NOVEMBER 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;

PEOPLE &c. ex rel. ALLEN v YELICH &c.:
Prisons and Prisoners--Calculation of Sentence--Whether respondent Department of Corrections and Community Supervision improperly calculated appellant's maximum expiration date for period of post-release supervision (PRS); appellant, who absconded from supervision, was sentenced for an unrelated crime in New Jersey; New Jersey court ordered sentence on New Jersey crime to run concurrently with undischarged portion of New York sentence, but appellant was not returned to New York State custody to serve the concurrent sentence; application of Penal Law §§ 70.40 and 70.45;

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;

ALMONTE (EMMANUEL), PEOPLE v:
Crimes--Evidence--Excited Utterances--Whether trial court properly admitted a recording of a 911 call between the victim and dispatcher under the excited utterance exception to the hearsay rule; Crimes—Lesser Included Offense--whether court properly denied defendant's request to submit third-degree assault as a lesser included offense of second-degree assault;

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;

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;

BALLARD, MATTER OF v KICKBUSH &c.:
Prisons and Prisoners--Discipline of Inmates--Whether substantial evidence supports the determinations that petitioner violated inmate rules; whether the hearing officer properly denied petitioner's request to call a witness; alleged due process violation;

BRIGGS v STATE OF NEW YORK DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION et al.:
Limitation of Actions--One-Year Statute of Limitations--Whether causes of action for false arrest and unlawful imprisonment were untimely; torts--malicious prosecution—whether claim for malicious prosecution was properly dismissed for failure to state a cause of action;

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;

ANONYMOUS, PEOPLE v:
Crimes--Sealing of Records--Whether prosecution was entitled, pursuant to CPL 160.50 (1)(d)(ii), to an order unsealing record for the purpose of making sentencing recommendation; prosecution sought to have sentencing court consider defendant's testimony from another criminal case where defendant admitted to engaging in illegal activity, which was a violation of his plea agreement; if unsealing was improper, whether defendant is entitled to resentencing;

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;

BARNAVE v DAVIS:
Appeal--Matters Appealable--Order denying motion to waive payment of filing fee and for free transcripts;

BOHLEN, MATTER OF v DiNAPOLI:
Civil Service--Retirement and Pension Benefits--Whether New York State Retirement System properly excluded longevity allowance payments from petitioners' final average salaries in calculating retirement benefits; application of Retirement and Social Security Law § 431;

BRITT (CLINTON), PEOPLE v:
Crimes--Possession of Forged Instrument--Defendant's possession of counterfeit bills in public—whether there was legally sufficient evidence of defendant's "intent to defraud, deceive or injure another," as required by Penal Law § 170.30 for criminal possession of a forged instrument in the first degree; suspect's running away compared to "active flight";

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;

BURSCH, MATTER OF v PURCHASE COLLEGE OF THE STATE UNIVERSITY OF NEW YORK, et al.:
Colleges and Universities--Disciplinary Proceedings--Whether respondent violated petitioner's right to due process or abused its discretion in denying petitioner's request for a three-hour adjournment of the disciplinary hearing so that petitioner's attorney could attend;

CANGRO v REITANO:
Dismissal and Nonsuit--Dismissal of Complaint--Frivolous motion practice;

CAYUGA NATION, &c. v CAMPBELL, et al.:
Native Americans--Internal Tribal Affairs--Dispute over which of two competing factions should have control as the lawful governing body of the Cayuga Nation, a sovereign Indian Nation; subject matter jurisdiction--whether determination of the controversy is beyond the authority of the courts of New York as usurping the sovereign right of the people of the Cayuga Nation to determine their own leadership;

CENTI v McGILLIN:
Contracts--Illegal Contracts--Dispute over money accumulated from illegal bookmaking business--whether loan agreement involving funds is enforceable;

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;

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;

