Unauthorized Insurance Carriers In New York

When a non-domiciliary comes into New York operating a vehicle registered and insured in a foreign state, New York Insurance Law §5107 provides protection in New York is required to conform to New York minimal financial requirements and, if not, is deemed to do so. 1

This statute, commonly known as the New York “Deemer” Provision unequivocally applies to any policy of insurance underwritten by an authorized insurer in New York. In the matter of Allstate Insurance Company v. Ramos the Appellate Division, 1st Department in a unanimous decision, indicated, “Consistent with New York public policy to protect the innocent victims of traffic accidents, personal protection insurance liability coverage underwritten in a sister state by insurers authorized to do business in New York is required to conform to New York minimal financial requirements and, if not, is deemed to do so”. 2

1 NYCRR §65.5 codifies the New York Rule with respect to the requirement that an out of state policy conform to the minimum insurance requirements of New York. 3 The Court of Appeals as early as 1974 in the action of Rosado v. Everready Insurance Company indicated, “It is the public policy of New York to protect the innocent victims of traffic accidents”. 4

The Court discussed the legislative intent indicating that “Motorists shall be financially able to respond in damages for their negligent acts, so that innocent victims of motor vehicle accidents may be compensated for the injury and financial loss inflicted upon them”. 5

What happens to the victim of a traffic accident who is injured in New York by a non-resident operating a vehicle insured by an unauthorized insurance carrier who does not do business in New York? Vehicle & Traffic Law §318 Subsection 5(a) provides “The Commissioner, upon receipt of evidence that a person other than the owner of the vehicle, has operated upon the public highways of this state a motor vehicle not registered in the state, with knowledge of proof of financial security was not in effect with respect to such vehicle shall revoke the driver’s license of such person, or if he is a non-resident, the non-resident privileges of such person.” 6

The revocation of driving privileges to the non-resident is little comfort to the New York accident victim who finds the tort-feasor to be without insurance coverage. This article explores the applicability of the New York State Insurance Law and New York State Insurance Regulations and the interplay of New York caselaw with respect to unauthorized insurers. The following issues are addressed in this article:

1.) A non-resident operating a vehicle insured by an unauthorized insurer and the applicability of the New York State Insurance Law threshold codified in §5103 of this article when a motor vehicle operated by a non-resident is required to conform to New York minimal financial requirements and, if not, is deemed to do so. 3

2.) A non-resident operating a vehicle insured by an unauthorized insurer having limits below the New York Statutory mandate of $25,000 per person/$50,000 per occurrence.

3.) A non-resident operating a vehicle insured by an unauthorized insurer having limits at or above the mandatory statutory minimum.

4.) A New York resident operating a vehicle insured by an unauthorized insurer having limits below the mandatory statutory minimum.

5.) The relationship of MVAI to a claim involving an unauthorized insurer.

6.) A New York resident operating a vehicle insured by an unauthorized insurer having limits at or above the mandatory statutory minimum.

7.) An action involving a “covered” individual v. a “non-covered” individual.

8.) Choice of law principals where the underlying policy limits are at or greater than the New York statutory minimum.

9.) Subrogation of first-party benefits paid to a covered person v. a non-covered person. Some 784 companies are listed by the New York Insurance Department as authorized to do business in New York. 5 §65-1(3) of the New York State Insurance Regulations also provides “Any other unauthorized insurer may file with the Superintendent of Insurance a statement that its automobile insurance policy sold in any other state or Canadian province will be deemed to satisfy the financial security requirements of Article 6 or 8 of the New York Vehicle & Traffic Law and will be deemed to provide for the payment of first-party benefits pursuant to §5103 of the New York Insurance Law when the motor vehicle is operated by a non-resident operating a vehicle in New York by an unauthorized insurer. In American Millennium Insurance Company v. Castro 9 Judge Louis B. York of Supreme Court, New York County was faced with a fact pattern which involved a New York resident as a passenger in a vehicle owned by a New Jersey corporation, operated by a New Jersey driver with a New Jersey license, registered to a New Jersey corporation. The vehicle was insured by a New Jersey commercial policy issued by American Millennium Insurance Company who was not authorized to do business in New York. The vehicle was subsequently involved in an accident in New York.

For purposes of a coverage analysis the first inquiry by coverage counsel or claims personnel is whether the insurance carrier...
Our QCBA Heritage

By Paul E. Kerson

This past November 13, 2010, I had occasion to be invited to celebrate our Queens County Bar Association (QCBA) Heritage. The event was the solemn ceremony at Flushing Cemetery of the rededication of the headstone of Mary Prince (1846-1925), the widow of our QCBA co-founder, Governor L. Bradford Prince.

Therein lies a story of the intertwining of the history of the QCBA and of the entire North American continent, the United States Government, and our common culture, now sweeping the world.

Le Baron Bradford Prince was born in Flushing, Queens County, NY in 1840 into the region’s most prominent and economically important family. His grandfather, the First of Eight William Princes in genetic succession, came to Flushing in 1737 and founded a tree nursery with his brother Robert.

By 1840, the Prince family owned much of the land of Flushing, where they grew fruit trees for replanting in the fast-growing nearby cities of Brooklyn and New York (read lower Manhattan). The United Five Borough and County “City of New York” we know today was not formed (or malformed) until 1898.

On his mother’s side, L. Bradford Prince was descended from William Bradford, one of the first governors of the original 1620 colony of Plymouth, Mass., founded by one of the very first boatloads of immigrants who specifically came here to have “anchor babies”. Their primitive watercraft was called “The Mayflower”.

In the 19th century, “Mayflower” ancestry was very respected by the voting populace. L. Bradford Prince went to local Flushing schools, graduated from Columbia Law School in 1866. He returned to Flushing to practice law. He was active in politics, and was repeatedly elected as Flushing’s New York State Assembly Member five different times from 1871 to 1875.

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Greetings!

BY MARK WELKEY

On the morning of December 1, 2010 the Queens County Bar Association was host to “Breakfast at Brandeis” and a special guest speaker. That speaker was James J. Wrynn the Superintendent of the New York State Insurance Department. He began serving as Superintendent on August 20, 2009. Wrynn previously served as the Executive Director of the New York State Insurance Fund and has 25 years experience as a trial attorney focusing in the areas of life, accident and health insurance, property and casualty insurance, general liability insurance, insurance coverage disputes, professional malpractice, and product liability. Wynn was a founding partner in the law firm of MacKay Wynn & Brady, LLP, which specializes in the area of civil litigation and appellate practice, with strong emphasis on insurance law. Superintendent Wrynn is a longtime member of QCBA and previously had served on our Board of Managers. 

The Brandeis Association, the fraternal organization of Jewish judges and lawyers, was established in 1969 with a stated purpose not only to encourage friendship and culture among our members, but to foster respect for law and legal institutions, as well as vigorously asserting the interest in justice and fair play in courts, but to foster respect for law and legal institutions, as well as vigorously asserting the interest in justice and fair play in courts. Wrynn was the Honorable Robert Nahman, Surrogate of Queens County, stepping down as a Surrogate from the bench due to the mandatory age limit. We will miss all of you and wish you the very best as you begin a new and, we hope, exciting chapter in your lives.

Something that is likely to become a new QCBA tradition is the member survey. Prior to becoming President, I had taken an informal survey, asking some of our members how QCBA could better meet their needs. One repeated response was: A basic CLE program on different areas of practice. In response to that request, David Adler, Chair of QCBA’s Trust and Estate Committee, organized a basic CLE program (Will and Probate) at the Surrogate’s Court on November 17, 2010 — and more than 100 attorneys attended.

Now, in preparation for our January 10th strategic planning meeting, QCBA and the American Bar Association are surveying all members about how we can better serve you during this challenging time for legal practice. You’ve all received a request to fill out the survey by email or mail and I urge you to take a few minutes to share your thoughts so that we can incorporate them into our planning. The survey is confidential and results will be compiled by Joanne O’Reilly of the ABA. If you have questions, please contact Joanne at orelly@staff.abanet.org.

At this season and throughout the year, our Association’s growth is your growth. Please become an active participant and ask your friends to join QCBA!

Finally, on behalf of the entire Queens County Bar Association, I want to wish each of you, your families and your loved ones the joys of this season. May you have a holiday and a new year filled with Peace, Health, Happiness and Success.

Chanwoo Lee, Esq.
President

Revised Attorney Affirmation-Required in Residential Foreclosure Actions

In cases where the previous version of the attorney affirmation has not yet been filed, plaintiff’s counsel in residential foreclosure actions involving one-to-four family homes and condominiums are now required to file the revised affirmation as follows:

For new cases, the affirmation must accompany the Request for Judicial Intervention. In pending cases, the affirmation must be submitted with either the proposed order of reference or the proposed judgment of foreclosure. In cases where a foreclosure judgment has been entered but the property has not yet been sold at auction, the affirmation must be submitted to the referee.

In addition to the revised affirmation, counsel remain under a continuing obligation to file an amended version of the affirmation if new facts emerge after the initial filing.

