JUNE 2018

NEW FILINGS DIGEST - CUMULATIVE UPDATE

This report lists, by title and subject matter, pending appeals previously published as "Court of Appeals New Filings."

Contact the Clerk's Office for additional information.

ADIRONDACK WILD: FRIENDS OF THE FOREST PRESERVE et al., MATTER OF v NEW YORK STATE ADIRONDACK PARK AGENCY et al.:
Environmental Conservation--Judicial Review--in CPLR article 78 proceeding challenging Department of Environmental Conservation's approval of Essex Chain Lakes Complex Unit Management Plan, whether certain causes of action were ripe for judicial review; whether a rational basis exists for the determination of the Department of Environmental Conservation that the Wild, Scenic and Recreational Rivers System Act permits establishment of snowmobile trail on a road that is located in a wild river area; whether Supreme Court properly dismissed the fourth cause of action on the basis that respondents are not bound by guidance document for the siting, construction and maintenance of snowmobile trails that was adopted by Department of Environmental Conservation in 2009;

ALLEN (DORAN), PEOPLE v:
Grand Jury--Resubmission of Charges--Whether People improperly re-presented second-degree murder charge to grand jury without obtaining leave of the court pursuant to CPL 190.75(3); where defendant was ultimately acquitted of murder charge, whether presence of murder charge during trial and submission of that charge to the jury improperly influenced the verdict convicting defendant of manslaughter in the first degree; whether harmless error analysis applies;

ALLIANCE TO END CHICKENS AS KAPOROS, et al. v NEW YORK CITY POLICE DEPARTMENT, et al.:
Proceeding against Body or Officer--Mandamus--Whether plaintiffs have a right, via a writ of mandamus, to compel the municipal defendants to enforce certain laws related to preserving public health and preventing animal cruelty, which they allege are violated by Orthodox Jews who perform the religious practice of Kaporos--chickens killed in religious ritual; discretionary versus mandatory actions of municipal agents; animals;

ALVAREZ (OMAR), PEOPLE v:
Crimes--Right to Counsel--Effective Representation--Whether appellate counsel's deficient performance, including failing to request that the Appellate Division reduce defendant's sentence in the interest of justice, deprived defendant of the effective assistance of counsel;

ANDREW CAROTHERS, M.D., P.C., &c. v PROGRESSIVE INSURANCE COMPANY, et al.:
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;

ANDRYEYEVA, &c., et al. v NEW YORK HEALTH CARE, INC. &c., et al.:
Actions--Class Actions--Whether plaintiffs' renewed motion for class certification was properly granted; employment relationships--wages--whether the Appellate Division erred in finding that the premise upon which the employer based its payment practices with respect to nonresidential home health care attendants--that is, the Department of Labor's interpretation of the Wage Order (12 NYCRR 142.2.1)--is neither rational nor reasonable;

ARROWHEAD CAPITAL FINANCE, LTD. v CHEYNE SPECIALITY FINANCE FUND L.P., et al.:
Attorney and Client--Unauthorized Practice of Law--Whether failure of plaintiff's counsel to maintain an in-state office at the time action was commenced, in violation of Judiciary Law § 470, renders the action a nullity and requires dismissal of the action without prejudice;

TOWN OF AURORA &c. v VILLAGE OF EAST AURORA, &c.:
Bridges--Maintenance--Whether Town of Aurora or Village of East Aurora is responsible for the costs of repairing a bridge constructed and maintained by the Village; Village board of trustees never adopted resolution assuming care, control and maintenance of the bridge; application of Village Law §§ 6-604, 6-606;

BAISLEY (STEVEN), PEOPLE v:
Courts--Jurisdiction--Whether a local criminal court has jurisdiction over charges of nonsupport of a child in the second degree (Penal Law § 260.05[2]) and criminal contempt in the second degree (Penal Law § 215.30[3]); criminal contempt charge based on defendant's failure to obey a Family Court order of child support; application of Family Court Act §§ 156, 411;

BRADLEY, &c., et al. v HWA 1290 III LLC, et al.:
Negligence--Maintenance of Premises--Mechanic electrocuted while working in elevator machine room of building owned by defendants—whether plaintiffs raised issues of fact as to whether decedent died as a result of the defendants' negligence; summary judgment;

BRASHER, MATTER OF v SAM DELL'S DODGE CORPORATION, et al.:
Workers' Compensation--Whether decision of Workers' Compensation Board denying claimant's application for reconsideration and/or full board review was arbitrary or capricious or constituted an abuse of discretion; alleged due process violations;

BROWN (BORIS), PEOPLE v:
Attorney and Client--Conflicts of Interest--Defendant's attorney paid by another suspect in the crime who was represented by the attorney on an unrelated criminal matter--whether defendant validly waived his counsel's conflict of interest--whether such conflict was waivable in any event; whether trial court erred in denying defendant's CPL 440.10 motion without setting forth findings of fact and conclusions of law (CPL 440.30 [7]); propriety of consecutive sentences for murder and gun possession charges;

BROWN (DARRYL), PEOPLE v:
Crimes--Justification--Whether trial court erred in denying defendant's request to instruct the jury on the defense of justification;

