

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed  
by the Court of Appeals Clerk's Office  
**February 16 through February 22, 2007**

Each week, the Clerk's Office prepares a list of recently-filed appeals, indicating short title, jurisdictional predicate, subject matter and key issues. Some of these appeals may not reach decision on the merits because of dismissal, on motion or sua sponte, or because the parties stipulate to withdrawal. Some appeals may be selected for review pursuant to the alternative procedure of Rule 500.11.

**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 Rule 500.23 and direct any questions to the Clerk's Office.**

MATTER OF BERNTHON v. MATTIOLI:

3<sup>RD</sup> Dept. App. Div. order of 11/30/06; affirmance; sua sponte examination whether any basis lies for an appeal as of right; EVIDENCE - HEARSAY EVIDENCE - WHETHER FAMILY COURT ABUSED ITS DISCRETION IN ACCEPTING HEARSAY EVIDENCE IN A CUSTODY PROCEEDING; Family Court, Broome County granted petitioner's application, in a proceeding pursuant to Family Court Act article 6, for modification of a prior order of custody; App. Div. affirmed.

BURNS, III et al. v. VARRIALE JR. et al.:

3<sup>RD</sup> Dept. App. Div. order of 8/31/06; modification; leave to appeal granted by Court of Appeals, 2/15/07;  
WORKERS' COMPENSATION - THIRD-PARTY ACTION - APPORTIONMENT OF LITIGATION COSTS - FUTURE COMPENSATION - WHETHER VALUE OF FUTURE WORKERS' COMPENSATION BENEFITS TO BE AWARDED TO A CLAIMANT WITH A NONSCHEDULE, PERMANENT PARTIAL DISABILITY IS TOO SPECULATIVE TO FORM BASIS FOR EQUITABLY APPORTIONING ATTORNEYS' FEES PURSUANT TO WORKERS COMPENSATION LAW § 29(1);  
Supreme Court, Albany County granted plaintiffs' motion for, among other things, an order determining that plaintiffs were relieved from paying any remaining amount to St. Paul/Travelers Insurance Company (Travelers) and directing Travelers to pay plaintiffs \$18,960.92 in "fresh money"; App. Div. modified by reversing so much of the Supreme Court order as directed Travelers to pay \$18,960.92 in "fresh money" to plaintiffs, and directing plaintiffs to pay \$30,323.86 to Travelers, and as so modified, affirmed.

KOBIASHVILLI et al. v. HILL, et al.:

2<sup>ND</sup> Dept. App. Div. order of 11/28/06; reversal; sua sponte examination whether the Appellate Division order finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support the appeal taken as of right;  
NEGLIGENCE - MAINTENANCE OF PREMISES - WHETHER SUFFICIENT EVIDENCE EXISTED TO DEMONSTRATE CONSTRUCTIVE NOTICE OF ALLEGED DANGEROUS CONDITION LEADING TO A SLIP AND FALL;  
Supreme Court, Queens County denied the motion by defendants Hill and Central Queens Properties Corp. for summary judgment dismissing the complaint and all cross claims asserted against them; App. Div. reversed by granting the branch of the motion by defendants Hill and Central Queens Properties Corp. for summary judgment dismissing the complaint and all cross claims asserted against them.

URBAN JUSTICE CENTER, et al. v. PATAKI, et al.:

1<sup>ST</sup> Dept. App. Div. order of 12/21/06; modification; sua sponte examination whether a substantial constitutional question is directly involved to support the appeal taken as of right;  
PARTIES - STANDING - WHETHER PLAINTIFFS HAVE STANDING TO CHALLENGE THE CONSTITUTIONALITY OF LEGISLATIVE RULES AND PRACTICES THAT ALLEGEDLY DISCRIMINATE AGAINST LEGISLATORS OF MINORITY POLITICAL PARTIES; CONSTITUTIONAL LAW - SEPARATION OF POWERS - WHETHER SEPARATION OF POWERS DOCTRINE PRECLUDES JUDICIAL INQUIRY INTO THE CHALLENGED LEGISLATIVE RULES AND PRACTICES;  
Supreme Court, New York County granted defendants' CPLR 3211 motion to the extent of directing that 17 of plaintiffs' 20 causes of action be dismissed; App. Div. modified by dismissing the remaining causes of action and otherwise affirmed the Supreme Court order.