A Christmas Wish

BY JOSEPH E. DEFELICE

Good morning on Christmas
Oh I wish you were here,
Yes boo I do miss you,
We would have some good cheer
We could open the presents
and share a sweet kiss,
Yes, good morning on Christmas
and a Happy New Year
I’d watch your eyes twinkle,
and smile at you,
yes, on the morning of Christmas,
I’d laugh with you too
I’d stroke your long hair
and be happy with you,
yes, good morning on Christmas,
my sweet little boo

If you or someone you know is having a problem with alcohol, drugs or gambling, we can help.
To learn more, contact QCBA LAC for a confidential conversation.
Confidentiality is privileged and assured under Section 499 of the Judiciary Laws as amended by Chapter 327 of the laws of 1993.
Lawyers Assistance Committee Confidential Helpline 718 307-7828

Bagels and Lattkes Too!

Chanwoo Lee
BY KEVIN BEGLEY

The Queens Supreme Court introduced the video conference initiative as a pilot program, in January of 2004. Almost immediately the program was a huge success. It was so well received that the initial users jokingly asked us not to advertise the program for fear it would falter from overuse or the paucity of available equipment. Their fears proved unfounded. As the number of users grew, both the Courts and the Department of Correction increased the resources that were devoted to this project. That process continues today. As the program prospers and the demand for video conferencing increases, we are constantly evaluating the quality (and quantity) of our equipment and seeking novel ways to utilize it.

Currently, the Queens Video Conference program is designed to accommodate attorney-client interviews, probation interviews, service provider interviews and video court appearances. However, we are not limited to these categories. In the hope of expanding the video program and making it the best that it can be, we are committed to scheduling almost any court related video session that the current technology and our equipment will permit, e.g., out of state requests, upstate prisoners, hospital arrangements etc.

Since the inception of our video program, we have witnessed a number of striking advantages from utilizing video technology. Travel time for users has been minimized; fewer inmates are transported to the courthouse; overcrowding in the court pens has lessened; probation interviews are conducted in a more timely manner and, most importantly, there has been an increase in attorney-client contacts.

The Queens Supreme Court’s video unit is located on the seventh floor of the Queens Criminal Court building, just down the hall from the law library. The court video equipment operates on secure lines and no recordings are made of any video conference sessions. Presently, the video unit has at its command two courtroom setups, five interview booths and two mobile units. The mobile units afford us the added flexibility of setting up a video court appearance in any courtroom at anytime. The mobile units can also be used for attorney-client interviews, if the need for more interview booths arises.

All requests for video appearances must be made to the video conference unit by 3PM on the day prior to the scheduled session. Requests can be made by filling out a written video request form. These forms are available in room 708 of the courthouse or on-line on the Queens Supreme Court web page. The forms may be submitted by fax or email. Once the request is submitted, the video conference unit will notify the Department of Correction to place the defendant on the video conference recall sheet for the date requested. Video interviews are limited to 30 minutes, unless additional time is requested on the interview request form. If the defendant is not fluent in English, it is incumbent upon the person requesting the interview to arrange for an interpreter to be present.

For the most part, the greatest success of the video program has been the video...Continued On Page 18

**Video Conferencing**

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SHEILA J. FELDMAN
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**YOUR SON HAS CANCER!!**

Dear Colleagues,

These were the dreaded words my wife and I were told on November, 2001. Through the grace of God, and with the participation of our doctors and friends, our son Jonah was cured.

Throughout our ordeal, Chai Lifeline stood by our side and helped Jonah and us tremendously. From providing us with dinners, clothing, emotional support, and with our son's support and encouragement, the Chai Lifeline has been an extraordinary strength to our family.

Children with serious illness face a host of challenges on numerous fronts, challenges that seriously compound the challenges of cancer itself.

Chai Lifeline is a Non-profit organization dedicated to helping children suffering from serious illness as well as their families.

Chai Lifeline addresses the full spectrum of needs, from logistical to social, recreational to psychological. Chai Lifeline reaches out not only to patients, but also to their parents, siblings, classmates, school faculty, and the community as well.

Jonah is now a healthy 17 year old Senior, attending the Hebrew Academy of the Five Towns and Rockaway (HAFTR). As a means of thankfulness and appreciation, our family will be attending the ING Miami Marathon on Sunday, January 30, 2011, to raise money for Chai Lifeline.

Last year we were able to raise $30,000.00 for this worthwhile organization, but that is not enough. Please help us reach our goal by going to our website, [www.chailifeline.org](http://www.chailifeline.org) and contribute, or please mail your checks payable to Chai Lifeline to: Law Offices of Howard M. Amsellem, 445 Central Avenue, Suite 306, Cedarhurst, New York 11516.

Thank You,

Howard Adelsberg

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Penny D. Taylor v. Joseph Rose: A Recent Decision
Changing the Law Of Paternity by Estoppel

BY JOSEPH J. SAVINO AND JAMES L. HYER

On May 2, 2007, a decision was rendered by Judge Ellen Gesner of the Bronx Supreme Court in Penny D. Taylor v. Joseph Rose, No. 76026-04 (Bronx Sup. 2007), significantly changing the law of Paternity By Estoppel.

This noteworthy Decision came less than a year after the New York State Court of Appeals, holding In the Matter of Shondel J. v. Mark D., 7 N.Y.3d 320, 853 N.E.2d 610, 820 N.Y.S.2d 199, 2006 N.Y. Slip Op. 05238, that ruled in favor of Paternity By Estoppel. Citing this legal doctrine, the Court of Appeals upheld the trial court and Appellate Division determination that a man was required to pay child support for a child that was not biologically his. Despite irrefutable DNA evidence that the man was not the biological father of the child, the Court of Appeals reasoned:

In this child support proceeding, we hold that a man who has mistakenly represented himself as a child’s father may be stopped from denying paternity, to the child’s detriment. We reach this conclusion as set forth by the legislature.

In Shondel J., the man testified that he had only seen the child four times since the child’s birth, the Court of Appeals asserted that the man had held himself out to be the child’s father by providing the child with financial support, signing a sworn statement that he was the child’s father and authorizing the child’s last name to be changed to his own, regularly communicating and visiting with the child, and identifying the child as his own in his life insurance policy. Although the child in Shondel J. was only four or so years of age when the action was filed, the Court of Appeals found that the man’s actions caused the child to justifiably rely that he was the father, and it was in the best interests of the child to prevent the father from denying paternity, thereby requiring him to continue to pay child support.

In Penny D. Taylor v. Joseph Rose, the Bronx Supreme Court struck a blow to the Court of Appeals decision in Shondel J. providing that the rule of Paternity By Estoppel is not to be blindly applied in every case, but only if doing so would truly be in the best interest of the child.

Similar to the man in Shondel J., Rosa took actions to assert himself as the father of the child. In an effort to do the right thing, Rosa married the mother prior to the child’s birth, in November of 2002, so that the child would be an issue of the marriage, limited contact between Rosa and the child, the child had never identified Rosa as its father, Rosa had not held the child under section 4408, citing Matter of Kim F. v. Glenn W., 295 AD2d 903, 905, quoting Catherine A. v. David B., 249 AD2d 964, 964, lv dismissed 93NY2d 919; See Matter of Jennifer LL. v. Michael MM., 289 AD2d 896, 897; Matter of Boudoin v. Robert A., 199 AD2d 842, 844; Matter of Rosa v. David, 136 AD2d 512, 513-514, and Matter of Jennifer W. v. Steven X., 268 AD2d 800, 801. In the alternative, the Memorandum argued that the Judgment should be modified due to fraud, misrepresentation, or other misconduct of an adverse party. Citing, Matter of Oneida County Department of Social Services v. Joseph C., 289 AD2d 1077, and 725 NYS2d 854, 861; Matter of Jennifer W. v. Steven X., 268 AD2d 800, 801. Further, the Memorandum sought to distinguish the matter from Shondel J., offering that there was no significant parent/child relationship, limited contact between Rosa and the child, the child had never identified Rosa as it’s father, Rosa had not held the child.

What is Your Next Play...

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- Westbury
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and great-grandchildren were still alive, and


Mexican War of 1845. (New Mexico did
title disputed land titles in the Territory, a


Government to set up a court system to set-


Volume 2, which I actually later read in its


that the leading legal figure in 1879 in New


received a federal patronage appointment as


Continued From Page 2________________


THE QUEENS BAR BULLETIN – DECEMBER 2010


Our QCBA Heritage


1876 was one of L. Bradford Prince’s bannermens years. He was elected as the Flushing


New York State Senator, and he co-found-
ed our QCBA, still vitally active 134 years


after July 4th, 1999. My aunt and I had taken our then-school-age children on a


road trip across the continent to show them

to show them our country.


After leaving Elvis’s home in Memphis and the Alamo in Texas, we drove into Santa Fe, New Mexico one hot July after-


noon. Marleen and our daughter Deborah headed for the jewelry stores lining the Town Square.


headed for the numerous American Indian


Santa Fe, New Mexico one hot July after-


the New Mexico DAR Chapter of the Daughters


of American descendants, claiming continuing
civil rights violations. The “City” fought the case on Statute of Limitations grounds. It was
drawn out. I did not know that Martin’s Field, the ancient Shinnecock Indian burial ground
across 46th Avenue.


In 1938, in its infinite wisdom “the City of New York” Parks Department paved over Martin’s Field with courts and


Law School teaches us that adverse US Court District decisions are appealed to the


US Court of Appeals. But Martin’s Field


continued to attract people to New Mexico Territory.


