# NEW YORK APPELLATE DIGEST, INC.

Weekly Reversal Report
November 24 – 28, 2025

An Organized Compilation of Summaries of Selected Decisions, Mostly Reversals, Released by Our New York State Appellate Courts November 24 - 28, 2025 , and Posted on the New York Appellate Digest Website on Monday, December 1, 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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## PETITIONERS, THE NEW YORK TAXI WORKERS ALLIANCE, HAD STANDING TO CONTEST THE NYC TAXI AND LIMOUSINE COMMISSION'S PILOT PROGRAM WHICH WOULD ADD 2500 FOR-HIRE VEHICLES TO THE CITY STREETS; PETITIONERS DEMONSTRATED THE ADDED VEHICLES WOULD REDUCE MEMBERS' INCOME (INJURY-IN-FACT) IN VIOLATION OF A LOCAL LAW (FIRST DEPT).

The First Department, in a full-fledged opinion by Justice Higgitt, reversing Supreme Court, determined the petitioners, the New York Taxi Workers Alliance and two individual drivers, had standing to challenge a pilot program initiated by the NYC Taxi and Limousine Commission as violating a Local Law. The pilot program would put 2500 more for-hire vehicles (FHV's} on the street. Petitioners argued standing based on evidence the pilot program will lower the income of the members of the Taxi Workers Alliance. Supreme Court had held the loss-of-income claim was speculative:

… [P]etitioners established both an injury in fact and that their alleged harm satisfies the zone of interest requirement, and they therefore have standing.

… [P]etitioners allege a concrete, particularized harm: a loss of income and a deterioration of driver well-being occasioned by the introduction or potential introduction of additional vehicles into the for-hire market. That harm is neither

speculative nor conjunctural; rather, it is well-demonstrated by the legislative facts underpinning Local Law 147, which facts are based, in part, on industry data. Moreover, petitioners' alleged harm is supported by the findings of the Committee on For-Hire Vehicles as expressed in their reports. The legislative materials evince a clear connection between the number of FHVs on the streets and driver income: when the number of FHVs increases without a corresponding increase in passenger demand, driver income decreases. * * *

… [P]etitioners demonstrated that the alleged harms of loss of income and deterioration of driver well-being fall within the zone of interests or concerns promoted or protected by Local Law 147. Two of the principal interests or concerns expressly promoted or protected by the law are driver income and driver well-being (see Administrative Code § 19-550[a]; 35 RCNY 59A-06[a][1]), and the significant legislative history of Local Law 147 confirms that the City Council was concerned with the human costs associated with the exceptional growth in the FHV market, particularly drivers' ability to earn a living. Matter of New York Taxi Workers Alliance v New York City Taxi & Limousine Commission, 2025 NY Slip Op 06551, First Dept 11-25-25

Practice Point: To have standing to challenge a local law, the challenger must demonstrate an injury-in-fact and the injury is within the scope of the protections afforded by the local law.

November 25, 2025

## CIVIL PROCEDURE, EVIDENCE.

## DEFENDANTS DID NOT PRODUCE A SURVEILLANCE VIDEO DEPICTING PLAINTIFF'S ACCIDENT UNTIL AFTER PLAINTIFF'S DEPOSITION; DEFENDANTS ARE PRECLUDED FROM INTRODUCING THE VIDEO IN EVIDENCE (FIRST DEPT).

The First Department, reversing Supreme Court, determined defendant's should have been precluded from introducing in evidence a surveillance video depicting plaintiff's accident. Although the video had been explicitly demanded by plaintiff,

defendants did not produce it until after plaintiff's deposition, six months after the entry of the compliance order:

Supreme Court improvidently exercised its discretion in denying plaintiff's motion seeking discovery sanctions. Plaintiff demonstrated that defendants acted willfully and contumaciously when they failed to turn over video footage of plaintiff's accident … . Defendants failed to produce the video in response to repeated explicit demands and repeatedly denied the existence of any video of plaintiff's accident. It was not until after plaintiff's deposition on May 20, 2024 and during the June 27, 2024 deposition of defendants' building manager that defendants revealed the existence of the video. While only six months elapsed from entry of the compliance order to the belated production of the video, it cannot be said that plaintiff was not prejudiced by the late production. Defendants should be sanctioned for their dilatory behavior in producing the surveillance video after plaintiff's deposition had already taken place … .

Given the totality of the circumstances, Supreme Court should have granted the lesser sanction of preclusion … . Larue v 1201-31 Lafayette Ground Gowner LLC, 2025 NY Slip Op 06546, First Dept 11-25-25

Practice Point: Here there was an explicit demand for any video of plaintiff's accident but defendants did not produce to video until after plaintiff's deposition. Introduction of the video in evidence was precluded.

November 25, 2025

## CIVIL PROCEDURE, TRUSTS AND ESTATES, FORECLOSURE, REAL PROPERTY LAW, TRUSTS AND ESTATES.

## GENERALLY THE DEATH OF A PARTY TO AN ACTION DIVESTS THE COURT OF JURISDICTION AND REQUIRES A STAY OF THE PROCEEDINGS; HERE IN THIS FORECLOSURE ACTION HUSBAND AND WIFE OWNED THE PROPERTY AS TENANTS BY THE ENTIRETY; THE PROPERTY THEREFORE REMAINED WHOLLY OWNED BY WIFE UPON HUSBAND'S DEATH; BECAUSE PLAINTIFF WAS NOT SEEKING A DEFICIENCY JUDGMENT AGAINST HUSBAND'S ESTATE, A STAY OF THE PROCEEDINGS WAS NOT REQUIRED (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the death of one of the parties in this foreclosure action did not require a stay of the proceedings. The defendant wife held the property with her husband as tenants by the entirety. When the husband died, the wife remained as the owner of the entire property. The plaintiff mortgage company, by moving to delete the husband's name for the caption, elected not to seek a deficiency judgment against the decedent's estate. Therefore the action should not have been stayed:

"'Generally, the death of a party divests a court of jurisdiction to act, and automatically stays proceedings in the action pending the substitution of a personal representative for the decedent'" … . However, "where a party's demise does not affect the merits of the case, there is no need for strict adherence to the requirement that the proceedings be stayed pending substitution" … . "[A] mortgagor who has made an absolute conveyance of all his [or her] interest in the mortgaged premises . . . is not a necessary party to foreclosure, unless a deficiency judgment is sought" … .

… [T]he plaintiff established that, upon the decedent's death, Janice, "as a tenant by the entirety with her husband, remained seized of the entire ownership interest in the subject property" … . Moreover, by moving to amend the caption to delete the name of the decedent and, in effect, to discontinue the action insofar as asserted against him, the plaintiff, in effect, elected not to seek a deficiency judgment against the decedent's estate … .