CAPITAL ONE TAXI MEDALLION FINANCE v CORRIGAN, et al.:
Suretyship and Guarantee--Action to recover on two guaranties--line of credit secured by loans to Chicago taxi owners and drivers for the purchase of taxi medallions--whether defendants' claim for negligent impairment of collateral, which remains pending in parallel litigation, barred summary judgment in plaintiff's favor; lender's alleged refusal to release liens to permit sale of taxi medallions while they had higher value, and alleged withdrawal from medallion lending market to pursue competing venture with a ride-sharing service;

CISSE (ALI), PEOPLE v:
Crimes--Evidence--Whether defendant's telephone calls from prison were admitted into evidence in violation of federal and/or state wiretapping statutes, or right to counsel and

due process protections; suppression--whether various physical items should have been suppressed as fruits of an improper stop and search; whether the trial court improperly asked the jury whether it had reached a partial verdict; claimed ineffective assistance of counsel--counsel failed to move to suppress a suggestive identification and to dismiss the reckless endangerment count; whether the trial court erred in rejecting a voluntariness instruction to the jury;

CLARK, &c., MATTER OF v VILLEGAS, &c.:
Proceeding Against Body or Officer--Prohibition--whether Appellate Division properly granted writ of prohibition to prohibit enforcement of a Supreme Court order that directed Department of Corrections and Community Supervision to credit respondent with 1,282 days of jail time; whether CPLR article 78 proceeding is proper vehicle to challenge jail time credit calculation;

CLEMENT v DURBAN, et al.:
Constitutional Law--Privileges and Immunities Clause--Whether the requirements of CPLR 8501(a) and 8503 that nonresident plaintiffs maintaining lawsuits in New York courts post security for the costs for which they would be liable if their lawsuits were unsuccessful violate the Privileges and Immunities Clause of the United States Constitution (US Const, art IV, § 2); claimed due process and equal protection violations;

COLLAZO, et al. v NETHERLAND PROPERTY ASSETS LLC, et al.:
Landlord and Tenant--Rent--Tenants' claims of rent overcharge by landlord allegedly taking advantage of luxury decontrol provisions of the Rent Stabilization Law while simultaneously receiving tax incentives under the City of New York's J-51 program—whether Supreme Court abused its discretion in determining that most of plaintiffs' claims were within the specialized expertise of the New York State Division of Housing and Community Renewal and dismissing those claims under the primary jurisdiction doctrine;

CUBERO (MICHAEL), PEOPLE v:
Crimes--Appeal--Preservation of constitutional challenge to statute creating Justice Center for the Protection of People with Special Needs; whether Appellate Division, pursuant to its interest of justice jurisdiction or by its inherent authority, may remit matter for further factual findings as to whether Special Prosecutor acted with consent of District Attorney; crimes—right to counsel—effective representation—whether defendant's counsel was ineffective for failing to raise constitutional argument challenging authority of Special Prosecutor;

DELACRUZ (JEAN CARLOS), PEOPLE v:
Crimes--Sex Offenders--Sex Offender Registration Act--Whether a person who commits a sex crime between the ages of 16 and 17 should be spared a sex offender adjudication at a level higher than level one, especially without an individual clinical assessment—claimed due process and cruel and unusual punishment violations—whether defendant was properly classified as risk level one on the basis of a risk assessment instrument;

DEUTSCHE BANK NATIONAL TRUST COMPANY, &c. v FLAGSTAR CAPITAL MARKETS CORPORATION, et al.:
Contracts - Breach or Performance of Contract - Whether statute of limitations bars a breach of contract action brought more than six years after seller made allegedly false representations and warranties regarding loan underlying residential mortgage-backed securities - contract provision specifying set of conditions that would delay cause of action's accrual - enforceability of accrual clause;

DeVERA, &c., et al., MATTER OF v ELIA, &c., et al.:
Proceeding Against Body or Officer--Certiorari--CPLR article 78 proceeding on behalf of charter schools and parents of children attending pre-kindergarten programs at the schools to, among other things, annul so much of the Commissioner of Education's determination as found the charter schools properly required to execute a Pre-K contract as a condition to receiving state funds as a collaborating partner with a public school district--whether a school district can impose regulations on a charter school to obtain state funding for pre-kindergarten programming as a partner in the school district's consolidated application to the New York State Department of Education--grants under Education Law § 73;

DIAZ (EMMANUEL), PEOPLE v:
Crimes--Evidence--Whether defendant's telephone calls from prison were improperly admitted into evidence in the absence of his consent to release of the recordings to the prosecution; right to counsel--effective representation--whether defendant was deprived of the effective assistance of counsel as a result of his trial counsel's failure to request that the jury be charged on the affirmative defense that the object which he displayed was not a loaded weapon;

DIAZ (FREDERICK), PEOPLE v:
Crimes--Sex Offenders--Sex Offender Registration Act (SORA) (Correction Law article 6-C)--Defendant convicted in Virginia of first-degree murder of a victim under the age of 15 (crime not involving any sexual motivation or conduct)--whether Appellate Division correctly concluded, under the specific facts of this case, that requiring defendant to register as a sex offender under Correction Law § 168-a (2)(ii) violated his substantive due process rights and was not rationally related to SORA's legislative purpose;

