

COURT OF APPEALS NEW FILINGS

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

January 6, 2017 through January 12, 2017

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.

GILBANE BUILDING CO./TDX CONSTRUCTION CORP, et al. v ST. PAUL FIRE AND MARINE INSURANCE COMPANY, et al.:

1ST Dept. App. Div. order of 9/15/16; reversal; leave to appeal granted by App. Div., 12/22/16;

INSURANCE - DUTY TO DEFEND AND INDEMNIFY - WHETHER THE ADDITIONAL INSURED CLAUSE IN THE COMMERCIAL GENERAL LIABILITY INSURANCE POLICY AT ISSUE COVERS ONLY THOSE THAT HAVE A WRITTEN CONTRACT DIRECTLY WITH THE NAMED INSURED - INTERPRETATION OF THE ADDITIONAL INSURANCE ENDORSEMENT IN POLICY COVERING BUILDING CONSTRUCTION PROJECT; DECLARATORY JUDGMENT;

Supreme Court, New York County, denied defendant Liberty Insurance Underwriters' motion for summary judgment declaring that plaintiff Gilbane Building Co./TDX Construction Corp., a Joint Venture, is not an additional insured under the policy issued by Liberty to nonparty Samson Construction Company, and declared that plaintiff is an additional insured under the policy; App. Div. reversed, granted defendant Liberty Insurance Underwriters' motion, and vacated the declaration.

MAKI v THE TRAVELERS COMPANIES, INC., et al.:

3RD Dept. App. Div. order of 12/8/16; affirmance; whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

INSURANCE - CANCELLATION - ACTION FOR BREACH OF CONTRACT AND FRAUD AGAINST INSURERS AND EMPLOYEES OF INSURERS AFTER PLAINTIFF HAD A MOTOR VEHICLE ACCIDENT, ATTEMPTED TO MAKE AN INSURANCE CLAIM, AND WAS INFORMED THAT INSURANCE POLICY HAD BEEN CANCELLED; DISMISSAL OF CLAIMS;

Supreme Court, Delaware County, among other things, granted certain defendants' motion to dismiss the complaint; App. Div. affirmed.

WIGGINS (REGINALD), PEOPLE v:

1ST Dept. App. Div. order of 10/6/16; modification; leave to appeal granted by Moskowitz, J., 1/3/17;

CRIMES - RIGHT TO SPEEDY TRIAL - WHETHER A SIX-YEAR DELAY BETWEEN THE CRIME AND DEFENDANT'S GUILTY PLEA DENIED DEFENDANT THE CONSTITUTIONAL RIGHT TO A SPEEDY TRIAL;

Supreme Court, New York County, convicted defendant, upon a guilty plea, of manslaughter in the first degree; App. Div. modified to the extent of reducing the mandatory surcharge and crime victim assistance fees, and, as so modified, affirmed.

NATASHA W., MATTER OF v NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES, et al.:

1ST Dept. App. Div. order of 12/1/16; affirmance with two-Justice dissent; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution;

SOCIAL SERVICES - REGISTER OF CHILD ABUSE AND MALTREATMENT - WHETHER THE STATE PROVED, BY A FAIR PREPONDERANCE OF THE EVIDENCE, THAT PETITIONER MALTREATED HER CHILD BY USING THE CHILD TO FACILITATE COMMITTING A CRIME;

Supreme Court, New York County, granted the petition seeking to, among other things, amend and seal an indicated report of child maltreatment by petitioner, to the extent of annulling the report and the 2/11/14 determination of an administrative law judge, which had denied petitioner's request, and remanding the matter to respondents for further proceedings; App. Div. affirmed.