COOK (TYRELL), PEOPLE v:
Crimes--Suppression Hearing--Whether trial court properly reopened a suppression hearing, before rendering a decision, to permit the People to call an officer with additional information tending to establish reasonable suspicion for defendant's detention; Legal Sufficiency—whether the evidence was legally sufficient to establish that the victim suffered a physical injury; Right to a Fair Trial—whether defendant was denied his right to a fair trial based on alleged juror misconduct;

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;

TOWN OF DELAWARE v LEIFER, &c.:
Municipal Corporations--Zoning--Variance--Action by town to enjoin defendant landowner from holding outdoor festival on his land without applying for a use variance—whether the outdoor festival with presentation of music falls within the zoning code definition of a "theater" prohibited in the town's Rural District; claimed violations of defendant's First Amendment rights;

DELEON (OMAR), PEOPLE v:
Crimes--Larceny--Whether evidence before grand jury was sufficient to support the charges of attempted grand larceny in the third and fourth degrees; defendant placed "fishing device" in mailbox into which joint police-postal service task force had inserted more than $3000 in money orders; no evidence presented as to the value of the mail defendant attempted to remove;

DEUTSCHE BANK NATIONAL TRUST COMPANY v BARCLAYS BANK; DEUTSCHE BANK NATIONAL TRUST v HSBC BANK USA:
Limitations of Actions--What Statute Governs--Whether plaintiff trustee's breach of contract claims were barred by California's four-year statute of limitations, pursuant to the borrowing statute of CPLR 202; defendant banks alleged to have breached representations and warranties made in connection with the sale of residential mortgage-backed securities pooled in trust; whether claim accrued in California or New York;

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;

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;

ELLIS (ARTHUR W., JR.), PEOPLE v:
Crimes--Sex Offenders--Sex Offender Registration Act (SORA)--Whether Corrections Law § 168 requires a registered sex offender to register his Facebook account with the Division of Criminal Justice Services as an internet identifier;

FARRUGIA v 1440 BROADWAY ASSOCIATES:
Negligence--Maintenance of Premises--Whether defendant Harbour Mechanical was entitled to summary judgment dismissing the complaint as against it and the cross claims

for common-law indemnification and contribution asserted by building owner; Harbour Mechanical, an independent contractor, removed oil tank from subject property, thereby exposing opening into which plaintiff fell; whether Harbour failed to exercise reasonable care in performance of its work and launched a force or instrument of harm;

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;

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;

FOSTER-BEY (ELIJAH), PEOPLE v:
Crimes--Evidence--Whether trial court providently exercised its discretion in failing to hold a Frye hearing regarding admission of Low Copy Number DNA testing and the Forensic Statistical Tool used by the Office of the Chief Medical Examiner; whether admission of DNA evidence violated defendant's right to confront witnesses against him; instructions--whether trial court's Allen charge was coercive;

FRANKLIN STREET REALTY CORP., MATTER OF v NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, et al. (AND FOUR OTHER PROCEEDINGS):
Municipal Corporations--Regulation of Billboards--Challenge to determinations of the New York City Environmental Control Board (ECB) which found that petitioners engaged in unauthorized outdoor advertising--buildings displaying signs promoting the law offices of the attorney shareholder of the corporate building owners--whether the ECB’s determinations are arbitrary and capricious or contrary to the plain language of the applicable sections of the City Administrative Code;

MATTER OF THE ESTATE OF GIAQUINTO (JOHNSON v FARINA):
Wills--Execution--Whether respondent, objectant to a will, raised a triable issue of fact as to whether decedent lacked testamentary capacity to execute will;

GIUCA (JOHN), PEOPLE v:
Crimes--Vacatur of Judgment of Conviction--Whether the People violated their obligation to disclose material information favorable to defendant (Brady v Maryland, 373 US 83);

GREEN (NICOLE), PEOPLE v:
Crimes--Appeal--Waiver of Right to Appeal--Whether defendant knowingly, voluntarily and intelligently waived right to appeal; waiver colloquy inaccurately stated rights defendant was waiving;

GRIFFITH (HOWARD), PEOPLE v:
Crimes--Sex Offenders--Sex Offender Registration Act (SORA)--Whether defendant was denied effective assistance of counsel on his petition seeking a downward modification of his previously-imposed level three risk level determination; whether County Court erred in refusing to allow defendant to challenge his conviction in the context of the SORA proceeding;

