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Summarizing recent significant New York appellate cases

It's not often that I write about my own cases, since there are so many interesting opinions across New York courts each week. This week, however, is different. In *Business Council of New York State Inc. v New York State Department of Environmental Conservation*, Supreme Court, Albany County issued a significant decision annulling the New York State Department of Environmental Conservation's revised freshwater wetlands regulations under Part 664 that went into effect on January 1, 2025. The ruling is a significant one for all New Yorkers, but introduces near-term uncertainty for those currently navigating permitting and project planning in or near regulated wetlands. Let's take a look at that opinion and what else has been going on in the New York appellate courts over the last week.

COURT OF APPEALS

TORTS, FEDERAL PREEMPTION, GRAVES AMENDMENT

Second Child v Edge Auto, Inc., 2026 NY Slip Op 02436 (Ct App April 23, 2026)

Issue: **Does the Graves Amendment (49 U.S.C. § 30106), which shields rental car companies from vicarious liability for damages caused solely by their customer's negligent use of a rental vehicle, preempt Vehicle and Traffic Law § 370's primary insurance requirement?**

Facts: "Vehicle and Traffic Law § 370 requires rental car companies to carry liability insurance covering every vehicle they own. Such companies must meet minimum insurance standards for claims arising from bodily injury ($25,000 minimum) and property damage ($10,000 minimum). The statute provides that the insurance policy 'shall inure to the benefit of' the driver if the driver is operating the vehicle with the owner's permission. Separately, but relatedly, Vehicle and Traffic Law § 388 further provides that a vehicle's owner 'shall be liable and responsible' for any damages resulting from the vehicle's use if the driver had the owner's permission to operate the vehicle."

Following the Court of Appeals' interpretation of those statutory provisions in *ELRAC, Inc. v Ward* (96 NY2d 58, 78 [2001]), which held that "the legislature imposed vicarious liability on rental companies for their renters' actions under section 388 and imposed minimum insurance requirements for such liability under section 370, [and thus] rental companies were required to insure against that liability and indemnify a renter's damages up to the statutory minimum levels," Congress adopted the Graves Amendment to immunize rental car companies from that vicarious liability. Indeed, "Congress enacted the Graves Amendment to combat rising costs and lawsuits in New York and other states that imposed vicarious liability on car rental companies. At the time, New York was one of only three states that imposed unlimited vicarious liability on rental companies for the negligence of renters. These unlimited vicarious liability schemes, including New York's specifically, motivated Congress to pass the Graves Amendment."

Here, "plaintiff Second Child rented a truck from defendant, Edge Auto, Inc. In the operative rental agreement, Edge Auto required Second Child to maintain insurance up to 'at least the minimum limits of coverage required by the financial responsibility laws of the state where the loss occurs' and represented that it would provide Second Child liability insurance only in excess to any other valid insurance, and Second Child agreed to indemnify Edge Auto against any liability arising from Second Child's use of the vehicle. While driving the truck, Second Child's employee, plaintiff Daniel Jaffe, sideswiped another car. The damaged vehicle's owner sued plaintiffs for the costs associated with the damage. Plaintiffs then filed this action against defendants seeking to recover the costs associated with the damage up to the statutory minimums provided in Vehicle and Traffic Law § 370. In response, defendants argued that under the Graves Amendment, they could not be vicariously liable for damages arising from an accident caused solely by plaintiffs' negligence."

Supreme Court, on summary judgment, "concluded that the Graves Amendment preempted section 370 and rejected plaintiffs' argument that section 370 is a financial responsibility law subject to the Graves Amendment's savings clause. The Appellate Division affirmed, holding that 'the Graves Amendment does not supersede Vehicle and Traffic Law § 370 insofar as it is a state law that requires rental car companies to carry a specified minimum amount of insurance for each of their vehicle' but 'is superseded to the extent it requires a rental car company to provide primary insurance to their renters up to the minimum liability limits provided by the statute.'"

