

COURT OF APPEALS NEW FILINGS

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

May 6 through May 12, 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.

BISSELL, MATTER OF v TOWN OF AMHERST, et al.:

4TH Dept. App. Div. order of 12/30/10; modification; leave to appeal granted by Court of Appeals, 5/5/11;

WORKERS' COMPENSATION - THIRD-PARTY ACTION - APPORTIONMENT OF LITIGATION COSTS - FUTURE MEDICAL PAYMENTS - WHETHER THE APPELLATE DIVISION ERRED IN DISALLOWING PETITIONER FROM PRESENTLY RECOVERING FROM THE NEW YORK STATE INSURANCE FUND THOSE LITIGATION COSTS TRACEABLE TO THE FUTURE MEDICAL EXPENSES THAT PETITIONER RECOVERED IN A PERSONAL INJURY ACTION - WORKERS' COMPENSATION LAW §§ 13(a), 29(1) - MATTER OF KELLY v STATE INS. FUND (60 NY2d 131 [1983]);

Supreme Court, Erie County granted petitioner's application to extinguish respondent New York State Insurance Fund's Workers' Compensation Law § 29 lien; App. Div. modified the judgment by denying those parts of the petition seeking to extinguish the lien against proceeds that petitioner obtained in a third-party action and seeking to recover from respondent Insurance Fund its share of litigation costs related to future medical payments, affirmed the judgment as so modified, and remitted to Supreme Court for further proceedings in accordance with the court's memorandum.

DOMBROWSKI v BULSON:

4TH Dept. App. Div. order of 12/30/10; modification; leave to appeal granted by App. Div., 4/29/11;
ATTORNEY AND CLIENT - MALPRACTICE - WRONGFUL CRIMINAL CONVICTION - AVAILABILITY OF NONPECUNIARY DAMAGES FOR PLAINTIFF'S LOSS OF LIBERTY;

Supreme Court, Allegany County granted defendant's motion for summary judgment dismissing a complaint alleging legal malpractice, and denied plaintiff's cross motion for summary judgment; App. Div. modified by denying the motion in part and reinstating the complaint only insofar as it seeks damages for nonpecuniary loss, and affirmed the order as so modified.

HAHN AUTOMOTIVE WAREHOUSE, INC. v AMERICAN ZURICH INSURANCE COMPANY et al.:

4TH Dept. App. Div. order of 2/10/11; modification; leave to appeal granted by App. Div., 4/29/11;
CONTRACTS - BREACH OF CONTRACT - ACTION BY INSURED SEEKING DETERMINATION THAT ANY CLAIMS BY INSURERS FOR PAYMENTS PURSUANT TO SEVERAL INSURANCE CONTRACTS WERE TIME-BARRED - COUNTERCLAIM BY INSURERS SEEKING DETERMINATION THAT INSURERS WERE ENTITLED TO SATISFY ANY PART OF INSURED'S OUTSTANDING DEBT FROM PREVIOUSLY ISSUED LETTER OF CREDIT - CONSTRUCTION OF CONTRACT TERMS; SUMMARY JUDGMENT; STATUTE OF LIMITATIONS;

Monroe County Court, among other things, granted plaintiff's cross motion for partial summary judgment and denied those parts of defendants' motion seeking summary judgment dismissing the second through fourth causes of action against them; App. Div. modified by granting those parts of defendants' motion seeking summary judgment dismissing the second through fourth causes of action, and affirmed the order as so modified.

WOLFE v KELLY:

3/18/11 Administrative Determination, bringing up for review prior nonfinal 1ST Dept. App. Div. order of 12/2/10; sua sponte examination whether a substantial constitutional question was directly involved in the prior nonfinal App. Div. order so as to support an appeal pursuant to CPLR 5601(d);

ADMINISTRATIVE LAW - HEARING - WHETHER APPELLANT WAS DEPRIVED OF A HEARING OFFICER WHO WAS IMPARTIAL OR HAD THE APPEARANCE OF IMPARTIALITY; PROCEEDING AGAINST BODY OR OFFICER - SUBSTANTIAL EVIDENCE;

App. Div. annulled prior determination terminating petitioner's employment as a detective, granted the petition to the extent of dismissing Specification Nos. 1 and 2, and remanded to the administrative agency for a determination of a new penalty on Specification No. 3; thereafter, administrative agency determined that previously-imposed penalty of dismissal from the New York City Police Department was still warranted.