§ 70.25(2) AND 70.30(1)(a), DUE PROCESS AND THE PROHIBITION AGAINST DOUBLE JEOPARDY; PROSECUTOR'S ALLEGED VIOLATION OF UNSWORN WITNESS RULE DURING SUMMATION; ALLEGED INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILING TO OBJECT TO PROSECUTOR'S REMARKS IN SUMMATION;

ROSARIO (ANGEL), PEOPLE v: (Cal. Date - 9/7/11)

CRIMES - SEXUAL ABUSE - SEXUAL CONDUCT AGAINST A CHILD - WHETHER NOTE MINOR COMPLAINANT WROTE APPROXIMATELY 3 MONTHS AFTER DEFENDANT'S ALLEGED ABUSE ENDED WAS ADMISSIBLE UNDER THE "PROMPT OUTCRY" EXCEPTION TO THE HEARSAY RULE - ADMISSIBILITY OF COMPLAINANT'S PRIOR CONSISTENT STATEMENT;

ROSENBLUM, MATTER OF v THE NEW YORK CITY CONFLICTS OF INTEREST BOARD, et al.:

SCHOOLS - TEACHERS - DISCIPLINARY PROCEEDINGS - WHETHER THE COURTS BELOW ERRED IN CONCLUDING THAT EDUCATION LAW § 3020-a PROVIDES THE EXCLUSIVE MEANS TO DISCIPLINE A TENURED PEDAGOGUE AND THAT RESPONDENT NEW YORK CITY CONFLICTS OF INTEREST BOARD THEREFORE MAY NOT PROCEED WITH A TRIAL AGAINST A TENURED PEDAGOGUE BEFORE RESPONDENT NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS FOR THE ALLEGED VIOLATION OF THE CITY'S CONFLICTS OF INTEREST LAW;

ROSS, MATTER OF v NEW YORK STATE BOARD OF PAROLE:

PAROLE - DENIAL; CPLR ARTICLE 78 PROCEEDING TO REVIEW DETERMINATION OF BOARD OF PAROLE DENYING PETITIONER PAROLE RELEASE - DISMISSAL OF PETITION FOR FAILURE TO SERVE RESPONDENT WITH PAPERS AS ORDERED; LACK OF PERSONAL JURISDICTION;

RUEDA, &c., MATTER OF v CHARMAINE D.: (Cal. Date - 9/7/11)

INCAPACITATED AND MENTALLY DISABLED PERSONS - INVOLUNTARY ADMISSION - WHETHER EMERGENCY ROOM PSYCHIATRIST WHO TREATED RESPONDENT PROPERLY APPLIED FOR HER INVOLUNTARY ADMISSION TO A HOSPITAL PURSUANT TO MENTAL HYGIENE LAW § 9.27 WHERE HE COULD HAVE APPLIED FOR SUCH ADMISSION PURSUANT TO MENTAL HYGIENE LAW § 9.39; MOOTNESS - APPLICABILITY OF MOOTNESS EXCEPTION;

RYAN v KELLOGG PARTNERS INSTITUTIONAL SERVICES:

CONTRACTS - EMPLOYMENT CONTRACTS - EMPLOYMENT-AT-WILL - ENFORCEMENT OF ALLEGED AGREEMENT FOR A BONUS - APPLICABILITY AND PURPORTED WAIVER OF STATUTE OF FRAUDS DEFENSE; EVIDENCE -

CHALLENGE TO APPELLATE DIVISION RULING THAT THE TRIAL COURT "PROVIDENTLY EXERCISED ITS DISCRETION TO PRECLUDE INQUIRY INTO PLAINTIFF'S FINANCIAL COMMITMENTS AT THE TIME HE ENTERED INTO THE ORAL AGREEMENTS WITH DEFENDANT";

SALAZAR v NOVALEX CONTRACTING CORP., et al.:

(Cal. Date - 10/18/11)

LABOR - SAFE PLACE TO WORK - PLAINTIFF CONSTRUCTION WORKER FELL INTO OPEN TRENCH WHILE WALKING BACKWARDS AND SPREADING CONCRETE ON BASEMENT FLOOR - AVAILABILITY OF CLAIMS UNDER LABOR LAW §§ 200, 240(1) AND 241(6); SUMMARY JUDGMENT;

SALGY, MATTER OF v HALSTED COMMUNICATIONS, et al.:

WORKERS' COMPENSATION - WHETHER THE 2007 AMENDMENTS TO THE WORKERS' COMPENSATION LAW REQUIRE EMPLOYERS TO DEPOSIT THE PRESENT VALUE OF THE UNCAPPED PERMANENT PARTIAL DISABILITY AWARD INTO THE AGGREGATE TRUST FUND FOR CLAIMS WITH DATES OF INJURY PRIOR TO MARCH 14, 2007 - WORKERS' COMPENSATION LAW § 27(2);