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;

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;

HE v TROON MANAGEMENT, et al.:
Negligence--Maintenance of Premises--Whether New York City Administrative Code § 2-710 imposes a nondelegable duty on out-of-possession landlord to keep sidewalk free of ice and snow; commercial lease assigned the duty to clear snow and ice to tenant;

HENRY v HAMILTON EQUITIES, INC., et al.:
Negligence--Maintenance of Premises--Liability of out-of-possession landlords for condition of nursing home premises where plaintiff nurse was injured in a slip and fall incident--whether exception to out-of-possession landlord rule set forth in Putnam v Stout (38 NY2d 607 [1976]) applies where the owner has a duty to repair under its contract with and regulations promulgated by HUD;

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;

HILL (RAYHEAME), PEOPLE v:
Crimes--Suppression Hearing--Whether defendant had standing to challenge search of apartment and vehicle; whether People met burden of proving that consent to search was voluntary; whether illegal search of defendant's bags at hospital impermissibly tainted subsequent searches of apartment and vehicle; application of independent source rule;

HINTON v VILLAGE OF PULASKI:
Municipal Corporations--Sidewalks--Prior Notice of Defective Condition--Whether Village defendant was entitled to prior written notice of defective condition because the stairway upon which plaintiff fell was the functional equivalent of a sidewalk; negligence; summary judgment;

MATTER OF NEW YORK CITY ASBESTOS LITIGATION (IDELL, &c. v AERCO INTERNATIONAL, INC., et al.):
Torts--Toxic Torts--Whether trial court erred by, among other things, granting motions to quash defendant's trial subpoenas for live testimony of co-defendant witnesses, limiting defendant's cross-examination of adverse witnesses, limiting defendant's ability to plead and argue in the alternative pursuant to CPLR §§ 1601 and 3014, and depriving defendant of ability to seek equitable apportionment to other settled tortfeasors; claimed due process violations;

JOHNSON, PEOPLE ex rel. v SCHIFF &c.:
Habeas Corpus--When Remedy Available--Whether petitioner is entitled to habeas corpus relief;

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;

JP MORGAN CHASE BANK, NA v LEVIN:
Mortgages--Foreclosure--Whether respondent Wells Fargo demonstrated its prima facie entitlement to judgment as a matter of law on its claim by establishing that its mortgage was valid and superior in priority to plaintiff JP Morgan Chase Bank's mortgage; whether plaintiff could challenge respondent Wells Fargo's standing;

KINGSLEY v 300 W. 106TH ST. CORP.:
Landlord and Tenant--Use and Occupancy--Claimed succession rights to a rent-stabilized apartment—determination of amount of use and occupancy to be paid to landlord during pendency of the action concerning occupancy and succession rights to the apartment;

KLEIN v KLEIN:
Appeals--Appealable paper--Whether an appeal lies from an order to show cause signed by an individual Justice of the Appellate Division;

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);

LEONARD, et al. v PLANNING BOARD OF THE TOWN OF UNION VALE:
Environmental Conservation--Environmental Quality Review--Whether record supported town planning board's conclusion that changes in the regulatory landscape for environmental matters constituted new information or a change in circumstances warranting rescission of SEQRA negative declaration issued in 1987; alleged due process violation;

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;

LI (STAN XUHUI), PEOPLE v:
Crimes--Manslaughter--Whether legally sufficient evidence supports defendant's convictions for second degree manslaughter; defendant physician prescribed a combination of opioids and alpraxolam to the victims, who overdosed; whether a homicide charge may be based on the sale of a controlled substance; Crimes—Reckless Endangerment—whether legally sufficient evidence exists that defendant's prescribing practices placed patients at imminent risk of death;

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;

