

COURT OF APPEALS NEW FILINGS

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

December 2 through December 8, 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.

AUQUI &c., et al. v SEVEN THIRTY ONE LIMITED PARTNERSHIP, et al.:
1ST Dept. App. Div. order of 4/5/11; reversal with dissents;
leave to appeal granted by App. Div., 11/10/11; Rule 500.11
review pending;
JUDGMENTS - COLLATERAL ESTOPPEL - PRECLUSIVE EFFECT TO BE GIVEN
TO DETERMINATION BY WORKERS' COMPENSATION LAW JUDGE CONCERNING
TERMINATION DATE OF PLAINTIFF'S DISABILITY - WHETHER APPOINTMENT
OF GUARDIAN FOR PLAINTIFF RAISED TRIABLE ISSUE OF FACT AS TO THE
ONGOING NATURE OF PLAINTIFF'S DISABILITY;
Supreme Court, New York County granted defendants' motion to
preclude plaintiffs from litigating the issue of plaintiff Jose
Verdugo's accident-related disability beyond January 24, 2006;

App. Div. reversed and denied defendants' motion to preclude plaintiffs from litigating the issue of plaintiff Jose Verdugo's accident-related disability beyond January 24, 2006.

BRONX COMMITTEE FOR TOXIC FREE SCHOOLS, MATTER OF, et al. v NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY, et al.:

1ST Dept. App. Div. order of 7/7/11; affirmance; leave to appeal granted by Court of Appeals, 11/21/11;
ENVIRONMENTAL CONSERVATION - ENVIRONMENTAL IMPACT STATEMENT (EIS) - SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT (SEIS) - WHETHER SCHOOL CONSTRUCTION AUTHORITY (SCA) FAILED TO TAKE THE REQUISITE "HARD LOOK" AT LONG-TERM MAINTENANCE AND MONITORING OF MEASURES FOR THE REMEDIATION OF CONTAMINATED SOIL AND GROUNDWATER AT THE MOTT HAVEN SCHOOL CAMPUS SITE BEFORE ISSUING ITS EIS AND IS REQUIRED TO PREPARE A SEIS - EFFECT, IF ANY, OF SITE MANAGEMENT PLAN SCA DEVELOPED UNDER THE BROWNFIELD CLEANUP PROGRAM;
Supreme Court, Bronx County granted a petition to direct respondent School Construction Authority (SCA) to prepare a supplemental environmental impact statement (SEIS) pursuant to the State Environmental Quality Review Act (SEQRA) with respect to long-term maintenance and monitoring of measures for the remediation of contaminated soil and groundwater at the Mott Haven School Campus site; App. Div. affirmed.

GILLIAM (TYRAY), PEOPLE v:

4TH Dept. App. Div. order of 7/1/11; affirmance; leave to appeal granted by Jones, J., 11/28/11; Rule 500.11 review pending;
CRIMES - APPEAL - APPEAL WAIVER IN CONNECTION WITH GUILTY PLEA - APPELLATE DIVISION DID NOT SPECIFY WHETHER ITS AFFIRMANCE OF DEFENDANT'S CONVICTION WAS BASED ON THE VALIDITY OF THE APPEAL WAIVER OR ITS REVIEW AND REJECTION OF DEFENDANT'S EXCESSIVE SENTENCE CLAIM;
Onondaga County Court convicted defendant, upon his guilty plea, of rape in the second degree; App. Div. affirmed.

HEIDGEN (MARTIN), PEOPLE v:

2ND Dept. App. Div. order of 9/13/11; affirmance; leave to appeal granted by Cohen, J., 11/23/11;
CRIMES - MURDER - DEPRAVED INDIFFERENCE MURDER - INTOXICATED DEFENDANT TRAVELING WRONG WAY ON PARKWAY - SUFFICIENCY OF THE EVIDENCE TO SUPPORT DEPRAVED INDIFFERENCE; UNLAWFUL SEARCH AND SEIZURE - CLAIM THAT DEFENDANT'S BLOOD SAMPLE WAS ILLEGALLY OBTAINED AND IMPROPERLY ADMITTED INTO EVIDENCE; PRECLUSION OF EXPERT TESTIMONY FOR THE DEFENSE BY A POLICE ACCIDENT RECONSTRUCTIONIST; ALLEGED JUROR MISCONDUCT;

Supreme Court, Nassau County convicted defendant, upon a jury verdict, of two counts of murder in the second degree, three counts of assault in the first degree, and two counts of operating a vehicle while under the influence of alcohol and imposed sentence; App. Div. affirmed.

MECKWOOD (LONNIE), PEOPLE v:

3RD Dept. App. Div. order of 7/28/11; affirmance; leave to appeal granted by Read, J., 11/23/11;

CRIMES - SENTENCE - SECOND VIOLENT FELONY OFFENDER - PREVIOUS CONVICTION IN ANOTHER STATE - USE OF OUT-OF-STATE CONVICTION AS A PREDICATE FELONY WHERE DEFENDANT WOULD HAVE BEEN ELIGIBLE FOR YOUTHFUL OFFENDER STATUS HAD HE COMMITTED THE CRIME IN NEW YORK; CLAIM THAT PENAL LAW § 70.04 IS UNCONSTITUTIONAL BECAUSE IT IS VAGUE, AMBIGUOUS AND FAILS TO CONSIDER MITIGATING FACTORS; Broome County Court convicted defendant, upon his guilty plea, of attempted robbery in the first degree; App. Div. affirmed.

TOWNSLEY (TAYDEN), PEOPLE v:

3RD Dept. App. Div. order of 2/14/11; denial of writ of error coram nobis; leave to appeal granted by Lippman, Ch.J., 11/28/11; CRIMES - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - AT TRIAL PROSECUTOR ACCUSED DEFENDANT AND HIS TWO ASSIGNED TRIAL ATTORNEYS OF CONSPIRING WITH A THIRD PARTY TO CONCOCT A DEFENSE THAT WOULD FALSELY SHIFT RESPONSIBILITY FOR THE CRIME TO THE THIRD PARTY; POTENTIAL CONFLICT BETWEEN DEFENDANT AND HIS COUNSEL NOT RAISED AT TRIAL OR BY APPELLATE COUNSEL; App. Div. denied defendant's motion for a writ of error coram nobis.