SANTIAGO (EDWIN), PEOPLE v: (Cal. Date - 9/13/11)

CRIMES - IDENTIFICATION OF DEFENDANT - EXPERT TESTIMONY ON RELIABILITY OF EYEWITNESS IDENTIFICATIONS - WHETHER MULTIPLE EYEWITNESS IDENTIFICATIONS CAN CORROBORATE EACH OTHER; REQUESTED SUPPRESSION OF LINE-UP IDENTIFICATION DUE TO DISPARITY IN LOOKS OF THE STAND-INS;

SCARANO, MATTER OF v CITY OF NEW YORK, et al.:

MUNICIPAL CORPORATIONS - LICENSES - ARTICLE 78 PROCEEDING BROUGHT BY LICENSED ARCHITECT TO CHALLENGE DETERMINATION PROHIBITING HIM FROM FILING ANY PAPERS ON PUBLIC PROJECTS; CLAIMED DENIAL OF DUE PROCESS AND EQUAL PROTECTION - CHALLENGE TO CONSTITUTIONALITY OF ADMINISTRATIVE CODE OF THE CITY OF NEW YORK § 28-211.1.2;

SCHENECTADY COUNTY SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, INC., et al., MATTER OF v MILLS:

(Cal. Date - 9/13/11)

RECORDS - FREEDOM OF INFORMATION LAW (FOIL)- CPLR ARTICLE 78 PROCEEDING TO REVIEW RESPONDENT'S DETERMINATION DENYING PETITIONERS' FOIL REQUEST FOR NAMES AND STREET ADDRESSES OF ALL LICENSED VETERINARIANS AND VETERINARY TECHNICIANS LOCATED IN SCHENECTADY COUNTY - WHETHER FOIL'S PERSONAL PRIVACY EXCEPTION APPLIES TO THE REQUEST FOR INFORMATION - NEW YORK PUBLIC OFFICERS LAW § 89(2)(b) - AGENCY'S INABILITY TO DETERMINE WHETHER ADDRESS SUBMITTED BY LICENSEE IS BUSINESS OR RESIDENTIAL;

SCHMIDT, MATTER OF v FALLS DODGE, INC. et al. [WORKERS' COMPENSATION BOARD]:

WORKERS' COMPENSATION - AWARD - WHETHER SCHEDULE LOSS OF USE

AWARD IS SUBJECT TO NON-SCHEDULE AWARDS IN OTHER WORKERS' COMPENSATION CASES WHERE AWARDS WERE MADE AT THE MAXIMUM STATUTORY RATE AND COVER THE SAME PERIODS - WORKERS' COMPENSATION LAW § 15(6);

SEDACCA, MATTER OF v MANGANO, et al.:

PROCEEDING AGAINST BODY OR OFFICER - PROHIBITION - WHETHER, ABSENT CAUSE, THE NASSAU COUNTY EXECUTIVE MAY REMOVE COMMISSIONERS FROM THE NASSAU COUNTY ASSESSMENT REVIEW COMMISSION PRIOR TO THE EXPIRATION OF THEIR TERMS; DECLARATORY JUDGMENT; ALLEGED CONFLICT OF INTEREST OF COUNTY ATTORNEY;

SHEERAN, MATTER OF v NEW YORK STATE DEPARTMENT OF TRANSPORTATION et al.:

CIVIL SERVICE - COMPENSATION AND BENEFITS - WHETHER CIVIL SERVICE LAW § 72 APPLIES ONLY TO EMPLOYEES PLACED ON INVOLUNTARY LEAVE FROM AN "ACTIVE" STATUS OR ALSO TO EMPLOYEES PLACED ON INVOLUNTARY LEAVE FROM VOLUNTARY SICK LEAVE STATUS;

SIMKIN v BLANK:

CONTRACTS - MISTAKE - REFORMATION OF 2006 DIVORCE SETTLEMENT AGREEMENT DIVIDING MARITAL PROPERTY VALUED AS OF SEPTEMBER 2004 AND CONTAINING MUTUAL RELEASES AND A MERGER CLAUSE - CAUSE OF ACTION FOR REFORMATION BASED UPON ALLEGED MUTUAL MISTAKE INVOLVING PLAINTIFF'S PURPORTED INVESTMENT ACCOUNT WITH BERNARD L. MADOFF INVESTMENT SECURITIES; CONTRACTS - QUASI CONTRACTS - UNJUST ENRICHMENT - AVAILABILITY WHERE NEITHER PARTY TO AGREEMENT ENGAGED IN WRONGDOING; WHETHER DOCTRINE OF FINALITY IN DIVORCE CASES AND/OR RELEASE AND INTEGRATION CLAUSE IN AGREEMENT BARS PLAINTIFF FROM SEEKING REFORMATION OF THE AGREEMENT;

