

CASE ISSUE STATEMENTS – APRIL-MAY 2019

The calendar is subject to change. Please contact the Clerk's Office for any updated information.

If available, briefs, records and appendices can be viewed and downloaded from the Court of Appeals Public Access and Search System (Court-PASS), which is accessible from the homepage on the Court's website.

TUESDAY, APRIL 30

Matter of Eighth Judicial District Asbestos Litigation (Terwilliger, &c. v Beazer East, Inc., &c., et al. -No. 36

APL-2018-00023

Products Liability— Exposure to Toxic Substances--Injuries to decedent exposed to asbestos and coke oven emissions while employed at the Bethlehem Steel plant—whether the coke oven batteries constructed at the Bethlehem Steel plant were “products” subject to products liability theories rather than structures resulting from performance of a contract for construction services; negligence—duty to warn about product hazards; summary judgment.

Nadkos v Preferred Contractors Ins. – No. 37

APL-2018-00170

Statutes—Construction—Whether federal Liability Risk Retention Act of 1986 (15 USC § 3901) preempts the application of Insurance Law § 3420(d)(2) to foreign risk retention groups (RGG), such that a RGG need not comply with section 3420(d)(2)'s timely notice of disclaimer requirement.

People v John Giuca – No. 38

APL-2018-00123

Crimes— Vacatur of Judgment of Conviction—Whether the People violated their obligation to disclose material information favorable to defendant (Brady v Maryland, 373 U.S. 83).

WEDNESDAY, MAY 1

Andrew Carothers, M.D., P.C. v Progressive Insurance Company – No. 39

APL-2017-00225

Insurance--No-Fault Automobile Insurance--Payment withheld by insurance carrier for medical services provided by a professional corporation which has been "fraudulently incorporated" to allow nonphysicians to share in its ownership and control--elements necessary to establish the defense of fraudulent incorporation recognized in State Farm Mut. Auto. Ins. Co. v Mallela (4 NY3d 313 [2005]); jury instructions--adverse inference--nonparties' invocation of Fifth Amendment privilege against self-incrimination.

Matter of Jordan v New York City Housing Authority – No. 40

APL-2018-00105

Civil Service —Reinstatement—Whether Civil Service Law § 71 applies to labor class employees; Parties—Necessary Parties—Whether Department of Citywide Administrative Services is a necessary party to proceeding that challenged New York City Housing Authority’s denial of petitioner’s application for reinstatement; Pleading—Answer; whether respondent New York City Housing Authority should have been permitted an opportunity to answer the petition following the denial of its cross motion to dismiss.

Matter of Kosmider v Whitney – No. 41

APL-2018-00089

Records--Freedom of Information Law--Whether electronic images of ballots cast in an election are accessible under the Freedom of Information Law (Public Officers Law art 6 [FOIL])-- exemption from disclosure of certain documents under Election Law § 3-222 (2); elections-- ballots.

THURSDAY, MAY 2

People v David Mendoza – No. 42

APL-2018-00102

Crimes--Right to Counsel--Effective Representation--whether defendant was denied the effective assistance of counsel when his attorney advanced a jury nullification defense at trial.

People v Jaime Lopez-Mendoza – No. 43

APL-2018-00097

Crimes-- Right to Counsel--Effective Representation—Whether defendant’s ineffective assistance of counsel claim is reviewable on direct appeal; whether counsel was ineffective for failing to adequately review surveillance evidence and advising the jury, during opening statements, that defendant would testify in a manner inconsistent with the evidence; Evidence—whether error in admission of DNA evidence was harmless; whether carpet fiber evidence was properly admitted.

People v Samuel J. Smith – No. 44

APL-2018-00158

Crimes--Missing witness charge—whether the proponent of a missing witness charge has the initial burden of proving that the missing witness has noncumulative testimony to offer on behalf of the opposing party—only other witness identifying defendant as shooter was the victim; right to counsel—claimed ineffective representation.

2/25/18