He founded a “Bureau of Immigration” to


populate New Mexico Territory from


British colonial days, from the time of


the DAR. I said our country has come a


long way. It was and is the ancient burial


ground of New York” Parks Department paved


over Martin’s Field with basketball courts


and swings and slides. Mandingo remained


outcry. In 2002, I sued the NYC Parks


Commissioner on behalf of Mandingo and three other African American descendants, claiming continuing
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Community Board #11 Queens back in


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NOTICE OF NOMINATING COMMITTEE MEETINGS:

Please take notice that those members who wish to be considered for nomination as Officers or Members of the Board of Managers of the Queens County Bar Association should submit written requests and resumes highlighting their activities in the Association prior to January 19, 2011. Tentative meetings pursuant to the by-laws have been scheduled by the Nominating Committee on January 26, 2011 and finally on February 2, 2011. Said meetings are scheduled for 5:00 P.M. in the Board of Managers Room - in the Headquarters Building, 90-35 148th Street, Jamaica, N.Y. At those meetings you may present the names of the persons whom you desire to have considered by the Nominating Committee for nomination to offices to be filled at the Annual Meeting. Hearings will be held at those times for that purpose pursuant to the by-laws.

Joseph Carola, III
Secretary

Please submit your requests in writing to the attention of the:

Nominating Committee
Queens County Bar Association
90-35 148th Street
Jamaica, N.Y. 11435

The Annual Election of Officers and Managers will be held on March 4, 2011. The newly elected Officers and Managers will assume their duties on June 1, 2011.

Dated: November 15, 2010
Jamaica, NY
**Impact of Two Court Decisions on Parking Violations Bureau**

Continued From Page 1

it exceeds the requirements of VTL 242(5)."

PVB took an appeal from Meyers, with a notice of appeal dated November 19, 2009. On August 27, 2010, PVB withdrew its appeal, and on or about that date ceased enforcing 19 RCNY 39-12 (b) (3). CPLR 5519 (a) (1) imposes an automatic stay during a government appeal, but that stay will not apply to declaratory provisions of a judgment, which do not direct performance of an act in the future but rather are self-executing and effective immediately upon promulgation of the judgment; however, that lack of application is not free from doubt in the First Department.

Ko According to Ko, PVB mailed Mr. Ko a parking summons. The summons, by "Drive Off" and similar language, indicates the vehicle drove off before the summons was served. Mr. Ko moved to dismiss the summons for lack of personal jurisdiction. He denied he had been properly served under VTL 238 (2), in that the summons had neither been handed to him, nor to his car.

Administrative Law Judge Linda Hirsch denied the motion upon a hearing, found him guilty of the charged violation, and fined him $115, which he later paid. The PVB appeals board affirmed ALJ Hirsch's decision. Mr. Ko brought an Article 78 proceeding, seeking to annul the appeals board decision and have the summons dismissed for lack of personal jurisdiction. After Mr. Ko would not accept PVB's offer to settle his Article 78 by dismissing the summons and refunding the fine, Chief ALJ Mary Gotsopoulis remanded the matter of Mr. Ko's summons to ALJ Diane Pine, who dismissed the summons, stating the dismissal was "in the interests of justice in connection with Article 78 settlement negotiations." Then, alleging PVB had dismissed the summons and begun the process for reimbursement of the $115 fine to Mr. Ko, PVB moved to dismiss Mr. Ko's Article 78 proceeding as moot.

Eventually, after denying that motion, Supreme Court vacated PVB's dismissal of Mr. Ko's summons, concluding the dismissal exceeded PVB's statutory authority, was in violation of lawful procedure, was arbitrary and capricious, and had no factual basis. Among its findings concerning statutory authority, the court stated (at 607) the VTL did not "empower ALJ [Gotsopoulis] to unilaterally remand a matter to ALJ Pine so that the PVB could dismiss the violation and render this Article 78 proceeding moot."

Supreme Court granted Mr. Ko's petition, dismissed the summons, and vacated the fine, holding PVB lacked personal jurisdiction over Mr. Ko, at 608-609, stating: "[N]o provision is made in the Vehicle and Traffic Law for service of a summons by mail. Moreover, no exception is included in VTL §238(2) for vehicle operators who 'drive off' before a summons may be completed and properly served. The statute clearly provides that service may be completed only by one of two means — by personal delivery or by affixing the summons to the car.

The Ko decision was not appealed. PVB has not failed to comply with Meyers or Ko vis-a-vis the discrete summonses involved in those cases. However, PVB did not apply Meyers and is not applying Ko to similar cases not having litigious appeal, but that stay will not apply to similar cases not having litigious appeal, but that stay will not apply to an appeal, and on or about that date ceased enforcing 19 RCNY 39-12 (b) (3). CPLR 5519 (a) (1) imposes an automatic stay during a government appeal, but that stay will not apply to declaratory provisions of a judgment, which do not direct performance of an act in the future but rather are self-executing and effective immediately upon promulgation of the judgment; however, that lack of application is not free from doubt in the First Department.

Ko According to Ko, PVB mailed Mr. Ko a parking summons. The summons, by "Drive Off" and similar language, indicates the vehicle drove off before the summons was served. Mr. Ko moved to dismiss the summons for lack of personal jurisdiction. He denied he had been properly served under VTL 238 (2), in that the summons had neither been handed to him, nor to his car.

Administrative Law Judge Linda Hirsch denied the motion upon a hearing, found him guilty of the charged violation, and fined him $115, which he later paid. The PVB appeals board affirmed ALJ Hirsch's decision. Mr. Ko brought an Article 78 proceeding, seeking to annul the appeals board decision and have the summons dismissed for lack of personal jurisdiction. After Mr. Ko would not accept PVB's offer to settle his Article 78 by dismissing the summons and refunding the fine, Chief ALJ Mary Gotsopoulis remanded the matter of Mr. Ko's summons to ALJ Diane Pine, who dismissed the summons, stating the dismissal was "in the interests of justice in connection with Article 78 settlement negotiations." Then, alleging PVB had dismissed the summons and begun the process for reimbursement of the $115 fine to Mr. Ko, PVB moved to dismiss Mr. Ko's Article 78 proceeding as moot.

Eventually, after denying that motion, Supreme Court vacated PVB's dismissal of Mr. Ko's summons, concluding the dismissal exceeded PVB's statutory authority, was in violation of lawful procedure, was arbitrary and capricious, and had no factual basis. Among its findings concerning statutory authority, the court stated (at 607) the VTL did not "empower ALJ [Gotsopoulis] to unilaterally remand a matter to ALJ Pine so that the PVB could dismiss the violation and render this Article 78 proceeding moot."

Supreme Court granted Mr. Ko's petition, dismissed the summons, and vacated the fine, holding PVB lacked personal jurisdiction over Mr. Ko, at 608-609, stating: "[N]o provision is made in the Vehicle and Traffic Law for service of a summons by mail. Moreover, no exception is included in VTL §238(2) for vehicle operators who 'drive off' before a summons may be completed and properly served. The statute clearly provides that service may be completed only by one of two means — by personal delivery or by affixing the summons to the car.

The Ko decision was not appealed. PVB has not failed to comply with Meyers or Ko vis-a-vis the discrete summonses involved in those cases. However, PVB did not apply Meyers and is not applying Ko to similar cases not having litigious appeal, but that stay will not apply to similar cases not having litigious appeal, but that stay will not apply to
Impact of Two Court Decisions on Parking Violations

Continued From Page 8

ing summonses. PVB mails statutory pre-judgment notices, which are not parking summonses, may be mailed only after service of process has been completed and the time for responding to the summons has expired, and do not purport to be sum-

mones. The Ko decision, before rejecting mailing as process service, stated PVB mailed Mr. Ko a parking summons; how-

ever, no summons was mailed. In the Ko case PVB claimed notices of the summons were mailed. The Ko record contained no evidence or claim an original or copy of the summons was mailed.

Even assuming PVB mails the motorist a parking summons, the estoppel referred to in the memorandum will not support refusing to follow Ko (service by mail not permitted even in drive off cases), not even if an ALJ finds the motorist drove off to evade process. There can be no such estoppel without fraud or misrepresenta-

tion by defendant. Since under the applicable statute process service may be accom-

plished only upon personal delivery or by affixing the summons to the vehicle, driv-

ing off cannot mislead a process server into reasonably believing the statute authorizes process by mailing. Therefore, driving off to evade process will not estop a motorist from denying mailing is process service. “[I] is the instinct of our jurisprudence to extend the estoppel referred to in the memorandum will not support refusing to follow Ko (service by mail not permitted even in drive off cases), not even if an ALJ finds the motorist drove off to evade process. There can be no such estoppel without fraud or misrepresentation by defendant. Since under the applicable statute process service may be accomplished only upon personal delivery or by affixing the summons to the vehicle, driving off cannot mislead a process server into reasonably believing the statute authorizes process by mailing. Therefore, driving off to evade process will not estop a motorist from denying mailing is process service. “[I] is the instinct of our jurisprudence to extend the estoppel referred to in the memorandum will not support refusing to follow Ko (service by mail not permitted even in drive off cases), not even if an ALJ finds the motorist drove off to evade process. There can be no such estoppel without fraud or misrepresentation by defendant. Since under the applicable statute process service may be accomplished only upon personal delivery or by affixing the summons to the vehicle, driving off cannot mislead a process server into reasonably believing the statute authorizes process by mailing. Therefore, driving off to evade process will not estop a motorist from denying mailing is process service. “[I] is the instinct of our jurisprudence to extend the estoppel referred to in the memorandum will not support refusing to follow Ko (service by mail not permitted even in drive off cases), not even if an ALJ finds the motorist drove off to evade process. There can be no such estoppel without fraud or misrepresentation by defendant. Since under the applicable statute process service may be accomplished only upon personal delivery or by affixing the summons to the vehicle, driving off cannot mislead a process server into reasonably believing the statute authorizes process by mailing. Therefore, driving off to evade process will not estop a motorist from denying mailing is process service. “[I] is the instinct of our jurisprudence to extend the
Stated Meeting: Recent Significant Decisions from the Appellate Courts - October 26, 2010

Alan Rothbard, Jim Kehoe, Rich Lazarus and Dom Addabbo

Arthur Terranova, Hon. A. Gail Prudenti and Hon. Fred Santucci

Chanwoo Lee, President of QCBA, giving award to Hon. Fred Santucci for his outstanding service to the law.

