

COURT OF APPEALS NEW FILINGS

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

**November 5 through November 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.**

BLAUDZIUNAS, et al. v EGAN, et al.:

1<sup>ST</sup> Dept. App. Div. order of 6/29/10; affirmance; leave to appeal granted by App. Div., 11/4/10;

RELIGIOUS CORPORATIONS AND ASSOCIATIONS - DETERMINATION OF CLAIM TO REAL PROPERTY - RELIGIOUS CORPORATION LAW § 5 - DECISION OF ROMAN CATHOLIC ARCHBISHOP AND TRUSTEES OF SUPPRESSED INCORPORATED PARISH TO DEMOLISH CHURCH BUILDING; STANDING OF PARISHIONERS; Supreme Court, New York County denied plaintiffs' motion for a preliminary injunction enjoining defendants from demolishing a church building, and granted defendants' motion to dismiss the complaint; App. Div. affirmed.

COHN, MATTER OF v BOARD OF EDUCATION OF CITY SCHOOL DISTRICT OF CITY OF NEW YORK:

1<sup>ST</sup> Dept. App. Div. order of 6/3/10; reversal; leave to appeal granted by App. Div., 10/28/10;  
SCHOOLS - TEACHERS - LETTER IN PERSONNEL FILE - HEARING PURSUANT TO EDUCATION LAW § 3020-a - CHALLENGE TO APPELLATE DIVISION ORDER HOLDING THAT, UNDER ARTICLE TWENTY ONE OF CURRENT COLLECTIVE BARGAINING AGREEMENT, TEACHER HAD NO RIGHT TO A HEARING WHERE LETTER IN PERSONNEL FILE DOES NOT RESULT IN ADMINISTRATIVE CHARGES OR OTHER DISCIPLINARY SANCTIONS;  
Supreme Court, New York County granted a CPLR article 78 petition and directed expungement of a letter in petitioner's personnel file; App. Div. reversed, denied the petition and dismissed the proceeding.

DELAMOTA (SEBASTIAN), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 6/22/10; affirmance; leave to appeal granted by Pigott, J., 11/1/10;  
CRIMES - IDENTIFICATION OF DEFENDANT - EYEWITNESS IDENTIFICATION; SUPPRESSION HEARING;  
Supreme Court, Queens County convicted defendant, upon a jury verdict, of robbery in the first degree, criminal possession of a weapon in the third degree and menacing in the second degree, and imposed sentence; App. Div. affirmed.

GECETCHKORI, MATTER OF v ANNUCCI:

3<sup>RD</sup> Dept. App. Div. order of 10/7/10; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;  
PRISONS AND PRISONERS - CITIZEN OF THE REPUBLIC OF GEORGIA CURRENTLY INCARCERATED IN NEW YORK - CHALLENGE TO APPELLATE DIVISION ORDER AFFIRMING JUDGMENT DISMISSING PETITIONER'S CPLR ARTICLE 78 PETITION CHALLENGING RESPONDENT'S DETERMINATION DENYING HIS REQUEST TO BE TRANSFERRED TO THE REPUBLIC OF GEORGIA - CLAIM THAT CORRECTION LAW § 71(1-b) IS UNCONSTITUTIONAL;  
Supreme Court, Albany County dismissed petitioner's application, in a CPLR article 78 proceeding, to review respondent's determination denying his request to be transferred to the Republic of Georgia; App. Div. affirmed.

NEW YORK STATE SUPERFUND COALITION, INC., MATTER OF v NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION:

3<sup>RD</sup> Dept. App. Div. order of 12/31/09; modification; leave to appeal granted by Court of Appeals, 10/26/10;  
ENVIRONMENTAL CONSERVATION - HAZARDOUS WASTE - VALIDITY OF REGULATION - WHETHER RESPONDENT DEPARTMENT OF ENVIRONMENTAL CONSERVATION EXCEEDED ITS AUTHORITY IN PROMULGATING 6 NYCRR 375-2.8(a) AND 375-1.8(f)(9) - REGULATIONS WITH A STATED GOAL OF RESTORING CONTAMINATED INACTIVE HAZARDOUS WASTE SITES TO "PRE-DISPOSAL CONDITIONS" - WHETHER APPELLATE DIVISION CORRECTLY DEFERRED TO AGENCY INTERPRETATION OF STATUTE;

Supreme Court, Albany County, among other things, partially granted petitioner's application, in a combined proceeding pursuant to CPLR article 78 and action for a declaratory judgment, to annul certain regulations promulgated by respondent Department of Environmental Conservation; App. Div. modified the amended judgment by reversing so much thereof as granted petitioner's application to annul 6 NYCRR 375-2.8(a) and 375-1.8(f)(9), dismissed the petition to that extent, and affirmed as so modified.

