

COURT OF APPEALS NEW FILINGS

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

**May 20, 2016 through May 26, 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.**

AMERICAN ECONOMY INSURANCE COMPANY v STATE OF NEW YORK, et al.:

1<sup>ST</sup> Dept. App. Div. order of 4/14/16; reversal;

WORKERS' COMPENSATION - SPECIAL FUNDS - WHETHER WORKERS' COMPENSATION LAW § 25-a(1-a) IMPOSES RETROACTIVE LIABILITY IN VIOLATION OF THE CONTRACT CLAUSE OF THE U.S. CONSTITUTION AND THE TAKINGS CLAUSE OF THE U.S. AND NEW YORK STATE CONSTITUTIONS; Supreme Court, New York County, dismissed the complaint; App. Div. reversed, reinstated the complaint, and directed the Clerk to enter an amended judgment in favor of plaintiffs declaring that Workers' Compensation Law § 25-a(1-a) as retroactively applied to policies issued before October 1, 2013 is unconstitutional.

CANADY (EARL), PEOPLE v:

App. Term 2<sup>nd</sup>, 11<sup>th</sup> and 13<sup>th</sup> Judicial Districts order of 12/31/15; affirmance; leave to appeal granted by Fahey, J., 5/13/16; CRIMES - RIGHT TO A SPEEDY TRIAL - WHETHER TRIAL COURT IMPROPERLY CALCULATED THE TIME CHARGEABLE TO THE PEOPLE BY CHARGING THEM WITH TIME BEFORE THE OFF-CALENDAR STATEMENT OF READINESS WAS FILED, INSTEAD OF ONLY TIME AFTER THE DECLARATION; WHETHER PEOPLE'S OFF-CALENDAR READINESS DECLARATION WAS ILLUSORY; Criminal Court of the City of New York, Kings County, dismissed the proceeding on speedy trial grounds; App. Term affirmed.

CF HY LLC v HUDSON YARDS LLC, et al.:

Supreme Court, New York County, order of 4/21/16; bringing up for review 1<sup>st</sup> Dept. App. Div. order of 1/20/15; affirmance; pending motion to dismiss appeal;

MORTGAGES - FORECLOSURE - DETERMINATION OF FAIR MARKET VALUE OF MORTGAGED PROPERTY FOR PURPOSES OF CONSIDERING APPLICATION FOR DEFICIENCY JUDGMENT - WHETHER TRIAL COURT ERRED IN DENYING DEFENDANT SINGER'S REQUEST FOR AN ADJOURNMENT OF THE HEARING SO THAT HE COULD BE PRESENT AND TESTIFY REGARDING VALUATION - WHETHER THE TRIAL COURT PROPERLY CONSIDERED VARIOUS FACTORS IN DETERMINING MARKET VALUE, INCLUDING THE PURCHASE PRICE AFTER THE FORECLOSURE SALE;

Supreme Court awarded judgment in favor of plaintiff in the total amount of \$25,764,306.96; App. Div. affirmed; Supreme Court thereafter denied defendant Singer's motion apparently seeking a final judgment in light of the court's prior severance of the plaintiff's application for attorneys' fees.

CONTACT CHIROPRACTIC, P.C., &c. v NEW YORK CITY TRANSITAUTHORITY:

2<sup>ND</sup> Dept. App. Div. order of 1/20/16; affirmance; leave to appeal granted by App. Div., 5/10/16; Rule 500.11 review pending;

LIMITATION OF ACTIONS - WHAT STATUTE GOVERNS - ACTION TO RECOVER FIRST-PARTY NO-FAULT BENEFITS - WHETHER AN ACTION BY AN INJURED CLAIMANT, OR THE CLAIMANT'S ASSIGNEE, TO RECOVER FIRST-PARTY NO-FAULT BENEFITS FROM A SELF-INSURED DEFENDANT, IS SUBJECT TO SIX-YEAR OR THREE-YEAR STATUTE OF LIMITATIONS;

App. Term 2<sup>nd</sup>, 11<sup>th</sup> and 13<sup>th</sup> Judicial Districts, affirmed so much of an order of the Civil Court of the City of New York, Queens County, dated July 27, 2011, as upon renewal, adhered to the original determination in an order of the same court dated December 4, 2007, denying that branch of defendant's motion which was for summary judgment dismissing the complaint as time-barred; App. Div. affirmed.

