

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed
In the New York Court of Appeals from
December 27, 2002 through January 2, 2003

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 27, 2002 through January 2, 2003 the following jurisdictional statements for appeals were filed:

BROWN, MATTER OF, v RIVERA:

3RD Dept. App. Div. order of 11/7/02; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved;

PRISONS AND PRISONERS - PROPRIETY OF DETERMINATION DENYING PETITIONER'S REQUEST FOR REINSTATEMENT TO A TEMPORARY RELEASE PROGRAM; CORRECTION LAW § 855;

Supreme Court, Washington County, converted petitioner's application for a writ of habeas corpus into a CPLR article 78 proceeding and dismissed the petition; App. Div. affirmed.

FONVIL, MATTER OF, v MOLEA:

2nd Dept. App. Div. order of 11/25/02; denial of CPLR article 78 petition; sua sponte examination of whether a substantial constitutional question is directly involved; PROCEEDING AGAINST BODY OR OFFICER - PROHIBITION - RE-TRIAL OF PETITIONER/CRIMINAL DEFENDANT AS A VIOLATION OF DOUBLE JEOPARDY PRINCIPLES; PROPRIETY OF COURT'S DISQUALIFICATION OF PETITIONER'S CRIMINAL DEFENSE ATTORNEY DURING TRIAL; Appellate Division, Second Department, denied CPLR article 78 petition in the nature of prohibition and dismissed the proceeding.

GAMMONE, MATTER OF, v MURPHY, et al.:

2nd Dept. App. Div. order of 11/25/02; denial of CPLR article 78 petition; sua sponte examination of whether a substantial constitutional question is directly involved; CIVIL SERVICE - RETIREMENT - RETIREMENT AND SOCIAL SECURITY LAW (RSSL) SECTION 604-b; EQUAL PROTECTION CHALLENGE TO STATUTORY SCHEME; DUE PROCESS CHALLENGE ARISING FROM AGENCY'S REFUSAL TO HOLD A HEARING; BREACH OF FIDUCIARY DUTY; CIVIL SERVICE LAW § 201(4); RSSL SECTIONS 470 AND 670(b)(10); Appellate Division, Second Department, denied CPLR article 78 petition and dismissed the proceeding.

J.C. PENNEY CORPORATION, INC., MATTER OF, v CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY, et al.:

4TH Dept. App. Div. order of 11/15/02; dismissal of original proceeding pursuant to Eminent Domain Procedure Law (EDPL) § 207; sua sponte examination of whether a substantial constitutional question is directly involved; MUNICIPALITIES - EMINENT DOMAIN - ACQUISITION OF TENANTS' RIGHTS UNDER A LEASE; ALLEGED CONTRACT CLAUSE VIOLATION; ADEQUACY OF AGENCY'S NOTICE OF PROPOSED CONDEMNATION; ALLEGED NON-COMPLIANCE WITH NEW YORK STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA); Appellate Division, Fourth Department, confirmed City of Syracuse Industrial Development Agency's determination and dismissed petition in original EDPL § 207 proceeding.

MCDONALD (BRUCE), PEOPLE v:

3rd Dept. App. Div. order of 7/18/02; affirmance; leave to appeal granted by Kaye, Ch.J., 12/16/02; CRIMES AND CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL BY AFFIRMATIVE MISADVICE AS TO THE DEPORTATION CONSEQUENCES OF A GUILTY PLEA; ALLEGED MISAPPLICATION OF PREJUDICE STANDARD FOR INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS; Tompkins County Court entered judgment convicting defendant, upon his guilty plea, of criminal sale of marihuana in the third degree and criminal possession of a controlled substance in the third degree and thereafter denied defendant's CPL 440.10 motion to vacate the judgment of conviction; App. Div. affirmed.

MENDEZ (JACQUELINE), PEOPLE v:

2nd Dept. App. Div. order of 8/5/02; affirmance; leave to appeal granted by Goldstein, J., 10/21/02;
CRIMES AND CRIMINAL PROCEDURE - DEFENDANT'S COMPETENCY TO STAND TRIAL AND WAIVE JURY TRIAL; PEOPLE'S BURDEN OF PROOF;
County Court, Westchester County, entered judgment convicting defendant of manslaughter in the first degree and criminal possession of a weapon in the fourth degree; App. Div. affirmed.

O'CONNELL v CORCORAN, ESTATE OF O'CONNELL:

3rd Dept. App. Div. order of 1/17/02; affirmance; leave to appeal granted by Court of Appeals, 12/12/02;
DOMESTIC RELATIONS - DIVORCE - RES JUDICATION AND COLLATERAL ESTOPPEL - PRECLUSIVE EFFECT OF A VERMONT JUDGMENT OF DIVORCE IN NEW YORK EQUITABLE DISTRIBUTION ACTION; ALLEGED ERRORS IN VALUATION AND DISTRIBUTION OF MARITAL PROPERTY;
Supreme Court, Albany County, entered judgment ordering, inter alia, equitable distribution of the parties' marital property;
App. Div. affirmed.

TRONLONE, et al. v LAC D'AMIANTE DU QUEBEC, LTEE, et al.:

1st Dept. App. Div. order of 9/17/02; affirmance; leave to appeal granted by Appellate Division, 12/17/02; Rule 500.4 review pending;
CIVIL PROCEDURE; WHETHER NEW YORK OR NEW JERSEY LAW APPLIES TO ISSUES OF PRODUCT IDENTIFICATION AND EXPOSURE IN ASBESTOS CASE; PROPRIETY OF SUMMARY JUDGMENT;
Supreme Court, New York County, denied defendant's motion for summary judgment dismissing the complaint; App. Div. affirmed.

VELASQUEZ (SEGUNDO JOSE), PEOPLE v:

2ND Dept. App. Div. order of 10/28/02; affirmance; leave to appeal granted by Smith, J., 12/18/02;
CRIMES AND CRIMINAL PROCEDURE - CRIMINAL PROCEDURE - SUFFICIENCY OF EVIDENCE OF WAIVER OF ANTOMMARCHI RIGHTS; REMEDY FOR VIOLATION OF ANTOMMARCHI RIGHTS;
Supreme Court, Kings County, entered judgment convicting defendant of murder in the second degree; App. Div. affirmed.