

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

NEW YORK STATE COURT OF APPEALS

Background Summaries and Attorney Contacts

April 8 thru April 10, 2025

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Tuesday, April 8, 2025

No. 42 Glen Oaks Village Owners, Inc. v City of New York

Plaintiffs – the owners of two cooperative buildings in Queens and a mixed use building in Manhattan – brought this action against the City of New York to strike down Local Law 97, which was enacted as part of the City’s “Climate Mobilization Act” in 2019 to reduce greenhouse gas emissions from private buildings larger than 25,000 square feet. The statute imposes civil penalties on building owners who fail to meet its energy efficiency and gas emission standards. The plaintiffs contend that Local Law 97 is preempted by the State’s “Climate Leadership and Community Protection Act” (CLCPA), which took effect in January 2020 with a goal of reducing greenhouse gas emissions from all human-related sources statewide. They did not cite direct conflicts between Local Law 97 and the CLCPA, but argued the State had preempted the field of greenhouse gas (GHG) emission regulation by enacting the CLCPA.

Supreme Court granted the City’s motion to dismiss the suit, finding the plaintiffs failed to show that the State intended to occupy the entire field of gas emissions regulation. “As Plaintiffs fail [to] show how Local Law 97 would prohibit conduct that the State permits or would impose restrictions on rights granted by the State, they have not identified an inconsistency on which to base an inference of preemption...,” it said. “Defendants present evidence that there is no conflict between State and local law on the question of abating GHG emissions... [R]ather than identifying any inconsistency or divergence in their objectives, New York State has repeatedly expressed its desire and intent to collaborate with the City and other local governments to abate GHG emissions under the CLCPA.”

The Appellate Division, First Department modified the order by reinstating the plaintiffs’ preemption claim. It said “defendants failed to show that New York State’s CLCPA does not preempt New York City’s Local Law 97. Defendant’s contend that CLCPA § 11 (L 2019, ch 106, § 11), which states ‘[n]othing in this act shall relieve any person ... of compliance with other applicable federal, state, or local laws..., including state air and water quality requirements, and other requirements for protecting public health or the environment’ is a savings clause for Local Law 97 because the latter ‘protect[s] public health or the environment.’ However, reading section 11 together with section 10 (L 2019, ch 106, § 10), which states ‘[n]othing in this act shall limit the existing authority of a state entity to adopt and implement greenhouse gas emissions reduction measures’..., one could conclude, as plaintiffs do, that section 11 applies to local laws ‘other’ than ‘greenhouse gas emissions reduction measures.’”

The City, supported by the State as amicus curiae, argues the preemption claim should be dismissed because the CLCPA “embraces an ‘all hands on deck’ approach to climate change regulation, welcoming contributions from all levels of government, including the local level.” It says the CLCPA “was enacted against a longstanding history of local regulation of air quality and building standards” and “the State has specifically embraced Local Law 97 as key to meeting statewide greenhouse gas emissions benchmarks.” It says “neither the [CLCPA’s] two saving clauses, nor anything else in the statute, even arguably evince preemptive intent.”

For appellant City: Assistant Corporation Counsel Amy McCamphill (212) 356-2317

For respondents Glen Oaks et al (owners): Leigh M. Nathanson, Manhattan (212) 556-2100

For amicus State: Senior Assistant Solicitor General Philip J. Levitz (212) 416-6325

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Tuesday, April 8, 2025

No. 43 Matter of Joshua J.

Joshua J. was nine years old in 2018, when he and three siblings were removed from the home of his mother and placed in the temporary care of the Westchester County Department of Social Services (DSS). The mother had three prior neglect adjudications, and her children were placed in foster care after her five-year-old daughter, was twice found wandering in public without supervision. In both cases, the mother had left the girl with her 14-year-old daughter, who was found sleeping and unaware the girl had left the house. In March 2019, the mother consented to a finding of neglect without admitting to factual allegations in the County's petition.

