

COURT OF APPEALS NEW FILINGS

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

**March 12 through March 18, 2010**

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 60 days after the appeal was taken; respondent's brief to be filed 45 days after the filing of appellant's brief; and a reply brief, if any, to be filed 15 days after 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.**

HECKER (JOSEPH), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 12/3/09; affirmance; leave to appeal granted by Graffeo, J., 3/9/10;

CRIMES - JURORS - CHALLENGE TO JURY - CLAIMED RACIAL DISCRIMINATION IN JUROR CHALLENGES - WHETHER TRIAL JUDGE ERRED IN GRANTING THE PEOPLE'S APPLICATION PURSUANT TO BATSON v KENTUCKY (476 US 79) TO REVIEW DEFENSE COUNSEL'S USE OF PEREMPTORY CHALLENGES TO REMOVE THE ONLY TWO ASIAN-AMERICAN PANEL MEMBERS - REVIEW PROCESS FOR BATSON CHALLENGE ISSUES; MOOTNESS; COURTROOM CLOSURE;

Supreme Court, New York County convicted defendant, after a jury trial, of criminal sale of a controlled substance in the third degree, and sentenced him, as a second felony drug offender, to a term of six years; App. Div. affirmed.

HILL (HADJI S.), PEOPLE v:

4<sup>TH</sup> Dept. App. Div. order of 10/2/09; affirmance; leave to appeal granted by Jones, J., 3/2/10;

CRIMES - PLEA OF GUILTY - SUFFICIENCY OF ALLOCUTION - WHETHER DEFENDANT KNOWINGLY AND VOLUNTARILY ENTERED GUILTY PLEA TO MANSLAUGHTER IN THE FIRST DEGREE AND NEGATED INTENT ELEMENT OF THAT CRIME - POSSIBILITY OF JUSTIFICATION DEFENSE RAISED DURING PLEA ALLOCUTION;

Monroe County Court convicted defendant, upon his guilty plea, of manslaughter in the first degree; App. Div. affirmed.

MANKO v MANNOR, et al.:

1<sup>ST</sup> Dept. App. Div. order of 12/10/09; affirmance; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

PHYSICIANS AND SURGEONS - MEDICAL MALPRACTICE; LIMITATIONS OF ACTIONS; RES JUDICATA; FAILURE TO STATE A CAUSE OF ACTION; Supreme Court, New York County granted motions to dismiss the complaint as against the individually named defendants; App. Div. affirmed.

STEWART (ANDRE), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 11/19/09; affirmance; leave to appeal granted by Ciparick, J., 3/1/10;

CRIMES - SENTENCE - POST-RELEASE SUPERVISION - WHETHER DEFENDANT'S FAILURE TO RAISE HIS PLEA VACATUR ISSUE ON DIRECT APPEAL WAS "NOT UNJUSTIFIABLE" - DEFENDANT ADVISED BY TRIAL COURT THAT HE WOULD RECEIVE "MAXIMUM POST-RELEASE SUPERVISION" BUT WAS NOT ADVISED AS TO THE SPECIFIC DURATION - AVAILABILITY OF CPL 440 MOTION - REQUEST FOR VACATUR OF PLEA (PEOPLE v CATU, 4 NY3d 242); Supreme Court, New York County denied defendant's CPL article 440 motion; App. Div. affirmed.

UNION CARBIDE CORPORATION v AFFILIATED FM INSURANCE COMPANY, et al.

1<sup>ST</sup> Dept. App. Div. order of 12/15/09; modification; leave to appeal granted by App. Div., 3/4/10;

INSURANCE - EXCESS COVERAGE - MULTI-YEAR EXCESS INSURANCE POLICIES - WHETHER EXCESS POLICIES AT ISSUE PROVIDE ANNUALIZED AGGREGATE PRODUCTS LIMITS - DURATION OF COVERAGE WHERE EXCESS POLICY IS EXTENDED FOR TWO MONTHS UNDER ENDORSEMENTS THAT CONTAIN NO LIMIT OF LIABILITY;

Supreme Court, New York County denied defendant insurers' motions for partial summary judgment, granted plaintiff Union Carbide's motion for summary judgment and adjudged that the aggregate limits of liability for the policies that defendants issued to Union Carbide apply on an annual basis (the 5/9/07 order); thereafter, the same court granted plaintiff Union Carbide's

motion for partial summary judgment and adjudged that a two-month extension of a policy issued by defendant Continental Casualty Company to Union Carbide carried with it a full \$5 million aggregate limit (the 11/8/07 order); App. Div. modified the 5/9/07 Supreme Court order by denying Union Carbide's motion; and reversed the 11/8/07 Supreme Court order and denied plaintiff Union Carbide's motion.