Dom Chiariello, Ted Gorycki and Bernie Ferrera

George Nashak, Chanwoo Lee and Hugh Mo

Hon. Bernice Siegal, Chanwoo Lee, Hon. A. Gail Prudenti, Hon. Fred Santucci, Donna Furey, Todd Greenberg and Spiros Tsimbinos

Hon. Martin Ritholtz, Ed Rosenthal and Perry Sklarin


Hon. Seymour Boyers, Hon. Norman George and Hon. Harriet George

Photos by Walter Karling
Stated Meeting: Recent Significant Decisions from the Appellate Courts - October 26, 2010

Hon. Sheri S. Roman, Assoc. Justice of the Appellate Division, 2nd Dept.

Ira Futterman, Hon. Bernice Siegal, Bernie Vishnick and Hon. Allen Beldock

Maria Alaimo, Jonathan Silver and Donna Furey

Melissa Studin, Jill Stone, Hon. Bernice Siegal and Chanwoo Lee

Paul Shechtman speaking about criminal cases in the NY Court of Appeals

Remarks from Hon. Fred Santucci after receipt of award.

Andrew Fine discussing recent developments in the US Supreme Court

Spiros Tsimbinos, Moderator, discussing other pertinent issues in the appellate courts.

Wallace Leinheardt, Hon. Seymour Boyers and Hon. Morton Povman

Photos by Walter Karling
The Following Attorneys Were Disbarred By Order Of The Appellate Division, Second Judicial Department:

Allan E. Binder, admitted as Allan Eli Binder (May 4, 2010)

On January 29, 2009, the respondent entered a plea of guilty in County Court, Suffolk County, to receiving a bribe in the third degree, a class C felony. He thereafter failed to notify the Appellate Division of his conviction, as required by Judiciary Law §90(4)(c). As a result of his felony conviction, the respondent was automatically disbarred, effective January 29, 2009.

Neda B. Imasuen, admitted as Neda Bernards Imasuen (May 11, 2010)

The respondent was disbarred, on default, upon a finding that he was guilty of a pattern and practice of failing to cooperate with the Grievance Committee and neglect of a legal matter entrusted to him.

Michael J. Kaper, admitted as Michael Jonathan Kaper, a suspended attorney (May 11, 2010)

The respondent was disbarred, on default, upon a finding that he was guilty of, inter alia, failing to re-register as an attorney with the Office of Court Administration (OCA) for the biennial periods 1994 through 2008; failing to cooperate with the Grievance Committee; neglect of legal matters entrusted to him; misrepresenting the status of a matter to a client; handling a legal matter without adequate preparation; and failing to cooperate with the Nassau County Fee Arbitration Committee in seeking to arbitrate fees with three former clients.

Alain D. Kossi, admitted as Alain Damien Kossi (May 11, 2010)

On or about July 19, 2006, the respondent pleaded guilty in the United States District Court, Southern District of New York, to insider trading, a Federal felony. He thereafter failed to report his conviction to the Appellate Division, as required by Judiciary Law §90(4)(c). Inasmuch as the Federal felony would constitute a class E felony under New York’s General Business Law, the respondent was automatically disbarred in New York as of the date of his federal sentencing, November 14, 2006.

Brian Matthew Rosicky, a suspended attorney (May 11, 2010)

The respondent was disbarred, on default, upon a finding that he was guilty of failing to cooperate with the Grievance Committee; failing to re-register as an attorney with OCA for the biennial registration periods 2007-2008 and 2009-2010; misappropriating funds; failing to deliver funds; failing to render a proper accounting of funds; and failing to produce escrow records he was required to maintain.

Thomas Edward Wynne, a suspended attorney (May 11, 2010)

The respondent was disbarred, on default, upon a finding that he was guilty of a pattern and practice of failing to cooperate with the Grievance Committee’s investigation of multiple complaints involving dishonest checks and failing to release funds held in connection with a real estate action and a foreclosure action.

Nat J. Azzurra, admitted as Nat John Azzurra (May 18, 2010)

On January 14, 2010, the respondent was sentenced, upon his plea of guilty to grand larceny in the third degree, and grand larceny in the third degree, in the County Court, Westchester County. As a result of his felony conviction, the respondent was automatically disbarred effective January 14, 2010.

Cesar G. Cardona, admitted as Cesar G. Cardona, Jr., a suspended attorney (May 18, 2010)

The respondent was disbarred, on default, upon a finding that he was guilty of failing to cooperate with the Grievance Committee’s application of reciprocal discipline, pursuant to 22 NYCRR 691.3, the respondent was disbarred in New York.

Maureen Elizabeth Delgado, a suspended attorney (June 8, 2010)

The respondent was disbarred, on default, upon a finding that she was guilty of failing to re-register as an attorney with the Office of Court Administration (OCA) from 2001 through 2006; failing to cooperate with the Grievance Committee in its investigation of the foregoing and failing to schedule a court-ordered examination to determine if she was incapacitated due to medical illness.

Raghbir K. Gupta (June 8, 2010)

On April 7, 2008, the respondent was found guilty, after a jury trial in the United States District Court for the Southern District of New York, of immigration fraud. The respondent was convicted of engaging in conduct prejudicial to the administration of justice by converting funds and/or failing to safeguard funds entrusted to her as a fiduciary; engaging in conduct adversely reflecting on her fitness to practice law by converting funds and/or capturing a legal fee from funds entrusted to her as a fiduciary; failing to render an appropriate accounting of funds held in escrow; engaging in conduct prejudicial to the administration of justice and/or adversely reflecting on her fitness as a lawyer by failing to cooperate with the lawful demands of the Grievance Committee; engaging in conduct involving dishonesty, deceit, fraud or misrepresentation by misrepresenting to the Grievance Committee that she did not receive a legal fee for her representation in a legal matter; engaging in an impermissible conflict of interest by acting as a real estate broker and/or as a real estate agent while a disbarred attorney; and failing to cooperate with the Office of Court Administration (OCA).

On August 21, 2009, the respondent was convicted, upon his plea of guilty in the Supreme Court, Westchester County, of three counts of grand larceny in the second degree, a class C felony. By virtue of his felony conviction, the respondent ceased to be an attorney and counselor-at-law pursuant to Judiciary Law §90(4)(a) as of December 1, 2009.

Neil W. Silverblatt, admitted as Neil William Silverblatt (June 22, 2010)

On August 21, 2009, the respondent was convicted, upon his plea of guilty in the Supreme Court, Westchester County, of two counts of grand larceny in the second degree, a class C felony, and one count of scheme to defraud in the first degree, a class E felony. By virtue of his felony conviction, the respondent ceased to be an attorney and counselor-at-law pursuant to Judiciary Law §90(4)(a) as of December 24, 2009.

Marc A. Zirogiannis, admitted as Marc Allyn Zirogiannis (June 22, 2010)

On November 24, 2009, the respondent was convicted, upon his plea of guilty in the Supreme Court, New York County, to one count of grand larceny in the fourth degree, a class E felony, and scheme to defraud in the first degree, also a class E felony. By virtue of his felony conviction, the respondent ceased to be an attorney and counselor-at-law pursuant to Judiciary Law §90(4)(a) as of November 24, 2009.

Stephen T. Mitchell, admitted as Stephen Theodore Mitchell (July 6, 2010)

The respondent tendered a resignation wherein he acknowledged that he could not successfully defend himself on the merits against allegations that he, inter alia, misappropriated and failed to account for funds entrusted to him as a fiduciary, and that he, inter alia, misappropriated and failed to account for funds entrusted to him as a fiduciary; and engaged in conduct prejudicial to the administration of justice by failing to timely re-register as an attorney with OCA. In determining an appropriate measure of discipline to impose, the Appellate Division noted the respondent’s “apparent disregard for deadlines and the disciplinary process…”

Ira Samuel Schwartz, a suspended attorney (July 13, 2010)

The respondent was disbarred, on default, upon a finding that he was guilty of failing to cooperate with the Grievance Committee and failing to re-register as an attorney with OCA.

Linda M. Dietrich, admitted as Linda Marie Dietrich (August 3, 2010)

The respondent tendered a resignation wherein he acknowledged that he could not successfully defend himself on the merits against allegations that she, inter alia, misappropriated and failed to account for funds entrusted to her as a fiduciary, and that she, inter alia, misappropriated and failed to account for funds entrusted to her as a fiduciary; and engaged in conduct prejudicial to the administration of justice by failing to timely re-register as an attorney with OCA.

Robert A. Rudolph, admitted as Robert Alvarez Rudolph (July 6, 2010)

By order of the Supreme Court of Florida dated March 6, 2008, the respondent was disbarred, upon his default, from the practice of law wherein he acknowledged that he could not successfully defend himself on the merits against allegations that he, inter alia, engaged in conduct prejudicial to the administration of justice, which adversely reflects on his fitness to practice law.