SIMON et al. v USHER, et al.: (Cal. Date - 9/15/11)

TRIAL - PLACE OF TRIAL - CHANGE OF VENUE - TIMELINESS OF MOTION TO CHANGE VENUE - APPLICABILITY OF FIVE-DAY EXTENSION UNDER CPLR 2103(b)(2) TO TIME PERIOD BY WHICH DEFENDANT MUST MOVE FOR CHANGE OF VENUE UNDER CPLR 511(b);

SMITH (HOWARD K.), PEOPLE v:

CRIMES - DRIVING WHILE ABILITY IMPAIRED - WHEN POLICE ASKED DEFENDANT IF HE WOULD CONSENT TO A CHEMICAL SOBRIETY TEST, DEFENDANT REPEATEDLY REPLIED THAT HE WANTED TO SPEAK WITH HIS ATTORNEY - WHETHER REQUEST TO SPEAK WITH ATTORNEY CAN BE CONSIDERED A REFUSAL TO SUBMIT TO TEST - ADMISSIBILITY OF EVIDENCE OF REFUSAL AT TRIAL;

SMITH v REILLY:

ANIMALS - KNOWLEDGE OF VICIOUS PROPENSITY - PERSONAL INJURY ACTION SEEKING DAMAGES SUSTAINED BY INJURED PLAINTIFF WHO WAS PROPELLED OVER THE HANDLEBARS OF HIS BICYCLE WHEN DEFENDANT'S DOG RAN INTO THE ROAD AND COLLIDED WITH THE BICYCLE - WHETHER

DEFENDANT'S DEPOSITION TESTIMONY OR A WITNESS AFFIDAVIT SUBMITTED BY PLAINTIFFS RAISES A TRIABLE ISSUE OF FACT AS TO DOG'S PROPENSITY TO INTERFERE WITH TRAFFIC;

SMITH (KEVIN), PEOPLE v:

CRIMES - PROOF OF OTHER CRIMES - WHETHER TRIAL COURT ABUSED ITS DISCRETION IN SANDOVAL HEARING BY PERMITTING THE PEOPLE TO IDENTIFY DEFENDANT'S PRIOR CONVICTIONS SHOULD DEFENDANT CHOOSE TO TESTIFY IN HIS OWN BEHALF; ATTORNEY AND CLIENT - TRIAL COURT'S REFUSAL TO ALLOW SUBSTITUTION OF NEW COUNSEL AFTER BREAKDOWN IN DEFENDANT'S RELATIONSHIP WITH COUNSEL;

SMITH, MATTER OF v TORMEY:

PROCEEDING AGAINST BODY OR OFFICER - PROHIBITION - WHETHER CHALLENGED DETERMINATION REGARDING COUNTY COURT'S AWARD OF COUNSEL FEES WAS MADE IN EXCESS OF ADMINISTRATIVE JUDGE'S AUTHORITY PURSUANT TO 22 NYCRR 127.2(b);

SNIFFEN, MATTER OF v WEYGANT:

PARENT AND CHILD - CUSTODY - RELOCATION OF CUSTODIAL PARENT - WHETHER MOTHER'S RELOCATION WOULD BE IN CHILDREN'S BEST INTEREST - EXISTENCE OF PROOF CONCERNING CERTAIN FACTORS SUPPORTING RELOCATION;

SOSA (GILBERTO), PEOPLE v:

CRIMES - SENTENCE - RESENTENCING UNDER DRUG LAW REFORM ACT OF 2009 - MEANING OF "EXCLUSION OFFENSE" UNDER CPL 440.46(5)(a) - WHETHER A VIOLENT FELONY OFFENSE "FOR WHICH THE PERSON WAS PREVIOUSLY CONVICTED WITHIN THE PRECEDING TEN YEARS" MEANS CONVICTIONS WITHIN TEN YEARS PRECEDING THE DRUG OFFENSE FOR WHICH RESENTENCING IS SOUGHT OR, AS THE APPELLATE DIVISION CONCLUDED, CONVICTIONS WITHIN TEN YEARS PRECEDING THE RESENTENCING APPLICATION;

STATE OF NEW YORK, MATTER OF v FLAGG:

CRIMES - SEX OFFENDERS - CIVIL COMMITMENT OR SUPERVISION - REVOCATION OF STRICT AND INTENSIVE SUPERVISION AND TREATMENT (SIST) WHERE SEX OFFENDER VIOLATES CONDITIONS OF SIST WHERE VIOLATIONS DO NOT CONSTITUTE SEXUAL MISCONDUCT - CHALLENGE TO APPELLATE DIVISION ORDER THAT, AMONG OTHER THINGS, DETERMINED THAT STATE ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE THAT SEX OFFENDER WAS A DANGEROUS SEX OFFENDER REQUIRING CONFINEMENT - ALLEGED DEPRIVATION OF DUE PROCESS;

