

COURT OF APPEALS NEW FILINGS

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

September 20, 2013 through September 26, 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.

HORTON (THOMAS), PEOPLE v:

Wayne County Court order of 1/30/13; affirmance; leave to appeal granted by Smith, J., 9/17/13;

CRIMES - TAMPERING WITH WITNESS - DEFENDANT POSTED ON HIS FACEBOOK ACCOUNT A PICTURE OF A WOMAN WHO ACTED AS AN INFORMANT IN A CASE INVOLVING DEFENDANT'S BEST FRIEND AND LABELED HER A "SNITCH" - NO EVIDENCE OF THREATS OR INTIMIDATION - WHETHER THE EVIDENCE WAS LEGALLY SUFFICIENT TO SUPPORT DEFENDANT'S CONVICTION FOR TAMPERING WITH A WITNESS IN THE FOURTH DEGREE (PENAL LAW § 215.10);

Galen Town Court convicted defendant, after a jury trial, of tampering with a witness in the fourth degree; County Court, Wayne County, affirmed.

NEW YORK CITY ASBESTOS LITIGATION, MATTER OF (ANDRUCKI v ALUMINUM COMPANY OF AMERICA, et al.):

1ST Dept. App. Div. order of 5/28/13; reversal; leave to appeal granted by Court of Appeals, 9/12/13;

PUBLIC AUTHORITIES - CLAIMS AGAINST PUBLIC AUTHORITIES - COMPLIANCE WITH NOTICE OF CLAIM REQUIREMENTS - WHETHER A NOTICE OF CLAIM THAT STATED PERSONAL INJURY CLAIMS ARISING OUT OF A WORKER'S EXPOSURE TO ASBESTOS AND DEVELOPMENT OF MALIGNANT MESOTHELIOMA, PROVIDED THE REQUIRED 60-DAY NOTICE WITH RESPECT TO SURVIVORSHIP AND WRONGFUL DEATH CAUSES OF ACTION CONTAINED IN AMENDED COMPLAINT FILED AFTER WORKER DIED - APPLICABILITY OF "SUBSTANTIAL COMPLIANCE" DOCTRINE;

Supreme Court, New York County, awarded plaintiffs damages; App. Div. reversed, vacated the judgment, denied plaintiffs' motion for a default judgment against defendant Port Authority of New York and New Jersey, granted defendant's motion to dismiss the complaint for lack of subject matter jurisdiction, and directed the clerk to enter judgment accordingly.

NOREX PETROLEUM LIMITED v BLAVATNIK, et al.:

4TH Dept. App. Div. order of 4/25/13; affirmance; leave to appeal granted by Court of Appeals, 9/12/13;

LIMITATION OF ACTIONS - TOLLING - DISMISSAL OF COMPLAINT AS TIME-BARRED AFTER APPLYING NEW YORK'S BORROWING STATUTE AND THE PROVINCE OF ALBERTA'S STATUTE OF LIMITATIONS - WHETHER APPELLATE DIVISION ERRED IN DETERMINING THAT THE TOLLING PROVISION OF 28 USC § 1367(d) DOES NOT APPLY IN THIS CASE BECAUSE CPLR 205(a) PROVIDES FOR A LONGER TOLLING PERIOD - WHETHER CPLR 205(a) APPLIES WHERE CPLR 202 REQUIRES THE APPLICATION OF FOREIGN LAW WHICH HAS NO TOLLING PROVISION;

Supreme Court, New York County, among other things, granted the motions of various defendants to dismiss the complaint as against them, and denied plaintiff's motion to supplement the record on defendants' motions; App. Div. affirmed.

ROA, PEOPLE ex rel. v LEE, &c.:

2ND Dept. App. Div. order of 8/6/13; denial of application; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

HABEAS CORPUS - CHALLENGE TO APPELLATE DIVISION ORDER DENYING APPLICATION FOR A WRIT OF HABEAS CORPUS;

App. Div. denied petitioner's application for a writ of habeas corpus.

STATE OF NEW YORK, MATTER OF v DONALD DD.:

3RD Dept. App. Div. order of 6/6/13; affirmance; leave to appeal granted by Court of Appeals, 9/17/13;

CRIMES - SEX OFFENDERS - CIVIL COMMITMENT OR SUPERVISION - MENTAL ABNORMALITY - DIAGNOSIS OF ANTISOCIAL PERSONALITY DISORDER (ASPD) - WHETHER ASPD CAN CONSTITUTE A MENTAL ABNORMALITY REQUIRING CIVIL COMMITMENT;

Supreme Court, Greene County, granted petitioner's application, in a proceeding pursuant to Mental Hygiene Law article 10, to find respondent to be a dangerous sex offender and confined him to a secure treatment facility; App. Div. affirmed.

UNION SQUARE PARK COMMUNITY COALITION, INC. v NEW YORK CITY DEPARTMENT OF PARKS AND RECREATION, et al.:

1ST Dept. App. Div. order of 6/18/13; reversal; leave to appeal granted by Court of Appeals, 9/17/13;

PARKS AND PARKWAYS - PUBLIC TRUST DOCTRINE - WHETHER PROPOSED USE OF DEDICATED PARKLAND AS A RESTAURANT SERVES A PARK PURPOSE - WHETHER THE CONCESSION AGREEMENT BETWEEN THE CITY AND RESTAURANT COMPANY IS A LEASE OF PARKLAND REQUIRING APPROVAL BY THE STATE LEGISLATURE;

Supreme Court, New York County, granted plaintiffs' motion for a preliminary injunction restraining defendants from altering Union Square Park's Pavilion to accommodate a restaurant, granting any further approvals for the restaurant, implementing a license agreement and operating the restaurant, and denied defendants' cross motion to dismiss the complaint or for summary judgment; App. Div. reversed, denied plaintiffs' motion for a preliminary injunction, and granted defendants' cross motion to dismiss the complaint.