

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed  
by the Court of Appeals Clerk's Office  
**June 6 through June 12, 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.**

ELLIS, MATTER OF v MAHON:

2<sup>ND</sup> Dept. App. Div. order of 3/4/08; Article 78 proceeding; leave to appeal granted by Court of Appeals, 6/3/08; Rule 500.11 review pending;

CIVIL SERVICE - DISCIPLINARY PUNISHMENT - APPELLATE DIVISION'S DISCRETIONARY AUTHORITY IN A CPLR ARTICLE 78 PROCEEDING TO REVIEW THE PENALTY IMPOSED BY RESPONDENT COMMISSIONER - WHETHER THE APPELLATE DIVISION APPROPRIATELY ANNULLED PENALTY OF TERMINATION OF EMPLOYMENT;

App. Div. granted a CPLR article 78 petition on the law and in the exercise of discretion, annulled so much of a determination as imposed a penalty terminating petitioner's employment, reinstated petitioner to the position of eligibility examiner II with back pay and benefits, remitted to respondents for imposition of a penalty less severe than termination or suspension, and otherwise denied the petition and confirmed the determination.

KASSIS et al. v THE OHIO CASUALTY INSURANCE COMPANY:

4<sup>TH</sup> Dept. App. Div. order of 5/2/08; reversal with dissents; Rule 500.11 review pending;

INSURANCE - DUTY TO DEFEND AND INDEMNIFY - WHETHER DEFENDANT HAD A DUTY TO DEFEND AND INDEMNIFY PLAINTIFF KASSIS UNDER A COMMERCIAL GENERAL LIABILITY POLICY IT ISSUED TO PLAINTIFF SUPERIOR SIGN ON THE GROUNDS THAT KASSIS WAS AN ADDITIONAL INSURED UNDER THE POLICY'S BLANKET ADDITIONAL INSURED ENDORSEMENT AND THAT HE WAS AN INTENDED THIRD-PARTY BENEFICIARY UNDER THE POLICY;

Supreme Court, Onondaga County, among other things, granted plaintiffs' motion for summary judgment and denied defendant's cross motion for summary judgment; App. Div. reversed, denied plaintiffs' motion for summary judgment, granted defendant's cross motion for summary judgment in part and granted judgment to defendant declaring that it is not obligated to defend or indemnify plaintiff Joseph Kassis in the underlying action pursuant to its commercial general liability policy.

MOODY v SOROKINA:

4<sup>TH</sup> Dept. App. Div. order of 4/25/08; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

ATTORNEY AND CLIENT - ATTORNEY'S LIEN - CHALLENGE TO APPELLATE DIVISION ORDER AFFIRMING SUPREME COURT ORDER GRANTING FORMER ATTORNEY A CHARGING LIEN AGAINST AN AWARD REPRESENTING DEFENDANT'S EQUITABLE DISTRIBUTION;

Supreme Court, Jefferson County granted respondent, the former attorney for defendant, a charging lien against an award of \$8,000 representing defendant's equitable share of certain property; App. Div. affirmed.

SHAPERONOVITCH v CITY OF NEW YORK:

2<sup>ND</sup> Dept. App. Div. order of 3/18/08; affirmance; leave to appeal granted by Court of Appeals, 6/5/08;

MUNICIPAL CORPORATIONS - NOTICE OF STREET DEFECT - WHETHER AN "AMBIGUOUS" SYMBOL IN A BIG APPLE POTHOLE AND SIDEWALK PROTECTION CORPORATION MAP WAS SUFFICIENT TO CREATE AN ISSUE OF FACT CONCERNING WHETHER THE MUNICIPAL DEFENDANT HAD PRIOR WRITTEN NOTICE OF THE DEFECT COMPLAINED OF BY PLAINTIFFS;

Supreme Court, Kings County judgment entered upon a jury verdict in favor of plaintiffs and upon the denial of that branch of defendant's motion pursuant to CPLR 4404 which was to set aside the verdict and for judgment as a matter of law; App. Div. affirmed.