

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed  
In the New York Court of Appeals from  
**August 1, 2003 through August 7, 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 August 1, 2003 through August 7, 2003 the following jurisdictional statements for appeals were filed:

BEEHNER, et al. v ECKERD CORP.:

4<sup>th</sup> Dept. App. Div. order of 7/3/03; affirmance with dissents; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution; LABOR - SAFE PLACE TO WORK - PROTECTED ACTIVITY UNDER LABOR LAW § 240(1) - WHETHER PLAINTIFF WAS ENGAGED IN REPAIR WORK AT TIME OF INJURY;

Supreme Court, Onondaga County granted defendant's cross motion for summary judgment dismissing plaintiff's Labor Law § 240(1) claim; App. Div. affirmed.

COLON v CITY OF ROCHESTER, et al.:

4<sup>TH</sup> Dept. App. Div. order of 7/3/03; modification; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; DEFAMATION - ALLEGED VIOLATION OF CIVIL RIGHTS LAW §§ 50 and 51 - INCLUSION OF PLAINTIFF'S PHOTOGRAPH IN BROADCAST DOCUMENTARY ABOUT A NOTORIOUS MURDER; NEGLIGENCE - ALLEGED GROSS IRRESPONSIBILITY OF COUNTY EMPLOYEE IN MISTAKENLY TURNING OVER PHOTOGRAPH FROM PISTOL PERMIT TO POLICE OFFICERS WHO PROVIDED PHOTO TO DOCUMENTARY MAKER; Supreme Court, Monroe County granted summary judgment dismissing the complaint as against all defendants except the County of Monroe, denied the County's motion for summary judgment to the extent it sought dismissal of the cause of action for defamation against it and otherwise granted the County's motion; App. Div. modified the order by granting the County's motion for summary judgment in its entirety, dismissing the complaint as against the County and affirmed the order as so modified.

WASTE RECOVERY ENTERPRISES, LLC v TOWN OF UNADILLA, et al.:

3<sup>RD</sup> Dept. App. Div. order of 5/23/02; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; MUNICIPALITIES - CONSTITUTIONAL LAW - COMMERCE CLAUSE - CHALLENGE TO RULING THAT LOCAL LAW 1 OF 1988 OF THE TOWN OF UNADILLA WAS CONSTITUTIONAL AFTER COURT SEVERED PROVISION ALLOWING DISPOSAL OF LOCAL WASTE - SEVERANCE ALLEGEDLY CREATING CRIMINAL LIABILITY WHERE NONE EXISTED BEFORE; ESTOPPEL AGAINST MUNICIPALITY; Supreme Court, Otsego County order modifying Local Law 1 of 1989 of Town of Unadilla and declaring that law constitutional and valid as modified and declaring Local Law 1 of 1989 and Local Law 4 of 1992 of the Town of Unadilla unconstitutional; App. Div. affirmed.