STATE OF NEW YORK ex rel. GRUPP AND MOLL v DHL EXPRESS (USA), INC., et al.:

STATUTES - FEDERAL PREEMPTION - WHETHER CLAIMS UNDER NEW YORK FALSE CLAIMS ACT (STATE FINANCE LAW § 187 et seq.) ARE PREEMPTED BY THE AIRLINE DEREGULATION ACT OF 1978 AND THE FEDERAL AVIATION ADMINISTRATION AUTHORIZATION ACT - CLAIMS ALLEGING, AMONG OTHER

THINGS, THAT DEFENDANTS SUBMITTED TO THE STATE CLAIMS FOR DELIVERY SERVICES THAT FALSELY AND FRAUDULENTLY (1) MISREPRESENTED THAT CERTAIN PACKAGES WERE DELIVERED BY AIR WHEN THEY WERE ACTUALLY DELIVERED BY GROUND TRANSPORTATION, (2) IMPOSED JET FUEL SURCHARGES FOR PACKAGES THAT WERE DELIVERED SOLELY BY GROUND TRANSPORTATION, AND (3) IMPOSED DIESEL FUEL SURCHARGES BUT PASSED ALONG ONLY A SMALL PORTION OF SUCH SURCHARGES TO THE INDEPENDENT CONTRACTORS WHO BOUGHT THE FUEL;

STATE OF NEW YORK v MYRON P.:

MENTAL HEALTH - PROCEEDINGS BY STATE OF NEW YORK SEEKING AN ORDER AUTHORIZING RESPONDENT'S CIVIL MANAGEMENT PURSUANT TO MENTAL HYGIENE LAW ARTICLE 10 - CONFINEMENT OF SEX OFFENDER IN SECURE FACILITY AFTER SERVICE OF PRISON TIME - INVOLUNTARY HOSPITALIZATION - RIGHT TO JURY TRIAL;

STEWART (WAYNE R.), PEOPLE v:

CRIMES - ASSAULT - "SERIOUS PHYSICAL INJURY" PURSUANT TO PENAL LAW §§ 10.00(10) AND 120.10(1) - SUFFICIENCY OF EVIDENCE TO SUPPORT CONVICTION OF ASSAULT IN THE FIRST DEGREE;

STUTO v KERBER:

LABOR - HOURS AND WAGES - WHETHER BUSINESS CORPORATION LAW § 630, MAKING THE TEN LARGEST SHAREHOLDERS OF A CLOSELY HELD CORPORATION PERSONALLY LIABLE FOR UNPAID WAGES DUE TO EMPLOYEES, APPLIES TO FOREIGN CORPORATIONS;

SUBER (FRANK), PEOPLE v:

CRIMES - INFORMATION - WHETHER THE CORROBORATION REQUIREMENT SET FORTH IN CPL 60.50 APPLIES TO INFORMATIONS;

SULLIVAN v HARNISCH, et al.:

EMPLOYMENT RELATIONSHIPS - AT-WILL EMPLOYMENT - CLAIMED WRONGFUL DISCHARGE OF EMPLOYEE WHO MADE INTERNAL INQUIRIES INTO HIS SUPERIOR'S SECURITIES TRADING ACTIVITY - RETALIATION;

TERRACE COURT, MATTER OF v NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL:

LANDLORD AND TENANT - RENT REGULATION - MAJOR CAPITAL IMPROVEMENT (MCI) RENT INCREASE - LANDLORD'S APPLICATION FOR MCI RENT INCREASE FOR PERFORMING, AMONG OTHER THINGS, POINTING, WATERPROOFING AND MASONRY WORK ON OUTSIDE OF APARTMENT BUILDING - CHALLENGE TO DETERMINATION BY NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL (DHCR) PERMANENTLY EXEMPTING FIVE APARTMENTS FROM AN MCI RENT INCREASE GRANTED AS TO THE REMAINING APARTMENTS BECAUSE A MOISTURE PROBLEM EXISTED IN THE FIVE APARTMENTS AFTER THE WORK WAS COMPLETED - WHETHER DHCR ERRED OR ACTED ARBITRARILY AND CAPRICIOUSLY IN PERMANENTLY EXEMPTING THE



FIVE APARTMENTS FROM THE MCI RENT INCREASE RATHER THAN ALLOWING THE LANDLORD TO OBTAIN THE RENT INCREASE PROSPECTIVELY IF IT CORRECTED THE MOISTURE PROBLEM;

THOMAS (DANIEL), PEOPLE v: (Cal. Date - 10/20/11)  
CRIMES - IDENTIFICATION OF DEFENDANT - BOLSTERING OF SINGLE EYEWITNESS BY PERMITTING TESTIMONY CONCERNING THE WITNESS'S OUT-COURT IDENTIFICATION OF A CO-DEFENDANT; HARMLESS ERROR;