By virtue of the absolute conveyance of the property from the decedent to Janice, and the plaintiff's waiver of its right to seek a deficiency judgment against the decedent or his estate, "strict adherence to the requirement that the proceedings be stayed pending substitution was not necessary" … . Citimortgage, Inc. v Fimbel, 2025 NY Slip Op 06600, Second Dept 11-26-25

Practice Point: Here in this foreclosure action against husband and wife as tenants by the entirety, the husband's death did not require a stay of the proceedings because the wife continued to hold the entire ownership interest in the property and plaintiff was not seeking a deficiency judgment against the estate of the husband.

November 26, 2025

## CIVIL RIGHTS LAW, CONSTITUTIONAL LAW, CRIMINAL LAW.

## THE ALLEGATION THE LAW ENFORCEMENT DEFENDANTS PRESENTED FALSE TESTIMONY DURING PLANTIFFS' PROSECUTIONS STATED A VALID FOURTEENTH AMENDMENT DUE PROCESS VIOLATION CAUSE OF ACTION PURSUANT TO 42 USC 1983 (SECOND DEPT).

The First Department, reversing (modifying) Supreme Court, determined plaintiffs' cause of action alleging defendants violated 42 USC 1983 by presenting false testimony during the course of plaintiffs' prosecution should not have been dismissed:

Supreme Court erred in granting that branch of the defendants' motion which was for summary judgment dismissing so much of the cause of action alleging civil rights violations pursuant to 42 USC § 1983 as was predicated on a violation of the plaintiffs' due process rights enumerated in the Fourteenth Amendment of the United States Constitution insofar as asserted against the individual defendants. The plaintiffs' allegations that, during the course of their prosecution, the individual defendants presented false testimony were governed by the Fourteenth Amendment … . Thus, contrary to the defendants' contention, a due process

analysis was appropriate … . Batista v City of Yonkers, 2025 NY Slip Op 06592, Second Dept 11-26-25

Practice Point: An allegation that law enforcement officers presented false testimony during plaintiffs' prosecutions stated a 42 USC 1983 violation-of-due-process cause of action.

November 26, 2025

## CONSTITUTIONAL LAW, CRIMINAL LAW, APPEALS.

## DEFENDANT'S FACIAL CONSTITUTIONAL CHALLENGE TO THE CONCEALED CARRY STATUTE AS IT EXISTED AT THE TIME OF HIS INDICTMENT (A PROVISION OF THE STATUTE WAS DECLARED UNCONSTITUTIONAL BY THE US SUPREME COURT JUST PRIOR TO DEFENDANT'S INDICTMENT) SURVIVED HIS WAIVER OF APPEAL; ALTHOUGH DEFENDANT NEVER APPLIED FOR A FIREMARM LICENSE, HE HAS STANDING TO CHALLENGE THE STATUTE BASED ON HIS CONVICTION FOR ATTEMPTED POSSESSION OF A WEAPON; THE CHALLENGED PORTION OF THE STATUTE IS SEVERABLE FROM THE OTHER PROVISIONS; DEFENDANT WAS UNABLE TO DEMONSTRATE THE UNCONSTITUTIONAL PROVISION RENDERED THE STATUTE UNCONSTITUTIONAL UNDER ALL CONCEIVABLE CIRCUMSTANCES AND THEREFORE DID NOT DEMONSTRATE FACIAL UNCONSTITUTIONALITY (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Halligan, over a three-judge concurrence, determined: (1) the defendant's challenge to the facial constitutionality of the state's firearm licensing scheme survived his waiver of appeal; (2) the defendant, who was convicted of attempted criminal possession of a weapon, has standing to challenge the state's firearm licensing scheme as it was codified at the time of his indictment; (3) although one of the requirements for licensure in the relevant statute (Penal Law 400.00(2)(f) was declared

unconstitutional by the US Supreme Court just before defendant's indictment, that requirement is severable and did not render the entire statutory scheme unconstitutional. In 2022 the US Supreme Court, in New York State Rifle & Pistol Assn., Inc. v Bruen (597 US 1, found unconstitutional the statute's "proper cause" language, which required an individual seeking a concealed-carry license for a pistol or revolver to "demonstrate a special need for self-protection distinguishable from that of the general community," Although since removed, the "proper cause" language remained in the statute at the time of defendant's indictment:

We hold that a facial constitutional challenge such as the one presented here likewise falls into the narrow class of non-waivable appellate claims. Hornbook law underscores the very high bar for this type of challenge: a litigant must contend that "in any degree and in every conceivable application, the law suffers wholesale constitutional impairment" … . In the rare circumstances where a facial challenge is successful, "the law is invalid in toto—and therefore incapable of any valid application" … , and thus the State will lack authority to prosecute or punish the defendant or anyone else for the conduct at issue. … [A]facial challenge goes squarely to the "fairness in the process itself" … , and transcends an individual defendant's concerns to implicate "a larger societal interest in its correct resolution" … . Accordingly, a waiver that precludes appellate review of a facial constitutional challenge to a criminal statute should not be enforced. * * *

Both the People and the Attorney General argue that the defendant lacks standing to challenge the constitutionality of the licensing scheme because he never applied for a firearm license. We disagree. * * *

We find the "proper cause" requirement severable. The text and structure of the licensing scheme evince a clear legislative intent to regulate the lawful purchase, possession, and use of firearms. The licensing scheme is detailed and multi-faceted; the "proper cause" provision was just one aspect of a much broader scheme that includes a variety of distinct requirements. People v Johnson, 2025 NY Slip Op 06528, Ct App 11-24-25

Practice Point: Consult this decision for insight into when a challenge to the constitutionality of a statute will survive a waiver of appeal, when a defendant has standing to challenge the constitutionality of a criminal statute, when a portion of a challenged statute will be deemed severable from the other provisions, and whether

an unconstitutional statutory provision renders the entire statute unconstitutional in every conceivable circumstance (a requirement for facial unconstitutionality).