In March 2022, Family Court extended the placement of Joshua and his brother in the County's care, but retained the original order's "permanency hearing goal" of returning them to a parent. In October 2022, the court issued a superceding permanency order that continued the placement without changes. At the hearing for the October 2022 order, when the mother's attorney sought to present evidence in support of returning the children to her, the court said "this court will not be returning children pre-disposition to a parent. I don't have the authority to do that.... [T]his court would not be issuing that order today regardless of what I were to hear." The attorney then said that "given the court's ruling, I'm not going to ask most of the questions that I was planning to ask." The mother appealed both of the 2022 orders.

Before the appeals were heard, superceding permanency orders were issued and the Appellate Division, Second Department dismissed both appeals as moot. In separate decisions using identical language, the courts said the appeals were academic because "the permanency hearing order has expired.... Contrary to the mother's contention, this case does not warrant the invocation of the exception to the mootness doctrine."

The mother argues that in foster care cases a permanency hearing must be held every six months and parents have a statutory right to appeal the resulting permanency order, but that right is in almost every instance denied by a declaration of mootness by the Appellate Division, on the ground that by the time the appeal is decided, there has been a subsequent permanency hearing determination" that supercedes the order under appeal. She says an exception to mootness in such cases is necessary to effectuate the right to appeal. She further argues, among other things, that the court erred in ruling at the October 2022 hearing that it had no authority to order her children returned to her because Family Court Act § 1089 (d)(1) expressly provides that a court at a permanency hearing may direct "that the placement of the child be terminated and the child returned to the parent...." She says the error prevented her from presenting testimony that returning Joshua to her custody would be in his best interests, depriving her of due process.

For appellant mother.: George E. Reed, Jr., White Plains (914) 946-5000

For attorney for the child Joshua J.: William E. Horwitz, Briarcliff Manor (914) 479-0990

For respondent Westchester DSS: Deputy County Attorney Justin R. Adin (914) 995-2893

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Tuesday, April 8, 2025

No. 44 People v Carissa Hemingway

In September 2019, Carissa Hemingway was driving in Clinton County with her six-month-old child when a State Trooper pulled her over for using a cell phone as she drove. The trooper said her eyes were bloodshot and watery and he smelled the odor of marijuana. A blood test detected various drugs, including marijuana and Oxycodone, but no alcohol in her system. She was indicted on an E felony count of aggravated driving while intoxicated with a child passenger under Vehicle and Traffic Law (VTL) § 1192 (2-a)(b) and related misdemeanors.

For the felony count, the indictment alleged an underlying offense of driving while intoxicated under VTL § 1192(2), rather than driving while impaired by drugs under VTL § 1192(4). At the close of the prosecution's case, defense counsel moved for a trial order of dismissal of the felony charge, arguing the prosecution had presented no evidence of alcohol intoxication. The prosecution cross-moved to amend the indictment to allege an underlying offense of driving while impaired by drugs under subsection 4, rather than by alcohol under subsection 2. The prosecutor argued the error was merely typographical and could be corrected pursuant to Criminal Procedure Law (CPL) 200.70(1), which authorizes a trial court to "order the amendment of an indictment with respect to defects, errors or variances from the proof relating to matters of form, time, place, names of persons and the like," when the amendment does not change the theory of the prosecution or tend to prejudice the defendant.

County Court granted the prosecution's cross-motion, saying the amendment "does not change the theory of the case in any way or any of the discovery that was in place." Hemingway was convicted of all counts and sentenced to six months in jail followed by probation.

The Appellate Division, Third Department affirmed, saying, "The amendment was properly allowed, as it was to correct an apparent clerical error, did not change the People's theory of the case as reflected in the evidence before the grand jury, and defendant has demonstrated no prejudice.... To be sure, the People consistently maintained, both before the grand jury and at trial, that defendant drove while impaired by drugs – not alcohol."

Hemingway argues the trial court exceeded its authority under CPL 200.70 and that a superceding indictment was required to add a new underlying offense – driving while impaired by drugs – to support the felony count. She says the amendment permitted by the lower courts violated CPL 200.70(2), which prohibits the amendment of an indictment "for the purpose of curing: (a) A failure thereof to charge or state an offense; or (b) Legal insufficiency of the factual allegations...." She says it also contravened People v Perez (83 NY2d 269 [1994]), in which this Court ruled that trial courts exceeded their authority under the statute by allowing the amendment of an indictment to add a new count, on which the grand jury had voted to indict, that had been omitted from the indictment due to clerical error.