TKESHELASHVILI et al. v STATE OF NEW YORK: (Cal. Date - 10/19/11)  
NEGLIGENCE - PROXIMATE CAUSE - RECKLESS CONDUCT OF PLAINTIFF - DIVING INTO SHALLOW WATER - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT PLAINTIFF'S CONDUCT IN DIVING OFF THE COLGATE LAKE DAM INTO COLGATE LAKE WAS SO RECKLESS AS TO CONSTITUTE THE SOLE PROXIMATE CAUSE OF HIS INJURY AS A MATTER OF LAW BECAUSE HE "KNEW OR SHOULD HAVE KNOWN [THAT THE] WATER WAS TOO SHALLOW FOR DIVING";

TOLEDO &c. v IGLESIA NI CRISTO:  
INTEREST - PREVERDICT INTEREST - PROPER METHODOLOGY FOR AWARDED PREVERDICT INTEREST ON FUTURE WRONGFUL DEATH DAMAGES - CPLR ARTICLE 50-B;

TRAVIS v BATCHI:  
INSURANCE - NO-FAULT AUTOMOBILE INSURANCE - SERIOUS INJURY - WHETHER THE INJURED PLAINTIFF RAISED A TRIABLE ISSUE OF FACT AS TO WHETHER SHE SUSTAINED A "SERIOUS INJURY" WITHIN THE MEANING OF INSURANCE LAW § 5102(d) - SUMMARY JUDGMENT;

TRIAx CAPITAL ADVISORS, LLC v RUTTER, et al.:  
CONTRACTS - AMBIGUOUS CONTRACTS - AMBIGUITY OF FINANCIAL AND RESTRUCTURING ADVISORY SERVICES CONTRACT CONTAINING PROVISION ENTITLING PLAINTIFF TO FEE IF DEFENDANTS CLOSED "WITH ANY PARTY WHO [PLAINTIFF] HAS INTRODUCED AS SET FORTH ON EXHIBIT A (AS AMENDED) DURING THE TERM OF THIS AGREEMENT" - CHALLENGE TO APPELLATE DIVISION ORDER HOLDING THAT AGREEMENT WAS NOT AMBIGUOUS;

TRUMP ON THE OCEAN, LLC, MATTER OF v CORTES-VASQUEZ et al.:  
MUNICIPAL CORPORATIONS - ZONING - VARIANCE - DENIAL OF VARIANCE FOR PUBLIC DINING AND CATERING FACILITY AT JONES BEACH STATE PARK - VARIANCE SOUGHT FOR OCCUPIED BASEMENT TO BE CONSTRUCTED UNDER "DESIGN FLOOD ELEVATION";

U.S. ELECTRONICS, INC. v SIRIUS SATELLITE RADIO, INC.:  
(Cal. Date - 10/18/11)  
ARBITRATION - LEGAL STANDARD GOVERNING APPLICATION TO VACATE AN ARBITRATION AWARD BASED ON FAILURE OF ARBITRATOR AND OPPOSING PARTY TO DISCLOSE ARBITRATOR'S ALLEGED CONFLICT OF INTEREST - FEDERAL ARBITRATION ACT - "EVIDENT PARTIALITY";

VAELLO, MATTER OF v CONNOLLY:

PRISONS AND PRISONERS - DISCIPLINE OF INMATES - CHALLENGE TO APPELLATE DIVISION ORDER CONFIRMING DETERMINATION FINDING PETITIONER GUILTY OF VIOLATING CERTAIN PRISON DISCIPLINARY RULES;

VALDEZ &c., et al. v CITY OF NEW YORK, et al.:

MUNICIPAL CORPORATIONS - TORT LIABILITY - SPECIAL RELATIONSHIP - POLICE - WHETHER WOMAN WITH ORDER OF PROTECTION, WHO ADVISED POLICE ABOUT VIOLATION OF ORDER AND WAS TOLD TO GO HOME INSTEAD OF TO HER MOTHER'S HOUSE, BECAUSE OFFENDER WOULD BE ARRESTED IMMEDIATELY, HAS A SPECIAL RELATIONSHIP WITH THE CITY SUFFICIENT TO SUPPORT AWARD FOR DAMAGES AFTER OFFENDER SHOT HER;

VANDOVER (JEANNE M.), PEOPLE v:

MOTOR VEHICLES - OPERATING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS - SUPPRESSION OF RESULTS OF BLOOD ALCOHOL TEST AND DEFENDANT'S STATEMENTS TO POLICE - LEGAL SUFFICIENCY OF PEOPLE'S EVIDENCE ESTABLISHING PROBABLE CAUSE FOR DEFENDANT'S ARREST;

VEGA v RESTANI CONSTRUCTION CORP., et al.:

