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Weekly Reversal Report
November 17 – 21, 2025

An Organized Compilation of Summaries of Selected Decisions, Mostly Reversals, Released by Our New York State Appellate Courts November 17 – 21, 2025, and Posted on the New York Appellate Digest Website on Monday, November 24, 2025. The Entries in the Table of Contents Link to the Summaries which Link to the Full Decisions on the Official New York Courts Website. Click on “Table of Contents” in the Header on Any Page to Return There. Right Click on the Citations to Keep Your Place in the Reversal Report.

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ATTORNEYS, MEDICAL MALPRACTICE, CIVIL PROCEDURE, JUDGES, NEGLIGENCE.

THE MOTION COURT PROPERLY ISSUED A PROTECTIVE ORDER REQUIRING PLAINTIFF'S COUNSEL IN THIS MED MAL CASE TO RESCIND THE CORRESPONDENCE SENT TO PLAINTIFF'S TREATMENT PROVIDERS WHICH DISCOURAGED THEM FROM SPEAKING WITH DEFENSE COUNSEL; THE DISSENT ARGUED THE MAJORITY WAS IMPROPERLY ISSUING AN ADVISORY OPINION (FOURTH DEPT).

The Fourth Department, over a dissent which argued the majority was improperly issuing an advisory opinion, determined the trial judge in this medical malpractice action properly ordered plaintiff's counsel rescind correspondence sent to treatment providers which discouraged the treatment providers from speaking with

defense counsel. The correspondence accompanied the "Arons" speaking authorizations executed by the plaintiff:

… [A] plaintiff who signs an authorization allowing a treating physician to speak to defense counsel about the plaintiff's medical condition at issue should not be allowed to send a letter separately to the same physician requesting that the physician not speak to defense counsel. Permitting plaintiffs to make such a request would undermine the purpose of the Arons authorization and, at the very least, be confusing to the physician … .

Adding to the confusion is the statement "I value and wish to protect the confidentiality of our physician-patient relationship," which may lead the physician to conclude that, notwithstanding plaintiff's execution of the speaking authorization, plaintiff was not actually waiving the physician-patient privilege or the privacy protections afforded by HIPAA. …

… [T]he letter … might lead the physician to believe, wrongly, that plaintiff has a right to attend any informal interview with defense counsel. … [A] defendant's attorney may ask treating physicians to participate in ex parte interviews, which by definition do not involve the plaintiff. While a physician may insist that the plaintiff be present for such an interview, that is a decision for the physician alone to make. Just as a defendant's attorney has no right to interview the physician informally … , a plaintiff has no right to attend the interview (the plaintiff has only the right to ask the physician for permission to attend an interview).

Based on the above, we cannot conclude that the court abused its discretion in directing plaintiff "to send correspondence to his treating physicians rescinding all prior letters sent containing the language that the [c]ourt has deemed to be confusing, misleading and/or intimidating." Murphy v Kaleida Health, 2025 NY Slip Op 06421, Fourth Dept 11-21-25

Practice Point: Here the letters sent to treatment providers by plaintiff's counsel, which accompanied the "Arons" speaking authorizations, improperly discouraged the treatment providers from speaking with defense counsel. Plaintiff's counsel was properly ordered to rescind the correspondence.

November 21, 2025

CONSTITUTIONAL LAW, ELECTION LAW, MUNICIPAL LAW.

SIX TOWN OF NEWBURGH VOTERS CHALLENGEDTHE TOWN'S AT-LARGE ELECTION SYSTEM UNDER THE VOTER DILUTION STATUTE WHICH PROHIBITS THE DILUTION OF VOTES OF MEMBERS OF A PROTECTED CLASS, HERE BLACKS AND HISPANICS; THE TOWN RESPONDED WITH A CONSTITUTIONAL CHALLENGE TO THE VOTER DILUTION STATUTE; THE COURT OF APPEALS HELD THE TOWN, A GOVERNMENTAL ENTITY CREATED BY THE STATE LEGISLATURE, COULD NOT CHALLENGE A STATE STATUTE AS FACIALLY UNCONSTITUTIONAL (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Wilson, affirming the Appellate Division, determined the Town of Newburgh, as a governmental entity created by the state legislature, could not challenge the facial constitutionality of the vote dilution provision of the New York Voting Rights Act (NYVRA) (codified at Election Law 17-200 et seq. Six Newburgh voters sued the Town under Election Law 17-206 which prohibits election methods which dilute the votes of members of a protected class. It was alleged that the at-large election system diluted the power of Black and Hispanic residents such that they were not represented on the Town Board. The Town, in response, asserted a facial constitutional challenge to the dilution provision, Election Law 17-206:

… [A] legislative entity's challenge to a State law must be "examined with a view towards the relief sought" … . Newburgh seeks invalidation of the entire vote-dilution provision under Election Law § 17-206. For a facial constitutional challenge, principles of "judicial restraint" … counsel strongly against permitting subordinate units of state government from using the judiciary to second-guess the wisdom of enacted legislation. A municipality's authority to raise a challenge to a State law is at its lowest ebb when that challenge is a facial constitutional challenge, seeking to invalidate a statute in all possible applications, not merely because it allegedly placed the particular municipality in an allegedly untenable position. … "[O]ur capacity rule reflects a self-evident proposition about

legislative intent: the 'manifest improbability' that the legislature would breathe constitutional rights into a public entity and then equip it with authority to police state legislation on the basis of those rights" … . Clarke v Town of Newburgh, 2025 NY Slip Op 06359, CtApp 11-20-25

Practice Point: Consult this opinion for a discussion of the circumstances under which a town, which is a governmental entity created by the state legislature, can challenge the constitutionality of a state statute. Here a town's challenge to the facial constitutionality of the voter dilution provision of the Election Law was rejected on the ground the state legislature did not grant towns the right to police state legislation.

November 20, 2025

CRIMINAL LAW, ATTORNEYS, JUDGES.

IN DETERMINING WHETHER THE PEOPLE'S CERTIFICATE OF COMPLIANCE WITH THEIR DISCOVERY OBLIGATIONS WAS VALID THE MOTION COURT RULED THE PEOPLE HAD ACTED IN GOOD FAITH; THE MATTER WAS REMITTED FOR THE APPLICATION OF THE CORRECT STANDARD: WHETHER THE PEOPLE ACTED WITH DUE DILIGENCE AND MADE REASONABLE EFFORTS TO SATISFIY THEIR OBLIGATIONS (FOURTH DEPT).

