

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed  
by the Court of Appeals Clerk's Office

**March 4, 2016 through March 10, 2016**

Each week the Clerk's Office prepares a list of recently-filed appeals, indicating short title, jurisdictional predicate, subject matter and key issues. Some of these appeals may not reach decision on the merits because of dismissal, on motion or sua sponte, or because the parties stipulate to withdrawal. Some appeals may be selected for review pursuant to the alternative procedure of Rule 500.11. For those appeals that proceed to briefing in the normal course, the briefing schedule generally will be: appellant's brief to be filed within 60 days after the appeal was taken; respondent's brief to be filed within 45 days after the due date for the filing of appellant's brief; and a reply brief, if any, to be filed within 15 days after the due date for the filing of respondent's brief.

**The Court welcomes motions for amicus curiae participation from those qualified and interested in the subject matter of these newly filed appeals. Please refer to Rule 500.23 and direct any questions to the Clerk's Office.**

TOWN OF AMHERST v GRANITE STATE INSURANCE COMPANY:

4<sup>TH</sup> Dept. App. Div. order of 6/19/15; modification; leave to appeal granted by Court of Appeals, 2/23/16;  
ARBITRATION - AGREEMENT TO ARBITRATE - WHETHER THE APPELLATE DIVISION ERRED IN DETERMINING THAT IT WAS FOR THE ARBITRATOR, NOT THE COURT, TO DECIDE THE VALIDITY AND EFFECT OF A SUBSEQUENT AGREEMENT TO LITIGATE A CLAIM THAT WAS SUBJECT TO ARBITRATION UNDER THE TERMS OF THE PARTIES' INSURANCE POLICY;

Supreme Court, Erie County, denied defendant's motion to compel arbitration and granted plaintiff's cross motion for a permanent stay of arbitration; App. Div. modified by granting defendant's motion to compel arbitration except insofar as it concerns defendant's counterclaim for equitable subrogation and denying plaintiff's cross motion to stay arbitration except insofar as it concerns that counterclaim, and affirmed the order as modified.

ANDERSON (TREVOR), PEOPLE v.:

2<sup>ND</sup> Dept. App. Div. order of 7/29/15; affirmance; leave to appeal granted by Pigott, J., 2/25/16;

CRIMES - PROOF OF PRIOR CONVICTIONS - INQUIRY INTO NATURE OF PRIOR CONVICTIONS - DISCRETION OF TRIAL COURT - WHETHER FOLLOWING A SANDOVAL HEARING, THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY ALLOWING THE PEOPLE TO INQUIRE ABOUT DEFENDANT'S PRIOR CONDUCT OF POSSESSING GUNS; WHETHER DEFENDANT WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF TRIAL COUNSEL DUE TO COUNSEL'S ASSERTED FAILURE TO OBJECT TO THE PEOPLE'S POWERPOINT PRESENTATION DURING SUMMATION; Supreme Court, Kings County, convicted defendant, upon a jury verdict, of attempted murder in the second degree and criminal possession of a weapon in the second degree, and imposed sentence; App. Div. affirmed.

CARLSON v AMERICAN INTERNATIONAL GROUP, INC. et al.:

4<sup>TH</sup> Dept. App. Div. orders of 7/2/15; modification and reversal; leave to appeal granted by Court of Appeals, 2/18/16;

INSURANCE - DUTY TO DEFEND AND INDEMNIFY - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT THE INSURANCE POLICY WAS NOT "ISSUED OR DELIVERED" IN NEW YORK, THUS PRECLUDING PLAINTIFF FROM BRINGING SUIT AGAINST TORTFEASOR'S INSURANCE COMPANY UNDER INSURANCE LAW § 3420(a)(2); AUTOMOBILE INSURANCE - CARTAGE AGREEMENT BETWEEN DEFENDANT DHL EXPRESS (USA) AND DEFENDANT MVP DELIVERY AND LOGISTICS, INC. - WHETHER MVP VEHICLE DRIVEN BY TORTFEASOR DURING THE UNDERLYING MOTOR VEHICLE ACCIDENT WAS A VEHICLE "HIRED" BY DHL AND THUS COVERED UNDER ITS AUTOMOBILE INSURANCE;

Supreme Court, Niagara County, as relevant here, denied the cross motion of defendant American Alternative Insurance Co. to dismiss the first cause of action against it (12/4/12 order); thereafter, the same court, among other things, denied in part the motion of defendants American International Group, Inc, AIG Domestic Claims, Inc., and National Union Fire Insurance Company of Pittsburgh, PA, and the cross motion of defendant American Alternative Insurance Co., to dismiss the complaint (6/25/14 order); App.Div. reversed the 12/4/12 order, granted defendant American Alternative Insurance Co.'s cross motion in part, and dismissed the first cause of action against that defendant; in a separate order, App. Div. modified the 6/25/14 order by granting the motion and cross motion in their entirety and dismissing the complaint, and affirmed the order as modified.

ENRIQUEZ, MATTER OF v DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT OF THE CITY OF NEW YORK:

1<sup>ST</sup> Dept. App. Div. order of 6/2/15; reversal; leave to appeal granted by Court of Appeals, 2/18/16;

LIENS - MECHANIC'S LIENS - VACATUR OR DISCHARGE - LIEN FOR LIVING EXPENSES OF RELOCATED TENANTS - WHETHER A COURT MAY SUMMARILY DETERMINE IF ASSERTEDLY UNREASONABLE CLAIMED EXPENSES RENDERED A LIEN FACIALLY INVALID, OR WHETHER A FORECLOSURE TRIAL IS REQUIRED;

Supreme Court, Bronx County, denied petitioner's application to summarily discharge a lien for relocation expenses filed by respondent Department of Housing Preservation and Development (DHPD), and granted DHPD's cross motion to dismiss the proceeding; App. Div. reversed, granted the petition for summary discharge, and denied the cross motion to dismiss the proceeding.

