

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed
In the New York Court of Appeals from
November 1, 2002 through November 7, 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 November 1, 2002 through November 7, 2002 the following jurisdictional statements for appeals were filed:

CRABTREE, MATTER OF, v NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, et al.:

1st Dept. App. Div. order of 5/30/02; reversal; leave to appeal granted by Appellate Division, 10/17/02; Rule 500.4 review pending;

CIVIL PROCEDURE - COSTS AND ATTORNEY'S FEES - EQUAL ACCESS TO JUSTICE ACT; STANDARD OF APPELLATE REVIEW OF ATTORNEY'S FEES AWARD UNDER CPLR SECTION 8601(a); RENT OVERCHARGE CLAIM; STATE'S BURDEN OF PROOF TO ESTABLISH THAT ITS DETERMINATION WAS "SUBSTANTIALLY JUSTIFIED";

Supreme Court, New York County, entered judgment and order amending judgment awarding attorney's fees to petitioner pursuant to CPLR 8601; App. Div. reversed and vacated the award.

KAREDES v COLELLA, et al.:

3RD Dept. App. Div. order of 4/18/02; modification; leave to appeal granted by Court of Appeals, 10/10/02;
MUNICIPALITIES - CONTRACT FOR PROFESSIONAL SERVICES - AUTHORITY OF VILLAGE BOARD TO BIND FUTURE BOARDS TO A CONTRACT FOR MANAGEMENT OF A GOLF COURSE; ESTOPPEL;
Supreme Court, Broome County, inter alia, converted petitioner's application, in a proceeding pursuant to CPLR article 78, into an action for a declaratory judgment and declared the parties' contract valid and enforceable; App. Div. modified by reversing so much of the judgment as declared the contract valid and enforceable, declared the contract void and unenforceable to the extent that it violated the term limit rule and, as so modified, affirmed.

MAIN SENECA, MATTER OF, v TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY, et al. and BDO SEIDMAN, LLP:

4th Dept. App. Div. order of 3/15/02; affirmance; leave to appeal granted by Court of Appeals, 10/22/02;
MUNICIPALITIES - VIOLATION OF ANTI-PIRATING PROVISIONS OF GENERAL MUNICIPAL LAW SECTION 862; VALIDITY OF INDUSTRIAL DEVELOPMENT AGENCY'S APPROVAL OF SUBLEASE; REMEDIES FOR VIOLATION OF GENERAL MUNICIPAL LAW SECTION 862; METHODOLOGY FOR CALCULATING VIOLATOR'S TAX LIABILITY;
Supreme Court, Erie County, entered an amended judgment ordering respondent Uniland Partnership L.P. to pay respondent Town of Amherst Industrial Development Agency the taxes attributable or allocable to facilities occupied or used by respondent BDO Seidman, LLP; App. Div. affirmed.

MITTL v NEW YORK STATE DIVISION OF HUMAN RIGHTS:

RIVERA-MALDONADO v NEW YORK STATE DIVISION OF HUMAN RIGHTS:

1st Dept. App. Div. order of 4/2/02; leave to appeal granted by Court of Appeals, 10/24/02;
CIVIL RIGHTS - HUMAN RIGHTS LAW (EXECUTIVE LAW SECTION 296); UNLAWFUL DISCRIMINATION BASED ON PREGNANCY; STANDARD OF APPELLATE REVIEW;
Appellate Division annulled a determination of the State Division of Human Rights which, inter alia, found that employer unlawfully discriminated against an employee because of her pregnancy, granted employer's petition, dismissed the underlying complaint, denied employee's cross petition with respect to the amount of the award and dismissed that proceeding as academic.

SAVINON (CARLOS), PEOPLE v:

1st Dept. App. Div. order of 4/30/02; affirmance; leave to appeal granted by Smith, J., 10/15/02;
CRIMINAL PROCEDURE; PROPRIETY AND PREJUDICIAL EFFECT OF MISSING WITNESS CHARGE; IMPROPER REBUTTAL TESTIMONY BY COMPLAINANT; IMPROPER EXPERT OPINION EVIDENCE; LIMITATION OF DEFENSE EVIDENCE; SUFFICIENCY OF COURT'S INQUIRY OF JUROR WHO WAS ALLEGEDLY ADVERSELY AFFECTED BY CONDUCT OF DEFENSE COUNSEL'S ASSOCIATE; Supreme Court, New York County, entered judgment convicting defendant of rape in the first degree and sexual abuse in the first degree; App. Div. affirmed.

SHOLES, et al. v MEAGHER, et al. [FUREY & FUREY, P.C., et al.]:

2nd Dept. App. Div. order of 6/24/02; dismissal of appeal as of right; leave to appeal granted by Court of Appeals, 10/17/02;
CIVIL PROCEDURE - COSTS - 22 NYCRR 130-1.1; APPEALS - AVAILABILITY OF APPEAL AS OF RIGHT TO APPELLATE DIVISION FROM SUA SPONTE COURT ORDER IMPOSING SANCTIONS;
Supreme Court, Suffolk County, entered an order imposing costs and attorney's fees against non-party attorneys; App. Div. dismissed non-party attorneys' appeal as of right.

WESTMORELAND COAL COMPANY v ENTECH, INC.:

1st Dept. App. Div. order of 7/2/02; affirmance; leave to appeal granted by Court of Appeals, 10/24/02;
CONTRACT - STOCK PURCHASE AGREEMENT; CPLR ARTICLE 76; ALTERNATIVE DISPUTE RESOLUTION - PURCHASE PRICE ADJUSTMENT CLAUSE;
Supreme Court, New York County, order granting a CPLR article 76 petition and directing that all objections to a Closing Date Certificate be resolved by certain Independent Accountants; App. Div. affirmed.

