

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
May 16 through May 22, 2008

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.

BANC OF AMERICA SECURITIES LLC v SOLOW BUILDING CO. II, LLC:
1ST Dept. App. Div. order of 12/4/07; affirmance with dissents; leave to appeal granted by App. Div., 5/6/08; Rule 500.11 review pending;

LANDLORD AND TENANT - ALTERATION OF LEASED PREMISES - LEASE PROVISION PROVIDING THAT TENANT'S SOLE REMEDY FOR CLAIM THAT LANDLORD UNREASONABLY WITHHELD OR DELAYED CONSENT TO ALTERATION PROPOSALS IS AN ACTION FOR SPECIFIC ENFORCEMENT, INJUNCTION OR DECLARATORY JUDGMENT, OR AN ARBITRATION PROCEEDING - ASSERTION THAT SUCH PROVISION IS UNENFORCEABLE BECAUSE LANDLORD'S REFUSAL TO TIMELY REVIEW AND APPROVE PROPOSED ALTERATIONS CONSTITUTES BAD FAITH - SUFFICIENCY OF ALLEGATIONS OF LANDLORD'S BAD FAITH NONPERFORMANCE OF LEASE PROVISION IN CAUSE OF ACTION FOR CONSEQUENTIAL DAMAGES;

Supreme Court, New York County denied the motion of defendant Solow Building Co. II, LLC for partial summary judgment seeking dismissal of the fourth cause of action of the complaint; App. Div. affirmed.

DUFFY v VOGEL, et al.:

1ST Dept. App. Div. order of 4/3/08, affirmance;
TRIAL - HARMLESS OR PREJUDICIAL ERROR - WHETHER DENIAL OF
PLAINTIFF'S REQUEST TO POLL JURY IS HARMLESS ERROR; JURY; MOTION
TO SET ASIDE VERDICT AND FOR MISTRIAL; PHYSICIANS - MEDICAL
MALPRACTICE;

Supreme Court, New York County granted the Vogel defendants'
motion for partial summary judgment as to all medical malpractice
claims arising from treatment prior to March 24, 2000 (the
"first" order); thereafter, the same court granted plaintiff's
motion to set aside the verdict and declare a mistrial, and
directed plaintiff to serve a copy of the order with notice of
entry on the clerk of the trial support office to place the
matter on the trial calendar (the "second" order); App. Div.
reversed the second order, with dissents, denied plaintiff's
motion to set aside the verdict and declare a mistrial,
reinstated the verdict and directed the clerk to enter judgment
in favor of defendants dismissing the complaint; thereafter, the
App. Div. affirmed the first order.

JOSEY, MATTER OF v NEW YORK CITY POLICE DEPARTMENT et al.:

1ST Dept. App. Div. order of 4/10/08; reversal; sua sponte
examination whether a substantial constitutional question is
directly involved or any jurisdictional basis otherwise exists to
support an appeal as of right;
CIVIL SERVICE - POLICE - ACCIDENTAL DISABILITY RETIREMENT
BENEFITS;

Supreme Court, New York County annulled the determination of
respondent Police Pension Fund Board of Trustees denying
petitioner's application for accidental disability retirement
(ADR) benefits and directed respondent to grant petitioner ADR
benefits; App. Div. reversed, denied the CPLR article 78 petition
and dismissed the proceeding.

KALIN (WILLIAM), PEOPLE v:

Appellate Term, 2nd and 11th Judicial Districts order of 10/5/07;
reversal and dismissal of accusatory instrument; leave to appeal
granted by Smith, J., 5/13/08;

CRIMES AND CRIMINAL PROCEDURE - INFORMATION - WHETHER THE
PEOPLE'S FAILURE TO ATTACH A LABORATORY REPORT TO AN INFORMATION
CHARGING DEFENDANT WITH CRIMINAL POSSESSION OF A CONTROLLED
SUBSTANCE IN THE SEVENTH DEGREE CONSTITUTES A JURISDICTIONAL
DEFECT; CORRECTIVE ACTION;

Criminal Court of the City of New York convicted defendant, upon
his guilty plea, of criminal possession of a controlled substance
in the seventh degree; App. Term reversed the judgment of
conviction and dismissed the accusatory instrument.

