

October 12, 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.

ADAMS, MATTER OF, v ROCHESTER FIRE DEPARTMENT:

APPEALS - CHALLENGE TO APPELLATE DIVISION ORDERS DENYING MOTION TO PROCEED AS A POOR PERSON ON AN APPEAL AND DENYING MOTION FOR RENEWAL OF THAT MOTION; MOTIONS - DENIAL BY SUPREME COURT OF MOTION SEEKING TO COMPEL COMPLIANCE WITH A SUBPOENA PURSUANT TO CPLR 2308;

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);

ALDEN v ST. JOSEPH'S HOSPITAL HEALTH CENTER:

APPEAL - APPELLATE DIVISION - DENIAL OF MOTION FOR STAY IN ONGOING TORT ACTION AGAINST A HOSPITAL;

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.: (Cal. Date 11/13/07)

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;
APPLIED CARD SYSTEMS, INC., et al., PEOPLE &c. v:
 CONSUMER PROTECTION - DECEPTIVE ACTS AND PRACTICES - CREDIT CARD SOLICITATION OFFERS - RESTITUTION - WHETHER ATTORNEY GENERAL IS BARRED BY RES JUDICATA FROM RECOVERING RESTITUTION ON BEHALF OF INDIVIDUAL CONSUMERS BOUND BY SETTLEMENT OF PRIVATE CLASS ACTION AGAINST RESPONDENTS WHERE THE ATTORNEY GENERAL DID NOT PARTICIPATE IN SUCH SETTLEMENT - RELATIONSHIP OF INJURY TO DECEPTION - EFFECT OF SUBSEQUENT DISCLOSURE OF POLICY TERMS AND OPTION TO CANCEL INSURANCE;

APPLIED CARD SYSTEMS, INC., et al., PEOPLE &c. v:
 STATUTES - FEDERAL PREEMPTION - CREDIT CARD SOLICITATION OFFERS - WHETHER THE FEDERAL TRUTH IN LENDING ACT PROVISIONS CONCERNING CREDIT CARD SOLICITATIONS (15 USC § 1610[e]) PREEMPT CLAIMS UNDER GENERAL BUSINESS LAW §§ 349 AND 350; CONSUMER PROTECTION - DECEPTIVE ACTS AND PRACTICES - NECESSITY FOR EXTRINSIC EVIDENCE OF CONSUMER CONFUSION TO ESTABLISH A VIOLATION OF GENERAL BUSINESS LAW §§ 349 AND 350;

APPLETON ACQUISITION, LLC, et al. v THE NATIONAL HOUSING PARTNERSHIP, et al.:
 PARTNERSHIP - LIMITED PARTNERSHIP - WHETHER A DISSENTING LIMITED PARTNER'S ACTION FOR RESCISSION OF A MERGER TRANSACTION ON THE GROUNDS OF FRAUD AND MISREPRESENTATION, AND FOR DAMAGES ARISING FROM THE GENERAL PARTNER'S BREACH OF FIDUCIARY DUTIES IN EFFECTING THE MERGER, IS BARRED BY PARTNERSHIP LAW § 121-1102(d);

ARAUJO, et al. v TIANO'S CONSTRUCTION CORPORATION et al.:
 LABOR - PREVAILING RATE OF WAGES - SUMMARY JUDGMENT - WHETHER COURT PROPERLY DISMISSED PLAINTIFFS' CAUSES OF ACTION AGAINST THEIR EMPLOYER AND ITS SURETY FOR BREACH OF CONTRACT, QUANTUM MERUIT AND UNJUST ENRICHMENT, BASED ON THEIR CLAIMS THAT THEY WERE PAID LESS THAN THE MINIMUM PREVAILING WAGES SET PURSUANT TO THE DAVIS-BACON ACT. DETERMINATION THAT NO PRIVATE RIGHT OF ACTION EXISTS, EITHER DIRECTLY OR INDIRECTLY, TO ENFORCE CONTRACTS REQUIRING PAYMENT OF FEDERAL PREVAILING WAGE SCHEDULES;

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;

BROOKS et al. v JUDLAU CONTRACTING, INC.:

INDEMNITY - CONTRACTUAL INDEMNIFICATION - TRIAL COURT DISMISSAL OF THIRD-PARTY CLAIM FOR CONTRACTUAL INDEMNIFICATION - GENERAL CONTRACTOR'S CLAIM FOR INDEMNIFICATION FROM SUBCONTRACTOR FOR INJURY TO IRONWORKER WHO FELL FROM AN OVERPASS WHILE INSTALLING A STEEL GIRDER;

BYBLOS BANK EUROPE, SA v SYRKETI:

JUDGMENTS - FOREIGN JUDGMENTS - COMITY - WHETHER PLAINTIFF BELGIAN BANK WAS ENTITLED TO RECOGNITION AND ENFORCEMENT IN NEW YORK COURTS OF BELGIAN MONEY JUDGMENT ISSUED AFTER TURKISH JUDGMENT REJECTING PLAINTIFF'S CLAIM ON THE MERITS;

CABRERA (BRETT), PEOPLE v:

CRIMES AND CRIMINAL PROCEDURE - CRIMINALLY NEGLIGENT HOMICIDE - WHETHER EVIDENCE WAS SUFFICIENT TO ESTABLISH "DANGEROUS SPEEDING" AND TO SUSTAIN DEFENDANT'S CONVICTIONS OF CRIMINALLY NEGLIGENT HOMICIDE AND ASSAULT WHERE EVIDENCE DEMONSTRATED DEFENDANT DROVE VEHICLE 72 MILES PER HOUR ON A SECTION OF ROAD WITH A POSTED MAXIMUM SPEED LIMIT OF 55 MILES PER HOUR, LOST CONTROL OF THE VEHICLE, AND CRASHED INTO A TELEPHONE POLE AND TREE KILLING THREE OF HIS PASSENGERS AND SEVERELY INJURING A FOURTH; INSTRUCTIONS - CHARGE TO JURY - ALLEGED ERROR BY TRIAL COURT IN FAILING TO CHARGE JURY THAT EXCESSIVE SPEED ALONE WAS INSUFFICIENT TO SUSTAIN A FINDING OF CRIMINAL NEGLIGENCE AND THAT JUNIOR LICENSE VIOLATIONS WERE IRRELEVANT TO ISSUE OF CRIMINAL NEGLIGENCE;

CAMPOS v THE CITY OF NEW YORK:

MUNICIPAL CORPORATIONS - TORT LIABILITY - POLICE - WHETHER APPELLATE DIVISION ERRED IN GRANTING CITY'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT TO EXTENT OF DISMISSING THE CAUSES OF ACTION AGAINST THE CITY FOR USE OF EXCESSIVE FORCE AND NEGLIGENT TRAINING WHERE PLAINTIFF WAS SHOT AND ARRESTED BY AN OFF-DUTY

POLICE OFFICER; ALLEGED DENIAL OF RIGHT TO JURY TRIAL; 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;

CORSINO, et al. v NEW YORK CITY TRANSIT AUTHORITY, et al.:
 NEGLIGENCE - MAINTENANCE OF PREMISES - PLAINTIFF INJURED IN TRIP OVER CONTRACTOR'S DRAG LINE LYING ON SUBWAY PLATFORM IN STATION UNDER RENOVATION - LIABILITY OF VARIOUS DEFENDANTS FOR CONDITION; SUMMARY JUDGMENT - DISMISSAL OF COMPLAINT; TORTS - ACTUAL OR CONSTRUCTIVE NOTICE OF DANGEROUS CONDITION - DUTY OF CARE - PROXIMATE CAUSE;

COX et al. v NAP CONSTRUCTION COMPANY et al.:
 LABOR - PREVAILING RATE OF WAGES - PREEMPTION BY FEDERAL PREVAILING WAGE STATUTE - WHETHER THE DAVIS-BACON ACT (40 USC §§ 3142[a], [b]) PREEMPTS OR OTHERWISE PRECLUDES CLAIMS PURSUANT TO LABOR LAW AND 12 NYCRR 142-3.2 FOR FAILURE TO PAY PREVAILING WAGES, SUPPLEMENTAL BENEFITS AND OVERTIME COMPENSATION TO LABORERS ON A FEDERALLY FUNDED PUBLIC WORKS PROJECT;

CUADRADO (WILLIAM), PEOPLE v.: (Cal. Date 11/13/07)
 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;

DANIELSON (KHALIL), PEOPLE v: (Cal. Date 11/14/07)
 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;

DATA TREE, LLC, MATTER OF, v ROMAINE: (Cal. Date 11/14/07)
 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;

DAVIS v COUNTY OF WESTCHESTER, et al.:
 CIVIL SERVICE - COMPENSATION AND BENEFITS - DISABLED CORRECTION
 OFFICER - FULL-PAY DISABILITY BENEFITS UNDER GENERAL MUNICIPAL
 LAW § 207-c(1) - COUNTY APPLICATION ON BEHALF OF PETITIONER FOR
 DISABILITY RETIREMENT BENEFITS UNDER RETIREMENT AND SOCIAL
 SECURITY LAW ARTICLE 15; CLAIMED DENIAL OF DUE PROCESS;
 EXHAUSTION OF ADMINISTRATIVE REMEDIES;

DIFRANCESCO, et al. v COUNTY OF ROCKLAND:
 DECLARATORY JUDGMENTS - LOCAL LAWS - CHALLENGE TO LOCAL LAW NO. 1
 OF THE COUNTY OF ROCKLAND THAT REQUIRES, AMONG OTHER THINGS,
 SELLERS AND LESSORS OF ANY RESIDENTIAL PROPERTY SERVED BY A
 PRIVATE WATER SYSTEM WITHIN THE COUNTY OF ROCKLAND TO HAVE THE
 WATER SYSTEM TESTED AND CERTIFIED TO ENSURE COMPLIANCE WITH
 COUNTYWIDE WATER-QUALITY STANDARDS; ALLEGED UNCONSTITUTIONALITY
 OF LOCAL LAW NO. 1 OF THE COUNTY OF ROCKLAND;

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.: (Cal. Date 11/15/07)

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;

FAIR PRICE MEDICAL SUPPLY CORP. &c. v THE TRAVELERS INDEMNITY COMPANY:

INSURANCE - NO-FAULT AUTOMOBILE INSURANCE - EFFECT OF INSURER'S FAILURE TO PAY OR DENY CLAIM WITHIN 30 DAYS - WHETHER INSURER IS PRECLUDED FROM INTERPOSING DEFENSE ALLEGING THAT CLAIM FRAUDULENTLY SEEKS REIMBURSEMENT FOR MEDICAL SUPPLIES THAT WERE NOT DELIVERED TO THE INSURED - INSURANCE LAW § 5106(a);

FARKAS v FARKAS:

DISMISSAL AND NONSUIT - ABANDONED CASES - DELAY IN SETTLEMENT OF JUDGMENT IN FAVOR OF PLAINTIFF - DEFENDANT'S OPPOSITION TO ENTRY OF PROPOSED JUDGMENT BASED ON UNTIMELINESS (22 NYCRR 202.48[a], [b]) - WHETHER THERE WAS GOOD CAUSE FOR DELAY - LAW OFFICE FAILURE; JUDGMENT - VACATUR;

