

*State of New York*  
*Supreme Court, Appellate Division*  
*Third Judicial Department*

**Summaries of Cases**

**to be argued on**

**March 29, 2017**

**Albany Law School**

*J. Mulvey, J. McCarthy, P.J. Peters, J. Egan Jr., J. Aarons*

**These summaries are provided as a courtesy to the public attending this Court session. They are not intended to address the legal issues raised in a particular case and are distributed for background purposes only.**

**523308 - Matter of Leadingage NY v Shah**

In January 2012, respondent Governor Andrew Cuomo issued Executive Order No. 38, which directed the commissioners of certain agencies, among them respondent Nivah Shah, as Commissioner of respondent Department of Health, to promulgate regulations that limit the amount of taxpayer funds that service providers may use for administrative costs and executive compensation. As a result, the Department promulgated 10 NYCRR part 1002, which placed limitations on such costs and compensation. Petitioners, a set of nursing homes, assisted living programs, home care agencies and their nonprofit trade associations and other associations representing healthcare plans, health maintenance organizations and long-term care plans, initiated two combined CPLR article 78 proceedings/actions for declaratory judgment seeking to invalidate part 1002 as unconstitutional and to find part 1002 arbitrary and capricious. Supreme Court consolidated the cases, and thereafter issued a judgment finding that, to the extent that 10 NYCRR 1002.3 (b) limited executive compensation from all sources, and not just public funds, that section violated the separation of powers clause of the State Constitution and was thus unconstitutional. However, the court found that the remainder of part 1002 was within the Department's authority and was not arbitrary or capricious. Petitioners appeal the judgment, and respondents cross appeal.

**523330 - Salewski v Music**

In March 2013, third-party defendant John Salewski, in the course of his employment

with third-party defendant, Werner Enterprises, Inc., was operating a tractor trailer owned by Werner when he was involved in an accident with a vehicle operated by defendant. Defendant subsequently commenced a personal injury action against John Salewski and Werner for damages allegedly sustained in that accident. In June 2014, defendant executed a general release of all claims in favor of John Salewski and Werner. Ten months later, plaintiff Dawn Salewski, who was a passenger in the vehicle owned by Werner and driven by John Salewski in the same accident, commenced this action against defendant for damages allegedly sustained as a result of that collision. Defendant answered and brought a third-party action for contribution and indemnification against John Salewski and Werner, who, in turn, moved to dismiss the third-party complaint on the ground of release pursuant to CPLR 3211 (a) (5). Supreme Court granted the motion, finding that the plain language of the release executed by defendant in favor of John Salewski and Werner barred his third-party action. Defendant appeals.

**523963 - Marcello v Flecher**

On June 16, 2015, plaintiff commenced this medical malpractice action by service of a summons with notice seeking damages for injuries that purportedly arose from defendants' negligence in connection with plaintiff's hip replacement. Defendant St. Peter's Hospital filed a demand for the complaint. In August 2015, St. Peter's moved to dismiss the action for failure to serve a timely complaint, and plaintiff opposed the motion and cross-moved to compel acceptance of service of the verified complaint. In a February 2016 order, Supreme

Court denied St. Peter's motion to dismiss and granted plaintiff's cross motion to compel acceptance of service. St. Peter's appeals.

**523359 - Feeney v County of Delaware**

In July 2011, defendant Christopher Lacey was involved in a domestic dispute in which he was injured. Lacey was thereafter forcibly subdued and brought to the hospital by defendant Alan Begeal and officers from defendant Delaware County Sheriff's Department. Begeal assumed custody of Lacey, who, upon his arrival at the hospital, was moved to an examination room and handcuffed to a bed. Once Lacey calmed down, Begeal and the other officers left the room. When plaintiff Michael Feeney, a physician's assistant, attempted to treat Lacey, Lacey began struggling and eventually kicked Feeney in the head, knocking him to the ground and causing him to sustain injuries.

Feeney and his wife, derivatively, commenced the present action against the Sheriff's Department, defendants County of Delaware and Thomas Mills, the Sheriff of Delaware County, and various individual officers (hereinafter the County defendants), as well as Begeal and Lacey. Begeal and the County defendants separately moved for summary judgment dismissing the complaint, both asserting that they owed no special duty to Feeney and, in any event, they were immune from liability because their actions were discretionary in nature. Supreme Court granted the County defendants' motion, determining that they owed no special duty to Feeney because they did not have custody of Lacey when the injury occurred. Plaintiffs appeal this determination. Supreme Court denied Begeal's motion,

determining that there were triable issues of fact as to whether he assumed responsibility for the protection of Feeney by his actions. Begeal appeals the denial of his motion.

**524043 - Matter of US Specialty Ins. Co. and Denardo**

In September 2013, respondent, a police detective, was allegedly injured on the job in Dutchess County when his unmarked police cruiser collided with another vehicle at an intersection. At the time respondent's employer, the Town of Poughkeepsie, was covered under a "package" insurance policy issued by petitioner. Respondent then sought supplementary uninsured/underinsured motorist benefits against petitioner under the Town's policy. After settling his claim against the third-party driver with petitioner's consent, respondent provided various medical documents to petitioner and was deposed. Petitioner denied coverage about two years later, leading respondent to serve it with a demand for arbitration. Petitioner then moved for a permanent stay of arbitration and a judicial declaration that the policy did not cover respondent's claim. Respondent opposed this motion and cross-moved for summary judgment and a judicial declaration that the policy obligated petitioner to cover the accident. Supreme Court granted petitioner's motion in its entirety and denied respondent's cross motion. Respondent appeals.

**106590 - People v Ildefonso**

Following a jury trial, defendant was convicted of three counts of criminal sale of a controlled substance in the fourth degree for his participation in a series of three

controlled-buy operations during February 2012. Defendant was sentenced on each count to four years in prison to be followed by one year of postrelease supervision, with the sentences to be served consecutively. Defendant appeals, contending that he was deprived of the effective assistance of counsel through a series of purported errors and that his sentence is harsh and excessive.

**107656 - People v Caggiano**

Defendant pleaded guilty to criminal possession of a controlled substance in the third degree in full satisfaction of a nine-count indictment and waived his right to appeal. County Court denied defendant's request to be adjudicated a youthful offender and sentenced defendant, in accordance with the plea agreement, to five years in prison to be followed by two years of postrelease supervision. Defendant appeals.

**523793 - Olsen v Campbell**

In April 2014, plaintiff's three-year-old child was bitten on the face by defendant's dog, a 12-year-old Siberian husky, while the child was on defendant's premises pursuant to an ongoing childcare arrangement. Plaintiff commenced this action alleging that defendant's negligence caused the child's injuries. Supreme Court granted defendant's motion for summary judgment dismissing the complaint, finding that plaintiff failed to raise any issue of triable fact as to whether defendant had the requisite knowledge of the dog's vicious propensities in order to be strictly liable for the harm caused. Plaintiff appeals.

**523942 - St. Denis v Queensbury Baybridge Homeowners Assn.**

Plaintiff owns real property in the Town of Queensbury, Warren County, and is a member of defendant, a not-for-profit organization that is governed by its Restated Declaration of Covenants, Restrictions, Easements, Charges and Liens as well as its by-laws. Plaintiff commenced this action asserting two causes of action for breach of contract, and alleging, among other things, that defendant's Board of Directors took actions that exceeded the scope of its authority in the manner in which it used funds to make certain repairs to the property. Plaintiff moved for summary judgment. County Court denied plaintiff's motion and plaintiff appeals.