

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed  
by the Court of Appeals Clerk's Office  
**July 27 through August 2, 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.**

MARINO, MATTER OF, v NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES:

3<sup>RD</sup> Dept. App. Div. order of 6/14/07; confirmation of determination; sua sponte examination whether a substantial constitutional question is directly involved; PRISONS AND PRISONERS - DISCIPLINE OF INMATES - WHETHER SUBSTANTIAL EVIDENCE SUPPORTS THE COMMISSIONER'S DETERMINATION OF GUILT WITH RESPECT TO THE CHARGE OF USING A CONTROLLED SUBSTANCE; App. Div. confirmed determination of respondent Commissioner of Correctional Services which found petitioner guilty of violating a prison disciplinary rule, and dismissed the petition.

MAYORGA v JOCARL & RON CO.:

1<sup>ST</sup> Dept. App. Div. order of 6/7/07; affirmance with dissents;  
Rule 500.11 review pending;

TRIAL - EVIDENCE - DENIAL OF WITNESS - WHETHER TRIAL COURT IN  
SLIP AND FALL PERSONAL INJURY MATTER DEPRIVED PLAINTIFF OF A FAIR  
TRIAL BY PRECLUDING PLAINTIFF FROM CALLING A NON-PARTY EYEWITNESS  
TO THE ACCIDENT WHERE PLAINTIFF FAILED TO DISCLOSE THE WITNESS  
PRIOR TO TRIAL BUT DEFENDANT IDENTIFIED THE WITNESS IN OPENING  
STATEMENT AT THE TRIAL;

Supreme Court, Bronx County dismissed plaintiff's complaint  
following a jury verdict in defendant's favor; App. Div.  
affirmed.

WORTH CONSTRUCTION CO., INC. v ADMIRAL INSURANCE COMPANY, et al.:

1<sup>ST</sup> Dept. App. Div. order of 5/22/07; modification;

INSURANCE - DUTY TO DEFEND AND INDEMNIFY - WHETHER CONTRACTOR'S  
ADMISSION IN UNDERLYING PERSONAL INJURY ACTION THAT SUBCONTRACTOR  
WAS NOT AT FAULT PRECLUDED IT FROM CLAIMING THAT IT WAS COVERED  
AS ADDITIONAL INSURED UNDER SUBCONTRACTOR'S INSURANCE POLICY;

Supreme Court, New York County, upon renewal, modified a prior  
order and judgment of the same court, entered January 5, 2005, to  
declare that defendants Admiral Insurance Company and Farm Family  
Casualty Insurance Company were not obligated to defend,  
indemnify or reimburse plaintiff in an underlying personal injury  
action; App. Div. modified and declared that defendant Farm  
Family Casualty Insurance Company was obligated to defend,  
indemnify or reimburse plaintiff in the underlying personal  
injury action.