

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed  
In the New York Court of Appeals from  
**January 17, 2003 through January 23, 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 January 17, 2003 through January 23, 2003 the following jurisdictional statements for appeals were filed:

BANSBACH v ZINN, et al.:

3<sup>RD</sup> Dept. App. Div. order of 5/23/02; modification; leave to appeal granted by Court of Appeals, 1/9/03;

CORPORATIONS - OFFICERS AND DIRECTORS - BOARD OF DIRECTORS' OBLIGATION TO CEASE PAYMENT AND SEEK REPAYMENT OF LEGAL FEES AND EXPENSES OF CORPORATE OFFICER WHO PLEADED GUILTY TO FEDERAL FELONY CHARGES; BUSINESS CORPORATION LAW § 626 (c) - FUTILITY OF DEMAND; SUMMARY JUDGMENT; JUDGMENTS - COLLATERAL ESTOPPEL - EFFECT OF PRIOR DETERMINATION THAT PERSONAL RELATIONSHIPS AND PRIOR BUSINESS DEALINGS OF A CORPORATION'S DIRECTORS WITH ITS PRESIDENT WERE INSUFFICIENT TO CREATE A QUESTION OF FACT; LEAVE TO REPLEAD;

Supreme Court, Ulster County, inter alia, denied defendants' motion for summary judgment dismissing the complaint; App. Div. modified by, inter alia, awarding summary judgment to defendants and dismissing the complaint.

FOSTER (RONALD), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 6/4/02; affirmance; leave to appeal granted by Rosenblatt, J., 1/7/03;  
CRIMES AND CRIMINAL PROCEDURE - TRIAL - RIGHT TO BE PRESENT AT TRIAL - ROBIN ROOM CONFERENCES WITH PROSPECTIVE JURORS - NECESSITY OF RECORD ESTABLISHING DEFENDANT'S ABSENCE FROM CONFERENCES TO SUPPORT DEFENDANT'S CLAIM THAT HE WAS ABSENT FROM A CRITICAL STAGE OF THE TRIAL;  
Supreme Court, Bronx County, after a jury trial, rendered judgment convicting defendant of robbery in first and second degrees and attempted robbery in the first degree, and sentencing him as a second violent felony offender; App. Div. affirmed.

GARRICKS v THE CITY OF NEW YORK:

1<sup>ST</sup> Dept. App. Div. order of 12/31/02; affirmance with dissents; MUNICIPAL CORPORATIONS - NEGLIGENCE - SNOW AND ICE; REASONABLENESS OF CITY'S ACTIONS IN FAILING TO CLEAR SNOW FROM SIDEWALK WHERE PLAINTIFF SLIPPED AND FELL FOR 24 HOURS AFTER IT HAD FINISHED PLOWING ABUTTING STREET - JURY ISSUE OR MATTER FOR COURT'S RESOLUTION AS A MATTER OF LAW;  
Supreme Court, Bronx County, awarded plaintiff damages upon a jury verdict in a personal injury action; App. Div. affirmed.

RETINA ASSOCIATES OF LONG ISLAND, P.C., et al. v ROSBERGER, et al.:

2<sup>ND</sup> Dept. App. order of 11/25/02; affirmance; sua sponte examination of whether a constitutional question is directly involved to support the appeal taken as of right and whether the order finally determines the action;  
COURTS - PERSONAL JURISDICTION; LONG-ARM JURISDICTION (CPLR 302[a]); DISMISSAL OF COMPLAINT AS TO CERTAIN DEFENDANTS; FRAUD - CAUSE OF ACTION BASED ON ALLEGED PERJURED TESTIMONY IN PRIOR ARBITRATION PROCEEDING CONCERNING EMPLOYMENT CONTRACT;  
Supreme Court, Nassau County, granted defendant Rosberger's motion insofar as it sought dismissal of the complaint as to him, and (in a separate order) granted defendant Watskin's motion to dismiss the complaint as to her; App. Div. affirmed.

VERNON v VERNON:

1<sup>ST</sup> Dept. App. Div. order of 8/8/02; affirmance; leave to appeal granted by Court of Appeals, 1/9/03;  
PARENT AND CHILD - CUSTODY - MODIFICATION OF CUSTODY - SUBJECT MATTER JURISDICTION OVER CUSTODY MODIFICATION APPLICATION OF STATE RENDERING ORIGINAL DIVORCE JUDGMENT VERSUS STATE TO WHICH CHILD HAS RELOCATED - INTERPLAY BETWEEN FEDERAL PARENTAL KIDNAPPING PREVENTION ACT (28 U.S. CODE, § 1738A[c][2][B] AND NEW YORK DOMESTIC RELATIONS LAW § 75-d(1)(b));  
Supreme Court, New York County, granted plaintiff's motion to hold defendant in contempt of court for violation of access and visitation provisions of divorce judgment and modified divorce judgment to the extent of granting plaintiff sole legal and

physical custody of child; App. Div. affirmed.