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COURT OF APPEALS NEW FILINGS

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

December 22, 2017 through December 28, 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.

DeVERA, &c., et al., MATTER OF v ELIA, &c., et al.:
3RD Dept. App. Div. order of 6/8/17; reversal; leave to appeal granted by Court of Appeals, 12/12/17;
Proceeding Against Body or Officer--Certiorari--CPLR article 78 proceeding on behalf of charter schools and parents of children attending pre-kindergarten programs at the schools to, among other things, annul so much of the Commissioner of Education's determination as found the charter schools properly required to execute a Pre-K contract as a condition to receiving state funds as a collaborating partner with a public school district--whether a school district can impose regulations on a charter school to obtain state funding for pre-kindergarten programming as a partner in the school district's consolidated application to the New York State Department of Education--grants under Education Law § 73;

Supreme Court, Albany County, dismissed petitioners' application in a CPLR article 78 proceeding, to review a determination of respondent Commissioner of Education partially dismissing petitioners' challenge to certain conditions imposed upon their receipt of certain state funds; App. Div. reversed, granted the petition, annulled that part of the determination upholding certain conditions imposed upon petitioners' receipt of certain state funds, and remitted the matter to respondent Commissioner of Education for further proceedings not inconsistent with the decision.

MATTER OF LACEE L. (STEPHANIE L.; ADMINISTRATION FOR CHILDREN'S SERVICES):
1ST Dept. App. Div. order of 9/12/17; affirmance; leave to appeal granted by App. Div., 12/7/17;
Social Services--Foster Care--Whether the Americans With Disabilities Act applies in Family Court article 10 proceeding in evaluating whether agency made reasonable efforts to achieve the permanency goal of returning the subject child to the parent, who suffers from a cognitive disability;
Family court, Bronx County, determined that petitioner agency made reasonable efforts to achieve the permanency goal of returning the subject child to respondent mother during the nine-month period following the child's removal; App. Div. affirmed.

MANCINI, MATTER OF v OFFICE OF CHILDREN AND FAMILY SERVICES, et al.:
3RD Dept. App. Div. order of 6/29/17; affirmance; leave to appeal granted by Court of Appeals, 12/14/17;
Workers' Compensation--Limitation of Right to Compensation--Whether compensation benefits awarded for impairment of wage-earning capacity pursuant to Workers' Compensation Law § 15(3)(v) are subject to the durational limitations of Workers' Compensation Law § 15(3)(w);
App. Div. affirmed decision of the New York State Workers' Compensation Board, which ruled, among other things, that claimant was entitled to workers' compensation benefits pursuant to Workers' Compensation Law § 15(3)(v).

SAVE AMERICA'S CLOCKS, INC., et al., MATTER OF v CITY OF NEW YORK, &c., et al.:
1ST Dept. App. Div. order of 11/30/17; affirmance with dissents;
Municipal Corporations--Landmarks--Whether determination of New York City Landmarks Preservation Committee (LPC) approving a Certificate of Appropriateness allowing owner of property to convert landmark-designated clock tower into a private residence, and to convert the clock from a mechanical to an electrical system of operation, was arbitrary and capricious, lacked a rational basis in the record, or was affected by an error of law; whether New York City's Landmarks Preservation and Historic Districts Law (Administrative Code of City of NY § 25-301 et seq.) permits the LPC to require the property owner to allow

continuing public access to interior landmark; whether requiring continued public access to interior landmark constitutes a taking under the 5th Amendment to the U.S. Constitution;
Supreme Court, New York County, granted the CPLR article 78 petition to annul a Certificate of Appropriateness, issued 5/29/15, which authorized work on certain features of a designated interior landmark; App. Div. affirmed.

NEW YORK CITY ASBESTOS LITIGATION, MATTER OF (SOUTH v CHEVRON):
1ST Dept. App. Div. order of 8/29/17; affirmance; leave to appeal granted by App. Div., 12/14/17;
Seamen--Jones Act--Whether release executed by plaintiff in a 1997 Jones Act (46 USC § 30104 et seq.) action was enforceable in subsequent Jones Act and negligence action brought by plaintiff and his wife derivatively against defendant manufacturer of asbestos; plaintiff, who was exposed to asbestos while serving as merchant mariner, executed release before mesothelioma diagnosis; enforceability of release under Federal Employers' Liability Act (45 USC § 55);
Supreme Court, New York County, denied defendant's motion for summary judgment dismissing the complaint insofar as asserted against it; App. Div. affirmed.