

August 27, 2015

**CASE**

1                    No. 183 SSM 13  
Richard Rivera, et al.,  
    Appellants,  
    v.  
Fernandez & Ulloa Auto Group, et al.,  
    Respondents.

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, with costs. The Appellate Division correctly concluded that plaintiff failed to raise a triable issue of fact as to whether he suffered a serious injury within the meaning of Insurance Law § 5012(d) as a result of the underlying motor vehicle accident.  
Chief Judge Lippman and Judges Pigott, Rivera, Abdus-Salaam, Stein and Fahey concur.

## MOTIONS

Mo. No. 2015-996  
The People &c.,  
Respondent,  
v.  
Jose Aviles,  
Appellant.

Motion for assignment of counsel granted and V. Marika Meis, Esq., The Bronx Defenders, 360 East 161st Street, Bronx, NY 10451 assigned as counsel to the appellant on the appeal herein.

3 Mo. No. 2015-711  
In the Matter of Daniel B., &c.

Motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.

Beatrice Havranek, &c.,  
Respondent;  
Daniel B.,  
Appellant.  
(And Another Related Proceeding.)

1 Mo. No. 2015-946  
The People &c.,  
Respondent,  
v.  
Anthony Barksdale,  
Appellant.

Motion by New York Civil Liberties Union et al. for leave to file a brief amici curiae on the appeal herein granted and the proposed brief is accepted as filed. Three copies of the brief must be served and an original and nine copies filed within seven days.

1 Mo. No. 2015-709  
Raul Barreto,  
Appellant,  
et al.,  
Plaintiff,  
v.  
Metropolitan Transportation Authority, et al.,  
Respondents.  
(And Other Third-Party Actions.)

Motions for reargument denied.

4 Mo. No. 2015-727  
The People &c.,  
Respondent,  
v.  
Ryan P. Brahney,  
Appellant.

Motion for assignment of counsel granted and Kathryn Friedman, Esq., c/o The Sage Law Firm Group, PLLC, PO Box 200, 465 Grant Street, Buffalo, NY 14213 assigned as counsel to the appellant on the appeal herein.

1 Mo. No. 2015-1025  
The People &c.,  
Respondent,  
v.  
James Brown,  
Appellant.

Motion for assignment of counsel granted and Danielle Muscatello, Esq., c/o Robert DiDio & Associates, 80-02 Kew Gardens Road, Suite 307, Kew Gardens, NY 11415 assigned as counsel to the appellant on the appeal herein.

4 Mo. No. 2015-630  
In the Matter of April A. Burley,  
Respondent,  
v.  
Bernard D. Burley,  
Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2015-927  
In the Matter of Walter E. Carver,  
Respondent,  
v.  
State of New York, et al.,  
Appellants.

Motion by National Center for Law and Economic Justice et al. for leave to file a brief amici curiae on the appeal herein granted and the proposed brief is accepted as filed.

1 Mo. No. 2015-912  
The People &c.,  
Respondent,  
v.  
Lyxon Chery,  
Appellant.

Motion for assignment of counsel granted and Robert S. Dean, Esq., Center for Appellate Litigation, 120 Wall Street, 28th Floor, New York, NY 10005 assigned as counsel to the appellant on the appeal herein.

2 Mo. No. 2015-961  
The People &c.,  
Respondent,  
v.  
Prince Clark,  
Appellant.

Motion for assignment of counsel granted and Lynn W. L. Fahey, Esq., Appellate Advocates, 111 John Street, 9th Floor, New York, NY 10038 assigned as counsel to the appellant on the appeal herein.

4 Mo. No. 2015-869  
The People &c.,  
Respondent,  
v.  
Phillip Couser,  
Appellant.  
(And Another Appeal.)

Motion for assignment of counsel granted and Timothy P. Donaher, Esq., Monroe County Public Defender, 10 N. Fitzhugh Street, Rochester, NY 14614 assigned as counsel to the appellant on the appeals herein.

4 Mo. No. 2015-637  
In the Matter of Cyle J.F. et al.  
  
Seneca County Division of Human Services,  
Respondent;  
Alexander F.,  
Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2015-701  
In the Matter of Joele Z.F., &c.  
  
Jacqueline M-F.,  
Appellant;  
Administration for Children's Services,  
Respondent.

Motion for leave to appeal denied.

1 Mo. No. 2015-839  
The People &c.,  
Respondent,  
v.  
Lennie Frankline,  
Appellant.

Motion for assignment of counsel granted and Seymour W. James, Jr., Esq., The Legal Aid Society, 199 Water Street, New York, NY 10038 assigned as counsel to the appellant on the appeal herein.

