

COURT OF APPEALS NEW FILINGS

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

February 22, 2013 through February 28, 2013

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.

BOND v PROGRESSIVE INSURANCE CO. (TWO ACTIONS):

3RD Dept. App. Div. order of 12/13/12; modification; sua sponte examination whether the App. Div. order grants a new trial or hearing within the meaning of CPLR 5601(c);

JUDGMENTS - DEFAULT JUDGMENT - VACATUR - INTERESTED PERSONS - TIMELINESS OF MOTION; PARTIES - INTERVENTION;

Supreme Court, Schenectady County, among other things, denied a motion by Progressive Insurance Company for, among other things, vacatur of a default judgment and leave to intervene in action No. 1; App. Div. modified by reversing so much of the order as denied the motion of Progressive Insurance Company to (1) vacate a default judgment in action No. 1 and (2) intervene in action No. 1; granted the motion to that extent; vacated the default judgment; and affirmed as so modified.

VOSS, et al. v THE NETHERLANDS INSURANCE CO., et al.:

4TH Dept. App. Div. order of 6/5/12; affirmance; leave to appeal granted by Court of Appeals, 2/14/13;

INSURANCE - AGENTS AND BROKERS - ALLEGED FAILURE TO PROCURE ADEQUATE COVERAGE - INSURED CHARGED WITH PRESUMPTIVE KNOWLEDGE OF REDUCED COVERAGE IN RENEWED POLICY - WHETHER SUFFICIENT EVIDENCE EXISTED OF A SPECIAL RELATIONSHIP BETWEEN BROKER AND INSURED - WHETHER ALLEGED FAILURE TO PROCURE ADEQUATE COVERAGE WAS PROXIMATE CAUSE OF LOSS;

Supreme Court, Onondaga County granted the motion by defendant CH Insurance Brokerage for summary judgment dismissing the complaint and dismissed the complaint and all cross claims against that defendant; App. Div. affirmed.