DONOSO v NEW YORK UNIVERSITY:
Colleges and Universities--Judicial Review of Academic Discretion--Whether plaintiff's claims, challenging defendant's academic determination to withdraw plaintiff's admission to Doctor of Juridical Science program, should have been brought via an article 78 proceeding; Limitation of Actions—Four-month Statute of Limitations--whether action was time-barred under four-month statute of limitations applicable to CPLR article 78 proceedings; Dismissal and Nonsuit—Dismissal on Merits-- whether Supreme Court properly dismissed plaintiff's fraud, General Business Law § 349, promissory estoppel and civil rights (42 USC § 1983) claims;

DRELICH (MARVIN), PEOPLE v:
Crimes--Accusatory Instrument--Whether misdemeanor complaint charging defendant with patronizing a prostitute in the third degree was jurisdictionally defective because the factual allegation of the complaint--that defendant offered the complainant $15 in exchange for "manual stimulation"--was insufficient to establish the "sexual conduct" element of the charged crime.;

EASTBROOKE CONDOMINIUM, &c., MATTER OF v AINSWORTH, &c. et al.:
Taxation--Assessment--Whether condominium unit owner's authorization to condominium's board of managers to act as an agent in proceeding challenging tax assessment for a particular tax year authorizes the board to act as unit owner's agent for a different year; application of Real Property Tax Law § 339-y (4); whether respondents waived any deficiency in unit owners' authorizations;

FASOLAS &c.. v BOBCAT OF NEW YORK, INC., et al.:
Products Liability--Strict Liability--Whether an exception to strict products liability as set forth in Scarangella v Thomas Built Buses (93 NY2d 655 [1999]) is applicable where the allegedly defectively designed product was sold without optional safety equipment to a rental company that planned to rent the product to the general public; wrongful death;

FERRARA v PEACHES CAFÉ LLC, et al:
Liens--Mechanic's Lien--Whether defendant owner consented to improvements on real property it leased to a tenant who contracted for the improvements, thereby permitting imposition of a lien on the property under Lien Law § 3; whether lease indemnification clause extinguished owner's responsibility to pay for contractor's work;

FLORES (ALEX), RAMIREZ (LUCIO), AGUILAR (BENIGNO), FLORES (EMMANUEL), PEOPLE v:
Crimes--Jurors--Selection of Jurors--whether trial court's empaneling of an anonymous jury was improper under CPL 270.15 and deprived defendants of their right to a fair trial; whether error in empaneling anonymous jury was harmless;

GARLAND (TAMARKQUA), PEOPLE v:
Crimes--Verdict--Sufficiency of Evidence--Whether evidence was legally sufficient to establish that complainant suffered a serious physical injury, as required for assault in the first degree convictions, where complainant testified that, four years after he was struck by bullet, he still felt bullet fragments in his leg, experienced pain, and could not engage in sports at the same level as before the incident; Right to Speedy Trial—whether defendant met burden of demonstrating that People's statement of readiness was illusory;

GIBBS v STATE FARM FIRE AND CASUALTY COMPANY:
Appeal--Appellate Division--Denial of motion to vacate order dismissing appeal; claimed due process violations in action against insurer for damages arising out of water damage to a residence;

GOLD, et al. v NEW YORK LIFE INSURANCE COMPANY, et al.:
Arbitration--Agreement to Arbitrate--Whether the Appellate Division erred in determining that plaintiff Kartal's arbitration agreement containing a class action waiver is unenforceable as violating section 7 of the National Labor Relations Act--employee wage dispute with employer;

GONZALEZ, MATTER OF v ANNUCCI &c.:
Prisons and Prisoners--Whether the Department of Corrections and Community Supervision wrongfully denied petitioner good time credit based on his failure to locate housing that complied with the Sexual Assault Reform Act (SARA); whether the Department of Corrections and Community Supervision failed to comply with its obligations under the Correction Law by placing petitioner at a residential treatment facility following the maximum expiration date of his prison sentence and by failing to provide him statutorily required privileges and programming; Appeal--Academic and Moot Questions--Where petitioner level one sex offender was released from an approved residential treatment facility, whether mootness exception applied to petitioner's challenge to his placement in the facility and the conditions thereof; prisons and prisoners--whether Department of Corrections and Community Supervision had an affirmative statutory duty to provide substantial assistance to petitioner in finding housing that complied with the Sexual Assault Reform Act and, under the circumstances, whether the assistance provided was insufficient; application of Correction Law § 201(5);

GRIMES (JAKIM), PEOPLE v:
Crimes--Right to Counsel--Effective Representation--Whether, under the New York State Constitution, an attorney's failure to file a criminal leave application on a defendant's behalf at the Court of Appeals deprives the defendant of the effective assistance of counsel or due process of law;

