

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
December 21 through December 27, 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.

ONEBEACON AMERICA INSURANCE CO. v NL INDUSTRIES, INC., et al.:

1ST Dept. App. Div. order of 9/18/07; reversal; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution;

CONTRACTS - BREACH OR PERFORMANCE OF CONTRACT - DISMISSAL OF ACTION FOR BREACH OF AGREEMENT PROVIDING FOR DISMISSAL AS A REMEDY IF EITHER PARTY FILED AN ACTION IN VIOLATION OF THE AGREEMENT;

Supreme Court, New York County denied defendant NL Industries, Inc.'s (NL's) motion to dismiss the complaint in a declaratory judgment action regarding plaintiff's duty to defend and indemnify NL against certain underlying claims; App. Div. reversed, granted NL's motion to dismiss the complaint, dismissed the complaint and directed the Clerk to enter judgment accordingly.

REYNOSO, MATTER OF, v DENNISON, &c.:

4TH Dept. App. Div. letter of 10/29/07; dismissal of appeal; sua sponte examination of whether the October 29, 2007 letter is a judgment or order from which an appeal may be taken and whether any jurisdictional basis exists for an appeal as of right; AUTOMATIC DISMISSAL OF APPELLATE DIVISION APPEAL FOR FAILURE TO PERFECT PURSUANT TO 22 NYCRR 1000.12(b); App. Div. deemed appeal abandoned and dismissed appeal for failure to timely perfect.

SOROKINA, MATTER OF, v HANSELL, &c., et al.:

4TH Dept. App. Div. order of 11/9/07; confirmation of agency determination; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right; SOCIAL SERVICES - PUBLIC ASSISTANCE AND FOOD STAMPS - CPLR ARTICLE 78 PROCEEDING TO ANNUL A DETERMINATION DISCONTINUING PETITIONER'S PUBLIC ASSISTANCE AND FOOD STAMPS; Supreme Court, Jefferson County transferred the proceeding to the App. Div.; App. Div. confirmed respondents' determination discontinuing petitioner's public assistance and food stamps, and dismissed the petition.

SUM v TISHMAN SPEYER PROPERTIES, INC., et al.:

1ST Dept. App. Div. order of 2/15/07; affirmance; leave to appeal granted by Court of Appeals, 12/20/07; ARBITRATION - MATTERS ARBITRABLE - WHETHER PLAINTIFF'S UNION-NEGOTIATED AGREEMENT TO WAIVE HER RIGHT TO A JUDICIAL FORUM FOR HER GENDER DISCRIMINATION CLAIM IS ENFORCEABLE - FEDERAL ARBITRATION ACT - CPLR 7503(a) MOTION TO COMPEL ARBITRATION; CIVIL RIGHTS - DISCRIMINATION BASED ON GENDER; COLLECTIVE BARGAINING AGREEMENT; Supreme Court, New York County granted defendants' motion to compel arbitration of plaintiff's claims and stayed the action pending the outcome of such arbitration; App. Div. affirmed.