

July 5, 2007

NEW FILINGS DIGEST - QUARTERLY 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.

ADULT HOME AT ERIE STATION, INC., MATTER OF, v ASSESSOR AND BOARD OF ASSESSMENT REVIEW OF CITY OF MIDDLETOWN et al.:  
TAXATION - EXEMPTIONS - PROPERTY USED EXCLUSIVELY FOR CHARITABLE PURPOSES - WHETHER NOT-FOR-PROFIT CORPORATION THAT OPERATED AN ADULT HOME WAS ENTITLED TO EXEMPTION FROM REAL PROPERTY TAXES PURSUANT TO RPTL 420-a(1)(a);

ALVARADO v MILES:  
PHYSICIANS AND SURGEONS - DENTISTS - MALPRACTICE - SUMMARY JUDGMENT - WHETHER CONFLICTING EXPERT TESTIMONY IN DENTAL MALPRACTICE CASE RAISED TRIABLE ISSUES OF FACT AS TO WHETHER DEFENDANT DEPARTED FROM THE PREVAILING STANDARD OF CARE AND IF SO, WHETHER SUCH DEPARTURE WAS A PROXIMATE CAUSE OF PLAINTIFF'S INJURIES;

AMERICAN COMMITTEE FOR THE WEIZMANN INSTITUTE OF SCIENCE, MATTER OF, v DUNN:  
WILLS - PROBATE - UNDUE INFLUENCE - WHETHER PETITION TO VACATE PROBATE DECREE FAILED TO PLEAD CLAIM SOUNDING IN UNDUE INFLUENCE WHERE DECEDENT CHOSE TO BENEFIT NIECE AFTER DECEDENT'S BROTHER PROVIDED HOSPICE CARE IN HIS HOME DURING DECEDENT'S TERMINAL STAGE OF ILLNESS; DISCOVERY - WHETHER A CHARITY THAT FAILS TO RECEIVE NOTICE OF A PROBATE PROCEEDING UNTIL AFTER THE WILL HAS BEEN ADMITTED TO PROBATE SHOULD BE GIVEN AN OPPORTUNITY TO CONDUCT DISCOVERY TO DEMONSTRATE UNDUE INFLUENCE; STATUTE OF FRAUDS - WHETHER AN ENFORCEABLE AGREEMENT TO MAKE A TESTAMENTARY BEQUEST EXISTED;

AMOROSI, MATTER OF, v SOUTH COLONIE INDEPENDENT CENTRAL SCHOOL DISTRICT, et al.:  
CIVIL RIGHTS - DISCRIMINATION IN EMPLOYMENT - HUMAN RIGHTS LAW § 296 CLAIM OF DISCRIMINATION BASED ON PREGNANCY; LIMITATION OF ACTIONS - WHETHER APPROPRIATE STATUTE OF LIMITATIONS FOR A DISCRIMINATION CLAIM FOR DAMAGES AGAINST A SCHOOL DISTRICT UNDER HUMAN RIGHTS LAW § 296 IS THREE YEARS OR ONE YEAR; NOTICE OF CLAIM - APPLICATION FOR LEAVE TO FILE LATE NOTICE OF CLAIM;

ARONS, &c. v JUTKOWITZ, et al.: (Cal. Date 10/17/07)  
 DISCLOSURE - EX PARTE INTERVIEWS WITH NON-PARTY TREATING PHYSICIANS BY DEFENSE COUNSEL IN MEDICAL MALPRACTICE AND WRONGFUL DEATH ACTION - CPLR ARTICLE 31 - FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (42 USC § 1320d) - WHETHER PLAINTIFF MAY BE REQUIRED TO EXECUTE AUTHORIZATIONS PERMITTING DEFENSE COUNSEL TO SPEAK INFORMALLY WITH TREATING PHYSICIANS - WHETHER DEFENSE COUNSEL MAY BE REQUIRED TO DISCLOSE WRITTEN MATERIALS FROM INTERVIEWS WITH TREATING PHYSICIANS;

BERNSTEIN &c. et al. v PENNY WHISTLE TOYS, INC. et al.:  
 ANIMALS - LIABILITY FOR ANIMAL BITE - BUSINESS OWNER WHO KEEPS DOG IN STORE - NATURE OF DUTY TOWARD CHILD CUSTOMER - ABSENCE OF EVIDENCE THAT DOG EXHIBITED VICIOUS PROPENSITY PRIOR TO INCIDENT; NEGLIGENCE - DUTY; SUMMARY JUDGEMENT;

BERG v ALBANY LADDER COMPANY, INC., et al. (and a third-party action):  
 NEGLIGENCE - INJURY OF WORKER UNLOADING STEEL TRUSSES FROM A FLATBED TRUCK AT A CONSTRUCTION SITE - LABOR LAW § 240(1) AND 242(6) CLAIMS; SUMMARY JUDGMENT - DISMISSAL OF COMPLAINT;