HAKES (BRIAN), PEOPLE v:
Crimes--Sentence--Whether sentencing court had the authority to require defendant to pay for an electronic monitoring program (a Secure Continuous Remote Alcohol Monitoring [SCRAM] bracelet) as a condition of his probation--SCRAM bracelet removed when defendant told monitoring company that he was unable to make payments required for continued use of bracelet;

HAUG, MATTER OF v STATE UNIVERSITY OF NEW YORK AT POTSDAM, et al.:
Proceeding against body or officer--CPLR article 78 proceeding to review the university's determination; Evidence--hearsay accounts of incident as reported by complainant to campus police officer and director of student conduct;

HE (RONG), PEOPLE v:
Crimes--Confession--Whether statement obtained from defendant following a Payton violation (see Payton v New York, 455 US 573 [1980]) was sufficiently attenuated from illegal arrest; evidence--whether the People committed a Brady violation (see Brady v Maryland, 373 US 83 [1963]) by failing to disclose the contact information of potential witnesses;

HILL (NICHOLAS), PEOPLE v:
Crimes--Suppression Hearing--Police retained defendant's proffered identification while investigating defendant's explanation about who he was visiting in a particular apartment building--whether the trial court properly denied defendant's motion to suppress physical evidence on the basis that the police officer's retention of defendant's identification constituted a significant interruption of his freedom of movement so as to constitute an unreasonable seizure;

INTERNATIONAL UNION OF PAINTERS & ALLIED TRADES, DISTRICT COUNCIL NO. 4, &c., et al. v NEW YORK STATE DEPARTMENT OF LABOR, et al.:
Labor--Hours and Wages--Whether, under Labor Law § 220(3-e), apprentices who are registered individually under a bona fide apprenticeship may work and be paid as apprentices even if the work they are performing is not work in the same trade or occupation as their apprenticeship program;

JONES (DAMIAN), PEOPLE v:
Crimes--Enterprise Corruption--whether verdict convicting defendant of enterprise corruption is supported by legally sufficient evidence; proof of "ascertainable structure"

under Penal Law §§ 460.10, 460.20; Crimes--Indictment--whether prosecution constructively amended the indictment by introducing a new theory of criminal liability at trial; Crimes--Fair Trial--whether prosecutorial misconduct deprived defendant of a fair trial;

MATTER OF DARYLL BOYD JONES, A SUSPENDED ATTORNEY:
Attorney and Client--Reinstatement--Denial of motion for leave to renew and reargue motion for reinstatement; alleged violation of the Equal Protection and Confrontation Clauses;

JORDAN, et al., MATTER OF v NEW YORK CITY HOUSING AUTHORITY, et al.:
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 NEW YORK CITY ASBESTOS LITIGATION (JUNI, &c. v A.O. SMITH WATER PRODUCTS COMPANY, et al):
Labor--Safe Place to Work--Exposure to Toxic Substances--asbestos dust--whether there was a sufficient "scientific expression" of plaintiff's exposure to asbestos to support the jury's verdict in plaintiff's favor; evidence--expert proof of causation in toxic tort case brought by auto mechanic afflicted with mesothelioma after more than 25 years of working in two garages which serviced vehicles manufactured by defendant Ford Motor Company;

KOSMIDER, MATTER OF v WHITNEY, et al.:
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;

KRUG, MATTER OF v CITY OF BUFFALO:
Proceeding Against Body or Officer--CPLR article 78 proceeding to annul respondent's denial of petitioner's request to be defended in a civil action alleging that petitioner police officer assaulted a civilian; whether the denial of petitioner's request for a defense was arbitrary and capricious; whether conduct occurred while petitioner was acting within the scope of his public employment or duties;

KUZMICH, et al. v 50 MURRAY STREET ACQUISITION LLC:
Landlord and Tenant--Rent Regulation--Whether plaintiffs' apartments in a building receiving Real Property Tax Law § 421-g tax benefits are subject to rent stabilization--effect of luxury vacancy control provisions of Rent Stabilization Law of 1969 [Administrative Code of City of NY] § 26-504.2(a);

MATTER OF LACEE L. (STEPHANIE L.; ADMINISTRATION FOR CHILDREN'S SERVICES):
Social Services--Foster Care--Whether the Americans With Disabilities Act applies in Family Court article 10 proceeding in evaluating whether agency made reasonable efforts to achieve the permanency goal of returning the subject child to the parent, who suffers from a cognitive disability;

LARCHMONT PANCAKE HOUSE, MATTER OF v BOARD OF ASSESSORS &c., et al.:
Taxation--Assessment--Proceeding pursuant to Real Property Tax Law article 7 brought by petitioner, nonowner of subject property, to review real property tax assessments; whether petitioner is an aggrieved party within the meaning of the Real Property Tax Law; whether petitioner failed to satisfy condition precedent set forth in RPTL 524(3) because grievance was not filed by property owner, thereby depriving court of subject matter jurisdiction to review assessments;

