

## CASE ISSUE STATEMENTS

**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 home page on the Court's website.**

### MONDAY, JANUARY 4, 2016

#### **People v Anthony Jones (Case No. 2)**

APL-2014-00195

Crimes--Sentence--Mandatory surcharge--Whether the sentencing judge has discretion to grant defendant relief from the mandatory surcharge at the time of sentencing, or whether defendant was required to seek such relief by motion for resentencing pursuant to CPL 420.10 (5).

#### **Sean R. v BMW of North America, LLC (Case No. 3)**

APL-2014-00215

Evidence--Scientific evidence--Failure of scientific literature to support expert's proffered theory--Whether the testimony of plaintiff's experts, who theorized that exposure to gasoline fumes caused plaintiff's birth defects, was properly precluded where the medical literature showed that some constituent chemicals contained in gasoline can lead to birth defects, not that exposure to gasoline vapors can cause such defects.

#### **Selective Insurance Company of America v County of Rensselaer (Case No. 4)**

APL-2014-00241

Insurance--Liability insurance--Police Professional Liability Policy--Settlement of class action lawsuit seeking damages for individuals strip searched pursuant to an allegedly unconstitutional policy--Whether the underlying allegations in the class action lawsuit require County to pay insurers one deductible for each class plaintiff--Whether the attorneys' fees and costs arising out of the class action lawsuit are to be allocated ratably to each class action plaintiff; Whether the insurers acted in bad faith in their representation of the County in the class action lawsuit; Whether insurers are liable for County's attorneys' fees in defending the action.

### TUESDAY, JANUARY 5, 2016

#### **Red Zone LLC v Cadwalader, Wickersham & Taft LLP (Case No. 5)**

APL-2014-00288

Attorney and client--Malpractice--Alleged negligent drafting of agreement--Whether plaintiff was entitled to summary judgment; Limitation of actions--Tolling--Whether the Appellate Division erred in concluding that the statute of limitations was tolled by the continuous representation doctrine; Whether the courts below erred in dismissing defendant's affirmative defense of comparative negligence.

**People v Scott Barden (Case No. 6)**

APL-2014-00250

Crimes--Possession of stolen property--Intangibles--Credit card numbers--Whether a person may be convicted of criminal possession of stolen property in the fourth degree for using a credit card number to make unauthorized charges where the rightful owner retains physical possession of the credit card (Penal Law § 165.45[2])--Constructive possession of credit card number; Alleged violation of defendant's speedy trial rights.

**Sangaray v West River Associates, LLC (Case No. 7)**

APL-2015-00049

Negligence--Sidewalks--Failure to maintain sidewalk in reasonably safe condition--Property owner liability under Administrative Code of the City of NY § 7-210 for injuries arising out of a trip and fall due to a height differential between two adjacent flags of pavement on a public sidewalk--Whether section 7-210 imposes liability not only on owner of premises directly abutting height differential over which plaintiff tripped, but also on the owner of the neighboring premises where over 90% of the lower of the two pavement flags allegedly was situated--Common-law liability of owner of neighboring premises.

**THURSDAY, JANUARY 7, 2016**

**Matter of Monarch Consulting, Inc. v National Union Fire Insurance Company of Pittsburgh PA (Case No. 8)**

APL-2014-00271

Arbitration--Agreement to arbitrate--Whether insureds are compelled to arbitrate their disputes with their Workers' Compensation Insurance carrier even though the carrier failed to file the arbitration agreements with the California Department of Insurance as California law requires.

**Matter of Cisse v Graham (Case No. 9)**

APL-2014-00283

Parent, Child and Family--Custody--Change of custody--Family Court order modifying prior custody order to change custody from mother to father; Whether Family Court's affirmed finding that a sufficient change in circumstances occurred warranting modification of its prior custody order in the child's best interests has a sufficient basis in the record.

**People v Urselina King (Case No. 10)**

APL-2014-00170

Crimes--Jurors--Selection of jury--Whether the trial court discharged potential jurors based upon hardship without conducting a sufficient inquiry--Alleged mode of proceedings error; Evidence--Third-party culpability--Whether the trial court properly precluded evidence of third-party culpability as speculative, lacking in probative value, and constituting inadmissible hearsay; Right to counsel--Effective representation--Failure to object to alleged prosecutorial misconduct during summation.

**People v Anthony DiPippo (Case No. 11)**

APL-2015-00002

Crimes--Evidence--Whether the trial court committed reversible error in denying defendant's motion to admit evidence of alleged third-party culpability, consisting of the third-party's alleged declaration against penal interest, where proof of the third-party's prior acts of misconduct are proffered under a "reverse Molineux" theory to demonstrate the reliability of such declaration; Right to counsel--Alleged ineffective assistance of trial counsel for failing to request that (1) the allegedly culpable third party be granted immunity upon invoking his right against self-incrimination and (2) a particular witness be charged to the jury as an accomplice in fact.