BI-ECONOMY MARKET, INC. v HARLEYSVILLE INSURANCE CO. OF NEW YORK, et al.:  
 INSURANCE - ALLEGED BREACH OF TERMS OF INSURANCE CONTRACT - INSURER'S LIABILITY FOR CONSEQUENTIAL DAMAGES - BUSINESS INTERRUPTION INSURANCE; PARTIAL SUMMARY JUDGMENT;

BISHOP, et al. v MAURER, et al.:  
 ATTORNEY AND CLIENT - LEGAL MALPRACTICE - RETAINER LETTER - POTENTIAL CONFLICT OF INTEREST IN LAW FIRM'S REPRESENTATION OF HUSBAND AND WIFE REGARDING HUSBAND'S INDIVIDUAL RETIREMENT ACCOUNT AND EMPLOYEE STOCK OPTION PLAN PROCEEDS; MOTION TO DISMISS CAUSES OF ACTION;

BOYD v MANHATTAN & BRONX SURFACE TRANSIT OPERATING AUTHORITY et al.: (Cal. Date 9/4/07)  
 TRIAL-INSTRUCTIONS-WHETHER TRIAL COURT ERRED IN REFUSING TO GRANT DEFENDANTS' REQUEST FOR A CHARGE ON CONSTRUCTIVE NOTICE; BURDEN OF PROOF-WHETHER A PLAINTIFF INJURED DUE TO AN ALLEGEDLY DEFECTIVE CONDITION ON A BUS MUST DEMONSTRATE EITHER ACTUAL OR CONSTRUCTIVE NOTICE OF THE DEFECTIVE CONDITION;

CONGREGATION YETEV LEV D'SATMAR, INC., et al., MATTER OF, v JACOB (JENO) (YAAKOV) KAHANA, et al.: (Cal. Date 10/16/07)  
 RELIGIOUS CORPORATIONS AND ASSOCIATIONS - PROCEEDING PURSUANT TO NOT-FOR-PROFIT CORPORATION LAW § 618 TO, AMONG OTHER THINGS, DETERMINE THE VALIDITY OF THE ELECTION OF OFFICERS OF

CONGREGATION YETEV LEV D'SATMAR, INC. - WHETHER THE VALIDITY OF AN ELECTION OF OFFICERS AND DIRECTORS OF A RELIGIOUS CORPORATION CAN BE DETERMINED THROUGH THE APPLICATION OF NEUTRAL PRINCIPLES OF LAW WITHOUT REGARD TO MATTERS OF RELIGIOUS DOCTRINE; JUSTICIABILITY;

CONGREGATION YETEV LEV D'SATMAR OF KIRYAS JOEL, INC., et al. v CONGREGATION YETEV LEV D'SATMAR, INC., et al.:

(Cal. Date 10/16/07)

RELIGIOUS CORPORATIONS AND ASSOCIATIONS - DETERMINATION OF CLAIM TO REAL PROPERTY - ACTION TO QUIET TITLE - TRANSFER OF ONE-HALF INTEREST IN CEMETERY BY ONE CONGREGATION TO ANOTHER CONGREGATION - WHETHER APPELLATE DIVISION ERRED IN DETERMINING IT WAS PRECLUDED FROM DECIDING FACTUAL ISSUES SURROUNDING THE VALIDITY OF A RELIGIOUS CORPORATION'S REAL PROPERTY TRANSFER - RELIGIOUS CORPORATIONS LAW § 12;

CUADRADO (WILLIAM), PEOPLE v.:

CRIMES AND CRIMINAL PROCEDURE - INFORMATION - PLEA OF GUILTY TO SUPERIOR COURT INFORMATION AND SEPARATE CONSOLIDATED INDICTMENTS - WHETHER APPELLATE DIVISION ERRED IN DENYING DEFENDANT'S CPL 440.10 MOTION, WHICH SOUGHT TO DISMISS A SUPERIOR COURT INFORMATION ON THE GROUND THAT DEFENDANT'S WAIVER OF INDICTMENT AND SUBSEQUENT GUILTY PLEA TO THE INFORMATION WERE EXECUTED IN VIOLATION OF CPL 195.10(2)(b) BECAUSE HE HAD ALREADY BEEN INDICTED AND WAS UNDER THE JURISDICTION OF THE SUPREME COURT PRIOR TO THE ISSUANCE OF THE INFORMATION; ALLEGED NON-WAIVABLE JURISDICTIONAL DEFECT - PROCEDURAL BAR OF CPL 440.10(2)(c) TO RAISING ISSUE THAT COULD HAVE BEEN RAISED ON DIRECT APPEAL;

DATA TREE, LLC, MATTER OF, v ROMAINE:

DISCLOSURE - FREEDOM OF INFORMATION LAW - CPLR ARTICLE 78 PROCEEDING TO COMPEL THE SUFFOLK COUNTY CLERK TO PRODUCE CERTAIN DOCUMENTS PURSUANT TO THE FREEDOM OF INFORMATION LAW (FOIL) (PUBLIC OFFICERS LAW, ARTICLE 6) - WHETHER FOIL'S PRIVACY EXEMPTION APPLIED TO DOCUMENTS - WHETHER CORRECT BURDEN-SHIFTING ANALYSIS WAS APPLIED;