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC. f/k/a/ 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;

ACCOUNTING BY FLEET BANK, AS TRUSTEE OF THE TRUST FOR THE BENEFIT OF BARBARA W. PIEL, &c., MATTER OF:

DESCENT AND DISTRIBUTION - RIGHTS OF INHERITANCE - EFFECT OF ADOPTION - WHETHER SURROGATE ERRED IN DETERMINING THAT, BECAUSE BENEFICIARY'S OUT-OF-WEDLOCK CHILD WAS ADOPTED OUT OF FAMILY, SHE WAS NOT "DESCENDANT" OR "CHILD" OF BENEFICIARY AND WAS NOT INCLUDED WITHIN CLASS OF INTENDED REMAINDERPERSONS OR BENEFICIARIES OF TRUSTS ESTABLISHED BEFORE DOMESTIC RELATIONS LAW § 117 WAS AMENDED TO LIMIT RIGHT OF ADOPTED-OUT CHILD TO INHERIT ONLY FROM AND THROUGH ADOPTIVE PARENTS;

FISCHBARG v DOUCET et al.: (Cal. Date 11/15/07)

ATTORNEY AND CLIENT - COMPENSATION - WHETHER NEW YORK ATTORNEY HAS PERSONAL JURISDICTION OVER OREGON CLIENT IN ACTION TO RECOVER FEES FOR SERVICES IN OREGON LITIGATION - LONG-ARM JURISDICTION

(CPLR 302[a][1]);

FISCHETTI, MATTER OF, v SCHERER &c. et al.:

PROCEEDING AGAINST BODY OR OFFICER - PROHIBITION - CPLR ARTICLE 78 PETITION CHALLENGING SUPREME COURT ORDER DIRECTING DEFENSE COUNSEL TO REFRAIN FROM PUBLISHING THE COMPLAINANT'S NAME; ALLEGED DENIAL OF DEFENSE COUNSEL'S RIGHT TO FREEDOM OF SPEECH UNDER THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION AND DEFENDANT'S RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL;

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;

FRAZIER (HECTOR), PEOPLE v:

CRIMES AND CRIMINAL PROCEDURE - SENTENCE - POST-RELEASE SUPERVISION - WHETHER SENTENCING COURT'S FAILURE TO MENTION IN OPEN COURT A PERIOD OF POST-RELEASE SUPERVISION AS PART OF THE SENTENCE RENDERS THE POST-RELEASE SUPERVISION COMPONENT OF THE SENTENCE INVALID;

FREYCINET (GARY), PEOPLE v:

CRIMES AND CRIMINAL PROCEDURE - RIGHT OF CONFRONTATION - AUTOPSY REPORT INTRODUCED THROUGH TESTIMONY OF A MEDICAL EXAMINER WHO HAD NEITHER PERFORMED THE AUTOPSY NOR PREPARED THE REPORT - WHETHER AUTOPSY REPORT WAS INADMISSIBLE TESTIMONIAL STATEMENT (CRAWFORD v WASHINGTON, 541 US 36); JUSTIFICATION DEFENSE;

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

(Cal. Date 11/14/07)

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;

GASTON, &c. et al. v AMERICAN TRANSIT INSURANCE COMPANY:

INSURANCE - AUTOMOBILE INSURANCE - UNINSURED MOTORIST CLAIM - ACTION TO RECOVER UNSATISFIED JUDGMENT PURSUANT TO INSURANCE LAW § 3420(a)(2); ISSUE PRECLUSION - COLLATERAL ESTOPPEL - WHETHER DEFAULT JUDGMENT AGAINST INSURER IN PRIOR PROCEEDING TO STAY ARBITRATION OF UNINSURED MOTORIST VEHICLE CLAIMS HAS PRECLUSIVE EFFECT IN ACTION TO RECOVER UNSATISFIED JUDGMENT;

GREENE (TEMEL), PEOPLE v.:

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;

HABERMAN, et al., MATTER OF, v ZONING BOARD OF APPEALS OF CITY OF LONG BEACH et al.:

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;

HAMPTON (KOFI), PEOPLE v.:

APPEAL - APPELLATE DIVISION - APPELLATE DIVISION DISMISSAL OF MOTION FOR LEAVE TO APPEAL TO THE COURT OF APPEALS IN A CRIMINAL CASE;

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.:

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.:

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;

IG SECOND GENERATION PARTNERS, LP, et al., MATTER OF, v NEW YORK STATE DEPARTMENT OF HOUSING & COMMUNITY RENEWAL, &c.:

LANDLORD AND TENANT - RENT REGULATION - WHETHER DEPARTMENT OF HOUSING AND COMMUNITY RENEWAL (DHCR) HAD AUTHORITY TO CANCEL RENT ARREARS FOLLOWING DISMISSAL OF FAIR MARKET RENT APPEAL WHERE DHCR FOUND THAT RENT CALLED FOR IN LEASE WAS LESS THAN FAIR MARKET VALUE;

INGRAHAM, et al., MATTER OF, v PLANNING BOARD OF TOWN OF SOUTHEAST et al.:

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;

THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA v HSBC BANK USA:

BONDS - ACTION TO RECOVER SUMS PAID PURSUANT TO BOND GUARANTEEING PAYMENT OF TAX RECEIPTS OF CIGARETTE WHOLESALER TO STATE OF NEW YORK - WHETHER CLAIMS OF BONDING COMPANY AGAINST BANK WHERE TAX RECEIPTS WERE DEPOSITED ARE BARRED BY RES JUDICATA AS A RESULT OF PROCEEDINGS IN BANKRUPTCY CASE OF CIGARETTE WHOLESALER; SUMMARY JUDGMENT;

