

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed
In the New York Court of Appeals from
March 7, 2003 through March 13, 2003

A list of appeals with short title, jurisdictional predicate, subject matter and key issues is prepared each week.

Some of these filed appeals may never reach decision on the merits because of dismissal on motion, sua sponte, or for time deficiencies or because of stipulated withdrawals by the parties. Also, some counsel fail to file timely jurisdictional statements and thus the list should not be treated as comprehensive for any particular week.

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 Court Rule 500.11 and direct any questions to the Clerk's Office.

For March 7, 2003 through March 13, 2003 the following jurisdictional statements for appeals were filed:

HARTMAN (ROBERT), PEOPLE v:

2ND Dept. App. Div. order of 5/13/02; reversal; leave to appeal granted by Friedmann, J., 1/3/03; Rule 500.4 review pending; CRIMES AND CRIMINAL PROCEDURE - SEARCH AND SEIZURE - PROBABLE CAUSE;

Supreme Court, Queens County granted defendant's motion to suppress physical evidence and identification testimony; App. Div. reversed, denied the motion and remitted to Supreme Court for further proceedings.

JACOBS, MATTER OF, v LA TOUR:

3RD Dept. App. Div. order of 1/31/03; denial of motions for a rehearing and poor person relief; sua sponte examination whether the order appealed from finally determines an action or proceeding within the meaning of the Constitution;
PARENT AND CHILD - CUSTODY OF CHILD; PERSONAL JURISDICTION;
SUBJECT MATTER JURISDICTION; ALLEGED UNCONSTITUTIONAL INFRINGEMENTS OF PARENT-CHILD RELATIONSHIP;
Supreme Court, Warren County granted petitioners' modification petition to move child to Nebraska and denied respondent father's modification petition seeking custody of the child; App. Div. denied respondent's motion for extension of time to perfect his appeal and dismissed the appeal; App. Div. thereafter denied respondent's motions for a rehearing and poor person relief.

JOHNSON (JAMES), PEOPLE v:

1ST Dept. App. Div. order of 10/24/02; reversal; leave to appeal granted by Wesley, J., 3/4/03;
CRIMES AND CRIMINAL PROCEDURE - SEARCH AND SEIZURE - VALIDITY OF INVENTORY SEARCH OF THE GLOVE COMPARTMENT OF DEFENDANT'S CAR;
Supreme Court, New York County granted defendant's motion to suppress certain physical evidence and a statement he made to the police; App. Div. reversed, denied defendant's motion and remanded to Supreme Court for further proceedings.

JONES (DESMOND), PEOPLE v:

2ND Dept. App. Div. order of 5/13/02; denial of application for a writ of error coram nobis; leave to appeal granted by Ciparick, J., 2/25/03; Rule 500.4 review pending;
CRIMINAL LAW AND CRIMINAL PROCEDURE - WRIT OF ERROR CORAM NOBIS - APPLICATION OF CRIMINAL PROCEDURE LAW § 450.90 AS AMENDED BY L. 2002, CHAPTER 498; ALLEGED INEFFECTIVE ASSISTANCE OF COUNSEL; TIMELINESS; RETROACTIVITY;
App. Div. denied defendant's application for a writ of error coram nobis.

LEPKOWSKI, et al. v STATE OF NEW YORK:

3RD Dept. App. Div. order of 2/20/03; reversal, with dissents;
LABOR - HOURS AND WAGES - FAIR LABOR STANDARDS ACT (29 USC §§ 201-219) - OVERTIME COMPENSATION - SUFFICIENCY OF PLEADINGS AND VERIFICATIONS (COURT OF CLAIMS ACT § 11 [b]);
Court of Claims denied defendant's motion to dismiss the claims in two consolidated actions; App. Div. reversed and dismissed the claims.

LEVIN, MATTER OF, v NATIONAL COLONIAL INSURANCE COMPANY, et al.:

1ST Dept. App. Div. order of 7/18/02 reversal; leave to appeal granted by Court of Appeals, 2/25/03;

CONSTITUTIONAL LAW - FULL FAITH AND CREDIT - ENTITLEMENT OF KANSAS COURT'S LIQUIDATION ORDER TO FULL FAITH AND CREDIT AS TO THE OWNERSHIP OF ASSETS IN A TRUST FUND CREATED PURSUANT TO NEW YORK STATE INSURANCE REGULATION 41 (11 NYCRR 27.13, 27.14); INSURANCE - CLAIM THAT TRUST FUND ASSETS, TRANSFERRED TO AN OUT-OF-STATE INSURER WHICH BECAME INSOLVENT, SHOULD BE RETURNED TO THE NEW YORK TRUSTEE BANK;

Supreme Court, New York County granted the Superintendent of Insurance of the State of New York's motion for an order directing it, as conservator of the trust fund assets, to distribute the trust assets upon resolution of the competing claims of National Colonial Insurance Company and Chase Manhattan Bank and directed the Superintendent to distribute the trust assets to Chase; App. Div. reversed and directed that the trust assets be distributed to National Colonial's Kansas liquidator.

MC MAHON, et al. v HSM PACKAGING CORPORATION, et al.:

4th Dept. App. Div. order of 2/7/03; modification; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution;

TORTS - SAFE PLACE TO WORK - LABOR LAW § 240(1) - CONSTRUCTION WORKER INJURED IN FALL FROM ROOF DURING INSPECTION AND PLANNING FOR PLACEMENT OF ROOFTOP EQUIPMENT - INVESTIGATORY WORK;

Supreme Court, Onondaga County granted plaintiff's cross motion to the extent it sought partial summary judgment on liability on the Labor Law § 240(1) causes of action as against certain defendants and denied defendants' motion and cross motion for summary judgment dismissing plaintiff's Labor Law causes of action; App. Div. modified by denying plaintiff's cross motion for partial summary judgment and granting defendants' motion and cross motion for summary judgment dismissing plaintiff's Labor Law § 240(1) causes of action and affirmed as so modified.

TAYLOR (DAVON), PEOPLE v:

1ST Dept. App. Div. order of 10/1/02; affirmance; leave to appeal granted by Smith, J., 2/27/03;

CRIMINAL LAW AND CRIMINAL PROCEDURE - RIGHT TO COUNSEL - DEFENSE COUNSEL'S ALLEGED INEFFECTIVE REPRESENTATION; ARGUMENT AND CONDUCT OF COUNSEL - PROSECUTORIAL MISCONDUCT;

Supreme Court, Bronx County judgment convicting defendant of murder in the second degree and sentencing him to a term of 25 years to life; App. Div. affirmed.