DANIELSON (KHALIL), PEOPLE v.:

CRIMES AND CRIMINAL PROCEDURE - MURDER - DEPRAVED INDIFFERENCE MURDER - APPELLATE REVIEW - WHETHER THE APPELLATE DIVISION'S WEIGHT OF THE EVIDENCE REVIEW IN A DEPRAVED INDIFFERENCE MURDER CASE IS LIMITED TO THE ARGUMENTS RAISED BY DEFENDANT IN HIS BRIEF TO THAT COURT; EVIDENCE - WHETHER EVIDENCE OF DEPRAVED INDIFFERENCE MURDER WAS LEGALLY SUFFICIENT OR AGAINST THE WEIGHT OF THE EVIDENCE; RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - ALLEGED INEFFECTIVE REPRESENTATION OF TRIAL COUNSEL IN FAILING TO PRESERVE LEGAL SUFFICIENCY ISSUE;

DISNEY ENTERPRISES, INC., et al., MATTER OF, v TAX APPEALS  
TRIBUNAL OF STATE OF NEW YORK:

TAXATION - FRANCHISE TAX ON BUSINESS CORPORATIONS - WHETHER THE BUSINESS ALLOCATION PERCENTAGE USED BY THE DEPARTMENT OF TAXATION AND FINANCE, WHICH INCLUDED THE NEW YORK SALES OF PETITIONER'S WHOLLY-OWNED CALIFORNIA SUBSIDIARY IN THE NUMERATOR OF PETITIONER'S COMBINED GROUP'S RECEIPTS FACTOR, VIOLATED PUBLIC LAW 86-272 (15 USC §§ 381-384); ALLEGED VIOLATION OF DUE PROCESS AND COMMERCE CLAUSE;

EDERER v GUTSKY, et al.:

PARTNERSHIP - ACCOUNTING - WITHDRAWAL OF PARTNER - WHETHER PARTNERSHIP LAW § 26(b) EXEMPTED PARTNERS IN LIMITED LIABILITY PARTNERSHIP FROM INDIVIDUAL OBLIGATIONS TO ACCOUNT TO WITHDRAWING PARTNER UNDER EARLIER ENACTED AND UNAMENDED PARTNERSHIP LAW § 74; VALIDITY OF WITHDRAWAL AGREEMENT - WHETHER TERMS OF WITHDRAWAL AGREEMENT WERE UNREASONABLE OR ONEROUS, OR AGREEMENT WAS ENTERED UNDER DURESS;

A.E.F. (ANONYMOUS) v K.T.L. (ANONYMOUS), PEOPLE ex rel.:

PARENT AND CHILD - VISITATION - WHETHER APPELLANT MADE A SUFFICIENT SHOWING OF A MATERIAL CHANGE IN CIRCUMSTANCES TO REQUIRE A HEARING ON HER REQUESTED MODIFICATION OF A PRIOR VISITATION ORDER BASED ON HER ALLEGED WORK SCHEDULE CHANGE AND NEED TO ACCOMMODATE HER RELIGIOUS BELIEFS; APPEAL - ACADEMIC AND MOOT QUESTIONS - WHETHER APPEAL WAS ACADEMIC WHERE SUBSEQUENT ORDER REQUIRED RESPONDENT TO MAKE "REASONABLE ACCOMMODATION" IN VISITATION FOR APPELLANT'S RELIGIOUS OBSERVANCE WHEN APPELLANT WAS UNABLE TO DRIVE CHILD ON A HOLY DAY; JUDGES - RECUSAL - ALLEGED IMPROPER DENIAL OF MOTION TO RECUSE;

FLEMING et al. v GRAHAM, et al.:

WORKERS' COMPENSATION LAW - INJURIES ARISING IN COURSE OF EMPLOYMENT - "PERMANENT AND SEVERE FACIAL DISFIGUREMENT" (WORKERS' COMPENSATION LAW § 11) - AUTOMOBILE ACCIDENT IN EMPLOYER'S VEHICLE; SUMMARY JUDGMENT - WHETHER ISSUES OF FACT EXISTED REGARDING PLAINTIFF'S FACIAL SCARRING AS A SEVERE AND PERMANENT FACIAL DISFIGUREMENT;

FRIEDMAN, &c. v CONNECTICUT GENERAL LIFE INSURANCE COMPANY:

(Cal. Date 9/5/07)

INSURANCE-DISABILITY INSURANCE-WHETHER LOCATION OF RELATION OF EARNINGS TO INSURANCE CLAUSE ACCORDS WITH STATUTORY REQUIREMENTS AND IS ENFORCEABLE (INSURANCE LAW §§ 3216[c][7],[d]); COURTS-LAW OF THE CASE-WHETHER SUPREME COURT IMPROPERLY TREATED MOTION FOR SUMMARY JUDGMENT AS MOTION TO REARGUE PRIOR MOTION TO DISMISS FOR FAILURE TO STATE A CAUSE OF ACTION;