PARKHURST, MATTER OF v UNITED RENTALS AERIAL EQUIPMENT, INC. et al.:

3<sup>RD</sup> Dept. App. Div. order of 7/1/10; affirmance; leave to appeal granted by Court of Appeals, 10/26/10;

WORKERS' COMPENSATION - WHETHER THE 2007 AMENDMENTS TO THE WORKERS' COMPENSATION LAW REQUIRE EMPLOYERS TO DEPOSIT THE PRESENT VALUE OF THE UNCAPPED PERMANENT PARTIAL DISABILITY AWARD INTO THE AGGREGATE TRUST FUND - WORKERS' COMPENSATION LAW § 27(2);

App. Div. affirmed 6/22/09, 6/25/09 and 7/3/09 decisions of the Workers' Compensation Board which, among other things, directed each of the employers' workers' compensation carriers to make a deposit into the aggregate trust fund pursuant to Workers' Compensation Law § 27(2).

PATRIOT EXPLORATION LLC et al. v THOMPSON & KNIGHT:

1<sup>ST</sup> Dept. App. Div. order of 7/27/10; affirmance; leave to appeal granted by App. Div., 10/26/10; Rule 500.11 review pending;

COURTS - FORUM NON CONVENIENS - WHETHER MOTION COURT ABUSED ITS DISCRETION IN DECLINING TO DISMISS ACTION ON FORUM NON CONVENIENS GROUNDS (CPLR 327[a]) - WHETHER MOTION COURT COULD CONDITION AN INCONVENIENT-FORUM DISMISSAL ON A WAIVER OF THE FOREIGN FORUM'S TWO-YEAR STATUTE OF LIMITATIONS;

Supreme Court, New York County denied defendant's motion for dismissal of the action on the ground that New York is an inconvenient forum; App. Div. affirmed.

RAYNOR, MATTER OF v LANDMARK CHRYSLER et al. [WORKERS' COMPENSATION BOARD]:

3<sup>RD</sup> Dept. App. Div. order of 7/1/10; leave to appeal granted by Court of Appeals, 10/26/10;

WORKERS' COMPENSATION - AGGREGATE TRUST FUND - MANDATORY LUMP-SUM PAYMENT OF PRESENT VALUE OF NONSCHEDULE PERMANENT PARTIAL DISABILITY (PPD) AWARDS MADE ON OR AFTER JULY 1, 2007 - CHALLENGE TO 2007 AMENDMENT TO WORKERS' COMPENSATION LAW § 27(2) (L 2007, Ch. 6, § 46) - APPLICABILITY TO AWARD MADE AFTER JULY 1, 2007 WHERE INJURIES ARE SUSTAINED BEFORE THE MARCH 31, 2007 EFFECTIVE DATE OF AMENDMENT CAPPING THE NUMBER OF WEEKS FOR WHICH A CLAIMANT CAN RECEIVE PPD BENEFITS - CONSTITUTIONAL CHALLENGES TO THE 2007 AMENDMENT BASED UPON THE TAKING, CONTRACTS, DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FEDERAL CONSTITUTION - CLAIM THAT COMPUTATION OF THE PRESENT VALUE OF A LUMP-SUM PAYMENT OF

App. Div. order that, as relevant here, affirmed a 5/7/09 Workers' Compensation Board decision that directed the employer's workers' compensation carrier to make a deposit into the aggregate trust fund pursuant to Workers' Compensation Law § 27(2).

RICH v EAST 10<sup>TH</sup> STREET ASSOCIATES LLC &c., et al.:

1<sup>ST</sup> Dept. App. Div. order of 7/27/10 modification; leave to appeal granted by App. Div., 10/28/10; Rule 500.11 review pending;

LANDLORD AND TENANT - RENT - ACTION TO RECOVER RENT OVERCHARGES PAID UNDER LEASES SUBJECT TO THE RENT STABILIZATION LAW OF 1969 - WHETHER THE PROPER BASE DATE FOR DETERMINING AN OVERCHARGE IS DEEMED TO BE FOUR YEARS BEFORE THE FILING OF THE OVERCHARGE COMPLAINT - CPLR 213-a - RENT STABILIZATION CODE (9 NYCRR) § 2520.6(f);

Supreme Court, New York County denied the motion of defendant 256 10<sup>th</sup> Street NY, LLC for summary judgment dismissing the complaint; App. Div. modified by vacating the base rent finding and substituting therefor a finding that the base rent is the rent charged four years before the filing of the overcharge complaint, and otherwise affirmed.

SMITH (HOWARD K.), PEOPLE v:

App. Term, 9<sup>th</sup> & 10<sup>th</sup> Judicial Districts, order of 4/28/10; affirmance; leave to appeal granted by Pigott, J., 10/27/10; CRIMES - DRIVING WHILE ABILITY IMPAIRED - WHEN POLICE ASKED DEFENDANT IF HE WOULD CONSENT TO A CHEMICAL SOBRIETY TEST, DEFENDANT REPEATEDLY REPLIED THAT HE WANTED TO SPEAK WITH HIS ATTORNEY - WHETHER REQUEST TO SPEAK WITH ATTORNEY CAN BE CONSIDERED A REFUSAL TO SUBMIT TO TEST - ADMISSIBILITY OF EVIDENCE OF REFUSAL AT TRIAL;

Justice Court of Town of Orangetown convicted defendant, after a nonjury trial, of driving while ability impaired; App. Term affirmed.