The Fourth Department remitted the matter for a new determination whether the People's certificate of compliance (COC) with their discovery obligations was valid. The motion judge held the People "acted in good faith." The appropriate inquiry is whether the People exercised due diligence and made reasonable efforts to satisfy their obligations:

… [T]he court erred in concluding that the People's initial COC was proper solely on the basis that the People acted in good faith with respect to their discovery obligations. The court was required to determine whether the People satisfied their burden of establishing that they exercised due diligence and made reasonable efforts to satisfy their obligations under CPL article 245 at the time they filed their

initial COC … . In light of the court's failure to consider whether the People met that burden, we hold the case, reserve decision and remit the matter to Supreme Court to make that determination and, if appropriate, to determine whether the statement of readiness was valid and whether the People were ready within the requisite time period (see CPL 30.30 [1] [a]). People v Mosley, 2025 NY Slip Op 06484, Fourth Dept 11-21-25

Practice Point: The standard for determining whether the People's certificate of compliance with their discovery obligations is valid is "due diligence," not "good faith."

November 21, 2025

CRIMINAL LAW, APPEALS, JUDGES.

THE DEFENDANT'S WAIVER OF APPEAL WAS INVALID BECAUSE THE JUDGE FAILED TO ADVISE DEFENDANT (1) THAT THE STATE WOULD BEAR THE COSTS OF AN APPEAL IF THE DEFENDANT COULD NOT AFFORD THEM; AND (2) THE WAIVER DID NOT ENCOMPASS THE LOSS OF RIGHTS TO COUNSEL AND THE WAIVER OF COSTS, FEES, AND EXPENSES; IN ADDITION THE JUDGE DID NOT ASCERTAIN WHETHER DEFFENDANT READ AND UNDERSTOOD THE WRITTEN WAIVER FORM, OR WHETHER DEFENDANT HAD DISCUSSED THE WAIVER WITH COUNSEL (SECOND DEPT).

The Second Department determined defendant's waiver of appeal was invalid:

… [T]he defendant's purported waiver of his right to appeal was invalid. Among other things, during the appeal waiver colloquy, the Supreme Court failed to advise the defendant that if he could not afford the costs of an appeal or of an attorney to represent him on appeal, then the State would bear those costs … or to advise the defendant that the waiver of the right to appeal did not encompass the loss of attendant rights to counsel and the waiver of costs, fees, and expenses … . Although the defendant executed a written appeal waiver form, the court failed to

ascertain on the record whether the defendant had read the written waiver, was aware of all of its contents, and had discussed the entire written waiver with counsel, including the portion of the written waiver addressing the attendant rights to counsel and the waiver of costs, fees, and expenses … . Thus, under the circumstances of this case, the defendant did not knowingly, voluntarily, and intelligently waive his right to appeal, and the purported appeal waiver does not preclude appellate review of any of the defendant's contentions … . People v Mingo, 2025 NY Slip Op 06335, Second Dept 11-19-25

Practice Point: Consult this decision for insight into what a judge must advise and ask the defendant to ensure the waiver of appeal is knowing and intelligent.

November 19, 2025

CRIMINAL LAW, EVIDENCE, ATTORNEYS.

DEFENDANT MOVED TO SUPPRESS THE WEAPON SEIZED FROM DEFENDANT'S VEHICLE AFTER A TRAFFIC STOP ON THE GROUND THERE WAS NO PROBABLE CAUSE FOR THE STOP; THE POLICE CLAIMED THE REASON FOR THE STOP WAS DEFENDANT'S FAILURE TO WEAR A SEATBELT; SURVEILLANCE VIDEOS WHICH WOULD HAVE SHOWN WHETHER DEFENDANT WAS WEARING A SEARBELT WERE NOT PRESERVED; DEFENSE COUNSEL WAS INEFFECTIVE FOR FAILING TO REQUEST AN ADVERSE INFERENCE CHARGE IN CONNECTION WITH THE SUPPRESSION MOTION; MATTER REMITTED (FOURTH DEPT).

The Fourth Department, remitting the matter for legal argument and, if defendant so requests, reopening of the suppression hearing, determined defendant did not receive effective assistance of counsel. Surveillance videos which would have shown whether defendant was not wearing a seatbelt (the claimed probable cause for the stop) were not preserved. Defendant moved to suppress the weapon seized from the vehicle on the ground there was no probable cause for the traffic stop. Defense counsel was deemed ineffective for failing the request an adverse inference charge:

… [T]he single omission of failing to request that the court consider an adverse inference charge at the suppression hearing deprived defendant of meaningful representation … . Defense counsel's error in failing to make that argument was sufficiently egregious and prejudicial as to deprive defendant of his constitutional right to effective legal representation because the only evidence presented by the People at the hearing was testimony from one of the arresting officers, whose testimony was inconsistent at times, and an adverse inference charge could have successfully undermined the officer's testimony on the issue of probable cause to stop defendant, i.e., whether defendant was, in fact, not wearing a seatbelt. Indeed, suppression of the gun that was seized as a result of defendant's encounter with the police would have been dispositive of the sole count of the indictment, charging defendant with criminal possession of a weapon in the second degree … . Under the circumstances of this case, defense counsel's failure to request an adverse inference charge could not have been grounded in legitimate strategy … . We note that defendant's contention survives his guilty plea inasmuch as he demonstrated that defense counsel's error infected the plea bargaining process … .

We therefore conditionally modify the judgment by remitting the matter to Supreme Court "for further proceedings on the suppression application, to include legal argument by counsel for both parties and, if defendant so elects, reopening of the hearing" … . In the event that defendant prevails on the suppression application, the judgment is reversed, the plea is vacated and the indictment is dismissed and, if the People prevail, then the judgment "should be amended to reflect that result" … . People v Evans, 2025 NY Slip Op 06477, Fourth Dept 11-21-25

Practice Point: Here surveillance videos which would have shown whether defendant was not wearing a seatbelt (the claimed probable cause for the traffic stop) were not preserved. Defendant moved to suppress the weapon seized from the vehicle on the ground there was no probable cause for the stop. Defense counsel was deemed ineffective for failing to request an adverse inference charge with respect to the suppression hearing. The remedy: the matter was remitted for legal argument and, if defendant requests, reopening of the suppression hearing.

November 21, 2025

CRIMINAL LAW, EVIDENCE.

THE SEARCH WARRANT WAS BASED UPON STATEMENTS BY AN INFORMANT; BUT THE WARRANT APPLICATION DID NOT DEMONSTRATE THE BASIS OF THE INFORMANT'S KNOWLEDGE; THEREFORE THE EVIDENCE SEIZED PURSUANT TO THE WARRANT SHOULD HAVE BEEN SUPPRESSED (CT APP).

