

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
July 13 through July 19, 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.

GASTON, &c. et al. v AMERICAN TRANSIT INSURANCE COMPANY:
2ND Dept. App. Div. order of 5/1/07; affirmance; leave to appeal granted by Court of Appeals, 7/2/07;
INSURANCE - AUTOMOBILE INSURANCE - UNINSURED MOTORIST CLAIM - ACTION TO RECOVER UNSATISFIED JUDGMENT PURSUANT TO INSURANCE LAW § 3420(a)(2); ISSUE PRECLUSION - COLLATERAL ESTOPPEL - WHETHER DEFAULT JUDGMENT AGAINST INSURER IN PRIOR PROCEEDING TO STAY ARBITRATION OF UNINSURED MOTORIST VEHICLE CLAIMS HAS PRECLUSIVE EFFECT IN ACTION TO RECOVER UNSATISFIED JUDGMENT;
Supreme Court, Kings County granted plaintiffs' motion for summary judgment and denied defendant's motion for summary judgment dismissing the complaint; App. Div. affirmed.

JONES (ANTHONY), PEOPLE v.:

1st Dept. App. Div. order of 2/6/07; dismissal; leave to appeal granted by Pigott, J., 7/6/07;

APPEAL - APPELLATE DIVISION - DISMISSAL OF APPEAL - FUGITIVE DISENTITLEMENT DOCTRINE - WHETHER APPELLATE DIVISION PROPERLY DISMISSED APPEAL OF FORMER FUGITIVE RETURNED TO CUSTODY AND AVAILABLE TO OBEY MANDATE OF COURT;

Supreme Court, Bronx County convicted defendant, in absentia, of burglary in the second degree and robbery in the third degree; App. Div. granted reargument of a prior order of that court that, among other things, granted defendant poor person relief and dismissed the appeal, and upon reargument, dismissed defendant's appeal.

LAFORTE et al. v TIEDEMANN:

4th Dept. App. Div. order of 6/8/07; affirmance; sua sponte examination whether an appeal lies as of right pursuant to 5601(c);

INSURANCE - AUTOMOBILE INSURANCE - WHETHER TRIAL COURT PROPERLY DETERMINED THAT PLAINTIFFS ESTABLISHED A "SERIOUS INJURY" AS DEFINED BY INSURANCE LAW § 5102(d); DAMAGES - FUTURE DAMAGES - WHETHER TRIAL COURT PROPERLY ORDERED A NEW TRIAL ON DAMAGES FOR FUTURE PAIN AND SUFFERING WHERE JURY AWARDED DAMAGES FOR FUTURE MEDICAL EXPENSES AND LOSS OF EARNINGS BUT DETERMINED THAT INJURED PLAINTIFF HAD NO COMPENSABLE FUTURE PAIN AND SUFFERING;

Supreme Court, Monroe County, upon a jury verdict, awarded judgment in the amount of \$208,945 in favor of plaintiffs and against defendant; App. Div. affirmed.

MEEGAN, et al. v PROGRESSIVE INSURANCE COMPANY (Appeal No. 1):

4th Dept. App. Div. order of 6/8/07; reversal with dissents; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution;

TRIAL - EVIDENCE - WHETHER TRIAL COURT IN PERSONAL INJURY ACTION ABUSED ITS DISCRETION IN GRANTING PLAINTIFFS' MOTION IN PART BY PRECLUDING AN EXPERT FOR DEFENDANT FROM TESTIFYING WITH RESPECT TO AN ENTRY IN THE MEDICAL RECORDS OF ONE OF PLAINTIFF'S PHYSICIANS;

Supreme Court, Erie County granted plaintiffs' motion in part and precluded certain testimony at trial; App. Div. reversed and denied the motion in its entirety.

