

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed  
by the Court of Appeals Clerk's Office

**December 31, 2010 through January 6, 2011**

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. For those appeals that proceed to briefing in the normal course, the briefing schedule generally will be: appellant's brief to be filed 60 days after the appeal was taken; respondent's brief to be filed 45 days after the filing of appellant's brief; and a reply brief, if any, to be filed 15 days after the filing of respondent's brief.

**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.**

ALMONTE, MATTER OF v COMMISSIONER OF LABOR:

3<sup>RD</sup> Dept. App. Div. order of 8/6/09; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right and whether an appeal has been timely taken;

UNEMPLOYMENT INSURANCE - BENEFITS - TIMELINESS OF REQUEST FOR HEARING - WHETHER SUBSTANTIAL EVIDENCE SUPPORTS THE DECISION OF THE UNEMPLOYMENT INSURANCE APPEAL BOARD FINDING THAT CLAIMANT'S REQUEST FOR A HEARING WAS UNTIMELY;

App. Div. affirmed a 10/22/08 decision of the Unemployment Insurance Appeal Board which ruled that claimant's request for a hearing was untimely.

CAPPELLINO, MATTER OF v BAUMANN & SONS BUS COMPANY et al.:

3<sup>RD</sup> Dept. App. Div. order of 6/19/08; affirmance; leave to appeal granted by Court of Appeals, 11/18/10;

WORKERS' COMPENSATION - CAUSAL RELATION - WHETHER AN EMPLOYER THAT DOES NOT TIMELY FILE A NOTICE OF CONTROVERSY PURSUANT TO WORKERS' COMPENSATION LAW § 25(2)(b) MAY CONTEST BEFORE THE WORKERS' COMPENSATION BOARD (WCB) THE CAUSAL RELATIONSHIP BETWEEN THE DEATH OF CLAIMANT'S DECEDENT AND HIS EMPLOYMENT; CHALLENGE TO WCB'S DECISION THAT CLAIMANT'S APPLICATION FOR REVIEW OF AN ADMINISTRATIVE LAW JUDGE'S PRECLUSION OF TESTIMONY FROM CLAIMANT'S MEDICAL EXPERT WAS UNTIMELY; LEGAL STANDARD APPLICABLE TO WORKERS' COMPENSATION CLAIMS ARISING FROM HEART ATTACK FATALITIES; EXISTENCE OF SUBSTANTIAL EVIDENCE SUPPORTING WCB'S DECISION;

App. Div. affirmed a decision of the Workers' Compensation Board, which ruled that claimant's decedent did not sustain a causally related injury and denied the claim for workers' compensation benefits.

HALSTEAD v BROKAW, et al.:

2<sup>ND</sup> Dept. App. Div. order of 6/29/10; reversal; leave to appeal granted by Court of Appeals, 12/16/10;

LIBEL AND SLANDER - ACTIONABLE WORDS - OPINIONS - SUMMARY JUDGMENT - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT DEFENDANTS MADE A PRIMA FACIE SHOWING OF ENTITLEMENT TO JUDGMENT AS A MATTER OF LAW BY ESTABLISHING THAT THEIR ALLEGED STATEMENTS CONSTITUTED STATEMENTS OF OPINION RATHER THAN OF FACT - WHETHER THE APPELLATE DIVISION HOLDING IS INCONSISTENT WITH MANN v ABEL (10 NY3d 217 [2008]) AND STEINHILBER v ALPHONSE (68 NY2d 283 [1986]);

Supreme Court, Dutchess County denied defendants' motion for summary judgment dismissing the complaint; App. Div. reversed and granted defendants' motion for summary judgment dismissing the complaint.

MACK (JASON), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 9/21/10; affirmance; leave to appeal granted by Catterson, J., 12/7/10; Rule 500.11 review pending;

CRIMES - INDICTMENT - SUFFICIENCY OF EVIDENCE BEFORE GRAND JURY - SEXUAL ABUSE IN THE FIRST DEGREE - SUFFICIENCY OF EVIDENCE OF FORCIBLE COMPULSION;

Supreme Court, New York County, upon Supreme Court's inspection of grand jury minutes, granted defendant's motion to dismiss an indictment charging sexual abuse in the first degree; App. Div. affirmed.

JOSEPH R. (ANONYMOUS), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 6/22/10; reversal; leave to appeal granted by Pigott, J., 11/19/10; Rule 500.11 review pending;

CRIMES - SENTENCE - YOUTHFUL OFFENDER - APPEALABILITY OF YOUTHFUL OFFENDER ADJUDICATION - CPL 450.20(4);

Suffolk County Court adjudicated defendant a youthful offender, upon his plea of guilty to use of a child in a sexual performance, and imposed sentence; App. Div. reversed, vacated youthful offender adjudication and sentence imposed, and remitted the case to County Court for further proceedings.

RYAN v KELLOGG PARTNERS INSTITUTIONAL SERVICES:

1<sup>ST</sup> Dept. App. Div. order of 12/7/10; affirmance with dissents; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether the dissent at the App. Div. is on a question of law;

CONTRACTS - EMPLOYMENT CONTRACTS - EMPLOYMENT-AT-WILL - ENFORCEMENT OF ALLEGED AGREEMENT FOR A BONUS - APPLICABILITY AND PURPORTED WAIVER OF STATUTE OF FRAUDS DEFENSE; EVIDENCE - CHALLENGE TO APPELLATE DIVISION RULING THAT THE TRIAL COURT "PROVIDENTLY EXERCISED ITS DISCRETION TO PRECLUDE INQUIRY INTO PLAINTIFF'S FINANCIAL COMMITMENTS AT THE TIME HE ENTERED INTO THE ORAL AGREEMENTS WITH DEFENDANT";

Supreme Court, New York County amended the January 6, 2010 order to deny defendant's motion at trial to amend its answer and affirmative defenses; App. Div. affirmed the February 24, 2010 Supreme Court judgment, which brought up for review the January 6, 2010 and February 22, 2010 Supreme Court orders.