

COURT OF APPEALS NEW FILINGS

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

January 14 through January 20, 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 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.

BRONSON v HANSEL:

4TH Dept. App. Div. order of 12/30/10; affirmance with dissents;
Rule 500.11 review pending;

RELEASE - SCOPE OF RELEASE - MISTAKE - CHALLENGE TO APPELLATE
DIVISION ORDER UPHOLDING DISMISSAL OF A COMPLAINT SEEKING DAMAGES
FOR PERSONAL INJURIES ARISING OUT OF A CAR ACCIDENT AS BARRED BY
PLAINTIFF'S RELEASE ALTHOUGH PLAINTIFF CLAIMED SHE BELIEVED THE
RELEASE PERTAINED ONLY TO PROPERTY DAMAGES AND THE EXTENT OF HER
INJURIES WERE UNKNOWN WHEN SHE SIGNED IT;

Supreme Court, Orleans County granted defendant's motion for
summary judgment dismissing plaintiff's complaint and all cross
claims against defendant; App. Div. affirmed.

DIGIULIO &c. v GRAN, INC., &c., et al.:

1ST Dept. App. Div. order of 6/3/10; affirmance; leave to appeal granted by Court of Appeals, 1/11/11; Rule 500.11 review pending; NEGLIGENCE - DUTY - WHETHER DEFENDANTS WERE UNDER A COMMON-LAW OR STATUTORY DUTY TO USE AN AUTOMATED EXTERNAL DEFIBRILLATOR (AED) ON A PATRON WHO HAD A SUDDEN HEART ATTACK AT THEIR HEALTH CLUB - ASSUMPTION OF RISK BY HEALTH CLUB PATRON - APPLICABILITY OF PUBLIC HEALTH LAW § 3000-a(1) - DEFENDANTS' ALLEGED BREACH OF GENERAL BUSINESS LAW § 627-a IN FAILING TO USE AN AED ON PLAINTIFF'S DECEDENT;

Supreme Court, New York County denied plaintiff's motion for partial summary judgment on the issue of liability and granted defendants' cross motion for summary judgment dismissing the complaint; App. Div. affirmed.

SUPPIAH v KALISH:

1ST Dept. App. Div. order of 9/7/10; reversal; leave to appeal granted by App. Div., 1/6/11; Rule 500.11 review pending; ATTORNEY AND CLIENT - MALPRACTICE - ATTORNEY'S ALLEGED MALPRACTICE FOR FAILING TO SEEK EXTENSION RATHER THAN RENEWAL OF WORK VISA - ATTORNEY'S ENTITLEMENT TO SUMMARY JUDGMENT - WHETHER ATTORNEY SATISFIED HIS PRIMA FACIE SHOWING OF ENTITLEMENT TO JUDGMENT AS A MATTER OF LAW;

Supreme Court, New York County granted defendant's motion for summary judgment dismissing the complaint in this legal malpractice action; App. Div. reversed, denied the motion and reinstated the complaint.