

COURT OF APPEALS NEW FILINGS

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

October 23, 2015 through October 29, 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.

PEOPLE ex rel. BELLON O/B/O YADGAROVA et al. v YONATONOV:

Order to show cause that Justice Collen D. Duffy declined to sign on 8/26/15; sua sponte examination whether the paper appealed from is an order or judgment from which an appeal to the Court of Appeals may be taken, and whether any jurisdictional basis otherwise exists for an appeal as of right pursuant to CPLR 5601(b);

PARENT, CHILD AND FAMILY - CHALLENGE TO DECISION BY INDIVIDUAL APPELLATE DIVISION JUSTICE DECLINING TO SIGN ORDER TO SHOW CAUSE FOR, AMONG OTHER THINGS, AN ORDER GRANTING A HEARING TO DETERMINE CHILD CUSTODY AND VISITATION AND A STAY OF A FAMILY COURT ORDER DISMISSING A CHILD CUSTODY PETITION UNDER ARTICLE 6 OF THE FAMILY COURT ACT FOR LACK OF SUBJECT MATTER JURISDICTION;

Appellate Division Justice declined to sign an order to show cause that sought, among other things, an order granting a hearing to determine child custody and visitation, and a stay of a Family Court order dismissing a child custody petition under Article 6 of the Family Court Act for lack of subject matter jurisdiction.

RAMSEY (NORMAN E.), PEOPLE v.:

Washington County Court order of 5/27/15; dismissal of appeal; leave to appeal granted by Rivera, J., 10/16/15;
CRIMES - APPEAL - WHETHER DEFENDANT WAS REQUIRED TO SUBMIT AN AFFIDAVIT OF ERRORS UPON TAKING AN APPEAL TO COUNTY COURT, WHERE HE PROVIDED A TRANSCRIPT OF THE PROCEEDING DERIVED FROM AN AUDIO RECORDING OF THE UNDERLYING PROCEEDING INSTEAD OF A TRANSCRIPTION BY A COURT STENOGRAPHER - CPL 460.10(3);
Hudson Falls Village Court convicted defendant, upon his guilty plea, of the crime of forcible touching, and imposed a sentence.

STONEHILL CAPITAL MANAGEMENT, LLC v BANK OF THE WEST:

1ST Dept. App. Div. order of 4/7/15; reversal; leave to appeal granted by Court of Appeals, 10/22/15;
CONTRACTS - FORMATION OF CONTRACT - OFFER AND ACCEPTANCE - WHETHER DEFENDANT BANK OF THE WEST CLEARLY AND UNEQUIVOCALLY ACCEPTED PLAINTIFFS' OFFER TO PURCHASE A LOAN WHERE DEFENDANT STATED THAT IT WOULD NOT BE BOUND WITHOUT AN EXECUTED WRITING; Supreme Court, New York County, granted plaintiffs' motion for summary judgment on its breach of contract cause of action and entered judgment accordingly; App. Div. reversed, granted defendant Bank of the West's cross motion for summary judgment dismissing the complaint, and dismissed the complaint against that defendant.

TURTURRO, et al. v CITY OF NEW YORK, et al.:

2ND Dept. App. Div. order of 4/1/15; modification and affirmance; leave to appeal granted by Court of Appeals, 10/20/15;
MUNICIPAL CORPORATIONS - TORT LIABILITY - WHETHER THE MUNICIPAL DEFENDANT ESTABLISHED ITS ENTITLEMENT TO QUALIFIED IMMUNITY FOR ITS TRAFFIC PLANNING DECISION REGARDING A ROADWAY FOR WHICH IT HAD RECEIVED COMPLAINTS OF SPEEDING AND LACK OF TRAFFIC SIGNALS - WHETHER PLAINTIFFS FAILED TO ESTABLISH THAT ANY ACT OR OMISSION BY THE MUNICIPAL DEFENDANT WAS A PROXIMATE CAUSE OF THE INJURIES TO AN INFANT PLAINTIFF HIT BY A SPEEDING CAR; WHETHER PLAINTIFFS WERE PROPERLY ALLOWED TO ADDRESS AT TRIAL THE MANNER IN WHICH THE MUNICIPAL DEFENDANT RESPONDED TO COMPLAINTS OF SPEEDING AS A LAW ENFORCEMENT MATTER;
Supreme Court, Kings County, entered judgment upon a jury verdict finding, among other things, defendant City of New York 40% at fault for the happening of the accident and, among other things, denied defendant City of New York's motion pursuant to CPLR 4404(a) seeking to set aside the verdict against it on the issue of liability; App. Div. (1) modified the judgment by deleting the

provision thereof awarding plaintiff Elida Turturro the principal sum of \$75,000 for the loss of the infant plaintiff's services, and substituting therefor a provision dismissing that cause of action, and by deleting the provisions thereof awarding damages to the infant plaintiff in the principal sums of \$6,000,000 for past pain and suffering and \$10,000,000 for future pain and suffering; (2) affirmed the judgment as so modified; and (3) remitted the matter to Supreme Court for a new trial on the issues of damages for past and future pain and suffering, unless within 30 days after service upon the plaintiffs of a copy of the court's decision and order, the plaintiffs serve and file in the office of the Clerk of the Supreme Court, Kings County, a written stipulation consenting to reduce the amount of damages for past pain and suffering from the principal sum of \$6,000,000 to the principal sum of \$3,000,000, and to further reduce the amount of damages for future pain and suffering from the principal sum of \$10,000,000 to the principal sum of \$7,000,000, and the entry of an appropriate amended judgment accordingly; and (4) in the event that the plaintiffs so stipulate, affirmed the judgment as so reduced and amended; plaintiffs stipulated to the reduced award and an amended judgment was entered accordingly.