

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed  
by the Court of Appeals Clerk's Office  
**September 7 through September 13, 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.**

APPLIED CARD SYSTEMS, INC., et al., PEOPLE &c. v:

3<sup>RD</sup> Dept. App. Div. order of 4/5/07; modification; leave to appeal granted by Court of Appeals to the People of the State of New York by Eliot Spitzer &c., 9/4/07;

CONSUMER PROTECTION - DECEPTIVE ACTS AND PRACTICES - CREDIT CARD SOLICITATION OFFERS - RESTITUTION - WHETHER ATTORNEY GENERAL IS BARRED BY RES JUDICATA FROM RECOVERING RESTITUTION ON BEHALF OF INDIVIDUAL CONSUMERS BOUND BY SETTLEMENT OF PRIVATE CLASS ACTION AGAINST RESPONDENTS WHERE THE ATTORNEY GENERAL DID NOT PARTICIPATE IN SUCH SETTLEMENT - RELATIONSHIP OF INJURY TO DECEPTION - EFFECT OF SUBSEQUENT DISCLOSURE OF POLICY TERMS AND OPTION TO CANCEL INSURANCE;

Supreme Court, Albany County awarded petitioner Attorney General restitution, penalties and costs, but refused to award the Attorney General certain additional restitution in a special proceeding pursuant to CPLR 409(b) alleging violations of Executive Law § 63(12) and General Business Law articles 22-A and 29-H; App. Div. modified by reversing so much of the order as awarded restitution to consumers who enrolled in the Credit Account Protection program and whose accounts were re-aged, and affirmed the order as so modified.

APPLIED CARD SYSTEMS, INC., et al., PEOPLE &c. v:

3<sup>RD</sup> Dept. App. Div. order of 4/5/07, bringing up for review prior nonfinal order of 12/1/05; modification; leave to appeal granted by Court of Appeals to Applied Card Systems, Inc. and Cross Country Bank, Inc., 9/4/07;

STATUTES - FEDERAL PREEMPTION - CREDIT CARD SOLICITATION OFFERS - WHETHER THE FEDERAL TRUTH IN LENDING ACT PROVISIONS CONCERNING CREDIT CARD SOLICITATIONS (15 USC § 1610[e]) PREEMPT CLAIMS UNDER GENERAL BUSINESS LAW §§ 349 AND 350; CONSUMER PROTECTION - DECEPTIVE ACTS AND PRACTICES - NECESSITY FOR EXTRINSIC EVIDENCE OF CONSUMER CONFUSION TO ESTABLISH A VIOLATION OF GENERAL BUSINESS LAW §§ 349 AND 350;

Supreme Court, Albany County granted petitioner Attorney General judgment on the issue of liability on all claims asserted in a special proceeding pursuant to CPLR 409(b), which alleged violations of Executive Law § 63(12) and General Business Law articles 22-A and 29-H, and permanently enjoined respondents from engaging in the fraudulent, deceptive and unlawful acts and practices alleged; App. Div. affirmed; thereafter, Supreme Court partially granted and otherwise denied the Attorney General's motion for restitution, penalties and costs; App. Div. modified by reversing so much of the Supreme Court order as awarded restitution to certain classes of consumers, and affirmed the order as so modified.

BYBLOS BANK EUROPE, SA v SYRKETI:

1<sup>ST</sup> Dept. App. Div. order of 5/29/07; modification; leave to appeal granted by Court of Appeals, 9/4/07;

JUDGMENTS - FOREIGN JUDGMENTS - COMITY - WHETHER PLAINTIFF BELGIAN BANK WAS ENTITLED TO RECOGNITION AND ENFORCEMENT IN NEW YORK COURTS OF BELGIAN MONEY JUDGMENT ISSUED AFTER TURKISH JUDGMENT REJECTING PLAINTIFF'S CLAIM ON THE MERITS;

Supreme Court, New York County, in an action commenced pursuant to CPLR 3213 seeking recognition and enforcement of a Belgian money judgment pursuant to CPLR article 53, granted defendant's cross motion pursuant to CPLR 6223 to vacate an ex parte order of attachment and denied plaintiff's motion pursuant to CPLR 6211(b) to confirm the order of attachment; App. Div. modified the order to dismiss the complaint and deny, as academic, that part of defendant's cross motion seeking dismissal of the action pursuant to Business Corporation Law § 1314(b) and Banking Law § 200-b, and otherwise affirmed.

POLICE BENEVOLENT ASSOCIATION OF NEW YORK STATE TROOPERS et al. v DIVISION OF NEW YORK STATE POLICE, et al.:

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

PARTIES - STANDING - WHETHER STATE TROOPERS SUBJECTED TO AN INITIAL CRITICAL INCIDENT INQUIRY AND THEIR POLICE BENEVOLENT ASSOCIATION HAVE STANDING TO BRING AN ACTION SEEKING A DECLARATION THAT ALL NEW YORK STATE TROOPERS AND OFFICERS HAVE A RIGHT TO COUNSEL AND UNION REPRESENTATION AT ALL STAGES OF A

Supreme Court, Albany County granted plaintiffs' cross motion for summary judgment and denied defendants' motion for summary judgment; App. Div. reversed, denied plaintiffs' cross motion for summary judgment, granted defendants' motion for summary judgment and dismissed the complaint.