COURT OF APPEALS NEW FILINGS

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

July 10, 2015 through July 16, 2015

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.

BENNETT &c. v ST. JOHN'S HOME et al.:
4TH Dept. App. Div. order of 5/8/15; affirmance; leave to appeal granted by App. Div., 7/2/15; Rule 500.11 review pending; JUDGMENTS - SUMMARY JUDGMENT - TIMELINESS OF MOTION - WHETHER A TRIAL COURT MUST DENY A MOTION FOR SUMMARY JUDGMENT AS UNTIMELY ON THE GROUND THAT IT WAS MADE MORE THAN 120 DAYS AFTER THE FILING OF THE NOTE OF ISSUE WITHOUT A SHOWING OF GOOD CAUSE FOR THE DELAY, WHERE THE PARTIES STIPULATED TO THE TIMING OF THE MOTION BEFORE IT WAS MADE AND THE TRIAL COURT ACCEPTED THE STIPULATION IN ADVANCE OF THE MOTION - WHERE PUBLIC POLICY REQUIRES STRICT ENFORCEMENT OF 120-DAY LIMIT ABSENT LEAVE OF

COURT ON GOOD CAUSE SHOWN; HEALTH - NURSING HOMES - PATIENT NEGLECT - WHETHER PLAINTIFF RAISED TRIABLE ISSUES OF FACT PRECLUDING SUMMARY JUDGMENT ON HIS CLAIM BASED ON PUBLIC HEALTH LAW § 2801(d);
Supreme Court, Monroe County, granted defendants' motion for summary judgment dismissing the complaint; App. Div. affirmed.

KANGAS (ROY S.), PEOPLE v:
Oneida County Court order of 2/25/15; affirmance; leave to appeal granted by Stein, J., 6/25/15;
CRIMES - EVIDENCE - BUSINESS RECORDS - ELECTRONIC RECORDS - WHETHER THE TRIAL COURT IMPROPERLY ADMITTED BREATH TEST DOCUMENTS INTO EVIDENCE UNDER THE BUSINESS RECORDS EXCEPTION TO THE HEARSAY RULE;
Rome City Court convicted defendant, after a jury trial, of driving while intoxicated; County Court affirmed.