

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
OCTOBER 12, through OCTOBER 18, 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.

CASTILLO v 711 GROUP, INC.:

2ND Dept. App. Div. order of 4/17/07; affirmance; leave to appeal granted by App. Div., 9/19/07; Rule 500.11 review pending;
WORKERS' COMPENSATION - EXTENT OF DISABILITY - WHETHER
PLAINTIFF'S INJURY CONSTITUTED A GRAVE INJURY AS DEFINED IN
WORKERS' COMPENSATION LAW § 11 UNDER THE CATEGORY OF "LOSS OF AN
INDEX FINGER";

Supreme Court, Kings County denied third-party defendant 3-D Laboratories, Inc.'s motion for summary judgment; App. Div. affirmed and, upon searching the record, awarded plaintiff and defendant third-party plaintiff partial summary judgment on the issue whether plaintiff suffered a grave injury.

LEHMAN BROTHERS, INC. v COX:

1ST Dept. App. Div. order of 8/23/07; affirmance with dissents;
Rule 500.11 review pending;

ARBITRATION - AWARD - PETITION PURSUANT TO CPLR 7511 TO MODIFY A
NATIONAL ASSOCIATION OF SECURITIES DEALERS (NASD) ARBITRATION
PANEL AWARD - SUFFICIENCY OF EVIDENCE TO SUPPORT APPLICATION TO
MODIFY ARBITRATION AWARD;

Supreme Court, New York County granted a petition to vacate and
modify an October 3, 2005 NASD award only to the extent of
vacating the award of \$48,000 to respondent, granted respondent's
cross motion to confirm the NASD award only to the extent of
directing petitioner to deliver to respondent all shares of
Borealis Exploration, Ltd. stock held in any of respondent's
accounts for petitioner's benefit and to the extent that
respondent is directed to pay petitioner upon delivery of the
shares, and awarded petitioner the total sum of \$65,454.05
against respondent; App. Div. affirmed.

MARINO, MATTER OF, v NEW YORK CITY POLICE DEPARTMENT:

1ST Dept. App. Div. orders of 6/12/07 and 9/6/07; dismissal of
reargument (9/6/07 order) and denial of motion for poor person
relief and dismissal of appeal (6/12/07 order); sua sponte
examination whether there is any jurisdictional basis for an
appeal as of right and whether the order appealed from finally
determines the proceeding within the meaning of the Constitution;
APPEAL - APPELLATE DIVISION - DISMISSAL OF APPEAL ON GROUND THAT
NO APPEAL LIES FROM AN ORDER ENTERED ON DEFAULT; PROCEEDING
AGAINST BODY OR OFFICER;

Supreme Court, New York County dismissed the petition on
plaintiff's default; App. Div. denied as academic petitioner's
motion for poor person relief and dismissed the appeal sua sponte
on the basis that no appeal lies from an order entered on
default; App. Div. dismissed petitioner's motion for reargument
of the 6/12/07 App. Div. order.

SANONYMOUS v SANONYMOUS:

3RD Dept. App. Div. order of 10/4/07; affirmance with dissents;
HUSBAND AND WIFE - SUPPORT - MAINTENANCE - FAMILY COURT'S
JURISDICTION TO ADDRESS PETITION FOR AN UPWARD MODIFICATION OF
MAINTENANCE WHERE PARTIES' SEPARATION AGREEMENT SETS MAINTENANCE
AND DIRECTS FAMILY COURT TO TREAT APPLICATIONS TO MODIFY
MAINTENANCE AS "DE NOVO" APPLICATIONS;

Family Court, Otsego County affirmed an order of the Support
Magistrate that dismissed for lack of jurisdiction that portion
of petitioner wife's application as sought additional spousal
maintenance and denied respondent husband's request for a
downward modification of his spousal maintenance and child
support obligations; App. Div. affirmed.

STREET VENDOR PROJECT, MATTER OF, v CITY OF NEW YORK:

1ST Dept. App. Div. order of 8/23/07; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

ADMINISTRATIVE LAW - JUDICIAL REVIEW - CPLR ARTICLE 78 PETITION CHALLENGING MULTIPLE OFFENSE SCHEDULE ADOPTED BY RESPONDENT ENVIRONMENTAL CONTROL BOARD;

Supreme Court, New York County denied, in part, a CPLR article 78 petition challenging the multiple offense schedule adopted by respondent Environmental Control Board; App. Div. affirmed.