For appellant Hemingway: Mark Schneider, Plattsburgh (518) 566-6666

For respondent: Clinton County Chief Asst. District Attorney Jaime A. Douthat (518) 565-4770

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Tuesday, April 8, 2025

No. 45 People v T.P.

T.P. was charged with killing her boyfriend by stabbing him once in the chest with a four-inch kitchen knife during an altercation at a friend's house in Buffalo in September 2018. The boyfriend had a history of physically abusing T.P. and, on the night of his death, he was in violation of an order of protection requiring him to stay away from her. Witnesses testified that Wyatt had violently assaulted her on at least five prior occasions and that, on the night of the stabbing, they heard the pair arguing, punching sounds, and the defendant crying for help. When police arrived to investigate, they found T.P. had fresh injuries including lumps on her head, a swollen eye, and physical evidence of strangulation. She raised a justification defense at trial, saying she had been in fear for her life.

The prosecutor argued at trial that T.P. had been the instigator of the altercation and that, because her boyfriend was unarmed, T.P. should have attempted to flee before using the knife. The prosecutor said in summation that T.P. failed to testify that she was afraid for her life, although she had so testified, and defense counsel did not object to the mischaracterization. Supreme Court instructed the jury on the use of deadly force in self-defense, based on the Model Criminal Jury Instruction (CJI), but did not include a three-paragraph addendum informing jurors that they may consider testimony that a decedent "had a reputation for violence and engaged in violent acts," which is not normally allowed, in determining whether the defendant had a "reasonable belief" that deadly force was necessary to defend herself. Defense counsel did not request inclusion of the addendum in the court's instruction or object to its omission. T.P. was convicted of first-degree manslaughter and sentenced to eight years in prison.

The Appellate Division, Fourth Department reduced the prison term to four years, in the interest of justice, and otherwise affirmed. Addressing the trial court's omission of the CJI addendum, it said, "Inasmuch as the trial evidence regarding the victim's capacity for violence consisted almost entirely of direct evidence of his acts of violence toward defendant specifically, a charge addressing reputation evidence was unwarranted and, contrary to defendant's further contention, counsel was not ineffective for failing to request it."

T.P. argues, "Defense counsel failed to provide [her] with meaningful representation at her trial in two critical, interrelated ways. First, he repeatedly failed to ensure that the trial court properly instructed the jury on [her] justification defense – her sole defense at trial. Second, he failed to object to numerous instances of prosecutorial misconduct on summation, including the prosecutor's concededly false statement that [T.P.] did not testify that she was in fear for her life when she stabbed [her boyfriend], a key element of her justification defense...." She says "trial counsel's cumulative failures" deprived her of a fair trial.

For appellant T.P.: Corey M. Meyer, Manhattan (212) 450-4000

For respondent: Erie County Assistant District Attorney Daniel J. Mattle (716) 858-2255

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Wednesday, April 9, 2025

No. 46 People v Brenda WW.

Brenda WW fatally stabbed her live-in boyfriend in the back with a butcher knife during a violent altercation in their Madison County apartment in 2007. She was convicted of first-degree manslaughter and assault at trial in 2008 and again at retrial in 2010, and she was sentenced to 20 years in prison followed by five years of postrelease supervision.

In 2020, she moved for resentencing in Madison County Court under the Domestic Violence Survivors Justice Act (DVSJA), which was enacted in 2019 to give judges discretion to impose alternative, less severe sentences on defendants who were “subjected to substantial physical, sexual or psychological abuse” and “such abuse was a significant contributing factor to the defendant’s criminal behavior.” The DVSJA also permits incarcerated domestic violence victims to seek a reduction of an “unduly harsh” sentence if they would have qualified for an alternative sentence under the statute.

County Court denied her request for resentencing, saying Brenda and her boyfriend had “a mutually abusive relationship aggravated by the substance abuse of both parties,” but finding that any abuse at the time of the stabbing was neither substantial nor “a significant contributing factor to her behavior on that night.” It said she “was not in imminent danger from [him] that night.”

