

COURT OF APPEALS NEW FILINGS

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

April 21, 2017 through April 27, 2017

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.

ANDINO, MATTER OF v MILLS, et al.:

1ST Dept. App. Div. order of 1/5/16; modification; sua sponte examination whether the amended Supreme Court judgment, entered 1/12/17, order finally determines the action within the meaning of the Constitution;

Damages--Collateral source of payment--CPLR 4545--whether the Appellate Division correctly held that, under Oden V Chemung County Indus. Dev. Agency (87 NY2d 81 [1995]), the jury's award for future loss of pension benefits should have been offset by the total amount that plaintiff was projected to receive under her accidental disability pension;

Supreme Court, Bronx County, after a hearing, denied defendants' motion for a collateral source offset pursuant to CPLR 4545; thereafter, Supreme Court awarded plaintiff, upon a jury verdict, the principal sums of \$600,000 for past pain and suffering, \$23,000,000 for future pain and suffering over 37 years, \$283,422 for past lost earnings, \$2,392,512 for future lost earnings over 19.24 years \$2,100,000 for future medical expenses over 37 years, and \$2,490,829 for future loss of pension over 17.7 years; App. Div. modified, to grant that portion of defendants' motion seeking to offset the jury's award of future pension benefits by the amount of plaintiff's accidental disability benefits, and to vacate the award for future pain and suffering and order a new trial as to such damages, unless plaintiff, within 30 days of service of a copy of the order with notice of entry, stipulated to accept a reduced award for future pain and suffering in the amount of \$2.7 million and to entry of an amended judgment in accordance therewith, and otherwise affirmed; in an amended judgment, Supreme Court awarded plaintiff the sum of \$3,115,802.30.

BOLT, MATTER OF v NEW YORK CITY DEPARTMENT OF EDUCATION:

1ST Dept. App. Div. order of 12/6/16; modification; leave to appeal granted by App. Div., 4/4/17; Rule 500.11 review pending; Schools--Teachers--Where teacher allegedly assisted students on a statewide exam, whether the arbitrator's penalty of termination was excessive;

Supreme Court, New York County, granted the petition to vacate an arbitrator's opinion and award dated 10/15/14, terminating petitioner's employment with respondent based on her misconduct, and denied respondent's cross motion to dismiss the petition; App. Div. modified, by confirming the arbitrator's determination that petitioner is guilty as charged in specifications 2 and 3(a), (b), (c) and (d), and remanded the matter to respondent for imposition of a lesser penalty; and as so modified, affirmed.

CHECKSFIELD v BERG:

3RD Dept. App. Div. order of 3/16/17; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; Dismissal and Nonsuit--Failure to enter default judgment within one year--whether Supreme Court properly dismissed the action as abandoned; lack of reasonable excuse for delay in entering default judgment; application of CPLR 3215(c); Supreme Court, Madison County, denied plaintiff's motion for a default judgment and granted defendant's cross motion to dismiss the complaint; App. Div. affirmed.

FOTHERINGHAM v RIVERSOURCE LIFE INSURANCE CO. OF NEW YORK
&c., et al.:

4TH Dept. App. Div. order of 3/24/17; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; Conflict of Laws--Whether 2001 settlement and judgment in a class action commenced in the federal District Court for the District of Minnesota barred plaintiff's state court action; whether federal court enforcement order was entitled to full faith and credit in state court action; claimed due process violation; Supreme Court, Erie County, granted defendants' cross motion to dismiss the complaint; App. Div. affirmed.

HENRY (BRYAN), PEOPLE v:

2ND Dept. App. Div. order of 11/16/16; modification; leave to appeal granted by Stein, J., 4/13/17; Crimes--Right to Counsel--Representation on Unrelated Matter--Where defendant's right to counsel was violated when he was questioned by officers with regard to a robbery after he had been assigned counsel in connection with an arrest for marijuana possession, whether his right to counsel also was violated when he was questioned by officers on a homicide that was "factually interwoven" with the robbery charge; application of People v Cohen (90 NY2d 632 [1997]) and People v Grant (91 NY2d 989 [1998]);

Supreme Court, Nassau County, denied suppression of defendant's statements to law enforcement officials relating to the murder charge; thereafter, Supreme Court convicted defendant of murder in the second degree, two counts of criminal possession of a weapon in the second degree, criminal possession of marijuana in the fifth degree, and criminal possession of stolen property in the fifth degree, and imposed sentence; App. Div. modified, by vacating the convictions of murder in the second degree, two counts of criminal possession of a weapon in the second degree, and criminal possession of stolen property in the fifth degree and vacating the sentences imposed thereon, and, as so modified, affirmed the judgment, granted the motion to suppress defendant's statements to law enforcement officials relating to the murder charge, modified the order dated 6/7/11 accordingly, and remitted the matter to Supreme Court for a new trial.