

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed
In the New York Court of Appeals from
September 5, 2003 through September 11, 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 September 5, 2003 through September 11, 2003 the following jurisdictional statements for appeals were filed:

APONTE (RAMON), PEOPLE v.:

1ST Dept. App. Div. order of 6/5/03; reversal; leave to appeal granted by Sullivan, J., 8/14/03;

CRIMES AND CRIMINAL PROCEDURE - INSTRUCTIONS - WHETHER TRIAL COURT'S ALLEN CHARGE (ALLEN v. UNITED STATES, 164 US 492)

IMPROPERLY PRESSURED THE JURY TO RETURN A VERDICT; APPEAL - PRESERVATION OF ISSUE FOR REVIEW - SUFFICIENCY OF DEFENDANT'S OBJECTIONS AT TRIAL TO PRESERVE FOR APPELLATE REVIEW WHETHER ALLEN CHARGE WAS IMPROPER;

Supreme Court, New York County judgment convicting defendant of criminal sale of a controlled substance in the third degree; App. Div. reversed and remanded for a new trial.

BENNETT, MATTER OF, v NEW ROCHELLE POLICE DEPARTMENT:

2ND Dept. App. Div. order of 4/17/03; denial of motion; 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;
APPEAL - RECORDS AND BRIEFS ON APPEAL - CHALLENGE TO APPELLATE DIVISION ORDER DENYING APPELLANT'S MOTION FOR LEAVE TO PROCEED BY THE APPENDIX METHOD;
Appellate Division, Second Department denied motion for, inter alia, leave to proceed by the appendix method.

BROADNAX, et al. v GONZALEZ, et al.:

2ND Dept. App. Div. order of 4/28/03; affirmance; leave to appeal granted by Court of Appeals; 9/2/03;
TORTS - MALPRACTICE; PHYSICIANS AND SURGEONS - CAUSE OF ACTION FOR DAMAGES FOR EMOTIONAL DISTRESS RESULTING FROM STILLBIRTH OF CHILD;
Supreme Court, Westchester County granted defendants' CPLR 4401 motion for judgment as a matter of law at the close of plaintiffs' case at a jury trial and entered judgment dismissing the complaint; App. Div. affirmed.

FAHEY, et al. v CANINIO, et al.:

3RD Dept. App. Div. order of 4/24/03; affirmance; leave to appeal granted by Court of Appeals, 9/2/03;
TORTS - MALPRACTICE; PHYSICIANS AND SURGEONS - CAUSE OF ACTION FOR DAMAGES FOR EMOTIONAL DISTRESS RESULTING FROM DEATH OF NEWBORN TWINS FOLLOWING ALLEGEDLY NEGLIGENT OBSTETRICAL CARE;
Supreme Court, Broome County granted defendants' motion for summary judgment dismissing the complaint; App. Div. affirmed.

HABERMAN, MATTER OF, v CITY OF LONG BEACH, et al.:

2ND Dept. App. Div. order of 7/21/03; confirmation; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
MUNICIPAL CORPORATIONS - URBAN RENEWAL - EMINENT DOMAIN (EDPL 207) - ALLEGED ILLEGALLY EXCESSIVE CONDEMNATION - WHETHER CONDEMNATION SERVES A PUBLIC PURPOSE; ENVIRONMENTAL CONSERVATION - ENVIRONMENTAL QUALITY REVIEW - CHALLENGE TO CITY'S "SITE SPECIFIC ENVIRONMENTAL ASSESSMENT" AND RESULTING NEGATIVE DECLARATION;
Appellate Division, Second Department confirmed determination of City Council of the City of Long Beach to condemn a parcel of real property owned by petitioner, denied EDPL 207 petition and dismissed the proceeding.

PECORARO, MATTER OF, v BD. OF APPEALS OF TOWN OF HEMPSTEAD:

2ND Dept. App. Div. order of 4/21/03; modification; leave to appeal granted by Court of Appeals, 9/4/03;

MUNICIPAL CORPORATIONS - ZONING - VARIANCE - WHETHER DETERMINATION DENYING PETITIONER'S APPLICATION FOR AN AREA VARIANCE HAD A RATIONAL BASIS;

Supreme Court, Nassau County annulled the Board of Appeals of the Town of Hempstead's determination, denied petitioner's application for an area variance and remitted the matter to the Board for an additional hearing; App. Div. modified the order, by deleting the provision of the Supreme Court order remitting the matter to the Board of Appeals for an additional hearing and substituting therefor a provision directing the Board of Appeals of the Town of Hempstead to issue the area variance and affirmed the order as so modified.

WHEELER (MICHAEL), PEOPLE v:

2ND Dept. App. Div. order of 2/3/03; affirmance; leave to appeal granted by Kaye, Ch.J., 9/2/03;

CRIMES AND CRIMINAL PROCEDURE - UNLAWFUL SEARCH AND SEIZURE - APPLICABILITY OF PROTECTIVE SWEEP DOCTRINE;

Supreme Court, Kings County judgment convicting defendant of criminal possession of a weapon in the third degree; App. Div. affirmed.