LEADINGAGE NEW YORK, INC., et al., MATTER OF v SHAH, et al. (AND ANOTHER PROCEEDING):
Proceeding Against Body or Officer--Certiorari--CPLR article 78 proceedings challenging executive order and regulations imposing limits on administrative costs and executive compensation of health care providers that receive State financial assistance --Executive Order No. 39 and 10 NYCRR part 1002; claimed unconstitutionality of compensation cap as violative of separation of powers doctrine under New York State Constitution; whether Department of Health regulations at issue are arbitrary and capricious;

LI, et al. v PENG &c., et al.:
Estoppel--Collateral Estoppel--Whether Supreme Court properly determined that judgment entered in New Jersey court conclusively disposed of plaintiffs' claims and that plaintiffs are therefore collaterally estopped from maintaining New York action; alleged constitutional violations;

LOPEZ-MENDOZA (JAIME), PEOPLE v:
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;

MADISON COUNTY INDUSTRIAL DEVELOPMENT AGENCY et al., MATTER OF v STATE OF NEW YORK AUTHORITIES BUDGET OFFICE et al.:
Counties--Industrial Development Agency--Whether petitioner industrial development agency had authority to form a local development corporation (see N-PCL 1411; Public Authorities Law § 2) as a subsidiary under General Municipal Law § 858; interpretation of "necessary or convenient" clause of General Municipal Law § 858 (17);

MANCINI, MATTER OF v OFFICE OF CHILDREN AND FAMILY SERVICES, et al.:
Workers' Compensation--Limitation of Right to Compensation--Whether compensation benefits awarded for impairment of wage-earning capacity pursuant to Workers' Compensation Law § 15(3)(v) are subject to the durational limitations of Workers' Compensation Law § 15(3)(w);

MANRAGH (ROHAN JR.), PEOPLE v:
Crimes--Plea of Guilty--Forfeiture of Right to Raise Issues on Appeal--whether, by pleading guilty, defendant forfeited his claim that the prosecutor failed to inform the grand jury of defendant's request to call a witness to testify before that body; CPL 190.50(6);

MATTER OF MARIN, A SUSPENDED ATTORNEY:
Appeal--Appealable Paper--Appealability of order denying motions for, among other things, reargument, and granting motion to enjoin attorney from filing any new motions or applications without prior leave of court; alleged due process violation;

MATTER OF MARIN, A SUSPENDED ATTORNEY:
Attorney and Client--Disciplinary Proceedings--Denial of motion to vacate suspension order; alleged constitutional violations;

MARTIN (TIMOTHY), PEOPLE v:
Crimes--Suppression Hearing--Whether the trial court erred in admitting evidence of defendant's response to a police officer that he lived in the apartment being searched, to prove defendant's constructive possession of the drugs found--whether defendant's response fell within the pedigree exception to the *Miranda* rule;

MENDOZA (DAVID), PEOPLE v:
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;

MENTAL HYGIENE LEGAL SERVICES, MATTER OF v DANIELS &c.:
Records—Mental Health Records—whether respondent, in failing to provide petitioner with a copy of a patient's complete clinical record, violated its statutory obligation under Mental Hygiene Law § 9.31(b);

MENTAL HYGIENE LEGAL SERVICE et al., MATTER OF v SULLIVAN &c., et al.:
Mental Health--Patient in Custody of Commissioner of Mental Health--Treatment planning meetings--whether person confined after having been adjudicated a dangerous sex offender is statutorily entitled to have his Mental Hygiene Legal Service counsel present at his treatment planning meetings--construction of Mental Hygiene Law § 29.13 (b)--"person otherwise concerned with the welfare of the patient";

MORENO, &c. v FUTURE CARE HEALTH SERVICES, INC., et al.:
Labor--Hours and Wages--Whether defendant employer violated Labor Law article 19 by paying plaintiff home health care attendants a flat rate for 24-hour shifts, resulting in a wage below minimum wage; application of 12 NYCRR 142-2.1(b); actions--class actions--whether Supreme Court properly denied plaintiffs' motion for class certification;

MORGAN STANLEY MORTGAGE LOAN TRUST 2006-13ARX, &c. v MORGAN STANLEY MORTGAGE CAPITAL HOLDINGS LLC, &c.:
Contracts - Breach or Performance of Contract - Residential mortgage-backed securities - whether defendant's alleged breach of a contractual obligation to notify the trustee of defective loans gives rise to damages not governed by the "sole remedies" restrictions in the parties' agreements - whether allegations of gross negligence affect the enforceability of contract provisions limiting a party's liability;

NATIONAL ENERGY MARKETERS ASSOCIATION, MATTER OF v NEW YORK STATE PUBLIC SERVICE COMMISSION:
Public Utilities--Rate Making--Whether respondent New York State Public Service Commission has the authority to impose rate-making limitations on petitioner energy service companies; challenge to "Order Resetting Retail Energy Markets and Establishing Further Process," which imposed various requirements on new and renewal contracts between energy service companies and mass market customers; whether energy service companies have a property interest in continued access to utility systems, and thus are entitled to procedural due process;

NEW YORK CITY ASBESTOS LITIGATION, MATTER OF (ALL NYCAL):
Actions--Case administration--modification of case management order--claimed separation of powers, due process, and equal protection violations; punitive damages claims;

