

## 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, JANUARY 2:**

#### **Forman v Henkin**

APL-2016-00222

Disclosure--Discovery and Inspection--Scope of disclosure--social media--whether a personal injury plaintiff may be compelled to produce photographs privately posted on Facebook and authorizations related to plaintiff's private Facebook messages.

#### **Matter of Kelly v DiNapoli**

APL-2016-00083

Civil Service--Retirement and Pension Benefits --Accidental Disability Retirement--Whether the Appellate Division correctly held that substantial evidence supports the Comptroller's determination that petitioner's injury did not result from an "accident" within the meaning of Retirement and Social Services Law § 363 and, therefore, petitioner was not entitled to accidental disability retirement benefits.

#### **Matter of Sica v DiNapoli**

APL-2017-00093

Civil Service--Retirement and Pension Benefits--Accidental disability retirement--whether the Appellate Division correctly held that the record did not contain substantial evidence to support the Comptroller's determination that petitioner firefighter's injuries from being exposed to colorless and odorless gases while responding to an emergency at a supermarket were not the result of an "accident" within the meaning of Retirement and Social Security Law § 363.

#### **People v Jude Francis**

APL-2016-00125

Crimes--Sex Offenders--Sex Offender Registration Act--Use of youthful offender adjudication in determining risk level--whether a defendant's prior youthful offender adjudication may be considered in determining the defendant's risk level designation under SORA.

## **WEDNESDAY, JANUARY 3:**

### **Matter of Aponte v Olatoye**

APL-2016-00130

Public Housing--Denial of Remaining Family Member Status--Whether determination denying petitioner succession rights to his mother's apartment was arbitrary and capricious where agency did not consider mother's disability in reaching its determination.

### **People v Casimiro Reyes**

APL-2017-00022

Crimes--Conspiracy--Evidence--sufficiency of evidence--whether the evidence was sufficient to support the conviction of defendant for conspiracy to commit an arson committed by a street gang where defendant gang member was present at meetings where the gang members planned and discussed the arson--Penal Law § 105--element of agreement with others to engage in or cause the performance of criminal conduct.

### **Lohnas v Luzi**

APL-2016-00186

Limitation of Actions--Medical Malpractice--Estoppel to plead statute of limitations--whether an issue of fact existed regarding application of the continuous treatment doctrine; whether the equitable estoppel doctrine applied to toll the statute of limitations.

## **THURSDAY, JANUARY 4:**

### **Dormitory Authority v Samson Construction**

APL-2016-00202

Negligence--Architect's Malpractice--Whether Dormitory Authority may pursue a negligence claim against the architect in addition to its breach of contract claim arising out of damages incurred during site excavation for the construction project's foundation; parties--whether City of New York, a nonparty to the underlying construction contract, can assert a claim as a third-party beneficiary as ultimate end-user of the building to be constructed.

### **People v Douglas McCain**

APL-2016-00166

Crimes--Possession of Weapon--Sufficiency of accusatory instrument--whether factual allegations were sufficient to support charge of criminal possession of a weapon in the fourth degree, where defendant told arresting officer that he possessed a razor knife clipped to the outside of his pants pocket for self protection--whether Appellate Term improperly relied on the presumption contained in Penal Law § 265.15(4) in upholding the accusatory instrument.

**People v Albert Edward**

APL-2016-00147

Crimes--Possession of Weapon--Sufficiency of accusatory instrument--whether factual allegations were sufficient to support charge of criminal possession of a weapon in the fourth degree, where defendant was arrested for trespassing in the lobby of a Housing Authority building and the accusatory instrument alleged that, upon his arrest, the police recovered "a box cutter from the defendant and defendant stated in substance, I use it on the train for protection"--possession of "dangerous knife" or a "dangerous or deadly instrument or weapon" with intent to use it "unlawfully against another" (Penal Law § 265.01 [2]).

**TUESDAY, JANUARY 9:**

**Connolly v Long Island Power Authority**

APL-2016-00207

Public Authorities--Claims against Public Authorities--Claims of property owners against providers of electrical transmission for property damage occurring during storm surge of Hurricane Sandy over Rockaway peninsula; whether defendants were entitled to dismissal of complaint under the doctrine of governmental function immunity--governmental versus proprietary functions; dismissal and nonsuit; negligence.

**Baumann v Long Island Power Authority**

APL-2016-00208

Public Authorities--Claims against Public Authorities--Claims of property owners against providers of electrical transmission for property damage occurring during storm surge of Hurricane Sandy over Rockaway peninsula; whether defendants were entitled to dismissal of complaint under the doctrine of governmental function immunity--governmental versus proprietary functions; dismissal and nonsuit; negligence.

**Heeran v Long Island Power Authority**

APL-2016-00205

Public Authorities--Claims against Public Authorities--Claims of property owners against providers of electrical transmission for property damage occurring during storm surge of Hurricane Sandy over Rockaway peninsula; whether defendants were entitled to dismissal of complaint under the doctrine of governmental function immunity--governmental versus proprietary functions; dismissal and nonsuit; negligence.

**Cortlandt Street Recovery Corp. v Bonderman (and three related actions)**

APL-2017-00014

Parties--Standing--Whether indenture trustee had standing to assert causes of action for breach of contract, fraudulent conveyance, unlawful corporate distribution, unjust enrichment, and based on an alter ego theory; corporations--disregarding the corporate entity--whether complaint sufficiently stated a cause of action under a veil-piercing theory.

**People v Reginald Wiggins**

APL-2017-00006

Crimes--Right to Speedy Trial--Whether a six-year delay between the crime and defendant's guilty plea denied defendant the constitutional right to a speedy trial.

**WEDNESDAY, JANUARY 10:**

**Paramount Pictures Corporation v Allianz Risk Transfer AG**

APL-2016-00221

Judgments--Res Judicata--Application of Federal Rule of Civil Procedure 13(A) to New York State court cases; whether a party's failure to assert a compulsory counterclaim in a prior federal action precluded the party from pursuing the counterclaim in a subsequent state court action under the doctrine of res judicata.

**People v Dennis O'Kane**

APL-2016-00163

Crimes--Verdict--Content of verdict sheet--defense counsel's consent to annotations on verdict sheet summarizing specific allegations against defendant--whether County Court erred in holding that defense counsel was ineffective for consenting to the verdict sheet annotations and that such annotations constituted reversible error--issue not addressed by the parties but raised by County Court sua sponte in its opinion.

**People v Joseph Sposito**

APL-2016-00218

Crimes--Right to Counsel--Effective Representation--Trial counsel's waiver of a Huntley hearing, resulting in the admission at trial of a highly prejudicial videotaped statement; DNA testing--post-conviction relief--whether County Court properly denied defendant's motion for DNA testing.

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