

COURT OF APPEALS NEW FILINGS

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

BELT PAINTING CORP. v TIG INSURANCE COMPANY:

2nd Dept. App. Div. order of 5/13/02; reversal; leave to appeal granted by Court of Appeals, 12/12/02;

INSURANCE - EXCLUSIONS - TOTAL POLLUTION EXCLUSION - APPLICATION TO CLAIMANT'S EXPOSURE TO "NOXIOUS AND TOXIC FUMES" FROM INDOOR PAINTING JOB IN HIS WORKPLACE;

Supreme Court, Kings County, granted insurer's motion for summary judgment, denied insured's cross motion for summary judgment and declared insurer not obligated to defend or indemnify insured in personal injury action; App. Div. reversed, denied insurer's motion for summary judgment, granted insured's motion for summary judgment and declared insurer obligated to defend and indemnify insured in underlying personal injury action.

COHEN, MATTER OF, v BOARD OF APPEALS OF THE VILLAGE OF SADDLE ROCK:

2ND Dept. App. Div. order of 8/26/02; affirmance, leave to appeal granted by Court of Appeals, 12/12/02;
LOCAL LAWS - PREEMPTION BY STATE - AREA VARIANCE - MUNICIPAL HOME RULE LAW; VILLAGE LAW SECTION 7-712-b(3) (b); STATE'S ALLEGED PREEMPTION OF THE ENTIRE FIELD OF AREA VARIANCES AND PRECLUSION OF LOCAL REGULATION;
Supreme Court, Nassau County, granted CPLR article 78 petition and remanded to the Board of Appeals of the Village of Saddle Rock, and thereafter invalidated Village Code § 150-24(B), annulled the determination to the extent it denied area variances sought by the petitioner and remitted to the Board of Appeals for a new determination consistent with Village Law § 7-712-b(3); App. Div. affirmed.

ELCOR HEALTH SERVICES, INC. v NOVELLO:

3RD Dept. App. Div. order of 6/20/02; modification; leave to appeal granted by Court of Appeals, 12/12/02;
HEALTH - MEDICAID REIMBURSEMENT RATE; STATE ADMINISTRATIVE PROCEDURE ACT - NATURE OF ACTUAL IMPROVEMENT STANDARD; SCOPE OF JUDICIAL REVIEW OF DEPARTMENT OF HEALTH'S AUDIT DETERMINATION;
Supreme Court, Albany County, partially granted petitioner's application pursuant to CPLR article 78, to review a determination of the Department of Health reducing a component of petitioner's medicaid reimbursement rate; App. Div. modified by reversing so much of the judgment as partially granted the petition, denied the petition and affirmed the judgment as so modified.

HERNANDEZ v BANKERS TRUST COMPANY:

Supreme Court, New York County, order of 8/15/02; sua sponte examination of whether there is a jurisdictional predicate for a direct appeal pursuant to CPLR 5601(b)(2);
EMPLOYMENT - WRONGFUL TERMINATION - SUMMARY JUDGMENT; HOSTILE WORK ENVIRONMENT; DISCRIMINATORY DISCHARGE; RETALIATORY DISCRIMINATION (EXECUTIVE LAW SECTION 296[1][e] AND ADMINISTRATIVE CODE SECTION 8-107[7][i]); EQUAL PROTECTION; DUE PROCESS;
Supreme Court, New York County, granted defendant summary judgment dismissing the complaint.

RUSSO, MATTER OF, et al. v BLACK, et al.:

2ND Dept. App. Div. order of 8/26/02; affirmance; leave to appeal granted by Court of Appeals, 12/12/02;

LOCAL LAWS - PREEMPTION BY STATE - AREA VARIANCE - MUNICIPAL HOME RULE LAW; VILLAGE LAW SECTION 7-712-b(3)(b); STATE'S ALLEGED PREEMPTION OF THE ENTIRE FIELD OF AREA VARIANCES AND PRECLUSION OF LOCAL REGULATION;

Supreme Court, Nassau County, granted CPLR article 78 petition to the extent of annulling the determination of the Board of Appeals of the Village of North Hills denying petitioners' application for a special use permit and height variance and remitted to the Board for a new determination pursuant to Village Law § 7-712-b(3)(b); App. Div. affirmed.