

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed
In the New York Court of Appeals from
July 18, 2003 through July 24, 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 July 18, 2003 through July 24, 2003 the following jurisdictional statements for appeals were filed:

APIADO, MATTER OF, v NORTH SHORE HOSP., et al.:

3RD Dept. App. Div. order of 6/17/03; denial of motion for reconsideration; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

UNEMPLOYMENT INSURANCE - BENEFITS - DISQUALIFICATION - CHALLENGE TO AGENCY DETERMINATION THAT CLAIMANT IS DISQUALIFIED FROM RECEIVING UNEMPLOYMENT INSURANCE BECAUSE HER EMPLOYMENT WAS TERMINATED DUE TO MISCONDUCT;

Unemployment Insurance Appeal Board ruled claimant was disqualified from receiving unemployment insurance benefits because her employment was terminated due to misconduct; App. Div. affirmed and, thereafter, denied claimant's motion for reconsideration.

BERRIAN, MATTER OF, v SELSKY:

3RD Dept. App. Div. order of 6/26/03; modification; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; PRISONS AND PRISONERS - EQUAL PROTECTION CHALLENGE TO STATUTE ESTABLISHING A REDUCED FILING FEE FOR INMATES GRANTED POOR PERSON STATUS (CPLR 1101[f]); DISCIPLINE OF INMATES - GRIEVANCE PROCEDURES;

Supreme Court, Washington County dismissed petitioner's CPLR article 78 proceeding to review two determinations finding petitioner guilty of violating certain prison disciplinary rules; App. Div. modified judgment by reversing so much as confirmed the tier II determination, annulling the determination and directing respondents to expunge all references to the tier II proceeding from petitioner's institutional record and restore any good behavior allowance lost and, as so modified, affirmed.

MILANO, MATTER OF, v NEW YORK CITY TAXI and LIMOUSINE COMMN.:

1ST Dept. App. Div. order of 5/29/03; confirmation; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; MUNICIPAL CORPORATIONS - REGULATION OF TAXICAB BUSINESS - REVOCATION OF LICENSE - CHALLENGE TO AGENCY DETERMINATION; CHALLENGE TO REGULATION OF THE NEW YORK CITY TAXI AND LIMOUSINE COMMISSION (35 RCNY § 8-15); ALLEGED DEPRIVATION OF PROPERTY WITHOUT DUE PROCESS OF LAW; SUBSTANTIAL EVIDENCE; CHALLENGE TO PENALTY;

Appellate Division, First Department confirmed respondent New York City Taxi and Limousine Commission's determination revoking petitioner's taxicab license, denied CPLR article 78 petition and dismissed the proceeding.

PETERS v STATE FARM FIRE and CASUALTY CO.:

4TH Dept. App. Div. order of 6/13/03; affirmance; Rule 500.4 review pending; INSURANCE - DUTY TO DEFEND AND INDEMNIFY - EXCLUSIONS FOR INJURIES "EXPECTED OR INTENDED BY AN INSURED" OR "THE RESULT OF WILFUL AND MALICIOUS ACTS OF AN INSURED"; "OCCURRENCE" WITHIN THE MEANING OF HOMEOWNER'S INSURANCE POLICY; TIMELINESS OF INSURER'S DISCLAIMER OF COVERAGE (INSURANCE LAW § 3420); ALLEGED BREACH OF INSURER'S DUTY TO DEFEND;

Supreme Court, Monroe County granted defendant's cross motion for summary judgment dismissing the complaint; App. Div. affirmed.

PFISTER v WATERTOWN CITY SCHOOL DIST., et al.:

4TH Dept. App. Div. order of 6/13/03; affirmance with dissents; Rule 500.4 review pending; CONTRACTS - CONTRACT CONSTRUCTION - AMBIGUITY OF CONTRACT PROVISION - PAROL EVIDENCE RULE; SETTLEMENT AGREEMENT ENTERED INTO BY SCHOOL DISTRICT EMPLOYEE - REFERENCE TO EMPLOYEE'S PARTICIPATION IN RETIREMENT INCENTIVE PROGRAM IF DISTRICT OPTED INTO PROGRAM;

Supreme Court, Jefferson County dismissed the complaint after a nonjury trial; App. Div. affirmed.

VERMONT TEDDY BEAR CO., INC. v 538 MADISON REALTY COMPANY:

1ST Dept. App. Div. order of 6/3/03; affirmance with dissents;
LANDLORD AND TENANT - COMMERCIAL LEASE - TERMINATION OF LEASE -
RESTORATION OF PREMISES AFTER DAMAGE - LANDLORD'S DUTY UNDER
LEASE TO GIVE NOTICE OF SUBSTANTIAL RESTORATION IN ORDER TO AVOID
LEASE TERMINATION;
Supreme Court, New York County granted plaintiff's motion for
summary judgment; App. Div. affirmed.

WILLIAMS (EDWARD), PEOPLE v:

1ST Dept. App. Div. order of 4/15/03; affirmance; leave to appeal
granted by Smith, J., 7/10/03;
CRIMES AND CRIMINAL PROCEDURE - JURORS - SELECTION OF JURY -
CHALLENGE TO TRIAL COURT'S PROCEDURE OF QUESTIONING CERTAIN
PROSPECTIVE JURORS INDIVIDUALLY AND HAVING BOTH SIDES EXERCISE
THEIR CHALLENGES BEFORE SEATING THE NEXT PANELIST FOR QUESTIONING
(CPL 270.15);
Supreme Court, New York County judgment convicting defendant of
criminal possession of a controlled substance in the fifth degree
and criminal possession of a weapon in the second and third
degrees; App. Div. affirmed.