

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office

January 15, 2016 through January 21, 2016

Each week the Clerk's Office prepares a list of recently-filed appeals, indicating short title, jurisdictional predicate, subject matter and key issues. Some of these appeals may not reach decision on the merits because of dismissal, on motion or sua sponte, or because the parties stipulate to withdrawal. Some appeals may be selected for review pursuant to the alternative procedure of Rule 500.11. For those appeals that proceed to briefing in the normal course, the briefing schedule generally will be: appellant's brief to be filed within 60 days after the appeal was taken; respondent's brief to be filed within 45 days after the due date for the filing of appellant's brief; and a reply brief, if any, to be filed within 15 days after the due date for the filing of respondent's brief.

The Court welcomes motions for amicus curiae participation from those qualified and interested in the subject matter of these newly filed appeals. Please refer to Rule 500.23 and direct any questions to the Clerk's Office.

CARNEY, MATTER OF v NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES, et al.:

^{3RD} Dept. App. Div. order of 11/25/15; modification with a two-Justice dissent;

MOTOR VEHICLES - OPERATOR'S LICENSE - APPLICATION FOR NEW LICENSE AFTER LICENSE REVOCATION FOR ALCOHOL-RELATED DRIVING OFFENSE - NEW REGULATIONS ADOPTED DURING REVIEW OF PETITIONER'S APPLICATION FOR RELICENSING OF PERSONS WITH MULTIPLE ALCOHOL-OR-DRUG-RELATED DRIVING OFFENSES (15 NYCRR 136.5[b][1]) - WHETHER THE REGULATORY IMPOSITION OF A PERMANENT LIFETIME BAN AGAINST A DRIVER WITH FIVE OR MORE ALCOHOL-RELATED CONVICTIONS DURING HIS LIFETIME EXCEEDS THE COMMISSIONER'S ADMINISTRATIVE AUTHORITY;

Supreme Court, Albany County, dismissed petitioner's application, in a proceeding pursuant to CPLR article 78, to, among other things, review a determination of respondent Department of Motor Vehicles denying petitioner's application for a driver's license; App. Div. modified by partially converting the matter to a declaratory judgment action, and declared that petitioner has not shown 15 NYCRR 136.5(b)(1) to be invalid.

ISAAC, MATTER OF v LEWIN:

3RD Dept. App. Div. order of 12/9/15; denial of application; sua sponte examination whether a substantial constitutional question is directly involved or any other basis exists to support an appeal as of right;
HABEAS CORPUS - CHALLENGE TO APPELLATE DIVISION ORDER DENYING APPLICATION FOR A WRIT OF HABEAS CORPUS;
App. Div. denied petitioner's application for a writ of habeas corpus.

LEND LEASE (US) CONSTRUCTION LMB, INC., et al. v ZURICH AMERICAN INSURANCE COMPANY, et al.:

1ST Dept. App. Div. order of 12/22/15; modification with a two-Justice dissent;
INSURANCE - BUILDER'S RISK POLICY - IN THIS BREACH OF CONTRACT AND DECLARATORY JUDGMENT ACTION, WHETHER THE APPELLATE DIVISION CORRECTLY HELD AS A MATTER OF LAW THAT TOWER CRANE AFFIXED TO BUILDING FOR USE IN THE PERFORMANCE OF CONSTRUCTION WORK WAS NOT "COVERED PROPERTY" BECAUSE IT DID NOT FALL WITHIN THE POLICY'S DEFINITION OF "TEMPORARY WORKS," AND THAT, EVEN IF THE CRANE WAS "COVERED PROPERTY," IT WAS EXCLUDED FROM COVERAGE UNDER THE POLICY'S CONTRACTOR'S TOOLS, MACHINERY, PLANT AND EQUIPMENT EXCLUSION;
Supreme Court, New York County, denied plaintiffs' respective motions and defendants' cross motions for summary judgment; App. Div. modified to grant defendants' cross motions for summary judgment and declare that defendants have no obligation to provide coverage under the builder's risk policy, and otherwise affirmed.

OYAGUE, PEOPLE ex rel.v RACETTE:

3RD Dept. App. Div. order of 10/15/15; denial of writ of habeas corpus; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
HABEAS CORPUS - WHETHER THE APPELLATE DIVISION ERRED IN DENYING THE PETITION SEEKING A WRIT OF HABEAS CORPUS;
App. Div. denied petitioner's application for a writ of habeas corpus.

VINING (GREGORY), PEOPLE v:

1ST Dept. App. Div. order of 3/26/15; modification; leave to appeal granted by Lippman, Ch.J., 12/29/15;

EVIDENCE - ADMISSION AGAINST INTEREST - ADMISSION BY SILENCE - WHETHER A RECORDING OF A PHONE CALL PLACED BY DEFENDANT FROM PRISON TO COMPLAINANT, IN WHICH DEFENDANT WAS SILENT IN THE FACE OF COMPLAINANT'S ACCUSATION OF PHYSICAL ABUSE, WAS PROPERLY ADMITTED AGAINST DEFENDANT AS AN ADOPTIVE ADMISSION BY SILENCE; CLAIMED VIOLATION OF CONSTITUTIONAL RIGHTS;

Supreme Court, New York County, convicted defendant, after a jury trial, of attempted assault in the third degree, assault in the third degree, criminal mischief in the fourth degree, and criminal trespass in the second degree, and sentenced him to an aggregate term of 2 years; App. Div. modified to the extent of vacating the attempted assault conviction and dismissing that count of the indictment, and otherwise affirmed.

MATTER OF THE ESTATE OF WAGNER, DECEASED (AARISMAA; WAGNER):

4TH Dept. App. Div. order of 12/29/15; denial of motion; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

APPEAL - CHALLENGE TO APPELLATE DIVISION ORDER DENYING MOTION TO SETTLE THE RECORD FROM A PROCEEDING IN SURROGATE'S COURT UPON THE GROUND THAT PETITIONER FAILED TO DEMONSTRATE THE EXISTENCE OF A VIABLE APPEAL;

App. Div. denied petitioner's motion to settle the record from a proceeding in Seneca County Surrogate's Court.