

COURT OF APPEALS NEW FILINGS DIGEST

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
January 23 through January 29, 2009

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.

LAVOUNTAE A., MATTER OF:

4TH Dept. App. Div. order of 12/31/08; affirmance; Rule 500.11 review pending;
PARENT AND CHILD - ABUSED OR NEGLECTED CHILD - PRIMA FACIE CASE OF NEGLECT;
Family Court, Monroe County, among other things, adjudged that respondent neglected her children and placed the children in the care and custody of petitioner; App. Div. affirmed.

ADAMS v GENIE INDUSTRIES, INC.:

1ST Dept. App. Div. order of 7/8/08; affirmance; sua sponte examination whether the App. Div. has the power to grant leave to appeal on a certified question from an order affirming a Supreme Court order conditionally setting aside a verdict and directing a new trial on damages for past and future pain and suffering unless defendant stipulates to increase those awards by a specific amount;
PRODUCTS LIABILITY - DEFECTIVELY DESIGNED PRODUCT - CONTINUING DUTY OF PRODUCT MANUFACTURER TO REMEDY OR PROVIDE WARNING OF DANGEROUS DEFECTS BROUGHT TO ITS ATTENTION AFTER THE SALE OF SUCH PRODUCT - SAFER ALTERNATIVE DESIGN;

Supreme Court, New York County denied defendant's motion to set aside the jury verdict or for judgment in its favor and granted plaintiff's cross motion by conditionally setting aside the verdict and directing a new trial on damages for past and future pain and suffering unless defendant stipulated to increase those awards from \$100,000 and \$400,000 to \$500,000 and \$750,000, respectively; App. Div. affirmed.

EXECUTIVE RISK INDEMNITY, INC. v PEPPER HAMILTON LLP, et al.:

1ST Dept. App. Div. order of 9/23/08; reversal; leave to appeal granted by App. Div., 1/8/09;

INSURANCE - EXCESS COVERAGE - PROFESSIONAL LIABILITY POLICIES - WHETHER THREE EXCESS INSURANCE CARRIERS HAVE AN OBLIGATION TO DEFEND AND INDEMNIFY A LAW FIRM AND ONE OF ITS MEMBERS - COVERAGE EXCLUSIONS FOR "PRIOR KNOWLEDGE" OF MISCONDUCT ON THE PART OF THE LAW FIRM'S CLIENT - RECISSION OF POLICIES - APPLICATION OF CONTINUOUS COVERAGE PROVISION; SUMMARY JUDGMENT;

Supreme Court, New York County, among other things, granted the motion and cross motion of plaintiff Executive Risk Indemnity, Inc. and third-party defendants Continental Casualty Co. and Twin City Fire Insurance Co., and declared that they are not obligated to defend and indemnify defendants Pepper Hamilton LLP and W. Roderick Gagne under the subject excess professional liability insurance policies; App. Div. reversed and denied the motion and cross motion for summary judgment.

FRIENDLY CAR WASH MAIN STREET, INC., et al., MATTER OF v COMMISSIONER OF LABOR:

3RD Dept. App. Div. order of 1/5/09; denial of motion; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

CHALLENGE TO APPELLATE DIVISION ORDER DENYING MOTION TO DECLARE LABOR LAW § 625 UNCONSTITUTIONAL;

App. Div. denied appellant's motion to declare Labor Law § 625 unconstitutional and granted the cross motion to dismiss the appeal unless appellants shall file the required bond within 30 days of the date of the decision, in which event the cross motion is denied.

GRIFFIN, MATTER OF v WALSH:

4TH Dept. App. Div. order of 12/4/08; denial of motion; sua sponte examination whether any jurisdictional basis exists to support an appeal as of right;

CHALLENGE TO APPELLATE DIVISION ORDER DENYING FOR LACK OF MERIT PETITIONER'S MOTION FOR PERMISSION TO COMMENCE AN ORIGINAL CPLR ARTICLE 78 PROCEEDING IN THE APPELLATE DIVISION AS A POOR PERSON; App. Div. denied for lack of merit appellant's motion for permission to commence an original CPLR article 78 proceeding in the App. Div. as a poor person.

RIVERSIDE SOUTH PLANNING CORP. v CRP/EXTELL
RIVERSIDE, LP, et al.:

1ST Dept. App. Div. order of 12/30/08; reversal;
CONTRACTS - AMBIGUOUS CONTRACTS - SCOPE OF "SUNSET PROVISION" IN
1993 AGREEMENT;
Supreme Court, New York County denied defendants' motion to
dismiss the complaint; App. Div. reversed, granted defendants'
motion to dismiss the complaint and directed the Clerk to enter
judgment in favor of defendants dismissing the complaint.

SZYMASZEK, PEOPLE ex rel. v STATE OF NEW YORK:

3RD Dept. App. Div. order of 1/22/09; denial of writ of habeas
corpus; sua sponte examination whether a substantial
constitutional question is directly involved to support an appeal
as of right;
HABEAS CORPUS - CHALLENGE TO APPELLATE DIVISION ORDER DENYING
APPLICATION FOR A WRIT OF HABEAS CORPUS;
App. Div. denied application for a writ of habeas corpus.

WALTON v NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES:

3RD Dept. App. Div. order of 12/18/08; affirmance; sua sponte
examination whether a substantial constitutional question is
directly involved to support an appeal as of right;
CONSTITUTIONAL LAW - STATE CONSTITUTIONAL LAW - CONSTITUTIONALITY
OF SINGLE-PROVIDER COLLECT CALL SYSTEM FOR PRISON INMATES;
Supreme Court, Albany County granted a motion by respondent
Department of Correctional Services to dismiss the
petition/complaint in a combined proceeding pursuant to CPLR
article 78 and action for a declaratory judgment; App. Div.
affirmed.

