

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
March 2, 2007 through March 8, 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.

BETHELITE COMMUNITY CHURCH, GREAT TOMORROWS ELEMENTARY SCHOOL, MATTER OF, v THE DEPARTMENT OF ENVIRONMENTAL PROTECTION OF THE CITY OF NEW YORK, et al.:

1st Dept. App. Div. order of 3/9/06; affirmance; leave to appeal granted by Court of Appeals 2/15/07; Rule 500.11 review pending; MUNICIPAL CORPORATIONS-WATER AND SEWER CHARGES-CPLR ARTICLE 78 PROCEEDING TO COMPEL DEPARTMENT OF ENVIRONMENTAL PROTECTION OF THE CITY OF NEW YORK (DEP) TO GRANT PETITIONER RELIGIOUS CORPORATION EXEMPTION FROM WATER AND SEWER CHARGES, TO REVERSE PREVIOUSLY ASSESSED CHARGES AND PENALTIES AND TO ABATE ANY RESULTING TAX LIENS-EXHAUSTION OF ADMINISTRATIVE REMEDIES-WHETHER COURTS BELOW PROPERLY REACHED MERITS OF THE MATTER ON RESPONDENTS' PRE-ANSWER MOTION TO DISMISS ON ADMINISTRATIVE EXHAUSTION GROUNDS;

Supreme Court, New York County denied respondents' cross motion to dismiss the proceeding, granted the petition to the extent of vacating DEP's determination denying petitioner an exemption from water and sewer charges from 1985 to present, granting the exemption, vacating the assessments, charges and penalties levied by DEP against petitioner, and vacating the tax liens arising from such assessments, charges and penalties; App. Div. affirmed.

BOYD v MANHATTAN & BRONX SURFACE TRANSIT OPERATING
AUTHORITY et al.:

1st Dept. App. Div. order of 10/26/06; modification; leave to appeal granted by Court of Appeals 2/22/07;
TRIAL-INSTRUCTIONS-WHETHER TRIAL COURT ERRED IN REFUSING TO GRANT DEFENDANTS' REQUEST FOR A CHARGE ON CONSTRUCTIVE NOTICE; BURDEN OF PROOF-WHETHER A PLAINTIFF INJURED DUE TO AN ALLEGEDLY DEFECTIVE CONDITION ON A BUS MUST DEMONSTRATE EITHER ACTUAL OR CONSTRUCTIVE NOTICE OF THE DEFECTIVE CONDITION;
Supreme Court, Bronx County awarded plaintiff, after a jury trial, the principal sum of \$450,000 for past and future pain and suffering plus \$655.75 in interest; App. Div modified by vacating the award of interest and remanding to the Clerk of Bronx County to recompute interest at a set rate per annum.

FRIEDMAN, &c. v CONNECTICUT GENERAL LIFE INSURANCE COMPANY:

1st Dept. App. Div. order of June 29, 2006; modification; leave to appeal granted by Court of Appeals, 2/22/07;
INSURANCE-DISABILITY INSURANCE-WHETHER LOCATION OF RELATION OF EARNINGS TO INSURANCE CLAUSE ACCORDS WITH STATUTORY REQUIREMENTS AND IS ENFORCEABLE (INSURANCE LAW §§ 3216[c][7],[d]); COURTS-LAW OF THE CASE-WHETHER SUPREME COURT IMPROPERLY TREATED MOTION FOR SUMMARY JUDGMENT AS MOTION TO REARGUE PRIOR MOTION TO DISMISS FOR FAILURE TO STATE A CAUSE OF ACTION;
Supreme Court, New York County granted defendant's motion for summary judgment to the extent of dismissing the first, second, third, fourth, sixth, and eighth causes of action, and granted plaintiff's cross motion for summary judgment as to the fifth and seventh causes of action; App. Div. modified by denying plaintiff's cross motion in its entirety, affirmed the Supreme Court order as so modified, and dismissed the complaint.

JONES (MATTHEW), PEOPLE v:

1st Dept. App. Term order of 10/23/06; affirmance with dissent; leave to appeal granted by Pigott, J., 2/21/07;
CRIMES AND CRIMINAL PROCEDURE-ACCUSATORY INSTRUMENTS-WHETHER THE FACTUAL ALLEGATIONS SET FORTH IN THE INFORMATION WERE LEGALLY SUFFICIENT TO SUPPORT A CHARGE OF DISORDERLY CONDUCT (PENAL LAW § 240.20[5]); Criminal Court, New York County judgment convicted defendant, upon a plea of guilty, of disorderly conduct; App. Term affirmed.

ESTATE OF WALLENS (BURTON), DECEASED, MATTER OF:

Surrogate's Court, Erie County order of 10/25/06, bringing up for review 4th Dept. App. Div. order of 6/9/06, modification; leave to appeal granted by Court of Appeals, 2/22/07;
TRUSTS-ACCOUNTING-TESTAMENTARY TRUST ESTABLISHED UNDER WILL FOR BENEFIT OF TESTATOR'S GRANDDAUGHTER-OBJECTIONS TO ACCOUNTING OF TRUST BY CO-TRUSTEE FATHER-WHETHER TRUSTEE MAY EXERCISE POWER TO DISTRIBUTE TRUST ASSETS FOR HIS DAUGHTER'S EDUCATION IN A MANNER THAT ALSO SATISFIES HIS OBLIGATION TO PAY FOR EDUCATION UNDER THE TERMS OF A DIVORCE DECREE-EPTL 10-10.1-WHETHER CO-TRUSTEE MAY MAKE DISCRETIONARY DISTRIBUTION THAT OTHER CO-TRUSTEE MAY BE DISQUALIFIED FROM MAKING;

Surrogate's Court, Erie County granted in part respondent's motion to dismiss the objections to respondent's account of the testamentary trust covering the period May 1, 1997 through April 30, 2003, and granted in part petitioner's cross motion for summary judgment on her objections; App. Div. modified by granting respondent's motion to dismiss the objections, dismissing the objections in their entirety, denying petitioner's cross motion for summary judgment on her objections, and remitted the matter to Surrogate's Court; Surrogate's Court, Erie County, among other things, approved and judicially settled respondent's account.

ZIMMERMAN (JAMES), PEOPLE v:

1st Dept. App. Div. order of 8/24/06; affirmance; leave to appeal granted by Smith, J., 2/27/07;

CRIMES AND CRIMINAL PROCEDURE-JURISDICTION OF OFFENSES-PARTICULAR EFFECT JURISDICTION-WHETHER SUFFICIENT EVIDENCE SUPPORTED GRAND JURY'S FINDINGS OF "PARTICULAR EFFECT" VENUE IN NEW YORK COUNTY (CRIMINAL PROCEDURE LAW § 20.20[2][b]);

Supreme Court, New York County dismissed the indictment against defendant on the ground of lack of geographical jurisdiction; App. Div. affirmed.