The Appellate Division, Third Department modified by reducing her prison term to eight years in a 3-2 decision. It also eliminated her term of postrelease supervision by crediting her for time she served in prison beyond her reduced sentence. It found the abuse Brenda had suffered was “substantial” and noted that, although her relationship with the victim “was mutually abusive, that does not foreclose a determination that defendant was a victim of abuse;” and found the abuse was a “significant contributing factor” in her criminal conduct. The majority further found that her sentence was “unduly harsh” in view of her lengthy history of domestic abuse, credible reports that she “was genuinely remorseful for her actions,” and her clean disciplinary record “during her lengthy period of incarceration.” The majority said, “The fact that defendant was not entitled to a justification defense does not disqualify her from the compassionate relief afforded by the DVSJA. Defendant is not a perfect victim in any respect, and her own violent conduct certainly makes this inquiry a close call. However, the record before us establishes by a preponderance of the evidence that defendant has been repeatedly victimized by various individuals over the course of her life, which ... explains much of her conduct.”

The dissenters agreed that Brenda was subjected to “substantial” abuse, which “was a ‘substantial contributing factor’ to her criminal behavior.” But they said “the nature and circumstances of this crime and the history, character and condition of defendant do not render defendant’s original sentence unduly harsh. Specifically, the history of mutual violence between the parties, the volume of alcohol defendant consumed the night of the incident, defendant’s ever-changing story of the events of that night and her failure to take responsibility and accept that her actions caused the victim’s death militate against the compassionate relief afforded by the” DVSJA.

For appellant: Madison County Assistant District Attorney J. Sam Rodgers (315) 336-2236

For respondent Brenda WW.: Veronica Reed, Schenectady (518) 269-2012

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Wednesday, April 9, 2025

No. 47 People v Angela VV.

Angela VV was charged with murdering her boyfriend in their Franklin County apartment in November 2013. The pair had a mutually abusive relationship and both of them were abusing drugs and alcohol extensively. When police responded to her 911 call, Angela told them her boyfriend came at her with a knife, saying, "I am going to kill you." She pushed him to the floor and he dropped the knife, she grabbed a baseball bat and repeatedly struck him with it in the head and arms. As he lay on the floor, she picked up the knife and stabbed him repeatedly in the head, neck and chest. The autopsy determined the victim's skull was fractured, both forearms were broken, and he died of multiple stab wounds. She ultimately pled guilty to first-degree manslaughter and was sentenced to 15 years in prison.

In 2022, Angela applied for resentencing under the Domestic Violence Survivors Justice Act (DVSJA), which gives judges discretion to reduce an "unduly harsh" sentence imposed on a defendant who was "subjected to substantial physical, sexual or psychological abuse" where the abuse "was a significant contributing factor to the defendant's criminal behavior."

County Court denied the application, saying she largely relied on her own testimony, which "the court found much of it to be incredible, irrelevant, evasive, self-serving, non-responsive, or equivocal," and gave it "very little weight." It said it "is simply not convinced that [Angela] was a victim of domestic violence subject to substantial" abuse, nor "convinced that domestic violence abuse was a significant contributing factor to [her] criminal behavior."

The Appellate Division, Third Department affirmed on a 3-2 vote, deferring to County Court's credibility determinations regarding Angela's testimony and saying the other evidence from the hearing was insufficient "to prove that domestic abuse was a significant contributing factor to her criminal conduct" or that her original sentence was "unduly harsh." "Defendant, who almost immediately faced no imminent threat from the victim, acted in a deliberate and relentless manner in carrying out the brutal killing," it said. "Indeed, notwithstanding the fact that the victim was lying on the floor and covered in blood with a fractured skull and two fractured forearms, and despite defendant having paused to think about what she had already done, she resumed her attack." In addition to the killing, it said, "her history, character and condition weigh against the granting of her motion for resentencing."

The dissenters said "we need not defer to County Court's [credibility] determination in this context particularly where, as here, it is not supported by the record.... The record demonstrates that from the moment of her 911 call requesting help, through her testimony at the September 22, 2022 resentencing hearing, defendant has been consistent in her claim that she acted in self-defense after the victim entered her residence with a knife and attacked her. Defendant has also been steadfast in her claim that she endured months of physical, emotional and sexual abuse perpetrated by the victim prior to the underlying crime." They argued that her sentence was unduly harsh and that "the brutality of the crime does not outweigh the other factors supporting a reduction in the sentence."

