

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed
In the New York Court of Appeals from
January 31, 2003 through February 6, 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 31, 2003 through February 6, 2003 the following jurisdictional statements for appeals were filed:

BYNOG, et al. v CIPRIANI GROUP, INC., et al.:

1st Dept. App. Div. order of 10/8/02; modification; sua sponte examination of whether the Appellate Division order granting leave to appeal applies only to the action as to which the Appellate Division modified the Supreme Court order or to both actions addressed in the Appellate Division order; leave to appeal granted by App. Div., 1/16/03;

MASTER AND SERVANT - PAYMENT OF WAGES AND OTHER REMUNERATION - TEMPORARY WAITERS' RIGHT TO RECOVER GRATUITIES FROM BANQUET HALL OPERATORS UNDER LABOR LAW § 196-d WHERE "GRATUITIES" WERE PAID BY CUSTOMERS IN THE FORM OF FIXED SERVICE CHARGES; EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP; BANQUET HALL OPERATORS' LIABILITY FOR LATE PAYMENT OF WAGES TO TEMPORARY WAITERS UNDER LABOR LAW § 191; LABOR LAW § 198;

Supreme Court, New York County, granted defendants' motion for

summary judgment dismissing plaintiffs' causes of action for misappropriation of tips in violation of Labor Law § 196-d and late payment of wages in violation of Labor Law § 191; App. Div. modified by reinstating the cause of action under Labor Law § 191 and associated claim for costs and fees under Labor Law § 198; in a second action, Supreme Court, New York County, granted defendants' motion for summary judgment dismissing the complaint and denied as moot plaintiffs' motion to certify a class; App. Div. affirmed.

DAVID, et al. v COUNTY OF SUFFOLK and SMITHTOWN CENTRAL SCHOOL DISTRICT:

2ND Dept. App. Div. order of 6/24/02; affirmance; leave to appeal granted by Court of Appeals, 1/9/03; Rule 500.4 review pending; TORTS - SCHOOLS - STUDENTS - INJURY TO STUDENT - LIABILITY FOR NEGLIGENT SUPERVISION - PROPRIETY OF SUMMARY JUDGMENT IN DEFENDANT SCHOOL DISTRICT'S FAVOR; Supreme Court, Suffolk County, granted the motion of defendant Smithtown Central School District for summary judgment dismissing the complaint insofar as asserted against it; App. Div. affirmed.

MARINO, S., et al., MATTER OF [RAQUEL T., et al. and ANGEL GUARDIAN CHILDREN AND FAMILY SERVICES, INC., et al.]:

1ST Dept. App. Div. order of 4/23/02; affirmance; leave to appeal granted by Court of Appeals, 1/14/03; PARENT AND CHILD - TERMINATION OF PARENTAL RIGHTS - ABUSED CHILD; FAMILY COURT DERIVATIVE FINDING OF SEVERE ABUSE AS TO TWO CHILDREN BASED ON RAPE OF THIRD CHILD; SOCIAL SERVICES LAW § 384-b(8) (a) AND FAMILY COURT ACT § 1039-b; FEDERAL ADOPTION AND SAFE FAMILIES ACT (42 U.S.C. § 671, et seq.); EXERCISE OF DILIGENT EFFORTS TO REUNITE FAMILY; Family Court, New York County, terminated parental rights and committed the custody and guardianship of the children to Social Services to place for adoption; App. Div. affirmed.