The Second Department, reversing the Appellate Division, determined the search warrant failed the basis of knowledge requirement of the Aguilar-Spinelli test. The seized evidence should have been suppressed, requiring the dismissal of several counts:

… [W]e hold that as a matter of law the evidence provided in support of the 205 Curtis Street search warrant failed to satisfy the basis of knowledge requirement of the Aguilar-Spinelli test … . The general allegation that the informant was "aware that narcotics are kept inside the location" provides no indication "that the information was based upon personal observation" … . Likewise, the informant's statement that at some unidentified point in time the informant had conducted a narcotics transaction at that address "did not describe defendant's activities with sufficient particularity to warrant an inference of personal knowledge" … . Nor was the information conveyed by the informant corroborated by police observation … . Accordingly, the informant's statements fail to meet the requirements of Aguilar-Spinelli and, because there are no other allegations in the search warrant affidavit to establish "a reasonable belief that an offense has been or is being committed or that evidence of a crime may" have been found at 205 Curtis Street … , the search warrant for that address was not supported by probable cause, and the evidence seized there should have been suppressed. People v Berry, 2025 NY Slip Op 06358, Second Dept 11-20-25

Practice Point: If a search warrant is based upon an informant's statement, to be valid, the warrant application must demonstrate the information was based upon the informant's personal knowledge.

November 20, 2025

CRIMINAL LAW, JUDGES.

THE SENTENCING COURT DID NOT ABUSE ITS DISCRETION IN DENYING A YOUTHFUL OFFENDER ADJUDICATION, DESPITE THIS BEING DEFENDANT'S FIRST CONTACT WITH THE JUDICIAL SYSTEM, HIS ACQUITTAL OF THE MOST SERIOUS CHARGES, AND AFFIDAVITS FROM SEVERAL JURORS IN SUPPORT OF THE MOTION TO SET ASIDE THE VERDICT; THERE WAS A SUBSTANTIVE DISSENT (THIRD DEPT).

The Third Department, affirming defendant's attempted assault conviction and the denial of youthful offender status, over a dissent, determined the trial court did not abuse its discretion in denying the request for a youthful offender adjudication. The victim was slashed with a knife in the abdomen and arm. It was defendant's first contact with the criminal justice system. Affidavits from some of the jurors were submitted in support of defendant's motion to set aside the verdict:

… Supreme Court noted that it had received multiple letters in support of defendant which indicated that he was of "upstanding character." The court agreed with defendant's assertion that this was his first involvement with the criminal justice system and that he had avoided circumstances like this in the past. The court considered these facts in imposing the sentence, but also that there was no evidence that any other individual had been involved in the physical altercation between defendant and the victim. The court expressly disbelieved defendant's explanation that he carried the knife at all times because he feared for his safety, in view of the fact that defendant's presence with the knife was explicitly requested. The court noted that if defendant was truly afraid for his safety the appropriate response would be to call campus police, not show up to the fight with knife in tow. The court also paid importance to defendant's failure to take accountability or acknowledge that his actions caused the victim's injury, despite having expressed generalized sympathy for the victim. The court found that, although eligible for youthful offender status, the circumstances of the crime did not warrant granting the request and imposed a five-year term of incarceration. * * *

From the dissent:

… "[Y]outhful offender designations are given to those who have a real likelihood of turning their lives around, and the protection gives these individuals the opportunity for a fresh start, without a criminal record" … . That is precisely what the facts of this case present: an individual who made a grave mistake but appears motivated to redeem himself. In my view, although defendant's crime is significant, justice is better served by imposing a sentence that is commensurate with the severity of his crime while also permitting him to become a productive member of society upon release, which will occur at a critical time in his transition to adult life … . People v Hall, 2025 NY Slip Op 06366, Third Dept 11-20-25

Practice Point: Consult this decision for insight into the broad discretion accorded a judge in determining whether to adjudicate a defendant a youthful offender.

November 20, 2025

CRIMINAL LAW.

DEFENDANT WAS CONVICTED OF ASSAULT ON A PEACE OFFICER AND ASSAULT SECOND; THE ASSAULT SECOND CONVICTION WAS REVERSED BECAUSE (1) ASSAULT SECOND IN AN INCLUSORY CONCURRENT COUNT OF ASSAULT ON A PEACE OFFICER, AND (2) ASSAULT SECOND IS A LESSER INCLUDED OFFENSE OF ASSAULT ON A PEACE OFFICER (FOURTH DEPT).

The Fourth Department reversed the assault second conviction because assault second is an inclusory concurrent count of assault on a peace officer:

… [T]he conviction of assault in the second degree cannot stand. … [T]his Court has previously determined that assault in the second degree "is an inclusory concurrent count of assault on a [peace] officer" … . Moreover, as charged here, assault in the second degree "is a lesser included offense of assault on a [peace] officer" … . As a result, that part of the judgment convicting defendant of assault in the second degree must be reversed and count 4 of the indictment dismissed … . People v Engles, 2025 NY Slip Op 06412, Fourth Dept 11-21-25

November 21, 2025

CRIMINAL LAW.

A DEFENDANT, BY HIS OR HER CONDUCT, CAN FORFEIT THE RIGHT TO A TRIAL BY 12 JURORS; HERE DEFENDANT APPROACHED THE JURY FOREMAN AT THE FOREMAN'S HOME AND THE FOREMAN WAS DISCHARGED; THE TRIAL JUDGE PROPERLY PROCEEDED WITH 11 JURORS (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Troutman, determined defendant, by his egregious conduct directed at the jury foreperson, forfeited his right to a 12-person jury and the trial properly proceeded to a verdict with the remaining 11 jurors:

The foreperson testified that the court adjourned at around 1:00 the day before and, at around 1:25, he took a rideshare home. Outside the gate to his home, a man approached him "on behalf of" defendant and said that defendant was innocent and "being extorted." The man handed him documents, three of which the foreperson produced for the court. The foreperson asked how the man knew where he lived; the man said: "Public records." The foreperson testified that he was unsure if the man was the same person as defendant and denied telling the ADA that it was defendant. He described the man as the same height as himself, of indeterminate race, dark-skinned but lighter than himself, average build, and wearing a hat, sunglasses, and a jacket with a high collar. In addition, it was overcast and rainy. The whole interaction lasted under a minute, after which the foreperson went inside and called the ADA [the foreperson's friend, not the trial ADA] "in a bit of a panic," concerned for his family's safety. He then contacted the court on the ADA's advice. He testified that he could not be impartial. With the agreement of the parties, the court discharged him from the jury, reminded him that the case was ongoing, and instructed him not to speak to anyone about his experience. * * *

Whether forfeiture applies to the right to a jury of 12 is an issue of first impression, but forfeiture has been applied to many constitutional rights in the criminal procedure context. For example, a defendant may forfeit the right to counsel by engaging in " 'egregious conduct,' " albeit "only as a matter of 'extreme, last-resort

. . . analysis' " in cases involving brutal, violent, or persistent abuse … . Use of "violence, threats or chicanery" to make a witness unavailable may result in the forfeiture of the right to confront the witness … . A defendant may forfeit the right to be present at all stages of trial by engaging in courtroom conduct so disruptive that the trial cannot proceed in their presence … . Likewise, a pro se defendant's disruptive conduct may result in the forfeiture of the right to self-representation … .

