

COURT OF APPEALS NEW FILINGS

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

**September 23 through September 29, 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.**

MANKO v LENOX HILL HOSPITAL:

2<sup>ND</sup> Dept. App. Div. order of 6/30/11; sua sponte examination whether the June 30, 2011 App. Div. 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;

APPEALS - CHALLENGE TO APPELLATE DIVISION ORDER DENYING PLAINTIFF'S MOTION TO RECALL AND VACATE A PRIOR APPELLATE DIVISION ORDER;

App. Div. denied plaintiff's motion to recall and vacate a May 10, 2011 App. Div. order, which denied her prior motion to vacate so much of a February 8, 2011 App. Div. order as dismissed appeals from four Supreme Court, Kings County orders.

MAYS (CALVIN), PEOPLE v:

4<sup>TH</sup> Dept. App. Div. order of 6/17/11; affirmance; leave to appeal granted by Fahey, J., 9/7/11; Rule 500.11 review pending; CRIMES - APPEAL - PRESERVATION OF ISSUE FOR REVIEW - INTERACTION BETWEEN PROSECUTOR AND JURORS DURING DELIBERATIONS WHILE VIDEO RECORDING REPLAYED - ALLEGED MODE OF PROCEEDINGS ERROR; Supreme Court, Monroe County convicted defendant, upon a jury verdict, of two counts of robbery in the first degree and two counts of robbery in the second degree; App. Div. affirmed.

NEW YORK CITY TRANSIT AUTHORITY, MATTER OF v NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD et al.:

2<sup>ND</sup> Dept. App. Div. judgment of 11/30/10; confirmation of determination; leave to appeal granted by Court of Appeals, 9/22/11; CIVIL SERVICE - IMPROPER LABOR PRACTICES - CIVIL SERVICE LAW § 209-a(1)(d) - TRANSIT AUTHORITY'S ADOPTION OF STRICTER STANDARDS GOVERNING OFF-DUTY SECONDARY EMPLOYMENT OF TRAIN OPERATORS, CONDUCTORS, AND TOWER OPERATORS WITHOUT COLLECTIVELY BARGAINING WITH EMPLOYEES' UNION - WHETHER TRANSIT AUTHORITY ESTABLISHED RIGHT TO UNILATERALLY ADOPT NEW STANDARDS TO PROMOTE PUBLIC SAFETY; App. Div. confirmed a determination of the New York Public Employment Relations Board (PERB), which reversed a decision of an administrative law judge that dismissed, after a hearing, the improper labor practice charge of the Transport Workers Union of Greater New York, Local 100, alleging that petitioner violated Civil Service Law § 209-a(1)(d), and directed petitioner to make whole certain employees; denied the article 78 petition; dismissed the proceeding on the merits and granted PERB's cross petition to enforce its remedial order.

N.J.R. ASSOCIATES, &c. v TAUSEND, &c.:

1<sup>ST</sup> Dept. App. Div. order of 4/26/11; modification; leave to appeal granted by Court of Appeals, 9/15/11; ARBITRATION - STAY - WHETHER A PETITIONER WHO INITIATES AN ARBITRATION AND SUCCESSFULLY MOVES TO DISMISS A RESPONDENT'S PETITION TO STAY THE ARBITRATION WAIVES ITS RIGHT TO APPLY TO STAY THE ARBITRATION OF RESPONDENT'S COUNTERCLAIMS ON STATUTE OF LIMITATIONS GROUNDS - CPLR 7503(b); Supreme Court, New York County granted a CPLR article 75 petition to stay arbitration of respondent's fraud-based counterclaims, denied respondent's motion to dismiss the petition, and denied respondent's request for sanctions; App. Div. modified by denying the petition and granting the motion to dismiss the petition, and otherwise affirmed.

PLUNKETT (DAVID), PEOPLE v:

4<sup>TH</sup> Dept. App. Div. order of 10/1/10; affirmance; leave to appeal granted by Lippman, Ch.J., 3/29/11;

CRIMES - DANGEROUS INSTRUMENT - WHETHER SALIVA OF PERSON INFECTED WITH HIV CAN BE A DANGEROUS INSTRUMENT WITHIN THE MEANING OF PENAL LAW § 10.00(13); CLAIM THAT TRIAL COURT IMPROPERLY CURTAILED DEFENSE COUNSEL'S QUESTIONING OF PROSPECTIVE JURORS CONCERNING THEIR VIEWS ON MENTAL ILLNESS; GRAND JURY - PROSECUTOR'S ALLEGED FAILURE TO INTRODUCE EXCULPATORY EVIDENCE; Herkimer County Court convicted defendant, upon his guilty plea, of aggravated assault on a police officer or a peace officer and two counts of assault in the second degree; App. Div. affirmed.