

## CASE ISSUE STATEMENTS -MARCH 2022

**The calendar is subject to change. Please contact the Clerk's Office for any updated information.**

**If available, briefs, records and appendices can be viewed and downloaded from the Court of Appeals Public Access and Search System (Court-PASS), which is accessible from the homepage on the Court's website.**

### ***TUESDAY, MARCH 15***

#### **People v Easley (Levan) (No. 2)**

APL 2020-144

Crimes—Identification of Defendant—Frye Hearing—Whether defendant was entitled to a Frye hearing (*see Frye v United States*, 293 F 1013 [DC Cir 1923]) to challenge the admissibility of the People's DNA evidence based on the use of the forensic statistical tool (FST) to derive a likelihood ratio regarding the presence of defendant's DNA on the trigger of a firearm; Whether materials underlying the FST were required to be disclosed pursuant to *Brady v Maryland* (373 US 83 [1963]).

#### **People v Wakefield (John) (No. 3)**

APL 2020-146

Crimes—Evidence—DNA Identification Tests—Whether the trial court's *Frye* ruling was erroneous because defendant was not provided the opportunity to review the source code underlying the software program that was used to arrive at DNA probability statistics used as evidence against him; Crimes—Right of Confrontation—Whether defendant's right to confront witnesses was violated by not having access to the source code.

#### **Nemeth v Brenntag North America (No. 24)**

APL-2020-122

Products Liability—Exposure to Toxic Substances—Whether plaintiff presented sufficient evidence that her peritoneal mesothelioma was caused by respirable asbestos contained in talcum powder used by plaintiff over an 11-year period; defendant supplied asbestos-contaminated talc for talcum powder; Trial—Fair Trial—Whether plaintiff's counsel's remarks on summation and the trial court's failure to issue a curative instruction deprived defendant of a fair trial.

### ***WEDNESDAY, MARCH 16***

#### **Cutaia v Board of Managers of 160/170 Varick St. (reargument) (No. 25)**

APL-2019-168

Labor—Safe Place to Work—Whether plaintiff established entitlement to summary judgment on the Labor Law § 240(1) claim; plaintiff was injured when he received electrical shock and fell off ladder; application of *Nazario v 222 Broadway, LLC* (28 NY3d 1054 [2016]).

**Bonczar v American Multi-Cinema (No. 26)**

APL-2020-121

Labor—Safe Place to Work—Whether plaintiff was entitled to partial summary judgment on the issue of liability under Labor Law § 240 (1).

**Healy v EST Downtown (No. 27)**

APL-2021-52

Labor—Safe Place to Work—Whether plaintiff was engaged in an activity protected by Labor Law 240 when he fell from a ladder.

*THURSDAY, MARCH 17*

**Matter of MHLS v Delaney (No. 28)**

APL-2020-128

Proceeding Against Body or Officer—Mandamus—When Remedy Available—Whether mandamus was available to challenge placement of developmentally disabled child in hospital emergency room while child waited for a residential placement; Social Services—Medical Assistance—Whether Medicaid Act's requirement that medical assistance “shall be furnished with reasonable promptness to all eligible individuals” (42 USC § 1396a [a] [8]) gives rise to a private right of action; Civil Rights—Discrimination Based on Disability—Whether respondent's failure to provide child with certain services violated the Americans with Disabilities Act.

**Matter of Johnson v City of New York (No. 29)**

APL 2020-155

Workers' Compensation—Award—Whether an award of workers' compensation benefits for a schedule of loss of use (SLU) attributable to an injury to one part of a qualifying limb must be offset by a prior award for an injury involving a different part of the same qualifying limb.

**Matter of Liuni v Gander Mountain (No. 30)**

APL 2021-53

Workers' Compensation—Award—Whether an award of workers' compensation benefits for a schedule of loss of use attributable to an injury to one part of a qualifying limb must be offset by a prior award for an injury involving a different part of the same qualifying limb.