

COURT OF APPEALS NEW FILINGS

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

February 1, 2013 through February 7, 2013

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 within 60 days after the appeal was taken; respondent's brief to be filed within 45 days after the due date for the filing of appellant's brief; and a reply brief, if any, to be filed within 15 days after the due date for 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.

MORRIS v PAVARINI CONSTRUCTION et al.:

1ST Dept. App. Div. order of 9/4/12; reversal; leave to appeal granted by App. Div., 1/8/13; Rule 500.11 review pending;
LABOR - SAFE PLACE TO WORK - WHETHER A LABOR LAW § 241(6) CLAIM, PREDICATED ON A 12 NYCRR § 23-2.2(a) VIOLATION, LIES WHERE PLAINTIFF'S INJURY IS CAUSED BY A FALLING COMPONENT OF A "FORM" (MOLD) USED IN THE FABRICATION OF CONCRETE WALLS;
Supreme Court, Bronx County, upon remittal by Court of Appeals, granted defendants' motion for summary judgment dismissing plaintiff's Labor Law § 241(6) claim; App. Div. reversed, and upon searching the record, granted summary judgment to plaintiff.

RODRIGUEZ (JULIO), PEOPLE v:

1ST Dept. App. Div. order of 1/10/13; affirmance with dissents;
Rule 500.11 review pending;

CRIMES - SEX OFFENDERS - SEX OFFENDER REGISTRATION ACT (SORA) -
WHETHER TRIAL COURT'S DENIAL OF DEFENDANT'S REQUEST FOR AN
ADJOURNMENT VIOLATED DUE PROCESS OR CORRECTION LAW § 168-n(3);
Supreme Court, New York County adjudicated defendant a level
three sex offender and a sexually violent offender pursuant to
SORA (Correction Law art. 6-C); App. Div. affirmed.

SANTER, MATTER OF v BOARD OF EDUCATION OF EAST MEADOW UNION FREE
SCHOOL DISTRICT:

2ND Dept. App. Div. order of 12/19/12; reversal; sua sponte
examination whether a substantial constitutional question is
directly involved to support an appeal as of right;
SCHOOLS - TEACHERS - DISCIPLINARY MEASURES - EXERCISE OF FIRST
AMENDMENT RIGHTS - MEMBER OF TEACHERS' UNION WHO LEGALLY PARKED
HIS CAR IN FRONT OF SCHOOL WHILE PICKETING BECAUSE OF STALLED
NEGOTIATIONS ON A NEW COLLECTIVE BARGAINING AGREEMENT DISCIPLINED
FOR CREATING A HEALTH AND SAFETY RISK INsofar AS HIS CAR WAS
PARKED IN A LOCATION WHERE PARENTS WOULD DROP OFF THEIR CHILDREN
FOR SCHOOL, RESULTING IN SOME STUDENTS BEING DROPPED OFF IN THE
STREET AND HAVING TO CROSS TRAFFIC LANES TO ENTER THE SCHOOL;
Supreme Court, Nassau County, in a proceeding pursuant to CPLR
article 75, denied the petition to vacate an arbitration award
sustaining a charge of misconduct against petitioner and imposing
a fine against petitioner in the sum of \$500; App. Div. reversed,
granted the petition and vacated the arbitration award.

WESTERN EXPRESS INTERNATIONAL, INC., et al., PEOPLE v:

1ST Dept. App. Div. order of 4/19/11, reversed by Court of
Appeals 10/18/12; sua sponte examination whether the terms of the
Court's remittitur are being violated;
APPEAL - ALLEGED VIOLATION OR FLOUTING OF COURT OF APPEALS
REMITTITUR;

Supreme Court, New York County granted appellants' respective
motions to dismiss the enterprise corruption count of the
indictment and denied the motions to dismiss the remaining counts
of the indictment; App. Div. reversed and reinstated the
enterprise corruption count; Court of Appeals reversed and
reinstated the Supreme Court orders dismissing the enterprise
corruption count of the indictment as against appellants.