We see no reason to exclude the right to trial by a jury of exactly 12 persons from the universe of forfeitable rights. People v Sargeant, 2025 NY Slip Op 06361, CtApp 11-20-25

Practice Point; A defendant, by his or her conduct, can forfeit the right to a trial by 12 jurors. Here the defendant approached the jury foreman at the foreman's home resulting in the foreman's discharge from the jury. The trial judge properly proceeded with 11 jurors.

November 20, 2025

DEFAMATION, CIVIL PROCEDURE.

DEFENDANTS' MOTION TO AMEND THEIR COUNTERCLAIM FOR DEFAMATION, DEFAMATION PER SE AND DEFAMATION BY IMPLICATION SHOULD HAVE BEEN GRANTED; CRITERIA EXPLAINED (FOURTH DEPT).

The Fourth Department, reversing Supreme Court, determined defendants' cross-motion to amend the counterclaim for defamation should been granted. The allegations of defamation, defamation per se and defamation by implication were deemed sufficient. The decision is fact specific and cannot be fairly summarized here. The plaintiff and defendants, licensed investment advisors, entered an employment arrangement which broke down. Plaintiff sued for breach of a restrictive covenant. Defendants asserted a counterclaim for defamation based upon emails sent by plaintiff to their business clients:

Defendants sufficiently alleged that the statements made by the individual parties were false and that they were reasonably susceptible of a defamatory connotation. In determining the sufficiency of a defamation pleading, we must "consider 'whether the contested statements are reasonably susceptible of a defamatory connotation' " … , and, in doing so, we must "give the disputed language a fair reading in the context of the publication as a whole" … . Here, the emails were sent to clients of plaintiff who had previously been clients of defendants and advised them that defendant was no longer employed by plaintiff. The emails stated that the investment trading industry was "highly regulated," that plaintiff had "compliance policies" to protect its clients against "conflicts of interest," and that defendant found those policies "overly burdensome." We conclude that the disputed language provides a basis "from which the ordinary reader could draw an inference" … that plaintiff was accusing defendant of failing to adhere to ethical standards in the investment trading industry. …

" 'A statement imputing incompetence or dishonesty to the [party] is defamatory per se if there is some reference, direct or indirect, in the words or in the circumstances attending to their utterance, which connects the charge of incompetence or dishonesty to the particular profession or trade engaged in by [the party]' " … . The statement "must be more than a general reflection upon [the party's] character or qualities[;] . . . [it] must reflect on [the party's] performance or be incompatible with the proper conduct of [their] business" …. Here, as alleged in the proposed amended counterclaim, the statements conveyed that defendant was unable to conduct her work in a legally compliant and ethical manner and that she lacked professional competence or integrity. …

" 'Defamation by implication' is premised not on direct statements but on false suggestions, impressions and implications arising from otherwise truthful statements" … . There is a heightened legal standard for a claim of defamation by implication … . "Under that standard, '[t]o survive a motion to dismiss a claim for defamation by implication where the factual statements at issue are substantially true, the [party asserting the defamation claim] must make a rigorous showing that the language of the communication as a whole can be reasonably read both to impart a defamatory inference and to affirmatively suggest that the author intended or endorsed that inference' " … . The second part of the test is an objective inquiry and " 'asks whether the plain language of the communication itself suggests that an

inference was intended or endorsed' " … . Armbruster Capital Mgt., Inc. v Barrett, 2025 NY Slip Op 06493, Fourth Dept 11-21-25

Practice Point: Consult this decision for a detailed discussion of the elements of defamation, defamation per se, and defamation by implication.

November 21, 2025

FAMILY LAW, JUDGES, EVIDENCE.

THE JUDGE DID NOT FOLLOW THE REQUIRED PROCEDURE FOR FINDING NEGLECT ON A GROUND NOT ALLEGED IN THE PETITION; TO DO SO, THE JUDGE MUST AMEND THE ALLEGATIONS IN THE PETITION TO CONFORM TO THE PROOF AND GIVE THE RESPONDENT TIME TO RESPOND TO THE AMENDED ALLEGATIONS; NEITHER WAS DONE; PETITION DISMISSED (FOURTH DEPT).

The Fourth Department, dismissing the neglect petition, determined Family Court did not follow the required procedure for finding neglect on a ground which was not alleged in the petition. The court may amend the allegations in the petition to conform to the proof, provided the respondent is given a reasonable time to respond to the amended allegations. Here the court did not amend the allegations or give mother time to respond:

Pursuant to Family Court Act § 1051 (b), "[i]f the proof does not conform to the specific allegations of the petition, the court may amend the allegations to conform to the proof; provided, however, that in such case the respondent shall be given reasonable time to prepare to answer the amended allegations." Here, the basis for the court's finding of neglect pursuant to section 1012 (f) (i) (B) was not alleged in the petition, and the court did not amend the allegations to conform to the proof or give the mother notice or an opportunity to respond to any such implied amendment … . As the mother contends, had she known that the court was considering a theory of neglect based solely on her post-disclosure conduct, she would have prepared a defense to that theory. We therefore conclude that the court's finding of neglect on that ground was improper … , and the petition must

be dismissed … . Matter of Mariah W. (Amber N.), 2025 NY Slip Op 06487, Fourth Dept 11-21-25

Practice Point: To find neglect on a ground not alleged in the petition, the judge must conform the allegations in the petition to the proof and give the respondent time to respond to the amended allegations. Here the failure to follow that procedure resulted in dismissal of the petition.

November 21, 2025

FAMILY LAW, JUDGES, SOCIAL SERVICES LAW, EVIDENCE.

HERE THE JUDGE DID NOT HAVE THE AUTHORITY TO SUMMARILY MAKE A SEVERE ABUSE FINDING AND TERMINATE RESPONDENTS' PARENTAL RIGHTS BASED UPON A PRIOR ABUSE HEARING; SEVERE ABUSE WAS NOT ALLEGED IN THE PRIOR HEARING; A SEVERE ABUSE FINDING MUST BE BASED ON A "CLEAR AND CONVINCING" STANDARD, NOT THE "PREPONDERANCE OF EVIDENCE" STANDARD APPLIED IN THE PRIOR HEARING; IN ADDITION, THE JUDGE SHOULD NOT HAVE ISSUED AN ORDER OF DISPOSITION WITHOUT HOLDING A DISPOSITIONAL HEARING; MATTER REMITTED (FOURTH DEPT).

