

COURT OF APPEALS NEW FILINGS

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

September 26, 2014 through October 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.

BAXIN (JOSE MARTINEZ), PEOPLE v:

1ST Dept. App. Div. order of 4/29/14; affirmance; leave to appeal granted by Court of Appeals, 9/18/14;

CRIMES - SEX OFFENDERS - SEX OFFENDER REGISTRATION ACT (SORA) - WHETHER THE SORA HEARING COURT COMMITTED REVERSIBLE ERROR BY CONSIDERING GRAND JURY MINUTES THAT WERE NOT DISCLOSED TO DEFENDANT AND OVER DEFENSE COUNSEL'S OBJECTION;

Supreme Court, New York County, adjudicated defendant a level two sexually violent offender pursuant to SORA (Correction Law article 6-C); App. Div. affirmed.

DAURIA v CASTLEPOINT INSURANCE COMPANY, et al.:

1ST Dept. App. Div. order of 9/4/14; affirmance with dissents; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution; MOTIONS AND ORDERS - REARGUMENT OR RENEWAL - WHERE THE APPELLATE DIVISION GRANTED SUMMARY JUDGMENT DISMISSING THE COMPLAINT AS TO DEFENDANT INSURER ON APPEAL AND PLAINTIFFS THEREAFTER MOVED AT SUPREME COURT TO RENEW THE PRIOR GRANT OF SUMMARY JUDGMENT TO DEFENDANT BROKER, WHETHER THE APPELLATE DIVISION ERRED IN UPHOLDING THE DENIAL OF THE MOTION TO RENEW UPON THE GROUND THAT PLAINTIFFS FAILED TO SHOW THAT THE FACTUAL OR LEGAL BASIS FOR THE GRANT OF SUMMARY JUDGMENT TO BROKER HAD BEEN OVERTURNED BY THE GRANT OF SUMMARY JUDGMENT TO THE INSURER; Supreme Court, Bronx County, among other things, denied plaintiff's motion to renew defendant Frank Campo's motion to dismiss the complaint; App. Div. affirmed.

SELECTIVE INSURANCE COMPANY OF AMERICA, et al. v COUNTY OF RENSSELAER:

3RD Dept. App. Div. order of 1/23/14; affirmance; leave to appeal granted by Court of Appeals, 9/16/14; INSURANCE - LIABILITY INSURANCE - POLICE PROFESSIONAL LIABILITY POLICY - SETTLEMENT OF CLASS ACTION LAWSUIT SEEKING DAMAGES FOR INDIVIDUALS STRIP SEARCHED PURSUANT TO AN ALLEGEDLY UNCONSTITUTIONAL POLICY - WHETHER THE UNDERLYING ALLEGATIONS IN THE CLASS ACTION LAWSUIT REQUIRE COUNTY TO PAY INSURERS ONE DEDUCTIBLE FOR ONE OCCURRENCE OR SEPARATE DEDUCTIBLES FOR EACH CLASS ACTION PLAINTIFF - WHETHER THE ATTORNEYS' FEES AND COSTS ARISING OUT OF THE CLASS ACTION LAWSUIT ARE TO BE ALLOCATED RATABLY TO EACH CLASS ACTION PLAINTIFF; WHETHER THE INSURERS ACTED IN BAD FAITH IN THEIR REPRESENTATION OF THE COUNTY IN THE CLASS ACTION LAWSUIT; WHETHER INSURERS ARE LIABLE FOR COUNTY'S ATTORNEYS' FEES IN DEFENDING THIS ACTION; Supreme Court, Rensselaer County, (1) granted the motion for summary judgment by plaintiff insurers insofar as they sought a separate deductible for each of the 806 class action plaintiffs, (2) granted the County defendant's motion for summary judgment insofar as it sought to dismiss the part of the complaint seeking the proration of attorney's fees among all 806 occurrences and attributed all the fees to one policy, and (3) determined that County owed plaintiff insurers \$816,000; App. Div. affirmed.

SHANNON, &c., MATTER OF (FAMILY SERVICE SOCIETY OF YONKERS v WESTCHESTER COUNTY DEPARTMENT OF SOCIAL SERVICES):

1ST Dept. App. Div. order of 6/17/14; reversal; leave to appeal granted by Court of Appeals, 9/18/14; INCAPACITATED AND MENTALLY DISABLED PERSONS - GUARDIAN FOR PERSONAL NEEDS OR PROPERTY MANAGEMENT - PRIORITY OF CLAIMS UPON DEATH OF PERSON WHO HAD RECEIVED MEDICAID - COMPETING CLAIMS OF SOCIAL SERVICES DEPARTMENT AND SKILLED NURSING FACILITY - WHETHER

NURSING FACILITY'S CLAIMS AS A GENERAL CREDITOR AGAINST A GUARDIANSHIP ACCOUNT, WHICH CLAIM AROSE DURING AN INCAPACITATED PERSON'S LIFETIME, HAS PRIORITY OVER A CLAIM ASSERTED BY A DEPARTMENT OF SOCIAL SERVICES WITH PREFERRED CREDITOR STATUS - SOCIAL SERVICES LAW §§ 104 AND 369;

Supreme Court, Bronx County, among other things, directed petitioner to turn over to respondent Westchester County Department of Social Services (DSS) the balance of the funds remaining in the guardianship estate of Edna Shannon, an incapacitated person now deceased; App. Div. reversed and directed petitioner to turn over DSS's share of the balance of the guardianship account to respondent Eastchester Rehabilitation and Health Care Center, LLC.