COURT OF APPEALS NEW FILINGS

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

September 18, 2015 through September 24, 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.

ACE FIRE UNDERWRITERS INSURANCE COMPANY v SPECIAL FUNDS CONSERVATION COMMITTEE:
1ST Dept. App. Div. order of 2/24/15; affirmance; leave to appeal granted by Court of Appeals, 9/22/15;
WORKERS' COMPENSATION - SPECIAL FUNDS - WHERE THE WORKERS' COMPENSATION INSURANCE CARRIER APPROVES THE SETTLEMENT OF A THIRD-PARTY PERSONAL INJURY ACTION WITHOUT FIRST OBTAINING THE CONSENT OF THE SPECIAL FUNDS CONSERVATION COMMITTEE (SFCC) TO SUCH SETTLEMENT, AND THE SFCC THEREAFTER DENIES RETROACTIVE CONSENT FOR THE SETTLEMENT, DOES THE COURT IN WHICH THE UNDERLYING PERSONAL INJURY ACTION WAS COMMENCED HAVE THE POWER TO COMPEL THE SFCC TO CONSENT TO THE SETTLEMENT NUNC PRO TUNC, OR MUST THE CARRIER SEEK SUCH RELIEF FROM THE WORKERS' COMPENSATION BOARD;

Supreme Court, New York County, denied the petition for an order directing respondent to consent nunc pro tunc to settlement of the underlying personal injury action; App. Div. affirmed.

ACEVEDO, MATTER OF v NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES:
3RD Dept. App. Div. order of 8/6/15; affirmance with a two-Justice dissent;
MOTOR VEHICLES - OPERATOR'S LICENSE - DENIAL OF DRIVER'S LICENSE - REGULATIONS GOVERNING TREATMENT OF RELICENSING APPLICATIONS BY PERSONS WITH AT LEAST THREE ALCOHOL OR DRUG-RELATED CONVICTIONS (15 NYCRR 136.5) - WHETHER SUPREME COURT PROPERLY DISMISSED AS NONJUSTICIABLE PETITIONER'S CHALLENGES TO PROVISIONS IMPOSING A LIFETIME LICENSE REVOCATION AND REQUIRING THE ISSUANCE OF A RESTRICTED LICENSE AND INSTALLATION OF AN IGNITION INTERLOCK DEVICE - ALLEGED VIOLATION OF THE SEPARATION OF POWERS DOCTRINE - WHETHER CHALLENGED REGULATIONS CONFLICT WITH THE VEHICLE AND TRAFFIC LAW - WHETHER DENIAL OF RELICENSING APPLICATION CONSTITUTED AN IMPERMISSIBLE RETROACTIVE APPLICATION OF CHALLENGED REGULATIONS AND A VIOLATION OF THE EX POST FACTO CLAUSE OF THE US CONSTITUTION - CHALLENGE TO REGULATIONS AS BEING ARBITRARY AND CAPRICIOUS - NECESSITY FOR A HEARING;
Supreme Court, Albany County, dismissed petitioner's application, in a combined proceeding pursuant to CPLR article 78 and action for declaratory judgment, to, among other things, review a determination of respondent Department of Motor Vehicles denying petitioner's application for a driver's license; App. Div. affirmed.

CACERES et al. v STANDARD REALTY ASSOCIATES, INC., et al.:
1ST Dept. App. Div. order of 8/25/15; reversal with a two-Justice dissent; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution;
LABOR - SAFE PLACE TO WORK - LABOR LAW § 240(1) - SUMMARY JUDGMENT - WHETHER PLAINTIFF WAS ENTITLED TO PARTIAL SUMMARY JUDGMENT ON LIABILITY;
Supreme Court, New York County, denied plaintiffs' motion for partial summary judgment on the issue of liability; App. Div. reversed and granted plaintiffs' motion for partial summary judgment on the issue of liability.

DAVIS (MATTHEW A.), PEOPLE v:
4TH Dept. App. Div. order of 3/27/15; modification; leave to appeal granted by Lippman, Ch.J., 9/3/15;

CRIMES - MURDER - FELONY MURDER - WHETHER PEOPLE FAILED TO PROVE THAT DEFENDANT CAUSED THE DEATH OF AN OBESE VICTIM WHO DIED AFTER SUFFERING A HEART ATTACK DURING OR AFTER THE ROBBERY - SUFFICIENCY OF PROOF ON REASONABLE FORESEEABILITY THAT DEFENDANT'S ACTIONS IN UNLAWFULLY ENTERING VICTIM'S APARTMENT AND ASSAULTING HIM WOULD CAUSE THE VICTIM'S DEATH; CORROBORATION OF ACCOMPLICE TESTIMONY - BURGLARY AND ROBBERY PROSECUTION - WHETHER THE TRIAL COURT ERRED IN ADMITTING INTO EVIDENCE SURVEILLANCE VIDEO FOOTAGE TENDING TO CORROBORATE THE TESTIMONY OF DEFENDANT'S ACCOMPLICE; SENTENCE;
County Court, Niagara County, convicted defendant, upon a jury verdict, of two counts of murder in the second degree, one count of burglary in the first degree, and one count of robbery in the first degree, and imposed sentence; App. Div. modified by reversing those parts of the judgment convicting defendant of two counts of murder in the second degree and, as so modified, affirmed.

PARRIS, MATTER OF v COMMISSIONER OF LABOR:
3RD Dept. App. Div. order of 3/19/15; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right and whether any other jurisdictional basis exists for an appeal as of right; UNEMPLOYMENT INSURANCE - BENEFITS - DISQUALIFICATION - WHETHER CLAIMANT VOLUNTARILY LEFT HER EMPLOYMENT WITHOUT GOOD CAUSE; App. Div. affirmed a 12/10/13 decision of the Unemployment Insurance Appeal Board which ruled that claimant was disqualified from receiving unemployment insurance benefits because she voluntarily left her employment without good cause.