

COURT OF APPEALS NEW FILINGS

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

October 7, 2016 through October 13, 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.

FRANKLIN v GAREYUA:

1ST Dept. App. Div. order of 2/9/16; affirmance; leave to appeal granted by App. Div., 9/29/16; Rule 500.11 review pending; INSURANCE - NO-FAULT AUTOMOBILE INSURANCE - SERIOUS INJURY - SUMMARY JUDGMENT; WHETHER THE PLAINTIFF MOTORIST FAILED TO RAISE A TRIABLE ISSUE OF FACT AS TO THE CAUSATION OF HIS ALLEGED INJURY; Supreme Court, Bronx County, granted defendants' motion for summary judgment dismissing plaintiff's claim that he suffered serious injury to his left shoulder within the meaning of Insurance Law § 5102(d); App. Div. affirmed.

GROSSMAN v TCR a/k/a THE CLUB OF RIVERDALE:

1st Dept. App. Div. order of 9/22/16; affirmance with two-Justice dissent; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution;

NEGLIGENCE - MAINTENANCE OF PREMISES - SUMMARY JUDGMENT - WHETHER ISSUES OF FACT EXISTED AS TO WHETHER HAZARDOUS CONDITION WAS CREATED BY PRESENCE OF WATER ON THE FLOOR OF A GYM'S LOCKER ROOM; Supreme Court, Bronx County, denied defendant's motion for summary judgment dismissing the complaint; App. Div. affirmed.

MAPFRE INSURANCE COMPANY OF NEW YORK v MANOO, et al.:

1st Dept. App. Div. order of 6/9/16; reversal; leave to appeal granted by App. Div., 9/29/16;

INSURANCE - NO-FAULT AUTOMOBILE INSURANCE - WHETHER PLAINTIFF INSURER ESTABLISHED ENTITLEMENT TO SUMMARY JUDGMENT AS A MATTER OF LAW BASED ON THE INSURED'S FAILURE TO APPEAR AT AN EXAMINATION UNDER OATH, NOTWITHSTANDING THAT INSURER SCHEDULED EXAMINATION BEFORE RECEIVING PROVIDER'S CLAIM FOR BENEFITS; INTERPRETATION OF INSURANCE DEPARTMENT REGULATIONS;

Supreme Court, New York County, among other things, granted defendant's motion to reargue and, upon reargument, denied plaintiff's motion for summary judgment; App. Div. reversed, granted plaintiff's motion for summary judgment, and declared that plaintiff is not obligated to pay defendant for the claim at issue.

OBEY v CITY OF NEW YORK, et al.:

1st Dept. App. Div. order of 9/27/16; affirmance with two-Justice dissent; Rule 500.11 review pending;

NEGLIGENCE - WHETHER PLAINTIFF PRODUCED SUFFICIENT EVIDENCE TO ESTABLISH THAT A PARTICULAR TRAIN STRUCK HIM AND CAUSED HIS INJURIES; WHETHER TRAIN OPERATOR WAS NEGLIGENT IN FAILING TO ACTIVATE TRAIN'S EMERGENCY BRAKE UPON OBSERVING EVIDENCE OF A HUMAN PRESENCE ON THE TRACKS;

Supreme Court, New York County, granted defendant New York City Transit Authority's posttrial motion to set aside the verdict on the issue on liability and dismissed the complaint; App. Div. affirmed.

SOMEREVE v PLAZA CONSTRUCTION CORP.:

1st Dept. App. Div. order of 2/18/16; affirmance; leave to appeal granted by App. Div., 9/27/16; Rule 500.11 review pending;

LABOR - SAFE PLACE TO WORK - WHETHER LABOR LAW § 240(1) APPLIES WHERE PLAINTIFF WAS USING A PRIME MOVER TO HOIST A LOAD AND THE PRIME MOVER PITCHED FORWARD, CAUSING PLAINTIFF TO BE EJECTED OFF THE BACK OF THE MACHINE; WHETHER SUMMARY JUDGMENT WAS PREMATURE WHERE DISCOVERY WAS STILL ONGOING; WHETHER ISSUES OF FACT EXISTED PRECLUDING THE GRANT OF SUMMARY JUDGMENT; COMPARATIVE NEGLIGENCE AND SOLE PROXIMATE CAUSE;

Supreme Court, New York County, granted plaintiff's motion for partial summary judgment on the Labor Law § 240(1) cause of action; App. Div. affirmed.