

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed
In the New York Court of Appeals from
January 25, 2002 through January 31, 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 25, 2001 through January 31, 2002 the following jurisdictional statements for appeals were filed:

BANQUE INDOSUEZ v SOPWITH HOLDINGS CORP., et al.:

1ST Dept. App. Div. order of 11/15/01; affirmance; leave to appeal granted by Court of Appeals, 1/15/02;
JUDGMENTS; ENTITLEMENT TO POST-JUDGMENT INTEREST;
Supreme Court, New York County, denied the defendant's motion for an order directing plaintiff to pay defendants' counsel interest on their charging lien; App. Div. affirmed.

DARLINGTON &c, MATTER OF, A DISBARRED ATTORNEY:

2ND Dept. App. Div. order of 12/12/01; reconsideration denied; appeal taken pursuant to CPLR 5601(b); sua sponte examination of finality and whether substantial constitutional question is directly involved;

PROFESSIONAL DISCIPLINE - ATTORNEY DISBARMENT; REINSTATEMENT PROCESS ASSERTED AS VIOLATING DUE PROCESS;

App. Div. denied respondent's motion for reconsideration of a decision which denied his application for reinstatement to the Bar.

FISHER, et al., v QUALICO CONTRACTING CORP., et al.:

2ND Dept. App. Div. order of 6/25/01; affirmance; leave to appeal granted by Court of Appeals, 1/15/02;

TORT - PROPERTY DAMAGE; DAMAGES - USE OF COLLATERAL INSURANCE PAYMENT TO OFF SET JURY'S DIMINUTION IN VALUE AWARD (CPLR 4545[2]);

Supreme Court, Nassau County, judgment in favor of plaintiffs; App. Div. affirmed.

GOSHEN v THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, et al.:

1ST Dept. App. Div. order of 8/9/01; affirmance; leave to appeal granted by Court of Appeals, 1/15/02;

CONSUMER PROTECTION - INSURANCE; DECEPTIVE PRACTICE - "VANISHING PREMIUM"; VIABILITY OF OUT OF STATE CLAIM BASED UPON VIOLATION OF GENERAL BUSINESS LAW SECTION 394(h);

Supreme Court, New York County, inter alia severed and dismissed Goshen's claim; App. Div. affirmed.

HAYNES, MATTER OF v JOHNSON, COMMISSIONER, et al.:

4TH Dept. App. Div. order of 11/9/01; affirmance; appeal taken pursuant to CPLR 5601(b); sua sponte examination whether substantial constitutional question is directly involved;

SOCIAL SERVICES - FOSTER CARE; BIOLOGICAL PARENT'S STANDING TO REQUEST FAIR HEARING CONCERNING A NOTICE OF INTENT TO DISCONTINUE CHILD CARE SERVICES INTENDED FOR FOSTER PARENT;

Supreme Court, Erie County, granted respondent's motion to dismiss the petition; App. Div. affirmed.

JOHNSON, MATTER OF v MCGINNIS, et al.:

3RD Dept. App. Div. order of 12/20/01; affirmance; appeal taken pursuant to CPLR 5601(b); sua sponte examination whether substantial constitutional question is directly involved;

PRISONS AND PRISONERS - CIVIL PROCEDURE; ARTICLE 78 PROCEEDING (MANDAMUS) TO COMPEL DENTAL TREATMENT;

Supreme Court, Chemung County, dismissed the petition for failure to state a cause of action; App. Div. affirmed.

SCOTT, et al. v BELL ATLANTIC CORPORATION, et al.:

1ST Dept. App. Div. order of 5/10/01; reversal; leave to appeal granted by Court of Appeals, 1/15/02;

CONSUMER PROTECTION; OUT OF STATE INTERNET USERS' DECEPTIVE TRADE CAUSE OF ACTION AGAINST NEW YORK BUSINESS (GENERAL BUSINESS LAW SECTIONS 349, 350); EFFECTIVENESS OF DISCLAIMERS AND 30-DAY TRIAL PERIOD;

Supreme Court, New York County, inter alia, denied defendants' motion to dismiss the complaint; App. Div. reversed and granted the motion.

SLAYKO v SECURITY MUTUAL INSURANCE COMPANY, et al.:

3RD Dept. App. Div. order of 7/19/01; affirmance; leave to appeal granted by Court of Appeals, 11/19/01;

INSURANCE - DECLARATORY JUDGMENT - OBLIGATION TO DEFEND/INDEMNIFY; ACCIDENTAL DISCHARGE OF FIREARM; INTERPRETATION OF "INTENTIONALLY" AND "CRIMINAL ACTIVITY";

Supreme Court, St. Lawrence County, granted plaintiff's motion for summary judgment; App. Div. affirmed.

TOSCA (EDWIN), PEOPLE v:

1ST Dept. App. Div. order of 10/16/01; modification; leave to appeal granted by Ciparick, J., 1/21/02; Rule 500.4 review pending;

CRIMES AND CRIMINAL PROCEDURES - TRIALS; EVIDENCE - ADMISSIBILITY OF EVIDENCE OF UNCHARGED CRIME AS NARRATIVE OF POLICE CONFRONTATION WITH DEFENDANT;

Supreme Court, Bronx County, conviction of criminal possession of a weapon, third degree; App. Div. modified and reduced the sentence.

TUSA, MATTER OF v GOORD:

3RD Dept. App. Div. order of 10/25/01; administrative determination confirmed; appeal taken pursuant to CPLR 5601(b); sua sponte examination whether substantial constitutional question is directly involved;

PRISONS AND PRISONERS; DISCIPLINARY PROCEEDINGS - USE OF CONFIDENTIAL INFORMATION TO SUSTAIN FINDINGS; ALLEGED INADEQUACY OF EMPLOYEE ASSISTANCE;

App. Div., upon transfer by Supreme Court, Albany County, confirmed the determination finding petitioner guilty of violating certain prison disciplinary rules and dismissed the petition.