

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
July 4 through July 10, 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.

FUENTES (JOSE), PEOPLE v:

2ND Dept. App. Div. order of 2/5/08; affirmance; leave to appeal granted by Pigott, Jr., J., 6/26/08;

CRIMES AND CRIMINAL PROCEDURE - DISCLOSURE - FAILURE TO DISCLOSE EXCULPATORY MATERIAL - DOCUMENT FROM COMPLAINANT'S HOSPITAL RECORD WITHHELD BY THE PEOPLE DURING PRETRIAL DISCOVERY - BRADY v MARYLAND (373 US 83);

Supreme Court, Kings County convicted defendant, upon a jury verdict, of rape in the first degree and sodomy in the first degree; App. Div. affirmed.

GILL, PEOPLE ex rel. v GREENE:

3RD Dept. App. Div. order of 2/28/08; reversal and grant of CPLR article 78 petition; leave to appeal granted by App. Div., 6/26/08;

CRIMES AND CRIMINAL PROCEDURE - SENTENCE - CONCURRENT AND CONSECUTIVE TERMS - SENTENCING COURT SILENT AS TO WHETHER SECOND FELONY OFFENDER'S SENTENCES SHOULD RUN CONSECUTIVELY TO OR CONCURRENTLY WITH PREVIOUSLY IMPOSED SENTENCES - DEPARTMENT OF CORRECTIONAL SERVICES, RELYING ON PENAL LAW § 70.25(2-a), CALCULATED THE SENTENCES AS RUNNING CONSECUTIVELY; HABEAS CORPUS - CPLR ARTICLE 70 PROCEEDING CONVERTED TO CPLR ARTICLE 78 PROCEEDING - PETITIONER CONDITIONALLY RELEASED ON PAROLE; Supreme Court, Washington County denied petitioner's application for a writ of habeas corpus; App. Div. reversed, converted the habeas corpus petition to a CPLR article 78 proceeding and granted the petition to the extent of annulling the Department of Correctional Services' determination that petitioner's sentences run consecutively.

LMK PSYCHOLOGICAL SERVICES, P.C., et al. v STATE FARM MUTUAL AUTO INSURANCE:

3RD Dept. App. Div. order of 12/27/07; affirmance; leave to appeal granted by Court of Appeals, 7/1/08;

INSURANCE - NO-FAULT AUTOMOBILE INSURANCE - UNTIMELY DENIAL OF CLAIM - TOLL OF ACCRUAL OF INTEREST ON OVERDUE NO-FAULT BENEFITS (11 NYCRR 65.15[h], 11 NYCRR 65-3.9) - PLAINTIFFS' ENTITLEMENT TO ATTORNEYS' FEES - AWARD CALCULATED ON PER CLAIM OR PER INSURED BASIS;

Supreme Court, Greene County, among other things, granted summary judgment to plaintiffs and awarded damages, interest and attorneys' fees; App. Div. affirmed.

M&B JOINT VENTURE, INC. v LAURUS MASTER FUND, LTD. et al.:

1ST Dept. App. Div. order of 3/4/08; modification and affirmance; leave to appeal granted by App. Div., 6/24/08; LIENS - EQUITABLE LIEN - MOTION TO DISMISS - CONSIDERATION OF EXTRINSIC EVIDENCE; Supreme Court, New York County denied certain defendants' motion to cancel a notice of pendency (1/16/07 order) and thereafter denied Laurus's motion to dismiss the complaint (2/23/07 order); App. Div. affirmed the 1/16/07 order and modified the 2/23/07 order to the extent of granting the motion to dismiss the cause of action for unjust enrichment and otherwise affirmed.

MINGO (TYRONE), PEOPLE v:

2ND Dept. App. Div. order of 1/8/08; affirmance; leave to appeal granted by Court of Appeals, 6/26/08;

CRIMES AND CRIMINAL PROCEDURE - SEX OFFENDER REGISTRATION ACT (SORA) - WHETHER DOCUMENTS GENERATED BY THE DISTRICT ATTORNEY'S OFFICE CONSTITUTE "RELIABLE HEARSAY" WITHIN THE MEANING OF CORRECTION LAW § 168-n(3) AND "CLEAR AND CONVINCING" EVIDENCE

Supreme Court, Kings County designated defendant a level two sex offender pursuant to Correction Law article 6-C; App. Div. affirmed.

PATTEN &c., et al. v HAMBURG OB/GYN GROUP P.C. et al.:

4TH Dept. App. Div. order of 4/25/08; affirmance with dissents; leave to appeal granted by App. Div., 7/3/08;

LIMITATION OF ACTIONS - MEDICAL MALPRACTICE - CONTINUOUS TREATMENT DOCTRINE;

Supreme Court, Erie County granted in part and denied in part defendants' motion for summary judgment dismissing the complaint in a medical malpractice action; App. Div. affirmed.

SAMUEL, et al. v DRUCKMAN & SINEL LLP, et al.:

1ST Dept. App. Div. order of 4/8/08; modification and affirmance with dissents; leave to appeal granted by App. Div., 7/1/08;

ATTORNEY AND CLIENT - COMPENSATION - WHETHER ATTORNEY WHO REFERRED A MEDICAL MALPRACTICE ACTION TO OTHER ATTORNEYS IS ENTITLED TO A ONE-THIRD SHARE OF THE "ENHANCED" LEGAL FEE AWARDED UNDER JUDICIARY LAW § 474-a(2) OR TO A ONE-THIRD SHARE OF THE FEE AS CALCULATED UNDER THE STATUTORY SLIDING SCALE APPLICABLE IN MALPRACTICE ACTIONS; FEE AGREEMENT; SUMMARY JUDGMENT;

Supreme Court, New York County denied defendants' motion and plaintiffs' cross motion for summary judgment as well as plaintiffs' effort to have the matter referred to the judge who had approved the compromise settlement for award of legal fees in the underlying medical malpractice case; App. Div. modified by granting defendants' motion for summary judgment on its first counterclaim to the extent it seeks one-third of the \$805,767.30 legal fee awarded under Judiciary Law § 474-a(2) in the underlying medical malpractice action, and granted to the same extent plaintiffs' cross motion for summary judgment declaring the rights of the parties.