NEGLIGENCE - PERSONAL INJURY ACTION OF MAINTENANCE WORKER WHO ATTEMPTED TO MOVE A GARBAGE CAN ALLEGEDLY CONTAINING IMPROPERLY DISCARDED CONCRETE BLOCKS; SUMMARY JUDGMENT; CONDITIONS INHERENT IN WORK; RES IPSA LOQUITUR;

VELEZ (JESSIE), PEOPLE v:

CRIMES - SENTENCE - RESENTENCE - ADDITION OF POST-RELEASE SUPERVISION TO SENTENCE AFTER DEFENDANT'S RELEASE FROM PRISON - RESENTENCE PROCESS COMMENCED BEFORE DEFENDANT'S RELEASE FROM PRISON - DEFENDANT DID NOT OBJECT TO COURT ADJOURNMENTS; DOUBLE JEOPARDY - WAIVER;

VENTURA (CARLOS), PEOPLE v: (Cal. Date - 9/8/11)

CRIMES - APPEAL - ABSENCE OF DEFENDANT - INVOLUNTARY DEPORTATION - WHETHER THE APPELLATE DIVISION ERRED IN DISMISSING DEFENDANT'S APPEAL ON THE GROUND THAT HE HAD BEEN DEPORTED AND WAS NO LONGER AVAILABLE TO OBEY THE MANDATE OF THE COURT WHERE DEFENDANT SERVED HIS SENTENCE, HAD BEEN PAROLED TO THE CUSTODY OF IMMIGRATION AND CUSTOMS ENFORCEMENT AND ARGUED ON APPEAL SOLELY THAT THE EVIDENCE WAS LEGALLY INSUFFICIENT TO SUPPORT HIS CONVICTION;

WALKER (FREDERICK), PEOPLE v:

CRIMES - RIGHT TO BE PRESENT AT TRIAL - BURDEN OF ESTABLISHING DEFENDANT'S ABSENCE FROM SANDOVAL HEARING - CHALLENGE TO APPELLATE DIVISION RULING THAT COURT REPORTER'S FAILURE TO DOCUMENT DEFENDANT'S PRESENCE OR ABSENCE AT SANDOVAL HEARING WAS INSUFFICIENT TO SATISFY DEFENDANT'S BURDEN TO REBUT PRESUMPTION OF REGULARITY THAT ATTACHES TO JUDICIAL PROCEEDINGS;

TOWN OF WATERFORD, MATTER OF v NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION:

RECORDS - FREEDOM OF INFORMATION LAW (FOIL) - EXEMPTIONS - WHETHER FOIL'S DEFINITION OF "AGENCY" LIMITS THE APPLICATION OF THE INTER-AGENCY/INTRA-AGENCY EXEMPTION TO COMMUNICATIONS WITHIN AND BETWEEN STATE AND MUNICIPAL GOVERNMENTAL AGENCIES AND PRECLUDES ITS APPLICATION TO COMMUNICATIONS BETWEEN STATE AND FEDERAL GOVERNMENTAL AGENCIES;

WELCH, PEOPLE ex rel. v HESSEL:

HABEAS CORPUS - AVAILABILITY OF RELIEF;

WILINSKI et al. v 334 EAST 92<sup>ND</sup> HOUSING DEVELOPMENT FUND CORP., et al.: (Cal. Date - 9/14/11)

LABOR - SAFE PLACE TO WORK - LABOR LAW § 240(1) - PLAINTIFF ALLEGEDLY HIT IN THE HEAD BY TWO VERTICAL PIPES THAT FELL OVER WHEN HIT BY DEBRIS FROM A WALL UNDERGOING DEMOLITION - CHALLENGE TO APPELLATE DIVISION HOLDING THAT, "SINCE BOTH PIPES AND PLAINTIFF 'WERE AT THE SAME LEVEL AT THE TIME OF THE COLLAPSE [OF THE PIPES,] THE INCIDENT WAS NOT SUFFICIENTLY ATTRIBUTABLE TO ELEVATION DIFFERENTIALS TO WARRANT IMPOSITION OF LIABILITY PURSUANT TO LABOR LAW § 240(1)'" - APPLICABILITY AND CONTINUING VIABILITY OF MISSERITTI v MARK IV CONSTR. CO. (86 NY2d 487 [1995]) - RUNNER v NEW YORK STOCK EXCHANGE (13 NY3d 599 [2009]); LABOR LAW § 241(6) - APPLICABILITY OF INDUSTRIAL CODE PROVISIONS, 12 NYCRR 23-3.3(b)(3) AND (c), WHETHER SECTION 23-3.3(b)(3) REQUIRES PLAINTIFF TO SHOW THAT WIND PRESSURE OR VIBRATION CAUSED THE PIPES TO FALL - WHETHER PLAINTIFF'S INJURIES WERE CAUSED BY "WEAKENED OR DETERIORATED FLOORS OR WALLS OR FROM LOOSENED MATERIAL" WITHIN THE MEANING OF SECTION 23-3.3(c) - WHETHER CERTAIN DEFENDANTS ESTABLISHED THEIR ENTITLEMENT TO SUMMARY JUDGMENT UPON THE GROUND THAT THEY WERE NOT OWNERS OR CONTRACTORS WITHIN THE MEANING OF THE LABOR LAW;