November 24, 2025

## CRIMINAL LAW, ATTORNEYS.

## HERE THE MISDEMEANOR COMPLAINT DID NOT INCLUDE FACTUAL ALLEGATIONS SUPPORTING ONE OF THE COUNTS; THEREFORE THE PEOPLE'S CERTIFICATION OF COMPLIANCE WITH CPL 30.30 (5-A) WAS INACCURATE; THE INACCURACY REQUIRED THE DISMISSAL OF THE COUNT, NOT THE INVALIDATION THE PEOPLE'S CORRESPONDING CPL 245.20 STATEMENT OF READINESS (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Cannataro, over a two-judge dissent, determined that if the People's CPL 30.30 (5-a) certification is inaccurate because the misdemeanor complaint did not include facts supporting one of the counts, the appropriate remedy is dismissal of the defective count, not the invalidation of the People's statement of readiness:

On its face, the clear language of CPL 30.30 (5-a) requires that the People, in conjunction with filing their statement of readiness, certify that each count of the accusatory instrument is supported by facially sufficient, nonhearsay allegations, and that any counts that are not so supported have been dismissed. However, the statute does not provide for any readiness-related consequence for a mistaken or incorrect certification …. Such a requirement would make little sense because facial sufficiency is a legal question—sometimes a close legal question—and the People cannot reasonably be expected to attest accurately to the outcome of a defendant's challenge to the facial sufficiency of the instrument … .

Defendant contends that the People's obligation to certify facial sufficiency should be treated the same as the requirement that they certify compliance with their discovery obligations under CPL article 245. A comparison of the text of the relevant provisions reveals why this interpretation is incorrect. CPL 30.30 (5), as originally enacted in 2019, specifically stated that any "statement of trial readiness

must be accompanied or preceded by a certification of good faith compliance with the disclosure requirements of [CPL 245.20] and the defense shall be afforded an opportunity to be heard on the record as to whether the disclosure requirements have been met." Mirroring this provision, CPL 245.50 (3) provided that "the prosecution shall not be deemed ready for trial for purposes of [CPL 30.30] until it has filed a proper certificate" of compliance (former CPL 245.50 [3] [emphasis added]). .. [R]ead together, CPL 245.50 and [CPL] 30.30 require that due diligence must be conducted prior to filing a" certificate of compliance… . Thus, unlike the subdivision (5-a) certification requirement, the legislature specifically provided that an invalid certificate of compliance would render the People's accompanying statement of readiness illusory. The legislature could have, but did not, similarly tie the accuracy of certification pursuant to subdivision (5-a) to the People's trial readiness. People v Williams, 2025 NY Slip Op 06535, CtApp 1125-25

Practice Point: The failure to include factual allegations in support of a count in a misdemeanor complaint which has been certified to be in compliance with CPL 30.30 (5-a) requires dismissal of that count, but does not invalidate the corresponding CPL 245.20 statement of readiness.

November 25, 2025

## CRIMINAL LAW, CONSTITUTIONAL LAW, EVIDENCE.

## THE APPROPRIATE TEST FOR WHETHER THE POLICE HAD "REASONABLE SUSPICION" SUFFICIENT FOR A TRAFFIC STOP BASED ON AN ANONYMOUS TIP IS THE "TOTALITY OF THE CIRCUMSTANCES;" THE CRITERIA INCLUDE THE AGUILAR-SPINELLI RELIABILITY AND BASIS OF KNOWLEDGE FACTORS (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Cannataro, over a two-judge dissent, applied the "totality of the circumstances" test and determined the police had probable cause to stop defendant's car based upon an anonymous tip. The anonymous 911 caller told the dispatcher he was calling from a specified intersection and he had just been shot by two Black males in a white Mercedes. The caller said he knew the perpetrators and gave the dispatcher the address of one

of them. A police officer four blocks away in a patrol car spotted a White Mercedes 30 to 60 seconds after the dispatcher broadcasted the report and stopped it. After the officer confirmed the address on the driver's license was the address provided by the 911 caller, the officer asked if there were anything in the car he should know about. After the driver said "no, you can check the car" the officer saw a handgun and smelled gun powder through a gap in the locked glove compartment:

We have continued to apply the principles of Aguilar-Spinelli in the probable cause context … after the United States Supreme Court abandoned it in favor of the totality-of-the-circumstances approach (see Illinois v Gates, 462 US 213, 233 [1983] …), in recognition that Aguilar-Spinelli is more protective of our citizens' rights under the State Constitution … . At issue here … is whether that same analysis is required for the lesser intrusion of an investigatory stop requiring reasonable suspicion. * * *

… [W]e now hold that the appropriate test is whether an anonymous tip is sufficiently reliable to provide reasonable suspicion under the totality of the circumstances. While this approach involves an analysis of the Aguilar-Spinelli reliability and basis of knowledge factors, "allowance must be made in applying them for the lesser showing required" to meet the reasonable suspicion standard .. . .

Here, the totality of the circumstances establishes that there was reasonable suspicion to stop defendant's vehicle. The anonymous informant used the 911 system to report that he had "just been shot," necessarily claiming personal knowledge of the crime. The caller also provided a description of the alleged shooter, the make and color of the shooter's vehicle, and his location. The police were able to corroborate that information, within one minute of receiving the dispatch and within a block from the reported location, when they observed a car and suspect matching the description provided. The contemporaneous nature of the report is substantial here and weighs in favor of the caller's veracity.

The police were duty-bound to investigate the radio report of a shooting, and they could not ignore their own contemporaneous observation of a vehicle matching the caller's description and location. … [O]ur review of the reasonableness of the officer's conduct is limited to the information known to the police at the time of the

vehicle stop. … [T]here is record support for the affirmed finding of reasonable suspicion. People v Leighton R., 2025 NY Slip Op 06534, CtApp 11-25-25

Practice Point: Consult this opinion for insight into the application of the "totality of the circumstances" test to determine whether there was "reasonable suspicion" sufficient to justify a traffic stop based on an anonymous tip.

November 25, 2025

## CRIMINAL LAW, EVIDENCE, JUDGES, ATTORNEYS.

## A CONFERENCE IN CHAMBERS ABOUT WHETHER DEFENDANT WAS FIRED BECAUSE OF THE SEX ABUSE ALLEGATIONS WHICH WERE THE SUBJECT OF THE TRIAL WAS DEEMED TO BE A MATERIAL STAGE OF THE TRIAL AT WHICH DEFENDANT SHOULD HAVE BEEN PRESENT BECAUSE DEFENDANT HAD FIRST-HAND KNOWLEDGE OF THE FACTS; THE COURT RULED EVIDENCE OF THE FIRING COULD BE PRESENTED; DEFENSE COUNSEL'S WAIVER OF DEFENDANT'S PRESENCE WAS DEEMED INSUFFICIENT; NEW TRIAL ORDERED (THIRD DEPT).

