

COURT OF APPEALS NEW FILINGS

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

**March 25 through March 31, 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.**

COLEMAN v DAINES &c, et al.:

1<sup>ST</sup> Dept. App. Div. order of 12/16/10; reversal with dissents; leave to appeal granted by App. Div., 3/3/11;  
SOCIAL SERVICES - PROCEEDING AGAINST BODY OR OFFICER - PETITION SEEKING RELIEF AS A RESULT OF RESPONDENTS' HANDLING OF PETITIONER'S APPLICATION FOR MEDICAID HOME CARE SERVICES; SOCIAL SERVICES LAW § 133; MOOTNESS - EXCEPTION TO MOOTNESS DOCTRINE; ADMINISTRATIVE LAW - FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES; Supreme Court, New York County denied the petition and dismissed the hybrid CPLR article 78 proceeding and 42 USC § 1983 action seeking class certification, declaratory and injunctive relief and nominal damages resulting from respondents' handling of petitioner's application for Medicaid home care services; App. Div. reversed and remitted the matter to Supreme Court for further proceedings.

PROGRESSIVE NORTHEASTERN INSURANCE COMPANY v STATE FARM INSURANCE COMPANIES, et al.:

4<sup>TH</sup> Dept. App. Div. order of 2/10/11; modification; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

INSURANCE - DUTY TO DEFEND AND INDEMNIFY - CONSTRUCTION OF POLICY - OBLIGATION TO DEFEND AND INDEMNIFY AUTO REPAIR SHOP IN UNDERLYING PERSONAL INJURY ACTION ARISING FROM MOTOR VEHICLE ACCIDENT INVOLVING CUSTOMER'S VEHICLE WHICH WAS BEING DRIVEN BY REPAIR SHOP EMPLOYEE AT TIME OF ACCIDENT - CHALLENGE TO APPELLATE DIVISION ORDER HOLDING, AMONG OTHER THINGS, THAT COMMERCIAL LIABILITY POLICY EXCLUDED COVERAGE FOR INJURIES AND PROPERTY DAMAGE ARISING FROM THE USE OF ANY "AUTO" OWNED, OPERATED OR RENTED OR LOANED TO THE INSURED, AND THAT EXCEPTION TO SUCH EXCLUSION WITH RESPECT TO ANY CUSTOMER'S AUTO WHILE ON OR NEXT TO PREMISES THAT ARE OWNED, RENTED OR CONTROLLED BY THE INSURED AND THAT ARE BEING USED FOR ANY GARAGE OPERATIONS, WAS INAPPLICABLE BECAUSE THE UNDERLYING ACCIDENT OCCURRED IN ANOTHER CITY, 60 MILES AWAY;

Supreme Court, Onondaga County judgment (1) granted in part and denied in part the motion for summary judgment by defendant Gabe's Auto (4<sup>th</sup> decretal paragraph), and (2) declared that defendant Charter Oak Insurance Company was obligated to (a) defend or indemnify Gabe's Auto in an underlying personal injury action bearing index number 2007-3108 (7<sup>th</sup> decretal paragraph), and (b) reimburse Gabe's Auto for reasonable attorney's fees and costs incurred by Gabe's Auto in hiring substitute counsel in that underlying personal injury action (10<sup>th</sup> decretal paragraph); App. Div. modified by denying the motion of defendant Gabe's Auto for summary judgment in its entirety, vacating in part the 4<sup>th</sup> decretal paragraph and vacating in their entirety the 7<sup>th</sup> and 10<sup>th</sup> decretal paragraphs, and granting judgment declaring that defendant Charter Oak Fire Insurance Company is not obligated to defend or indemnify defendant Gabe's Auto in the underlying personal injury action and is not obligated to reimburse defendant Gabe's Auto in hiring substitute counsel in the underlying personal injury action, and affirmed the judgment as so modified.