

COURT OF APPEALS NEW FILINGS

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

**May 25, 2012 through May 31, 2012**

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.**

ABRAMS v BERELSON:

2<sup>ND</sup> Dept. App. Div. order of 4/10/12; reversal with dissents; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether the two-justice dissent is on a question of law;  
MOTIONS AND ORDERS - REARGUMENT OR RENEWAL - CHALLENGE TO APPELLATE DIVISION ORDER THAT REVERSED A SUPREME COURT ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO RENEW THEIR OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT DISMISSING THE COMPLAINT, DENIED PLAINTIFFS' MOTION FOR LEAVE TO RENEW, AND REINSTATED A PRIOR SUPREME COURT ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT DISMISSING THE COMPLAINT;

Supreme Court, Richmond County (1) granted plaintiffs' motion pursuant to CPLR 2221 for leave to renew their opposition to defendant's motion for summary judgment dismissing the complaint, and (2) upon renewal, vacated the August 30, 2000 order which had granted the defendant's motion for summary judgment dismissing the complaint, and denied defendant's motion for summary judgment; App. Div. reversed on the facts and in the exercise of discretion, denied plaintiffs' motion for leave to renew pursuant to CPLR 2221, and reinstated the August 30, 2000 Supreme Court order.

BRINSON (CHRISTOPHER), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order 12/6/11; affirmance; leave to appeal granted by Graffeo, J., 4/4/12; Rule 500.11 review pending; CRIMES - SENTENCE - RESENTENCE - POSTRELEASE SUPERVISION (PRS) - WHETHER THE ADDITION OF A TERM OF PRS TO DEFENDANT'S SENTENCE AFTER HE FINISHED SERVING THE DETERMINATE SENTENCE FOR WHICH PRS WAS BEING IMPOSED, BUT BEFORE HE FINISHED SERVING ALL OF HIS CONSECUTIVE INDETERMINATE SENTENCES, VIOLATED THE PROHIBITION AGAINST DOUBLE JEOPARDY AND DEFENDANT'S DUE PROCESS RIGHTS; Supreme Court, Queens County resentenced defendant on his conviction of robbery in the second degree, upon a jury verdict, to impose a period of postrelease supervision in addition to the determinate term of imprisonment previously imposed on July 14, 2000; App. Div. affirmed.

CIVIDANES v CITY OF NEW YORK et al.:

1<sup>ST</sup> Dept. App. Div. order of 3/22/12; affirmance; leave to appeal granted by App. Div., 5/15/12; Rule 500.11 review pending; INSURANCE - NO-FAULT AUTOMOBILE INSURANCE - APPLICABILITY OF NO-FAULT LAW - WHETHER PLAINTIFF'S INJURY AROSE OUT OF AN AUTOMOBILE ACCIDENT WITHIN THE MEANING OF THE NO-FAULT LAW WHERE SHE TRIPPED AND FELL IN A HOLE IN THE STREET AS SHE EXITED A BUS; Supreme Court, Bronx County denied the cross motion by defendants Manhattan and Bronx Surface Transit Operating Authority and New York City Transit Authority for summary judgment dismissing the complaint as against them on the ground that plaintiff failed to establish a serious injury within the meaning of Insurance Law § 5102(d); App. Div. affirmed.

HANDLER, M.D., P.C., MATTER OF v DINAPOLI &c., et al.:

3<sup>RD</sup> Dept. App. Div. order of 10/27/11; modification; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right; STATE - COMPTROLLER - WHETHER STATE COMPTROLLER EXCEEDED HIS CONSTITUTIONALLY DELEGATED AUTHORITY IN CONDUCTING AN AUDIT OF BILLING RECORDS OF A PRIVATE MEDICAL PRACTICE; NEW YORK STATE HEALTH INSURANCE PROGRAM - NON-PARTICIPATING PROVIDER;

Supreme Court, Albany County, among other things, partially granted petitioner's application, in a combined CPLR article 78 proceeding and action for declaratory judgment, to set aside respondent Comptroller's audit of petitioner; App. Div. modified by reversing so much of the order and judgment as partially granted the petition and remitted the matter to Supreme Court for further proceedings.

MILTON (JACOB), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 2/21/12; reversal; leave to appeal granted by Graffeo, J., 5/23/12;

CRIMES - INDICTMENT - WAIVER OF INDICTMENT - GUILTY PLEA TO SUPERIOR COURT INFORMATION THAT LISTED THE VICTIMS AS TWO BANKING INSTITUTIONS "AND OTHERS" ALTHOUGH THE FELONY COMPLAINT HAD NAMED SPECIFIED INDIVIDUALS AS VICTIMS - WHETHER THE APPELLATE DIVISION ERRED IN DETERMINING THAT THE INFORMATION WAS JURISDICTIONALLY DEFECTIVE BECAUSE THE VICTIMS NAMED THEREIN DIFFERED FROM THOSE NAMED IN THE FELONY COMPLAINT;

Supreme Court, Queens County convicted defendant, upon his guilty plea, of grand larceny in the first degree, and imposed sentence; App. Div. reversed, vacated the guilty plea, dismissed the superior court information, and remitted to Supreme Court for further proceedings on the felony complaint.

SOUTH ISLAND ORTHOPAEDIC GROUP, P.C., MATTER OF v  
DINAPOLI &c et al.:

3<sup>RD</sup> Dept. App. Div. order of 10/27/11 modification; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

STATE - COMPTROLLER - WHETHER STATE COMPTROLLER EXCEEDED HIS CONSTITUTIONALLY DELEGATED AUTHORITY IN CONDUCTING AN AUDIT OF BILLING RECORDS OF A PRIVATE MEDICAL PRACTICE; NEW YORK STATE HEALTH INSURANCE PROGRAM - NON-PARTICIPATING PROVIDER;

Supreme Court, Albany County, among other things, partially granted petitioner's application, in a combined CPLR article 78 proceeding and action for declaratory judgment, to set aside respondent Comptroller's audit of petitioner; App. Div. modified by reversing so much of the judgment as partially granted the petition and remitted the matter to Supreme Court for further proceedings.