

COURT OF APPEALS NEW FILINGS

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

May 27 through June 2, 2011

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.

CUSTODI et al. v MUFFOLETTO et al.:

4TH Dept. App. Div. order of 2/10/11; reversal; leave to appeal granted by App. Div., 4/29/11; Rule 500.11 review pending;

NEGLIGENCE - ASSUMPTION OF RISK - ACTION SEEKING DAMAGES FOR INJURIES SUSTAINED BY PLAINTIFF WHILE ROLLERBLADING WHEN SHE ALLEGEDLY TRIPPED OVER A TWO-INCH HEIGHT DIFFERENTIAL BETWEEN APRON AT END OF INDIVIDUAL DEFENDANTS' DRIVEWAY AND CULVERT THAT SEPARATED DRIVEWAY FROM PUBLIC ROADWAY - WHETHER THE APPELLATE DIVISION ERRED IN CONCLUDING THAT, UNDER THE CIRCUMSTANCES OF THIS CASE, THE DOCTRINE OF PRIMARY ASSUMPTION OF RISK IS INAPPLICABLE;

Supreme Court, Erie County granted the motion by defendants Peter and Susan Muffoletto for summary judgment dismissing the complaint as against them; App. Div. reversed, denied the motion and reinstated the complaint against defendants Peter and Susan Muffoletto.

BONOMONTE v CITY OF NEW YORK:

1ST Dept. App. Div. order of 12/14/10; affirmance; leave to appeal granted by App. Div., 5/5/11; Rule 500.11 review pending; NEGLIGENCE - DUTY - PROXIMATE CAUSE - PLAINTIFF CITY EMPLOYEE, ALREADY ON SICK LEAVE DUE TO SURGERY ON HIS ARM, SLIPPED AND FELL ON HIS WAY TO MANDATED DOCTOR'S APPOINTMENT AT THE EMPLOYER'S CLINIC; SUMMARY JUDGMENT; Supreme Court, New York County granted defendant's motion for summary judgment dismissing the complaint; App. Div. affirmed.

ROSS, MATTER OF v NEW YORK STATE BOARD OF PAROLE:

3RD Dept. App. Div. order of 11/18/10; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; PAROLE - DENIAL; CPLR ARTICLE 78 PROCEEDING TO REVIEW DETERMINATION OF BOARD OF PAROLE DENYING PETITIONER PAROLE RELEASE - DISMISSAL OF PETITION FOR FAILURE TO SERVE RESPONDENT WITH PAPERS AS ORDERED; LACK OF PERSONAL JURISDICTION; Supreme Court, Albany County granted respondent's motion to dismiss petitioner's CPLR article 78 petition for lack of personal jurisdiction over respondent; App. Div. affirmed.

SALGY, MATTER OF v HALSTED COMMUNICATIONS, et al.:

3RD Dept. App. Div. order of 2/10/11; affirmance; Rule 500.11 review pending; 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 FOR CLAIMS WITH DATES OF INJURY PRIOR TO MARCH 14, 2007 - WORKERS' COMPENSATION LAW § 27(2); App. Div. affirmed the 12/28/09 decision of the Workers' Compensation Board which, among other things, directed the employer's workers' compensation carrier to make a deposit into the aggregate trust fund pursuant to Workers' Compensation Law § 27(2).

TRIAx CAPITAL ADVISORS, LLC v RUTTER, et al.:

1ST Dept. App. Div. order of 4/14/11; reversal with dissents; Rule 500.11 review pending; CONTRACTS - AMBIGUOUS CONTRACTS - AMBIGUITY OF FINANCIAL AND RESTRUCTURING ADVISORY SERVICES CONTRACT CONTAINING PROVISION ENTITLING PLAINTIFF TO FEE IF DEFENDANTS CLOSED "WITH ANY PARTY WHO [PLAINTIFF] HAS INTRODUCED AS SET FORTH ON EXHIBIT A (AS AMENDED) DURING THE TERM OF THIS AGREEMENT" - CHALLENGE TO APPELLATE DIVISION ORDER HOLDING THAT AGREEMENT WAS NOT AMBIGUOUS; Supreme Court, New York County, in an action for breach of contract, denied defendants' motion to dismiss the complaint based upon documentary evidence; App. Div. reversed, granted defendants' motion to dismiss the complaint based upon documentary evidence, and directed the Clerk to enter judgment in favor of defendants dismissing the complaint.