

COURT OF APPEALS NEW FILINGS

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

**May 14 through May 20, 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.**

BEASLEY (LAMONT), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 1/12/10; affirmance with dissents; leave to appeal granted by Eng, J., 5/4/10;  
CRIMES - RIGHT TO SPEEDY TRIAL - CPL 30.30 - WHETHER POSTREADINESS DELAY WAS CHARGEABLE TO PEOPLE IN ABSENCE OF DEFENSE COUNSEL'S EXPRESS CONSENT TO DELAY;  
Supreme Court, Kings County convicted defendant of criminal possession of a controlled substance in the second degree and imposed sentence; App. Div. affirmed.

DYLAN C., MATTER OF:

2<sup>ND</sup> Dept. App. Div. order of 10/13/09; affirmance; leave to appeal granted by Court of Appeals, 5/11/10;  
CRIMES - ESCAPE - JUVENILE DELINQUENTS - ESCAPE FROM NONSECURE FACILITY - WHETHER A JUVENILE DELINQUENT WHO ABSCONDS FROM A NONSECURE DETENTION FACILITY, AS DEFINED IN FAMILY COURT ACT § 301.2(5), MAY BE CHARGED WITH ESCAPE IN THE SECOND DEGREE UNDER PENAL LAW § 205.10;  
Family Court, Kings County dismissed petition in a juvenile delinquency proceeding; App. Div. affirmed.

GOLDENBERG v WESTCHESTER COUNTY HEALTH CARE CORP., &c., et al.:

2<sup>ND</sup> Dept. App. Div. order of 12/22/09; affirmance; leave to appeal granted by Court of Appeals,, 5/4/10;  
ACTIONS - COMMENCEMENT - WHETHER COMPLAINT WAS PROPERLY DISMISSED AS TIME-BARRED ON THE GROUND THAT ACTION WAS NEVER VALIDLY COMMENCED BECAUSE PLAINTIFF SERVED A SUMMONS AND COMPLAINT UPON DEFENDANTS WITHOUT FILING THEM OR OBTAINING AN INDEX NUMBER AND PAYING THE FILING FEE - APPLICABILITY OF CPLR 2001 TO EXCUSE FILING DEFECT WHERE PLAINTIFF PREVIOUSLY FILED A PROPOSED COMPLAINT AS AN EXHIBIT TO A PROCEEDING TO FILE A LATE NOTICE OF CLAIM - DEFENDANTS' ALLEGED WAIVER OF OBJECTION TO FILING DEFECTS BY ASSERTING THE GENERAL AFFIRMATIVE DEFENSE OF LACK OF PERSONAL JURISDICTION RATHER THAN SPECIFYING THE FILING DEFECT;  
Supreme Court, Westchester County granted defendants' motion to dismiss the complaint as time-barred and denied plaintiff's cross motion for, among other things, leave to file the summons and complaint nunc pro tunc; App. Div. affirmed.

HORST v BROWN:

1<sup>ST</sup> Dept. App. Div. order of 4/6/10; reversal; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution;  
LIMITATION OF ACTIONS - WAIVER OF AFFIRMATIVE DEFENSE; SUMMARY JUDGMENT; LOANS - PROMISSORY NOTES;  
Supreme Court, New York County granted plaintiff's motion for summary judgment as to one of her claims and dismissed certain of her claims on statute of limitations grounds; App. Div. reversed, reinstated the dismissed claims, granted plaintiff summary judgment as to liability on those claims, and remanded the matter for a trial on damages.

NATIONAL FUEL GAS DISTRIBUTION CORP., MATTER OF v NEW YORK STATE PUBLIC SERVICE COMMISSION:

3<sup>RD</sup> Dept. App. Div. order of 12/31/09; modification; leave to appeal granted by Court of Appeals, 5/4/10;  
PUBLIC UTILITIES - PUBLIC SERVICE COMMISSION - RATE SETTING - WHETHER THE APPELLATE DIVISION ERRED IN CONCLUDING THAT RESPONDENT AGENCY IMPROPERLY REDUCED THE AMOUNT OF SITE INVESTIGATION AND REMEDIATION COSTS THAT PETITIONER GAS CORPORATION WAS PERMITTED TO PASS ON TO ITS CUSTOMERS BY

DETERMINING THAT ITS PARENT COMPANY SHOULD HAVE ALLOCATED TO PETITIONER A GREATER SHARE OF CERTAIN INSURANCE SETTLEMENT PROCEEDS - ALLEGED USE OF INAPPROPRIATE STANDARD OF REVIEW; App. Div. modified respondent agency's determination concerning certain rates and charges to be paid to petitioner by annulling so much thereof as imputed additional settlement proceeds to petitioner, granted the petition to that extent, remitted to respondent agency for further proceedings and confirmed the determination as so modified.

SHUBBUCK v CONNERS et al:

4<sup>TH</sup> Dept. App. Div. order of 4/3/10; affirmance with dissents; Rule 500.11 review pending;  
DAMAGES - FUTURE DAMAGES - WHETHER PERSONAL INJURY PLAINTIFF'S TESTIMONY CONCERNING THE IMPACT OF HIS INJURY ON HIS WAGES WAS LEGALLY SUFFICIENT TO SUPPORT CLAIM FOR FUTURE LOST WAGES; Supreme Court, Erie County awarded plaintiff damages against defendants upon a jury verdict in a personal injury action; App. Div. affirmed.

STATE OF NEW YORK, MATTER OF v RASHID:

1<sup>ST</sup> Dept. App. Div. order of 12/22/09; affirmance; leave to appeal granted by Court of Appeals, 5/11/10;  
CRIMES - SEX OFFENDERS - CIVIL COMMITMENT OR SUPERVISION - WHETHER RESPONDENT WAS A "DETAINED SEX OFFENDER" SUBJECT TO CIVIL MANAGEMENT UNDER MENTAL HYGIENE LAW ARTICLE 10 WHERE, AT THE TIME THE CIVIL MANAGEMENT PROCEEDING WAS INITIATED, HE WAS SERVING A SENTENCE FOR A NONSEXUAL, UNRELATED OFFENSE THAT RAN CONSECUTIVELY TO A PRIOR COMPLETED SENTENCE FOR A SEXUAL OFFENSE - APPLICABILITY OF MERGER RULES OF PENAL LAW § 70.30; Supreme Court, New York County granted respondent's motion to dismiss a petition seeking to subject him to civil management pursuant to Mental Hygiene Law article 10; App. Div. affirmed.

WARNEY v STATE OF NEW YORK:

4<sup>TH</sup> Dept. App. Div. order of 2/11/10; affirmance; leave to appeal granted by Court of Appeals, 5/11/10;  
STATE - UNJUST CONVICTION AND IMPRISONMENT ACT - COURT OF CLAIMS ACT § 8-b - WHETHER THE COURT OF CLAIMS ERRED IN DISMISSING CLAIM TO RECOVER FOR UNJUST CONVICTION AND IMPRISONMENT OF A PERSON EXONERATED BY DNA EVIDENCE AFTER SERVING NINE YEARS IN PRISON FOR A MURDER CONVICTION - WHETHER FALSE CONFESSION CONSTITUTED CONDUCT BRINGING ABOUT CONVICTION;  
Court of Claims granted defendant's motion to dismiss the claim and dismissed the claim; App. Div. affirmed.