

COURT OF APPEALS NEW FILINGS

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

**July 29 through August 4, 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.**

SUPERIOR OFFICERS COUNCIL HEALTH & WELFARE FUND, et al. v EMPIRE HEALTHCHOICE ASSURANCE, INC., &c.:

1<sup>ST</sup> Dept. App. Div. order of 6/30/11; affirmance with dissents; Rule 500.11 review pending;  
CONTRACTS - DISMISSAL OF COMPLAINT PURSUANT TO CPLR 3211(a)(1) AND (7) - BREACH OF CONTRACT - "AGREEMENT FOR ADMINISTRATIVE PHARMACEUTICAL SERVICES ONLY" BETWEEN EMPLOYEE BENEFITS FUND AND PROVIDER OF PRESCRIPTION BENEFITS MANAGEMENT SERVICES - WHETHER COMPLAINT STATES A CAUSE OF ACTION FOR RECOVERY OF REBATES FOR PRESCRIPTION DRUGS OR FOR BREACH OF A PROVISION REQUIRING PROVIDER TO "ADVISE AND ASSIST THE [FUND] IN A CONSULTING CAPACITY REGARDING BENEFITS DESIGN AND OTHER MATTERS PERTAINING

TO ADMINISTRATION OF THE PROGRAM"; BREACH OF FIDUCIARY DUTY -  
WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT PLAINTIFFS'  
"BREACH OF FIDUCIARY DUTY CLAIM WAS PROPERLY DISMISSED BECAUSE IT  
IS NOT BASED UPON THE BREACH OF ANY FIDUCIARY DUTY INDEPENDENT OF  
THE PARTIES' AGREEMENT ITSELF."

Supreme Court, New York County granted defendant's motion to  
dismiss the complaint pursuant to CPLR 3211(a)(1) and (7); App.  
Div. affirmed.