**TUESDAY, JANUARY 12, 2016**

**People v Raymond Leach (Case No. 12)**

APL-2015-00040

Crimes--Fitness to proceed to trial--Whether the Appellate Division correctly concluded that the record belied defendant's contention that he was mentally incompetent to understand the nature of the charges against him; Enforcement of agreement--Waiver of right to appeal--Whether defendant's waiver of the right to appeal was voluntary, knowing and intelligent; Validity of defendant's guilty plea to reduced charge of attempted grand larceny in the third degree, where the People "neither filed a reduced indictment nor exercised any of their other options pursuant to CPL 210.20(6) within 30 days following the entry" of the County Court order reducing charge from grand larceny in the third degree; Challenge to sentence as excessive; Whether defendant was deprived of his right to the effective assistance of counsel.

**People v Gordon Gross (Case No. 13)**

APL-2014-00248

Crimes--Right to counsel--Effective representation--Failure to object to the prosecution's presentation of and reference to testimony of certain non-expert witnesses on the ground that such testimony bolstered the testimony of the victim of a child sex crime--Whether the Appellate Division correctly ruled that the testimony did not constitute improper bolstering because it was not admitted for its truth, and that counsel's failure to object to that testimony therefore did not constitute ineffective assistance--Whether defense counsel was ineffective for failing to consult with or present testimony from a medical expert on defendant's behalf.

**People v Jin Cheng Lin (Case No. 14)**

APL-2014-00102

Crimes--Evidence--Whether the trial court erred in precluding admission into evidence of defendant's complaint of mistreatment by police and a videotape of defendant's interview by an Assistant District Attorney; Confession--Voluntariness of confession--Pre-arraignment delay and circumstances surrounding interrogation during that time; Direction to jury to continue deliberations after trial court refused to accept verdict on grounds of repugnancy--Whether trial court erred in refusing to direct the jury to reconsider verdict in its entirety.

## **WEDNESDAY, JANUARY 13, 2016**

### **Aetna Health Plans v Hanover Insurance Company (Case No. 15)**

APL-2015-00009

Insurance--No-fault automobile insurance--Whether a health care insurer that paid for medical treatment of an individual hurt in a car accident while driving a car covered by no-fault automobile insurance may maintain a reimbursement claim against the no-fault insurance carrier under principles of subrogation--11 NYCRR 65-3.11(a); Necessity for privity of contract; Whether the complaint should have been dismissed for lack of standing--Estoppel--Untimely disclaimer.

### **People v Freddie Thompson (Case No. 16)**

APL-2014-00323

Crimes--Sentence--Resentence--Whether the courts below properly calculated the 10-year look-back period in adjudicating defendant a second violent felony offender; Whether defendant was deprived of a fair trial by comments made during summation; Whether Supreme Court erred in denying defendant's motion to reopen the Wade hearing.

### **People v Christopher A. Nicholson (Case No. 17)**

APL-2014-00220

Crimes--Witnesses--Rebuttal of witness in child sex prosecution--Whether Supreme Court erred in allowing the People to call defendant's ex-wife as a rebuttal witness to rebut certain testimony offered by defendant's only witness, his former girlfriend; Expert Witness--Whether Supreme Court erred in admitting the testimony of an expert with respect to child sexual abuse accommodation syndrome; Right to counsel--Claimed ineffective assistance of counsel.

### **People v Marcus D. Hogan (Case No. 18)**

APL-2015-00035

Crimes--Controlled substances--Presumption of knowing possession--Whether the evidence supported the trial court's application of the "drug factory presumption" set forth in Penal Law § 220.25 (2); Right to counsel--Effective representation--Whether defendant received effective assistance of counsel where his attorney failed to discuss his right to testify before the Grand Jury and failed to make a timely motion to dismiss the indictment based on the People's alleged violation of CPL 190.50 (5) (a).

## **THURSDAY, JANUARY 14, 2016**

### **People v Lawrence Watson (Case No. 19)**

APL-2015-00042

Crimes--Right to counsel--Effective representation--Potential conflict of interest--Representation of defendant by staff attorney of an institutional defender where potential witness in defendant's case had been represented by a different staff attorney in a case arising out of the same incident underlying the charges against defendant--Application of People v Wilkins (28 NY2d 53) to smaller-scale public defense agency--Whether the Appellate Division erred in concluding that no actual or potential conflict of interest existed--Whether the trial court violated defendant's right to

counsel of his own choosing by disqualifying defense counsel even though defendant waived any potential conflict.

**Matter of Exeter Building Corp. v Town of Newburgh (Case No. 20)**

APL-2014-00308

Municipal Corporations--Zoning--Nonconforming use--Common-law vested right--Whether property owner established a vested right under the common law to develop property under a former zoning regulation by taking various actions in reliance upon conditional approval of a site plan.

**Torres v Jones (Case No. 21)**

APL-2015-00013

Torts--Civil rights--False arrest, false imprisonment and unreasonable seizure--Whether the Appellate Division erred in holding that plaintiff failed to raise a triable issue of fact regarding the existence of probable cause for her arrest; Malicious prosecution--Whether the Appellate Division erred in holding that plaintiff failed to rebut the presumption of probable cause created by the Grand Jury's indictment and failed to raise a triable issue of fact that her arrest and prosecution were motivated by actual malice; Qualified immunity; Appearance by individual defendant in action.