JENKINS (JONATHAN), PEOPLE v:

CRIMES AND CRIMINAL PROCEDURE - PLEA BARGAINING - ENFORCEMENT OF AGREEMENT - COMPLIANCE WITH CONDITIONS OF PLEA AGREEMENT - SPECIFIC PERFORMANCE; CLAYTON MOTION (People v Clayton, 41 AD2d 204) - PRESERVATION OR WAIVER OF ISSUES RAISED IN WITHDRAWN MOTION;

JERICHO WATER DISTRICT v ONE CALL USERS COUNCIL, INC., et al.:

PUBLIC UTILITIES - CONTRIBUTORS TO COSTS OF OPERATING A ONE-CALL NOTIFICATION SYSTEM FOR SAFETY OF THOSE DIGGING NEAR UNDERGROUND FACILITIES - WHETHER PLAINTIFF WATER DISTRICT IS A "MUNICIPALITY" WITHIN THE MEANING OF GENERAL BUSINESS LAW § 761(3) AND THEREFORE EXEMPT FROM CONTRIBUTING TO THE ONE-CALL SYSTEM COSTS; MUNICIPAL CORPORATIONS;

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);

JOHNSON (FATIN), PEOPLE v:

CRIMES AND CRIMINAL PROCEDURE - APPEAL - PRESERVATION - JURY INSTRUCTIONS ON DEPRAVED INDIFFERENCE MURDER; IDENTIFICATION OF DEFENDANT - LINEUP - DENIAL OF APPLICATION FOR COURT-ORDERED LINEUPS TO BE CONDUCTED IN A SEQUENTIAL AND DOUBLE-BLIND FASHION;

JONES (ANTHONY), PEOPLE v.:

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 PLAINTIFF MAY BE REQUIRED TO EXECUTE AUTHORIZATIONS PERMITTING
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INSURANCE COMPANY, et al.:

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TORTS - CAUSES OF ACTION FOR BREACH OF FIDUCIARY DUTY AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AGAINST RABBI WHO COUNSELED AND ENGAGED IN SEXUAL RELATIONSHIP WITH MEMBER OF SYNAGOGUE - CIVIL RIGHTS LAW § 80-a;

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TRIAL - EVIDENCE - DENIAL OF WITNESS - WHETHER TRIAL COURT IN SLIP AND FALL PERSONAL INJURY MATTER DEPRIVED PLAINTIFF OF A FAIR TRIAL BY PRECLUDING PLAINTIFF FROM CALLING A NON-PARTY EYEWITNESS TO THE ACCIDENT WHERE PLAINTIFF FAILED TO DISCLOSE THE WITNESS PRIOR TO TRIAL BUT DEFENDANT IDENTIFIED THE WITNESS IN OPENING STATEMENT AT THE TRIAL;

MCALLISTER, MATTER OF, v GOORD:

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MCCURDY v THE STATE OF NEW YORK:

EMINENT DOMAIN - AWARD - APPROPRIATE MEASURE OF CONSEQUENTIAL DAMAGES FOR TAKING OF TEMPORARY EASEMENT OF ROAD FRONTAGE WHERE SUBJECT PARCEL IS UNDEVELOPED VACANT PROPERTY - WHETHER DAMAGES ARE BASED ON RENTAL VALUE OF ENTIRE REMAINDER, RATHER THAN THE PORTION OF THE PROPERTY ACTUALLY ENCUMBERED BY THE TEMPORARY EASEMENT;

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];
MILL CREEK PHASE 1 STATEN ISLAND BLUEBELT SYSTEM, MATTER OF, v
VIGLIAROLO, et al.:

INTEREST - RATE OF INTEREST - WHETHER INTEREST RATE ON TAX LIEN AGAINST THE SUBJECT PROPERTY CONTINUED TO ACCRUE AT A RATE OF EIGHTEEN PERCENT AFTER THE CITY ACQUIRED THE SUBJECT PROPERTY THROUGH A CONDEMNATION PROCEEDING OR WAS LIMITED TO SIX PERCENT PURSUANT TO GENERAL MUNICIPAL LAW § 3-a(2);

MILLER v CONSOLIDATED RAIL CORPORATION et al.:

NEGLIGENCE - MAINTENANCE OF PREMISES - SUMMARY JUDGMENT - WHETHER DEFENDANT OWNER OF A PARCEL OF PROPERTY USED AS AN AUTO YARD OWED A LEGALLY RECOGNIZED DUTY TO PLAINTIFF, A PERSON AUTHORIZED TO BE PRESENT ON THE PREMISES, TO PROVIDE SOME FORM OF EMERGENCY LIGHTING IN THE YARD OR TO CLOSE IT IN THE EVENT OF A POWER OUTAGE;

MIRO et al. v PLAZA CONSTRUCTION CORPORATION, et al.:

LABOR - SAFE PLACE TO WORK - LABOR LAW § 240(1) - WHETHER EVIDENCE ESTABLISHED THAT PLAINTIFF'S OWN ACTIONS WERE SOLE PROXIMATE CAUSE OF HIS FALL FROM A LADDER WHERE HE ALLEGEDLY RECOGNIZED THE UNDESIRABILITY OF FIREPROOFING MATERIAL ON HIS LADDER AND KNEW HE COULD REQUEST A DIFFERENT LADDER FROM HIS EMPLOYER BUT FAILED TO DO SO;

9TH & 10TH 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.:

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;

OLSON (BRIAN), PEOPLE v:

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;

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;

