

COURT OF APPEALS NEW FILINGS

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

November 14, 2014 through November 20, 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.

GUMBS et al. v FLUSHING TOWN CENTER III, L.P. et al.:

1ST Dept. App. Div. order of 2/25/14; affirmance with dissents; leave to appeal granted by App. Div., 10/30/14; Rule 500.11 review pending;

DISCLOSURE - MEDICAL RECORDS AND REPORTS - CPLR 3126 MOTION TO STRIKE COMPLAINT UPON PLAINTIFFS' REFUSAL TO PROVIDE MEDICAL AUTHORIZATIONS - WHETHER DEFENDANTS DEMONSTRATED THAT THE RECORDS SOUGHT WERE RELATED TO THE CLAIMED INJURIES, INCLUDING PERMANENT DISABILITY, LOSS OF FUTURE EARNINGS AND LOSS OF ENJOYMENT OF LIFE;

Supreme Court, Bronx County, among other things, denied defendants' motion pursuant to CPLR 3126 to strike the complaint upon plaintiffs' failure to provide requested HIPAA-compliant authorizations for the release of medical records; App. Div. affirmed.

HOGAN, MATTER OF v DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION:

4TH Dept. App. Div. order of 10/15/14; denial of motion; sua sponte examination of whether order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right; MOTIONS AND ORDERS - CHALLENGE TO APPELLATE DIVISION ORDER THAT, AMONG OTHER THINGS, DENIED AS UNTIMELY PETITIONER'S MOTION TO VACATE DISMISSAL OF A CPLR ARTICLE 78 PROCEEDING; App. Div. denied motion to vacate dismissal of CPLR article 78 proceeding and otherwise dismissed the motion to the extent it sought other relief.

HOLMES v BUSINESS RELOCATION SERVICES, INC.:

1ST Dept. App. Div. order of 5/8/14; affirmance; leave to appeal granted by App. Div., 10/29/14; Rule 500.11 review pending; WORKERS' COMPENSATION - EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP - SPECIAL EMPLOYEE - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT ISSUES OF FACT EXIST AS TO WHETHER DEFENDANT WAS SPECIAL EMPLOYER OF INJURED PLAINTIFF; Supreme Court, Bronx County, as relevant here, denied defendant Business Relocation Services, Inc.'s motion for summary judgment dismissing the complaint as barred by the Workers' Compensation Law; App. Div. affirmed.

MONARCH CONSULTING, INC., et al., MATTER OF v NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH PA. (AND TWO OTHER PROCEEDINGS):

1ST Dept. App. Div. order of 9/11/14; reversal of two judgments and affirmance of one order; ARBITRATION - AGREEMENT TO ARBITRATE - WHETHER INSUREDS ARE COMPELLED TO ARBITRATE THEIR DISPUTES WITH THEIR WORKERS' COMPENSATION INSURANCE CARRIER EVEN THOUGH THE CARRIER FAILED TO FILE THE ARBITRATION AGREEMENTS WITH THE CALIFORNIA DEPARTMENT OF INSURANCE AS CALIFORNIA LAW REQUIRES; Supreme Court, New York County, in two judgments and one order concerning three separate insureds, in effect, compelled arbitration in two proceedings and denied a petition to compel arbitration in the third proceeding; App. Div. reversed the Supreme Court judgments compelling arbitration and affirmed the Supreme Court order denying the petition to compel arbitration.