NEW YORK CIVIL LIBERTIES UNION, MATTER OF v NEW YORK CITY POLICE DEPARTMENT et al.:
Records--Freedom of Information Law--Whether Civil Rights Law § 50-a exempts from disclosure written disciplinary decisions of the New York City Police Department, despite that the disciplinary trials are open to the public and redaction of identifying information is available; whether respondents' previous disclosure of other redacted records waives any objection to redacting the subject disciplinary decisions; application of Public Officers Law § 87, Matter of Short v Board of Mgrs. of Nassau County Med. Ctr. (57 NY2d 399 [2001]), Karlin v McMahon (96 NY2d 842 [2001]);

NIAGARA MOHAWK POWER CORPORATION, &c. v ALLIED HEALTHCARE PRODUCTS, INC.:
Covenants--Covenants Running with the Land--Whether affirmative covenant to provide free power to manufacturing facilities on property now owned by defendant Allied Healthcare Products is unenforceable as a burden in perpetuity; whether plaintiff and defendant Albany Engineering are equitably estopped from challenging covenant; whether defendant Allied Healthcare Products abandoned the power covenant;

NICKE, et al. v SCHWARTZAPFEL PARTNERS P.C. &c., et al.:
Bankruptcy--Capacity to Sue--whether plaintiffs, chapter 13 bankruptcy debtors, had capacity to maintain legal malpractice action against law firm that represented bankruptcy trustee in a personal injury action asserted on behalf of one of the plaintiffs; Estoppel--Collateral Estoppel--whether collateral estoppel barred plaintiff from commencing legal malpractice action;

159 MP CORP., et al. v REDBRIDGE BEDFORD, LLC:
Landlord and Tenant--Lease--Action for a judgment declaring that two commercial leases are in full force and effect and that plaintiffs are not in violation of their obligations under the leases--Yellowstone injunction to prevent landlord from terminating leases or commencing summary proceeding for eviction (First National Stores v Yellowstone Shopping Ctr., 21 NY2d 630 [1968])--whether written leases negotiated at arm’s length by commercial tenants may include a waiver of the right to declarative relief that is enforceable at law, or whether such a waiver is void and unenforceable as a matter of public policy;

MATTER OF LUIS P.:
Crimes--Juvenile Offender--Whether the presentment agency proved beyond a reasonable doubt that appellant's oral and written statements were voluntary; if written confession was involuntary, whether its admission at fact-finding hearing was harmless error; whether appellant's confessions were sufficiently corroborated; Evidence—whether reports from the Child Advocacy Center were improperly admitted into evidence because they were prepared for litigation;

PENA, MATTER OF v NEW YORK STATE GAMING COMMISSION:
Horse Racing--Revocation or Suspension of License--Trainer--Whether New York State Gaming Commission's determination revoking petitioner's licenses to participate in pari-mutuel harness racing for three years is supported by substantial evidence--veterinary records;

PHILLIP v STATE OF NEW YORK:
Appeal--Appellate Division--Motion to waive payment of filing fee;

JAMES Q. (COMMISSIONER OF THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES; JAMES Q.; SUFFOLK COUNTY DISTRICT ATTORNEY), MATTER OF:
Records--Sealing of Records--Motion to seal record of CPL 330.20 retention proceeding--whether the Appellate Division erred in determining that the confidentiality provisions of the Mental Hygiene Law do not require the sealing of documents filed in a CPL 330.20 (9) subsequent retention proceeding; redaction;

RETAIL ENERGY SUPPLY ASSOCIATION, et al., MATTER OF v PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK:
Public Utilities--Rate Making--Whether respondent New York State Public Service Commission has the authority to impose rate-making limitations on petitioner energy service companies; challenge to "Order Resetting Retail Energy Markets and Establishing Further Process," which imposed various requirements on new and renewal contracts between energy service companies and mass market customers; whether energy service companies have a property interest in continued access to utility systems, and thus are entitled to procedural due process;

RKEIN (HASSAN), PEOPLE v:
Crimes--Justification--Whether trial court properly denied defendant's request for a justification charge regarding second-degree assault count; defendant struck unarmed initial aggressor in head with pint glass;

RODRIGUEZ (MANUEL), PEOPLE v:
Crimes--Larceny--Whether evidence was legally sufficient to establish grand larceny in the third degree where defendant exercised dominion and control over proceeds of stolen check, but not over the stolen check itself;

ROSA v DELACRUZ et al.:
Insurance--No-Fault Automobile Insurance--Whether plaintiff raised an issue of fact as to whether his injuries were causally related to automobile accident; Insurance Law § 5102(d);

SANCHEZ (ALEXIS), PEOPLE v:
Crimes--Verdict--Whether the verdict convicting defendant of murder in the second degree and criminal possession of a weapon in the second degree was against the weight of the evidence; whether the People disproved defendant's justification defense beyond a reasonable doubt; suppression—whether the People met their burden of establishing that the confidential informant had a basis of knowledge for the information provided to the police and that the information was reliable;