Robert A. Rudolph, admitted as Robert Alvarez Rudolph (July 6, 2010)

On October 13, 2006, the respondent pleaded guilty in the United States District Court for the Eastern District of New York to making false statements for the purpose of obtaining a loan insured by the United States Department of Housing and Urban Development (“HUD”), a federal felony. On May 29, 2009, he was sentenced to neither prison nor probation, and any fine was waived, in recognition of his “extensive cooperation with the government.” However, inasmuch as the federal felony of making false statements for the purpose of obtaining a HUD-insured loan is “essentially similar” to the New York felony of offering a false instrument for filing in the first degree, the respondent received a three-year suspension from the practice of law wherein he acknowledged that he could not successfully defend himself on the merits against allegations that he, inter alia, misappropriated and failed to account for funds entrusted to her as a fiduciary, and that she, inter alia, misappropriated and failed to account for funds entrusted to her as a fiduciary; and engaged in conduct prejudicial to the administration of justice by failing to timely re-register as an attorney with OCA. In determining an appropriate measure of discipline to impose, the Appellate Division noted the respondent’s “apparent disregard for deadlines and the disciplinary process…”

Edwin Frederick (August 3, 2010)

On October 13, 2006, the respondent pleaded guilty in the United States District Court for the Eastern District of New York to making false statements for the purpose of obtaining a loan insured by the United States Department of Housing and Urban Development (“HUD”), a federal felony. On May 29, 2009, he was sentenced to neither prison nor probation, and any fine was waived, in recognition of his “extensive cooperation with the government.” However, inasmuch as the federal felony of making false statements for the purpose of obtaining a HUD-insured loan is “essentially similar” to the New York felony of offering a false instrument for filing in the first degree, the respondent received a three-year suspension from the practice of law wherein he acknowledged that he could not successfully defend himself on the merits against allegations that he, inter alia, misappropriated and failed to account for funds entrusted to her as a fiduciary, and that she, inter alia, misappropriated and failed to account for funds entrusted to her as a fiduciary; and engaged in conduct prejudicial to the administration of justice by failing to timely re-register as an attorney with OCA. In determining an appropriate measure of discipline to impose, the Appellate Division noted the respondent’s “apparent disregard for deadlines and the disciplinary process…”

On December 4, 2010, during the celebration of Chanukah 2010, Manhattan’s PARK EAST SYNAGOGUE, at 163 East 67th Street, presented a Jewish cantorial concert entitled “SYMPHONY OF THE SOUL.” Performing at the concert were the internationally acclaimed YITZCHAK MEIR HELFGOT, the Chief Cantor of the synagogue, and his special guest at this year’s concert — SENIOR CANTOR SHIMON FARKAS, of Australia’s Central Synagogue in Sydney, who once was the cantor of a now-closed resort hotel in upstate New York. Both Cantor Helfgot and Cantor Farkas were excellent and in superb form.

PARK EAST SYNAGOGUE, at 163 East 67th Street, is a noted synagoguing school, whose spiritual leader since 1962 has been Rabbi Arthur Schneier. The energetic Rabbi Schneier, a Holocaust survivor, will be celebrating his 81st birthday in March. 2011.

My guest for the evening, AARON MORRILL, ESQ., an attorney, Chief Executive Officer, and music producer, is the Chief Executive Officer of the beverage company HELFGOT, Performing at the concert were the international superstar of Jewish cantorial and his special guest at this year’s concert, CANTOR BENNY BOGOSNITZKY. On the piano was CANTOR DANIEL GILDAR MAESTRO RUSSELL GER, a young, wonderful conductor who has a lot of energy and whose huge talent is earning consistently a top reputation, conducted the choir.

The 21 performances in Greenwich Village are also the centerpiece of a larger national tour spanning four months and

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SYMPHONY OF THE SOUL at the PARK EAST SYNAGOGUE

The magic and wonder of MUMMENSCHANZ returns to New York City for the first time since 2003 with a special three-week holiday engagement in New York City at The SKIRBall CENTER FOR THE PERFORMING ARTS, FROM DECEMBER 20, 2010 THROUGH JANUARY 8, 2011. The program showcases the incredible humor, versatility and pure imagination of the celebrated Swiss performance troupe in a dazzling spectacle that the whole family will love. For nearly four decades, MUMMENSCHANZ has captivated audiences worldwide with its pioneering non-verbal theatre of movement and transformation.

In the surreal, comic, wordless universe of MUMMENSCHANZ, everyday objects such as toilet paper, wrenches, tubes, and boxes spring to life to become fantastical characters, and abstract forms and ordinary shapes interact in surprising ways to reveal timeless truths about human connections and relationships. The troupe creates a playful and uniquely memorable experience through an inventive use of forms, sounds, and light, with a creative manipulation of sculptural, expressive masks. The result is a visually stunning spectacle of family entertainment that sparks the imagination and transcends cultural barriers.

Founding artists BERNIE SCHÜCHR and FLORIANA FRASSETTO are the featured performers and directors, presenting some of the troupe’s timeless favorites and most beloved creations. They are joined by RAFFAELLA MATTIOLI and PIETRO MONTANDON, who began their association with MUMMENSCHANZ in 1992. BERNIE SCHÜCHR and FLORIANA FRASSETTO have a powerful connection to America, and with New York theatergoers, in particular, for us, since it is here that we initially enjoyed our first big breakthrough with a long-running show on Broadway at the Bijou Theatre.

Co-presented by MUMMENSCHANZ FOUNDATION and THE SKIRBall CENTER FOR THE PERFORMING ARTS, the three-week engagement is one of the highlights of the upcoming season, and the family-friendly entertainment will be included in the theater’s popular Big Red Chair Family Series. Included among the yuletide shows is a Christmas Eve matinee at 2:00 PM ET, and two specially scheduled performances on New Year’s Eve, at 4:00 PM and 7:00 PM ET. The artists will also participate in a series of lively and informative “Talk Back” events, where the audience has the opportunity to ask questions and interact with the performers.

The 21 performances in Greenwich Village are also the centerpiece of a larger national tour spanning four months and
immediately threatening the public interest based, inter alia, on his failure to cooperate with the Grievance Committee.

Sheldon Cowen (May 7, 2010)

On the Court’s own motion, the respondent was suspended from the practice of law in New York; pending further order of the Court, based upon a judicial declaration of his incapacity.

Robert V. Fonte (May 11, 2010)

Following a disciplinary hearing, the respondent was found guilty of breaching his fiduciary duty and failing to safeguard and ensure the transactional integrity of funds entrusted to him, incident to his practice of law; failing to promptly pay or deliver funds, which were placed in his possession by clients and disbursed to third parties, to the clients or third parties entitled to receive them; failing to make reasonable efforts to adequately supervise the work of attorneys within his firm; engaging in conduct prejudicial to the administration of justice; and engaging in conduct adversely reflecting on his fitness as a lawyer; engaged in an impermissible conflict of interest; and engaged in conduct prejudicial to the administration of justice.

Timothy C. Quinn, a suspended attorney (August 3, 2010)

The respondent tendered a resignation wherein he acknowledged that he could not successfully defend himself on the merits against pending charges alleging that she, as an attorney, in the New York felony of possessing a sexual performance by a child, he, which belonged to another person; engaged in conduct reflecting adversely on his fitness as a lawyer by violating his fiduciary obligations and duties due to his inability to account for funds held in his attorney trust account for funds held in his attorney trust account; breaching his fiduciary duty and failing to exercise his supervisory responsibilities in breach of his fiduciary duty by permitting checks to be issued from his attorney trust account on one or more occasions in which there were excess disbursements by a non-lawyer using a signature stamp of the respondent; and engaging in conduct that adversely reflects on his fitness to practice law by reason of the foregoing; failing to exercise his supervisory responsibilities in breach of his fiduciary duty by permitting checks to be issued from his attorney trust account on one or more occasions in which there were excess disbursements by a non-lawyer using a signature stamp of the respondent; and engaging in conduct that adversely reflects on his fitness to practice law by reason of the foregoing.

The Following Attorneys Were Suspended By Order Of The Appellate Division, Second Judicial Department:

Emanuel A. Towns, admitted as Emanuel Alexander Towns (April 27, 2010)

Following a disciplinary hearing, the respondent was found guilty of engaging in conduct adversely reflecting on his fitness as a lawyer by failing to comply with the disciplinary provisions of the Grievance Committee with reckless disregard of the truth.

Ganiu Owolabi Ajose (May 3, 2010)

The respondent was immediately suspended from the practice of law, pending further proceedings, upon a finding that he was guilty of professional misconduct immediately threatening the public interest based, inter alia, on his failure to cooperate with the Grievance Committee.

Sheldon Cowen (May 7, 2010)

On the Court’s own motion, the respondent was suspended from the practice of law in New York; pending further order of the Court, based upon a judicial declaration of his incapacity.