FUNG et al. v JAPAN AIRLINES COMPANY, LTD., et al.:

WORKERS' COMPENSATION - EXCLUSIVENESS OF REMEDY - CONSOLIDATED PERSONAL INJURY ACTIONS - EMPLOYEE SLIP ON ICE IN PARKING LOT

OWNED BY EMPLOYER - WHETHER EXCLUSIVITY PROVISIONS OF WORKERS' COMPENSATION LAW BAR PLAINTIFFS' ACTION AGAINST THE COMPANY (JAPAN AIRLINES MANAGEMENT CORP.) SERVING AS THE EMPLOYER'S "MANAGING AGENT" UNDER A LEASE; NEGLIGENCE - DUTY OF CARE - WHETHER SNOW REMOVAL COMPANY WHICH CONTRACTED WITH THE "MANAGING AGENT" ASSUMED A DUTY OF CARE TO THE EMPLOYEE; SUMMARY JUDGMENT - WHETHER TRIABLE ISSUES OF FACT WERE RAISED;

GML, INC. et al. v CINQUE & CINQUE, PC et al.:

LIMITATION OF ACTIONS - WHAT STATUTE GOVERNS - LEGAL MALPRACTICE - CPLR § 202 - WHETHER TOLLING PROVISIONS OF TENNESSEE STATUTE ARE UNAVAILABLE TO PLAINTIFFS EVEN WHERE "DEFENDANTS HAVE NOT DEVELOPED SUFFICIENT CONTACTS WITH THE FOREIGN STATE FOR ITS COURTS TO BE CAPABLE OF ASSERTING PERSONAL JURISDICTION OVER THEM"; ALLEGED UNCONSTITUTIONALITY OF TOLLING PROVISIONS EMBODIED IN CPLR § 202 AS APPLIED TO PLAINTIFFS;

GAJADHAR (WINSTON), PEOPLE v:

CRIMES AND CRIMINAL PROCEDURE - RIGHT TO JURY TRIAL - WAIVER OF RIGHT - WHETHER A CRIMINAL DEFENDANT CAN WAIVE HIS RIGHT TO A JURY OF TWELVE INDIVIDUALS AND AGREE TO AN ELEVEN MEMBER JURY;

GREENE (TEMEL), PEOPLE v: (Cal. Date 10/18/07)

CRIMES AND CRIMINAL PROCEDURE - EXCLUSIONARY RULE - VIOLATION OF PHYSICIAN-PATIENT PRIVILEGE - WHETHER INFORMATION A HOSPITAL ADMINISTRATOR PROVIDED TO POLICE CONCERNING DEFENDANT'S TREATMENT FOR A FACIAL WOUND VIOLATED DEFENDANT'S PHYSICIAN-PATIENT PRIVILEGE (CPLR 4504); WHETHER ALLEGED VIOLATION OF STATUTORY PHYSICIAN-PATIENT PRIVILEGE IMPLICATES A CONSTITUTIONALLY PROTECTED RIGHT WARRANTING SUPPRESSION; HARMLESS AND PREJUDICIAL ERROR - WHETHER ANY ERROR IN THE ADMISSION OF HOSPITAL'S INFORMATION WAS HARMLESS; IDENTIFICATION OF DEFENDANT - PHOTOGRAPHIC ARRAYS - ALLEGEDLY TAINTED IDENTIFICATION OF DEFENDANT;

GUISHARD, et al. v GENERAL SECURITY INSURANCE COMPANY:

INSURANCE - DUTY TO DEFEND AND INDEMNIFY - WHETHER AN INJURY INCURRED IN THE COURSE OF CONVERTING A VAN TO AN ICE CREAM TRUCK ARISES OUT OF THE "OWNERSHIP, MAINTENANCE OR USE" OF THE VAN SUCH THAT THE AUTO EXCLUSION PROVISION APPLIED, RELIEVING THE INSURER OF ITS OBLIGATION TO DEFEND AND INDEMNIFY PLAINTIFFS IN AN UNDERLYING PERSONAL INJURY ACTION; INDEMNITY; SUMMARY JUDGMENT;

HABERMAN, et al., MATTER OF, v ZONING BOARD OF APPEALS OF CITY OF LONG BEACH et al.: (Cal. Date 10/16/07)

MUNICIPAL CORPORATIONS - ZONING - VARIANCE - VACATUR OF BUILDING PERMIT ISSUED PURSUANT TO COURT-APPROVED STIPULATION BETWEEN PARTIES - NECESSITY FOR SUBSEQUENT RATIFICATION OF STIPULATION BY ZONING BOARD OF APPEALS;

HALL (AZIM), PEOPLE v.:

CRIMES AND CRIMINAL PROCEDURE - SUPPRESSION HEARING - BODY CAVITY SEARCH INCIDENT TO ARREST CONDUCTED AT THE POLICE STATION - WHETHER THE SEARCH VIOLATED THE FOURTH AMENDMENT TO THE U.S. CONSTITUTION;