For appellant Angela VV.: Mitch Kessler, Cohoes (518) 235-6312

For respondent: Franklin County Exec. Asst. Dist. Attorney Alyxandra Stanczak (518) 481-1544

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Wednesday, April 9, 2025

No. 48 People v Laquawn Lewis

Laquawn Lewis was charged with attempted murder based on a November 2015 incident outside of a bodega in Astoria, Queens, in which he repeatedly punched, kicked and stomped on the victim and then stole money from his pockets as he lay on the ground. The beating was recorded by a surveillance camera and Lewis was arrested a year later when his parole officer identified him as the attacker in the video.

Prior to jury selection, Lewis's assigned counsel asked to be relieved, telling the judge that Lewis threatened to kill him during a video conference. Supreme Court denied the request, saying "Passions do run high when a trial's about to start..., but your application to be relieved is most respectfully denied. I want to move this case, and move this case expeditiously...."

Lewis then sought assignment of new counsel or to represent himself pro se "because this attorney is ineffective and I've got paperwork for you." When the court asked how long it would take him to hire a lawyer, Lewis said, "I would represent myself... I would like to represent myself." The court asked, "You're going to represent yourself?" and Lewis replied, "Yes." The court said, "I'll deal with that. [Assigned counsel] is on the case until you can hire another attorney. If you choose to go pro se at the time of trial, I'll entertain your application at that point..." Lewis did not renew his request to represent himself and assigned counsel defended him at trial. He was acquitted of attempted murder, but convicted of the remaining charges including top counts of first-degree robbery and assault. He was sentenced to 25 years in prison.

The Appellant Division, Second Department affirmed, ruling that Supreme Court did not deprive Lewis of his right to self-representation. It said, "The defendant's requests to proceed pro se, which were made in the context of his claim of dissatisfaction with counsel, were not unequivocal...." It also rejected his claim that the prosecution failed to present legally sufficient evidence to establish that the victim of the beating sustained serious physical injury.

Lewis argues, "This case presents the unusual situation in which a court imposed an attorney-client relationship against the will of both the client and attorney and then closed its eyes to the inevitable consequences that arose.... While the summary denial of each request is an independent basis for reversal under the Sixth Amendment, the cumulative effect of the court's inaction resulted in a dysfunctional attorney-client relationship that compromised the integrity of the entire trial." He says that his repeated requests to represent himself were clear and unequivocal and notes that this Court recognized, in People v McIntyre (36 NY2d 10 [1974]), "that most pro se requests are 'motivated by dissatisfaction with the trial strategy' or 'a lack of confidence in [the] attorney.'" He also pursues his claim of insufficient evidence of serious physical injury."

For appellant Lewis: David Fitzmaurice, Manhattan (212) 693-0085 ext 222

For respondent: Queens Assistant District Attorney Charles T. Pollak (718) 286-5984

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Wednesday, April 9, 2025

No. 49 Matter of Reclaim the Records v New York State Department of Health

Reclaim the Records (RTR), a not-for-profit that provides public access to copies of government records for historical and genealogical research, filed a Freedom of Information Law (FOIL) request with the State Health Department (DOH) in 2021 seeking digital copies of its “Death Index” for each year up through 2017. The Death Indexes contain limited information obtained from death certificates, including the name and age of a deceased, gender, date of death and residency code. DOH provided its Death Index for 1971 and referred RTR to its online indexes for 1957 through 1970, but determined that its indexes for subsequent years were exempt from disclosure under FOIL as an unwarranted invasion of personal privacy and as specifically exempted under Public Health Law § 4174(1)(a), which restricts access to “a certified copy or a certified transcript of the record of any death” to seven categories of applicants and further provides that “no certified copy or certified transcript of a death record shall be subject to disclosure under” FOIL. RTR filed this proceeding to compel disclosure.

Supreme Court ordered DOH to produce the indexes, with any Social Security numbers redacted. It said privacy concerns of the dead “have been dissipated or extinguished by their death” and “the risk [to survivors] is simply too attenuated and too speculative.”