The Third Department, reversing defendant's sex-offense convictions and ordering a new trial, determined it was error to fail to include the defendant in sidebar and chambers conferences and defense counsel's waiver of defendant's presence was insufficient:

… County Court did not at any point advise defendant of his right to be present during sidebar conferences. * * * … [A]fter jury selection concluded but before the trial began, a conference was held with the attorneys in chambers wherein defendant plainly was not present. During this conference, County Court heard arguments from both defense counsel and the prosecutor regarding the admissibility of certain evidence, including testimony that defendant was fired from his job at the YMCA following the [sexual abuse] incident in question. There was discussion by the attorneys and the court as to the reason for defendant's

termination and whether it was based upon the charged conduct in this case. The court ruled that evidence of defendant's firing would be allowed. It was only after it had issued its ruling that the court acknowledged that defendant was not present, whereupon defense counsel stated, "I can waive his appearance."

Noting that the conference was conducted for the purpose of determining the admissibility of proposed testimony, and further recognizing that defendant presumably had personal knowledge of the circumstances surrounding his firing such that he would have been able to meaningfully participate in the discussion … , we find that this conference constituted a material stage of the trial at which defendant had the right to be present. In that regard, the transcript of the conference makes apparent that County Court's ultimate ruling on this issue turned on the precise reason for defendant's termination, and defendant was deprived of the opportunity to assist his counsel in advocating against the admission of the subject testimony. Therefore, it cannot be said "that defendant's presence would have been useless, or the benefit but a shadow" … . People v Benton, 2025 NY Slip Op 06559, Third Dept 11-26-25

Practice Point: Consult this decision for insight into when the failure to include defendant in a sidebar or chambers conference will be deemed reversible error.

November 26, 2025

## CRIMINAL LAW, EVIDENCE.

## DEFENDANT WAS COOPERATIVE DURING HIS ARREST; HIS SUBSEQUENT RESISTANCE, THEREFORE, DID NOT CONSTITUTE "RESISTING ARREST;" INDICTMENT DISMISSED (FIRST DEPT).

The First Department, reversing Supreme Court, determined the defendant's resisting-arrest conviction was against the weight of the evidence and dismissed the indictment. Defendant was cooperative when he was placed under arrest. His subsequent resistance, therefore, did not constitute resisting arrest:

As the People concede, defendant's conviction of resisting arrest was against the weight of the evidence … . The undisputed evidence established that defendant

was cooperative when he was placed under arrest, handcuffed, physically restrained, and surrounded by police officers … . Defendant's subsequent physical resistance does not constitute resisting arrest, as he could not have intentionally "prevented or attempted to prevent a police officer from effecting an authorized arrest" by doing so (Penal Law § 205.30). People v Nesmith, 2025 NY Slip Op 06555, First Dept 11-25-24

Practice Point: Any resistance by a defendant which occurs after arrest does not constitute the crime of "resisting arrest."

November 25, 2025

## CRIMINAL LAW, JUDGES.

## THE TRIAL JUDGE PROPERLY HANDLED A JUROR'S CLAIM THAT OTHER JURORS HAD EXHIBITED RACIAL BIAS DURING DELIBERATIONS AND PROPERLY DENIED THE DEFENSE REQUEST FOR A MISTRIAL; THERE WAS A COMPREHENSIVE DISSENT (CT APP).

The Court of Appeals, in a full-fledged opinion by Justice Garcia, affirming the Appellate Division, over an extensive dissent, determined the trial judge properly assessed a juror's claim that jurors exhibited racial bias during deliberations and properly denied defense counsel's motion for a mistrial:

On appeal, the Appellate Division held that the trial judge did not abuse his discretion in denying a mistrial because the court made an "appropriate inquiry into this most serious charge" of racial bias by consulting with the parties and questioning relevant jurors, which ensured that "defendant's right to an impartial verdict [was] properly balanced with the jury's right to adjudicate 'free from outside interference' "… . In reviewing the actions of the trial judge, the Court concluded that " '[i]n a probing and tactful inquiry, the [trial] court [did] evaluate the nature of what [juror No. 5] ha[d] seen, heard, or ha[d] acquired knowledge of, and assess[ed] its importance and its bearing on the case' " … . Two Justices dissented, asserting they were "unable to conclude on the record before us that the jury was not tainted by racial bias in their deliberations" … . … * * *

… [T]he judge was aware of the conduct of the jurors throughout the proceedings, observed the demeanor of the jurors as they were questioned on the issue of racial bias, evaluated their responses, and reasonably concluded on this record that what Juror 5 perceived as racial bias was in fact a discussion about the identification evidence, some of which, as the court noted in its post-trial decision denying the motion to set aside the verdict, may have been misinterpreted. As to the other unidentified jurors allegedly harboring some form of racial bias, defense counsel declined to request that the court question them individually (and, indeed, argued that the court should not do so), and therefore "the only asserted error preserved for appellate review was the denial of the motion for a mistrial" … . Our role is not to substitute our judgment as to the appropriate remedy for that of the trial judge. … On review of the record here, we hold that there was no abuse of discretion in the trial court's denial of the motion for a mistrial. People v Jaylin Wiggins, 2025 NY Slip Op 06539, Ct App 11-25-25

Practice Point: Consult this opinion for insight into the issues raised by a juror's claim that other jurors have exhibited racial bias during deliberations. Here the majority concluded the trial judge handled the inquiry properly and properly denied the defense request for a mistrial.

November 25, 2025

## FAMILY LAW, ATTORNEYS, JUDGES.

## INDIGENT PARTIES WHO ARE ASSIGNED COUNSEL IN FAMILY COURT PROCEEDINGS HAVE A RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL; HERE IN THESE PERMANENT-NEGLECT/TERMINATION-OF-PARENTAL-RIGHTS PROCEEDINGS, THE MAJORITY CONCLUDED MOTHER DID NOT RECEIVE EFFECTIVE ASSISTANCE; THERE WAS A THREE-JUDGE DISSENT (CT APP).

The Court of Appeals, reversing the Appellate Division, over a two-judge dissent, determined mother had a right to, but did not receive, effective assistance of counsel in the permanent neglect proceeding in Family Court. Assigned counsel did not speak to mother until after the fact-finding hearing had begun, was

unprepared, and did not request an adjournment. During the fact-finding hearing, mother asked to represent herself and waived her right counsel. Assigned counsel remained in a standby capacity. After the fact-finding hearing, the court moved directly to the dispositional hearing. During the dispositional hearing mother's request for representation was denied:

… [D]espite being assigned more than two months earlier, counsel had not spoken to the mother before the hearing to terminate her parental rights had already begun. We cannot determine based on this record why counsel and the mother did not speak prior to the fact-finding hearing, and the court did not inquire, so the reasons for that lack of communication are pure speculation. Even assuming … that counsel attempted to contact the mother but was unsuccessful, there is no strategic or other reasonable explanation for counsel's failure to request an adjournment of the proceeding so that he could speak to his client before the fact-finding hearing began, especially when the mother indicated that she would not be surrendering her parental rights. Before the mother indicated that she would not, in fact, surrender her parental rights, counsel could have legitimately thought that the fact-finding hearing would not go forward. However, once it was clear that the hearing was about to commence, counsel should have requested an adjournment to speak to his client about the proceeding and its implications. Counsel's failure to do so lacks a strategic or legitimate explanation.