LUBONTY v U.S. BANK NATIONAL ASSOCIATION, &c.:
Mortgages--Foreclosure--Whether six-year statute of limitations for defendant's foreclosure action was tolled pursuant to CPLR 204(a) because of plaintiff's two bankruptcy filings, which invoked the automatic stay under 11 USC § 362(a); limitation of actions; RPAPL 1501(4) action to cancel and discharge mortgage on real property;

MADDICKS v BIG CITY PROPERTIES:
Landlord and Tenant--Rent Regulation--Whether pre-answer dismissal regarding class action allegations was premature; putative class of rent-stabilized tenants alleged that defendants engaged in systematic effort to avoid compliance with rent-stabilization law; whether Supreme Court's sua sponte dismissal of complaint based on arguments not raised by defendants was improper;

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);

MAIRENA (DAVID), PEOPLE v:
Crimes--Justification--Whether trial court erred by informing the parties, prior to summations, that it would instruct the jury on the specific instrumentality of death in its charge of manslaughter in the first degree, and then failing to include that language in its charge following summations; whether harmless error applies to the alleged error;

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);

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;

McCULLUM (RAMEE), PEOPLE v:
Crimes--Possession of Weapon--Whether a defendant maintains a reasonable expectation of privacy in goods bailed as the result of a landlord's "legal possession" of an apartment, sufficient to establish standing to challenge a search under the Fourth Amendment of the United States Constitution--whether, where the People and the court both commit an error of fact, the defendant is justified in relying on that error for purposes of preservation of an argument;

McINTOSH (JAMES R.), PEOPLE v:
Crimes--Lesser Included Offense--Whether County Court's error in failing to charge jury on lesser included offenses was harmless; defendant requested to charge manslaughter in the second degree and criminally negligent homicide as lesser included offenses of murder in the second degree and manslaughter in the first degree; application of People v Boettcher (69 NY2d 174 [1987]);

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;

NADKOS, INC. v PREFERRED CONTRACTORS INSURANCE COMPANY RISK RETENTION GROUP LLC, et al.:
Statutes--Construction--Whether federal Liability Risk Retention Act of 1986 (15 USC § 3901) preempts the application of Insurance Law § 3420(d)(2) to foreign risk retention groups (RRG), such that an RRG need not comply with section 3420(d)(2)'s timely notice of disclaimer requirement;

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;

NEULANDER (M. ROBERT), PEOPLE v:
Crimes--Jurors--Misconduct of Jurors--Whether the trial court improperly denied defendant's CPL 330.30 motion to set aside verdict on basis of juror misconduct; during trial, juror exchanged text messages with third parties regarding the trial;

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;

NYCTL 1998-2 TRUST, et al. v SIEMON, et al.:
Taxation--Tax Liens, Tax Sales and Tax Titles--Foreclosure on tax lien--claimed due process and other violations in the foreclosure proceeding;

O'DONNELL, MATTER OF v ERIE COUNTY, et al.:
Workers' Compensation--Voluntary Withdrawal from Labor Market--Whether the Appellate Division erred in affirming the Workers' Compensation Board's determination on the basis that an April 2017 amendment to Workers' Compensation Law § 15(3)(w) no longer requires a claimant to demonstrate an ongoing attachment to the labor market;

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;

PENDELL (PERRY), PEOPLE v:
Crimes--Verdict--Sufficiency of Evidence--Whether the convictions were supported by legally sufficient evidence; evidence--whether the trial court erroneously admitted photographic exhibits into evidence; whether a proper foundation was proffered validating the authenticity of the photographs;

PETTUS, MATTER OF v BOARD OF DIRECTORS, et al.:
Appeal--Appellate Division--Denial of motion to reverse a prior Appellate Division order denying a motion for reargument;

PETTUS v BOYD, RICHARDS, PARKER & COLONNELLI, P.L., et al.:
Appeal--Appealable Paper--Unsigned order to show cause related to application for poor person relief;

PEREZ (JOSE), PEOPLE v:
Crimes--Sex Offenders--Sex Offender Registration Act (SORA)--Whether Supreme Court erred when it assessed defendant 30 points for purposes of risk factor 9 based on a prior conviction of lewdness in New Jersey--whether prior New Jersey conviction for public lewdness constituted a "misdemeanor sex crime" under New York law;