The Appellate Division, Third Department reversed in a 3-2 decision and dismissed the suit, finding the indexes for 1973 through 2017 were exempt from disclosure. It noted DOH’s “legitimate interest in protecting a decedent’s survivors against the prospect of identity theft and fraud if the information was released. Beyond that, the withheld archival information includes sensitive personal information impacting a surviving family member’s privacy interests ..., including health information otherwise shielded from disclosure under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) for 50 years following the death of an individual....” The majority also said the indexes were properly withheld under Public Health Law § 4174(1)(a), which restricts access to certified death records to seven categories of people. “We recognize that petitioners are not requesting copies of death certificates or any ‘certified’ records. Even so..., the import of the statute is to limit the disclosure of these records to applicants who fall within the defined categories.... The express qualifier precludes a FOIL request otherwise made by a nonqualifying member of the general public.”

The dissenters said disclosure of medical or sensitive personal information to RTR would be an invasion of privacy and barred by HIPAA. “However..., the release of limited biographical information – specifically, each decedent’s name, date of birth, date of death, place of birth and place of death – would not constitute an unwarranted invasion of personal privacy.... Importantly, this is not the type of information that relates to the ‘intimate moments in the life of one’s deceased ... relative,’ which if disclosed and publically available may cause surviving relatives anguish.... Instead, this information constitutes simple biographical data of which surviving relatives are aware.” They argued that disclosure of the indexes is not barred by Public Health Law § 4171(1)(a) because RTR is not seeking “original death certificates, certified copies or certified transcripts of death records.”

For appellant Reclaim the Records: Michael D. Moritz, Manhattan (212) 373-3000

For respondent Health Department: Assistant Solicitor General Kevin C. Hu (518) 776-2007

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Thursday, April 10, 2025

No. 50 Matter of Won Yi v New York State Board of Professional Medical Conduct

Dr. Won Yi was a board-certified radiation oncologist and director of a private radiation oncology practice in Buffalo in 2018, when the State Bureau of Professional Medical Conduct (Bureau) charged him with practicing medicine with gross negligence and incompetence stemming from his treatment of seven patients between 2009 and 2013. At a hearing before a committee of the State Board for Professional Medical Conduct (BPMC), the Bureau called one medical expert, Dr. Isamettin Aral, who testified the doctor had deviated from the generally accepted standard of care, including clinical practice guidelines issued by professional societies including the American College of Radiology (ACR) and the National Comprehensive Cancer Networks (NCCN). Dr. Yi testified on his own behalf and called an expert, Dr. Michael Kos, who testified that he did not deviate from the standard of care. After a nine-day hearing, the BPMC committee sustained 16 of the 17 charges, most of them relating to the use of excessive doses of radiation on patients, and revoked his license. He commenced this proceeding to challenge the determination, arguing, in part, that clinical practice guidelines issued by professional societies do not determine the standard of care.

The Appellate Division, Third Department confirmed the BPMC determination in a 3-2 decision, saying that “the ACR and NCCN guidelines provide contemporary informed treatment recommendations that are flexible and subject to adjustment – but do not purport to define an authoritative standard of care.... Even so, and notwithstanding Aral’s express identification of these guidelines as the standard of care, it is evident from his detailed testimony as to each patient that he utilized the guidelines as ‘one link in the chain’ of his evaluation process” and “he provided a factual basis for his opinions as to both negligence and incompetence going far beyond a mere recitation of the guidelines.... Thus, we conclude that he provided competent expert testimony that the Hearing Committee could rely on in its determinations.” The practice guidelines were not included in the record, but the court took judicial notice of them.”

The dissenters argued that Dr. Aral’s testimony did not provide substantial evidence to support the determination because it was “premised upon professional practice materials [the practice guidelines] intended to be used only as educational tools and which, by express disclaimer, are designed to be merely advisory in nature.... Here, the findings of the Committee were premised entirely on the erroneous understanding of [BPMC’s] expert, Isamettin Aral, that professional societies establish the accepted standard of care.” They said, “Although we acknowledge that [appellant] pursued what appears to have been aggressive care with the goal of prolonging the lives of patients A-G and was in accordance with their wishes, the record lacks any reference to pervasive standards outlining physician obligations relative to the extraordinary circumstances of terminally ill patients with advanced, late-stage disease.”

