

COURT OF APPEALS NEW FILINGS

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

**October 22 through October 28, 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.**

HICKEY, MATTER OF v NEW YORK CITY DEPARTMENT OF EDUCATION:

1<sup>ST</sup> Dept. App. Div. order of 6/3/10; reversal; leave to appeal granted by App. Div., 10/5/10;

SCHOOLS - TEACHERS - LETTER IN PERSONNEL FILE - HEARING PURSUANT TO EDUCATION LAW § 3020-a - CHALLENGE TO APPELLATE DIVISION ORDER HOLDING THAT, UNDER CURRENT COLLECTIVE BARGAINING AGREEMENT, TEACHER HAS NO RIGHT TO A HEARING WHERE LETTER IN PERSONNEL FILE DOES NOT RESULT IN A DISCIPLINARY CHARGE;

Supreme Court, New York County granted a CPLR article 78 proceeding to the extent of directing respondent to expunge a June 3, 2008 letter from petitioner's personnel file; App. Div. reversed, denied the CPLR article 78 petition and dismissed the proceeding.

JOHNSON CITY PROFESSIONAL FIREFIGHTERS LOCAL 921 et al. and VILLAGE OF JOHNSON CITY, MATTER OF (PROCEEDING NO. 1); VILLAGE OF JOHNSON CITY and JOHNSON CITY FIREFIGHTERS ASSOCIATION LOCAL 921 IAFF, MATTER OF (PROCEEDING NO. 2):

3<sup>RD</sup> Dept. App. Div. order of 4/8/10; affirmance; leave to appeal granted by Court of Appeals, 10/14/10;

ARBITRATION - MATTERS ARBITRABLE - ARBITRABILITY OF VILLAGE'S ALLEGED VIOLATION OF COLLECTIVE BARGAINING AGREEMENT WITH FIREFIGHTERS UNION PROVIDING THAT THE "VILLAGE SHALL NOT LAY-OFF ANY MEMBER OF THE BARGAINING UNIT DURING THE TERM OF THE CONTRACT" - ALLEGED APPLICATION OF LEGAL STANDARD THAT DOES NOT COMPORT WITH THE STANDARD ANNOUNCED IN YONKERS SCHOOL CROSSING GUARD UNION OF WESTCHESTER CO., CSEA v CITY OF YONKERS (39 NY2d 964 [1976]);

Supreme Court, Broome County in Proceeding No. 1, among other things, granted petitioner's application pursuant to CPLR 7502 for a preliminary injunction; in Proceeding No. 2, among other things, denied petitioner's application pursuant to CPLR 7503 to stay arbitration between the parties; App. Div. affirmed.

TKESHELASHVILI et al. v STATE OF NEW YORK:

3<sup>RD</sup> Dept. App. Div. order of 3/18/10; affirmance; leave to appeal granted by Court of Appeals, 10/19/10;

NEGLIGENCE - PROXIMATE CAUSE - RECKLESS CONDUCT OF PLAINTIFF - DIVING INTO SHALLOW WATER - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT PLAINTIFF'S CONDUCT IN DIVING OFF THE COLGATE LAKE DAM INTO COLGATE LAKE WAS SO RECKLESS AS TO CONSTITUTE THE SOLE PROXIMATE CAUSE OF HIS INJURY AS A MATTER OF LAW BECAUSE HE "KNEW OR SHOULD HAVE KNOWN [THAT THE] WATER WAS TOO SHALLOW FOR DIVING";

Court of Claims, among other things, granted defendant's motion for summary judgment dismissing the claim; App. Div. affirmed.

TOLEDO &c. v IGLESIA NI CRISTO:

1<sup>ST</sup> Dept. App. Div. order of 7/6/10; affirmance; leave to appeal granted by Court of Appeals, 10/26/10;

INTEREST - PREVERDICT INTEREST - PROPER METHODOLOGY FOR AWARDED PREVERDICT INTEREST ON FUTURE WRONGFUL DEATH DAMAGES - CPLR ARTICLE 50-B;

Supreme Court, Bronx County, among other things, awarded interest on future damages, calculated on the value of those damages discounted to the date of death and going forward from that date to the date of judgment; App. Div. affirmed.

VEGA v RESTANI CONSTRUCTION CORP., et al.:

1<sup>ST</sup> Dept. App. Div. order of 5/27/10; affirmance; leave to appeal granted by App. Div., 10/5/10; Rule 50.11 review pending;

NEGLIGENCE - PERSONAL INJURY ACTION OF MAINTENANCE WORKER WHO ATTEMPTED TO MOVE A GARBAGE CAN ALLEGEDLY CONTAINING IMPROPERLY DISCARDED CONCRETE BLOCKS; SUMMARY JUDGMENT; CONDITIONS INHERENT IN WORK; RES IPSA LOQUITUR;

Supreme Court, Bronx County denied the motion of defendant General Fence Corporation for summary judgment dismissing the

complaint and all cross claims as against it; App. Div. affirmed.