

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed
In the New York Court of Appeals from
September 20, 2002 through September 26, 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 September 20, 2002 through September 26, 2002 the following jurisdictional statements for appeals were filed:

DILLON v U-A COLUMBIA CABLEVISION OF WESTCHESTER, INC., et al.:
2ND Dept. App. Div. order of 4/8/02; affirmance; leave to appeal granted by the Court of Appeals, 9/12/02;

CONTRACTS - DAMAGES; LIQUIDATED DAMAGES OR UNLAWFUL PENALTY - VOLUNTARY PAYMENT DOCTRINE AS BAR TO RECOVERY OF LATE FEES; FRAUD - PARTICULARITY OF ALLEGATIONS; GENERAL BUSINESS LAW SECTION 349; BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING; NEGLIGENT MISREPRESENTATION; MONEY HAD AND RECEIVED;
Supreme Court, Westchester County, granted defendant's motion to dismiss the complaint insofar as asserted against it; App. Div. affirmed.

GIUFFRIDA v CITIBANK CORPORATION, et al.:

2ND Dept. App. Div. order of 11/26/01; affirmance; leave to appeal granted by Court of Appeals, 9/10/02;
NEGLIGENCE - VIOLATION OF STATUTORY DUTY; MUNICIPALITIES - LIABILITY UNDER GENERAL MUNICIPAL LAW SECTION 205(a) - PRACTICAL OR REASONABLE CONNECTION BETWEEN CODE VIOLATIONS AND FIREFIGHTER'S INJURIES;
Supreme Court, Kings County, granted defendants' motion for summary judgment and dismissed the complaint insofar as asserted against them; App. Div. affirmed.

HAYES, PEOPLE ex rel., v TRAVIS:

3RD Dept. App. Div. order of 8/2/02; sua sponte examination of whether a substantial constitutional question is directly involved;
HABEAS CORPUS; DUE PROCESS - RIGHT TO WRITTEN DECISION FOLLOWING FINAL PAROLE REVOCATION HEARING; RIGHT TO ADMINISTRATIVE APPEAL;
App. Div. denied application for a writ of habeas corpus.

MCNAIR (GEORGE), MATTER OF, v MCNULTY, et al.:

2ND Dept. App. Div. order of 6/17/02; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved;
MUNICIPALITIES - STREETS AND OTHER PUBLIC WAYS - MAINTENANCE OF TREES IN STREET - TAKINGS - INTERFERENCE WITH ABUTTING OWNERS' EASEMENT RIGHTS;
Supreme Court, Suffolk County, inter alia, granted respondents' motion to dismiss a cause of action pursuant to Real Property Actions and Proceedings Law article 15 and dismissed the petition/complaint; App. Div. affirmed.

SPELLER &c., et al. v SEARS ROEBUCK AND COMPANY, INC., et al.:

2ND Dept. App. Div. order of 5/6/02; reversal; leave to appeal granted by Court of Appeals, 9/10/02;
TORTS - PRODUCTS LIABILITY - SUMMARY JUDGMENT - PLAINTIFFS' BURDEN TO PRODUCE DIRECT EVIDENCE OF A PRODUCT DEFECT - EXPERT TESTIMONY;
Supreme Court, Queens County, denied certain defendants motion for summary judgment dismissing the complaint; App. Div. reversed, granted the motion, dismissed the complaint against defendants and severed the action as against the other defendants.

TORRES, MATTER OF, v DOLING:

3RD Dept. App. Div. order of 7/18/02; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved;
ADMINISTRATIVE PROCEEDINGS - PERSONAL JURISDICTION - COMPLIANCE WITH SERVICE PROVISIONS OF ORDER TO SHOW CAUSE;
Supreme Court, Washington County, granted respondents' motion to dismiss the petition for lack of personal jurisdiction; App. Div. affirmed.