

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed  
In the New York Court of Appeals from  
**May 31, 2002 through June 6, 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 May 31, 2002 through June 6, 2002 the following jurisdictional statements for appeals were filed:

GORMAN, MATTER OF, v VON ESSEN, et al.:

1<sup>ST</sup> Dept. App. Div. order of 5/16/02; affirmance; sua sponte examination of finality and whether a substantial constitutional question is directly involved;

CIVIL SERVICE; VALIDITY OF NEW YORK CITY DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES RESOLUTION NO. 99-7 - RECLASSIFYING CERTAIN CHIEF POSITIONS AND DISPENSING WITH THE COMPETITIVE EXAM FOR THE FORMER POSITION OF DEPUTY CHIEF;

Supreme Court, New York County, granted the petition and annulled Resolution No. 99-7 of the New York City Department of Citywide Administrative Services; App. Div. affirmed.

HASSAN &c., et al. v MONTUORI, et al. and HENDEL PRODUCTS, INC., et al.:

2<sup>ND</sup> Dept. App. Div. order of 2/04/02; modification with dissents; leave to appeal granted by Appellate Division, 5/17/02; TORTS - PERSONAL INJURY; DEFINITION OF "OWNER" (VEHICLE AND TRAFFIC LAW § 128); OWNER/PASSENGER'S CLAIM AGAINST ABSENTEE CO-OWNERS BASED ON VICARIOUS LIABILITY (VEHICLE AND TRAFFIC LAW § 388[1]); Supreme Court, Nassau County, denied certain defendants' motion and cross-motion for summary judgment dismissing the complaint; App. Div. modified, granted summary judgment dismissing the complaint as to them and severed the action as to the remaining defendants.

ARIELLE "LL" &c. v CHEMUNG COUNTY DEPARTMENT OF SOCIAL SERVICES:

3<sup>RD</sup> Dept. App. Div. order of 5/9/02; affirmance with dissents; sua sponte examination of whether the two-justice dissent at the Appellate Division is on a question of law in appellant's favor to support an appeal as of right; FAMILY COURT - CHILD ABUSE; PRIMA FACIE EVIDENCE OF SEXUAL ABUSE; CORROBORATION; Family Court, Chemung County, partially granted the petition and adjudicated Arielle "LL" an abused child; App. Div. affirmed, dissenters would reverse and dismiss the petition.

MANDEL (WARREN), MATTER OF; THE PEOPLE &c.; STATE OF NEW YORK:

2<sup>ND</sup> Dept. App. Div. order of 4/29/02; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved; SEX OFFENDER REGISTRATION ACT - JURISDICTION; IN ABSENCE OF ARTICLE 78 PROCEEDING, COURT'S POWER TO REVIEW CHALLENGE TO BOARD'S DETERMINATION THAT PLAINTIFF MUST REGISTER AS A CONVICTED SEX OFFENDER AS A RESULT OF A FEDERAL OFFENSE; CORRECTION LAW, ARTICLE 6-C; Nassau County Court, determined that it was without authority to review a determination of the Board of Examiners of sex offenders; App. Div. affirmed.

BISHOP MCGANN &c., et al. v THE INCORPORATED VILLAGE OF OLD WESTBURY, et al.:

2<sup>ND</sup> Dept. App. Div. orders of 4/15/02, 6/12/00 and 12/20/98; modifications; sua sponte examination of finality, whether a substantial constitutional question is directly involved, whether there are bases for the appeals from the two earlier orders and whether they are timely; ZONING; LAND USE - CEMETERY AS CONSTITUTING A RELIGIOUS USE; [STATE ENVIRONMENTAL QUALITY REVIEW ACT REVIEW; REFUND OF REAL PROPERTY TAXES]; Supreme Court, Nassau County, inter alia, annulled respondents' denial of a special use permit, remanded the matter for the issuance of the permit and awarded plaintiff damages; App. Div. modified, deleted the award of damages and the remittal for issuance of the permit and remanded the matter for a determination of the environmental impact of plaintiff's proposed use.

MIRIAM OSBORN MEMORIAL HOME ASSOCIATION v CHASSIN, et al.:

2<sup>ND</sup> Dept. App. Div. order of 3/2/98; modification; sua sponte examination of finality and whether a substantial constitutional question is directly involved;

PUBLIC HEALTH - MEDICAID; VALIDITY OF PUBLIC HEALTH LAW

§ 2807-d(2)(b)(ii) ASSESSMENT AND REPORTING PROVISIONS AS APPLIED TO A NON-MEDICAID, NOT-FOR-PROFIT RESIDENTIAL HEALTH CARE FACILITY;

Supreme Court, Westchester County, granted defendants' motion for summary judgment dismissing the complaint and for partial summary judgment on their counterclaims directing plaintiff to comply with the statute's reporting requirements; App. Div. modified, denied defendants' motion, granted plaintiff's cross-motion for judgment declaring the statute unconstitutional and enjoining its enforcement.

WOODSON, AN INFANT &c., et al. v MENDON LEASING CORPORATION, et al. and AMERICAN TRANSIT INSURANCE COMPANY:

1<sup>ST</sup> Dept. App. Div. order of 12/20/01; affirmance; leave to appeal granted by Appellate Division, 5/09/02;

CIVIL PROCEDURE; VACATUR OF DEFAULT JUDGMENT BASED ON COMPLAINT VERIFIED BY A PERSON WITHOUT PERSONAL KNOWLEDGE OF SUBSTANTIVE FACTS;

Supreme Court, Bronx County, inter alia, granted the motion to vacate a default judgment; App. Div. affirmed.