Holding: The Court of Appeals affirmed, holding that "section 370, insofar as we have interpreted it to require such companies to provide primary liability insurance coverage to renters, does not fall within the Graves Amendment's savings clause and is preempted, but that section 370's requirement that rental car companies carry a specified minimum amount of insurance is not preempted." The Court explained, section 388's vicarious liability provision is clearly preempted by the Graves Amendment, and because the Court has held that section 370's primary insurance requirement is interlocking with section 388, it too was preeempted. The Court reasoned, "[t]o conclude otherwise would be to require car rental companies to insure against liability that federal law commands they no longer face. This is pre-

cisely the type of absurd result, contrary to well-settled insurance law, that bedrock interpretive principles instruct us to avoid. Moreover, interpreting the Graves Amendment in its full context commands that we read the savings clause with an eye toward the Amendment's primary objective: eliminating vicarious liability for rental companies. Concluding that section 370, as interpreted by Ward, is protected by the savings clause would recognize that rental companies no longer face vicarious liability, but nonetheless require that these companies obtain insurance for such liability and defend and indemnify customers in lawsuits arising from their own negligence. Section 370's primary insurance requirement would, in effect, become a vicarious liability regime masquerading as a financial responsibility statute, in violation of federal law. This 'workaround' to the Graves Amendment would undermine its core purpose. Thus, we hold that Vehicle and Traffic Law § 370 is preempted to the extent the statute requires such companies to provide primary liability insurance coverage to renters."

The Court noted, however, that "the Graves Amendment does not free car rental companies from all liability arising from the use of a rented vehicle. On the contrary, it expressly permits States to impose liability on rental companies for damages arising from their own negligence or criminal wrongdoing. Nor does the Graves Amendment restrict New York's ability to require rental companies to obtain insurance, no matter what kind, for the privilege of registering and operating a motor vehicle. Our decision today does not affect section 370's requirement that car rental companies obtain insurance coverage for such other liability or for the privilege of registering vehicles in New York. Rather, we narrowly hold that the Graves Amendment preempts Vehicle and Traffic Law § 370 to the extent that it requires car rental companies to provide primary liability insurance to their renters up to the statute's minimum liability amounts."

Finally, the Court held that preemption did not offend the McCarran-Ferguson Act, which "constrains federal preemption of state laws regulating the insurance industry." The Court reasoned that "section 370 survives as a requirement that companies maintain minimum insurance obligations even after the Graves Amendment. Although precluding section 370's primary liability insurance requirement might be characterized as an 'impairment,' that impairment fundamentally relates to vicarious liability; any conflict pertaining to insurance only arises secondarily to the question of liability. Section 370's requirement that rental companies obtain an insurance policy, file a surety bond, or file a certificate of self-insurance remains in effect. Because the impairment here does not relate to the business of insurance, the McCarran-Ferguson Act is not offended, and the Graves Amendment is not reverse preempted."

CRIMINAL LAW, WAIVER OF RIGHT TO HEARING UNDER DOMESTIC VIOLENCE SURVIVORS JUSTICE ACT

***People v N.H.*, 2026 NY Slip Op 02437 (Ct App April 23, 2026)**

Issue: **May a defendant, as a condition of a negotiated plea agreement, waive a Penal Law § 60.12 hearing to determine their eligibility for an alternative sentence under the Domestic Violence Survivors Justice Act?**

Facts: "Enacted in 2019, the DVSJA amended Penal Law § 60.12 to establish an alternative sentencing framework for certain defendants who are survivors of domestic violence. We recently explained that the Legislature enacted the DVSJA in recognition of the national epidemic of domestic violence and the failure of prior law to allow judges discretion to fully consider the impact of domestic violence in making sentencing determinations. To that end, the DVSJA expands judicial discretion at the initial sentencing stage by permitting courts to sentence defendants to an alternative, less severe sentence."

Here, after being charged "with, among other offenses, one count of attempted murder in the second degree and two counts of assault in the first degree, arising from an incident at a party outside N.H.'s home," defendant's counsel requested that the trial court sentence her "under the DVSJA to six months' incarceration followed by five years' probation, or grant a hearing pursuant to Penal Law § 60.12 to determine her eligibility for a reduced DVSJA sentence," supporting the request with evidence that defendant had been the repeated victim of domestic violence and that her actions at the party resulted as a response to that abuse.

