

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed
In the New York Court of Appeals from
September 12, 2003 through September 18, 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 September 12, 2003 through September 18, 2003 the following jurisdictional statements for appeals were filed:

HAWKINS, PEOPLE ex rel., v. GREENE:

3RD Dept. App. Div. order of 8/15/03; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
HABEAS CORPUS - AVAILABILITY OF RELIEF - UNANIMOUS DENIAL OF HABEAS CORPUS RELIEF BY APPELLATE DIVISION - POSTPONEMENT OF PRISONER'S CONDITIONAL RELEASE DATE DUE TO LOSS OF GOOD TIME ALLOWANCE - GOOD TIME ALLOWANCE ALLEGEDLY PREDICATED ON PARTICIPATION IN ALCOHOL SUBSTANCE ABUSE TRAINING PROGRAM NOT MADE AVAILABLE TO PETITIONER - CLAIMED FEDERAL AND STATE CONSTITUTIONAL VIOLATIONS;
Appellate Division, Third Department granted petitioner permission to proceed as a poor person to the extent of waiving the filing fee and denied petitioner's application for a writ of habeas corpus.

MAHESHWARI, et al. v DELSENER/SLATER ENTERS., LTD. and THE CITY OF NEW YORK, et al.:

1ST Dept. App. Div. order of 8/7/03; reversal with dissents; NEGLIGENCE - DUTY; ALLEGED BREACH OF DUTY BY MUNICIPALITY (OWNER OF EVENT SITE) AND EVENT PRODUCER (PERMITTEE OF SITE) TO PROVIDE SECURITY FOR 1996 LOLLAPALOOZA FESTIVAL; PROXIMATE CAUSE; NOTICE OF PRIOR CRIMINAL ACTIVITY; SUMMARY JUDGMENT; MUNICIPAL CORPORATIONS - TORT LIABILITY - GOVERNMENTAL OR PROPRIETARY FUNCTIONS;

Supreme Court, New York County granted summary judgment dismissing the complaint as against Keith Kevan and Keith Kevan Organization and denied summary judgment dismissing complaint as against Delsener/Slater Enters., Ltd.; App. Div. reversed, granted summary judgment to Delsener/Slater and directed the clerk to enter judgment dismissing the complaint against Delsener/Slater and the City of New York.

NEW YORK STATE ASSN. OF NURSE ANESTHETISTS v NOVELLO:

3RD Dept. App. Div. order of 1/23/03; affirmance; leave to appeal granted by Court of Appeals, 9/4/03; ADMINISTRATIVE LAW - VALIDITY OF DEFENDANTS' "CLINICAL GUIDELINES FOR OFFICE-BASED SURGERY" - DEFENDANTS' AUTHORIZATION TO ISSUE GUIDELINES; SEPARATION OF POWERS; STANDING; INJURY IN FACT; Supreme Court, Albany County granted summary judgment to plaintiff and declared "The Clinical Guidelines for Office-Based Surgery" promulgated by defendants null and void; App. Div. affirmed.

SANTOS (JEFFREY), PEOPLE v:

1ST Dept. App. Div. order of 6/26/03; affirmance; leave to appeal granted by Tom, J., 8/28/03; Rule 500.4 review pending; CRIMES AND CRIMINAL PROCEDURE - VACATUR OF JUDGMENT OF CONVICTION (CPL 440.10[1][g]) - "NEWLY DISCOVERED EVIDENCE" - STANDARD OF REVIEW; REVIEWABILITY - AVAILABILITY OF REVIEW IN COURT OF APPEALS OF TRIAL COURT DISCRETION; Supreme Court, New York County granted defendant's CPL 440.10(1)(g) motion to vacate defendant's conviction of two counts of assault in the second degree; App. Div. affirmed.