

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed
In the New York Court of Appeals from
July 12, 2002 through July 18, 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 July 12, 2002 through July 18, 2002 the following jurisdictional statements for appeals were filed:

BRISCO (FRANK), PEOPLE v.:

2ND Dept. App. Div. order of 03/25/02; affirmance; leave to appeal granted by Levine, J., 07/02/02;
CRIMES AND CRIMINAL PROCEDURE; IDENTIFICATION - ALLEGEDLY SUGGESTIVE SHOW-UP;
Supreme Court, Suffolk County, conviction of attempted burglary, second degree; App. Div. affirmed.

HORN v THE NEW YORK TIMES:

1ST Dept. App. Div. order of 03/21/02; affirmance with dissents; leave to appeal granted by Appellate Division, 07/02/02; CONTRACTS-EMPLOYMENT; WRONGFUL DISCHARGE; EXCEPTION TO EMPLOYMENT-AT-WILL DOCTRINE; PHYSICIAN ASKED BY EMPLOYER TO DISCLOSE CONFIDENTIAL PATIENT INFORMATION (WIEDER v SKALA, 80 NY2D 628); Supreme Court, New York County, inter alia, denied defendant's motion to dismiss the cause of action for breach of implied contract; App. Div. affirmed; dissenter would dismiss that cause of action.

LORILLARD TOBACCO COMPANY, et al. v ROTH, COMMISSIONER &c., et al.:

4th Dept. App. Div. order of 03/15/02; affirmance; leave to appeal granted by Court of Appeals, 07/02/02; TAXATION - DECLARATORY JUDGMENT; PROMOTIONAL BUY-DOWN PROGRAMS - AGENCY INTERPRETATION OF NEW YORK CIGARETTE MARKETING STANDARDS ACT (TAX LAW ARTICLE 20-A); Supreme Court, Monroe County, denied plaintiffs' motion for partial summary judgment and granted defendants' cross-motion for summary judgment; App. Div. affirmed.

RODRIGUEZ (JOSE), PEOPLE v:

1ST Dept. App. Div. order of 02/21/02; modification; leave to appeal granted by Levine, J., 07/03/02; CRIMES AND CRIMINAL PROCEDURE - JURY TRIALS; ALLEGED JUROR MISCONDUCT - FAILURE TO DISCLOSE FRIENDSHIP WITH DISTRICT ATTORNEY IN THE OFFICE PROSECUTING DEFENDANT; SUMMATION - PROSECUTOR'S COMMENTS ON WITNESS' SILENCE AS TO DEFENDANT'S GOOD CHARACTER; Supreme Court, New York County, conviction of criminal sale of a controlled substance, third degree and sentenced him as a second felony offender; App. Div. modified and reduced the sentence.

SHABAZZ (BOBBY), PEOPLE v:

4th Dept. App. Div. order of 12/21/01; affirmance; leave to appeal granted by Levine, J., 07/01/02; CRIMES AND CRIMINAL PROCEDURE; SEARCH AND SEIZURE - REASONABLE SUSPICION FOR VEHICLE STOP AS RIPINING INTO PROBABLE CAUSE FOR SEARCH OF VEHICLE; County Court, Erie County, denied the defendant's motion to suppress evidence from the motor vehicle stop; App. Div. affirmed.

WITTLINGER, MATTER OF, v WING, COMMISSIONER, et al.:

1ST Dept. App. Div. order of 12/27/01; affirmance; leave to
appeal granted by Court of Appeals, 07/09/02;

CIVIL PROCEDURE - ATTORNEYS FEES; ACTION AGAINST THE STATE -
"PREVAILING PARTY" AND "SUBSTANTIALLY JUSTIFIED" ELEMENTS FOR AN
AWARD OF ATTORNEYS FEES (CPLR ARTICLE 86 [STATE EQUAL ACCESS TO
JUSTICE ACT]);

Supreme Court, New York County, inter alia, denied the
application for petitioner's attorneys fees; App. Div. affirmed.