

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
November 21 through November 27, 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.

BAZAKOS v LEWIS:

2ND Dept. App. Div. order of 9/23/08; reversal with dissents; leave to appeal granted by App. Div., 11/13/08;
LIMITATION OF ACTIONS - WHAT STATUTE GOVERNS - WHETHER A CLAIM FOR DAMAGES ARISING FROM INJURIES ALLEGEDLY CAUSED BY A PHYSICIAN DURING AN "INDEPENDENT MEDICAL EXAMINATION" CONDUCTED IN CONNECTION WITH AN UNDERLYING PERSONAL INJURY LAWSUIT SOUNDS IN MEDICAL MALPRACTICE (SUBJECT TO A 2 1/2-YEAR STATUTE OF LIMITATIONS) OR IN ORDINARY NEGLIGENCE (SUBJECT TO A THREE-YEAR STATUTE OF LIMITATIONS);
Supreme Court, Nassau County granted defendant Philip Lewis' motion pursuant to CPLR 3211(a)(5) to dismiss the complaint insofar as asserted against him as time-barred; App. Div. reversed and denied the motion.

CASSARA v WYNN:

4TH Dept. App. Div. order of 10/3/08; reversal; sua sponte examination whether defendant is an aggrieved party within the meaning of CPLR 5511, whether the order appealed from finally determines the action within the meaning of the Constitution and whether any other jurisdictional basis exists to support an appeal as of right;

MORTGAGES - FORECLOSURE - CHALLENGE TO APPELLATE DIVISION ORDER REVERSING A JUDGMENT IN A FORECLOSURE ACTION AND REINSTATING DEFENDANT'S ANSWER;

Supreme Court, Monroe County awarded plaintiff the sum of \$81,925.95, which was entered in a mortgage foreclosure action upon an order granting plaintiff's motion for summary judgment; App. Div. reversed, denied plaintiff's motion for summary judgment and reinstated defendant's answer.

PORT AUTHORITY POLICE BENEVOLENT ASSOCIATION, INC., et al.,
MATTER OF v ANGLIN, et al.:

3RD Dept. App. Div. order of 8/14/08; leave to appeal granted by Court of Appeals, 11/20/08;

CIVIL SERVICE - RETIREMENT AND PENSION BENEFITS - FINAL AVERAGE SALARY - WHETHER PREMIUM PAYMENTS RECEIVED BY PORT AUTHORITY POLICE SERGEANT IN COMPENSATION FOR VACATION DAYS WORKED AS A RESULT OF THE TERRORIST ATTACK ON SEPTEMBER 11, 2001 ARE OVERTIME COMPENSATION WITHIN THE MEANING OF GENERAL MUNICIPAL LAW § 90;

App. Div. confirmed respondents' determination denying petitioner's application for recalculation of his final average salary and dismissed the CPLR article 78 petition.

VOMERO v CITY OF NEW YORK:

2ND Dept. App. Div. order of 9/30/08; reversal; Rule 500.11 review pending;

MUNICIPAL CORPORATIONS - ZONING - VARIANCE - WHETHER ZONING BOARD'S DETERMINATION WAS ILLEGAL, ARBITRARY AND CAPRICIOUS, OR AN ABUSE OF DISCRETION;

Supreme Court, Richmond County granted a CPLR article 78 petition to review a determination of the Board of Standards and Appeals of the City New York that, after a hearing, granted the application of G.A.C. Catering, Inc. for a use variance, and annulled the determination; App. Div. reversed, confirmed the determination, denied the petition and dismissed the CPLR article 78 proceeding.