MEEGAN, et al. v PROGRESSIVE INSURANCE COMPANY (Appeal No. 2):

4th Dept. App. Div. order of 6/8/07; reversal with dissents; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution;

INSURANCE - AUTOMOBILE INSURANCE - SUPPLEMENTARY UNINSURED/UNDERINSURED MOTORIST COVERAGE - SERIOUS INJURY THRESHOLD - WHETHER PLAINTIFFS REQUIRED TO ESTABLISH THAT INJURED PLAINTIFF SUSTAINED A SERIOUS INJURY WITHIN THE MEANING OF INSURANCE LAW § 5102(d); DAMAGES - BURDEN OF PROOF - WHETHER DEFENDANT INSURANCE COMPANY HAD THE BURDEN OF ESTABLISHING A LIMIT OF COVERAGE;

Supreme Court, Erie County, upon a jury verdict in favor of plaintiffs and against defendant, awarded plaintiffs \$479,091.85; App. Div. reversed, denied in part plaintiffs' cross motion for a directed verdict, granted in part defendant's post trial motion, set aside the verdict, and granted a new trial on the issue of serious injury and damages.

MILLER v CONSOLIDATED RAIL CORPORATION et al.:

3RD Dept. App. Div. order of 6/7/07; reversal with dissents; Rule 500.11 review pending;

NEGLIGENCE - MAINTENANCE OF PREMISES - SUMMARY JUDGMENT - WHETHER DEFENDANT OWNER OF A PARCEL OF PROPERTY USED AS AN AUTO YARD OWED A LEGALLY RECOGNIZED DUTY TO PLAINTIFF, A PERSON AUTHORIZED TO BE PRESENT ON THE PREMISES, TO PROVIDE SOME FORM OF EMERGENCY LIGHTING IN THE YARD OR TO CLOSE IT IN THE EVENT OF A POWER OUTAGE;

Supreme Court, Albany County denied defendants summary judgment dismissing the complaint; App. Div. reversed, granted the motion for summary judgment and dismissed the complaint.

RAMOS v HOWARD INDUSTRIES, INC.:

4TH Dept. App. Div. order of 3/16/07; affirmance with dissent; leave to appeal granted by App. Div. 7/6/07;

PRODUCTS LIABILITY - DEFECTIVELY DESIGNED PRODUCT - SUMMARY JUDGMENT - WHETHER, IN A PRODUCTS LIABILITY CLAIM ALLEGING A MANUFACTURING DEFECT IN A PRODUCT UNAVAILABLE FOR INSPECTION, DEFENDANT MANUFACTURER OF TRANSFORMERS SATISFIED ITS BURDEN ON A MOTION FOR SUMMARY JUDGMENT BY SUBMITTING EVIDENCE THAT ESTABLISHED ITS PRODUCTS WERE GENERALLY DESIGNED AND MANUFACTURED UNDER STATE OF THE ART CONDITIONS AND COMPLIED WITH ALL APPLICABLE INDUSTRY STANDARDS, AND THE PRODUCT WOULD HAVE BEEN INDIVIDUALLY TESTED TO ENSURE COMPLIANCE WITH CUSTOMER SPECIFICATIONS AND INDUSTRY REQUIREMENTS;

Supreme Court, Chautauqua County denied defendant's motion for summary judgment dismissing the complaint; App. Div. affirmed.

TAVERAS (JOSE MARTIN), PEOPLE v:

1ST Dept. App. Div. order of 3/27/07; dismissal; leave to appeal granted by Ciparick, J., 7/6/07;

APPEAL - APPELLATE DIVISION - DISMISSAL OF APPEAL - FUGITIVE DISENTITLEMENT DOCTRINE - FORMER FUGITIVE RETURNED TO CUSTODY AND AVAILABLE TO OBEY MANDATE OF COURT; CRIMES AND CRIMINAL PROCEDURE;

Supreme Court, New York County judgment of conviction and sentence, in absentia; App. Div. granted the People's motion to dismiss the appeal.

ZATUCHNY &c., et al. v "DOE" &c., et al.:

1ST Dept. App. Div. order of 11/30/06; affirmance; leave to appeal granted by App. Div., 7/5/07; Rule 500.11 review pending;

TORTS - WRONGFUL DEATH - VICARIOUS LIABILITY OF VEHICLE OWNER; CHOICE OF LAW - VEHICLE AND TRAFFIC LAW § 388 - WHETHER NEW YORK OR NEW JERSEY LAW APPLIES IN A "SPLIT-DOMICILE" CASE;

Supreme Court, New York County denied the motion of defendant Mercedes-Benz Credit Corp. to dismiss the complaint as against it for failure to state a cause of action; App. Div. affirmed.