Robert V. Fonte (May 11, 2010)

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Timothy C. Quinn, a suspended attorney (August 3, 2010)

The respondent tendered a resignation wherein he acknowledged that he could not successfully defend himself on the merits against pending charges alleging that she, as an attorney, in the New York felony of possessing a sexual performance by a child, he, which belonged to another person; engaged in conduct reflecting adversely on his fitness as a lawyer by violating his fiduciary obligations and duties due to his inability to account for funds held in his attorney trust account for funds held in his attorney trust account; breaching his fiduciary duty and failing to exercise his supervisory responsibilities in breach of his fiduciary duty by permitting checks to be issued from his attorney trust account on one or more occasions in which there were excess disbursements by a non-lawyer using a signature stamp of the respondent; and engaging in conduct that adversely reflects on his fitness to practice law by reason of the foregoing; failing to exercise his supervisory responsibilities in breach of his fiduciary duty by permitting checks to be issued from his attorney trust account on one or more occasions in which there were excess disbursements by a non-lawyer using a signature stamp of the respondent; and engaging in conduct that adversely reflects on his fitness to practice law by reason of the foregoing.

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Ganiu Owolabi Ajose (May 3, 2010)

The respondent was immediately suspended from the practice of law, pending further proceedings, upon a finding that he was guilty of professional misconduct immediately threatening the public interest based, inter alia, on his failure to cooperate with the Grievance Committee.
Court Notes

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services, without obtaining the consent of the lenders after full disclosure of his multiple interests in the transaction(s); accepting a commission by a non-attorney for the benefit of any person other than a client in relation to his representation or employment by the client; engaging in an impermissible conflict of interest by representing both the borrower and the lender, in one or more real estate transactions, without obtaining the consent of either after full disclosure; and engaging in conduct that adversely reflects on his fitness to practice law by reason of the foregoing.

Robert John Demers, Jr., (June 8, 2010)

On January 4, 2010, the respondent pleaded guilty in the United States District Court for the Southern District of New York, to one count of conspiracy to commit bank fraud and five counts of wire fraud. As a result of his plea of guilty to a serious crime, the Appellate Division immediately suspended the respondent on its own motion, pursuant to Judiciary Law §906(3), pending his supreme court appeal.

Stuart N. Kingoff, admitted as Stuart N. Kingoff

On November 18, 2008, the Supreme Court of the State of New York, Nassau County, of operating a motor vehicle while under the influence of alcohol, a classified misde- meanor, and reckless endangerment in the second degree, a class A misdemeanor, and engaging in conduct that adversely reflects on his fitness as a lawyer by reason of the foregoing.

Adam Lawrence Gross, admitted as Adam Gross (August 3, 2010)

By order of the Supreme Court of Ohio dated January 9, 2009, the respondent was found guilty of a serious crime, and continuing until further order of the Court, pursuant to Judiciary Law §904(4)(c).

Barr B. Musof, admitted as Barr Benjamin Musof (July 13, 2010)

Following a disciplinary hearing, the respondent was found guilty of engaging in illegal conduct that adversely reflects on his honesty, trustworthiness or fitness as a lawyer based upon his conviction in Supreme Court, Nassau County.

Sanction Attorneys For The Following Conduct:

Failing to timely re-register with the New York State Office of Court Administration (5)

Failing to carry out a contract of employment and failing to maintain adequate communication with a client

Neglecting a legal matter and failing to maintain adequate communication with the client

Neglecting a legal matter; failing to supervise the work of an attorney to whom the matter was assigned; and failing to maintain adequate communication with a client

Neglecting a legal matter; failing to ade- quately supervise the employee to whom the attorney delegated responsibility for obtaining required information; and failing to provide a client in a domestic relations matter with a written retainer agreement and/or monthly billing statements

Neglecting legal matters and failing to act with reasonable diligence and prompt ness in representing clients

Failing to provide a client with a retainer agreement addressing the scope of legal services to be provided, an explanation of the fees to be charged and/or the client’s right to invoke fee arbitration

Misrepresenting pertinent facts to a court

Putting a case into suit without with meeting, or discussing the matter, with the client(s) and obtaining the information to prepare the subject complaint from an adversarial party

Representing a client without paying appropriate attention to the legal work and/or adequately preparing, as well as failing to exert best efforts to ensure that the client’s decisions were “informed”

Failing to promptly refund an unearned fee; failing to abide by the terms of the fee arbitration process; and failing to comply with an award and judgment issued and/or entered in Small Claims Court

Failing to maintain required bookkeeping records; failing to identify a fiduciary account as an IOLA, escrow, trust or special account, as required; and failing to timely cooperate with the Grievance Committee

Sharing fees with a non-attorney and/or improper engagement in multidisciplinary practice with said non-attorney

This edition of COURT NOTES was compiled by Diana J. Szochet, Assistant Counsel to the Grievance Committee for the Second, Eleventh and Thirteenth Judicial Districts and Past President of the Brooklyn Bar Association. The material contained herein is reprinted with permission of the Brooklyn Bar Association.
LaGuardia Place (at Washington Square), it provides a large-scale, professional performance for a major university-based professional multi-arts presenting program in Manhattan.

BRYAN DYKSTRA'S HOLIDAY
Go buy tickets for BRYAN DYKSTRA'S HOLIDAY running until December 19, 2010, at THE DRILLING THEATER COMPANY on West 78th street in Manhattan's Upper West Side. BRYAN DYKSTRA is an accomplished raconteur who has written and performed 2 pieces of stories, with amazing rhymes, that he wrote in this excellent one-man show. In his first story, HOLIDAY - the title of the entire show - imagine a traditional Christmas action brought by Santa Claus’s well-heeled law firm against the Green Giant - you know, of the well-known canned vegetable fame. The story is hilarious and was very well told by BRYAN DYKSTRA who deftly captured and swatted occasional technical glitches that occurred on the show’s opening night.

The second part of the show was BRYAN DYKSTRA exciting his composition of “Summy,” concerning the plight of a magnificent Vermont tree that is brought with other trees for Christmas sale. Sadly, this beautiful tree gets overlooked and not purchased for a variety of reasons, and BRYAN DYKSTRA brings a great vulnerability in his touching recitation.

One piece of advice for improvement on this excellent show would be to add some background to his presentation, whether it be visual aids or music - anything to add to the background. BRYAN DYKSTRA chose a well-decorated Christmas living room as the set for both pieces, but the program has not been enhanced by music or visuals in the background. BRYAN DYKSTRA is a fascinating raconteur and author, and I encourage you to see this show, directed by DONALD PERRY [2 “T’s, not a typo], before it closes on December 19.

LOOKING AT CHRISTMAS AT THE FLEA
THE FLEA THEATER, at 41 White Street, by the courts in lower Manhattan, has a wonderful resident theatrical company of exceptionally talented actors, called THE BATS. The presentation of LOOKING AT CHRISTMAS was worthy of the great tradition of THE FLEA. Written by STEVEN BANKS. LOOKING AT CHRISTMAS is a heart-warming story of two childhood centers on two persons, a young man and a young woman, meeting at the Christmas windows at Bloomfield’s Department store downtown to tour other Christmas display store windows of other department stores - and that running around has to be done, at least once by every New Yorker, even the most jaded!

STEVEN BANKS is a distinguished head writer of the Emmy-nominated SEXTET. His writing captures the brilliance of Steven Banks’ play, in addition to the easy dialogue, is the altering of scenes between those of the young couple (played by THE BATS), and some of the mannequins in the window who comment on the young couple. BANKS’ play is witty and riveting. JIM SIMPSON’s direction brings beautiful life to the script. The direction by Jim Simpson is engaging. GABRIEL BERRY’s costume design is spectacular.

THE QUEENS BAR BULLETIN – DECEMBER 2010
The acting was terrific: ALLISON BUCK brought a genial charm and engaging sincerity as the transgender Midwesterner brought to New York City in December to seek fame, career, and fortune. Many Puccini roles at the Met, including leading roles in La Bohème, Madama Butterfly, Manon Lescaut, Turandot, and Tosca.

MAESTRO NICOLA LUSOTTI made his Met debut conducting Puccini’s Tosca in 2006. ELISABETE MATOS was at the Met debut as Minnie on December 22, and CARL TANNER will make his Met debut as Dick Johnson on December 27. The December 10, 1910 world premiere of the opera earned nineteen curtain calls for Puccini, stage director David Belasco, stars Emlyn Devon and Enrico Caruso, and conducted Arturo Toscanini. A review in the New York Herald of that evening reported that the performance was a triumph for all involved:

“The event had been looked forward to as the one of the most brilliant in the history of the house, and the result justified all expectation. Miss Destinn in the title role sang as she never had before, particularly in the second act, where her vocal art was taxed to the utmost. Mr. Caruso, as Dick Johnson, had one of the best roles that has ever fallen to his lot. Mr. Toscanini seemed to have poured all his artistic Wit into the conducting. Seldom has such teamwork among great artists been seen and heard. In a word, it was the kind of premiere which of older Europe would have been envious.”

The opera has been revived at the Met ten times. Destinn and Caruso repeated their roles in the 1990 revival in movie theaters, on the radio and on the internet, through distribution platforms the Met has established with many various media partners. The January 8, 2011 matinee of LA FANCIULLA DEL WEST was transmitted to more than 1,500 movie theaters in more than 40 countries globally as part of The Met: Live in HD series. The opera’s 1910 world premiere at the Met, with MARCELLO GIORDANI as the title role, made the opera a household name with audiences around the globe, and has been produced in more than 100 countries globally as part of The Met: Live in HD series. The opera’s 1910 world premiere at the Met, with MARCELLO GIORDANI in his role debut as Dick Johnson and Lucio Gallo as the villainous Jack Rance, San Francisco Opera Music Director NICOLA LUSOTTI will conduct his first Met performances of the work, which the composer told The New York Times in 1910 he considers the best of his operas.”

