

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
February 23, 2007 through March 1, 2007

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.

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.

CERTAIN UNDERWRITERS AT LLOYD'S, LONDON, et al. v FOSTER WHEELER CORPORATION, et al.:

1st Dept. App. Div. order of 9/28/06; reversal; leave to appeal granted by App. Div., 2/13/07;

INSURANCE-EXCESS COVERAGE-DECLARATORY JUDGMENT ACTION SEEKING APPORTIONMENT OF RESPONSIBILITY FOR DEFENSE AND INDEMNITY COSTS OF ASBESTOS-RELATED PERSONAL INJURY CLAIMS; CHOICE OF LAW-WHETHER NEW YORK OR NEW JERSEY LAW GOVERNS CERTAIN EXCESS LIABILITY INSURANCE POLICIES;

Supreme Court, New York County denied Foster Wheeler Corp.'s motion to declare that New York substantive law governs the disputed issues in this action; App. Div. reversed by granting motion by Foster Wheeler Corp. to the extent of declaring that the liability insurance policies issued by defendants-respondents, and the underlying settled policies providing primary and lower-level coverage for the same years, are governed by New Jersey substantive law, and denied the motions by defendants-respondents.

HAYMON, &c. v PETIT, et al.:

4th Dept. App. Div. order of 2/2/07; reversal with dissents; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution; NEGLIGENCE-DUTY-WHETHER OPERATOR OF BASEBALL STADIUM OWED A LEGAL DUTY TO PLAINTIFF'S CHILD WHO WAS STRUCK AND INJURED BY A MOTOR VEHICLE IN A STREET OUTSIDE THE STADIUM WHILE THE CHILD WAS ATTEMPTING TO RETRIEVE A "FOUL BALL" HIT FROM INSIDE THE STADIUM DURING A BASEBALL GAME;

Supreme Court, Cayuga County denied defendant Auburn Community Non-Profit Baseball Association's motion for summary judgment to dismiss the complaint and cross claims against it; App. Div. reversed by granting the Auburn Community Non-Profit Baseball Association's motion for summary judgment and dismissing the complaint and cross claims against it.

ISLAND RECYCLING CORP. et al. v NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE et al.:

2nd Dept. App. Div. order of 11/28/06; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; TAXATION-SALES TAX-DECLARATORY JUDGMENT-WHETHER DEPARTMENT OF TAXATION AND FINANCE'S INTERPRETATION OF TAX LAW § 1105(c)(5) WAS AN IMPROPER RETROACTIVE APPLICATION OF A NEW INTERPRETATION OF THE TAX LAW; ALLEGED VIOLATION OF COMMERCE CLAUSE IN IMPOSING SALES TAX ON PORTION OF SERVICES PERFORMED OUTSIDE THE STATE OF NEW YORK;

Supreme Court, Suffolk County denied plaintiffs' motion for summary judgment, granted defendants' cross motion for summary judgment to the extent of declaring that Tax Law § 1105(c)(5) and 20 NYCRR § 527.7(a) were not unconstitutional as applied to plaintiffs, that the service performed for plaintiffs was taxable as a maintenance service to real property, and that defendants properly imposed sales tax on the entire receipt for the service, and dismissed the action; App. Div. affirmed.

MAPP, MATTER OF, v BURNHAM, &c., et al.:

Supreme Court, New York County judgment of 10/13/06, bringing up for review 1st Dept. App. Div. order of 8/18/05; annulled, with dissent, Port Authority's determination; leave to appeal granted by Court of Appeals 2/15/07; Rule 500.11 review pending; CIVIL SERVICE-TERMINATION OF EMPLOYMENT-JUDICIAL REVIEW OF DETERMINATION OF PORT AUTHORITY OF NEW YORK & NEW JERSEY; WHETHER SUBSTANTIAL EVIDENCE SUPPORTED AGENCY DETERMINATION TERMINATING PETITIONER'S EMPLOYMENT WHERE PETITIONER APPLIED FOR AND ACCEPTED AID FROM RED CROSS BASED UPON ALLEGEDLY MISLEADING INFORMATION THAT HE HAD BEEN "LAID OFF" FROM HIS JOB;

Supreme Court, New York County transferred petitioner's article 78 proceeding to App. Div. for disposition; App. Div. annulled the determination, granted the petition, reinstated the petitioner, and remanded to Supreme Court for determination of an award of lost wages and benefits.