"While N.H.'s DVSJA application was pending and before any Penal Law § 60.12 hearing, the prosecution offered, and N.H. accepted, a plea bargain in exchange for her waiver of the hearing and her right to appeal. Pursuant to the agreement, N.H. pleaded guilty to one count of first-degree reckless assault, in full satisfaction of the indictment, in exchange for a determinate sentence of five years' imprisonment followed by five years' post-release supervision. During the plea proceeding, defense counsel argued that N.H. was entitled to the hearing and that asking her to waive it went 'against the spirit of why the law was created.' The court, noting the absence of caselaw in this area, also expressed concern as to whether a defendant may waive a DVSJA hearing as a condition of a negotiated plea agreement, but ultimately concluded that such a hearing was waivable. The court accepted N.H.'s plea and imposed the promised sentence."

The Appellate Division, Second Department affirmed, holding that "section 60.12 hearings are waivable as part of a plea agreement, and that the five-year period of PRS imposed was not excessive in this case."

Holding: The Court of Appeals reversed, holding that "Penal Law § 60.12 hearings are nonwaivable and that [N.H.] is therefore entitled to such a hearing to determine her eligibility for DVSJA relief . . . The statutory framework and purpose of the DVSJA alternative reduced sentencing framework reveal the Legislature's intent to mitigate a systemic failure of the criminal legal system, which led to unduly harsh sentencing of domestic violence survivors." Although the Court recognized that many of a defendant's rights may be waived in a plea agreement, "some rights are too valuable, both to the defendant and to the community, to be sacrificed in plea bargaining . . . Thus, we have held that a defendant may only waive a guaranteed right when there is no constitutional or statutory mandate and no public policy prohibiting waiver."

Here, the Court held, "the statutory structure and the animating purpose of the DVSJA alternative sentencing framework establish that the Legislature did not intend for waiver of such a hearing to be a permissible condition of a plea . . . In enacting the DVSJA's alternative, reduced sentencing framework, the Legislature intended to address what it found was a systemic problem with existing sentences as applied to certain domestic violence survivors. The legislative history and statutory background reflect the Legislature's recognition of the national epidemic of domestic violence and goal of ameliorating the failure of prior law to allow judges discretion to fully consider the impact of domestic violence in making sentencing determinations. The Legislature reimagined the appropriate sentencing ranges, including alternative non-incarceratory sentences in certain cases, for this particular subgroup of defendants who were themselves victims of domestic abuse. The DVSJA is thus corrective action on a large scale, meant not merely to address excessive sentences on an individual level, but to recalibrate the criminal legal system to account for the trauma experienced by a class of defendants which led to their chargeable actions." Allowing a "waiver of a survivor's opportunity to make the case for an alternative sentence upsets this balance and undermines the Legislature's intent to correct a structural flaw in the criminal law as applied to this class of survivor defendants."

Moreover, the Court noted, "because our system is predominantly one of pleas rather than trials, allowing waiver of section 60.12 hearings would eviscerate this alternative sentencing pathway for the vast majority of domestic violence survivor defendants who plead guilty rather than proceeding to a trial. That would be inconsistent with the legislative history and an incongruous result given that the Legislature intended to expand, not contract or eliminate, remedial sentencing for survivors. As with certain other rights, a survivor's right to a section 60.12 hearing is too valuable, both to the survivor defendant and to the community, to be sacrificed in plea bargaining."

TRIAL COURT DECISION OF INTEREST

ADMINISTRATIVE LAW, SEQRA

Chautauqua Lake Prop. Owners Assn., Inc. v State of New York, 2026 NY Slip Op 26053 (Sup Ct, Albany County April 8, 2026)

Issue: **Did the New York State Department of Environmental Conservation comply with its obligations under the State Environmental Quality Review Act before adopting new statewide wetlands regulations?**

Facts: The regulations at issue, Part 664, were DEC's recent revision to New York's long-standing freshwater wetlands regulations. Under the revised regulations, DEC significantly expanded its jurisdiction over freshwater wetlands, including broader classification and updated mapping criteria, and imposed onerous classifications on many categories of the newly regulated areas that has inhibited necessary development across the state.