PLASTIC SURGERY GROUP, P.C., MATTER OF v COMPTROLLER OF THE STATE OF NEW YORK:
Disclosure--Medical Records and Reports--Whether CPLR 3122(a)(2), which generally requires that a subpoena requesting the production of a patient's medical records be accompanied by a written authorization by the patient, applies to a subpoena duces tecum served by the Comptroller during the course of an audit of a medical provider;

PRIESTON, PEOPLE ex rel. v NASSAU COUNTY SHERIFF'S DEPARTMENT:
Bail--Bail Bonds--Whether Supreme Court properly disapproved a bail package on the ground that the amount of collateral posted to secure the insurance company bail bond was insufficient;

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;

RAMLALL (GANESH), PEOPLE v:
Crimes--Right to Speedy Trial--Whether a CPL 30.30 dismissal on statutory speedy trial grounds of a misdemeanor charge of driving while intoxicated (Vehicle and Traffic Law § 1192[3]) affects the CPL 30.20 speedy trial analysis of the delays related to the traffic infraction charge of "driving while ability impaired" (Vehicle and Traffic Law § 1192[1]) based on the same underlying conduct;

REGINA METROPOLITAN CO., LLC, MATTER OF v NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL:
Landlord and Tenant--Rent--Whether method used by respondent New York State Division of Housing and Community Renewal (DHCR) to calculate rent overcharge for apartment, which looked beyond the four-year limitations period to determine base date rent, was arbitrary and capricious; landlord improperly deregulated apartment while receiving J-51 tax benefits; whether tenants were entitled to treble damages and attorneys' fees;

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;

PEOPLE ex rel. RICHARDS v NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION:
Habeas Corpus--When Remedy Available;

RIVERA v STATE OF NEW YORK:
Employment Relations--Respondent Superior--Vicarious Liability--Whether the Court of Claims properly concluded that the State was not vicariously liable for the actions of a corrections officer; whether corrections officer, who assaulted inmate, was acting outside the scope of officer's employment; Pleading--Answer--whether the Court of Claims abused its discretion in allowing State to amend its answer to include affirmative defense;

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 (ALEXIS), PEOPLE v:
Crimes--Plea of Guilty--Withdrawal of Plea; sentence--concurrent and consecutive terms—whether the trial court erred in imposing consecutive sentences upon a finding that defendant violated the terms of the parties' cooperation agreement by refusing to testify for the prosecution concerning a home invasion incident preceding the incident leading to the murder conviction;

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;

ROUSE (CLARENCE), PEOPLE v:
Crimes--Witnesses--Whether trial court's restriction of cross-examination of a police witness concerning prior bad acts deprived defendant of his right to confrontation; whether the trial judge's denigration of defense counsel in front of the jury deprived defendant of a fair trial; whether trial court properly excluded evidence including 911 recordings; whether the verdict was based on legally sufficient evidence;

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;

SCHOONMAKER, MATTER OF v NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES:
Proceeding Against Body or Officer--Certiorari--CPLR article 78 proceeding to review determination of the New York State Department of Motor Vehicles Administrative Appeals Board affirming a determination of the administrative law judge which found that petitioner refused to submit to a chemical test in violation of Vehicle and Traffic Law § 1194 and revoked his driver's license; whether there was probable cause to stop the vehicle based on tire crossing the "fog line" on the shoulder of the road; breathalyzer test;

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);

SLOANE, MATTER OF v M.G.:
Incapacitated and Mentally Disabled Persons--Sustaining Life of Person in Permanent Vegetative State--claimed violation of equal protection guaranties in end-of-life decision making for person with developmental disability who had healthcare decision-making capacity until a late-life heart attack--hearing pursuant to Surrogate's Court Procedure Act (SCPA) 1750-b;