Counsel also appeared unprepared, questioning whether the records that were subpoenaed were available to be reviewed and announcing that he would remain silent during the hearing, only to be admonished by the court that he was required to participate. In addition, the court, faced with a record that showed counsel's unpreparedness to proceed due to lack of communication, continued forward with the fact-finding hearing and the dispositional hearing even after it was clear that the mother did not understand the proceedings, denied the mother's subsequent request to be represented by counsel even though the court told the mother she could change her mind about self-representation, and gave the mother's standby counsel only five minutes in which to explain the proceedings to her. Matter of Parker J. (Beth F.), 2025 NY Slip Op 06533, CtApp 11-25-25

Practice Point: Consult this opinion for insight into what constitutes ineffective assistance of counsel in the context of an assigned counsel representing an indigent parent in permanent neglect and termination of parental rights proceedings.

November 25, 2025

## FAMILY LAW, EVIDENCE, JUDGES.

## THE EVIDENCE DID NOT SUPPORT THE FINDINGS THAT MOTHER AND FATHER NEGLECTED THE NEWBORN WHO TESTED POSITIVE FOR AMPHETAMINES AND DOCTOR-PRESCRIBED SUBUTEX; THERE WAS NO EVIDENCE THE CHILD'S LOW BIRTH WEIGHT AND NEED FOR COMFORTING WAS RELATED TO AMPHETAMINES AS OPPOSED TO THE SUBUTEX; FATHER'S "HOSTILE" BEHAVIOR TOWARD PETITIONERS AND HIS REFUSAL TO SIGN A BIRTH CERTIFICATE WERE NOT VALID GROUNDS FOR A NEGLECT FINDING (THIRD DEPT).

The Third Department, reversing Family Court, determined the evidence did not support finding mother and father had neglected the newborn child based upon positive toxicology results for amphetamines and Subutex. Subutex had been prescribed by a doctor. Mother admitted using a methamphetamine once during the pregnancy. The evidence did not demonstrate a causal connection between the child's low birth weight and need for extra comforting and the use of amphetamines as opposed to the doctor-prescribed Subutex:

In finding that the child had been neglected by the mother, Family Court referenced the positive toxicology results and the mother's admission to having used "ICE." The court also referenced that the child was born with a "low birth weight consistent with experiencing in utero drug exposure." While the hospital records confirm the child was "small for gestational age," there was no testimony linking this to the mother's use of amphetamines/methamphetamines during pregnancy. The court also cited to the child exhibiting "telltale signs of drug exposure, exhibiting increased tremors when disturbed, high pitch crying and a need for extra comforting." There was testimony from a registered nurse who cared

for the child that the child had withdrawal symptoms, such as a "high-pitched, shrill cry" and "constantly need[ing] to be held and have human touch." However, there was no testimony as to whether the child's small birth weight and withdrawal symptoms were related to the mother's methamphetamine use, rather than her use of Subutex, which her unrefuted testimony demonstrates was prescribed by a doctor.[FN2] In fact, the mother testified that, during her pregnancy, medical professionals informed her that using Subutex would be fine for the child, that there would not be any side effects, but there may be "some withdrawals." * * *

We reach the same result regarding the father's neglect finding, which was based upon the father's behavior toward petitioner's staff, as well as hospital staff, which was "hostile beyond what would be deemed acceptable by a reasonable and prudent standard." The finding was also based upon the father's refusal to sign a birth certificate or acknowledgement of paternity, "effectively abandoning the child when the mother was deemed to be an unsafe caregiver." There is no support in the law that either of these behaviors constitute neglect, nor did petitioner "demonstrate that [the child's] physical, mental or emotional condition was in imminent danger of being impaired" based upon these behaviors … . And finally, Family Court imputed the father with knowledge of the mother's drug use and found that he neglected the child "by failing to exercise a minimum degree of care to prevent the mother from abusing drugs during her pregnancy." This statement exaggerates what the testimony revealed was the extent of the mother's drug use during pregnancy, and there simply was no evidence regarding the father's knowledge of her use … . Matter of Raivyn BB. (Courtney BB.), 2025 NY Slip Op 06564, Third Dept 11-26-25

Practice Point: A newborn's testing positive for amphetamines is not enough to support a neglect finding without proof the baby's low birth weight and need for comforting was caused by amphetamines.

Practice Point: Father's "hostile" attitude and refusal to sign the birth certificate were not valid grounds or a neglect finding.

November 26, 2025

## FORECLOSURE, CIVIL PROCEDURE, CONSTITUTIONAL LAW, CONTRACT LAW.

## THE FORECLOSURE ABUSE PREVENTION ACT (FAPA) WAS PROPERLY APPLIED RETROACTIVELY IN THIS CASE; RETROACTIVE APPLICATION DOES NOT VIOLATE THE DUE PROCESS OR CONTRACT CLAUSES OF THE UNITED STATES CONSTITUTION (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Singas, determined the Foreclosure Prevention Abuse Act applied retroactively to the case before it. Retroactive application does not violate the Due Process or Contract Clauses of the United States Constitution:

We therefore hold that the provisions apply retroactively. Accordingly, because "a final judgment of foreclosure and sale has not been enforced" in this action … , FAPA §§ 4, 7, and 8 govern here by their terms. * * *

To comport with substantive due process, a statute's retroactive application must be supported by "a legitimate legislative purpose furthered by rational means" … . That is, "the retroactive application of the legislation" must "itself [be] justified by a rational legislative purpose" … .

