

COURT OF APPEALS NEW FILINGS

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

December 12, 2014 through December 18, 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.

CUSIMANO v SCHNURR:

1ST Dept. App. Div. order of 8/7/14; reversal; leave to appeal granted by Court of Appeals, 11/24/14;

ARBITRATION - FEDERAL ARBITRATION ACT (FAA) - AGREEMENTS INVOLVING INTERSTATE COMMERCE - COMMERCIAL REAL ESTATE - WHETHER THE APPELLATE DIVISION ERRED IN CONCLUDING THAT THE FAA APPLIED TO THE CONTRACTS AT ISSUE BY LOOKING BEYOND THE FOUR CORNERS OF THE AGREEMENTS AND CONSIDERING TRANSACTIONS THAT OCCURRED AFTER THE AGREEMENTS WERE EXECUTED; WAIVER OF RIGHT TO ARBITRATE - WHETHER PLAINTIFFS WAIVED THEIR RIGHT TO ARBITRATION BY FILING AN ACTION IN COURT AND PARTICIPATING IN LITIGATION BEFORE FILING FOR ARBITRATION - LACK OF PREJUDICE TO DEFENDANTS;

Supreme Court, New York County, granted defendants' cross motion and intervenors' motions to stay arbitration to the extent of staying the arbitration of all claims against defendant Schnurr on statute of limitations grounds and staying the arbitration of certain claims against intervenors and the remaining defendants on statute of limitations grounds, and granted plaintiffs' motion to stay the action to the extent of directing the parties to arbitrate the non-time-barred claims; App. Div. reversed, denied defendants' cross motion and intervenors' motions, granted plaintiffs' motion, and stayed the action pending the arbitration.

IN RE: NEW YORK CITY ASBESTOS LITIGATION (KONSTANTIN v 630 THIRD AVENUE ASSOCIATES, et al.):

1ST Dept. App. Div. order of 7/3/14; affirmance with a two-Justice dissent; leave to appeal granted by App. Div., 12/9/14; ACTIONS - CONSOLIDATION AND SEVERANCE - ASBESTOS LITIGATION - WHETHER THE TRIAL COURT PROPERLY CONSOLIDATED THIS CASE WITH DUMMITT v A.W. CHESTERTON - SIMILARITIES OF CONSOLIDATED CASES - THEORIES OF LIABILITY - DISJOINTED NATURE OF TRIAL; LABOR - SAFE PLACE TO WORK - EXPOSURE TO TOXIC SUBSTANCES - ASBESTOS DUST - APPORTIONMENT OF LIABILITY BETWEEN GENERAL CONTRACTOR AND MANUFACTURER - WHETHER JURY COULD ALLOCATE MORE FAULT TO GENERAL CONTRACTOR; RECKLESSNESS - WHETHER IT WAS RATIONAL FOR THE JURY TO CONCLUDE THAT GENERAL CONTRACTOR ACTED RECKLESSLY; DAMAGES - CHALLENGE TO DAMAGES AWARD AS UNPRECEDENTED; Supreme Court, New York County, after a jury trial, awarded plaintiff Ruby E. Konstantin damages in the sum of \$7,195,713.91; App. Div. affirmed.

RICHARDS, PEOPLE ex rel. v NEW YORK STATE DIVISION OF PAROLE:

4th Dept. App. Div. order of 11/13/14 by Justice Edward D. Carni; writ of habeas corpus; sua sponte examination of whether any jurisdictional basis exists for the appeal taken as of right from an order issued by a single Justice of the Appellate Division and whether a substantial constitutional question is directly involved to support an appeal as of right; HABEAS CORPUS - AVAILABILITY OF RELIEF; CLAIMED VIOLATION OF CONSTITUTIONAL RIGHTS; Justice Carni granted poor person relief and dismissed the petition for a writ of habeas corpus.