The Fourth Department, reversing Family Court's "severe abuse" finding and the consequent termination of parental rights, determined it was error to make these rulings based upon a prior abuse hearing because "severe abuse" was not alleged in that hearing. In addition, a finding of "severe abuse" must be based on "clear and convincing evidence," not the "preponderance of the evidence" standard applied in the prior hearing. Also, the judge should not have issued an order of disposition without holding a dispositional hearing:

… [T]he court did not have the authority, in the context of this Social Services Law § 384-b proceeding, to retroactively make a finding of severe abuse under Family Court Act § 1051 (e) based upon the evidence adduced during the prior article 10 abuse proceeding. … Family Court Act § 1051 (e) provides that in an article 10

abuse case, the court may "[i]n addition to a finding of abuse, . . . enter a finding of severe abuse or repeated abuse, . . . which shall be admissible in a proceeding to terminate parental rights pursuant to [Social Services Law § 384-b (4) (e)] . . . If the court makes such additional finding of severe abuse or repeated abuse, the court shall state the grounds for its determination, which shall be based upon clear and convincing evidence."

Thus, while it is true that a court is permitted to make a severe abuse finding as part of the disposition in an article 10 abuse case … , that did not occur here. Indeed, in the context of the underlying article 10 proceeding, petitioner did not seek a determination that Respondents severely abused the child, and the court made no such determination. Moreover, the entirety of the court's findings in the article 10 matter were based upon a preponderance of the evidence—not clear and convincing evidence as required by the statute … . Finally, we note that the court improperly issued an order of disposition in this case before conducting a dispositional hearing (see Family Ct Act § 631; Social Services Law § 384-b [8] [f]). We therefore reverse the order and remit the matter to Family Court for further proceedings on the petition. Matter of Kevin V. (Sara L.), 2025 NY Slip Op 06422, Fourth Dept 11-21-25

November 21, 2025

FAMILY LAW, JUDGES.

A JUDGE CANNOT DELEGATE PARENTAL ACCESS DETERMINATIONS TO A MENTAL HEALTH PROFESSIONAL (SECOND DEPT).

The Second Department noted that a judge should not delegate to a mental health professional the determination of whether a parent will be awarded parental access:

"[A] court may not properly delegate to mental health professionals the ultimate determination of whether a parent will be awarded [parental access] rights" … . It is "improper for [a] court to condition future [parental access] on the recommendation of a mental health professional" … . Here, the Family Court erred by delegating to the therapeutic agency (1) the authority to determine when therapeutic parental access would cease and the father's prior stipulated

unsupervised parental access schedule would be reinstated and (2) the discretion to expand and/or modify the father's access to the children … . Accordingly, the order must be modified by deleting the provisions thereof modifying the parental access provisions of the judgment of divorce so as to condition the father's parental access on the therapeutic agency's determinations. Matter of McCook v Delbrune, 2025 NY Slip Op 06322, Second Dept 11-19-25

November 19, 2025

FREEDOM OF INFORMATION LAW (FOIL), ATTORNEYS, PRIVILEGE, CRIMINAL LAW.

THE DISTRICT ATTORNEY'S DATASHEET IS AN ATTORNEY-WORK-PRODUCT WHICH IS NOT SUBJECT TO FOIL DISCLOSURE; BECAUSE PETITIONER DID NOT SUBSTANTIALLY PREVAIL IN THE FOIL PROCEEDINGS, PETITIONER WAS NOT ENTITLED TO AN AWARD OF ATTORNEY'S FEES (FIRST DEPT).

The First Department, reversing Supreme Court, determined the District Attorney's (D.A.'s) datasheet was an attorney-work-product which was not subject to a FOIL disclosure:

Supreme Court appropriately ordered an in camera inspection of all records responsive to petitioner's FOIL request, including the datasheet that was ultimately produced with redaction of personal information regarding certain people involved in the relevant criminal matter (Public Officers Law § 84 et seq.). However, those records should not have included the D.A. datasheet. This Court has previously held that the D.A. datasheet constitutes attorney work product, as it contains the analysis and conclusions of the intake attorney … . As a result, CPLR 3101(c) protects the datasheet from disclosure under FOIL, and it is not subject to disclosure even with redactions … .

In light of this determination, the award of attorneys' fees is unwarranted, as petitioner has not "substantially prevailed" in its appeal of respondent's denial … . Furthermore, even had petitioner substantially prevailed, Supreme Court made no

"find[ing] that the agency had no reasonable basis for denying access," and thus, there was no basis for an award of attorneys' fees to petitioner … . Matter of Law Off. of Cyrus Joubin v Manhattan Dist. Attorney's Off., 2025 NY Slip Op 06283, First Dept 11-18-25

Practice Point: A FOIL request for a District Attorney's datasheet will be denied because the datasheet is privileged (attorney-work-product).

November 18, 2025

JUDGES, APPEALS, FORECLOSURE.

THE SECOND DEPARTMENT HAD REVERSED ON APPEAL, DETERMINING THE COMPLAINT SHOULD HAVE BEEN DISMISSED; WHEN SUPREME COURT WROTE A JUDGMENT DISMISSING THE COMPLAINT BASED ON THE SECOND DEPARTMENT'S DECISION IT IMPROPERLY ADDED A SENTENCE WHICH WAS NOT IN THE DECISION; A JUDGMENT BASED UPON AN APPELLATE DECISION MUST STRICTLY CONFORM TO THE DECISION (SECOND DEPT).

The Second Department, modifying Supreme Court, determined the judgment entered by Supreme Court after reversal on apply did not strictly conform to the Second Department's decision. Presumable the extra sentence added by Supreme Court was struck on appeal:

… [T]he judgment should not have included the provision directing "that Plaintiff is permitted to file a new action as against [the defendant] in accordance with Brothers v. Florence, 95 NY2d 290 (2000)," as the judgment was entered upon this Court's decision and order dated December 28, 2022 … , which did not grant such relief to the plaintiff … . "A 'written order [or judgment] must conform strictly to the court's decision,' and in the event of an inconsistency between a judgment and a decision or order upon which it is based, the decision or order controls" … . "Such an inconsistency may be corrected either by way of a motion for resettlement or on appeal" … . Deutsche Bank Trust Co. Ams. v Smith, 2025 NY Slip Op 06308, Second Dept 11-19-25

Practice Point: After reversal on appeal, any judgment written by the lower court must strictly conform to the language of the appellate decision. Here Supreme Court wrote a judgment dismissing the complaint but improperly added a sentence (which was not in the appellate decision) to the effect that plaintiff was permitted to file a new action.

November 19, 2025

LABOR LAW-CONSTRUCTION LAW, EVIDENCE.