… FAPA's legislative history identifies certain "abus[ive]" litigation practices engaged in by mortgage lenders and noteholders as the animating force behind FAPA's enactment: the sponsors' memoranda state "legislat[ive] find[ings]" to this effect … . In light of the legislature's determination that these "abuses" should be curtailed, it is rational for FAPA to apply retroactively to shield as many borrowers as possible from those practices. Moreover, insofar as FAPA's relevant provisions clarify or change the manner in which the six-year statute of limitations applies, FAPA's retroactive application also rationally advances "the strong public policy favoring finality, predictability, fairness and repose" in human affairs … . Van Dyke v U.S. Bank, Natl. Assn., 2025 NY Slip Op 06537, CtApp 11-25-25

November 25, 2025

## FORECLOSURE, CIVIL PROCEDURE, CONSTITUTIONAL LAW.

## IN ANSWERING TWO CERTIFIED QUESTIONS FROM THE SECOND CIRCUIT, THE COURT OF APPEALS HELD THAT THE FORECLOSURE ABUSE PREVENTION ACT (FAPA) APPLIED RETROACTIVELY AND DID NOT VIOLATE SUBSTANTIVE OR PROCEDURAL DUE PROCESS UNDER THE NEW YORK CONSTITUTION (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Wilson, answering two certified questions from the Second Circuit, determined (1) the Foreclosure Abuse Prevention Act (FAPA) took effect immediately upon enactment and applied to all foreclosure actions in which a final judgment of foreclosure has not been enforced, and (2), retroactive application of the statute does not violate substantive or procedural due process rights under the New York Constitution:

… FAPA Section 7 applies to "foreclosure actions commenced before the statute's enactment." FAPA achieved its clear purpose with straightforward statutory text. The portion of Section 7 of FAPA at issue in this case is codified at CPLR 213 (4) (b):

"[A] defendant shall be estopped from asserting that the period allowed by the applicable statute of limitation for the commencement of an action upon the instrument has not expired because the instrument was not validly accelerated prior to, or by way of commencement of a prior action, unless the prior action was dismissed based on an expressed judicial determination, made upon a timely interposed defense, that the instrument was not validly accelerated."

FAPA Section 10 then provides that "[t]his act shall take effect immediately and shall apply to all actions commenced on[, as relevant here, a residential mortgage loan agreement,] in which a final judgment of foreclosure and sale has not been enforced." Article 13 LLC v Ponce De Leon Fed. Bank, 2025 NY Slip Op 06536, CtApp 11-25-25

November 25, 2025

## FRAUD, BANKING LAW, CIVIL PROCEDURE, NEGLIGENCE.

## PLAINTIFF WIRED $300,000 TO AN ACCOUNT IN DEFENDANT BANK WHICH HAD BEEN SET UP BY A FRAUDSTER TO DEFRAUD PLAINTIFF; PLAINTIFF FAILED TO PLEAD A SPECIAL RELATIONSHIP WITH DEFENDANT BANK WHICH IS REQUIRED BEFORE A DUTY (OWED TO PLAINTIFF) TO ENFORCE ITS ANTI-FRAUD PROCEDURES ARISES; THE COMPLAINT THEREFORE SHOULD HAVE BEEN DISMISSED (CT APP).

The Court of Appeals, in a one-sentence memorandum decision which adopted the reasoning of the Second Department dissent by Justice Higgitt, reversed the Second Department's ruling that the complaint adequately pled a special relationship between the bank and plaintiff and held that the bank's motion to dismiss the complaint should have been granted. There must have existed a special relationship between defendant JPMorgan Chase Bank and plaintiff before a duty (owed to plaintiff) to enforce the bank's anti-fraud procedures arises. Defendant David Tate had opened an account at a New Jersey Chase bank in the name of his business, Alchemy. Tate did not provide any personal identification or any corporate documentation to the bank. Plaintiff, thinking she was investing in Alchemy, wired $300,000 to the Alchemy account which was appropriated by Tate. As Justice Higgitt wrote in his dissent:

On this appeal, which involves an individual who was swindled when she authorized a wire transfer to the account of a fraudster, we are asked to determine whether New Jersey law recognizes a common-law duty on the part of a bank to an existing customer to exercise reasonable care before permitting a potential customer to open an account. I find that a duty to exercise such care exists only when a bank has a "special relationship" with its existing customer from which that duty should be deemed to flow. The amended complaint, however, fails to allege facts suggesting that a special relationship existed between plaintiff and defendant Bank. Therefore, defendant Bank's CPLR 3211 (a) (7) motion should have been granted. Ben-Dor v Alchemy Consultant LLC, 2024 NY Slip Op 03797, Second Dept 7-11-24; Ben-Dor v Alchemy Consultant LLC, 2025 NY Slip Op 06538 CtApp 11-25-25

Practice Point: In New Jersey, to sue a bank for the wrongful conduct of a third party, here the use of a bank account to defraud plaintiff, the bank must owe plaintiff a special duty. Reversing the Second Department and adopting the reasoning of the dissent, the Court of Appeals held the complaint should have been dismissed because it did not adequately allege the existence of a special relationship between the bank and the plaintiff.

November 25, 2025

## INSURANCE LAW, ADMINISTRATIVE LAW.

## AN INSURER CANNOT DENY PAYMENT OF AN AUTOMOBILE-ACCIDENT NO-FAULT CLAIM ON THE GROUND THE LICENSED HEALTHCARE PROVIDER COMMITTED PROFESSIONAL MISCONDUCT (HERE AN ALLEGED KICKBACK SCHEME) UNLESS THE PROVIDER HAS ABDICATED CONTROL TO AN UNLICENSED PARTY (CT APP).

The Court of Appeals, in full-fledged opinion by Judge Rivera, over an extensive dissenting opinion by Judge Wilson, determined the NYS Department of Financial Services' (DFS's) interpretation of a regulation addressing the payment of no-fault benefits for automobile-accident injuries was rational. The issue was whether alleged professional misconduct by a licensed healthcare provider allowed the insurer to deny payment. The DFS ruled that the insurer could not deny payment of a no-fault claim based upon alleged misconduct by the licensed provider which did not amount to the provider's abdicating control to an unlicensed party:

The United States Court of Appeals for the Second Circuit has certified the question of whether a regulation promulgated by the Department of Financial Services ("DFS") permits an insurer to deny a healthcare provider's no-fault benefits claim because the provider allegedly committed professional misconduct by paying for patient referrals. DFS interprets its regulation to allow an insurer to deny a no-fault benefits claim only when a provider fails to fulfill a foundational licensing requirement necessary to perform healthcare services in any instance, and not when an insurer unilaterally determines that a properly-licensed provider has committed professional misconduct, short of effectively abdicating control to an

unlicensed party. This interpretation is rational, because it is consistent with the regulation's plain text, the no-fault statutory framework, and the legislative purposes of providing swift compensation to victims of motor vehicle accidents and reducing litigation costs. Therefore, as to those cases where the alleged professional misconduct does not constitute surrender of control to an unlicensed party, we answer the certified question in the negative. * * *

DFS asserts that it has long interpreted 11 NYCRR 65-3.16 (a) (12) as only encompassing pre-licensing requirements, and not standards to maintain licensure. DFS explains that State regulators have sole discretion to determine whether a provider has committed professional misconduct and, if they have, whether there should be licensing consequences that affect their ability to collect no-fault reimbursements. Only after a State regulator has determined that a provider committed professional misconduct, and it has suspended, annulled, or revoked their license, may an insurer deny the provider reimbursement of a no-fault benefits claim under 11 NYCRR 65-3.16 (a) (12). Additionally, DFS states that its interpretation of 11 NYCRR 65-3.16 (a) (12) does not preclude plaintiffs from arguing in this action that [the alleged} kickback scheme [at issue here] was so extensive as to essentially cede improper control of … to unlicensed individuals, in violation of licensing requirements. Plaintiffs argue that 11 NYCRR 65-3.16 (a) (12) allows an insurer to deny reimbursement based on its unilateral determination that a provider allegedly committed professional misconduct.

