

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed
In the New York Court of Appeals from
December 6, 2002 through December 12, 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 December 6, 2002 through December 12, 2002 the following jurisdictional statements for appeals were filed:

GORDON, et al., MATTER OF, v RUSH, et al.:

2ND Dept. App. Div. order of 6/24/02; affirmance; leave to appeal granted by Court of Appeals, 11/21/02;
STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA); ABILITY OF TOWN'S COASTAL EROSION HAZARD BOARD OF REVIEW TO CONDUCT AN INDEPENDENT ENVIRONMENTAL REVIEW OF PETITIONER'S APPLICATIONS TO CONSTRUCT CERTAIN STRUCTURES WHERE THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION HAS ALREADY ISSUED AN INITIAL NEGATIVE DECLARATION WITH RESPECT TO THE APPLICATIONS; STATUS OF BOARD'S POSITIVE DECLARATION AS A FINAL ADMINISTRATIVE ACTION RIPE FOR CPLR ARTICLE 78 REVIEW;

Supreme Court, Suffolk County, denied Board's motion to dismiss the petition and granted the petition to the extent of (i) annulling portions of the Board's determination to initiate its own review pursuant to SEQRA and (ii) enjoining the Board from commencing or continuing its own independent SEQRA review; App. Div. affirmed.

MAJORS (MARK), PEOPLE v.:

4TH Dept. App. Div. order of 2/1/02; affirmance; leave to appeal granted by Kaye, Ch.J., 11/26/02;
CRIMES - CRIMINAL PROCEDURE; ADMISSIBILITY OF MOLINEUX EVIDENCE BASED UPON DEFENDANT'S VOIR DIRE QUESTIONING;
Monroe County Court judgment convicting defendant of murder in the second degree; App. Div. affirmed.

MEDICAL SOCIETY OF THE STATE OF NEW YORK, et al., MATTER OF, v SERIO &c., et al.:

1ST Dept. App. Div. order of 10/22/02; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
INSURANCE - NO-FAULT AUTOMOBILE INSURANCE - REVISED REGULATION 68; ALLEGED IMPROPER DELEGATION OF RULEMAKING AUTHORITY TO PRIVATE INSURANCE COMPANIES; ALLEGED NONCOMPLIANCE WITH STATE ADMINISTRATIVE PROCEDURE ACT'S RULEMAKING AND FILING REQUIREMENTS; SEPARATION OF POWERS; REGULATION 68'S ALLEGED VIOLATION OF AND CONFLICT WITH ARTICLE 51 OF THE INSURANCE LAW;
Supreme Court, New York County, judgment declaring that the promulgation of "revised Regulation 68," amending 11 NYCRR part 65, did not constitute improper legislative policy-making or an improper delegation of rule-making authority and dismissing the proceeding insofar as it sought article 78 relief annulling revised Regulation 68 for failure to comply with the State Administrative Procedure Act; App. Div. affirmed.

NEW JERSEY STEEL CORPORATION, et al. v LUTIN (No. 1127202):

Supreme Court, New York County, judgment of 11/25/02; appeal taken pursuant to CPLR 5601(d) for review of 1ST Dept. App. Div. order of 9/19/02; sua sponte examination 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, 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 for a new trial on the issue of punitive damages unless New Jersey Steel Corporation stipulated to a reduced award; following stipulation to a reduced damages award, Supreme Court entered judgment awarding damages to plaintiffs.

N.Y.A.A.D., INC., et al. v THE STATE OF NEW YORK, et al.:

3RD Dept. App. Div. order of 10/24/02; reversal; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
CONSUMER PROTECTION - VALIDITY OF THE 1996 AIRBAG SAFETY AND ANTI-THEFT ACT;

Supreme Court, Albany County, granted plaintiffs' cross-motion for summary judgment declaring the 1996 Airbag Safety and Anti-Theft Act a nullity; App. Div. reversed, granted summary judgment to defendants and dismissed the complaint.

RODRIGUEZ v SERGE ELEVATOR COMPANY, INC.:

2ND Dept. Dept. App. Div. order of 2/4/02; reversal; leave to appeal granted by Court of Appeals, 11/19/02; Rule 500.4 review pending;

TORTS - AVAILABILITY OF RES IPSA LOQUITUR WHERE PLAINTIFF IS UNABLE TO IDENTIFY THE SPECIFIC ELEVATOR WHERE HER ACCIDENT OCCURRED ALTHOUGH BOTH ELEVATORS WERE EXCLUSIVELY MAINTAINED BY DEFENDANT;

Supreme Court, Queens County, denied defendant's motion for summary judgment; App. Div. reversed, granted summary judgment to defendant and dismissed the complaint.

WYMAN, et al., MATTER OF, v BRAMAN, et al.:

3RD Dept. App. Div. order of 10/31/02; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
CIVIL PROCEDURE - STANDING; GENERAL MUNICIPAL LAW SECTION 239-m;
Supreme Court, Ulster County, granted respondent's motion to dismiss the petition and amended petition for lack of standing;
App. Div. affirmed.

ZACCARO, MATTER OF, v CAHILL:

3rd Dept. App. Div. order of 10/17/02; administrative determination confirmed; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

ENVIRONMENTAL LAW - FRESHWATER WETLANDS ACT; ALLEGED DUE PROCESS VIOLATION ARISING FROM AGENCY'S FAILURE TO GIVE LANDOWNER ACTUAL NOTICE OF FILING OF FINAL MAP DESIGNATING HIS PROPERTY AS WETLANDS;

Appellate Division, Third Department, confirmed administrative determination finding petitioner in violation of the Freshwater Wetlands Act and dismissed CPLR article 78 proceeding.