SMITH (SAMUEL J.), PEOPLE v:
Crimes--Instructions--Missing witness charge--whether the proponent of a missing witness charge has the initial burden of proving that the missing witness has noncumulative testimony to offer on behalf of the opposing party—only other witness identifying defendant as shooter was the victim; right to counsel—claimed ineffective representation;

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);

SURI v GREY GLOBAL GROUP, INC., et al.:
Civil Rights--New York City Human Rights Law--Whether triable issues of fact exist regarding plaintiff's gender discrimination claim under Administrative Code of City of New York § 8-107(1)(a); plaintiff alleged that she was discriminated against because she rebuffed the sexual advance of her immediate supervisor;

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;

TAUS, MATTER OF v STANFORD, &c., et al.:
Proceeding Against Body or Officer--Certiorari--CPLR article 78 proceeding to review determinations of the Board of Parole denying petitioner’s request for parole release; dismissal of petition as moot based on petitioner’s subsequent reappearance before the Board of Parole;

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;

THIAM (MOUHAMED), PEOPLE v:
Crimes--Accusatory Instrument--Where a defendant is charged only with misdemeanors or lesser charges in a multi-count accusatory instrument and at least one misdemeanor count is facially sufficient, does the trial court have jurisdiction over the defendant such that it may accept a plea to any count in the accusatory instrument, even those that are facially insufficient--whether a defendant may plead to a misdemeanor that is of an equal or higher grade than the misdemeanor charge that is facially sufficient;

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;

TOMHANNOCK, LLC v ROUSTABOUT RESOURCES, LLC:
Specific Performance--When Remedy Appropriate--Whether plaintiff, which entered into an option agreement whereby buyers of a parcel of real property agreed to reconvey a portion of the parcel to plaintiff upon plaintiff's request, was entitled to specific performance of the option agreement despite that plaintiff was unable to record the necessary deed due to a failure to obtain subdivision approval;

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;

TSINTZELIS (GEORGE), PEOPLE v:
Crimes--Evidence--DNA Identification Tests--Whether the trial court erred in denying defendant's discovery request pursuant to CPL 240.20(1)(c) for the electronic raw data used to develop his DNA profile; whether the admission of DNA lab reports through the testimony of an analyst who didn't perform or supervise the DNA testing violated defendant's confrontation rights;

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;

MATTER OF VEGA (POSTMATES INC. et al.):
Unemployment Insurance--Employee or Independent Contractor--Whether claimant, who was engaged as a courier for Postmates Inc., was an employee of the company for unemployment insurance purposes—whether there is substantial evidence of an employer-employee relationship;

WALSH, MATTER OF v NEW YORK STATE COMPTROLLER et al.:
Civil Service--Retirement and Pension Benefits--in CPLR article 78 proceeding challenging the denial of performance of duty disability retirement benefits under Retirement and Social Security Law § 607-c, whether substantial evidence supports the Comptroller's determination that petitioner failed to demonstrate that her injuries were the "natural and proximate result of [ ] an act of any inmate" within the meaning of section 607-c--injury occurring when inmate impaired by alcohol or drugs fell on petitioner correction officer--involuntary versus deliberate act by inmate;

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;

WEST v B.C.R.E. - 90 WEST STREET, LLC:
Landlord and Tenant--Rent Regulation--Whether plaintiffs' apartments in buildings receiving Real Property Tax Law § 421-g tax benefits are subject to the luxury vacancy decontrol provisions of the Rent Stabilization Law of 1969 (Administrative Code of the City of NY) § 26-504.2; building also received low-interest mortgage financing from New York City Housing Development Corporation; interpretation of Private Housing Finance Law § 654-d(18);

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;

WILLIAMS (CADMAN), PEOPLE v:
Crimes--Evidence--Whether trial court abused its discretion in failing to hold a Frye hearing regarding admission of Low Copy Number Typing and the Forensic Statistical Tool used by the Office of the Chief Medical Examiner; Crimes—Right to Counsel—Effective Representation—whether counsel was ineffective for failing to challenge court's justification instruction; Crimes—Evidence—whether recordings of defendant's phone calls, made while defendant was in pretrial detention, were admissible;