



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

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Speeches

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For Immediate Release

**TAKING STOCK: PAST ACCOMPLISHMENTS
AND FUTURE CHALLENGES FOR THE CITY**

**CORPORATION COUNSEL MICHAEL A. CARDOZO WELCOMES ATTENDANTS
OF THE ANNUAL NEW YORK SELF INSURERS MEETING,
WHERE LAW DEPARTMENT WORKERS' COMPENSATION CHIEF JOHN SWEENEY HAS BEEN ELECTED THE
ASSOCIATION'S NEW PRESIDENT**

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Introduction

Thank you for that gracious introduction.

It is my pleasure, on behalf of New York City, to extend the City's welcome to you as you attend your annual meeting.

We particularly appreciate your presence here because we know that, unlike some visitors to our City, the likelihood of any of you suing us in the event you have an accident here is close to non-existent; after all, according to your mission statement you are committed to promoting and protecting your members' vital interests - which I assume means keeping payouts, even by New York City, down to an absolute minimum.

I also know that you won't sue us because, even if you were inclined to put self-interest ahead of the interests of the businesses you represent, the likelihood of you being hurt in this City, and therefore having to even consider suing, is very small. Why? Because, I am proud to say, New York City is one of the safest cities in America.

Accomplishments

Let me start off by explaining that fact a little more, and then tell you about some of the City's other recent achievements, particularly those in which the New York City Law Department, which I have the honor of leading, played a major role. Along the way I will touch on some issues that should be of particular interest to you, along with highlighting some needed reforms that I hope you will consider supporting.

Public Safety

Public Safety is the foundation of any great city. In the last seven years crime in this City has declined nearly 30 percent. That has occurred even though the City has 3,000 fewer police officers on the street - and even as the City committed many of its best officers to the counter-terrorism and intelligence work demanded by the post-9/11 world.

I am particularly pleased to note the drop in gun related crimes, since the Law Department can claim a major role in that

accomplishment.

As you may know, the City, through my Office, initiated a number of gun lawsuits against gun dealers and gun manufacturers, alleging that their failure to take reasonable steps to prevent guns from falling into irresponsible hands has resulted in a proliferation of illegal guns in New York City. The results of this litigation effort have been impressive:

- Shooting incidents in NYC declined from more than 5,000 in 1993 to less than 1500.
- Assaults with a firearm on police officers dropped from 442 in 1995 to 112 in 2005.
- Most significantly, the number of crime guns recovered in the City from states where we sued gun dealers dropped 16 percent between 2006 and 2007; and
- The number of guns traced to NYC that were sold by the gun dealers we sued has declined 75 percent.

These are the kinds of results that bring particular satisfaction to lawyers who, by working for the government, are trying to improve all of our lives.

The City has made improvements beyond public safety. Let me just quickly note a few other areas of significance.

Public Education

Here the results tell an impressive story:

- Students are performing better on math and reading tests.
- Black and Hispanic students are making the biggest gains.
- Graduation rates are up more than 20 percent since 2002.

Marketing

We have also made marketing New York City a top priority.

The Law Department was instrumental in creating a new marketing vehicle for the City, allowing it to become the first major United States city to capitalize on its intellectual property rights – such as the FDNY logo.

What has flowed from this? We are generating significant revenue from the licensing of these rights, and these marketing efforts also resulted in tourism increasing 30 percent, with a record 47 million tourists visiting New York City last year.

PlaNYC

A third achievement is the development of “PlaNYC,” an ambitious 127-item agenda for a greener, greater New York that will guide the City’s growth over the next few decades.

One of its major goals is to shrink our carbon footprint 30 percent from current levels by 2030. Among the ways the City will achieve this goal are the following:

- We’re planting one million trees by 2017 and have already put more than 110,000 of them in the ground.
- We’re converting our 13,000 yellow cabs to hybrid cars through a system of incentives.
- Environmental Litigation is another area of emphasis in terms of making New York City greener. In that connection, the Law Department has initiated a number of ground breaking environmental lawsuits, including a successful case against the federal government that went all the way to the US Supreme Court. Incidentally, that Supreme Court case was one of four New York City cases, out of an overall total of 80, the Supreme Court decided that year.

Public Health

Finally, the City has made improving public health a major priority.

For example there are 300,000 fewer smokers in NYC today than there were in 2002. And I am proud to say that the New York City Law Department played a major role in making this happen. For example, it was the Law Department that

drafted the law that banned smoking in virtually any public location in New York City.

And it is the Law Department that has filed a number of cases against sellers of cigarettes who fail to pay cigarette taxes.

This has included suits against sellers of cigarettes on the Internet, wholesalers of cigarettes, and retail sellers of cigarettes on Indian reservations.