2 Mo. No. 2015-721  
The People &c.,  
Appellant,  
v.  
Mark Garrett,  
Respondent.

Motion for reargument denied.

4 Mo. No. 2015-814  
In the Matter of Zachary H.

Motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.

Onondaga County Department of Social  
Services,  
Respondent;  
Jessica H.,  
Appellant.

1 Mo. No. 2015-808  
The People &c.,  
Respondent,  
v.  
Stanley Hardee,  
Appellant.

Motion for assignment of counsel granted and Robert  
S. Dean, Esq., Center for Appellate Litigation, 120  
Wall Street, 28th Floor, New York, NY 10005  
assigned as counsel to the appellant on the appeal  
herein.

3 Mo. No. 2015-679  
In the Matter of Sonara HH., &c.  
  
Schoharie County Department of Social  
Services,  
Respondent;  
Robert HH.,  
Respondent.  
Attorney for the Child,  
Appellant.

Motion for leave to appeal dismissed upon the  
ground that the order sought to be appealed from  
does not finally determine the proceeding within the  
meaning of the Constitution.

3 Mo. No. 2015-731  
In the Matter of Sonara HH., &c.

Schoharie County Department of Social  
Services,  
Appellant;  
Robert HH.,  
Respondent.

Motion for leave to appeal dismissed upon the  
ground that the order sought to be appealed from  
does not finally determine the proceeding within the  
meaning of the Constitution.

3 Mo. No. 2015-730  
In the Matter of Tina A. Hoch,  
Appellant,

v.  
Karen A. Wilks,  
Respondent.

Motion for leave to appeal denied.

2 Mo. No. 2015-924  
The People &c.,  
Respondent,  
v.  
Jennifer Jorgensen,  
Appellant.

Motion by National Advocates for Pregnant Women  
et al. for leave to appear amici curiae on the appeal  
herein granted only to the extent that the proposed  
brief is accepted as filed. Three copies of the brief  
must be served and an original and nine copies filed  
within seven days.

1 Mo. No. 2015-780  
Justinian Capital SPC &c.,  
Appellant,  
v.  
WestLB AG, &c., et al.,  
Respondents.

Motion for leave to appeal granted.

3                    Mo. No. 2015-628  
Hugh Knight,  
    Appellant,  
    v.  
State of New York,  
    Respondent.

On the Court's own motion, appeal dismissed, without costs, upon the ground that no appeal lies as of right from the unanimous order of the Appellate Division absent the direct involvement of a substantial constitutional question (see CPLR 5601). Motion for poor person relief dismissed as academic.

4                    Mo. No. 2015-684  
In the Matter of Davianna L.

Motion for leave to appeal denied.

Monroe County Department of Human  
Services,  
    Respondent;  
David R.,  
    Appellant.

2                    Mo. No. 2015-729  
In the Matter of Donald William Leo, a  
disbarred attorney,  
    Appellant.

Motion for leave to appeal granted.  
Judge Rivera took no part.

3                    Mo. No. 2015-832  
In the Matter of Jorge L. Linares,  
    Appellant,  
    v.  
Andrea W. Evans, &c.,  
    Respondent.

Motion by Columbia Law School Prisoners and Families Clinic of Morningside Heights Legal Services for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed. Three copies of the brief must be served and an original and nine copies filed within seven days.  
Judge Stein took no part.

3                    Mo. No. 2015-920  
In the Matter of Jorge L. Linares,  
                          Appellant,  
                          v.  
Andrea W. Evans, &c.,  
                          Respondent.

Motion by Tim Brennan et al. for leave to appear amici curiae on the appeal herein granted only to the extent that the proposed brief is accepted as filed. Three copies of the brief must be served and an original and nine copies filed within seven days. Judge Stein took no part.

2                    Mo. No. 2015-609  
Long Island Pine Barrens Society, Inc., et al.,  
                          Respondents,  
                          v.  
County of Suffolk, et al.,  
                          Appellants.

Motion for leave to appeal denied.

1                    Mo. No. 2015-851  
The People &c.,  
                          Respondent,  
                          v.  
James Miller,  
                          Appellant.

Motion for assignment of counsel granted and Richard M. Greenberg, Esq., Office of the Appellate Defender, 11 Park Place, Suite 1601, New York, NY 10007 assigned as counsel to the appellant on the appeal herein.

4                    Mo. No. 2015-604  
Takisha Moye,  
                          Appellant,  
                          v.  
Joel A. Giambra et al.,  
                          Respondents.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.