WILLIAM (TONY), PEOPLE v:

CRIMES - SUPPRESSION HEARING - WHETHER POLICE HAD REASONABLE SUSPICION TO STOP THE CAB IN WHICH DEFENDANT WAS A PASSENGER WHEN THEY OBSERVED THAT THE PASSENGERS MATCHED GENERAL ASPECTS OF THE RADIOED DESCRIPTION OF TWO MEN WHO HAD COMMITTED A ROBBERY NEARBY; WHETHER SUBSEQUENT SHOW-UP IDENTIFICATION WAS UNDULY SUGGESTIVE;

WILLIAMS, MATTER OF v FISCHER:

PRISONS AND PRISONERS - DISCIPLINE OF INMATES - CHALLENGE TO APPELLATE DIVISION ORDER HOLDING THAT THE MISBEHAVIOR REPORT CHARGING PETITIONER WITH ASSAULTING AN INMATE AND VIOLENT CONDUCT, THE HEARING TESTIMONY AND THE CONFIDENTIAL TESTIMONY AND DOCUMENTS REVIEWED BY THE HEARING OFFICER IN CAMERA PROVIDE SUBSTANTIAL EVIDENCE TO SUPPORT THE DETERMINATION OF GUILT;

WILLIAMS et al. v STATE OF NEW YORK:

NEGLIGENCE - PROXIMATE CAUSE - WHETHER DEFENDANT STATE CAN BE HELD LIABLE FOR AN ASSAULT PERPETRATED TWO YEARS AFTER A VOLUNTARY MENTAL PATIENT WAS PERMITTED TO "ELOPE" FROM STATE PSYCHIATRIC FACILITY;

WINGATE (BLAKE), PEOPLE v: (Cal. Date - 9/15/11)

CRIMES - RIGHT TO REPRESENTATION PRO SE - SUFFICIENCY OF "SEARCHING INQUIRY" - WHETHER JUDGMENT OF CONVICTION MUST BE REVERSED WHERE NISI PRIUS COURT ALLOWED DEFENDANT TO REPRESENT HIMSELF AT SUPPRESSION HEARING WITHOUT GIVING HIM ADEQUATE WARNINGS ABOUT THE DANGERS AND DISADVANTAGES OF PROCEEDING WITHOUT COUNSEL BUT GAVE DEFENDANT ADEQUATE WARNINGS BEFORE ALLOWING HIM TO REPRESENT HIMSELF AT TRIAL; ALLEGED ERROR IN LIMITING ACCESS TO STANDBY COUNSEL BY PREVENTING DEFENDANT FROM COMMUNICATING WITH COUNSEL DURING CROSS-EXAMINATION OF PROSECUTION WITNESS AND WITH AN INVESTIGATOR BEFORE DECIDING WHETHER TO PUT ON A DEFENSE CASE;

WOLFE v KELLY:

ADMINISTRATIVE LAW - HEARING - WHETHER APPELLANT WAS DEPRIVED OF A HEARING OFFICER WHO WAS IMPARTIAL OR HAD THE APPEARANCE OF IMPARTIALITY; PROCEEDING AGAINST BODY OR OFFICER - SUBSTANTIAL EVIDENCE;

WORLD TRADE CENTER BOMBING LITIGATION, MATTER OF (STEERING COMMITTEE v THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY):

NEGLIGENCE - WHETHER PORT AUTHORITY IS ENTITLED TO GOVERNMENTAL IMMUNITY FROM NEGLIGENCE CLAIMS ARISING OUT OF THE TERRORIST TRUCK BOMBING OF THE WORLD TRADE CENTER; MAINTENANCE OF PREMISES - WHETHER THE APPELLATE DIVISION ERRED IN DETERMINING THAT THE JURY COULD HAVE FAIRLY CONCLUDED THAT THE PORT AUTHORITY WAS NEGLIGENT IN FAILING TO MAINTAIN ITS PARKING GARAGE IN A REASONABLY SAFE CONDITION AND THAT THIS NEGLIGENCE WAS A SUBSTANTIAL CAUSE OF THE BOMBING; APPORTIONMENT OF LIABILITY AMONG JOINT TORTFEASORS - JURY DETERMINATION THAT PORT AUTHORITY WAS 68% LIABLE AND TERRORISTS WERE 32% LIABLE FOR PERSONAL AND ECONOMIC INJURIES RESULTING FROM THE BOMBING;