LANGDON (FRANK DINEHART), PEOPLE v:

County Court, Columbia County, letter decision of 3/17/16; sua sponte examination whether any jurisdictional basis exists for this appeal taken as of right;

APPEAL - APPEALABLE PAPER - DENIAL OF MOTION FOR A HEARING IN A CRIMINAL MATTER;

County Court denied the 3/7/16 "motion for a hearing" regarding Indictment No. 3386.

LOFTON (DAVID), PEOPLE v:

4<sup>TH</sup> Dept. App. Div. order of 10/2/15; modification; leave to appeal granted by Abdus-Salaam, J., 5/16/16;  
CRIMES - SENTENCE - YOUTHFUL OFFENDER - DENIAL OF YOUTHFUL OFFENDER STATUS - WHETHER THE TRIAL COURT'S STATEMENTS AT SENTENCING SATISFIED THE REQUIREMENT SET FORTH IN PEOPLE v MIDDLEBROOKS (25 NY3d 516, 522 [2015]) THAT THE COURT "DETERMINE ON THE RECORD IF [DEFENDANT] WAS AN ELIGIBLE YOUTH DUE TO THE EXISTENCE OF ONE OR MORE OF THE FACTORS SET FORTH IN CPL 720.10(3)";

Supreme Court, Monroe County, convicted defendant as a juvenile offender, upon a jury verdict, of criminal sexual act in the first degree and burglary in the second degree and imposed a sentence; App. Div. modified by vacating the surcharge and DNA databank fee and otherwise affirmed.

PRINCES POINT LLC v MUSS DEVELOPMENT LLC, et al.:

1<sup>ST</sup> Dept. App. Div. order of 2/4/16; affirmance; leave to appeal granted by App. Div., 5/12/16; Rule 500.11 review pending;  
VENDOR AND PURCHASER - CONTRACT FOR SALE OF REAL PROPERTY - WHETHER PROSPECTIVE PURCHASER OF REAL PROPERTY COMMITS ANTICIPATORY BREACH OF CONTRACT BY COMMENCING AN ACTION AGAINST SELLERS FOR RESCISSION OF THE CONTRACT BEFORE THE CLOSING DATE - WHETHER SELLERS ARE REQUIRED TO ESTABLISH THAT THEY ARE READY, WILLING AND ABLE TO CLOSE AFTER BUYER'S ANTICIPATORY BREACH IN ORDER TO RETAIN THE DEPOSIT AND CERTAIN OTHER PAYMENTS AS LIQUIDATED DAMAGES;

Supreme Court, New York County, declared that plaintiff anticipatorily breached its real estate contract with one of the defendants, entitling defendants to recover the down payment and to retain certain other payments; App. Div. affirmed.

WILLIAMS, &c., et al. v STATE OF NEW YORK:

4<sup>TH</sup> Dept. App. Div. order of 3/18/16; affirmance; sua sponte examination whether the Appellate Division order finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;  
STATE - CLAIM AGAINST STATE - PERMISSION TO FILE LATE CLAIM DENIED - WHETHER THE COURT OF CLAIMS ABUSED ITS DISCRETION IN DENYING THAT PART OF CLAIMANTS' MOTION SEEKING PERMISSION TO FILE A LATE CLAIM BASED ON A CONSTITUTIONAL TORT THEORY OR A NEGLIGENT TRAINING THEORY;

Court of Claims granted claimants' motion for permission to file a late claim against defendant with respect to a claim for damages for decedent's pain and suffering based on defendant's alleged negligence in failing to protect decedent, and otherwise denied claimants' motion for permission to file a late claim against defendant; App. Div. affirmed.