

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 homepage on the Court's website.

TUESDAY, FEBRUARY 6

Matter of Abdur-Rashid v New York City Police Department (No. 19)

APL-2016-00219

Proceeding Against Body or Officer--Mandamus--CPLR article 78 proceedings to compel respondents New York City Police Department (NYPD) and NYPD Commissioner Kelly to disclose documents requested by petitioners pursuant to Freedom of Information Law (FOIL) (Public Officers Law § 84 et seq.)--whether the Appellate Division erred in holding that the NYPD may invoke the federal Glomar doctrine (permitting agencies to neither confirm nor deny the existence of records sought) when responding to a FOIL request--FOIL requests seeking disclosure of records pertaining to surveillance activities and investigations involving petitioners and their associated organizations.

People v Michael Johnson (No. 21)

APL-2016-00167

Crimes--Suppression Hearing--Voluntariness of statements--whether the Appellate Division correctly determined that pre-arraignment delay and circumstances surrounding interrogation during that time did not establish that defendant's statements to police were involuntary; Witnesses--Failure to call witness--whether trial court properly denied defendant's request for a missing witness charge as to victim's son, an eyewitness to the crime; Proof of Other Crimes--whether trial court properly denied defendant's motion for a mistrial, where it sustained defendant's objection to improper testimony by a cooperating witness, struck that portion of his testimony and provided a curative instruction; Disclosure--delay in providing evidentiary materials regarding cooperating witness.

Keyspan Gas East Corporation v Munich Reinsurance American, Inc., et al. (No. 20)

APL-2016-00236

Insurance--Action against Insurer--Coverage--long-term environmental property damage caused by pollution from manufactured gas plants--allocation of risk of loss attributable to a continuous harm occurring, in part, during periods when liability insurance was unavailable in the marketplace--whether the policies at issue contain anti-stacking language requiring an all-sums allocation method.

WEDNESDAY, FEBRUARY 7

Gilbane Building Co./TDX Construction Corp. v St. Paul Fire and Marine Ins. Co. (No. 22)

APL-2017-00001

Insurance--Duty to Defend and Indemnify--Whether the additional insured clause in the commercial general liability insurance policy at issue covers only those that have a written contract directly with the named insured--interpretation of the additional insurance endorsement in policy covering building construction project; declaratory judgment.

Gravano v Take-Two Interactive Software (No. 23)

APL-2017-00027

Civil Rights--Right of Privacy--Whether plaintiff's allegation that defendant video game maker used plaintiff's likeness to advertise video game stated a cause of action under Civil Rights Law §§ 50, 51; whether video game and subject images are protected works under the First Amendment.

Lohan v Take-Two Interactive Software (No. 24)

APL-2017-00028

Civil Rights--Right of Privacy--Whether plaintiff's allegation that defendant video game maker used plaintiff's digital portrait to advertise video game stated a cause of action under Civil Rights Law §§ 50, 51.

People v Nicholas Brooks (No. 25)

APL-2016-00141

Crimes--Evidence--Expert witness--whether the trial court erred in (1) allowing an extended Frye hearing requested by the People to challenge defendant's expert witness, and in denying defendant's motion for a Frye hearing regarding the medical examiner intended to be presented by the People, (2) limiting the testimony of defendant's expert, including that regarding certain drugs and toxicology, (3) allowing the claimed hearsay testimony of 11 of decedent's friends to show the victim's unfavorable perception of defendant's character, and (4) denying defendant's motion to set aside the verdict based on juror misconduct.

THURSDAY, FEBRUARY 8

E.J. Brooks Company v Cambridge Security Seals (No. 26)

CTQ 2017-00003

Damages--Measure of Damages--whether, under New York law, a plaintiff asserting claims of misappropriation of a trade secret, unfair competition, and unjust enrichment can recover damages that are measured by the costs the defendant avoided due to its unlawful activity; Interest--Prejudgment Interest--whether prejudgment interest under New York Civil Practice Law and Rules § 5001(a) is mandatory where a plaintiff recovers damages as measured by the defendant's avoided costs.

People v Raymond Crespo (No. 27)

APL-2017-00046

Crimes-- Right to Representation Pro Se-- Whether defendant's requests to proceed pro se, made during jury selection, were timely asserted.

People v Spence Silburn (No. 28)

APL-2017-00052

Crimes-- Right to Representation Pro Se-- Whether defendant unequivocally invoked his right to proceed pro se-- request to proceed pro se with standby counsel; notice of defendant's intent to present psychiatric evidence solely to aid jury in determining whether post-Miranda statements to police were knowing and voluntary--CPL 250.10.

TUESDAY, FEBRUARY 13

People v Rafael Perez (No. 29)

APL-2016-00231

Crimes--Unlawful Search and Seizure--Whether the police, who were investigating a pattern of robberies at a New York Housing Authority building, were justified in making an investigatory stop of defendant and in subsequently searching defendant for a weapon; identification of defendant--whether the show up identification procedure was unduly suggestive; confession--whether defendant's statements to police were spontaneous; Sentence--whether vacatur of defendant's sentence on a crime for which he was sentenced as a second felony offender was warranted where the sentence on the predicate crime was vacated and the matter remanded for a youthful offender determination.

Congel v Malfitano (No. 30)

APL-2017-00005

Partnership--Dissolution---Whether the Appellate Division erred in finding a wrongful dissolution of the partnership which lacked a definite term or particular undertaking (Partnership Law § 62), in awarding counsel and expert fees as part of the damages, in applying minority and marketability discounts to defendant's partnership interest, and in attributing goodwill to the partnership's value.

Kolchins v Evolution Markets, Inc. (No. 31)

APL-2016-00234

Contracts--Breach or Performance of Contract--Whether the parties' emails and other correspondence constituted a binding offer and acceptance of an extension of a 2009 employment agreement--whether respondent is entitled to a "production bonus" dependent on active employment at the time of the payment.

WEDNESDAY, FEBRUARY 14

Rodriguez v City of New York (No. 32)

OGLAD APL-2016-00235

Negligence--Comparative Negligence--Whether plaintiff was required to establish the absence of comparative negligence in order to obtain summary judgment on the issue of liability.

Somereve v Plaza Construction (No. 33)

OGLAD APL-2016-00191

Labor--Safe Place to Work--Whether Labor Law § 240(1) applies where plaintiff was using a prime mover to hoist a load and the prime mover pitched forward, causing plaintiff to be ejected off the back of the machine; whether summary judgment was premature where discovery was still ongoing; whether issues of fact existed precluding the grant of summary judgment; issues of comparative negligence and sole proximate cause.

People v Teri W. (No. 34)

DiFiore, Ch.J. APL-2017-00003

Crimes--Sentence--Youthful offender--whether Supreme Court lawfully imposed a 10-year term of probation rather than a 5-year term--whether the maximum probationary term authorized by statute for a youthful offender convicted of a felony is five years (Penal Law §§ 60.02 [2]; 65.00 [3][a][i]).