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LANDLORD AND TENANT - LEASE - RENT ESCALATION CLAUSE - WHETHER LANDLORD PROPERLY PASSED TO TENANT CITY A SHARE OF THE ASBESTOS REMOVAL COST AS AN OPERATING EXPENSE; WAIVER OF ARGUMENT; INTEREST ACCRUAL;

PASLEY (ALEXANDER), PEOPLE v: (Cal. Date 11/14/07)

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 MURDER CHARGE ON LEGAL SUFFICIENCY GROUNDS;

PLUDEMAN v NORTHERN LEASING SYSTEMS, INC., et al.:

PLEADING - SUFFICIENCY OF PLEADING - FRAUD - WHETHER PLAINTIFFS' ALLEGATIONS OF FRAUD SATISFIED THE PLEADING REQUIREMENTS OF CPLR 3016(b);

POLICE BENEVOLENT ASSOCIATION OF NEW YORK STATE TROOPERS et al. v DIVISION OF NEW YORK STATE POLICE, et al.:

PARTIES - STANDING - WHETHER STATE TROOPERS SUBJECTED TO AN INITIAL CRITICAL INCIDENT INQUIRY AND THEIR POLICE BENEVOLENT ASSOCIATION HAVE STANDING TO BRING AN ACTION SEEKING A DECLARATION THAT ALL NEW YORK STATE TROOPERS AND OFFICERS HAVE A RIGHT TO COUNSEL AND UNION REPRESENTATION AT ALL STAGES OF A CRITICAL INCIDENT INVESTIGATION;

PORTER (ANTHONY R.), PEOPLE v:

CRIMES AND CRIMINAL PROCEDURE - RIGHT TO COUNSEL - WHETHER DEFENDANT UNEQUIVOCALLY INVOKED HIS RIGHT TO COUNSEL BY STATING

"I THINK I NEED AN ATTORNEY"; SUPPRESSION HEARING - WHETHER TRIAL COURT ERRED IN FAILING TO GRANT DEFENDANT'S MOTION TO SUPPRESS HIS STATEMENT MADE TO POLICE AFTER HE STATED "I THINK I NEED AN ATTORNEY"; ALLEGED ILLEGAL WARRANTLESS SEARCH OF PREMISES WHERE DEFENDANT STAYING;

PROPERTY CLERK OF THE POLICE DEPARTMENT OF THE CITY OF NEW YORK v HARRIS et al.:

FORFEITURES AND PENALTIES - FORFEITURE OF PROCEEDS OR INSTRUMENTALITY OF CRIME - WHETHER CITY IS ENTITLED TO RETAIN POSSESSION OF A VEHICLE DURING PENDENCY OF FORFEITURE PROCEEDINGS WHERE VEHICLE IS JOINTLY OWNED BY TWO INDIVIDUALS AND ONE IS CHARGED WITH USING THE VEHICLE IN COMMISSION OF A CRIME AND THE OTHER IS AN INNOCENT CO-OWNER;

JAVIER R. (ANONYMOUS), MATTER OF:

APPEAL - ACADEMIC AND MOOT QUESTION - APPELLATE DIVISION DISMISSAL OF APPEAL AS MOOT - APPLICATION PURSUANT TO FAMILY COURT ACT § 1028 FOR RETURN OF CHILD TO PARENTS AFTER TEMPORARY REMOVAL FROM HOME - DURING PENDENCY OF APPEAL TO APPELLATE DIVISION, FAMILY COURT MODIFIED ITS PRIOR ORDER AND RETURNED CHILD TO CUSTODY OF PARENTS;

RAFFELLINI v STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY:

INSURANCE - AUTOMOBILE INSURANCE - UNDERINSURED MOTORIST ENDORSEMENT - "SERIOUS INJURY" THRESHOLD - WHETHER LACK OF "SERIOUS INJURY" MAY BE RAISED AS A DEFENSE IN AN ACTION TO RECOVER DAMAGES UNDER THE SUPPLEMENTARY UNDERINSURANCE ENDORSEMENT OF AN AUTOMOBILE POLICY;

RAMOS v HOWARD INDUSTRIES, INC.:

PRODUCTS LIABILITY - DEFECTIVELY DESIGNED PRODUCT - SUMMARY JUDGMENT - WHETHER, IN A PRODUCTS LIABILITY CLAIM ALLEGING A MANUFACTURING DEFECT IN A PRODUCT UNAVAILABLE FOR INSPECTION, DEFENDANT MANUFACTURER OF TRANSFORMERS SATISFIED ITS BURDEN ON A MOTION FOR SUMMARY JUDGMENT BY SUBMITTING EVIDENCE THAT ESTABLISHED ITS PRODUCTS WERE GENERALLY DESIGNED AND MANUFACTURED UNDER STATE OF THE ART CONDITIONS AND COMPLIED WITH ALL APPLICABLE INDUSTRY STANDARDS, AND THE PRODUCT WOULD HAVE BEEN INDIVIDUALLY TESTED TO ENSURE COMPLIANCE WITH CUSTOMER SPECIFICATIONS AND INDUSTRY REQUIREMENTS;

RAWLINS (MICHAEL), PEOPLE v.:

CRIMES AND CRIMINAL PROCEDURE - RIGHT OF CONFRONTATION - WHETHER FINGERPRINT COMPARISON REPORTS ADMITTED INTO EVIDENCE UNDER THE BUSINESS RECORDS EXCEPTION WERE TESTIMONIAL SUCH THAT THEIR ADMISSION VIOLATED DEFENDANT'S RIGHT OF CONFRONTATION;

RIVERKEEPER, INC., MATTER OF, v PLANNING BOARD OF TOWN OF SOUTHEAST et al. (AND TWO OTHER PROCEEDINGS):

