

COURT OF APPEALS NEW FILINGS

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

**June 3 through June 9, 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.**

BUXENBAUM, MATTER OF v FULMER:

2<sup>ND</sup> Dept. App. Div. order of 3/29/11; affirmance; 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;

PARENT AND CHILD - CUSTODY - MODIFICATION OF CUSTODY - FAMILY COURT ORDER PROHIBITING MOTHER FROM TELLING HER CHILD CERTAIN INFORMATION ABOUT THE CHILD'S PATERNITY; INDIGENT MOTHER'S RIGHT TO COUNSEL;

Family Court, Suffolk County granted the father's petition to modify a prior order of custody and visitation so as to award him sole legal custody of the subject child; the same court, in a separate order, among other things, prohibited the mother from telling the child that any man other than the father is the child's biological father.

HELD, &c., et al. v STATE OF NEW YORK WORKERS' COMPENSATION BOARD:

3<sup>RD</sup> Dept. App. Div. order of 4/21/11; modification; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right; WORKERS' COMPENSATION - DECLARATORY JUDGMENT ACTION BY EMPLOYER GROUPS THAT HAVE ADOPTED A PLAN FOR SELF INSURANCE UNDER THE WORKERS' COMPENSATION LAW - WHETHER CERTAIN ANNUAL ASSESSMENTS AGAINST PLAINTIFFS TO COVER THE COST OF THE WORKERS' COMPENSATION BOARD'S PAYMENT OF THE COMPENSATION LIABILITIES OF DEFAULTED GROUPS VIOLATE PLAINTIFFS' DUE PROCESS RIGHTS UNDER THE U.S. OR NEW YORK CONSTITUTIONS OR CONSTITUTE UNCONSTITUTIONAL TAKINGS - WORKERS' COMPENSATION LAW § 50(5);

Supreme Court, Albany County, among other things, granted plaintiffs' motion for summary judgment to the extent that the application of former Workers' Compensation Law § 50(5)(f) and new Workers' Compensation Law § 50(5)(g) to plaintiffs effects an unconstitutional taking, and denied in part defendants' cross motion for summary judgment and, thereafter, entered judgment accordingly; App. Div. modified by reversing so much of the Supreme Court order, amended order and second amended order as partially granted plaintiffs' motion for summary judgment and partially denied defendants' cross motion for summary judgment, denied plaintiffs' motion in its entirety, granted defendants' cross motion in its entirety, awarded summary judgment to defendants, dismissed the complaint, and reversed the judgment.

IDX CAPITAL, LLC, et al. v PHOENIX PARTNERS GROUP LLC, et al.:

1<sup>ST</sup> Dept. App. Div. order of 4/26/11; modification with dissents; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution; TORTS - COMPLAINT ALLEGING, AMONG OTHER THINGS, CAUSES OF ACTION FOR TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONSHIP, LIBEL, INJURIOUS FALSEHOOD, AND AIDING AND ABETTING BREACH OF FIDUCIARY DUTIES - WHETHER THE APPELLATE DIVISION CORRECTLY GRANTED SUMMARY JUDGMENT DISMISSING THE COMPLAINT AS TO CERTAIN DEFENDANTS AND DISMISSING CLAIM FOR EARN-OUT DAMAGES AS SPECULATIVE;

Supreme Court, New York County denied defendant Wesley Wang's motion for summary judgment dismissing the "earn-out" portion of plaintiffs' alleged damages, and denied the motion of defendants Phoenix Partners Group LLC, Phoenix Partners Group LP, Nicholas Stephan, Marcos Brodsky, and Patrick Nihan for summary judgment dismissing the second verified amended complaint as against them; App. Div. modified to dismiss the claim for earn-out damages and to dismiss the complaint as against the Phoenix Partners companies, Stephen and Brodsky, and otherwise affirmed.

WILLIAM (TONY), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 2/8/11; affirmance; leave to appeal granted by Graffeo, J., 5/27/11;

CRIMES - SUPPRESSION HEARING - WHETHER POLICE HAD REASONABLE SUSPICION TO STOP THE CAB IN WHICH DEFENDANT WAS A PASSENGER WHEN THEY OBSERVED THAT THE PASSENGERS MATCHED GENERAL ASPECTS OF THE RADIOED DESCRIPTION OF TWO MEN WHO HAD COMMITTED A ROBBERY NEARBY; WHETHER SUBSEQUENT SHOW-UP IDENTIFICATION WAS UNDULY SUGGESTIVE;

Supreme Court, New York County convicted defendant of robbery in the first degree and sentenced him, as a second violent felony offender, to a term of 10 years; App. Div. affirmed.