

COURT OF APPEALS NEW FILINGS

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

February 5 through February 11, 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. 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.

BOSCIC (DRAGAN), PEOPLE v:

Sullivan County Court order of 7/30/09; reversal; leave to appeal granted by Pigott, J., 1/22/10;

CRIMES - MOTOR VEHICLES - OPERATING VEHICLE WHILE UNDER INFLUENCE OF ALCOHOL OR DRUGS - DRIVING WHILE ABILITY IMPAIRED (VEHICLE AND TRAFFIC LAW § 1192[1]) - WHETHER THE PEOPLE MUST PRODUCE EVIDENCE THAT BREATHALYZER WAS CALIBRATED WITHIN SIX MONTHS PRIOR TO ITS USE BEFORE THE RESULTS OF A BREATHALYZER TEST CAN BE ADMITTED INTO EVIDENCE; WHETHER COUNTY COURT PROPERLY CONSIDERED ON APPEAL A BREATH TEST OPERATOR GUIDE THAT WAS NOT INTRODUCED AS EVIDENCE AT TRIAL;

Town of Bethel Justice Court convicted defendant, after a bench trial, of driving while ability impaired (alcohol); Sullivan County Court reversed and dismissed all charges.

CHOW, et al. v RECKITT & COLMAN, INC., et al.:

1ST Dept. App. Div. order of 1/5/10; affirmance with dissents; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution; PRODUCTS LIABILITY - DEFECTIVELY DESIGNED PRODUCT - CHALLENGE TO APPELLATE DIVISION ORDER HOLDING THAT PLAINTIFFS FAILED TO RAISE A TRIABLE ISSUE OF FACT AS TO WHETHER A LYE-BASED DRAIN CLEANER WAS DEFECTIVELY DESIGNED; Supreme Court, Bronx County granted summary judgment dismissing the complaint and any cross claims against defendants Reckitt & Colman, Inc., Reckitt Benckiser, Inc. and Malco Products, Inc.; App. Div. affirmed.

CUMMINGS (ELIJAH), PEOPLE v:

1ST Dept. App. Div. order of 10/22/09; affirmance; leave to appeal granted by Graffeo, J., 1/28/10; CRIMES - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - WHETHER TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO MOVE FOR DISMISSAL OF THE SECOND DEGREE BURGLARY COUNT BASED ON THE ARGUMENT THAT A POLICE STATION DOES NOT CONSTITUTE A "DWELLING" UNDER PENAL LAW § 140.25(2) - POLICE STATION CONTAINING DORM ROOM; WHETHER TRIAL COURT ERRED IN PERMITTING CROSS-EXAMINATION OF DEFENDANT ABOUT A PRIOR ROBBERY AND ATTEMPTED ROBBERY CONVICTION; ALLEGED PROSECUTORIAL MISCONDUCT; Supreme Court, New York County convicted defendant, after a jury trial, of burglary in the second degree and two counts of criminal possession of a weapon in the third degree, and sentenced him, as a persistent violent felony offender, to an aggregate term of 20 years to life; App. Div. affirmed.

JACKSON v STATE OF NEW YORK:

3RD Dept. App. Div. order of 1/4/10; denial of motion; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether any jurisdictional basis otherwise exists to support an appeal as of right; MOTIONS - CHALLENGE TO APPELLATE DIVISION ORDER DENYING A MOTION TO REOPEN A PRIOR MOTION FOR DEFAULT JUDGMENT; App. Div. denied motion to reopen prior motion for default judgment.

TUNG v CHIU:

1ST Dept. App. Div. order of 12/15/09; grant of motion; 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; PHYSICIANS AND SURGEONS - DENTISTS - MALPRACTICE; APPEAL - APPELLATE DIVISION GRANT OF MOTION TO COMPEL APPELLANT TO POST AN UNDERTAKING FOR SUMS OF JUDGMENTS ENTERED AGAINST HIM - CPLR 6312(b); App. Div. granted defendant's motion for an order compelling plaintiff to post an undertaking for sums of judgments entered against him.