DFS's interpretation of 11 NYCRR 65-3.16 (a) (12) is rational. … [I]nterpreting the regulation to exclude professional misconduct fully comports with the regulatory text. Government Employees Ins. Co. v Mayzenberg, 2025 NY Slip Op 06527, CtApp 11-24-25

Practice Point: Consult this opinion for insight into how a court will determine whether an agency has properly interpreted a regulation.

November 24, 2025

## LIEN LAW, CIVIL PROCEDURE.

## THE PERSONAL PROPERTY IN PLAINTIFF'S RENTED STORAGE FACILITY WAS SOLD AT AUCTION BASED ON PLAINTIFF'S PURPORTED FAILURE TO PAY RENT; WHEN THE DEFENDANT STORAGE FACILITY OWNER REALIZED THE RENT HAD BEEN PAID BY PLAINTIFF'S PARTNER, DEFENDANT RESCINDED THE SALE OF PLAINTIFF'S PROPERTY, WAIVED LATE FEES, RETURNED THE MONEY TO THE BUYER AND ADVISED THE BUYER TO RETURN THE PROPERTY TO PLAINITFF; ALLEGING PROPERTY WAS MISSING, PLAINTIFF SUED UNDER LIEN LAW 182 FOR "WRONGFUL SALE" OF THE PROPERTY; AFTER AN EXTENSIVE STATUTORY ANALYSIS, THE SECOND DEPARTMENT DETERMINED LIEN LAW 182 DOES NOT CREATE A PRIVATE RIGHT OF ACTION FOR "WRONGFUL SALE" (SECOND DEPT).

The Second Department, in a full-fledged opinion by Justice Wooten, affirming Supreme Court, determined defendant could not maintain an action against defendant storage facility based on a violation of Lien Law section 182. Defendant storage facility had not noticed that payments made by plaintiff's partner, who rented a separate storage facility, were supposed to be applied to plaintiff's rent. At the time defendant learned of the payments made by plaintiff's partner, defendant had sold the items in plaintiff's storage facility at an auction. Defendant rescinded the sale, waived the assessed late fees, returned the money paid by the buyer of plaintiff's personal property, and advised the buyer to return the property. Plaintiff then sued for "wrongful sale" pursuant to Lien Law 182, alleging that some of his property was missing. Lien Law 182(7)(a) provides that any person claiming an interest goods to be sold at auction can bring a special proceeding within 10 days of the service of notice of the auction. No such special proceeding was brought by plaintiff. Both Supreme Court and the Second Department held that Lien Law 182 does not create a cause of action for "wrongful sale:"

Here, Lien Law § 182 provides that the remedy where a person "disputes the validity of the lien, or the amount claimed," is to "bring a proceeding hereunder within ten days of the service of the notice" (id. § 182[7][a]), for which the remedy,

if the person who commences the proceeding prevails, is "the entry of judgment cancelling the lien or reducing the amount claimed thereunder," and a directive that "the person shall be entitled to possession of the property" if the lien is canceled (id. § 182[9]). The statute also provides for a "[p]rivate right of action" "for recovery of damages and the return of [the] goods" for "[a]ny occupant damaged by an unlawful detention of his [or her] goods or any other violation of this section" (id. § 182[4][a]).

To the extent the plaintiff attempts to equate his allegation of a wrongful sale with an "unlawful detention," for which the statute recognizes a "[p]rivate right of action" (id. § 182[4][a]), the plaintiff's contention is without merit. An "unlawful detention of goods" is unambiguously defined under the statute as an owner's "refus[al] to surrender goods stored by him [or her] for an occupant upon payment by the occupant of the occupancy fees permitted by this section" (id. § 182[3]). That definition does not mention or reference the sale of goods stored by an owner, and thus, the phrase "unlawful detention" cannot be read as encompassing the plaintiff's allegation of a wrongful sale. Heins v Public Stor., 2025 NY Slip Op 06605, Second De[t 11-26-25

Practice Point: Lien Law 182 provides that a person with an interest in property to be sold at auction pursuant to the Lien Law may bring a special proceeding to dispute the validity of the lien or the amount claimed within ten days of service of notice of the auction (which was not done here). Lien Law 182 does not create a private right of action for "wrongful sale" of the property at the action. Therefore plaintiff's "wrongful sale" cause of action was properly dismissed after trial pursuant to CPLR 4401.

November 26, 2025

## RELIGION, REAL PROPERTY TAX LAW, ZONING, APPEALS, EVIDENCE.

## BECAUSE THERE IS SUPPORT IN THE RECORD FOR THE LOWER COURTS' FINDING THAT THE PROPERTY PURCHASED BY A CHURCH WAS NOT BEING USED AS A RETREAT IN VIOLATION OF THE ZONING LAWS AND THEREFORE IS TAX EXEMPT, THE COURT OF APPEALS IS CONSTRAINED TO AFFIRM; THERE WAS A THREE-JUDGE DISSENT (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Wilson, over a three-judge dissent, determined Supreme Court and the Appellate Division properly ruled that the property in Sullivan County purchased by a church in Queens was not being used in violation of the zoning laws and was tax-exempt. The factual question was whether the property was being used as a retreat for church members, which would violate the zoning laws, or whether the property was being used to grow vegetables, which would not violate the zoning law. The majority held it was constrained to affirm because there was support in the record for the factual findings made by Supreme Court:

These proceedings under the Real Property Tax Law present a factual dispute about how a church based in Flushing, Queens, actually used a property it purchased in the Town of Callicoon. Because the lower courts committed no legal error, and because we may not reweigh facts or redetermine issues of credibility, we affirm. * * *

Our role is not to substitute our judgment for that of the hearing court but rather to determine whether there is record support for the decision it reached. Here, the trial record supports Supreme Court's finding, affirmed by the Appellate Division, that although petitioner may have purchased the property with the intention of using it as a "retreat,"[FN4] its actual use of the property was to clear approximately one acre of the parcel and, on that cleared area, grow vegetables for charitable distribution to low-income Queens residents. The only other trial evidence about actual use of the property was that the Town Supervisor, who lived across the street from the subject property, regularly harvested hay from the property and never saw any overnight use of the property for "retreat" purposes. Matter of First United

Methodist Church in Flushing v Assessor, Town of Callicoon, 2025 NY Slip Op 06526. CtApp 11-24-25

Practice Point: The Court of Appeals is constrained to accept the lower courts' factual findings if there is support for them in the record.