In a related area, the City's Trans fat ban and calorie-labeling requirement are helping New Yorkers to improve their nutrition and make healthier choices. Here too, the Law Department has been an important player in this effort, particularly in drafting the needed regulations and in defending challenges to the legality of the government imposing these requirements on food sellers.

Again, the results indicate we are moving in the right direction:

- New York City life expectancy has hit an all-time high.
- The average New Yorker now lives about six months longer than the average American.
- Over the past year alone, we've seen declines in seven of the 10 leading causes of preventable death.

The Challenges Ahead

We all know that despite these accomplishments, the City faces enormous economic challenges today. The Mayor has estimated that, despite significant budget tightening over the last 18 months, the City will face a more than \$4 billion budget shortfall by June 2010.

He therefore recently has ordered City agencies to undertake \$1.5 billion worth of additional actions to shrink the budget gaps this fiscal year and next, and because cost-cutting alone won't be enough, the City has raised real estate taxes by 7 percent, effective January 1.

Later today, in his annual State of the City address, the Mayor is expected to announce further steps to deal with the economic crisis that confronts us.

Hopefully, this will be enough, but we all know, given economic realities, that we are in a very painful time where difficult budgetary decisions must be made by the government.

Actions in which the Audience will be Particularly Interested

These economic challenges make it more essential than ever that we look at areas, such as tort and workers' compensation payouts, where abuses may exist and reforms are needed.

I therefore want to address a problem with which you and the Law Department deal every day: defending your clients when it is claimed that they are responsible for disasters and accidents, and minimizing the amount governments and businesses have to pay when faced with such claims.

Let me begin with a true disaster – the 9/11 bombings of the World Trade Center. As you all know, the falling of the twin towers resulted in hundreds of tons of debris at Ground Zero, debris that had to be cleared by New York City and its contractors. Of all the many terrible consequences from the 9/11 disaster, one that remains is the sad fact that some of the people who participated in that clean up effort have become ill, some very ill.

While we all know that New York City was not responsible for the collapse of the twin towers, and that the real villains in these cases are Osama Bin Laden and Al Qaeda, approximately 3,000 people have asserted claims against New York City and its contractors, claiming they are responsible for illnesses allegedly resulting from the clean-up effort.

Let me emphasize that these are not workers' compensation claims, so in order to prevail, the plaintiffs need to prove that the City and/or the contractors did something wrong that led to plaintiffs' injuries. The result is an enormous high-stakes litigation pending in federal court, with some trials scheduled to begin next year. Surely there must be a better way than a mass tort litigation to resolve problems of this kind, but that is a subject for another day.

In addition to mass disasters like the World Trade Center tragedy, the ultimate cost of which is still to be determined, the

City is involved in literally thousands of tort cases each year. Over the last seven years, the City's payouts for these tort cases have averaged \$550 million per year. That is a lot of money, to say the least.

The good news is that the number of tort cases filed against the City, and being handled by the City, is actually declining significantly. Ten years ago, almost 13,000 tort cases were commenced; last year the comparable number was half of that. Also, the number of pending cases against the City has been reduced from 58,400 ten years ago to 20,000 today. However the numbers – both in terms of dollar payouts and cases filed – remain enormous.

Similar huge numbers can be found in our Workers' Compensation practice. Last year, for example, our Workers' Compensation Division received 15,000 new claims, appeared at 16,000 hearings, and processed 200,000 medical bills. More than \$150 million in medical and wage replacements benefits were paid by the City.

I draw at least two conclusions from these huge numbers. First, they demonstrate a need for continued careful scrutiny of claims filed, and vigorously contesting them when they appear unjustified. Second, they show the need for reform of many of the laws that led to the huge pay-out numbers.

In terms of carefully monitoring, and where appropriate resisting, filed claims, let me cite one of our favorite examples of ridiculous workers' compensation cases. It is a case we call the "The Lighting Bolt."

An employee filed a workers' compensation claim that alleged that while she was sitting at her desk a bolt of lightning struck an air conditioner in an apartment building across the street from her office. She claimed that the electric current "surged through all its conductive means," down the wires alongside the building into a radio on the window sill and finally (mysteriously) into the cell phone in her pocket resulting in an electric shock causing injury to her hip and lower back, headaches, vomiting, an elevated heart rate, increased blood pressure, dizziness, insomnia, diarrhea, short term memory loss and injury to her right leg. Her doctor diagnosed "electrical brain trauma" and found her to be totally disabled as a result of the accident.

The City controverted the case and consulted a Professor of Engineering and Computer Science from Polytechnic Institute who had received his PhD from MIT. He investigated, researched, and visited the worksite. He concluded that it was absolutely physically impossible for the lightning to have in any way affected the claimant while she was sitting at her desk. The claimant offered no expert testimony. Nevertheless, the Judge found that the claimant had injured her leg as a result of the event she described and awarded compensation.