ENVIRONMENTAL CONSERVATION - ENVIRONMENTAL IMPACT STATEMENT - EFFECT OF NEW ENVIRONMENTAL INFORMATION RECEIVED AFTER PRELIMINARY SUBDIVISION PLAT APPROVAL - REQUIREMENT OF SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT (SEIS); CPLR ARTICLE 78 PROCEEDINGS TO CHALLENGE DETERMINATIONS OF RESPONDENT PLANNING BOARD;

RIVERSIDE SYNDICATE, INC. v MUNROE et al.:

LANDLORD AND TENANT - RENT REGULATION - WHETHER COURT-APPROVED STIPULATION OF SETTLEMENT BETWEEN LANDLORD AND TENANTS IN 1996 SUMMARY PROCEEDING VIOLATES RENT STABILIZATION CODE (9 NYCRR) § 2520.13 AND MAY BE DECLARED NULL AND VOID AS AGAINST PUBLIC POLICY; ESTOPPEL - WAIVER;

RODRIGUEZ, MATTER OF, v DOAR, et al.:

PROCEEDING AGAINST BODY OR OFFICER - DISMISSAL OF CPLR ARTICLE 78 PETITION CHALLENGING FAIR HEARING DETERMINATION MADE BY ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES;

TOWN OF RYE et al., MATTER OF, v NEW YORK STATE BOARD OF REAL PROPERTY SERVICES, et al.:

TAXATION - REAL PROPERTY TAX - CPLR ARTICLE 78 PROCEEDING TO CHALLENGE DETERMINATION OF NEW YORK STATE BOARD OF REAL PROPERTY SERVICES THAT DENIED TOWN OF RYE'S APPLICATION FOR A SEGMENT SPECIAL EQUALIZATION RATE FOR SCHOOL TAX APPORTIONMENT IN THE PART OF THE CITY OF RYE LOCATED WITHIN THE RYE NECK UNION FREE SCHOOL DISTRICT; DISMISSAL OF PROCEEDING BASED ON PETITIONERS' "LACK OF CAPACITY"; STANDING;

SALTERS (KYLE), PEOPLE v:

CRIMES AND CRIMINAL PROCEDURE - PROMOTING PRISON CONTRABAND - WHETHER MARIJUANA IS "DANGEROUS CONTRABAND" WITHIN THE MEANING OF PENAL LAW § 205.00(4) - WHETHER EVIDENCE IS LEGALLY SUFFICIENT TO SUSTAIN DEFENDANT'S CONVICTION OF ATTEMPTED PROMOTING PRISON CONTRABAND IN THE FIRST DEGREE; LESSER INCLUDED CHARGE; PRISONS AND PRISONERS;

SAMIENITO, et al. v WORLD YACHT, INC. et al.:

LABOR - HOURS AND WAGES - WHETHER APPELLATE DIVISION PROPERLY DISMISSED CAUSE OF ACTION BY PLAINTIFFS ALLEGING THAT EMPLOYER IMPROPERLY CHARACTERIZED GRATUITIES AS SERVICE CHARGES AND UNLAWFULLY RETAINED THESE GRATUITIES PAID BY PATRONS PURCHASING CRUISE DINING TICKETS; WHETHER APPELLATE DIVISION PROPERLY DISMISSED CAUSE OF ACTION FOR UNJUST ENRICHMENT BASED ON PARTIES' ORAL AGREEMENT CONCERNING PLAINTIFFS' COMPENSATION; ALLEGED VIOLATION OF LABOR LAW § 196-d AND BUSINESS LAW § 349;

SANATASS et al. v CONSOLIDATED INVESTING COMPANY, INC., et al.:
 LABOR - SAFE PLACE TO WORK - LABOR LAW §§ 240(1) AND 241(6) -
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 WITHOUT OWNER'S CONSENT AND IN VIOLATION OF THE LEASE; SUMMARY
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SANONYMOUS v SANONYMOUS:
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SCHREIBER, MATTER OF, v K-SEA TRANSPORTATION CORP. et al.:
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 BURDEN OF DEMONSTRATING WHY ARBITRATION AGREEMENT SHOULD NOT BE
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SIMONE, et al. v HEIDELBERG, et al.:
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 SEPARATELY SOLD AND THE EASEMENT WAS NOTED IN DEEDS CONVEYING THE
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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
 THIRTY-FIVE TO FORTY MILES AN HOUR, SKIDDED ON WET PAVEMENT, AND
 HIT A REFUSE CONTAINER, OWNED BY CORPORATE DEFENDANTS, PARKED ON
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SMALLEY, et al. v THE DREYFUS CORPORATION, et al.:
 MASTER AND SERVANT - AT-WILL EMPLOYMENT - TERMINATION OF
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 SHERIFFS AND CONSTABLES - POUNDAGE FEES (CPLR 8012[b]) - CITY
 MARSHALL'S ENTITLEMENT TO POUNDAGE WHERE JUDGMENT DEBTORS FILED
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 THE LEVY BUT RELEASED IT WITHOUT COMPLYING WITH CPLR 5204;

SOUMAYAH v MINNELLI et al.:
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SPARBER (DANIEL), PEOPLE v:

CRIMES AND CRIMINAL PROCEDURE - SENTENCE - WHETHER TRIAL COURT'S FAILURE TO MENTION A PERIOD OF POST-RELEASE SUPERVISION AS PART OF THE SENTENCE RENDERS THE POST-RELEASE SUPERVISION COMPONENT OF THE SENTENCE INVALID - COURT CLERK'S WRITTEN NOTATION REGARDING POST-RELEASE SUPERVISION ON COMMITMENT PAPERS;

SPOTA, MATTER OF, v JACKSON:

INDIANS - INTERNAL TRIBAL AFFAIRS - PROCEEDING UNDER INDIAN LAW § 8 TO REMOVE AN ALLEGED INTRUDER ON THE RESERVATION - WHETHER STATE COURTS HAVE AUTHORITY UNDER INDIAN LAW § 8 TO DETERMINE WHETHER ESTRANGED WIFE OF A BLOOD-RIGHT MEMBER OF THE TRIBE IS AN "INTRUDER";

ST. JOSEPH HOSPITAL OF CHEEKTOWAGA, et al. v NOVELLO, et al.:

CONSTITUTIONAL LAW - VALIDITY OF STATUTE - SECTION 31 OF PART E OF CHAPTER 63 OF THE LAWS OF 2005 CREATING NEW YORK STATE COMMISSION ON HEALTHCARE FACILITIES IN THE 21ST CENTURY - WHETHER LEGISLATION IS CONSTITUTIONAL; HOSPITALS - RECOMMENDED CLOSURE; SUMMARY JUDGMENT; DECLARATORY JUDGMENT;

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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;

STIVER v GOOD & FAIR CARTING & MOVING, INC.: (Cal. Date 10/11/07)
NEGLIGENCE - DUTY - AUTOMOBILE ACCIDENT - ALLEGED NEGLIGENT PERFORMANCE OF ANNUAL INSPECTION OF VEHICLE; SUMMARY JUDGMENT;

SUAREZ, MATTER OF, v JOHNSON et al.:

PROCEEDING AGAINST BODY OR OFFICER - PROHIBITION - WHETHER DOUBLE JEOPARDY CLAUSES OF STATE AND FEDERAL CONSTITUTIONS BAR APPELLANT'S FURTHER PROSECUTION FOR FIRST DEGREE MANSLAUGHTER AFTER ACQUITTAL ON INTENTIONAL MURDER COUNT - "SAME OFFENSE"; COLLATERAL ESTOPPEL;

SUSAN ANONYMOUS, MATTER OF, v JAMES ANONYMOUS:

PARENT AND CHILD - SUPPORT - WHETHER FAMILY COURT LACKED SUBJECT MATTER JURISDICTION TO GRANT A NEW SUPPORT ORDER DIRECTING RESPONDENT PAY CHILD SUPPORT UNTIL SON REACHED THE AGE OF 21 WHERE PRIOR CONNECTICUT JUDGMENT DIRECTED CHILD SUPPORT ONLY UNTIL SON REACHED AGE OF 18 (FEDERAL FULL FAITH AND CREDIT FOR CHILD SUPPORT ORDERS ACT; UNIFORM INTERSTATE FAMILY SUPPORT ACT); ATTORNEYS' FEES - WHETHER FAMILY COURT PROPERLY GRANTED

PETITIONER ATTORNEYS' FEES;

TAVERAS (JOSE MARTIN), PEOPLE v:

APPEAL - APPELLATE DIVISION - DISMISSAL OF APPEAL - FUGITIVE
DISENTITLEMENT DOCTRINE - FORMER FUGITIVE RETURNED TO CUSTODY AND
AVAILABLE TO OBEY MANDATE OF COURT; CRIMES AND CRIMINAL
PROCEDURE;

THOMAS (ROBERT), PEOPLE v:

CRIMES AND CRIMINAL PROCEDURE - SENTENCE - POST-RELEASE
SUPERVISION - WHETHER SENTENCING COURT'S FAILURE TO PRONOUNCE IN
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SENTENCE RENDERS THE POST-RELEASE SUPERVISION COMPONENT OF THE
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APPEAL PRECLUDES HIM FROM ARGUING THE INVALIDITY OF THE POST-
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HOUSING AND COMMUNITY RENEWAL (DHCR) RATIONALLY CONCLUDED THAT
PETITIONER'S FAILURE TO KEEP SIX COMPACTOR ROOMS CLEAN IN A 13-
STORY RESIDENTIAL BUILDING CONSTITUTED A FAILURE TO MAINTAIN
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LANGUAGE IN THE LIMITED LIABILITY COMPANY LAW, A MEMBER OF A
LIMITED LIABILITY COMPANY HAS STANDING TO SUE DERIVATIVELY ON THE
COMPANY'S BEHALF;

CITY OF UTICA, MATTER OF, v TOWN OF FRANKFORT et al.:

MUNICIPAL CORPORATIONS - ANNEXATION OF TERRITORY - GENERAL
MUNICIPAL LAW ARTICLE 17 - WHETHER THE APPELLATE DIVISION
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
THE SPECIAL ELECTION REQUIREMENT OF GENERAL MUNICIPAL LAW § 713;

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CRIMES AND CRIMINAL PROCEDURE - RIGHT TO COUNSEL - TRIAL COURT
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ABOUT HIS TRIAL TESTIMONY FOR TWO DAYS; JURY INSTRUCTIONS -
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URBAEZ (MARCOS), PEOPLE v:

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PROCESS VIOLATION WHERE CHARGE AGAINST DEFENDANT WAS REDUCED FROM
AGGRAVATED HARASSMENT IN THE SECOND DEGREE TO ATTEMPTED

AGGRAVATED HARASSMENT IN THE SECOND DEGREE TO AVOID A JURY TRIAL;
VANONYMOUS, MATTER OF, a disbarred attorney:
 ATTORNEY AND CLIENT - AUTOMATIC DISBARMENT - JUDICIARY LAW §
 90(4)(b) - DISBARMENT OF ATTORNEY FOLLOWING GUILTY PLEA TO CRIME
 OF UNLAWFUL IMPRISONMENT IN THE FIRST DEGREE (PENAL LAW §
 135.10), A CLASS E FELONY;