LECHNER v USTJANAUSKAS:

sua sponte examination whether the App. Div. papers rejection
notice appealed from is an appealable paper within the meaning of
CPLR 5512;

CHALLENGE TO PAPERS REJECTION NOTICE FROM APPELLATE DIVISION,

ROMEO (ANTHONY), PEOPLE v:

2ND Dept. App. Div. order of 1/29/08; reversal and dismissal of indictment; leave to appeal granted by Read, J., 5/8/08;
CRIMES AND CRIMINAL PROCEDURE - RIGHT TO SPEEDY TRIAL - PEOPLE v TARANOVICH (37 NY2d 442) - WHETHER DEFENDANT'S STATE CONSTITUTIONAL SPEEDY TRIAL RIGHTS WERE VIOLATED WITH RESPECT TO A 1987 MURDER INDICTMENT WHERE DEFENDANT WAS FIRST TRIED AND CONVICTED ON A SEPARATE MURDER IN CANADA AND THE PEOPLE DID NOT SEEK EXTRADITION UNTIL 2003 AFTER THE TREATY ON EXTRADITION BETWEEN CANADA AND THE UNITED STATES ADDED A TEMPORARY SURRENDER PROVISION; PRESERVATION;

County Court, Suffolk County convicted defendant of manslaughter in the first degree, upon his guilty plea, and imposed sentence; App. Div. reversed, dismissed the indictment and remitted to County Court for the purpose of entering an order in its discretion pursuant to CPL 160.50.

ROSE et al. v BROWN & WILLIAMSON TOBACCO CORPORATION &c. et al.:

1ST Dept. App. Div. order of 4/10/08; reversal with dissents;
PRODUCTS LIABILITY - DEFECTIVELY DESIGNED PRODUCT - IN A CASE ALLEGING THAT REGULAR CIGARETTES WERE NEGLIGENTLY DESIGNED ON THE THEORY THAT DEFENDANT TOBACCO COMPANIES SHOULD HAVE SOLD ONLY "LIGHT" CIGARETTES, MUST PLAINTIFFS ESTABLISH THAT "LIGHT" CIGARETTES WOULD HAVE BEEN ACCEPTABLE TO THE CONSUMERS THAT CONSTITUTED THE MARKET FOR REGULAR CIGARETTES; PROXIMATE CAUSE; PREEMPTION;

Supreme Court, New York County awarded plaintiffs damages against defendants Brown & Williamson Holdings, Inc. and Philip Morris USA Inc. based on a cause of action for negligent product design; App. Div. reversed, granted defendants' motions for a directed verdict and for judgment notwithstanding the verdict, dismissed the second amended verified complaint and directed the clerk to enter judgment accordingly.

ROUSE (MICHELLE), PEOPLE v:

1ST Dept. App. Div. order of 1/29/08; affirmance; leave to appeal granted by Smith, J., 5/13/08;
CRIMES AND CRIMINAL PROCEDURE - RIGHT TO SPEEDY TRIAL - CPL 30.30 - WHETHER TRIAL COURT PROPERLY EXCLUDED A 30-DAY PERIOD COMMENCING ON DATE COURT APPOINTED CO-DEFENDANT NEW COUNSEL AND GRANTED A 30-DAY ADJOURNMENT;

Supreme Court, Bronx County convicted defendant of attempted arson in the third degree and sentenced her to a term of 3 months, with 5 years' probation and a \$2,000 fine; App. Div. affirmed.

RYAN (RICKEY), PEOPLE v:

4TH Dept. App. Div. order of 11/9/07; affirmance; leave to appeal granted by Jones, J., 5/12/08;

CRIMES AND CRIMINAL PROCEDURE - CHALLENGE TO PRE-ARREST DETENTION OF DEFENDANT AND PHOTO ARRAY;

Supreme Court, Monroe County convicted defendant, upon his plea of guilty, of robbery in the second degree; App. Div. affirmed.