November 24, 2025

## WORKERS' COMPENSATION.

## DURING MARCH AND APRIL 2020 CLAIMANT, WHO WORKED IN RETAIL IN CLOSE CONTACT WITH THE PUBLIC, WAS EXEMPT FROM THE EMERGENCY WORK RESTRICTIONS; CLAIMANT CONTRACTED COVID, SUFFERED A STROKE AND WAS HOSPITALIZED FOR FOUR MONTHS; HIS CLAIM CONSTITUTED A "COMPENSABLE ACCIDENT;" CLAIMANT DEMONSTRATED AN EXTRAORDINARY RISK OF EXPOSURE DUE TO FREQUENT CONTACT WITH THE PUBLIC "IN AN AREA WHERE COVID WAS PREVALENT" (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Singas, determined the Workers' Compensation Board properly considered the "prevalence of the COVID virus" in the claimant's workplace and properly awarded benefits. Claimant, who worked in retail, was exempt from the emergency restrictions and had extensive contact with the public during March and April 2022. After contracting COVID, claimant had a stroke and was hospitalized for four months:

… [C]laimant testified that he worked full time in a high-volume store during March and April 2020. According to claimant, his job responsibilities involved almost constant contact with the public, working either on the store floor or as a cashier. Claimant testified that employer did not provide store employees with sneeze guards or protective face masks until mid-April 2020. Although employer had a policy requiring customers to socially distance and wear face masks in the store, claimant explained that management advised employees not to enforce that policy. Many customers did not wear face masks, and claimant recounted specific

instances of close contact with customers despite employer's social-distancing policy. * * *

The Board determined that relevant case law "indicate[d] that if a claimant contracts COVID-19 through close contact with the public, such exposure could be found to be a work-related accident within the meaning of [Workers' Compensation Law] § 2 (7)." According to the Board, a claimant can demonstrate this by showing COVID-19's "prevalence" in the workplace … . * * *

… [T]o establish that an illness due to exposure to pathogens or adverse environmental conditions is compensable, a claimant must demonstrate that the illness was caused by "extraordinary" workplace exposure … . Consistent with that requirement, the Board's "prevalence" framework requires a claimant to show a "significantly elevated" risk of exposure … . As applied to COVID-19, the "prevalence" framework specifically requires a claimant to demonstrate an "extraordinary" level of exposure through evidence of frequent contact with the public or co-workers "in an area where COVID-19 is prevalent." … [P]ersistent, high-risk exposure to a disease in the workplace culminating in infection can constitute a compensable accident … . Matter of Aungst v Family Dollar, 2025 NY Slip Op 06530, CtApp 11-24-25

Practice Point: Consult this opinion for insight into when exposure to a disease in the workplace, here COVID, can be considered a "compensable accident" under the Workers' Compensation Law.

November 24, 2025

## WORKERS' COMPENSATION.

### THE WORKERS' COMPENSATION BOARD PROPERLY DENIED BENEFITS FOR PTSD SUFFERED AS A RESULT OF EXPOSURE TO COVID IN THE WORKPLACE BECAUSE THERE WAS NOTHING UNIQUE ABOUT THE CLAIMANTS' EXPOSURE AS OPPOSED TO THAT OF THE REST OF THE WORK FORCE; THE WORKERS' COMPENSATION LAW HAS SINCE BEEN AMENDED TO CHANGE THE ANALYSIS FOR PSYCHOLOGICAL INJURY SUCH THAT WHETHER A CLAIMANT SUFFERED STRESS GREATER THAN WHAT USUALLY OCCURS IN THE NORMAL WORK ENVIRONMENT IS NO LONGER A CONSIDERATION (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Troutman, over a three-judge dissent, reversing the Appellate Division, determined the workers' claims for benefits for post-traumatic stress disorder (PTSD) stemming from workplace exposure to COVID were properly denied by the Workers' Compensation Board. The Board reasoned that the exposure was not the result of an "accident" because everyone in the workplace was similarly exposed. The Court of Appeals noted that the Workers' Compensation Law has recently been amended to provide that psychological-injury claims can no longer be disallowed on the ground the underlying stress was no greater that what usually occurs in the normal work environment:

… [E]vidence of COVID-19's prevalence in the workplace does not relieve a claimant of the burden to establish that the injury was accidental which, in cases of emotional stress-induced psychological injury, has involved a demonstration by the claimant of stress greater than the stress experienced by similarly situated workers in the normal work environment. Here, substantial evidence supports the Board's determination that the stress of workplace exposure experienced by claimants was comparable to the stress experienced by similarly situated workers in the normal work environment during the COVID-19 pandemic … .

Neither our decision today nor the approach of our dissenting colleagues could be expected to have a significant impact on the development of the law. After the

Appellate Division decided these appeals, the legislature amended the Workers' Compensation Law to provide that the Board "may not disallow a claim" for PTSD, acute stress disorder, or major depressive disorder "upon a factual finding that the stress was not greater than that which usually occurs in the normal work environment" (Workers' Compensation Law § 10 [3] [c]). By amending the statute in this manner, the legislature has determined that claims of psychological injuries should be evaluated under a standard more favorable than even the dissent's novel standard.… Claimants do not argue that the newly amended language applies retroactively to the Board decisions, which predate the effective date of the legislation. Matter of McLaurin v New York City Tr. Auth., 2025 NY Slip Op 06529, CtApp 11-24-25

Practice Point: A recent amendment to the Workers' Compensation Law provides that, where psychological injury is claimed, whether the stress suffered by the claimants is greater than that which usually occurs in the normal work environment is no longer a consideration. Here, in this pre-amendment case, the fact that the claimants' exposure to COVID was no greater than the exposure suffered by the rest of the workforce was a proper ground for the denial of psychological-injury benefits.

November 24, 2025