

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed  
In the New York Court of Appeals from  
**November 8, 2002 through November 14, 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 8, 2002 through November 14, 2002 the following jurisdictional statements for appeals were filed:

ALOMARI, MATTER OF, v PIETRUSZKA, et al.:

4<sup>th</sup> Dept. App. Div. order of 10/1/02; article 78 petition dismissed; appeal taken pursuant to CPLR 5601(b); sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right; CIVIL PROCEDURE - REMEDIES; AVAILABILITY OF PROHIBITION OR MANDAMUS TO REVIEW AN ORDER AMENDED WITHOUT GIVING APPELLANT A FULL OPPORTUNITY TO BE HEARD; COLLATERAL REVIEW OF ALLEGED ERROR OF LAW WHERE DIRECT APPEAL LIES;

App. Div. in a proceeding commenced there in the nature of prohibition and mandamus, dismissed the petition.

GRUCCI (JOSEPH J.), PEOPLE v:

App. Term, 9<sup>th</sup> and 10<sup>th</sup> Judicial Districts, order of 7/2/02; affirmance; leave to appeal granted by Rosenblatt, J., 11/4/02; CRIMINAL LAW - ENVIRONMENTAL REGULATION; DEPARTMENT OF ENVIRONMENTAL CONSERVATION'S JURISDICTION TO REGULATE THE SHELL FISHING INDUSTRY IN WATERS OWNED BY TOWN PURSUANT TO COLONIAL LAND GRANTS; NY CONSTITUTION, ARTICLE I, SECTION 14; TOWN LAW SECTION 130(18)(e); ENVIRONMENTAL CONSERVATION LAW SECTION 11-0105; ENVIRONMENTAL CONSERVATION LAW SECTION 13-0311(7); District Court, Suffolk County, dismissed the accusatory instrument pursuant to CPL Sections 170.30 and 170.35; App. Term affirmed.

MERCHANTS MUTUAL INSURANCE COMPANY, MATTER OF, v FALISI, et al.:

2<sup>ND</sup> Dept. App. Div. order of 4/22/02; affirmance; leave to appeal granted by Court of Appeals, 10/24/02; Rule 500.4 review pending; INSURANCE - SUPPLEMENTARY UNINSURED MOTORIST CLAIM; TIMELINESS OF NOTICE OF CLAIM; DISCLAIMER OF COVERAGE; Supreme Court, Suffolk County, granted CPLR 75 petition to permanently stay arbitration of a supplementary uninsured motorist claim; App. Div. affirmed.

NEW JERSEY STEEL CORPORATION and VON ROLL HOLDING, LTD. v LUTIN:

1<sup>ST</sup> Dept. App. Div. order of 9/19/02; modification; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the constitution and whether a substantial constitutional question is directly involved to support an appeal as of right; TORTS - LIBEL; DETERMINATION THAT STATEMENTS WERE NOT CONSTITUTIONALLY PROTECTED STATEMENTS OF OPINION; SUFFICIENCY OF EVIDENCE; PREJUDICIAL EFFECT OF ALLEGEDLY ERRONEOUS EVIDENTIARY RULINGS AND JURY INSTRUCTIONS; TRIAL COURT'S FAILURE TO REQUIRE JURY TO MAKE SEPARATE FINDINGS AS TO EACH ALLEGEDLY DEFAMATORY STATEMENT; FAILURE TO VACATE PUNITIVE DAMAGES AWARD; Supreme Court, New York County, entered judgment awarding plaintiff New Jersey Steel Corporation compensatory and punitive damages and awarded plaintiff Von Roll Holding, Ltd. compensatory damages; App. Div. modified by reducing compensatory damages to each plaintiff, vacated the punitive damage award to New Jersey Steel Corporation and remanded the issue of punitive damages for a new trial unless New Jersey Steel Corporation stipulated to a reduced award.

SPITZER, ATTORNEY GENERAL, MATTER OF, v FARRELL,  
COMMISSIONER &c., et al.:

1<sup>ST</sup> Dept. App. Div. order of 5/28/02; reversal; leave to appeal granted by Court of Appeals, 10/17/02;

ENVIRONMENTAL LAW; STATE ENVIRONMENTAL QUALITY REVIEW ACT - NEGATIVE DECLARATION; STANDARD OF APPELLATE REVIEW; COURT'S RELIANCE ON EVOLVING SCIENTIFIC KNOWLEDGE IN FINDING AGENCY DETERMINATION DEFICIENT;

Supreme Court, New York County, order denied petitioner's CPLR article 78 petition to annul a negative declaration issued by respondent, New York City Department of Sanitation; App. Div. reversed and annulled the negative declaration and directed respondent, New York City Department of Sanitation to conduct a new environmental assessment.