HENNEBERRY, MATTER OF, v ING CAPITAL ADVISERS, LLC, et al.:

ARBITRATION - POWERS OF ARBITRATOR - WHETHER PETITIONER WAS DENIED DUE PROCESS WHERE ARBITRATOR PLACED BURDEN OF PROOF ON RESPONDENTS DURING THE PROCEEDING, BUT REVERSED THE RULING IN HIS WRITTEN DECISION AND SHIFTED THE BURDEN TO PETITIONER;

HILL (ANTHONY), PEOPLE v: (Cal. Date 10/16/07)

CRIMES AND CRIMINAL PROCEDURE - PLEA OF GUILTY - WHETHER TRIAL COURT'S FAILURE TO ADVISE DEFENDANT OF POST-RELEASE SUPERVISION RENDERED HIS PLEA UNKNOWING AND INVOLUNTARY UNDER PEOPLE v CATU (4 NY3d 242 [2005]) AND PEOPLE v VAN DEUSEN (7 NY3d 744 [2006]) ENTITLING HIM TO VACATUR OF HIS PLEA; WHETHER TRIAL COURT ACTED PROPERLY IN MODIFYING DEFENDANT'S SENTENCE SO THAT THE JAIL TIME AND MANDATORY POST-RELEASE SUPERVISION PERIOD COMBINED TO EQUAL THE PROMISED SENTENCE UNDER THE ORIGINAL PLEA AGREEMENT;

HOSPITAL FOR JOINT DISEASES, &c. v TRAVELERS PROPERTY CASUALTY INSURANCE COMPANY et al.: (Cal. Date 10/11/07)

INSURANCE - NO-FAULT AUTOMOBILE INSURANCE - WAIVER - FAILURE TO TIMELY OBJECT TO THE ADEQUACY OF THE CLAIM FORMS OR TO SEEK VERIFICATION OF THE PURPORTED ASSIGNMENT OF CLAIM; SUMMARY JUDGMENT - WHETHER HOSPITAL ADEQUATELY ESTABLISHED THAT IT MAILED THE STATUTORILY PRESCRIBED BILLING FORMS TO THE INSURANCE COMPANY; STANDING;

INGRAHAM, et al., MATTER OF, v PLANNING BOARD OF TOWN OF SOUTHEAST et al.: (Cal. Date 10/18/07)

ENVIRONMENTAL CONSERVATION - ENVIRONMENTAL IMPACT STATEMENT - REQUIREMENT OF SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT (SEIS); CPLR ARTICLE 78 PROCEEDING TO CHALLENGE A DETERMINATION OF RESPONDENT PLANNING BOARD CONDITIONALLY GRANTING APPROVAL OF A FINAL SUBDIVISION PLAT;

INNOPHOS, INC. v RHODIA, S.A., et al.:

CONTRACTS - CONSTRUCTION - WHETHER THE DEFINITION OF "TAXES" IN THE PARTIES' PURCHASE AND SALE AGREEMENT INCLUDED ASSESSMENTS BY AN AGENCY OF THE MEXICAN GOVERNMENT FOR OUTSTANDING WATER EXTRACTION FEES; SUMMARY JUDGMENT - DISCOVERY - WHETHER DISCOVERY WAS REQUIRED TO RESOLVE AN ALLEGED AMBIGUITY IN THE CONTRACT;

JOHNSON, MATTER OF, v NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION et al.:

CIVIL SERVICE - TERMINATION OF EMPLOYMENT - WHETHER PETITIONER'S CONVICTION OF CRIMINAL POSSESSION OF A FORGED INSTRUMENT IN THE

THIRD DEGREE OPERATED AS A FORFEITURE OF HIS EMPLOYMENT WITH THE NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION PURSUANT TO NEW YORK CITY CHARTER § 1116(a);

JONES (MATTHEW), PEOPLE v.: (Cal. Date 10/17/07)  
CRIMES AND CRIMINAL PROCEDURE-ACCUSATORY INSTRUMENTS-WHETHER THE FACTUAL ALLEGATIONS SET FORTH IN THE INFORMATION WERE LEGALLY SUFFICIENT TO SUPPORT A CHARGE OF DISORDERLY CONDUCT;

JOSEY, MATTER OF, v GOORD:  
PRISONS AND PRISONERS - DISCIPLINE OF INMATES - RES JUDICATA - WHETHER A PRISON DISCIPLINARY PROCEEDING BASED ON PETITIONER'S CRIMINAL CONVICTION IS BARRED BY DOCTRINE OF RES JUDICATA WHERE PROCEEDING AROSE OUT OF THE SAME SET OF FACTS UNDERLYING A PRIOR DISCIPLINARY PROCEEDING IN WHICH PETITIONER WAS FOUND GUILTY OF VIOLATING SEVERAL DISCIPLINARY RULES AND A PENALTY WAS IMPOSED AGAINST HIM - CRIMINAL CONVICTION AS NEWLY DISCOVERED EVIDENCE;