GENERALLY A HOMEOWNER WHO DOES NOT DIRECT THE WORK ON THE HOME CANNOT BE HELD LIABLE FOR A LADDER-FALL PURSUANT TO LABOR LAW 240(1); BUT THE HOMEOWNER'S EXEMPTION DOES NOT APPLY WHEN THE WORK IS RELATED TO A COMMERCIAL PURPOSE; HERE THERE WERE QUESTIONS OF FACT WHETHER THE PROPERTY WAS TO BE USED FOR COMMERCIAL PURPOSES (SECOND DEPT).

The Second Department, reversing Supreme Court, determined there were questions of fact whether the defendant property-owner in this ladder-fall case was entitled to the homeowner's exemption from Labor Law 240(1) liability because the work related to a commercial purpose:

"Although the Labor Law generally imposes liability for worker safety on property owners and contractors, it exempts from liability 'owners of one and two-family dwellings who contract for but do not direct or control the work'" (… Labor Law §§ 240[1]; 241[6]). However, "[t]he exemption 'was not intended to insulate from liability owners who use their one- or two-family houses purely for commercial purposes'" … . "'[R]enovating a residence for resale or rental plainly qualifies as work being performed for a commercial purpose'" … . "Where the property serves both residential and commercial purposes, [a] determination as to whether the exemption applies in a particular case turns on the nature of the site and the purpose of the work being performed, and must be based on the owner's intentions at the time of the injury" … .

Here, the defendant failed to eliminate triable issues of fact as to whether he was entitled to the homeowner's exemption, including whether the work being performed related to a commercial purpose of the premises … and whether the defendant intended to use the premises as a three-family dwelling … . Reyes v Rahman, 2025 NY Slip Op 06348, Second Dept 11-19-25

Practice Point: The homeowner's exemption from Labor Law 240(1) liability does not apply where the home is used for commercial purposes.

November 19, 2025

LABOR LAW-CONSTRUCTION LAW, EVIDENCE.

PLAINTIFF FELL GOING DOWN PERMANENT STEPS AFTER HE STEPPED OFF THE LADDER; THERE WAS NO LIABILITY UNDER LABOR LAW 240(1)—NO FAILURE OR ABSENCE OF A SAFETY DEVICE (FIRST DEPT).

The First Department, reversing Supreme Court, determined there was no liability under Labor Law 240(1) because plaintiff fell going down permanent steps after he stepped off the ladder:

Plaintiff testified that on the day of his accident he was working in a meeting room that had projection screens, soundproof walls, and raised floors, including a platform for the speakers. The platform had two access points — one via a ramp and the other on the opposite side of the platform, via a two-step staircase. Plaintiff needed to work on the ceiling above the platform, so he placed his ladder on the platform near the staircase. After he completed his work, he descended the ladder and placed both feet on the platform floor. He then turned to walk down the two-step staircase, missed a step, and fell.

There is no liability pursuant to Labor Law § 240(1) where the plaintiff's injuries are not related to the failure of a safety device, such as a ladder, to protect the plaintiff from a gravity-related hazard … . Where the "injury results from a separate hazard wholly unrelated to the risk which brought about the need for the

safety device in the first instance, no [Labor Law § 240(1)] liability exists" … . Healy v Trinity Hudson Holdings, 2025 NY Slip Op 06278, First Dept 11-18-25

Practice Point: The failure of absence of a safety device is a prerequisite for liability under Labor Law 240(1). Here plaintiff safely stepped onto a permanent platform from the ladder and then fell going down permanent steps—no Labor Law 240(1) liability.

November 18, 2025

LABOR LAW-CONSTRUCTION LAW, EVIDENCE.

PLAINTIFF TESTIFIED HE WAS STANDING AT THE TOP OF AN UNSECURED A-FRAME LADDER WHEN IT MOVED AND HE FELL; THE FACT THAT THERE WERE NO WITNESSES DID NOT PRECLUDE SUMMARY JUDGMENT IN PLAINTIFF'S FAVOR ON THE LABOR LAW 240(1) CAUSE OF ACTION (FIRST DEPT).

The First Department, reversing Supreme Court, determined plaintiff was entitled to summary judgment on the Labor Law 240(1) cause of action in this A-frame ladder-fall case. Plaintiff was standing at the top of the unsecured ladder when it moved and he fell. The fact that there were no witnesses to the accident did not raise a question fact because plaintiff's testimony was not contradicted and his credibility was not called into question:

Plaintiff testified at his deposition that he worked at the top of the ladder, which was unsecured, it suddenly moved and fell, causing him to land on the floor and injure his shoulder. Plaintiff also testified that after he fell from the ladder, he stood it back up before his supervisor returned. The supervisor stated that upon his return to the room, plaintiff, who was standing next to the upright ladder, told him that the ladder was shaky and had fallen because no one was holding it.

Plaintiff made a prima facie showing that his injuries were proximately caused by a violation of Labor Law § 240(1). The evidence established that defendant failed to provide a safety device to ensure that the ladder, which plaintiff was instructed to use, would remain upright while he worked. The evidence also showed that

plaintiff fell off the ladder when it shifted and fell … . This evidence was sufficient to establish a prima facie case, and plaintiff was not obligated to show that the ladder itself was defective … . Molina v Chatham Towers, Inc., 2025 NY Slip Op 06285, First Dept 11-18-25

Practice Point: To warrant summary judgment in a ladder-fall case, it is enough that the ladder was unsecured and moved. There is no need to show the ladder was defective.

November 18, 2025

MEDICAL MALPRACTICE, NEGLIGENCE, EVIDENCE.

DEFENDANT HOSPITAL'S EMERGENCY ROOM PERSONNEL WERE UNAWARE PLAINTIFF HAD EXECUTED A "MOLST" DECLINING LIFE-SAVING TREATMENT WHEN THEY PERFORMED CHEST COMPRESSIONS WHICH REVIVED PLAINTIFF BUT FRACTURED RIBS; PLAINTIFF SUFFERED ANOTHER HEART ATTACK SEVEN HOURS LATER AND DIED; A JURY AWARDED DAMAGES FOR PAIN AND SUFFERING; PLAINTIFF'S EXPERT DID NOT SUFFICIENTLY ARTICULATE A STANDARD OF CARE OR A VIOLATION OF A STANDARD OF CARE; THE DEFENSE MOTION FOR A DIRECTED VERDICT SHOULD HAVE BEEN GRANTED (FOURTH DEPT).