VIGILANT INSURANCE COMPANY, et al. v THE BEAR STEARNS COMPANIES:
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 AND INVESTOR EDUCATION PROGRAMS IN THE FUTURE AS PART OF A
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 VIOLATION OF SUPREMACY CLAUSE AND NULLIFICATION OF JUDGMENT OF
 UNITED STATES DISTRICT COURT CONCERNING DISGORGEMENT;

VUCETOVIC v EPSOM DOWNS, INC.:
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 ARE PART OF THE "SIDEWALK" FOR PURPOSES OF ADMINISTRATIVE CODE OF
 THE CITY OF NEW YORK § 7-210;

WARE (ANTHONY), PEOPLE v:
 CRIMES AND CRIMINAL PROCEDURE - SENTENCE - POST-RELEASE
 SUPERVISION - WHETHER SENTENCING COURT'S FAILURE TO MENTION IN
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WEBB v NEW YORK METHODIST HOSPITAL, 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 (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;

WHITE v CONTINENTAL CASUALTY COMPANY et al.:
 INSURANCE - DISABILITY INSURANCE - BREACH OF CONTRACT ACTION -
 SUMMARY JUDGMENT - WHETHER PLAINTIFF PHYSICIAN WAS "TOTALLY
 DISABLED" AS DEFINED UNDER DISABILITY INCOME POLICY;

WHITE (GARY), PEOPLE v:

CRIMES AND CRIMINAL PROCEDURE - CONFESSION - WHETHER, IN THE ABSENCE OF AN INCRIMINATING PRE-MIRANDA STATEMENT BY DEFENDANT, THERE WAS A NEED TO DETERMINE WHETHER PRE- AND POST-MIRANDA SESSIONS WERE PART OF A "SINGLE CONTINUOUS CHAIN OF EVENTS" IN DECIDING WHETHER SUPPRESSION OF DEFENDANT'S CONFESSION TO POLICE WAS WARRANTED;

WHITE HOUSE MANOR, LTD. v BENJAMIN, et al.:

CONTRACTS - BREACH OF CONTRACT - UNJUST ENRICHMENT - STIPULATION OF SETTLEMENT - PROCEEDING TO ENFORCE STIPULATION OF SETTLEMENT IN WHICH RESPONDENT AGREED TO PAY PRO RATA SHARE OF REAL PROPERTY TAXES; SUMMARY JUDGMENT DECLARING BREACH OF CONTRACT FOR SALE OF REAL PROPERTY; PERSONAL JURISDICTION - WAIVER OF DEFECT IN PERSONAL JURISDICTION BY STIPULATION TO SETTLE ACTION;

WILSON v GALICIA CONTRACTING & RESTORATION CORP. et al.:

MOTIONS AND ORDERS - VACATUR OF ORDER - COMPLIANCE WITH CPLR 3215(f) AND WHETHER NONCOMPLIANCE RENDERS A DEFAULT JUDGMENT A NULLITY; WHETHER PLAINTIFF'S COUNSEL WAS OBLIGATED TO WITHDRAW HIS REPRESENTATION PURSUANT TO 22 NYCRR 1200.15;

WINDHAM (JOSEPH), PEOPLE v:

CRIMES AND CRIMINAL PROCEDURE - SEX OFFENDERS - SEX OFFENDER REGISTRATION ACT (SORA) - WHETHER A DEFENDANT SENTENCED IN 1991 TO CONCURRENT TERMS OF ONE TO THREE YEARS FOR FIRST DEGREE SEXUAL ABUSE AND FOUR TO TWELVE YEARS FOR FIRST DEGREE ROBBERY, WHO WAS INCARCERATED ON SORA'S EFFECTIVE DATE OF JANUARY 21, 1996, IS SUBJECT TO ADJUDICATION UNDER SORA;

WORTH CONSTRUCTION CO., INC. v ADMIRAL INSURANCE COMPANY, et al.:

INSURANCE - DUTY TO DEFEND AND INDEMNIFY - WHETHER CONTRACTOR'S ADMISSION IN UNDERLYING PERSONAL INJURY ACTION THAT SUBCONTRACTOR WAS NOT AT FAULT PRECLUDED IT FROM CLAIMING THAT IT WAS COVERED AS ADDITIONAL INSURED UNDER SUBCONTRACTOR'S INSURANCE POLICY;

YARBOROUGH v CITY OF NEW YORK:

MUNICIPAL CORPORATIONS - NOTICE OF STREET DEFECT - SUMMARY JUDGMENT - TRIABLE ISSUE OF FACT - PERSONAL INJURY ALLEGEDLY CAUSED BY POTHOLE IN STREET - CITY'S ALLEGED AFFIRMATIVE CREATION OF A DANGEROUS CONDITION AS AN EXCEPTION TO THE CITY'S PRIOR WRITTEN NOTICE REQUIREMENT UNDER ADMINISTRATIVE CODE OF THE CITY OF NEW YORK § 7-201(c)(2) - WHETHER PLAINTIFF WAS REQUIRED TO SUBMIT EVIDENCE THAT CITY'S REPAIR OF POTHOLE IMMEDIATELY RESULTED IN A DANGEROUS CONDITION;

ZIMMERMAN (JAMES), PEOPLE v:

CRIMES AND CRIMINAL PROCEDURE-JURISDICTION OF OFFENSES-PARTICULAR EFFECT JURISDICTION-WHETHER SUFFICIENT EVIDENCE SUPPORTED GRAND JURY'S FINDINGS OF "PARTICULAR EFFECT" VENUE IN NEW YORK COUNTY

(CRIMINAL PROCEDURE LAW § 20.20[2][b]);