

COURT OF APPEALS NEW FILINGS

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

September 28, 2018 through October 4, 2018

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.

BARNAVE v DAVIS:

2ND Dept. App. Div. order of 11/25/14; denial of motion; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether any basis exists for an appeal as of right;

Appeal--Matters Appealable--Order denying motion to waive payment of filing fee and for free transcripts;

App. Div., among other things, denied that branch of appellant's motion to waive payment of the filing fee and for free transcripts in relation to an appeal from a judgment of Supreme Court, Queens County.

GREEN (NICOLE), PEOPLE v:

4TH Dept. App. Div. order of 4/27/18; affirmance; leave to appeal granted by Wilson, J., 9/18/18;

Crimes--Appeal--Waiver of Right to Appeal--Whether defendant knowingly, voluntarily and intelligently waived right to appeal; waiver colloquy inaccurately stated rights defendant was waiving;

County Court, Genesee County, convicted defendant of attempted burglary in the second degree; App. Div. affirmed.

KLEIN v KLEIN:

2ND Dept, App. Div. orders of 8/20/18 and 9/5/18; orders to show cause bringing on motions; sua sponte examination whether an appeal lies to the Court of Appeals from the orders identified in the notice of appeal;

Appeals--Appealable paper--Whether an appeal lies from an order to show cause signed by an individual Justice of the Appellate Division;

In a matrimonial action from Supreme Court, Rockland County, an individual Justice of the App. Div. signed an order to show cause bringing on a motion for transfer of the appeal to a different App. Div. department and struck out proposed interim relief (8/20/18); thereafter, an individual Justice of the App. Div. signed an order to show cause bringing on a motion for a stay and other relief and struck out a proposed interim stay (9/5/18).

NADKOS, INC. v PREFERRED CONTRACTORS INSURANCE COMPANY RISK RETENTION GROUP LLC, et al.:

1ST Dept. App. Div. order of 5/3/18; affirmance; leave to appeal granted by Court of Appeals, 9/18/18;

Statutes--Construction--Whether federal Liability Risk Retention Act of 1986 (15 USC § 3901) preempts the application of Insurance Law § 3420(d)(2) to foreign risk retention groups (RRG), such that an RRG need not comply with section 3420(d)(2)'s timely notice of disclaimer requirement;

Supreme Court, New York County, granted the motion of defendant Preferred Contractors Insurance Company Risk Retention Group LLC (PCIC) for summary judgment, denied plaintiff's cross motion for summary judgment, dismissed the complaint, and declared that PCIC does not have a duty to defend or indemnify plaintiff in the underlying personal injury action; App. Div. affirmed.

PRIESTON, PEOPLE ex rel. v NASSAU COUNTY SHERIFF'S DEPARTMENT:

2nd Dept. App. Div. order of 7/3/18; sustained a writ; leave to appeal granted by Court of Appeals, 9/18/18;

Bail--Bail Bonds--Whether Supreme Court properly disapproved a bail package on the ground that the amount of collateral posted to secure the insurance company bail bond was insufficient;

App. Div. sustained the writ of habeas corpus and directed respondent Nassau County Sheriff's Department to immediately release the detainee upon his posting of an insurance company bail bond in the aggregate sum of \$500,000 on Nassau County Indictment Nos. 1512N/17 and 86N/18.