2                    Mo. No. 2015-638  
In the Matter of State of New York,  
    Respondent,  
    v.  
Juan O. (Anonymous),  
    Appellant.

Motion for leave to appeal denied.

1                    Mo. No. 2015-937  
The People &c.,  
    Respondent,  
    v.  
Robert Patterson,  
    Appellant.

Motion for assignment of counsel granted and Seymour W. James, Jr., Esq., The Legal Aid Society, 199 Water Street, New York, NY 10038 assigned as counsel to the appellant on the appeal herein.

1                    Mo. No. 2015-592  
Grace Perez,  
    Appellant,  
    v.  
Violence Intervention Program, et al.,  
    Respondents.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.  
Judge Rivera took no part.

2                    Mo. No. 2015-907  
The People &c.,  
    Respondent,  
    v.  
Anthony Perkins,  
    Appellant.

Motion for assignment of counsel granted and Lynn W. L. Fahey, Esq., Appellate Advocates, 111 John Street, 9th Floor, New York, NY 10038 assigned as counsel to the appellant on the appeal herein.

4                    Mo. No. 2015-778  
Raymond Pink, et al.,  
    Respondents,  
    v.  
Rome Youth Hockey Association, Inc.,  
    Appellant,  
et al.,  
    Defendants.

Motion by Pacific Legal Foundation for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed. Three copies of the brief must be served and an original and nine copies filed within seven days.  
Judge Fahey took no part.

4                    Mo. No. 2015-831  
Raymond Pink, et al.,  
    Respondents,  
    v.  
Rome Youth Hockey Association, Inc.,  
    Appellant,  
et al.,  
    Defendants.

Motion by New York State Academy of Trial  
Lawyers for leave to file a brief amicus curiae on the  
appeal herein granted and the proposed brief is  
accepted as filed. Three copies of the brief must be  
served and an original and nine copies filed within  
seven days.  
Judge Fahey took no part.

2                    Mo. No. 2015-798  
In the Matter of Michael Psaros,  
    Respondent,  
    v.  
Anica Mitchell-Ortega,  
    Appellant.

Motion for leave to appeal denied.

2                    Mo. No. 2015-718  
The People &c. ex rel. Santiago Ramirez,  
    Appellant,  
    v.  
Kathleen Gerbing, &c.,  
    Respondent.

Motion for leave to appeal denied.

1                    Mo. No. 2015-967  
Yaniveth R., &c. et al.,  
    Appellants,  
    v.  
LTD Realty Co. et al.,  
    Respondents,  
et al.,  
    Defendants.  
(And a Third-Party Action)

Motion by Defense Association of New York, Inc.  
for leave to appear amicus curiae on the appeal  
herein granted only to the extent that the proposed  
brief is accepted as filed.

2 Mo. No. 2015-850  
The People &c.,  
Respondent,  
v.  
Anthony Romero, &c.,  
Appellant.

Motion for assignment of counsel granted and Lynn W. L. Fahey, Esq., Appellate Advocates, 111 John Street, 9th Floor, New York, NY 10038 assigned as counsel to the appellant on the appeal herein.

2 Mo. No. 2015-725  
In the Matter of Aminata M. S.-L.  
(Anonymous).

Motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.

Westchester County Department of Social  
Services,  
Respondent;  
Doris L. (Anonymous),  
Appellant.  
(And Another Proceeding.)

Mo. No. 2015-702  
The People &c.,  
Respondent,  
v.  
Jagtar Singh,  
Appellant.

Motion for an extension of the time within which to apply for permission to appeal pursuant to CPL 460.20 granted and motion papers treated as a timely CPL 460.20 application.

2 Mo. No. 2015-897  
The People &c.,  
Respondent,  
v.  
Omar A. Smalling,  
Appellant.

Motion for assignment of counsel granted and Lynn W. L. Fahey, Esq., Appellate Advocates, 111 John Street, 9th Floor, New York, NY 10038 assigned as counsel to the appellant on the appeal herein.

1                    Mo. No. 2015-896  
The People of the State of New York, &c., et  
al.,  
                    Respondents,  
                    v.  
Sprint Nextel Corp., et al.,  
                    Appellants.

Motion by Institute for Professionals in Taxation for  
leave to appear amicus curiae on the appeal herein  
granted only to the extent that the proposed brief is  
accepted as filed. Three copies of the brief must be  
served and an original and nine copies filed within  
seven days.  
Judge Rivera took no part.

1                    Mo. No. 2015-901  
The People of the State of New York, &c., et  
al.,  
                    Respondents,  
                    v.  
Sprint Nextel Corp., et al.,  
                    Appellants.

