

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed
In the New York Court of Appeals from
August 29, 2003 through September 4, 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 August 29, 2003 through September 4, 2003 the following jurisdictional statements for appeals were filed:

FRANCHINI v. PALMIERI:

3RD Dept. App. Div. order of 8/07/03; affirmance with dissents;
Rule 500.4 review pending;

NEGLIGENCE - JUDGMENTS - SUMMARY JUDGMENT - SUFFICIENCY OF EXPERT
AFFIDAVITS TO RAISE ISSUE OF FACT THAT PLAINTIFF'S CONDITION WAS
CAUSALLY RELATED TO MOTOR VEHICLE ACCIDENT;

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

GOLDSTEIN v. ACCUSCAN, INC.:

2ND Dept. App. Div. order of 8/4/03; affirmance with dissents; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution; CONTRACTS - CONSTRUCTION - WHETHER CONTRACT TERM "AMOUNTS RECEIVED" CLEARLY AND UNAMBIGUOUSLY REFERRED TO ALL SETTLEMENT MONEY RECEIVED BY DEFENDANT, INCLUDING AMOUNTS TAKEN BY ITS ATTORNEYS FOR THEIR FEES; Supreme Court, Westchester County granted plaintiff's cross motion for summary judgment against defendant AccuScan and severed the action against defendant Heller; App. Div. affirmed.

IRELAND (DEB), MATTER OF, (an attorney):

3RD Dept. App. Div. order of 8/1/03; 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; ATTORNEYS - DISCIPLINARY PROCEEDINGS - CHALLENGE TO APPELLATE DIVISION ORDER DENYING VARIOUS MOTIONS CONCERNING PENDING DISCIPLINARY PROCEEDING; Appellate Division, Third Department denied respondent's motions for orders granting respondent's request to proceed in forma pauperis and, among other things, directing petitioner to divulge certain papers, records and documents to respondent and answer fully and completely all of her omnibus discovery demands, staying the hearing of the pending charges until petitioner provides the requested discovery and directing petitioner to return the Ireland v. Pitcher file to the Sullivan County clerk.

KOLLAR (EZEKIAL), PEOPLE v:

1ST Dept. App. Div. order of 5/27/03; reversal; Rule 500.4 review pending; CRIMES AND CRIMINAL PROCEDURE - RIGHT TO REMAIN SILENT - WHETHER POLICE OFFICER'S CONVERSATION WITH DEFENDANT AFTER HIS INVOCATION OF THE RIGHT TO REMAIN SILENT CONSTITUTED "INTERROGATION" WITHIN THE MEANING OF MIRANDA v. ARIZONA (384 US 436); Supreme Court, Bronx County judgment convicting defendant of murder in the second degree and criminal possession of a weapon in the second degree; App. Div. reversed, granted the motion to suppress statements and remanded the case for a new trial.

SMITH (KENNETH), PEOPLE v.:

1ST Dept. App. Div. order of 4/10/03; affirmance; leave to appeal granted by Kaye, Ch.J., 8/13/03; CRIMES AND CRIMINAL PROCEDURE - JURY TRIALS - EXPERT WITNESS - POLICE OFFICER - CHALLENGE TO INTRODUCTION OF UNDERCOVER OFFICER'S TESTIMONY ABOUT VARIOUS ROLES IN MULTI-PARTICIPANT DRUG OPERATION WHERE EVIDENCE WAS OF A SINGLE TRANSACTION COMMITTED BY DEFENDANT WORKING ALONE; Supreme Court, New York County judgment convicting defendant of criminal sale of a controlled substance in the third degree and criminal possession of a controlled substance in the seventh degree; App. Div. affirmed.

WASTE RECOVERY ENTERS., LLC v. TOWN OF UNADILLA, et al.:

3RD Dept. App. Div. order of 5/23/02; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; MUNICIPALITIES - CONSTITUTIONAL LAW - COMMERCE CLAUSE - CHALLENGE TO RULING THAT LOCAL LAW NO. 1 OF 1989 AND LOCAL LAW NO. 4 OF 1992 OF THE TOWN OF UNADILLA ARE UNCONSTITUTIONAL - SEVERANCE OF CERTAIN PORTION OF LOCAL LAWS TO AVOID UNCONSTITUTIONALITY; Supreme Court, Otsego County order modifying Local Law 1 of 1988 of Town of Unadilla and declaring that law valid and constitutional as modified, and declaring Local Law 1 of 1989 and Local Law 4 of 1992 of the Town of Unadilla unconstitutional; App. Div. affirmed.

VILLAGE OF WESTBURY v. STRAEHLE, et al.:

2ND Dept. App. Div. order 8/4/03; reversal; 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; MUNICIPAL CORPORATIONS - APPLICABILITY OF VILLAGE OF WESTBURY CODE CHAPTERS 83 AND 90 OR THE STATE UNIFORM FIRE PREVENTION AND BUILDING CODE (9 NYCRR 1153.1) IN PROCEEDING TO DIRECT REMOVAL OR REPAIR OF ALLEGEDLY DANGEROUS BUILDING; EXECUTIVE LAW § 371 ET SEQ.; PREEMPTION; REVIEWABILITY ON APPEAL OF ARGUMENT NOT RAISED IN COURT OF ORIGINAL INSTANCE; Supreme Court, Nassau County denied those branches of the petition and petitioner's motion seeking to prohibit respondents from entering the building, to authorize petitioner to board up the building and determine whether to demolish, permanently secure or otherwise dispose of it and to enforce a determination of the Village of Westbury Board of Trustees; App. Div. reversed and granted the petition and motion to the extent of remitting the matter to the Village of Westbury Board of Trustees for further proceedings.