

COURT OF APPEALS NEW FILINGS

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

June 2, 2017 through June 8, 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.

BURGOS, MATTER OF v CITYWIDE CENTRAL INSURANCE PROGRAM, et al.:

3RD Dept. App. Div. order of 3/30/17; affirmance with dissents;
Rule 500.11 review pending;

Workers' Compensation--Extent of Disability--Where the Workers' Compensation Board has accepted the medical testimony assigning the most severe rating to a lumbar injury and determined that claimant is unable to perform even sedentary work, it is an abuse of discretion to find that claimant has less than a permanent total disability under the 2012 New York State Guidelines for Determining Permanent Impairment;

App. Div. affirmed an 8/6/15 decision of the Workers' Compensation Board which ruled, among other things, that claimant sustained a permanent partial disability and an 85% loss of wage-earning capacity.

JANAKIEVSKI, MATTER OF (COMMISSIONER OF LABOR):

3RD Dept. App. Div. order of 4/27/17; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right and whether any other jurisdictional basis exists for an appeal as of right; Unemployment Insurance--Benefits--Whether substantial evidence supports the Unemployment Insurance Appeal Board's determination that claimant was unable to meet the requirements for a valid original claim because his work for a nonprofit organization was excluded from the definition of employment under Labor Law § 563(2)(d); claimed violation of claimant's right to equal protection by treating people with disabilities differently for purposes of unemployment insurance benefits;

App. Div. affirmed a 6/9/16 decision of the Unemployment Insurance Appeal Board which ruled that claimant was ineligible to receive unemployment insurance benefits because he failed to file a valid original claim.

MATTER OF NEW YORK CITY ASBESTOS LITIGATION (JUNI, &c. v A.O. SMITH WATER PRODUCTS COMPANY, et al):

1ST Dept. App. Div. order of 2/28/17; affirmance; leave to appeal granted by App. Div., 5/30/17;

Labor--Safe Place to Work--Exposure to Toxic Substances--asbestos dust--whether there was a sufficient "scientific expression" of plaintiff's exposure to asbestos to support the jury's verdict in plaintiff's favor; evidence--expert proof of causation in toxic tort case brought by auto mechanic afflicted with mesothelioma after more than 25 years of working in two garages which serviced vehicles manufactured by defendant Ford Motor Company;

Supreme Court, New York County, granted defendant's motion to set aside the jury verdict in favor of plaintiff and set aside the verdict in its entirety; Supreme Court thereafter, awarded judgment in favor of defendant Ford Motor Company; App. Div. affirmed.

SCAVETTA et al. v WECHSLER:

1ST Dept. App. Div. order of 3/16/17; affirmance; leave to appeal granted by App. Div., 5/23/17; Rule 500.11 review pending;

Animals--Liability for Injuries--Whether a negligence claim may be asserted against a dog owner who attached the dog's leash to unsecured bike rack, which was put into motion when the dog fled and which eventually struck plaintiff, causing injuries;

Supreme Court, New York County, granted defendant's motion for summary judgment dismissing the complaint and denied plaintiffs' cross motion for summary judgment on the issue of liability; App. Div. affirmed.