

COURT OF APPEALS NEW FILINGS

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

**March 8 through March 14, 2019**

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.**

AMERICAN INTERNATIONAL SPECIALTY LINES INSURANCE COMPANY v  
ALLIED CAPITAL CORPORATION, et al.:

1<sup>ST</sup> Dept. App. Div. order of 10/25/18; reversal; leave to appeal granted by App. Div., 2/18/19;

**Arbitration--Award in Excess of Arbitrator's Powers--Whether the arbitration panel exceeded its authority when it reconsidered the partial final award it had previously issued--common law doctrine of functus officio; arbitration proceeding arising out of litigation involving an insurance claim payment; summary judgment;** Supreme Court, New York County, denied the petition to vacate a corrected partial final arbitration award dated 8/18/16 and a final arbitration award dated 4/6/17 and to confirm a partial final arbitration award dated 3/18/16; App. Div. reversed, granted the petition, vacated the arbitration awards dated 8/18/16 and 4/6/17, and confirmed the partial final award date 3/8/16.

BALGOBIN v STATE OF NEW YORK:

3<sup>RD</sup> Dept. App. Div. order of 1/3/19; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right and whether any jurisdictional basis exists for an appeal as of right;

**State--Claim Against State--Court of Claims--Claim seeking \$1,500 per week for life in satisfaction of instant scratch-off lottery ticket; lotteries; summary judgment;**

Court of Claims, among other things, granted defendant's motion for summary judgment dismissing the claim; App. Div. affirmed.

LONEY (JAVON), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 8/1/18; modification; leave to appeal granted by Wilson, J., 3/1/19;

**Crimes--Possession of Weapon--Whether trial court erred in declining defendant's request to instruct the jury that voluntariness is an element of the charged criminal possession of a weapon; suppression of physical evidence--whether trial court erred in denying defendant's motion to suppress firearm and marihuana evidence found when police entered apartment where defendant's blood trail lead; alleged prosecutorial misconduct in summation to jury;**

Supreme Court, Kings County, convicted defendant, upon a jury verdict, of criminal possession of a weapon in the third degree and unlawful possession of marihuana, and imposed sentence after denying defendant's application for youthful offender status; App. Div. modified by vacating the sentence imposed, and remitted the matter to Supreme Court for a new determination of defendant's application for youthful offender status and resentencing.

NAPPI v COMMUNITY ACCESS, INC.:

1<sup>ST</sup> Dept. App. Div. order of 2/19/19; modification; sua sponte examination of whether a substantial constitutional question is directly involved to support the appeal taken as of right;

**Landlord and Tenant--Eviction--Whether plaintiff subtenant had established right to rent apartment; whether plaintiff's sublease was properly terminated; alleged constitutional violations;**

Supreme Court, New York County, granted defendant's cross motion to dismiss the complaint; App. Div. modified to declare that plaintiff does not have individual rights to the subject apartment and otherwise affirmed.

PETTUS, MATTER OF v BOARD OF DIRECTORS, et al.:

1<sup>ST</sup> Dept. App. Div. order of 2/19/19; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right and whether any jurisdictional basis exists for an appeal as of right;

**Condominiums and Cooperatives--Common Charges and Special Assessments--  
Proceeding to challenge cooperative board's determination to increase maintenance fees;**

Supreme Court, Bronx County, struck the note of issue and dismissed with prejudice the CPLR article 78 proceeding to annual respondent coop board's 12/9/14 determination increasing coop maintenance by 9 percent; App. Div. affirmed.

WHITE, MATTER OF v ANNUCCI, &c., et al.:

3<sup>RD</sup> Dept. App. Div. judgment of 1/31/19; confirmation of determination; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

**Prisons and Prisoners--Discipline of Inmates--Claimed due process violations with regard to a tier III disciplinary hearing involving a charge of violating facility correspondence procedures;**

Supreme Court, Sullivan County, transferred the proceeding to the Appellate Division, Third Department.; App. Div. confirmed respondent Commissioner's determination finding petitioner guilty of violating a prison disciplinary rule, and dismissed the petition.