For appellant Won Yi: Anthony Z. Scher, Rye Brook (914) 328-5600

For respondent BPMC: Assistant Solicitor General Kevin C. Hu (518) 776-2007

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Thursday, April 10, 2025

No. 51 People v Daniel Sherlock

Daniel Sherlock, a resident of New York State, was arrested on federal charges in 2017 after federal investigators recovered child pornography from his computer in his Manhattan office. Some of the 86 pornographic images depicted sadomasochistic conduct. At the time of his arrest, Sherlock was on probation for a prior crime, third-degree obscenity, based on his possession of a sexual performance of a child. He pled guilty to possession of child pornography in the Southern District of New York and was sentenced to 18 months in federal prison. Prior to his release, because he would be required to register in New York as a sex offender, the Board of Examiners of Sex Offenders prepared a Risk Assessment Instrument (RAI) assessing him 25 points and making him a presumptive level one offender, the lowest risk level available under the Sex Offender Registration Act (SORA).

At Sherlock's SORA hearing, the prosecution sought to designate him a sexually violent offender under Correction Law § 168-a(3)(b), which defines a sexually violent offense to include "conviction of a felony in any other jurisdiction for which the offender is required to register as a sex offender in the jurisdiction in which the conviction occurred." Sherlock opposed the "sexually violent" designation, arguing that section 168-a(3)(b) did not apply to his conviction because his crime occurred in New York and he was required to register in New York.

Suffolk County Court assessed him 85 points on the RAI, including 30 points for one victim being 10-years-old or less, and designated him a level two sexually violent offender. It said the definition of sexually violent offense in Correction Law § 168-a(3)(b) "is plain and unambiguous" and applied to Sherlock's conviction because "the statute uses the term 'any other jurisdiction,' not any other state. Since the defendant's conviction was within the federal jurisdiction, it is a different jurisdiction than New York State." The court held the prosecution properly assessed 30 points for one of the victims being less than 11 years old, holding that an investigator's affidavit that said a girl pictured in the photo cache was between 8 and 13 when she was photographed, provided clear and convincing evidence.

The Appellate Division, Second Department affirmed, finding Sherlock "was properly designated a sexually violent offender pursuant to the terms of Correction Law § 168-a(3)(b)" and was properly assessed 30 points for at least one victim being 10 years old or younger.

Sherlock argues that section 168-a(3)(b) does not apply because, although he was convicted of a felony in federal court, he was not required to register in the federal jurisdiction and instead registered in New York. He was not convicted of a "sexually violent offense" recognized by New York law, he says, and section 168-a(3)(b) "only allows for a sexually violent designation if the offender is required to register in that other jurisdiction, a key element which is absent here since there is no federal sex offender registry." He also argues the statute violates his rights to due process and equal protection, in part because he could not have been designated sexually violent if he had been convicted of the same conduct in a New York State court. As for the 30 points assessed for one victim's age, he says the affidavit stating that she was between 8 and 13 years old is not clear and convincing evidence that she was 10 or less.

For appellant Sherlock: Lisa Marcoccia, Riverhead (631) 852-1650

For respondent: Suffolk County Assistant District Attorney Lauren Tan (631) 852-2469

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Thursday, April 10, 2025

No. 2 **Ezrasons, Inc. v Rudd**

Ezrasons, Inc., a New York corporation, filed this shareholder derivative action in Manhattan on behalf of Barclays PLC, an English corporation that is registered to do business in New York, against 46 current and former officers and directors of Barclays who had been convicted or censured for money laundering, conspiracy to manipulate trading and other misconduct between 2008 and 2018, which cost Barclays \$18 billion in fines and sharply reduced the value of its shares. Ezrasons alleged that the defendants violated their fiduciary duties as officers and directors under English Companies Act (ECA) §§ 174 and 178, which governs shareholder derivative actions in England. The defendants moved to dismiss on the ground that Ezrasons lacked standing to bring the suit because it was not a registered “member” of Barclays as required by English law.

