

COURT OF APPEALS NEW FILINGS

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

GERMANTOWN CENTRAL SCHOOL DISTRICT v CLARK, CLARK, MILLIS & GILSON, et al.:

3RD Dept. App. Div. order of 6/6/02; reversal; leave to appeal granted by Court of Appeals, 10/17/02;
CIVIL PROCEDURE - LIMITATION OF ACTIONS; APPLICABILITY OF THE REMEDIAL DATE OF DISCOVERY STATUTE OF LIMITATIONS FOR CERTAIN TOXIC TORTS (CPLR 214-c) TO PROFESSIONAL MALPRACTICE CLAIMS ARISING FROM ASBESTOS ABATEMENT SERVICES;
Supreme Court, Columbia County, inter alia, granted plaintiff's cross motion to amend complaint and denied summary judgment to defendants; App. Div. reversed, denied plaintiff's cross motion to amend the complaint, granted summary judgment to defendants and dismissed complaint.

GRICE (TERRILL), PEOPLE v:

2nd Dept. App. Div. order of 4/29/02; affirmance; leave to appeal granted by Kaye, Ch.J., 10/23/02;

CRIMES - CRIMINAL PROCEDURE - RIGHT TO COUNSEL - APPLICATION TO A DEFENDANT IN POLICE CUSTODY WHERE DEFENDANT'S FAMILY MEMBER TELLS POLICE THAT AN ATTORNEY HAS BEEN RETAINED TO REPRESENT DEFENDANT; Supreme Court, Queens County, inter alia, denied defendant's motion to suppress statements to police and thereafter entered judgment convicting defendant of burglary in the first degree (two counts), burglary in the second degree and criminal possession of a weapon in the second degree; App. Div. affirmed.

HAFEEZ (RAVIE), PEOPLE v:

2nd Dept. App. Div. order of 6/24/02; modification; leave to appeal granted by Smith, J., 10/15/02;

CRIMES - LEGAL SUFFICIENCY OF EVIDENCE SUPPORTING DEFENDANT'S CONVICTION OF TAMPERING WITH PHYSICAL EVIDENCE; DEFENDANT'S RIGHT TO USE PARTIALLY AUDIBLE TAPE DURING CROSS-EXAMINATION FOR IMPEACHMENT PURPOSES; FAILURE TO SANCTION FOR LATE DISCLOSURE OF ROSARIO MATERIAL; IMPROPER COMMENTS BY PROSECUTOR DURING SUMMATION;

Supreme Court, Queens County, entered judgment convicting defendant of murder in the second degree, conspiracy in the fourth degree, tampering with physical evidence and hindering prosecution in the first degree; App. Div. modified by reversing convictions and vacating sentences for murder in the second degree, conspiracy in the fourth degree and hindering prosecution in the first degree and, as so modified, affirmed.

PERALTA v HENRIQUEZ, et al.:

2nd Dept. App. Div. order of 3/18/02; affirmance; leave to appeal granted by Court of Appeals, 10/10/02;

TORTS - PREMISES LIABILITY; DUTY OF LANDOWNER TO LIGHT A VACANT LOT IN WHICH TENANTS AND GUESTS ARE PERMITTED TO PARK 24 HOURS A DAY; REQUIREMENT OF ACTUAL OR CONSTRUCTIVE NOTICE OF DEFECT; CPLR ARTICLE 16 - LANDOWNER'S RIGHT TO JURY INSTRUCTION REGARDING DUTIES OWED BY DEFAULTING CO-DEFENDANT;

Supreme Court, Rockland County, entered judgment against landowner defendants; App. Div. affirmed.

RODRIGUEZ (JOSE L.), PEOPLE v:

4th Dept. App. Div. order of 5/3/02; affirmance; leave to appeal granted by Kaye, Ch.J., 10-18-02; Rule 500.4 review pending;

CRIMES - APPEALS - HARMLESS ERROR; APPLICATION OF HARMLESS ERROR DOCTRINE WHEN THE ALLEGED ERRONEOUS FAILURE TO HOLD A WADE HEARING IS FOLLOWED BY A GUILTY PLEA;

Monroe County Court, entered judgment convicting defendant upon guilty plea of criminal sale of a controlled substance in the third degree; App. Div. affirmed.

TERIO v FORD MOTOR COMPANY, et al.:

Supreme Court, Dutchess County, order of 9/19/02; direct appeal taken pursuant to CPLR 5601(b)(2); sua sponte examination of whether a direct appeal lies;

CIVIL PROCEDURE - APPLICATION OF RES JUDICATA AND COLLATERAL ESTOPPEL TO CLAIM RESOLVED IN AN ARBITRATION AWARD; DUE PROCESS; EQUAL PROTECTION;

Supreme Court, Dutchess County, granted summary judgment to defendants and denied as moot plaintiff's application for pre-suit discovery and a trial preference.