The City appealed and fortunately the Board reversed, ruling that the City's expert witness had credibly testified that the events described by the claimant could not have occurred and could not have resulted in any physical injury to the claimant.

Similar ridiculous cases are not hard to find in the tort field. One of my favorites is the 78-year-old man who smoked for 30 years and then developed bladder cancer while at Rikers Island awaiting trial. He claimed that the City was responsible for his cancer, since, he said, he never inhaled during the 30-years he smoked. It took the jury only one hour to reject his contention, but it took a two-week jury trial before the City could prevail.

Cases like the lightning bolt and the bladder cancer case demonstrate the need for continued vigilance of claims filed.

But there are many cases that result in large settlements and judgments because the law is in substantial need of revision. I wouldn't presume to tell this audience where changes are needed in the workers' compensation area, but I do want to spend a minute on so-called tort reform.

First, some good news. A few years ago, the New York City Council changed the law that had previously made the City liable when someone was injured as a result of a defect on one of the 12,000 miles of New York City sidewalks. The legislation changed the law so that it now provides, with a few exceptions, that if an accident occurs on a City sidewalk the adjoining landowner, not the City, will be responsible. The result? The adjoining landowner, given the incentive of avoiding potential liability, tries to keep the sidewalk in good repair, and the City saves approximately \$50 million a year it was previously paying because of its sidewalk liability. Certainly public safety, has benefited from this reform.

But there is need for substantially more legislative changes. Let me give you one glaring example. Assume that as a result of your employer's negligence you slip and fall and can no longer work. Your lost future income is \$1 million, and you also receive an employer-funded disability pension that will pay you \$400,000. Assume workers' compensation is not applicable, so you therefore sue your employer. How much do you recover? In the private sector, your \$1 million recovery will be offset by your \$400,000 pension. You will therefore be awarded \$600,000 in damages and be made economically whole for the injury your employer caused. Fair enough.

But in New York State, under the identical set of facts, if you work in the public sector, and are injured you hit the jackpot. Under New York State law, you will receive \$1.4 million – the \$1million in lost future income, plus your \$400,000 employer funded pension. The \$400,000 disability pension will not be deducted from your recovery in court. Instead, you are allowed to “double dip” and come out better than if you had not been hurt in the first place. Your employer – here New York City – pays twice, the damage award and the cost of your disability pension.

This double dipping outrage costs New York City alone approximately \$17 million per year and affects virtually every municipality in the State. That is why over 1,200 governmental entities across the State have been calling on the Legislature to amend the law, thus far to no avail.

In these difficult economic times, it is unconscionable that outmoded laws are enabling some to become rich at the expense of innocent taxpayers. I do hope you will join me in urging the State legislature to enact this and many other long overdue statutory revisions.

Conclusion and Congratulations to John Sweeney

Let me bring my remarks to a close by congratulating Steve [Perroots, NYSIA’s most recent Chairman] for what I understand has been a very successful tenure as the Chairman of the New York Self Insurers Association. Organizations like NYSIA play a very important role in New York. Groups like yours raise major public policy issues that should be taken into account by government, and it is essential, in order for effective public policy to be made, that the right statutes and regulations be promulgated, that reforms such as those to which I alluded be made, and that your views be ably and aggressively articulated.

Steve [Perroots] has led you in raising those issues, and I am confident that your new leader, John Sweeney, the head of my Office’s Workers’ Compensation Division, will do the same.

I thought I would conclude by telling you a few secrets about John Sweeney, although I hope that won’t derail what I understand is his expected elevation to the position this afternoon. Rather than engaging in a long boring discussion of his legal skills, instead I want to give you three secret facts about John Sweeney.

First, John is a history buff. He’s filled with an amazing amount of arcane information.

Second, John is a classical music aficionado. In fact, prior to becoming an attorney, John was not only an organist, but also traveled throughout the country delivering and building organs.

Third, John is an epicurean. He enjoys good food and wine, and rumor has it that he’s an excellent cook.

Finally, while John is an excellent lawyer, he suffers, as the saying goes, from being handwriting challenged. Frankly, his handwriting is nearly indecipherable. Once, relying upon John’s extensive handwritten notes, another attorney asked a witness if he’d worked for the Long Island Museum. The witness responded no, but he did work for the Long Island nursery.

Despite this handicap, John has become one of the State’s experts in workers’ compensation law. He has worked for the Law Department for almost 20 years and has brought dedication and professionalism to the job. You have done yourselves, as well as the New York City Law Department, great distinction by electing John as your new chair.

Ladies and gentlemen, on behalf of New York City, I extend my best wishes for a successful conference.

**Note:* A press release on John Sweeney’s election has also been issued. View our 2009 press releases for details, at nyc.gov/law.