Motion by Council on State Taxation for leave to  
appear amicus curiae on the appeal herein granted  
only to the extent that the proposed brief is accepted  
as filed.  
Judge Rivera took no part.

1                    Mo. No. 2015-908  
The People of the State of New York, &c., et  
al.,  
                    Respondents,  
                    v.  
Sprint Nextel Corp., et al.,  
                    Appellants.

Motion by Broadband Tax Institute for leave to file a  
brief amicus curiae on the appeal herein granted and  
the proposed brief is accepted as filed.  
Judge Rivera took no part.

1                    Mo. No. 2015-921  
The People of the State of New York, &c., et  
al.,  
                    Respondents,  
                    v.  
Sprint Nextel Corp., et al.,  
                    Appellants.

Motion by Taxpayers Against Fraud Education Fund  
for leave to file a brief amicus curiae on the appeal  
herein granted and the proposed brief is accepted as  
filed. Three copies of the brief must be served and  
an original and nine copies filed within seven days.  
Judge Rivera took no part.

1                    Mo. No. 2015-922  
The People of the State of New York, &c., et  
al.,  
                    Respondents,  
                    v.  
Sprint Nextel Corp., et al.,  
                    Appellants.

Motion by Chamber of Commerce of the United States of America for leave to appear amicus curiae on the appeal herein granted only to the extent that the proposed brief is accepted as filed.  
Judge Rivera took no part.

1                    Mo. No. 2015-923  
The People of the State of New York, &c., et  
al.,  
                    Respondents,  
                    v.  
Sprint Nextel Corp., et al.,  
                    Appellants.

Motion by Business Council of New York State, Inc. for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed. Three copies of the brief must be served and an original and nine copies filed within seven days.  
Judge Rivera took no part.

4                    Mo. No. 2015-771  
In the Matter of Eighth Judicial District  
Asbestos Litigation.

Motion by Business Council of New York State et al. for leave to file a brief amici curiae on the appeal herein granted and the proposed brief is accepted as filed.

Joann H. Suttner, &c.,  
                    Respondent,  
                    v.  
A.W. Chesterton Company, et al.,  
                    Defendants,  
Crane Co.,  
                    Appellant.

4                    Mo. No. 2015-726  
In the Matter of Jessica W. Voorhees,  
                    Appellant,  
                    v.  
Gary I. Talerico, II,  
                    Respondent.  
(And Another Proceeding.)

Motion for leave to appeal denied.  
Judge Fahey took no part.

1                    Mo. No. 2015-767  
The People &c.,  
    Respondent,  
    v.  
Bobby Wallace,  
    Appellant.

Motion to vacate this Court's June 12, 2015  
preclusion order granted.

2                    Mo. No. 2015-703  
Wells Fargo Bank, N.A., &c.,  
    Respondent,  
    v.  
Rotimi Erobobo,  
    Appellant,  
et al.,  
    Defendants.

Motion for leave to appeal dismissed upon the  
ground that the order sought to be appealed from  
does not finally determine the action within the  
meaning of the Constitution.

2                    Mo. No. 2015-790  
The People &c.,  
    Respondent,  
    v.  
Leonard Williams,  
    Appellant.

Motion for assignment of counsel granted and Lynn  
W. L. Fahey, Esq., Appellate Advocates, 111 John  
Street, 9th Floor, New York, NY 10038 assigned as  
counsel to the appellant on the appeal herein.

1                    Mo. No. 2015-696  
WSC Riverside Drive Owners LLC,  
    Appellant,  
    v.  
Oliver Williams,  
    Respondent.

Motion for leave to appeal dismissed upon the  
ground that the Court of Appeals does not have  
jurisdiction to entertain this motion for leave to  
appeal from the order of the Appellate Division  
entered in this proceeding commenced in the Civil  
Court of the City of New York (see NY Const, art  
VI, § 3[b][7]; CPLR 5602[a]).

3                    Mo. No. 2015-714  
In the Matter of Alexander Z., &c.

Albany County Department for Children,  
Youth and Families,  
    Respondent;  
Melissa Z.,  
    Appellant.

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In the Matter of Alexander Z., &c.

Albany County Department for Children,  
Youth and Families,  
    Respondent;  
Jimmy Z.,  
    Appellant.  
(And Other Proceedings.)

2                    Mo. No. 2015-860  
Matvey Zelichenko,  
    Appellant,  
    v.  
301 Oriental Boulevard, LLC,  
    Respondent.

Motions for leave to appeal denied.

Motion by Defense Association of New York, Inc.  
for leave to file a brief amicus curiae on the appeal  
herein granted and the proposed brief is accepted as  
filed.