

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed
In the New York Court of Appeals from
April 4, 2003 through April 10, 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 April 4, 2003 through April 10, 2003 the following jurisdictional statements for appeals were filed:

ANDREW (LARRY), a/k/a ANDREWS (LARRY), PEOPLE v:
2nd Dept. App. Div. order of 11/12/02; affirmance; leave to appeal granted by Rosenblatt, J., 3/25/03;
CRIMES AND CRIMINAL PROCEDURE - EVIDENCE - HEARSAY - BUSINESS RECORD - REDACTED HOSPITAL RECORD; PRESUMPTION OF REGULARITY IN CRIMINAL PROCEEDINGS - DEFENDANT'S RIGHT TO BE PRESENT DURING ISSUANCE OF SUPPLEMENTAL JURY INSTRUCTIONS - PRESERVATION OF ISSUE ON APPEAL;
Supreme Court, Queens County entered judgment convicting defendant of assault in the first degree; App. Div. affirmed.

BANCO POPULAR NORTH AMERICA v VICTORY TAXI MANAGEMENT, INC. and ALBAZ:

1ST Dept. App. Div. order of 11/19/02; affirmance; leave to appeal granted by Court of Appeals, 2/25/03; 500.4 review pending;

CONTRACTS - GUARANTEES - SUFFICIENCY OF DEFENDANT'S "NAKED DENIAL" THAT SHE SIGNED THE SUBJECT GUARANTEES - PROPRIETY OF SUMMARY JUDGMENT;

Supreme Court, New York County granted plaintiff's motion for summary judgment in lieu of complaint against defendant Albaz; App. Div. affirmed.

MATHIASON, JR., et al., MATTER OF, DAVENPORT, et al.:

3RD Dept. App. Div. order of 2/13/03; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved;

MUNICIPAL CORPORATIONS - ZONING - SPECIAL USE PERMIT; ARTICLE 78 PROCEEDING TO ANNUL PLANNING BOARD DETERMINATION GRANTING SPECIAL USE PERMIT TO CONSTRUCT AND OPERATE YOUTH SOCCER FIELDS AND PARKING LOTS - CLAIM THAT PROPOSED LAND USE FAILS TO CONFORM TO MINIMUM REQUIREMENTS OF TOWN OF SHANDAKEN ZONING CODE;

Supreme Court, Ulster County dismissed petitioner's CPLR article 78 proceeding to annul a determination of the Planning Board of the Town of Shandaken granting respondent Shandaken Area Youth Sports' application for a special use permit; App. Div. affirmed.

RODRIGUEZ, MATTER OF, v BURN-BRITE METALS COMPANY, INC., et al.:

3RD Dept. App. Div. order of 12/19/02; affirmance; leave to appeal granted by Court of Appeals, 3/27/03;

WORKERS' COMPENSATION - CLAIMANT ENGAGED IN WORK INCONSISTENT WITH TOTAL DISABILITY - EFFECT OF FALSE REPRESENTATION REGARDING ELIGIBILITY FOR BENEFITS IN VIOLATION OF WORKERS' COMPENSATION LAW § 114-a - CONSTRUCTION OF WORKERS' COMPENSATION LAW § 114-a REGARDING TERMINATION OF MEDICAL BENEFITS;

Workers' Compensation Board modified Workers' Compensation Law Judge's decision by finding claimant ineligible for all benefits from the date of his misrepresentation to Board regarding his eligibility for benefits and disqualifying him from all future wage replacement benefits; App. Div. affirmed.

SALINO, MATTER OF, v CIMINO, et al.:

2ND Dept. App. Div. order of 10/28/02; reversal; leave to appeal granted by Court of Appeals, 3/27/03;

MUNICIPAL CORPORATIONS - PROVISION OF COUNSEL - POLICE OFFICER AS DEFENDANT IN FEDERAL ACTION - COUNTY'S OBLIGATION TO PROVIDE A DEFENSE TO ITS POLICE OFFICER EMPLOYEES IN CIVIL ACTIONS WHERE IT IS ALLEGED THAT THEY WERE ACTING WITHIN THE SCOPE OF THEIR PUBLIC EMPLOYMENT ALTHOUGH THE COUNTY DETERMINED AFTER ITS OWN INVESTIGATION THAT THE ACTS OCCURRED OUTSIDE THE SCOPE OF EMPLOYMENT; SUFFOLK COUNTY CODE § 35-3(a);

Supreme Court, Suffolk County dismissed petitioner's CPLR article 78 proceeding to annul a determination of respondent Suffolk County attorney denying petitioner's request that the county attorney represent him in a pending Federal civil rights action; App. Div. reversed, granted the petition, annulled the determination and directed the Suffolk County Attorney to defend petitioner in the Federal action.