COURT OF APPEALS NEW FILINGS

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

July 28, 2017 through August 4, 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.

FRELIGH v GOVERNMENT EMPLOYEES INSURANCE COMPANY:
3RD Dept. App. Div. order of 7/27/17; reversal with dissents; Rule 500.11 review pending;
Insurance--No-Fault Automobile Insurance--whether plaintiff's claim for projected future earnings as an employee of an automobile parts business was speculative; Insurance Law § 5102; whether summary judgment was proper;
Supreme Court, Ulster County, denied defendant's motion for summary judgment dismissing the complaint; App. Div. reversed, granted the motion, and dismissed the complaint.

KIRTON, MATTER OF v ANNUCCI:
3RD Dept. App. Div. order of 4/20/17; modification; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right and whether any other basis exists to support an appeal as of right;
Prisons and Prisoners--Discipline of Inmates--Whether substantial evidence supports the determination of guilt with respect to charges remaining after Appellate Division modification; claimed due process violation--prisoner's ability to present witnesses;
Supreme Court, Albany County, transferred the proceeding to the App. Div.; App. Div. modified by annulling so much of respondent's determination as found petitioner guilty of violating mess hall procedures; granted the petition to that extent; and directed respondent to expunge all references to this charge from petitioner's institutional record; and, as so modified, confirmed.

LEADINGAGE NEW YORK, INC., et al., MATTER OF v SHAH, et al. (AND ANOTHER PROCEEDING):
3RD Dept. App. Div. order of 6/22/17; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;
Proceeding Against Body or Officer--Certiorari--CPLR article 78 proceedings challenging executive order and regulations imposing limits on administrative costs and execute compensation of health care providers that receive State financial assistance--Executive Order No. 39 and 10 NYCRR part 1002; claimed unconstitutionality of compensation cap as violative of separation of powers doctrine under New York State Consitution; whether Department of Health regulations at issue are arbitrary and capricious;
Supreme Court, Albany County, partially dismissed petitioners' applications, in two combined proceedings, to declare invalid certain regulations promulgated by respondent Department of Health; App. Div. affirmed.

TCR SPORTS BROADCASTING HOLDING, LLP, MATTER OF v WN PARTNER, LLC, et al. (AND ANOTHER PROCEEDING):
1ST Dept. App. Div. order of 7/13/17; affirmance and modification with dissents; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution;
Arbitration--Agreement to Arbitrate--Forum--whether courts have the power, after vacating an arbitral award based on "evident partiality" related to the forum, to order rehearing in a forum other than that provided for in the parties' arbitration agreement;

Supreme Court, New York County, (11/4/15) among other things, denied respondent Washington Nationals' (Nationals') motion to confirm an arbitration award issued 6/30/14 by Major League Baseball's Revenue Sharing Definitions Committee, granted the part of petitioner's motion seeking to vacate the award, and denied the part of petitioner's motion seeking to direct that a second arbitration proceed before an impartial panel unaffiliated with Major League Baseball; and, thereafter (7/11/16), denied the National's motion to compel the parties to re-arbitrate the claim before the Revenue Sharing Definitions Committee, and granted petitioner's cross motion to stay the parties from compelling or conducting another arbitration of the dispute until the final determination of the appeals from the 11/4/15 order; App. Div. affirmed the 11/4/15 order, and modified the 7/11/16 order to grant the Nationals' motion to compel the parties to re-arbitrate the claim before the Revenue Sharing Definitions Committee.