

COURT OF APPEALS NEW FILINGS

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

October 28 through November 3, 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.

BENTORIA HOLDINGS, INC. v TRAVELERS INDEMNITY COMPANY, et al.:

2ND Dept. App. Div. order of 5/24/11; affirmance; leave to appeal granted by App. Div., 10/20/11;

INSURANCE - EXCLUSIONS - EARTH MOVEMENT EXCLUSION - POLICY PROVISION EXCLUDING COVERAGE FOR LOSS OR DAMAGE CAUSED BY EARTH MOVEMENTS SUCH AS EARTHQUAKES, LANDSLIDES, AND MINE SUBSIDENCE, AND BY "EARTH SINKING ... RISING OR SHIFTING," "WHETHER NATURALLY OCCURRING OR DUE TO MAN MADE OR OTHER ARTIFICIAL CAUSES" - WHETHER EARTH MOVEMENT EXCLUSION CLEARLY AND UNAMBIGUOUSLY APPLIES TO DAMAGE RESULTING FROM EXCAVATION ON AN ADJACENT LOT - SUMMARY JUDGMENT; ACTIONS - CONSOLIDATION AND SEVERANCE - DENIAL OF MOTION TO SEVER ACTION INSOFAR AS ASSERTED AGAINST ONE OF SEVERAL DEFENDANTS;

Supreme Court, Kings County denied that branch of defendant Travelers Indemnity Company's motion that sought summary judgment dismissing the complaint insofar as asserted against it and, in effect, denied an alternative branch of that defendant's motion which was to sever the action insofar as asserted against it; App. Div. affirmed.

COUNTY OF ERIE, MATTER OF v CIVIL SERVICE EMPLOYEES ASSOCIATION, LOCAL 815:

4TH Dept. App. Div. order of 3/25/11; affirmance; leave to appeal granted by Court of Appeals, 10/20/11;
ARBITRATION - STAY OF ARBITRATION - CPLR ARTICLE 78 PROCEEDING TO STAY ARBITRATION OF A GRIEVANCE RELATED TO OVERTIME FILED BY THE UNION ON BEHALF OF ELECTION CLERKS AT THE ERIE COUNTY BOARD OF ELECTIONS - WHETHER ELECTION LAW § 3-300 PREVENTS A COLLECTIVE BARGAINING AGREEMENT BETWEEN THE COUNTY AND THE UNION FROM APPLYING TO BOARD OF ELECTIONS EMPLOYEES;
Supreme Court, Erie County, among other things, granted the petition for a permanent stay of arbitration; App. Div. affirmed.

KOSOWSKI, MATTER OF, et al. v DONOVAN, et al.:

2ND Dept. App. Div. order of 5/17/11; affirmance; leave to appeal granted by Court of Appeals, 10/25/11;
ELECTIONS - POLITICAL PARTIES - SPECIAL PROCEEDING PURSUANT TO ELECTION LAW ARTICLE 16 SEEKING DECLARATION THAT THE COUNTY COMMITTEE OF THE NASSAU CONSERVATIVE PARTY WAS ILLEGALLY CONSTITUTED AND SEEKING TO ANNUL ACTIONS UNDERTAKEN BY THAT COMMITTEE; TIMELY COMMENCEMENT OF PROCEEDING UNDER ELECTION LAW § 16-102 - NUMBER OF COMMITTEE MEMBERS REQUIRED BY ELECTION LAW § 2-104;
Supreme Court, Nassau County denied the petition to, among other things, invalidate the election of officers by the County Committee of the Conservative Party of Nassau County, and dismissed the proceeding; App. Div. affirmed.

ODDO ASSET MANAGEMENT v BARCLAYS BANK PLC, et al.:

1ST Dept. App. Div. order of 5/31/11; affirmance; leave to appeal granted by Court of Appeals, 10/18/11;
PLEADING - SUFFICIENCY OF PLEADING - BREACH OF FIDUCIARY DUTY - TORTIOUS INTERFERENCE WITH CONTRACT - WHETHER MANAGERS OF TWO INVESTMENT FUNDS WITH NO CONTRACTUAL RELATIONSHIP WITH PLAINTIFF ASSET MANAGEMENT COMPANY OWED PLAINTIFF A FIDUCIARY DUTY - WHETHER PLAINTIFF SUFFICIENTLY PLEADED ITS CLAIM OF TORTIOUS INTERFERENCE WITH ITS CONTRACT WITH THE INVESTMENT FUNDS;
Supreme Court, New York County dismissed the complaint; App. Div. affirmed.

STATE OF NEW YORK, MATTER OF v SHANNON S.:

4TH Dept. App. Div. order of 6/10/11; affirmance; leave to appeal granted by Court of Appeals, 10/20/11;

CRIMES - SEX OFFENDERS - CIVIL COMMITMENT OR SUPERVISION - SUFFICIENCY OF THE EVIDENCE ESTABLISHING THAT RESPONDENT HAS A MENTAL ABNORMALITY WITHIN THE MEANING OF MENTAL HYGIENE LAW § 10.03(i) - "PARAPHILIA NOT OTHERWISE SPECIFIED" - NECESSITY THAT SPECIFIC MENTAL ABNORMALITY BE LISTED IN THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (DSM); APPLICABLE STANDARD OF PROOF; NECESSITY FOR EXPLICIT FACTUAL FINDING THAT A LESS RESTRICTIVE ALTERNATIVE IS INAPPROPRIATE BEFORE COURT MAY ISSUE A CONFINEMENT ORDER; WHETHER THE APPELLATE DIVISION ERRED IN DETERMINING THAT ORDER ISSUED FOLLOWING PROBABLE CAUSE HEARING IS NOT APPEALABLE - CONTENTION THAT CONFINEMENT FOLLOWING PROBABLE CAUSE HEARING IS APPROPRIATE ONLY WHERE THERE HAS BEEN A FINDING OF DANGEROUSNESS; WHETHER TRIAL COURT IMPROPERLY REOPENED THE PROOF;

Supreme Court, Chatauqua County, among other things, committed respondent to a secure treatment facility; App. Div. affirmed.