

COURT OF APPEALS NEW FILINGS

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

November 11 through November 17, 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.

GRESS v BROWN:

4TH Dept. App. Div. order of 3/25/11; affirmance; leave to appeal granted by Court of Appeals, 10/25/11;

LIMITATION OF ACTIONS - WHAT STATUTE GOVERNS - GRAVEMEN OF COMPLAINT - WHETHER ACTION SEEKING A JUDGMENT DECLARING THAT AGENCY LACKED AUTHORITY TO FREEZE PLAINTIFFS' WAGES SHOULD HAVE BEEN BROUGHT AS A CPLR ARTICLE 78 PROCEEDING, SUBJECT TO A FOUR-MONTH STATUTE OF LIMITATIONS;

Supreme Court, Erie County, among other things, granted the motion of plaintiffs for partial summary judgment and declared that defendant Buffalo Fiscal Stability Authority does not have the authority to freeze the wages of plaintiffs, denied and dismissed defendants' affirmative defenses, and denied the cross motions of defendants for summary judgment; App. Div. affirmed.

MANKO v AETNA HEALTH, INC., et al.:

2ND App. Div. order of 7/25/11; partial grant and partial denial of motions; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

APPEAL - CHALLENGE TO APPELLATE DIVISION ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF - APPELLANT'S MOTIONS ON APPEALS FROM TWO SUPREME COURT ORDERS;

App. Div., among other things, granted that branch of plaintiff-appellant's motion which was for leave to serve and file a supplemental appendix, denied as unnecessary that branch of plaintiff-appellant's motion which was, in effect, to adjourn the motion to waive the requirements of 22 NYCRR 670.10.2(f) regarding certification of plaintiff-appellant's appendix, denied plaintiff-appellant's motion to waive the requirements of 22 NYCRR 670.10.2(f) regarding certification of her appendix with leave to renew after the service and filing of a supplemental appendix, and granted defendants-respondents' motion for an enlargement of time to file their respective briefs until a certain date.

OAKES et al. v PATEL et al.:

4TH App. Div. order of 8/19/11; affirmance; leave to appeal granted by App. Div., 9/30/11; Rule 500.11 review pending;

APPEAL - PRESERVATION OF ISSUE FOR REVIEW - DAMAGES - WHETHER DEFENDANTS PROPERLY PRESERVED CHALLENGE TO PROPOSED ADDITUR TO DAMAGES; PLEADINGS - DENIAL OF LEAVE TO AMEND ANSWER TO ASSERT AFFIRMATIVE DEFENSES - RELEASE - COVENANT NOT TO SUE - WHETHER RELEASE WAS RENDERED NULL AND VOID; EVIDENCE - PRECLUSION OF EVIDENCE OF INJURED PLAINTIFF'S PREEXISTING INJURIES AT DAMAGES TRIAL;

Supreme Court, Erie County awarded plaintiffs money damages upon a jury verdict in a medical malpractice action (verdict as to liability and certain damages after first trial; verdict as to damages for past and future pain and suffering, past and future loss of services and future supportive living expenses after second trial); App. Div. affirmed.