

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
November 28 through December 4, 2008

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.

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.

BRYANT (MAURICE), PEOPLE ex rel.:

2ND Dept. App. Div. orders of 10/1/08 and 10/21/08; denial of writ of habeas corpus (10/1/08 order) and amendment of order denying a writ of habeas corpus; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

HABEAS CORPUS - PROCEEDING AGAINST BODY OR OFFICER - APPELLATE DIVISION DENIAL OF APPLICATION FOR WRIT OF HABEAS CORPUS; PRISONS AND PRISONERS;

App. Div. denied petitioner's application for a writ of habeas corpus and dismissed the petition; thereafter, the same court amended its order by indicating that no papers were filed in opposition to petitioner's application.

CENTRAL MUTUAL INSURANCE COMPANY, MATTER OF v BEMISS:

3RD Dept. App. Div. order of 8/14/08; affirmance; leave to appeal granted by Court of Appeals, 11/25/08;

INSURANCE - AUTOMOBILE INSURANCE - SUPPLEMENTARY

UNINSURED/UNDERINSURED MOTORIST ("SUM") ENDORSEMENT - WHETHER THE STANDARD SUM ENDORSEMENT REQUIRES THE INSURED IN A MULTIPLE TORTFEASORS SITUATION, AFTER SETTLING WITH ONE TORTFEASOR FOR THAT PARTY'S POLICY LIMIT AND SEEKING TO SETTLE WITH A SECOND TORTFEASOR FOR LESS THAN THAT PARTY'S POLICY LIMIT, TO OBTAIN THE INSURER'S WRITTEN CONSENT TO SETTLE OR TO PRESERVE THE INSURER'S SUBROGATION RIGHTS IN THE SETTLEMENT WITH THE SECOND TORTFEASOR; Supreme Court, Rensselaer County granted petitioner's CPLR 7503 application to permanently stay arbitration between the parties; App. Div. affirmed.

REYNOSO, MATTER OF v FISCHER:

3RD Dept. App. Div. order of 10/30/08; confirmation of administrative determination and dismissal of CPLR article 78 petition; sua sponte examination whether there is any jurisdictional basis for an appeal as of right and whether a notice of appeal was properly filed in the place required by CPLR 5515(1);

PRISONS AND PRISONERS - DISCIPLINE OF INMATES - WHETHER SUBSTANTIAL EVIDENCE SUPPORTS THE COMMISSIONER'S DETERMINATION OF GUILT WITH RESPECT TO THE CHARGES OF POSSESSION OF UNAUTHORIZED MEDICATION, HARASSMENT AND MAKING THREATS; CLAIMED DUE PROCESS VIOLATION;

App. Div. confirmed determination of respondent Commissioner of Correctional Services finding petitioner guilty of violating certain prison disciplinary rules and dismissed the CPLR article 78 petition.

RIVERA, MATTER OF v LE CLAIRE:

3RD Dept. App. Div. order of 8/7/08; confirmation of administrative determination and dismissal of CPLR article 78 petition; sua sponte examination whether any jurisdictional basis exists to support an appeal as of right;

PRISONS AND PRISONERS - DISCIPLINE OF INMATES - CHALLENGE TO DETERMINATION FINDING PETITIONER GUILTY OF VIOLATING A PRISON DISCIPLINARY RULE PROHIBITING SMUGGLING;

App. Div. confirmed respondent's determination finding petitioner guilty of violating a prison disciplinary rule and dismissed the CPLR article 78 petition.