

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
August 31 through September 6, 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.

ALDEN v ST. JOSEPH'S HOSPITAL HEALTH CENTER:

4TH Dept. App. Div. order of 6/18/07; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution, whether a substantial constitutional question is directly involved to support an appeal as of right, and whether the appeal was properly and timely taken;

APPEAL - APPELLATE DIVISION - DENIAL OF MOTION FOR STAY IN ONGOING TORT ACTION AGAINST A HOSPITAL;

App. Div. denied appellant's motion for stay of all proceedings pending the hearing and determination of appeals taken from Supreme Court, Onondaga County orders dated 3/9/06 and 5/9/06, and dismissed as unnecessary respondent's cross motion to dismiss one of the prior appeals.

BROOKS et al. v JUDLAU CONTRACTING, INC.:

2ND Dept. App. Div. order of 4/3/07; sua sponte examination whether the Appellate Division has authority to grant leave to appeal from an Appellate Division order granting a new trial on damages;

INDEMNITY - CONTRACTUAL INDEMNIFICATION - TRIAL COURT DISMISSAL OF THIRD-PARTY CLAIM FOR CONTRACTUAL INDEMNIFICATION - GENERAL CONTRACTOR'S CLAIM FOR INDEMNIFICATION FROM SUBCONTRACTOR FOR INJURY TO IRONWORKER WHO FELL FROM AN OVERPASS WHILE INSTALLING A STEEL GIRDER;

Supreme Court, Kings County, after a jury trial, awarded plaintiff Stephen Brooks judgment against defendant Judlau Contracting, Inc. in the sum of \$1,607,239.72; App. Div. modified the judgment by deleting the provisions awarding damages to plaintiff Stephen Brooks as against defendant Judlau Contracting, Inc. and, in effect, dismissing plaintiff Helen Brooks' claim against defendant Judlau Contracting, Inc.; reinstated the claim of plaintiff Helen Brooks; and granted a new trial on the issue of damages.

FISCHETTI, MATTER OF, v SCHERER &c. et al.:

1ST Dept. App. Div. judgment of 7/19/07; denial of CPLR article 78 petition; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

PROCEEDING AGAINST BODY OR OFFICER - PROHIBITION - CPLR ARTICLE 78 PETITION CHALLENGING SUPREME COURT ORDER DIRECTING DEFENSE COUNSEL TO REFRAIN FROM PUBLISHING THE COMPLAINANT'S NAME; ALLEGED DENIAL OF DEFENSE COUNSEL'S RIGHT TO FREEDOM OF SPEECH UNDER THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION AND DEFENDANT'S RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL; App. Div. denied a CPLR article 78 petition challenging a 2/6/07 Supreme Court, New York County order granting the People's application to the extent of directing defense counsel in the underlying criminal matter to refrain from publishing the complainant's name, and dismissed the proceeding.

KIRMAYER v STATE OF NEW YORK CIVIL SERVICE COMMISSION:

3RD Dept. App. Div. order of 7/26/07; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

PROCEEDING AGAINST BODY OR OFFICER - CIVIL SERVICE - APPOINTMENT AND PROMOTION - CPLR ARTICLE 78 PETITION CHALLENGING THE APPOINTMENT OF CERTAIN RESPONDENTS TO THE POSITION OF CHIEF OF DATA PROCESSING TECHNICAL SERVICES;

Supreme Court, Albany County dismissed petitioner's CPLR article 78 petition to revoke the appointment of certain respondents to the position of Chief of Data Processing Technical Services; App. Div. affirmed.

WILEY, MATTER OF, v CITY OF WATERTOWN FIRE DEPARTMENT et al.:
3RD Dept. App. Div. order of 4/12/07; reversal; sua sponte
examination whether a substantial constitutional question is
directly involved to support an appeal as of right;
WORKERS' COMPENSATION - COVERAGE - WHETHER WORKERS' COMPENSATION
COVERAGE WAS EXTENDED TO PAID FIREFIGHTERS BY THE CITY OF
WATERTOWN PRIOR TO CLAIMANT'S INJURY;
App. Div reversed Workers' Compensation Board decision
determining that claimant was a covered employee under the
Workers' Compensation Law, and dismissed the claim.