

COURT OF APPEALS NEW FILINGS

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

September 14, 2012 through September 20, 2012

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.

CANGRO v PARK SOUTH TOWERS ASSOCIATES, et al.:

1ST Dept. App. Div. order of 8/14/12; grant of motions to dismiss the appeal; sua sponte examination whether a substantial constitutional question is directly involved to support the appeal taken as of right and whether the order appealed from finally determines the action within the meaning of the Constitution;

APPEALS - CHALLENGE TO ORDER GRANTING MOTIONS TO DISMISS THE APPEAL TO THE EXTENT OF STRIKING THE APPEAL FROM A PARTICULAR TERM, WITH LEAVE TO RE-PERFECT UPON AN APPROPRIATE APPENDIX FOR A LATER TERM;

Supreme Court, New York County denied plaintiff's motion to reargue, reconsider and modify that court's 3/17/11 order; App. Div. granted motions to dismiss the appeal from a 6/8/11 Supreme Court order to the extent of striking the appeal from the court's October 2012 Term calendar, with leave to re-perfect upon an appendix which complies with CPLR 5528 and 22 NYCRR 600.10(c) without further fee, on or before 10/1/12 for the court's December 2012 Term; and directed that, upon failure to so perfect, an order dismissing the appeal may be entered ex parte, provided respondents serve a copy of the order upon the appellant within 10 days after the date of entry thereof.

EBC I, INC., &c. v GOLDMAN SACHS & CO.:

1ST Dept. App. Div. order of 12/8/11; affirmance; leave to appeal granted by Court of Appeals, 9/6/12;
TORTS - FRAUD - WHETHER THE APPELLATE DIVISION'S DISMISSAL OF PLAINTIFF'S BREACH OF FIDUCIARY DUTY AND FRAUD CLAIMS CONFLICTS WITH THIS COURT'S DECISION IN EBC I, INC. v GOLDMAN SACHS & CO. (5 NY3d 11 [2005]); SUMMARY JUDGMENT;
Supreme Court, New York County granted defendant's motion for summary judgment dismissing the complaint; App. Div. affirmed.

HRONCICH, MATTER OF v CON EDISON, et al.:

3RD Dept. App. Div. order of 1/19/12; affirmance; leave to appeal granted by Court of Appeals, 9/6/12;
WORKERS' COMPENSATION - DEATH BENEFITS - WHETHER THE APPELLATE DIVISION PROPERLY AFFIRMED THE WORKERS' COMPENSATION BOARD DECISION GRANTING CLAIMANT DEATH BENEFITS WITHOUT APPORTIONMENT FOR THE PERCENTAGE OF NON-WORK RELATED CAUSES(S) OF DEATH - WORKERS' COMPENSATION LAW § 15(7);
App. Div. affirmed the 12//18/09 decision of the Workers' Compensation Board which ruled that decedent's death was causally related to his occupational illness.

TORRES v GAMMA TAXI CORP., et al.:

1ST Dept. App. Div. order of 7/10/12; modification with dissents; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution;
MOTOR VEHICLES - COLLISION - WHETHER PLAINTIFF SUFFERED A SERIOUS INJURY WITHIN THE MEANING OF INSURANCE LAW § 5102(d) - PLAINTIFF INVOLVED IN TWO PRIOR MOTOR VEHICLE ACCIDENTS; DISMISSAL OF CLAIMS FOR DAMAGES FOR PERSONAL INJURY; SUMMARY JUDGMENT;
Supreme Court, Bronx County granted defendants' motion for renewal and, upon renewal, granted defendants' motion for summary judgment dismissing the complaint on the ground that plaintiff did not suffer a serious injury within the meaning of Insurance Law § 5102(d).