

COURT OF APPEALS NEW FILINGS

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

October 26, 2018 through November 1, 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.

MATTER OF NEW YORK CITY ASBESTOS LITIGATION (IDELL, &c. v AERCO INTERNATIONAL, INC., et al.)

1ST Dept. App. Div. order of 9/13/18; affirmance; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

Torts--Toxic Torts--Whether trial court erred by, among other things, granting motions to quash defendant's trial subpoenas for live testimony of co-defendant witnesses, limiting defendant's cross-examination of adverse witnesses, limiting defendant's ability to plead and argue in the alternative pursuant to CPLR §§ 1601 and 3014, and depriving defendant of ability to seek equitable apportionment to other settled tortfeasors; claimed due process violations;

Supreme Court, New York County, granted defendants Crane Co. and Warren Pumps LLC's respective motions to quash trial subpoenas issued to them (order 8/15/17); thereafter, denied defendant Jenkins Bros.' motion pursuant to CPLR 4404 to set aside the verdict, and granted plaintiff's motion pursuant to CPLR 4404 to set aside the verdict to the extent of directing a new trial unless defendant stipulated to an increase in the jury awards of \$1.8 million and \$1.5 million for past and future pain and suffering, respectively, to \$4 million and \$2.5 million, respectively (order 12/15/17); App. Div. affirmed order (8/15/17); and modified order (12/15/17) to vacate the additurs for past and future pain and suffering and to direct a new trial on past pain and suffering only, unless, within 30 days of service of a copy of the order with notice of entry, defendant stipulated to increase the award for past pain and suffering to \$4 million, and to reinstate the jury's future pain and suffering award, and otherwise affirmed.

LEONARD, et al. v PLANNING BOARD OF THE TOWN OF UNION VALE:

2ND Dept. App. Div. order of 8/15/18; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; **Environmental Conservation--Environmental Quality Review--Whether record supported town planning board's conclusion that changes in the regulatory landscape for environmental matters constituted new information or a change in circumstances warranting rescission of SEQRA negative declaration issued in 1987; alleged due process violation;**

Supreme Court, Dutchess County, denied the second amended petition and, in effect, dismissed the proceeding; App. Div. affirmed.

O'DONNELL, MATTER OF v ERIE COUNTY, et al.:

3RD Dept. App. Div. order of 6/14/18; affirmance; leave to appeal granted by Court of Appeals, 10/18/18;

Workers' Compensation--Voluntary Withdrawal from Labor Market--Whether the Appellate Division erred in affirming the Workers' Compensation Board's determination on the basis that an April 2017 amendment to Workers' Compensation Law § 15(3)(w) no longer requires a claimant to demonstrate an ongoing attachment to the labor market;

App. Div. affirmed 8/18/16 Workers' Compensation Board decision which ruled, among other things, that claimant involuntarily withdrew from the labor market, and 7/19/17 Workers' Compensation Board amended decision which ruled, among other things, that claimant was not required to demonstrate an ongoing attachment to the labor market.

PEREZ (JOSE), PEOPLE v:

2ND Dept. App. Div. order of 6/27/18; affirmance; leave to appeal granted by Court of Appeals, 10/16/18;

Crimes--Sex Offenders--Sex Offender Registration Act (SORA)--Whether Supreme Court erred when it assessed defendant 30 points for purposes of risk factor 9 based on a prior conviction of lewdness in New Jersey--whether prior New Jersey conviction for public lewdness constituted a "misdemeanor sex crime" under New York law;

Supreme Court, Kings County, after a hearing, designated defendant a level two sex offender pursuant to Correction Law article 6-c; App. Div. affirmed.

TAUS, MATTER OF v STANFORD, &c., et al.:

3RD Dept. App. Div. order of 9/20/18; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

Proceeding Against Body or Officer--Certiorari--CPLR article 78 proceeding to review determinations of the Board of Parole denying petitioner's request for parole release; dismissal of petition as moot based on petitioner's subsequent reappearance before the Board of Parole;

Supreme Court, Albany County, dismissed the petition; App. Div. affirmed.