GIANCARLO DEL MONACO returns to direct the revival of his 1991 production. LA FANCIULLA DEL WEST will be experienced by millions of people around the world in movie theaters, on the radio and on the internet, through distribution platforms the Met has established with many various media partners. The January 8, 2011 matinee of LA FANCIULLA DEL WEST is scheduled for December 6 for a series of performances commemorating the 100th anniversary of the opera’s 1910 world premiere at the Met, with MARCELLO GIORDANI in his role debut as Dick Johnson and Lucio Gallo as the villainous Jack Rance, San Francisco Opera Music Director NICOLA LUSOTTI will conduct his first Met performances of the work, which the composer told The New York Times in 1910 he considers the best of his operas.”

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Unauthorized Insurance Carriers in New York

Continued From Page 1

In 2007 the Appellate Division Second Department was faced with a Pennsylvania case involving an uninsured motorist claim by a New York resident against a Pennsylvania resident. The Pennsylvania Supreme Court had previously held that the uninsured motorist claim was permitted to have at the time of such happening a material interest which will be adversely affected by the happening of such event.

b) Except as provided in paragraph 2, 3 or 3-A of this subsection, any of the following acts in this state, effected by mail from outside the state or otherwise, by any person, firm or corporation including a stock or non-stock company shall constitute doing in an insurance business in this state and shall constitute doing business in the state within the meaning of §302 of the Civil Practice Law and Rules:

(1) Collecting any premium, membership fee, or surety, any contract of warranty, guarantee or surety; any contract of insurance or other consideration for any business dealing, i.e., additional business within the meaning of this subsection, any of the following acts in this state, effected by mail from outside the state or otherwise, by any person, association or corporation authorized to do business herein, or solicitation of applications for any such policy or contract;

(2) Making, or proposing to make, as insurer, any insurance contract, including either insurance or delivery of a policy or contract of insurance to a resident of this state or to any insurer, association or corporation authorized to do business herein, or solicitation of applications for any such policy or contract;

(3) Making, or proposing to make as warrantor, guarantor or surety, any contract of warranty, guarantee or surety; any contract of insurance or other consideration for any business dealt in this state, effected by mail from outside the state or otherwise; by any person, association or corporation authorized to do business herein, or solicitation of applications for any such policy or contract;

(4) Collecting any premium, membership fee, assessment or other consideration for any policy or contract of insurance;

f) Making any kind of business, including a reinvestment of a trust fund, recognized as constituting a doing of an insurance business within the meaning of this chapter.

In General Accident Insurance Company v. Tran the Appellate Division Second Department was faced with an insurance coverage issue involving a New York resident who was not required to prove a serious injury under New York no-fault law. The New York no-fault law was not required to prove a serious injury prior to recovery as New York Insurance Law §3202(g) did not apply. This holding has not been changed by the New York Court of Appeals Decision in 2007 in Raffelini v. State Farm Mutual Automobile Insurance Company but as the Appellate Court held in the present case, the determination of the existence of a serious injury should be based on the application of New York no-fault law. The Appellate Court held in the present case that the insured person was not required to prove a serious injury under New York no-fault law.

In Woodbine v. We Try Harder, Inc., the Trial Court in Queens County (Judge Nat Torcivia in the Second Department) held that under New York Insurance Law §5102(d). In this proceeding the Appellate Court held that under New York Insurance Law §5102(d) the insurance carrier was not required to prove a serious injury under New York no-fault law. The New York no-fault law was not required to prove a serious injury prior to recovery as New York Insurance Law §3202(g) did not apply. This holding has not been changed by the New York Court of Appeals Decision in 2007 in Raffelini v. State Farm Mutual Automobile Insurance Company but as the Appellate Court held in the present case, the determination of the existence of a serious injury should be based on the application of New York no-fault law. The Appellate Court held in the present case that the insured person was not required to prove a serious injury under New York no-fault law.

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**Culture Corner**

Continued From Page 16

SIMON RATTLE, Artistic Director of the Berlin Philharmonic, will make his Metropolitan Opera debut on November 29, 2010, leading a revival of Debussy’s PELLÉAS ET MÉLISANDE. The cast will feature Czech mezzo-soprano MAGDALENA KOČENA as MÉLISANDE and French baritone STÉPHANE DEGOUT as PELLÉAS. GERALD FINLEY will sing the role of PELLÉAS’s jealous brother RAOUl.

DEGUOT will sing the role of his mother Geneviève, and WILLARD WHITE will complete the cast as the aged monarch Arkel, as he sings making their Met role debuts. Debussy’s opera, based on the late 19th-century symbolist play by Maurice Maeterlinck, is the quintessential Impressionist opera, with a richly orchestrated score colorfully evoking the moods of the mysterious drama on stage. Jonathan Miller’s production, which premiered at the Met in 1995, is “a masterpiece of understatement, and yet it reflects the tiniest shifts of texture, urgency, and emotion in Debussy’s music,” says Journal of Financial Times). SIMON RATTLE, the internationally acclaimed conductor who in the opinion of one Guardian reporter “has made his name with this music,” will keep up the tradition of using cutting-edge technology.

The one area of disappointment for the video conference unit has been the number of requests for video court appearances. These appearances are governed by section 182 of the Criminal Procedure Law, with a maximum of 120 per week. In 1998 to 1991, there were fewer than 120 requests for the company. From 1998 to 1991, he was director of dance while MMDG was the national company of Belgium at the Théâtre Royal de la Monnaie in Brussels. In 1990, he founded the White Oak Dance Project with Mikhail Baryshnikov. Morris is also a ballet choreographer having created seven works for the San Francisco Ballet since 1994 and received commissions from many others. MARK MORRIS has worked extensively in opera, having been involved in productions for The Metropolitan Opera, New York City Opera, English National Opera, and the Royal Opera. In 1995, Morris was named a fellow of the MacArthur Foundation in 1991. For more information, visit www.mmdg.org.

Even with distances, reservations, and complex technology at BAM is easy:

**Video Conferencing**

Continued From Page 4 — interviews. In a little more than three years, the video conference unit has entertained more than 6,000 requests for video interviews. Two thirds of those requests have come from probation officers. The remainder were scheduled by attorneys who practice in Queens. Currently we average 3000 interview requests per year. We expect this number to peak at 4000 requests in 2007.

The one area of disappointment for the video conference unit has been the video court appearances. These appearances are governed by section 182 of the Criminal Procedure Law and by Part 106 of the Rules of the Court. By statute, video court appearances have been held since 1995. Judges order video appearances for hearings, trials, certain pleas and certain sentences. In addition, the court must obtain the consent of the defendant in order to proceed by video. The latter restriction has been the main obstacle to the success of video court appearance program. Even so, there are several situations in which video court appearances would be ideal. Most obvious are the instances where attorneys intend to submit an affirmation of actual engagement. Where an affirmation must be read, the video conference can often an abysmal waste of time and resources to have Correction bring an inmate into court simply to advise the defendant of an adjourned date. If the attorney consents to the video appearance in his/her affirmation and if the request is submitted 10 days in advance of the video court appearance, the video calendar and spared the defendant of making his/her appearance in his/her presence. Finally, defendants who are being held in another county, or who have a warrant out for them, are also appropriate for video court appearances. Finally, defendants who are being considered for inpatient programs, where the defendant is not available on the adjourned date, are also appropriate for video court appearances.

The video unit is also exploring the feasibility of using videoconferencing technology for hospital appointments. Due to the delicate nature of the hospital setting, this goal is more difficult to attain. Currently, only Bellevue Hospital has agreed to participate in video pilot program with the Courts, but we hope to have more city hospitals on board by the end of the year. When the notion of using videoconferencing in our daily lives was first introduced to us at the 1964 World’s Fair and then later in the Disney theme parks, it piqued our interest. We were believed that we would see this futuristic vision in our lifetime. Well, video conferencing is now a reality and the Queens Supreme Court is taking every step possible to implement this technology to the field and to address the ever increasing demand by court users to avail themselves of this cutting-edge technology.

**WAVE FESTIVAL**. RAOUl, played to packed audiences at BAM during November 2010, I know. I love it.” The last Saturday evening show was held so that the efficient BAM ushers could fill every possible seat in the house with persons waiting on a long line trying to get in. The show is staged by Compagnie du Hanmoten, but is essentially a main show of JAMES THIERREE, the gifted gifted dancer/choreographer. James Thierree’s CHARLIE CHAPLIN, JAMES THIERREE] has great energy and creativity. He is a clown, actor, acrobat, and trapeze artist, a man never seen physically demanding role. The role is pure physicality. There are no words in the piece, although occasional sounds. PELLÉAS ET MÉLISANDE should be the invitation of the role toward the outside world and aided by wonderful, imaginative props created by VICTORIA THIERREE, the wife of the show’s star. Among the props, the props were a gigantic floating elephant, a depressed jellyfish, a large arachnida fish, and a fossilized bird. It is the mastery of JAMES THIERREE’s energy, the quality that made his grandfathers another cinematic legend and a comedic genius was his ability, even without words, to evoke emotion, as in Chaplin’s portrayal of a tramp, even with a walk done with the back to the camera. JAMES THIERREE has those qualities well within them, but they did not emerge. The part that engaged me was JAMES THIERREE as Raoul tapping his foot and eventually moving to a phonograph playing “I Whistle a Happy Tune” from The King and I, or his sticking his head into the long ear of the ancient phonograph when the needle got stuck. In both scenes, JAMES THIERREE was expressing a human emotion to the beauty of the music through sheer physicality and exasperation at a technical glitch. What made Chaplin great was his understanding and feeling of human emotions and vulnerability. I urge you to focus on those traits in a future production. I hope he returns to the USA, but in a production that also allows him to have a voice again and have human emotions in his characterizations.