SAVE AMERICA'S CLOCKS, INC., et al., MATTER OF v CITY OF NEW YORK, &c., et al.:
Municipal Corporations--Landmarks--Whether determination of New York City Landmarks Preservation Committee (LPC) approving a Certificate of Appropriateness allowing owner of property to convert landmark-designated clock tower into a private residence, and to convert the clock from a mechanical to an electrical system of operation, was arbitrary and capricious, lacked a rational basis in the record, or was affected by an error of law; whether New York City's Landmarks Preservation and Historic Districts Law (Administrative Code of City of NY § 25-301 et seq.) permits the LPC to require the property owner to allow continuing public access to interior landmark; whether requiring continued public access to interior landmark constitutes a taking under the 5th Amendment to the U.S. Constitution;

SEON, MATTER OF v NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES, et al.:
Administrative Law--Judicial Review--Whether there is substantial evidence in the record to support the determination of the Administrative Law Judge that petitioner, New York City Transit bus driver, failed to exercise due care and that such failure caused pedestrian serious physical injury (Vehicle and Traffic Law § 1146);

NEW YORK CITY ASBESTOS LITIGATION, MATTER OF (SOUTH v CHEVRON):
Seamen--Jones Act--Whether release executed by plaintiff in a 1997 Jones Act (46 USC § 30104 et seq.) action was enforceable in subsequent Jones Act and negligence action brought by plaintiff and his wife derivatively against defendant manufacturer of

asbestos; plaintiff, who was exposed to asbestos while serving as merchant mariner, executed release before mesothelioma diagnosis; enforceability of release under Federal Employers' Liability Act (45 USC § 55);

SPENCE, &c., et al., MATTER OF v NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS, et al.:
Constitutional Law--First Amendment Rights--Rights of public employees to campaign for and hold elected office--employee policies with respect to outside activities; proceeding against body or officer--CPLR article 78 proceeding and action for declaratory judgment challenging disapproval of dairy product specialists' requests to campaign for and serve as county legislators; summary judgment;

SUAZO (SAYLOR), PEOPLE v:
Crimes--Right to Jury Trial--Whether defendant was entitled to a jury trial, despite that he was only being tried for class B misdemeanors carrying maximum sentences of 90 days, because he was subject to deportation if convicted of a crime of domestic violence; constitutionality of CPL 340.40;

TAPIA (CARLOS), PEOPLE v:
Crimes--Verdict--Sufficiency of the Evidence--whether the evidence was legally sufficient to support verdict of attempted assault in the first degree; charge based on use of dangerous instrument under an acting-in-concert theory, but no dangerous instrument recovered from crime scene and no evidence that defendant knew other perpetrator possessed a dangerous instrument; identification of defendant--showup--whether Supreme Court properly denied defendant's motion to suppress a showup identification --evidence--whether admission of police officer's grand jury testimony as a past recollection recorded violated the Confrontation Clause or the rule against hearsay;

MATTER OF EIGHTH JUDICIAL DISTRICT ASBESTOS LITIGATION (TERWILLIGER, &c., v BEAZER EAST, INC., &c, et al.):
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;

THOMAS (MICHAEL), PEOPLE v:
Crimes--Sentence--Second Felony Offender--Whether a prior felony conviction may be used as a predicate felony conviction if the defendant is resentenced on the prior felony conviction after the commission of the instant felony;

THOMAS (VICTOR), PEOPLE v:
Crimes--Appeal--Waiver of Right to Appeal—whether defendant's waiver of the right to appeal was valid; crimes—confession—whether defendant's statement to police, made after a detective showed defendant an incriminating photograph, was the product of custodial interrogation requiring Miranda warnings;

T-MOBILE NORTHEAST, LLC, MATTER OF v DeBELLIS, &c., et al.:
Taxation--Real Property Tax--Whether cellular telephone equipment housed on rooftops in petitioner's service area are taxable real property under RPTL 102(12)(i) or RPTL 102(12)(b); whether application of RPTL 102(12)(i) to certain components of petitioner's cellular telephone equipment violates petitioner's right to equal protection;

TOWNS (AGAPE A.), PEOPLE v:
Crimes--Conduct of Trial Judge--Whether the trial court's conduct in personally negotiating and entering into a cooperation agreement with a prosecution witness deprived defendant of a fair trial; whether witness testimony should have been precluded as fruit of the poisonous tree because the police learned of the identity of the witness from defendant after violating his right to counsel;

ULETT (DERRICK), PEOPLE v:
Crimes--Disclosure--Failure to Disclose Exculpatory Material--alleged violation of Brady v Maryland (373 US 83)--People's failure to disclose a surveillance video of the lobby of the building outside of which the crime occurred—materiality of evidence--whether defendant demonstrated a reasonable probability that the trial result would have been different had the video been disclosed prior to trial—possibility that video would have led to additional exculpatory or impeaching evidence;

U.S. BANK NATIONAL ASSOCIATION &c. v GREENPOINT MORTGAGE FUNDING, INC.:
Contracts--Breach or Performance of Contract--"Put-back" action involving residential mortgage backed securities--whether a breach notice is required when the underlying contract claim is based on defendant's independent discovery or knowledge of nonconforming mortgages--whether late breach notice can relate back in time to the commencement of the underlying action in order to avoid dismissal; demand requirement contained within accrual clause of loan sale agreement--CPLR 203(f);