KISH &c. v GRAHAM, et al.: (Cal. Date 10/17/07)  
DISCLOSURE - EX PARTE INTERVIEWS WITH NON-PARTY TREATING PHYSICIANS BY DEFENSE COUNSEL IN MEDICAL MALPRACTICE ACTION - CPLR ARTICLE 31 - FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA) (42 USC § 1320d) - WHETHER PLAINTIFF MAY BE REQUIRED TO EXECUTE AUTHORIZATIONS PERMITTING DEFENSE COUNSEL TO CONDUCT POST-NOTE OF ISSUE EX PARTE INTERVIEWS WITH TREATING PHYSICIANS;

LAUNDERS, &c. v STEINBERG, et al.: (Cal. Date 9/5/07)  
DAMAGES - MEASURE OF DAMAGES - COMPENSATORY AND PUNITIVE DAMAGES AWARDED AGAINST FATHER CONVICTED OF MANSLAUGHTER IN THE FIRST DEGREE FOR THE DEATH OF HIS DAUGHTER - PAIN AND SUFFERING AWARD FOR CHILD'S EIGHT HOUR SUFFERING BEFORE DEATH - PAIN AND SUFFERING AWARD FOR CHILD'S PRIOR SUFFERING AS A BATTERED CHILD - PUNITIVE DAMAGE AWARD; COLLATERAL ESTOPPEL;

LEON (JOSE), PEOPLE v.:  
CRIMES AND CRIMINAL PROCEDURE - RIGHT OF CONFRONTATION - WHETHER A FINGERPRINT COMPARISON DOCUMENT IS INADMISSIBLE UNDER CRAWFORD v WASHINGTON (541 US 36 [2004]) AT A DEFENDANT'S PREDICATE FELONY HEARING;

LONG ISLAND LIGHTING COMPANY et al. v ALLIANZ UNDERWRITERS INSURANCE COMPANY, et al.:  
INSURANCE - EXCESS COVERAGE - WHETHER ISSUE OF ENVIRONMENTAL CONTAMINATION AT VARIOUS SITES IS "REASONABLY LIKELY" TO INVOLVE THE EXCESS POLICY OF A PARTICULAR INSURER; ENVIRONMENTAL CONTAMINATION - LIABILITY FOR CLEAN UP COSTS; DECLARATORY JUDGMENT ACTION AGAINST EXCESS INSURERS - JUSTICIABILITY;

VICTOR M., MATTER OF (ANONYMOUS): (Cal. Date 9/6/07)  
 JUVENILE DELIQUENTS - SUPPRESSION HEARING - WHETHER FINDING THAT OFFICER'S OBSERVATION OF APPELLANT GAMBLING IN A HALLWAY OF A "CLEAN HALL BUILDING" PROVIDED PROBABLE CAUSE FOR AN ARREST AND SUBSEQUENT SEARCH OF APPELLANT; WHETHER AS AN ALTERNATIVE GROUND FOR SEARCH, OFFICER HAD PROBABLE CAUSE TO BELIEVE APPELLANT HAD COMMITTED VIOLATIONS OF TRESPASS AND LOITERING;

MANN v ABEL et al.:

LIBEL AND SLANDER - NEWSPAPER ARTICLE - ACTUAL MALICE - ALLEGED VIOLATION OF NEWSPAPER'S FREE SPEECH RIGHTS UNDER FEDERAL AND STATE CONSTITUTIONS; DAMAGES - COMPENSATORY AND PUNITIVE;

MEEKINS (DWAIN), PEOPLE v:

CRIMES AND CRIMINAL PROCEDURE - EVIDENCE - DNA IDENTIFICATION TESTS - WHETHER PRIVATE LABORATORY'S DNA REPORT WAS PROPERLY ADMITTED UNDER THE BUSINESS RECORDS EXCEPTION TO THE HEARSAY RULE THROUGH TESTIMONY OF EXPERTS IN DNA ANALYSIS AND FORENSIC BIOLOGY EMPLOYED BY THE LABORATORY AND THE MEDICAL EXAMINER'S OFFICE WHERE THE WITNESSES HAD NO PERSONAL ROLE IN THE DNA TESTING; RIGHT OF CONFRONTATION - WHETHER DNA REPORT WAS INADMISSIBLE TESTIMONIAL STATEMENT (CRAWFORD v WASHINGTON) [541 US 36] AND DAVIS v WASHINGTON [126 S Ct 2266];

MINGO (JOHN), PEOPLE v:

CRIMES AND CRIMINAL PROCEDURE - SENTENCE - CLAIMED EXCESSIVENESS OF VIOLATION OF PROBATION SENTENCE - WHETHER APPELLATE REVIEW OF EXCESSIVENESS OF VIOLATION OF PROBATION SENTENCE IS BARRED BY DEFENDANT'S WAIVER OF THE RIGHT TO APPEAL TAKEN AT THE ORIGINAL GUILTY PLEA TO THE CHARGE UNDERLYING THE PROBATIONARY SENTENCE;

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. v FIERO:

LIMITATION OF ACTIONS - ONE-YEAR STATUTE OF LIMITATIONS - WHETHER PLAINTIFF'S ACTION TO COLLECT A DISCIPLINARY FINE IT HAD IMPOSED IS A PROCEEDING TO CONFIRM AN ARBITRATION AWARD AND THUS SUBJECT TO A ONE-YEAR LIMITATION PERIOD; ASSOCIATIONS - WHETHER NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. IS AUTHORIZED TO BRING A STATE COURT ACTION TO COLLECT DISCIPLINARY FINES IT HAS IMPOSED;

9<sup>TH</sup> & 10<sup>TH</sup> STREET, LLC, MATTER OF, v BOARD OF STANDARDS AND APPEALS OF THE CITY OF NEW YORK:

MUNICIPAL CORPORATIONS - ZONING - BUILDING PERMIT - WHETHER THE DEPARTMENT OF BUILDINGS' DENIAL OF A BUILDING PERMIT TO PETITIONER ON THE GROUNDS THAT PETITIONER COULD NOT PRODUCE DOCUMENTATION OF EVENTUAL INSTITUTIONAL CONTROL OVER A PROPOSED DORMITORY BUILDING CONSTITUTED AN IMPERMISSIBLE ADMINISTRATIVE ANTICIPATORY PUNISHMENT;

936 SECOND AVENUE, L.P. v SECOND CORPORATE DEVELOPMENT COMPANY, INC., et al.:

LANDLORD AND TENANT - RENT - INTERPRETATION OF RENT VALUATION PROVISION OF NET LEASE - WHETHER THE LEASE PROVISION PRECLUDES AN APPRAISER FROM CONSIDERING THE LEASE ITSELF AS AN ENCUMBRANCE WHEN VALUING THE PROPERTY FOR THE PURPOSE OF ESTABLISHING RENT FOR A RENEWAL TERM; DECLARATORY JUDGMENT;

NUSSENZWEIG v PHILIP-LORCA DICORCIA, et al.: (Cal. Date 10/10/07)  
LIMITATION OF ACTIONS - WHEN CAUSE OF ACTION UNDER STATE'S PRIVACY STATUTE (CIVIL RIGHTS LAW §§ 50,51) CONCERNING USE OF PLAINTIFF'S LIKENESS IN A WORK OF ART ACCRUES; APPEAL - MATTERS REVIEWABLE - ALLEGED ERROR IN APPELLATE DIVISION'S FAILURE TO REACH ISSUE WHETHER DEFENDANTS' USE OF PLAINTIFF'S PHOTOGRAPH WAS ENTITLED TO FIRST AMENDMENT PROTECTION WHERE COURT DETERMINED THAT THE ACTION WAS BARRED BY STATUTE OF LIMITATIONS; CIVIL RIGHTS - COMMERCIAL USE OF PHOTOGRAPH - WHETHER USE OF INDIVIDUAL'S LIKENESS IN A WORK OF ART IS SUBJECT TO AN ACTION UNDER STATE'S PRIVACY STATUTE;

WALLACE B.O., MATTER OF, v CHRISTINE S.-O.:

PARENT AND CHILD - VISITATION - FEES - WHETHER FAMILY COURT ERRED IN DIRECTING THAT RESPONDENT PAY NINETY PERCENT OF LAW GUARDIAN'S FEES IN UNDERLYING FAMILY COURT ACT ARTICLE 6 PROCEEDING AND FIFTY PERCENT OF THE LAW GUARDIAN'S FEES ON TWO PRIOR APPEALS; WHETHER FAMILY COURT IMPROPERLY APPOINTED GUARDIAN AD LITEM;

OLSON (BRIAN), PEOPLE v: (Cal. Date 10/10/07)

CRIMES AND CRIMINAL PROCEDURE - EVIDENCE - SUFFICIENCY - JUSTIFICATION DEFENSE - USE OF PHYSICAL FORCE TO DEFEND SISTER BEING HARASSED BY GROUP OF MEN - VICTIM HIT WITH BEER BOTTLE;

OPTIC PLUS ENTERPRISES, LTD. v BAUSCH & LOMB, INC., et al.:

DISCLOSURE - MATERIAL EXEMPT FROM DISCLOSURE - ATTORNEY-CLIENT PRIVILEGE - WHETHER APPELLATE DIVISION ERRED IN GRANTING IN PART PLAINTIFF'S MOTION TO COMPEL AND DIRECTING THAT THE DEFENDANTS PRODUCE THE FILES OF THEIR INSIDE COUNSEL FOR AN IN CAMERA REVIEW BY THE SUPREME COURT TO DETERMINE IF CERTAIN DOCUMENTS SET FORTH IN DEFENDANTS' "PRIVILEGE LOG" SHOULD BE DISCLOSED IN A BREACH OF CONTRACT ACTION;

ORNSTEIN v. NEW YORK CITY HEALTH AND HOSPITALS CORPORATION, et al.:

NEGLIGENCE - NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS - WHETHER PLAINTIFF HAS A VIABLE CLAIM FOR EMOTIONAL AND PSYCHOLOGICAL INJURY RESULTING FROM EXPOSURE TO THE VIRUS THAT CAUSES ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS) TO THE EXTENT SUCH CLAIM IS BASED UPON DAMAGES SUSTAINED MORE THAN SIX MONTHS AFTER PLAINTIFF'S EXPOSURE TO THE AIDS VIRUS BECAUSE INFECTION IS BELIEVED UNLIKELY WHEN THE VICTIM TESTS NEGATIVE FOR THE PRESENCE OF THE VIRUS MORE THAN SIX MONTHS AFTER EXPOSURE;

ORTEGA et al. v CITY OF NEW YORK: (Cal. Date 9/5/07)  
 TORTS - NEGLIGENCE - "THIRD-PARTY SPOILIATION" - WHETHER  
 PLAINTIFFS MAY MAINTAIN CAUSE OF ACTION FOR THIRD-PARTY NEGLIGENT  
 SPOILIATION OF EVIDENCE FOR INADVERTENT VIOLATION OF COURT ORDER  
 TO PRESERVE A VEHICLE THAT MIGHT HAVE PROVIDED EVIDENCE ENABLING  
 PLAINTIFFS TO PURSUE NEGLIGENCE CLAIMS AGAINST OTHER PARTIES;

OSTER, et al. v STATE OF NEW YORK, et al.:  
 LANDLORD AND TENANT - RENT REGULATION - SUMMARY PERSONAL USE  
 HOLDOVER PROCEEDINGS AGAINST TENANTS IN RENT-STABILIZED  
 APARTMENTS - TENANTS ALLEGE THAT THE PHRASE "ONE OR MORE" IN RENT  
 STABILIZATION LAW § 26-511(c)(9)(b) AND THE PHRASE "A HOUSING  
 ACCOMMODATION" IN THE RENT STABILIZATION CODE ARE SO VAGUE AND  
 AMBIGUOUS ON THEIR FACE AS TO VIOLATE TENANTS' RIGHT TO DUE  
 PROCESS;

PASLEY (ALEXANDER), PEOPLE v:  
 CRIMES AND CRIMINAL PROCEDURE - MURDER - DEPRAVED INDIFFERENCE  
 MURDER - WEIGHT OF THE EVIDENCE - WHETHER THE APPELLATE DIVISION  
 WAS REQUIRED TO CONDUCT A WEIGHT OF THE EVIDENCE REVIEW UPON  
 DEFENDANT'S REQUEST IN THIS DEPRAVED INDIFFERENCE MURDER CASE  
 AND, IF SO, WHETHER THE WEIGHT OF THE EVIDENCE SUPPORTED  
 DEFENDANT'S CONVICTION; RIGHT TO COUNSEL - EFFECTIVE  
 REPRESENTATION - ALLEGED INEFFECTIVE REPRESENTATION OF TRIAL  
 COUNSEL IN FAILING TO MOVE TO DISMISS A DEPRAVED INDIFFERENCE  
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 CHARGED WITH USING THE VEHICLE IN COMMISSION OF A CRIME AND THE  
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RIVERKEEPER, INC., MATTER OF, v PLANNING BOARD OF TOWN OF SOUTHEAST et al. (AND TWO OTHER PROCEEDINGS):

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SMALLS v AJI INDUSTRIES, INC., et al.:

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IN MOTOR VEHICLE ACCIDENT OCCURRING WHEN DRIVER TURNED LEFT AT  
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SMALLEY, et al. v THE DREYFUS CORPORATION, et al.:

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STEEL LOS III/GOYA FOODS, INC., MATTER OF, v BOARD OF ASSESSORS OF COUNTY OF NASSAU, et al.:

TAXATION - TAX REFUND - WHETHER NASSAU COUNTY ADMINISTRATIVE CODE § 6-26.0(b)(3), UNDER WHICH THE COUNTY IS RESPONSIBLE FOR THE REFUND OF TAX OVERPAYMENTS RECEIVED BY THE COUNTY, TOWNS AND SCHOOLS DISTRICTS, APPLIES TO REFUNDS OF PAYMENTS-IN-LIEU-OF - TAXES (PILOT PAYMENTS); WHETHER PILOT PAYMENTS ARE CONTRACTUAL OR ARE SUBJECT TO THE PROVISIONS OF THE TAX LAWS;

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 PROPERLY CONCLUDED THAT A PROPOSED ANNEXATION OF LAND FROM  
 HERKIMER COUNTY AND THE TOWN OF FRANKFORT TO THE CITY OF UTICA  
 WAS IN THE OVERALL PUBLIC INTEREST, OR ERRED BY DISPENSING WITH  
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ESTATE OF WALLENS (BURTON), DECEASED, MATTER OF:  
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 ABUSE AND FOUR TO TWELVE YEARS FOR FIRST DEGREE ROBBERY, WHO WAS  
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JURY'S FINDINGS OF "PARTICULAR EFFECT" VENUE IN NEW YORK COUNTY  
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