The Fourth Department, reversing the denial of defendant hospital's motion for a directed verdict in this med mal case, determined the plaintiff's expert did not establish the applicable standard of care or a breach thereof. Plaintiff had executed a Medical Order for Life-Sustaining Treatment (MOLST) declining life-saving measures. Hospital personnel were not aware of the MOLST when plaintiff presented in the emergency room. When plaintiff became unresponsive, chest compressions were performed. Plaintiff was revived but he had suffered rib fractures. The plaintiff suffered a second heart attack and died seven hours later. The jury awarded damages for pain and suffering:

… [T]he court erred in denying [defendant's] motion for a directed verdict. "[V]iewing the evidence in [the] light most favorable to [plaintiff] and affording [plaintiff] the benefit of every inference," we conclude that there was "no rational process by which a jury could find in favor of" plaintiff inasmuch as there was no expert testimony establishing the applicable standard of care or a breach thereof … . At trial, plaintiff's expert described how a hospital could communicate a patient's MOLST in order to ensure that it was honored, what hospitals were "allowed" to do, what he would "expect," what "should" happen, and what "option[s]" were available, but he did not state what an accepted standard of care required. Further, even assuming, arguendo, that plaintiff's expert articulated a standard of care, we conclude that he failed to opine that any such standard was violated under the specific circumstances of this case … . Cianci v University of Rochester, 2025 NY Slip Op 06492, Fourth Dept 11-21-25

Practice Point: Consult this decision for an example of vague expert testimony in a med mal case which failed to articulate a standard of care or a breach thereof.

November 21, 2025

NEGLIGENCE, EVIDENCE.

IN THIS DRAM SHOP ACT CASE, DEFENDANT BAR DID NOT DEMONSTRATE DEFENDANT DRIVER WAS NOT VISIBLY INTOXICATED WHEN SERVED AND THEREFORE DID NOT MEET ITS INITIAL BURDEN FOR ITS SUMMARY JUDGMENT MOTION; A TWO-JUSTICE DISSENT ARGUED DEFENDANT BAR MET ITS INITIAL BURDEN, THUS SHIFITNG THE BURDEN TO THE PLANTIFF (FOURTH DEPT).

The Fourth Department, over a two-justice dissent, determined, in this Dram Shop Act case, defendant bar did not demonstrate defendant driver was not visibly intoxicated when served alcohol. The dissenters argued the bar met its initial burden on its motion for summary judgment:

In support of the motion, defendant submitted evidence that, throughout the evening preceding the accident, plaintiff and a group of others—including the

driver—were out celebrating and consumed alcohol. Just before they went to defendant's bar, the entire group had been denied entry into another establishment because some members of the group were visibly intoxicated. At defendant's bar, the group was served and consumed more alcohol. Although defendant's owner and employees testified that defendant's employees as a general practice do not allow visibly intoxicated persons to drink alcohol and that the employees were trained to recognize visibly intoxicated people, no one could specifically recall seeing the driver, nor could they describe the driver's level of intoxication on the night at issue … . In fact, none of the deposition testimony submitted by defendant was from an individual physically present inside the bar at the time the driver was allegedly served.

From the dissent:

…. [W]e conclude that defendant met its initial burden on the motion by submitting uncontradicted deposition testimony "in which its employees averred that they had no recollection that [the driver] was visibly intoxicated while she was . . . at [defendant]'s establishment" … . … [D]efendant's employees testified that staff are trained to recognize visibly intoxicated persons; that bartenders do not allow visibly intoxicated persons to drink alcohol; and that bouncers do not allow visibly intoxicated persons to enter the bar, that they make rounds inside the establishment in order to observe the patrons and determine if anyone is visibly intoxicated, and that they signal the bartenders to stop serving alcohol to patrons who are visibly intoxicated. Additionally, a bouncer testified that he recalled conducting "rounds inside the establishment" on the night of the incident and that he observed the patrons, as was his routine, but did not "signal[ ] to the bartenders that anyone was intoxicated." Gonzalez v City of Buffalo, 2025 NY Slip Op 06423, Fourth Dept 11-21-25

Practice Point: In moving for summary judgment in a Dram Shop Act case, the defendant bar had the initial burden to demonstrate it did not serve a visibly intoxicated defendant. Because the majority concluded that initial burden was not met, the summary judgment motion was denied without the need to consider the plaintiff's response. The dissent disagreed with the majority and argued the bar had met its initial burden.

November 21, 2025

NEGLIGENCE, EVIDENCE.

PLAINTIFF WAS INJURED WHEN SHE USED HER ARM TO KEEP THE ELEVATOR DOOR FROM CLOSING; DEFENDANTS DEMONSTRATED THE ELEVATOR WAS IN GOOD WORKING CONDITION TWO WEEKS BEFORE PLAINTIFF'S INJURY; DEFENDANTS WERE ENTITLED TO SUMMARY JUDGMENT (FIRST DEPT).

The First Department, reversing Supreme Court, determined defendants (building owner and elevator company) were entitled to summary judgment dismissing the complaint which alleged the elevator doors slammed shut on plaintiff's hand. A video showed that plaintiff extended her arm between the door frame and the elevator door to keep it from closing:

Movants sustained their initial burden of demonstrating that the elevator door was safe and code compliant at the time of the accident and that plaintiff's conduct was the sole proximate cause of the accident. The report prepared by defendant … , approximately two weeks prior to the accident, found that the subject elevator was maintained commensurate with local industry practices and that the systems functioned at or near recommended standards. Moreover, the video of the incident, which plaintiff authenticated by testifying that it was a fair and accurate depiction of the events, showed that plaintiff extended her arm between the door frame and the elevator door to keep the door from closing. Such evidence was sufficient to demonstrate the absence of a triable issue of fact … . Ellerbee v 61 W. 62 Owners Corp., 2025 NY Slip Op 06386, First Dept 11-20-25

Practice Point: If you are injured using your arm or hand to stop an elevator door from closing and it is shown the elevator was working properly, your complaint will be dismissed. (But isn't it foreseeable that people will try to stop an elevator door from closing with their hands, and shouldn't there be a safety mechanism which would prevent the door from closing?)

November 20, 2025

PRIVILEGE, CIVIL PROCEDURE, EVIDENCE, NEGLIGENCE.

DOCUMENTS RELATING TO THE MENTAL-HEALTH TREATMENT OF A PEDOPHILE PRIEST WERE NOT PROTECTED BY PRIEST-PENITENT, PHYSICIAN-PATIENT OR PSYCHOLOGIST-PATIENT PRIVILEGES; THE NAMES OF OTHER CHILDREN ABUSED BY THE PRIEST ALLEGED TO HAVE ABUSED PLAINTIFF ARE DISCOVERABLE (SECOND DEPT).