Since 1975, the Freshwater Wetlands Act has administered the protection of New York's wetlands. Originally, DEC was required to map all freshwater wetlands that would then be subject to regulation. The Act was amended, however, through provisions in the 2022–2023 state budget (the 2022 Amendments). Among other things, the 2022 Amendments removed the requirement that DEC map all wetlands, meaning that now DEC wetland maps are "merely informational and not necessarily determinative of regulatory jurisdiction." To codify the 2022 Amendments, DEC was instructed to promulgate new Part 664 regulations.

Following the new regulations' adoption, four CPLR Article challenges were brought on the grounds that DEC's adoption of the Part 664 regulations violated SEQRA and the State Administrative Procedures Act, among others. The court consolidated the four actions, and ultimately annulled the DEC's new wetlands regulations.

Holding: Supreme Court held that DEC wholly failed to comply with SEQRA when adopting the revised Part 664. First, the court held that although SEQRA does not apply to legislative mandates, a SEQRA lead agency must still comply with its environmental review obligations if it makes its own regulatory decisions that are not legislatively mandated. Specifically, the court rejected DEC's argument that it was not obligated to analyze the impact of its own discretionary decisions in implementing the 2022 Amendments because "the record shows that DEC exercised substantial judgment and discretion in implementing significant aspects of the 2022 Amendments through the new Part 664 regulations, and those discretionary policy judgments and choices are subject to SEQRA review." For example, the court noted, "DEC classified all wetlands in urban areas as Class II, for which permits may issue only in very limited circumstances . . . To be sure, the 2022 Amendments required DEC to regulate wetlands 'located within or adjacent to an urban area' (ECL § 24-0107 [9] [b]), but the Legislature did not require DEC to impose a blanket Class II designation on all urban wetlands without regard to individual characteristics." DEC also "chose to mandate a fixed 100-foot buffer zone around all regulated wetlands. But the statute itself, unchanged by the 2022 Amendments, provides that activities within 100 feet of wetlands are subject to regulation if they 'impinge upon or otherwise substantially affect the wetlands' (ECL § 24-0701 [2]). Rather than requiring an individualized assessment of whether adjacent activities would impinge upon or otherwise adversely affect the wetlands, as contemplated by the statute, DEC made the policy choice of establishing a categorical 100-foot buffer around *all* freshwater wetlands." These policy choices, the court held, remain subject to SEQRA review.

Turning to DEC's substantive SEQRA obligations, the court held that DEC's truncated, two-sentence SEQRA review was inadequate, because it artificially cabined the environmental review to the benefits of wetlands protections and failed to identify or take a hard look at any other potential adverse environmental impacts and failed to provide a reasoned elaboration for the agency's decision.

First, the court noted that there were various areas of environmental concern pointed out in public comments that DEC failed to identify as areas of concern warranting a "hard look," including the prospect of urban sprawl, growth inducing impacts, impacts on urban com-

munities, and impacts to aquatic ecosystems, algae blooms, and invasive species, among others. Rather, the DEC's analysis improperly focused entirely on the beneficial impact that the new Part 664 regulations would have on wetlands. The court held that, although an agency need not identify every area of concern, DEC had a duty to identify and examine the foreseeable consequences of its discretionary choices and could not confine its analysis to only the intended benefits of a contemplated action. And the standard for preparation of positive declaration and an environmental impact statement is relatively low, the court held, "whereas the standard for a negative declaration . . . is relatively high, requiring the lead agency to determine either that there will be no adverse environmental impacts or that the identified adverse environmental impacts will not be significant." Thus, the court held, DEC failed to satisfy that burden.

Second, the court held DEC failed to provide any reasoned elaboration of its decision of nonsignificance. DEC's two-sentence justification, the court held, "does not address any potential adverse impacts, reference any supporting documents, acknowledge the concerns raised in public comments or analyze the concerns that were identified. There simply is no reasoned elaboration as to how the imposition of new environmental regulations governing millions of acres of wetlands across the State, viewed in light of the scale and context of the proposed action, would have no potential for significant adverse impacts to the environment. DEC's significance analysis, to the extent it is discernable, was confined to a single dimension: the protection of wetlands. And while DEC ultimately maybe correct that only positive environmental benefits will accrue from enhanced wetlands protection, the agency has not articulated the reasoning it relied upon to rule out the potential for adverse impacts."

Because DEC violated its SEQRA obligations, the court annulled the new wetlands regulations in their entirety.

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