MASON (LANZE R.), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 10/14/15; affirmance; leave to appeal granted by Fahey, J., 2/24/16;

CRIMES - INSTRUCTIONS - DEFENSE OF JUSTIFICATION - WHETHER THE TRIAL COURT PROPERLY DETERMINED, IN DENYING DEFENDANT'S REQUEST FOR A JUSTIFICATION CHARGE, THAT DEFENDANT USED DEADLY PHYSICAL FORCE WHEN HE STRUCK THE COMPLAINANT IN THE FACE WITH A GLASS BOTTLE; JURORS - SELECTION OF JURY - PROPRIETY OF COURT'S COMMENT THAT ANY PROSPECTIVE JUROR WHO WAS EXCUSED BASED ON HIS OR HER DIFFICULTY WITH THE ENGLISH LANGUAGE WOULD BE REQUIRED TO TAKE A COURSE IN ENGLISH - CLAIMED MODE OF PROCEEDINGS ERROR;

Supreme Court, Queens County, convicted defendant, upon a jury verdict, of assault in the second degree and criminal possession of a weapon in the fourth degree, and imposed sentence; App. Div. affirmed.

SLOCUM (MATTHEW A.), PEOPLE v:

3<sup>RD</sup> Dept. App. Div. order of 11/12/15; reversal; leave to appeal granted by Fahey, J., 3/2/16;

CRIMES - CONFESSION - STATEMENTS MADE TO POLICE ON THE NIGHT OF DEFENDANT'S ARREST - WHETHER DEFENDANT UNEQUIVOCALLY INVOKED HIS RIGHT TO COUNSEL BEFORE BEING QUESTIONED BY POLICE - IF NOT, WHETHER POLICE WERE REQUIRED TO MAKE A FURTHER INQUIRY INTO DEFENDANT'S DESIRE TO HAVE COUNSEL REPRESENT HIM BEFORE QUESTIONING DEFENDANT ABOUT THE CRIMES - WHETHER STATEMENTS DEFENDANT MADE TO SOCIAL SERVICES CASEWORKER AFTER DEFENDANT'S RIGHT TO COUNSEL ATTACHED SHOULD HAVE BEEN SUPPRESSED UPON THE GROUND THAT THE CASE WORKER WAS ACTING AS AN AGENT OF LAW ENFORCEMENT - ASSUMING ALL OF DEFENDANT'S STATEMENTS SHOULD HAVE BEEN SUPPRESSED, WHETHER THE ERROR IN ADMITTING THEM WAS HARMLESS AS TO DEFENDANT'S ARSON CONVICTION;

County Court, Washington County, convicted defendant, upon a jury verdict, of three counts of murder in the second degree, arson in the third degree, tampering with physical evidence, petit larceny and criminal possession of a weapon in the third degree; App. Div. reversed, granted that part of defendant's motion to suppress statements made after he invoked his right to counsel as set forth in the court's opinion, and remitted the matter to Washington County Court for further proceedings not inconsistent with the court's decision.

SPENCER (DARRELL), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 1/26/16; affirmance; leave to appeal granted by Tom, J., 3/3/16;

CRIMES - JURORS - QUALIFICATION INQUIRY - WHETHER THE TRIAL COURT ERRED IN REFUSING TO GRANT A MISTRIAL WHEN, ON THE FOURTH DAY OF DELIBERATIONS, AFTER DISCHARGE OF THE ALTERNATE JURORS, JUROR NUMBER ONE STATED THAT SHE COULD NOT "SEPARATE [HER] EMOTIONS FROM THE CASE" AND "D[ID NOT] HAVE IT IN [HER]" TO DECIDE THE CASE ON THE FACTS AND LAW; JURY INSTRUCTIONS - INTOXICATION CHARGE - PURPOSEFUL BEHAVIOR - WHETHER THE TRIAL COURT ERRED IN REFUSING TO GIVE AN INTOXICATION CHARGE IN LIGHT OF DEFENDANT'S PURPOSEFUL ATTEMPT TO CONCEAL THE DEATH OF THE VICTIM; SEARCH AND SEIZURE - KNOWINGLY AND VOLUNTARILY EXITING APARTMENT - WHETHER DEFENDANT'S WARRANTLESS ARREST WAS UNLAWFUL UNDER PAYTON v NEW YORK (445 US 573 [1980]);

Supreme Court, Bronx County, convicted defendant, after a jury trial, of manslaughter in the first degree, and sentenced him to a 25-year term of imprisonment; App. Div. affirmed.

VALENTIN (JOSE), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 10/15/15; affirmance; leave to appeal granted by Fahey, J., 2/23/16;

CRIMES - AGENCY DEFENSE IN NARCOTICS PROSECUTION - RIGHT OF REBUTTAL - WHETHER THE PEOPLE ARE PERMITTED TO INTRODUCE EVIDENCE OF A PRIOR CONVICTION WHEN A DEFENDANT ASSERTS AN AGENCY DEFENSE BY ADOPTING PORTIONS OF THE PEOPLE'S EVIDENCE THAT SUPPORT THAT DEFENSE, RATHER THAN BY TESTIFYING OR OTHERWISE ELICITING EVIDENCE FROM DEFENSE WITNESSES; WHETHER DEFENDANT WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF TRIAL COUNSEL;

Supreme Court, New York County, convicted defendant, after a jury trial, of criminal sale of a controlled substance in the third degree, and sentenced him, as a second felony drug offender, to a term of four years; App. Div. affirmed.