

COURT OF APPEALS NEW FILINGS

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

November 27, 2020 through December 3, 2020

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.

HUNTERS FOR DEER et al. v TOWN OF SMITHTOWN:

2ND Dept. App. Div. order of 8/19/20; reversal; leave to appeal granted by Court of Appeals, 11/19/20;

Local Laws--Preemption--Whether Smithtown Town Code § 160-5 is preempted by Environmental Conservation Law § 11-0931(4)(a)(2) with regard to minimum setback limits for the discharge of a bow and arrow;

Supreme Court, Suffolk County, denied that branch of the plaintiffs' motion which was for summary judgment on so much of the complaint as sought a declaration that chapter 160 of the Code of the Town of Smithtown is invalid as applied to the discharge setback of a bow and arrow, and granted that branch of the defendant's cross motion which was for summary judgment dismissing that part of the complaint; App. Div. reversed, granted that branch of the plaintiffs' motion which was for summary judgment on so much of the

complaint as sought a declaration that chapter 160 of the Code of the Town of Smithtown is invalid as applied to the discharge setback of a bow and arrow, denied that branch of the defendant's cross motion which was for summary judgment dismissing that part of the complaint, and remitted the matter to Supreme Court for the entry of a judgment, inter alia, declaring that chapter 160 of the Code of the Town of Smithtown is invalid as applied to the discharge setback of a bow and arrow.

TCR SPORTS BROADCASTING HOLDING, LLP v WN PARTNER, LLC, et al.:
App. Div., 1ST order of 10/22/20; affirmance; bringing up for review 1ST Dept. App. Div. order of 7/13/17; affirmance; sua sponte examination of whether (1) the two-Justice dissent in the July 13, 2017 App. Div. order is on a question of law (*see* CPLR 5601[a], [d]); (2) the July 13, 2017 App. Div. order "necessarily affects" the December 9, 2019 Supreme Court judgment (*see* CPLR 5601[d]); and (3) a substantial constitutional question is directly involved to support an appeal as of right from the October 22, 2020 App. Div. order;

Arbitration--Agreement of Arbitrate--Forum--Whether courts have the power, after vacating an arbitration award based on "evident partiality" related to the forum, to order rehearing in a forum other than that provided for in the parties' arbitration agreement;

Supreme Court, New York County, among other things, denied respondent Washington Nationals Baseball Club, LLCs' (the Nationals') motion to confirm an arbitration award issued 6/30/14 by the Revenue Sharing Definitions Committee, granted the part of petitioner's motion seeking to vacate the award, and denied the part of petitioner's motion seeking to direct that a second arbitration proceed before an impartial panel unaffiliated with Major League Baseball (11/4/15 order); thereafter, denied the Nationals' motion to compel the parties to re-arbitrate the claim before the Revenue Sharing Definitions Committee, and granted petitioner's cross motion to stay the parties from compelling or conducting another arbitration of the dispute until the final determination of the appeals from the 11/4/15 Supreme Court order (7/11/16 order), thereafter, granted the Nationals' motion to confirm the arbitration award (8/22/19 order); thereafter, denied petitioner's motion to resettle the 8/22/19 order (11/14/19 order); thereafter, judgment in favor of the Nationals' (12/9/19 order); App. Div. affirmed judgment in favor of the Nationals, and dismissed appeals from 8/22/19 and 11/14/19 orders as subsumed in the appeal from the judgment (10/22/20 order).

WESTCHESTER FIRE INSURANCE CO. v SCHORSCH et al.:

1ST Dept. App. Div. order of 8/20/20; modification; leave to appeal granted by App. Div., 11/5/20;

Insurance--Directors and Officers Liability Policy--Whether a directors and officers liability policy's bankruptcy exception, which allows claims asserted by the "bankruptcy trustee" or "comparative authority," applies to claims raised by a creditor trust, as a post-confirmation litigation trust, to restore coverage removed by the insured versus insured exclusion;

Supreme Court, New York County, denied Excess Insurers' motions to dismiss defendant insureds' counterclaim for breach of contract; and thereafter, granted the motions of defendants Nicholas S. Schorsch, Edward M. Weil, Jr., William Kahane, Peter M. Budko, and Brian S. Block (defendants insureds) for partial summary judgment on their first counterclaim alleging breach of contract with respect to the insurance coverage obligations of plaintiff Westchester Fire Insurance Co., defendant Aspen American Insurance Co., defendant RSUI Indemnity Co. (collectively, Excess Insurers), declared Excess Insurers obligated to pay all defense and indemnity costs incurred in an action pending in Delaware, and found defendants insureds entitled to attorneys' fees incurred in defending against the instant declaratory judgment action; App. Div. modified, to deny defendant insureds' motion for partial summary judgment on their first counterclaim, to vacate the declaration that Excess Insurers are obligated to pay for indemnity costs incurred in the Creditor Trust Action, and to vacate the award of attorneys' fees incurred by defendants insureds in the instant action, and otherwise affirmed.