Ezrasons argued it had standing under New York law because Business Corporation Law (BCL) § 1319 overrides the common-law “internal affairs” doctrine, which otherwise “provides that relationships between a company and its directors and shareholders are generally governed by the substantive law of the jurisdiction of incorporation,” while “procedural rules are governed by the law of the forum” (Davis v Scottish Re Group Ltd. [30 NY3d 247]). BCL § 626(a) states, “An action may be brought in the right of a domestic or foreign corporation to procure a judgment in its favor, by a holder of shares or of voting trust certificates of the corporation or of a beneficial interest in such shares or certificates.” BCL § 1319 clarifies that section 626 “shall apply to a foreign corporation doing business in this state, its directors, officers and shareholders.”

Supreme Court dismissed the suit, ruling that BCL § 1319 did not override the internal affairs doctrine because it “is a mere statutory predicate to jurisdiction.” It found the ECA’s membership requirement for standing is a substantive rule that Ezrasons failed to meet.

The Appellate Division, First Department affirmed, saying the internal affairs doctrine “has been consistently invoked by this Court in derivative actions to apply foreign law on substantive issues, including those affecting a party’s right to sue.” It said BCL § 1319 “merely confers jurisdiction upon New York courts over derivative suits on behalf of a foreign corporation” and “does not require application of New York law in such suits” nor override the internal affairs doctrine.

Ezrasons argues that the plain text and legislative history of BCL § 1319 demonstrate the Legislature’s intent to override the internal affairs doctrine and “apply New York’s gatekeeping rules governing derivative actions to foreign corporations doing business in New York.” It says the “common-law doctrine must give way to a statutory directive.” Ezrasons also argues that it has standing under New York law because the English statute’s membership requirement is procedural, not substantive, and the lower courts’ contrary conclusion conflicts with Davis v Scottish Re.

For appellant Ezrasons: Francis A. Bottini, Jr., LaJolla, CA (858) 914-2001

For respondents Rudd et al (defendant officers): Lara A. Flath, Manhattan (212) 735-3000

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Thursday, April 10, 2025

No. 3 **Hausmann v Baumann**

Rebecca Hausmann and another shareholder of the German company Bayer AG filed this derivative action on its behalf in Manhattan, alleging breach of fiduciary duty by its directors and two New York investment banks involved in Bayer's \$66 billion purchase of Monsanto Inc. in 2018. The acquisition, which was negotiated, financed, and closed in New York, resulted in Bayer taking on Monsanto's extensive liability for products posing a risk to human health and led to a decline in Bayer's stock value. The plaintiffs alleged that the defendants violated their fiduciary duties under the German Stock Corporation Act (GSCA) by failing to conduct due diligence on the purchase in order to enrich themselves.

The defendants moved to dismiss for lack of standing and other grounds, arguing that the plaintiffs lacked standing under German law because they did not satisfy the GSCA's requirement that they obtain permission to sue from the regional court in Leverkusen, Germany, where Bayer AG is headquartered. The plaintiffs argued they had standing under New York law because Business Corporation Law (BCL) § 1319 overrides the internal affairs doctrine, which provides that relations between a company and its shareholders are generally governed by the substantive law of the jurisdiction where it was incorporated, while procedural rules are governed by the law of the forum where the suit was brought. BCL § 626 would give plaintiffs standing as shareholders without court permission, and BCL § 1319 provides that section 626 "shall apply to a foreign corporation doing business in this state, its directors, officers and shareholders." The plaintiffs also argued that the GSCA provision requiring court permission to sue is procedural, not substantive, and thus requires courts to apply New York law on the issue of standing.

Supreme Court dismissed the suit, finding the plaintiffs lacked standing under German law. "As Bayer rightfully asserts, the internal affairs doctrine requires application of German law to determine whether the Plaintiffs have standing to bring this derivative suit."

The Appellate Division, First Department affirmed, saying "we agree with Supreme Court that the internal affairs doctrine applies to this shareholder derivative action on behalf of a foreign corporation to make applicable relevant substantive German laws. Furthermore, we agree with Supreme Court's implicit finding that the German Stock Corporation Act § 148 is a substantive law rather than a procedural one and requires plaintiffs to seek leave from the German court to bring a derivative action."

For appellants Hausmann et al: Francis A. Bottini, Jr., LaJolla, CA (858) 914-2001

For respondents Baumann et al: William Savitt, Manhattan (212) 403-1000