A great contrast can be made in BRIAN DYSKA’S “HÔ” [reviewed above] and JAMES THIERREE of THE HARD NUT at BAM. BRIAN DYSKA’S show relied on all words to convey the meaning, and BRIAN DYSKA’s unbelievable and gifted star, JAMES THIERREE, who has an acting career, conveys the sadness, emotions, and challenges faced by his character.

The amazing scenography in RAOUl is provided by JAMES THIERREE.

**THE HARD NUT at BAM**

Mark Morris Dance Group’s joyous holiday classic, THE HARD NUT is now playing at BAM’S HOWARD GILMAN OPERA HOUSE at 30 Lafayette Avenue, in downtown Brooklyn until December 19, 2010. I urge you to go. Performances are on: Dec 10, 11 & 15-18 at 7:30pm, and on Dec 12 & 19 at 3pm. Tickets range in price from: $25, 45, 60, 75, 90, and 160. The show is appropriate for ages 4 up. 

**THE HARD NUT**, a hilarious yet reverent holiday rendition of The Nutcracker, returns to BAM after an eight year absence, part of the Mark Morris Dance Group’s 30th Anniversary Season. “Morris’ choreography is so joyful, so inherently funny,” raves the San Francisco Chronicle. It is this mix of playful and exquisite dance combined with the greatest respect for E.T.A. Hoffman’s story.” Listed by the New York Times as a “recommended holiday outing.”

Piotr Ilyich Tchaikovsky’s iconic score that has resulted in this family friendly favorite winning OTVAN TV’s Battle of the Nutcrackers two seasons running. Morris updates the classic holiday tale by setting in it the swinging 1960/70s, complete with go-go boots, G.I. Joe soldiers, dancing Gumball machines, and a bouncing casting. THE HARD NUT takes its title from the slimy sinister plot of The Nutcracker and the Mouse King. Hollywood’s version of THE HARD NUT has been an evil Rat Queen figure. princess Parplip and offers an impossible challenge: the girl will regain her beauty if a young man can solve an impossible puzzle. Morris played his audience with “the teeth,” Drosselmeyer, the kind family friend, searches the world over but finds the hidden nut back at home 15 years later, just when a suit who is up to the challenge finally emerges.

**MARK MORRIS** was born in 1956 in Seattle, Washington. He formed the MARK MORRIS DANCE GROUP (“MMDG”) in 1980 and has since created more than 120 works for the company. From 1988 to 1991, he was director of dance while MMDG was the national company of Belgium at the Théâtre Royal de la Monnaie in Brussels. In 1990, he founded the White Oak Dance Project with Mikhail Baryshnikov. Morris is also a ballet choreographer having created seven works for the San Francisco Ballet since 1994 and received commissions from many others. MARK MORRIS has worked extensively in opera, having been involved in productions for The Metropolitan Opera, New York City Opera, English National Opera, and the Royal Opera. In 1995, Morris was named a fellow of the MacArthur Foundation in 1991. For more information, visit www.mmdg.org.

Even with distances, reservations, and complex technology at BAM is easy:

Subway: 2, 3, 4, 5, Q, B to Atlantic Avenue; D, N, R to Pacific Street; G to Franklin Street.

Train: Long Island Railroad to Flatbush Avenue

Bus: B25, B26, B41, B45, B52, B67 all stop within three blocks of BAM. Car: Commercial parking lots are located adjacent to BAM.

**John Gabriel Borkman** by BAM

HENRIK IBSEN is probably my favorite playwright, so I am delighted to share with you that BAM will present a production of Ibsen’s classic JOHN GABRIEL BORMANK at BAM in January, 2011. The production stars ALAN RICKMAN, I expect the show will be eventually sold out, so please do yourselves a favor and avoid being shut out. For ticket information, call BAM Ticket Services at 718.636.4100, or visit www.BAM.org.

**John Gabriel Borkman**

JOHN GABRIEL BORKMAN at BAM

**Howard L. Wieder** is the writer of both THE "CULTURE CORNER" and the "BOOKS AT THE BAR" columns, managing editor of THE QUEENS BAR BULLETIN, and is JUSTICE CHARLES J. MARKEY’S PRINCIPAL LAW CLERK in Supreme Court, Queens County, Long Island City, New York.
Unauthorized Insurance Carriers In New York

Continued From Page 17

non-resident. The Deemer Statute, Insurance Law §5107, would not apply as the unauthorized carrier incorporated in a state greater than the New York minimum. New York rules including Insurance Law §5102(d) would apply as a New York resident is receiving similar benefits as they would with a New York authorized insurer, therefore, New York rules would apply.

In New York “A covered person” is precluded from suing another “covered person” in negligence for basic economic loss equal to the amount he or she receives in first party benefits. A covered person may only exclude from coverage certain items of basic economic loss as defined by the no-fault statute without the requirement of showing a serious injury. An insurance carrier may only exclude from coverage certain categories of losses including the following:

1.) Intentional act
2.) Injuries which occurred while the claimant was driving while intoxicated
3.) Injuries which occurred while the claimant was committing an act which would constitute a felony
4.) Injuries occurred while the claimant was drag racing
5.) Injuries occurred while the claimant was repairing an automobile in the household

In General Accident Insurance Company v. Roberts 27 the insurance carrier sought to subordinate and enforce a lien pursuant to Insurance Law §5104(b). The insurance carrier in General Accident Insurance Company v. Roberts was unable to enforce the lien created statutorily under Insurance Law §5104(b) where the injured party was involved in an accident with a farm tractor, not covered by motor vehicle liability insurance.

Choice of law principles governs which vehicle which enters New York and cause injury which are uninsured. As with any insurance coverage analysis question the issue is not one of an insurance carrier in New York is a fact driven analysis which requires a case by case approach. While the New York Deemer Statute provides maximum protection to New York residents it does not cover every situation involving an out of state injury. The insurance coverage practitioner is therefore cautioned to conduct a complete factual analysis of the business dealings of the uninsured insurer before a determination can be made as to the applicability of the New York Deemer Statute and choice of law issues are considered.

Francis J. Scabbill is a long time member of the Queens County Bar Association and a partner of the law firm Picusano & Scabbill in Westbury, NY.

Marital Quiz

ANSWERS TO MARITAL QUIZ ON PAGE 8

Question #1 - Does the Family Court Act provide for an award of durational maintenance? Your answer - No, Levy v. Levy 2009 NY Slip Op 06809 (2nd Dep't).

Question #2 - If the Supreme Court does not grant a divorce, may it award durational maintenance? Your answer - No, Levy v. Levy 2009 NY Slip Op 08738 (2nd Dep't).

Question #3 - If the Supreme Court grants a divorce, can a court award maintenance to the non-custodial parent? If yes, what is the control over the court? Your answer - Yes, See McKinney’s Consolidated Laws of New York Vehicle & Traffic Law §386(5) a (a). If the non-custodial parent’s earnings and assets are commingled with those of the custodial parent it is possible for the property settlement to be shared.

Question #4 - If the parties were never divorced? Your answer - No, unless the petitioner is likely to become in need of public assistance or care. Mattox v. Mattox 65 AD2d 319; 409 N.Y.S.2d 562 (3rd Dep’t 1980).

Question #5 - To your knowledge, who has the most authority to order child support? Your answer - The court. There are exceptions to this standard, however, the court’s ability to order the child support amount is not diminished.

Question #6 - The parties’ stipulation of settlement was incorporated, but did not merge the parties’ judgment of divorce. May the court enter a motion to modify the stipulation?

Question #7 - May the court suspend child support payments where the non-custodial parent’s access has been unjustifiably frustrated by the custodial parent? Your answer - Yes, the custodial parent’s refusal to permit access or active interference with the non-custodial parent’s visitation rights. Matter of Thompson v. Thompson 2010 NY Slip Op 08120 (2010 Dep’t). Any agreement to such behavior is not enforceable.

Question #8 - If a judgment of divorce and stipulation of settlement is awarded and the cost of private secondary education, should the court treat the application for child support to the same as a modification or a de novo application? Your answer - No, 42 U.S.C.S. §667 mandates the determination of the child’s unmet need. In re Mosey 83 N.Y.2d 65, 607 N.Y.S.2d 906 (Ct. of Appeals, 1993).

Question #9 - In the Marital Quiz which appeared in the October 2010 issue of the Queens Bar Bulletin, I cited an Appellate Division, Second Department case, 1993. This case decided that a court has no authority to order child support based on 413(k) of the New York Family Court Act. Your answer - No, 42 U.S.C.S. §667 mandates the determination of the child’s unmet need. In re Mosey 83 N.Y.2d 65, 607 N.Y.S.2d 906 (Ct. of Appeals, 1993).

Question #10 - In a separation agreement the parties elected to apply the CSSA guidelines to their separation agreement. Should the court have been bound to award the necessary child support to the non-custodial parent? Your answer - No, 42 U.S.C.S. §667 mandates the determination of the child’s unmet need. In re Mosey 83 N.Y.2d 65, 607 N.Y.S.2d 906 (Ct. of Appeals, 1993).

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