WRIGHT (JASON L.), PEOPLE v: (Cal. Date - 9/15/11)

CRIMES - CLAIM THAT ROBBERY COUNT WAS DUPLICITOUS BECAUSE DEFENDANT WAS CHARGED WITH STEALING "A BB GUN AND/OR A PAIR OF SNEAKERS" - ALLEGED INEFFECTIVENESS OF TRIAL COUNSEL - THEORY UPON WHICH JURY FOUND DEFENDANT GUILTY - SUFFICIENCY OF THE EVIDENCE SUPPORTING CONVICTION OF ROBBERY IN THE FIRST DEGREE;

WRIGHT (NAFIS), PEOPLE v:

CRIMES - SENTENCE - WHETHER DEFENDANT WITH A PRIOR VIOLENT FELONY CONVICTION, BUT NEVER ADJUDICATED A "SECOND FELONY OFFENDER," IS ELIGIBLE FOR RESENTENCING UNDER CPL 440.46 - DRUG LAW REFORM ACT OF 2009;

WYCKOFF HEIGHTS MEDICAL CENTER &c. [NEW YORK and PRESBYTERIAN HOSPITAL, &c.] v COUNTRY-WIDE INSURANCE COMPANY:

INSURANCE - NO-FAULT AUTOMOBILE INSURANCE - WHETHER A NO-FAULT CARRIER MAY DENY A HEALTH CARE PROVIDER'S CLAIM FOR HEALTH SERVICE EXPENSES BASED UPON THE FACT THAT A NOTICE OF ACCIDENT WAS NOT TIMELY FILED, WHERE THE HEALTH CARE PROVIDER TIMELY SUBMITTED A WRITTEN PROOF OF CLAIM FOR HEALTH SERVICE EXPENSES;

YAN v WANG:

HUSBAND AND WIFE - DIVORCE - GROUND OF CRUEL AND INHUMAN TREATMENT (DOMESTIC RELATIONS LAW § 170[1]); CLAIMED VIOLATIONS OF DUE PROCESS BY TRIAL JUDGE AND APPELLATE DIVISION;

YENEM CORP. v 281 BROADWAY HOLDINGS [AND OTHER ACTIONS]:

NEGLIGENCE - VIOLATION OF STATUTORY DUTY - LIABILITY FOR DAMAGE CAUSED BY EXCAVATION WORK ON ADJOINING PROPERTY - WHETHER A MUNICIPAL ORDINANCE THAT IMPOSES A DUTY UPON THOSE PERFORMING EXCAVATION WORK 10 FEET BELOW THE CURB LEVEL TO "PRESERVE AND PROTECT" ADJOINING STRUCTURES (ADMINISTRATIVE CODE OF THE CITY OF NY FORMER § 27-1031[b][1] [NOW ADMINISTRATIVE CODE OF THE CITY OF NY § 28-3309.4]) IMPOSES ABSOLUTE LIABILITY SO AS TO WARRANT SUMMARY JUDGMENT ON THE ISSUE OF LIABILITY IN FAVOR OF PLAINTIFFS, THE OWNER AND TENANT OF PREMISES ALLEGEDLY DAMAGED BY DEFENDANTS' EXCAVATION WORK ON THE ADJACENT PROPERTY - CONSIDERATION OF PRIOR CONDITION OF BUILDING AND ADEQUACY OF PRECAUTIONS IN DETERMINING LIABILITY; LEAVE GRANTED TO DEFENDANTS TO ASSERT COUNTERCLAIMS AGAINST PLAINTIFF RANDALL CO. LLC;

YUSUF (MALIK), a/k/a ASHFORD (YUSUF M.), PEOPLE v:

CRIMES - SENTENCE - SECOND FELONY OFFENDER - WHETHER PENAL LAW § 70.70(1)(c)(4), WHICH PROVIDES FOR ENHANCED PUNISHMENT FOR "SECOND FELONY DRUG OFFENDERS PREVIOUSLY CONVICTED OF A VIOLENT FELONY" PERMITS SUCH ENHANCEMENT WHEN DEFENDANT'S PRIOR VIOLENT FELONY CONVICTION OCCURRED IN ANOTHER STATE - CPL 400.21;

ZAMORA, MATTER OF v NEW YORK NEUROLOGIC ASSOCIATES, et al.:

WORKERS' COMPENSATION - COVERAGE - PERMANENT PARTIAL DISABILITY - WHETHER NONRETIRED CLAIMANT HAS OBLIGATION TO DEMONSTRATE ATTACHMENT TO LABOR MARKET WITH EVIDENCE OF SEARCH FOR EMPLOYMENT WITHIN MEDICAL RESTRICTIONS; BURDEN OF PROOF;