U.S. BANK NATIONAL ASSOCIATION &c. v DLJ MORTGAGE CAPITAL, INC. (A.D. DOCKET NO. 1678):
Limitation of Actions--Commencement of action after termination of prior action--where complaint was dismissed because plaintiff failed to satisfy a condition precedent and plaintiff lacked standing to sue, whether CPLR 205(a) applies to allow trustee, which was substituted as plaintiff, to commence a new action; whether trustee may rely on relation-back doctrine of CPLR 203(f);

U.S. BANK NATIONAL ASSOCIATION &c. v DLJ MORTGAGE CAPITAL, INC. (A.D. DOCKET NO. 1679):
Contracts--Conditions Precedent--Where plaintiff trustee failed to comply with a contractual condition precedent to bringing suit, whether the timely claims were properly dismissed without prejudice to refiling pursuant to CPLR 205(a); limitation of actions --commencement of action after termination of prior action;

VANYO v BUFFALO POLICE BENEVOLENT ASSOCIATION, INC. et al.:
Limitation of Actions--Claim in Amended Pleading--Action by former police officer alleging improper termination following arbitration conducted pursuant to collective bargaining agreement; whether Supreme Court properly dismissed the first and second causes of action alleged in the amended complaint as time-barred; whether relation-back doctrine of CPL 203(f) applies to the first and second causes of action; dismissal of complaint--whether Supreme Court exceeded its authority in sua sponte dismissing original complaint with prejudice pursuant to CPLR 306-b; whether defendants waived any objection based upon lack of service of the original complaint;

VEGA (FIDEL), PEOPLE v:
Crimes--Justification--Whether trial court's justification charge properly instructed the jury to apply the deadly force standard if it found that defendant used a dangerous instrument; Evidence—whether trial court properly precluded defense counsel from questioning the victim and defendant about the victim's mental health; Verdict—Sufficiency of the Evidence—whether verdict convicting defendant of first-degree burglary was supported by legally sufficient evidence;

VISELLI et al. v THE RIVERBAY CORPORATION:
Negligence--Maintenance of Premises--Firefighter slipped and fell on wet substance on painted concrete stairs, causing injuries; whether Supreme Court properly granted summary judgment dismissing plaintiffs' claim alleging a violation of General Municipal Law § 205-a; whether defendant's submission of a certificate of occupancy indicating that the building was in compliance with all applicable statutes, codes and ordinances shifted the burden to plaintiff to raise triable issues on that claim;

WATTS (RODNEY), PEOPLE v:
Crimes--Forgery--Whether the crime of criminal possession of a forged instrument in the second degree, as defined by Penal Law§ 170.10, encompasses the sale of counterfeit concert and sporting event tickets;

WEGMANS FOOD MARKETS, INC., MATTER OF v TAX APPEALS TRIBUNAL OF THE STATE OF NEW YORK:
Taxation--Sales and Use Taxes--Whether an ambiguous tax exclusion should be construed in favor of the taxpayer or the government—whether the Appellate Division correctly concluded that the information services provided to appellant by a nonparty were excluded from sales tax liability under Tax Law § 105 (c)(1) —whether the Appellate Division properly made factual determinations not addressed by the Tax Appeals Tribunal;

WEISSBROD GURVEY v STATE OF NEW YORK, et al.:
Appeal--Dismissal--Whether the Appellate Division properly dismissed the appeal for failure to timely perfect; alleged deprivation of plaintiff's constitutional rights under the First, Fifth and Fourteenth Amendments;

WILLIAMS et al. v BEEMILLER, INC., &c., et al.:
Courts--Jurisdiction--Long Arm Jurisdiction--Whether exercise of personal jurisdiction over defendant under New York's long-arm statute (see CPLR 302[a][3]) comports with federal due process; defendant, out-of-state dealer of firearms, sold a gun in Ohio that was transported to New York and used in a shooting that injured plaintiff; whether jurisdiction over defendant can be obtained under an agency or alter ego theory;

WOHLFEIL, MATTER OF v SHAREL VENTURES, LLC, et al.:
Workers' Compensation--Extent of Disability--Whether substantial evidence supports the Workers' Compensation Board's determination that claimant sustained a permanent partial disability and a 75% loss of wage-earning capacity where medical testimony indicated that, as a result of her lumbar back injury, she is unable to perform even sedentary work as defined in the 2012 New York State Guidelines for Determining Permanent Impairment and Loss of Wage Earning Capacity;

XOCHIMITL (OMAR), PEOPLE v:
Crimes--Suppression Hearing-- Warrantless entry into suspect's home; whether the People established that elderly female relative, who lived in subject apartment with defendant, voluntarily consented to the police's entry into the apartment by opening the door and stepping aside in response to the officers' request to enter;

ZAPPIN, MATTER OF, AN ATTORNEY:
Attorney and Client--Disciplinary Proceedings--Disbarment; claimed due process issues; claimed improper use of collateral estoppel in disciplinary proceedings;