

COURT OF APPEALS NEW FILINGS

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

**October 18, through October 24, 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.**

CUCCERALDO (JACK J.), PEOPLE v:

App. Term, 9<sup>th</sup> and 10<sup>th</sup> Judicial Districts order of 5/23/19; reversal; leave to appeal granted by Fahey, J., 10/3/19;

**Motor Vehicles--Traffic Infractions--Whether hearing officer properly entered default judgments against defendant when defendant pleaded not guilty to charges alleging violations of the Vehicle and Traffic Law and requested trial but failed to appear for trial and no trial was held;**

District Court of Suffolk County, Suffolk County Traffic and Parking Violations Agency, convicted defendant, upon his failure to appear at trial, of operating a motor vehicle without insurance, unlicensed operation of a motor vehicle, operating a motor vehicle upon a public highway while using a mobile telephone, and operating a motor vehicle

without distinctive number license plates, respectively, and imposed sentences; App. Term reversed judgments of conviction, remitted any paid fines and surcharges, and remitted the matters to District Court for further proceedings.

GREENE, &c., et al. v ESPLANADE VENTURE PARTNERSHIP, et al.:

2<sup>nd</sup> Dept. App. Div. order of 5/15/19; reversal with dissents; leave to appeal granted by App. Div., 10/9/19;

**Pleading--Amendment--Whether Supreme Court improvidently exercised its discretion to grant that branch of plaintiffs' motion which was for leave to amend the complaint to add a cause of action sounding in negligent infliction of emotional distress, alleging, among other things, that plaintiff grandmother suffered emotional distress as a result of witnessing the fatal injury sustained by her granddaughter while plaintiff grandmother was within the "zone of danger";**

Supreme Court, Kings County, granted that branch of plaintiffs' motion which was for leave to amend the amended complaint to add a cause of action sounding in negligent infliction of emotional distress; App. Div. reversed and denied that branch of plaintiffs' motion which was for leave to amend the amended complaint to add a cause of action sounding in negligent infliction of emotional distress.

NARRA CHIROPRACTIC, P.C. A/A/O MAYRA CHICA v STATE FARM MUTUAL AUTOMOBILE INS. CO.:

New York Civil Court, Bronx County order 6/21/19; dismissal of complaint; sua sponte examination whether a direct appeal lies pursuant to CPLR 5601(b)(2);

**Constitutional Law--Validity of Regulation--Whether 11 NYCRR 65-3.8(g)(1) (ii) and (g)(2) are ultra vires, and therefore, unconstitutional;**

New York Civil Court, Bronx County, granted defendant's motion for summary judgment dismissing plaintiff's complaint, denied plaintiff's cross-motion, and dismissed plaintiff's complaint.

PETTUS v BOARD OF DIRECTORS, OWNERS 800 GRAND CONCOURSE, et al.:

App. Term, 1<sup>st</sup> Dept. order of 9/26/19; denial of motions; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether any jurisdictional basis exists for an appeal as of right;

**Appeal--Appealable Order;**

App. Term denied appellant's motion for an order seeking various relief and granted respondents' cross-motion to the extent of enjoining appellant from filing any papers in the App. Term that have any relation to or connection with the instant matter without prior leave of court.

TOUSSAINT v THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, et al.:  
1<sup>ST</sup> Dept. App. Div. order of 5/30/19; modification with dissents; leave to appeal granted  
by App. Div., 9/26/19;

**Labor--Safe Place to Work--Whether the requirement in the Industrial Code that a  
"designated person" operate a power buggy is sufficiently specific to support a  
claim under Labor Law § 241(6);**

Supreme Court, New York County, granted the summary judgment motion of defendants  
the The Port Authority of New York and New Jersey and Granite Construction Northeast,  
Inc. (GCN) to the extent of serving and dismissing the Labor Law § 200 claim, severing  
and dismissing all claims against GCN, severing and dismissing the Labor Law § 241(6)  
claims premised on violations of the Industrial Code except 12 NYCRR 23-9.9(a), and  
otherwise denied summary judgment; App. Div. modified, upon a search of the record, to  
grant plaintiff summary judgment as to liability on the Labor Law § 241(6) claim insofar  
as it was predicted on 12 NYCRR23-9.9(a) as against defendant The Port Authority of  
New York and New Jersey, and as so modified, affirmed.