

COURT OF APPEALS NEW FILINGS

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

**January 8 through January 14, 2010**

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.**

ELENA D.B., MATTER OF:

2<sup>ND</sup> Dept. App. Div. order of 7/14/09; affirmance; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

INCAPACITATED AND MENTALLY DISABLED PERSONS - GUARDIAN FOR PERSONAL NEEDS OR PROPERTY MANAGEMENT - CHALLENGE TO APPELLATE DIVISION ORDER HOLDING THAT SUPREME COURT PROPERLY REVOKED A POWER OF ATTORNEY AND PROVIDENTLY EXERCISED ITS DISCRETION IN APPOINTING A NEUTRAL THIRD-PARTY GUARDIAN;

Supreme Court, Westchester County, after a hearing, denied John C.B.'s and Elena B.S.'s cross petitions to appoint John C.B. as permanent guardian of Elena D.B., granted the petition to the extent of appointing another as guardian for the personal needs and property management of Elena D.B., and revoked a power of attorney in favor of John C.B.; App. Div. affirmed.

BLACK (JAMEL), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 9/29/09; affirmance; leave to appeal granted by Graffeo, J., 1/6/10;

CRIMES - JURORS - CHALLENGE TO JURY - CLAIMED RACIAL DISCRIMINATION IN JUROR CHALLENGES - WHETHER TRIAL JUDGE ERRED IN DENYING DEFENDANT'S APPLICATION PURSUANT TO BATSON v KENTUCKY (476 US 79) CHALLENGING THE PEOPLE'S USE OF PEREMPTORY CHALLENGES TO REMOVE PROSPECTIVE AFRICAN-AMERICAN PANEL MEMBERS ON THE BASIS OF THEIR PLACE OF RESIDENCE, LACK OF EMPLOYMENT AND LACK OF HIGH SCHOOL DIPLOMA;

Supreme Court, Kings County convicted defendant, upon a jury verdict, of robbery in the first degree, assault in the third degree, criminal possession of stolen property in the fifth degree, criminal possession of a weapon in the third degree, and imposed sentence; App. Div. affirmed.

KAUR, MATTER OF v NEW YORK STATE URBAN DEVELOPMENT CORPORATION &c. (AND ANOTHER PROCEEDING):

1<sup>ST</sup> Dept. App. Div. order of 12/3/09; grant of EDPL 207 petitions;

EMINENT DOMAIN - PUBLIC USE - ACQUISITION OF WEST HARLEM ACREAGE FOR DEVELOPMENT OF NEW CAMPUS FOR COLUMBIA UNIVERSITY - PETITIONS PURSUANT TO EMINENT DOMAIN PROCEDURE LAW § 207 CHALLENGING DETERMINATION APPROVING THE PROPERTY ACQUISITION - CIVIC PROJECT OR LAND USE IMPROVEMENT PROJECT; CLOSING OF THE RECORD DURING PENDENCY OF FREEDOM OF INFORMATION LAW PROCEEDINGS;

App. Div. granted the petitions challenging the determination of respondent New York State Urban Development Corporation d/b/a Empire State Development Corporation dated 12/18/08 which approved the acquisition of certain real property for the project commonly referred to as the Columbia University Educational Mixed Use Development Land Use Improvement and Civic Project, and annulled the determination.

MILLENNIUM PARTNERS, L.P. v SELECT INSURANCE COMPANY, et al.:

1<sup>ST</sup> Dept. App. Div. order of affirmance; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

INSURANCE - DUTY TO DEFEND AND INDEMNIFY - WHETHER SUMMARY JUDGMENT DISMISSING THE COMPLAINT WAS PROPERLY GRANTED TO INSURER UPON GROUND THAT INSURED'S CLAIM FOR DEFENSE COSTS WAS SUBJECT TO A POLICY EXCLUSION BECAUSE IT AROSE FROM LOSSES THE INSURED INCURRED AS A RESULT OF BEING REQUIRED TO DISGORGE IMPROPERLY ACQUIRED FUNDS - EXISTENCE OF DISPUTED ISSUES OF FACT AS TO WHETHER FUNDS WERE IMPROPERLY ACQUIRED;

Supreme Court, New York County dismissed the complaint as against defendant Select Insurance Company; App. Div. affirmed.

RICHELIS S., MATTER OF:

4<sup>TH</sup> Dept. App. Div. order of 12/30/09; reversal; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether the dissent at the App. Div. is on a question of law;  
PARENT AND CHILD - TERMINATION OF PARENTAL RIGHTS - WHETHER ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES ESTABLISHED BY A PREPONDERANCE OF THE EVIDENCE THAT THE FATHER VIOLATED THE CONDITIONS OF A SUSPENDED JUDGMENT;  
Family Court, Erie County, in a proceeding pursuant to Social Services Law § 384-b, dismissed the petition seeking to revoke a suspended judgment and terminate respondent's parental rights; App. Div. reversed, granted the petition, committed the guardianship and custody of the child to petitioner, and remitted the matter to Family Court for the initial freed child permanency hearing.

SPORT ROCK INTERNATIONAL, INC., et al. v AMERICAN CASUALTY COMPANY OF READING, PA:

1<sup>ST</sup> Dept. App. Div. order of 5/12/09; modification; leave to appeal granted by App. Div., 12/8/09;  
INSURANCE - DUTY TO DEFEND AND INDEMNIFY - EFFECT OF "OTHER INSURANCE" CLAUSES IN TWO INSURANCE POLICIES COVERING THE SAME INSURED FOR THE SAME RISK - CHALLENGE TO APPELLATE DIVISION'S HOLDING THAT COVERAGE AFFORDED BY INSURER ISSUING POLICY WITH EXCESS "OTHER INSURANCE" CLAUSE (THE "EXCESS INSURER") WAS EXCESS TO COVERAGE AFFORDED BY INSURER ISSUING POLICY CONTAINING PRO RATA "OTHER INSURANCE" CLAUSE (THE "PRIMARY INSURER"), THAT PRIMARY INSURER WAS RESPONSIBLE FOR PROVIDING DEFENSE IN UNDERLYING ACTION AND REIMBURSING EXCESS INSURER FOR ANY DEFENSE COSTS THAT HAD BEEN INCURRED BY EXCESS INSURER, AND THAT EXCESS INSURER WILL NOT BE OBLIGATED TO CONTRIBUTE TO THE DEFENSE OR INDEMNIFICATION OF THE INSURED UNTIL THE PRIMARY INSURER'S COVERAGE IS EXHAUSTED; SUMMARY JUDGMENT;  
Supreme Court, New York County granted plaintiffs' motion for summary judgment to the extent of declaring that defendant American Casualty Company of Reading, PA is obligated to defend plaintiff Sport Rock International, Inc. in an underlying action, and otherwise denied the motion; App. Div. modified to further declare that the coverage afforded Sport Rock International in the underlying action under the policy issued to it by plaintiff Evanston Insurance Company is excess over the primary coverage afforded Sport Rock International therein as an additional insured under the policy American Casualty Company of Reading, PA issued to nonparty Petzl, that Evanston will not be obligated to contribute to Sport Rock International, Inc.'s defense or indemnification in the underlying action until Sport Rock International's coverage from American Casualty Company has been exhausted, and that American Casualty Company is obligated to reimburse Evanston up to the applicable limit of American Casualty's policy for all costs Evanston has heretofore incurred in defending Sport Rock International in the underlying action, and otherwise affirmed.