

COURT OF APPEALS NEW FILINGS

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

**December 27, 2013 through January 2, 2014**

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.**

GARAY (BENNY), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 6/20/13; affirmance; leave to appeal granted by Smith, J., 12/19/13;

CRIMES - RIGHT TO COUNSEL - WHETHER TRIAL COURT VIOLATED DEFENDANT'S RIGHT TO COUNSEL BY DISCHARGING A JUROR WHO CALLED IN SICK PRIOR TO THE ARRIVAL OF DEFENDANT'S COUNSEL; WHETHER TRIAL COURT ERRED IN DENYING DEFENDANT'S REQUEST FOR A SUPPRESSION HEARING; COURTROOM CLOSURE DURING TESTIMONY OF UNDERCOVER POLICE OFFICERS;

Supreme Court, New York County, convicted defendant, upon a jury verdict, of criminal possession of a controlled substance in the fifth degree, and sentenced him to time served; App. Div. affirmed.

MARSALA, et al., MATTER OF v CITY OF LONG BEACH, et al.:

2<sup>ND</sup> Dept. App. Div. order of 11/20/13; 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 - HYBRID PROCEEDING PURSUANT TO CPLR ARTICLE 78 TO REVIEW DETERMINATIONS OF THE CITY OF LONG BEACH DENYING APPLICATIONS TO RENEW 22 TAXI LICENSES, AND ACTION TO RECOVER DAMAGES FOR VIOLATION OF CONSTITUTIONAL RIGHTS UNDER COLOR OF STATE LAW; Supreme Court, Nassau County, in effect, denied petitioners/plaintiffs' motion for summary judgment on the fourth through twelfth causes of action, granted the City's cross motion for summary judgment dismissing the fourth through twelfth causes of action as asserted against it, and denied the petition set forth in the first through third causes of action; App. Div. affirmed.

VARGAS v CITY OF NEW YORK, et al.:

2<sup>ND</sup> Dept. App. Div. order of 4/10/13; reversal; leave to appeal granted by Court of Appeals, 12/17/13; MUNICIPAL CORPORATIONS - NOTICE OF CLAIM - DISMISSAL OF COMPLAINT FOR FAILURE TO FILE PROPER NOTICE OF CLAIM; NEGLIGENCE - CIVIL RIGHTS CLAIM BY DIABETIC ARRESTEE DEPRIVED OF INSULIN WHILE HE WAS IN POLICE CUSTODY; Supreme Court, Kings County, in effect, upon the denial of those branches of defendant City's motion which were to dismiss so much of the complaint as alleged negligence and civil rights violations pursuant to 42 USC § 1983, and upon a jury verdict, found in favor of plaintiff in the principal sum of \$17,619,725.73; Supreme Court then denied defendants' motion pursuant to CPLR 4404(a) to set aside the verdict and for judgment as a matter of law, or to set aside the verdict as contrary to the weight of the evidence and for a new trial; and granted plaintiff's motion for attorneys' fees pursuant to 42 USC § 1988; App. Div., among other things, reversed the judgment, granted those branches of defendant City's motion which were to dismiss so much of the complaint as alleged negligence and civil rights violations pursuant to 42 USC § 1983, dismissed those portions of the complaint, reversed the order regarding attorneys' fees and denied plaintiff's motion for attorney's fees pursuant to 42 USC § 1988.