The Second Department, in a full-fledged opinion by Justice Dillon, determined progress reports concerning the mental health treatment of a pedophile priest were discoverable without redaction in this Child Victims Act case against the Diocese. The Diocese claimed the redacted information was protected from disclosure by the priest-penitent, physician-patient and psychologist-patient privileges. The Second Department determined those privileges were waived by the (pedophile) priest who consented to forwarding the reports to a third-party, a Bishop overseeing the priest's progress. In addition, the priest-penitent privilege did not apply because the documents did not relate to spiritual guidance. The Second Department further determined that the names of other victims allegedly abused by the same priest were discoverable:

This appeal permits us to address two principal sets of issues. The first is a rare two-step analysis regarding the potential disclosure of progress reports and letters generated at the request of a religious organization to determine whether an alleged pedophile priest could be safely returned to duties at a parish. Under the circumstances of this appeal, we hold that the progress reports of an alleged pedophile priest that are shared with his Bishop with accompanying letters, to assist the Bishop in determining whether the priest may return to parish duties, fall outside the scope of the clergy-penitent privilege of confidentiality under CPLR 4505. Further, we hold that the physician-patient and psychologist-patient privileges of confidentiality for progress reports and letters generated by a psychological treatment facility to assist the same Bishop's determination, and disclosed to the Bishop for that purpose, are waived under CPLR 4504 and 4507. Relatedly, we hold that the Appellate Division, Second Department, agrees with the reasoning of the Appellate Divisions, First and Third Departments, that in actions pursuant to the Child Victims Act (CVA) (see CPLR 214-g), courts may exercise

discretion in favor of requiring the unredacted disclosure of the identities of alleged abuse victims other than the plaintiff, so long as those abuses were committed by the same alleged abuser rather than by any other alleged abuser. Maida v Diocese of Brooklyn, 2025 NY Slip Op 06314, Second Dept 11-19-25

Practice Point: Consult this opinion for discussions of the nature of the priest-penitent, physician-patient and psychologist-patient privileges in the context of the discovery of documents relating to the mental health treatment of a pedophile priest accused of abusing children.

Practice Point: Consult this opinion for a discussion of the discoverability of the names of other children abused by the priest who is alleged to have abused the plaintiff.

November 19, 2025

WORKERS' COMPENSATION, EVIDENCE.

ALTHOUGH CLAIMANT'S MEDICAL REPORT DID NOT ADHERE TO THE REQUIREMENTS OF WORKERS' COMPENSATION LAW 137 AND COULD BE DEEMED INADMISSIBLE FOR THAT REASON, THE EMPLOYER FAILED TO MAKE A TIMELY OBJECTION TO THE REPORT; THE PRECLUSION OF THE REPORT WAS THEREFORE ERROR (THIRD DEPT).

The Third Department, reversing the Workers' Compensation Board, determined the medical report (by Dr, Kountis) finding claimant had a 42.5% schedule loss of use (SLU) of the right wrist should not have been precluded because it did not meet the requirements of Workers' Compensation Law 137. Although the Board has the power to preclude the report for that reason, the employer did not make a timely objection to the report:

Although "[a] report of an examination that does not substantially comply with the requirements of Workers' Compensation Law [§] 137 . . . shall not be admissible as evidence," a party raising an objection to such a report's admissibility must "raise

[that] objection in a timely manner" … . Claimant filed Kountis' report in March 2023, after which the employer was notified that it had 75 days to respond in any of several enumerated ways, including by filing a memorandum to refute the sufficiency and credibility of the report. At no time during that 75-day period did the employer challenge Kountis' report for failing to adhere to the requirements of Workers' Compensation Law § 137. Further, the employer failed to raise the argument during the subsequent hearing held in September 2023. It is clear that the employer had, and failed to avail itself of, ample opportunity to challenge Kountis' report prior to the WCLJ's determination. As a result, the employer's eventual challenge was untimely, and it was error for the Board to preclude Kountis' report … . Matter of Troiano v New York City Hous. Auth., 2025 NY Slip Op 06377, Third Dept 11-20-25

Practice Point: If there are grounds for precluding a medical report for failure to meet the requirements of Workers' Compensation Law 137, the employer must make a timely objection to the report. Here the employer failed to object to the report during the 75-day period allowed for objections and failed to object in a hearing held six or seven months after the report was filed. The Third Department determined, under those facts, it was error to preclude the report.

November 20, 2025

WORKERS' COMPENSATION.

THE EXTENSION (NOW TO 2026) OF THE TIME FOR PARTICIPANTS IN THE 9-11 CLEANUP TO FILE CLAIMS FOR MEDICAL BENEFITS DOES NOT APPLY TO CLAIMS FOR DEATH BENEFITS BY A BENEFICIARY OF A DECEASED PARTICIPANT; HERE THE PARTICIPANT'S WIFE MADE A CLAIM FOR DEATH BENEFITS WHICH WAS PROPERLY DENIED BECAUSE THE STATUTORY DEADLINE IN WORKERS' COMPENSATION LAW SECTION 28 HAD PASSED (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Garcia, determined the two-year death-benefit statute of limitations in Workers' Compensation Law

section 28 precluded a claim for death benefits made by the wife of a volunteer who participated in the 9-11 cleanup and who had received lifetime benefits for resulting medical conditions. Although the deadline for claims for medical benefits has been extended (to 2026), that extension does not apply to claims for death benefits by surviving beneficiaries:

[Workers' Compensation Law 168] explicitly refers to "[a] claim by a participant," permits such participant's claim to be filed within the enumerated extended time period, and again repeats "[a]ny such participant" when stating that certain previously denied claims "shall be reconsidered by the board" … . The phrase "claim by a participant" does not encompass claims by the surviving beneficiaries of those individuals. This is made clearer by comparison with the language in Workers' Compensation Law § 18, which expressly provides that notice may be given by "any person claiming to be entitled to compensation or some one in his behalf" and can be "signed by [the employee] or by a person on his behalf or, in case of death, by any one or more of his dependents, or by a person, on their behalf." Likewise, Workers' Compensation Law § 28 refers to "the claimant" and references payments "to an employee or his dependents in case of death." Workers' Compensation Law § 168's use of the phrase "[a] claim by a participant" must therefore be understood to mean that only a claim brought by a participant, and not by the survivors or beneficiaries of a participant, may benefit from the extended time limits of Workers' Compensation Law § 168. As the Appellate Division reasoned, "it was decedent who was entitled to file a claim for benefits outside of the period allowed by Workers' Compensation Law § 28" … .

No other provision provides claimant with relief from the requirement that claims be filed within the two-year limitations period. Matter of Garcia v WTC Volunteer, 2025 NY Slip Op 06360, CtApp 11-20-25

Practice Point: Claims for death benefits by the beneficiaries of deceased participants in the 9-11 cleanup are subject to the two-year statute of limitations in Workers' Compensation Law.

November 20, 2025