

COURT OF APPEALS NEW FILINGS

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

**September 9 through September 15, 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.**

ABREU, MATTER OF v BEZIO:

3<sup>RD</sup> Dept. App. Div. order of 5/19/11; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;  
PRISONS AND PRISONERS - DISCIPLINE OF INMATES - CHALLENGE TO THREE DETERMINATIONS FINDING PETITIONER GUILTY OF VIOLATING PRISON DISCIPLINARY RULES;  
Supreme Court, Albany County dismissed petitioner's application, in a proceeding pursuant to CPLR article 78, to review three determinations of the Commissioner of Correctional Services finding petitioner guilty of violating certain prison disciplinary rules; App. Div. affirmed.

RILEY (LOUIS), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 6/7/11; modification; leave to appeal granted by Pigott, J., 8/30/11 (two orders);

CRIMES - LARCENY - PROOF OF VALUE - WHETHER THE LABOR COST MAY BE COUNTED TOWARD THE REPLACEMENT COST OF STOLEN COPPER PIPES AND AN INSTALLED PLUMBING SYSTEM; DISPOSAL OF STOLEN PROPERTY (PENAL LAW § 450.10) - WHETHER THE TRIAL COURT PROPERLY DECLINED TO IMPOSE ANY SANCTION ON THE PEOPLE FOR FAILURE TO PROVIDE NOTICE OF THE RETURN OF STOLEN PROPERTY TO THE OWNER;

Supreme Court, New York County, upon a jury verdict, convicted defendant of grand larceny in the second degree, criminal possession of stolen property in the second degree, burglary in the third degree, and six counts of possession of burglar's tools, and sentenced him, as a second felony offender, to an aggregate term of 4 1/2 to 9 years; App. Div. modified to the extent of reducing the convictions of grand larceny in the second degree and criminal possession of stolen property in the second degree to petit larceny and criminal possession of stolen property in the fifth degree, respectively, and imposing a sentence of time served on each of the reduced convictions.

SAVIK, MURRAY & AURORA CONSTRUCTION MANAGEMENT COMPANY, LLC v ITT HARTFORD INSURANCE GROUP, et al.:

1<sup>ST</sup> Dept. App. Div. order of 7/28/11; modification with dissents; Rule 500.11 review pending;

INSURANCE - DUTY TO DEFEND AND INDEMNIFY - UNTIMELY NOTICE OF OCCURRENCE - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING AS A MATTER OF LAW THAT PLAINTIFF FAILED TO PROVIDE CERTAIN DEFENDANT INSURERS TIMELY NOTICE OF THE UNDERLYING OCCURRENCE - PROVISION REQUIRING INSURED TO PROVIDE INSURANCE CARRIER, AS SOON AS PRACTICABLE, NOTICE OF "AN 'OCCURRENCE' OR AN OFFENSE WHICH MAY RESULT IN A CLAIM";

Supreme Court, New York County, upon reargument, effectively adhered to its judgment, entered May 12, 2009, which declared the verified amended complaint dismissed; App. Div. modified to declare that ITT Hartford Insurance Group and QBE Insurance Corp. had no duty to defend plaintiff in the underlying arbitration, and affirmed as so modified.