

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed
In the New York Court of Appeals from
January 18, 2002 through January 24, 2002

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 January 18, 2001 through January 24, 2002 the following jurisdictional statements for appeals were filed:

DREIKAUSEN, et al, MATTER OF v THE ZONING BOARD OF APPEALS OF THE CITY OF LONG BEACH AND BAY CLUB OF LONG BEACH, INC.:

2ND Dept. App. Div. order of 10/1/01; affirmance; leave to appeal granted by Court of Appeals, 1/10/02;

ZONING - USE VARIANCE; BASIS FOR DETERMINATION GRANTING VARIANCE ON "UNNECESSARY HARDSHIP" GROUNDS;

Supreme Court, Nassau County, dismissed the proceeding to review a determination granting a use variance; App. Div. affirmed; dissenter would reverse and annul the determination.

GRANT, MATTER OF v MURPHY, et al.:

1ST Dept. App. Div. order of 12/13/01; affirmance; appeal taken pursuant to CPLR 5601(b); sua sponte examination whether a substantial constitutional question is directly involved; CIVIL SERVICE - RETIREMENT AND PENSIONS; ARTICLE 78 REVIEW OF BASIS FOR CALCULATING PETITIONER'S RETIREMENT ALLOWANCE; Supreme Court, New York County, denied the application and dismissed the petition; App. Div. affirmed.

HAUBECK REALTY CORP., et al., MATTER OF v TAX APPEALS TRIBUNAL OF NYS, et al.:

3rd Dept. App. Div. judgment of 12/13/01; administrative determination confirmed; appeal taken pursuant to CPLR 5601(b); sua sponte examination whether substantial constitutional question is directly involved; TAXATION - REAL PROPERTY TRANSFER GAINS TAX; APPLICABILITY OF TAX LAW FORMER SECTION 1440(5)(e) TO SALE OF REAL PROPERTY SUBJECT TO LEASES PREDATING ENACTMENT OF THE TAX STATUTE; Respondent Tax Appeal Tribunal sustained an assessment of real property transfer gains tax imposed under Tax Law former Article 31-B; App. Div. in a proceeding instituted there confirmed the determination and dismissed the petition.

JENKINS, MATTER OF v GOORD, COMMISSIONER &c, et al.:

3RD Dept. App. Div. order of 11/21/01; affirmance; appeal taken pursuant to CPLR 5601(b); sua sponte examination of whether substantial constitutional question is directly involved; CIVIL PROCEDURE - LIMITATION OF ACTIONS; ADMINISTRATIVE LAW - PRISONS AND PRISONERS; TIMELINESS OF PETITION TO REVIEW DISCIPLINARY DETERMINATIONS; Supreme Court, Albany County, granted respondent's motion to dismiss the petition as time barred, App. Div. affirmed.

MANZANO v O'NEIL:

4th Dept. App. Div. order of 7/3/01; reversal; leave to appeal granted by Court of Appeals, 11/20/01; INSURANCE - NO-FAULT; SUFFICIENCY OF PROOF OF "SERIOUS INJURY" (INSURANCE LAW SECTION 5102[d]); Supreme Court, Onondaga County, denied defendant's motion to set aside the verdict on the ground that plaintiffs failed to establish a serious injury as a matter of law; App. Div. reversed, granted the motion and dismissed the complaint.

TOWN OF MASSENA v HEALTHCARE UNDERWRITERS MUTUAL INSURANCE COMPANY, et al.:

3rd Dept. App. Div. order of 4/26/01; modification; leave to appeal granted by Court of Appeals, 12/20/01;
INSURANCE; OBLIGATION TO DEFEND/INDEMNIFY IN UNDERLYING FEDERAL DEFAMATION ACTION;
Supreme Court, St. Lawrence County, denied certain defendants' motions for summary judgment seeking a declaration in their favor; App. Div. modified and granted the motions for summary judgment by Healthcare Underwriters Mutual Insurance Company, Physicians' Reciprocal Insurers, and Federal Insurance Company.

ORENS, MATTER OF, v NOVELLO &c, et al.:

3rd Dept. App. Div. order of 6/21/01; administrative determination annulled; leave to appeal granted by Court of Appeals, 1/10/02;
PROFESSIONAL DISCIPLINE - REVOCATION OF MEDICAL LICENSE; INTERPRETATION OF PUBLIC HEALTH LAW SECTION 230(6); CONSTITUTION OF HEARING COMMITTEE OF STATE BOARD OF PROFESSIONAL MEDICAL CONDUCT; PHYSICIAN ASSISTANT AS "LAY MEMBER;"
Respondents revoked petitioner's license to practice medicine; App. Div. granted the petition and annulled the determination and held that the Hearing Committee was not properly constituted.

PMS ASSETS, LTD, MATTER OF v ZONING BOARD OF APPEALS OF VILLAGE OF PLEASANTVILLE:

2nd Dept. App. Div. order of 10/1/01; affirmance; leave to appeal granted by Court of Appeals, 1/10/02;
ZONING - WHETHER A NEW USE OF A WAREHOUSE CHANGED THE PRIOR LEGAL NONCONFORMING USE; DENIAL OF USE VARIANCE;
Supreme Court, Westchester County, granted the petition and annulled the Zoning Board's determination that the prior nonconforming use had changed and denied the petitioner's application for use variance; App. Div. affirmed.

REYES (HOSTOS), PEOPLE, ex rel. v STATE OF NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES:

3RD Dept. App. Div. order of 11/1/01; affirmance; appeal taken to pursuant to CPLR 5601(b); sua sponte examination whether substantial constitutional question is directly involved;
HABEAS CORPUS; AVAILABILITY OF HABEAS CORPUS REMEDY TO CHALLENGE VALIDITY OF PLEA;
Supreme Court, St. Lawrence County, denied petitioner's application for a writ of habeas corpus; App. Div. affirmed.

The Court encourages those qualified and interested in the subject matter of the appeal noted below to move for amicus curiae participation.

SMIETANA (JOSEPH), PEOPLE v:

Erie County Court order of 1/22/01; affirmance; leave to appeal granted by Rosenblatt, J., 5/22/01;

CRIMINAL PROCEDURE - SPEEDY TRIAL; WHETHER STARTING POINT FOR COMPUTING 30 DAY TIME LIMIT (CPL 30.30[1]) RUNS FROM DATE ACCUSATORY INSTRUMENT WAS FILED OR ARRAIGNMENT DATE;

Buffalo City Court conviction of harassment in second degree; County Court affirmed.