NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

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Press Release

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STATE'S HIGHEST COURT RULES THAT "BIG APPLE MAPS" MUST BE SPECIFIC AND CLEAR IN PROVIDING PRIOR WRITTEN NOTICE TO CITY ON SIDEWALK AND ROAD DEFECTS

PRIOR WRITTEN NOTICE OF SIDEWALK DEFECTS ALSO REQUIRES CLEAR AND UNAMBIGUOUS NOTICE OF THE SAME TYPE OF HAZARD THAT CAUSED INJURY

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New York, Dec. 18, 2008 – The Court of Appeals today issued a decision covering two cases that pertain to the City's "prior written notice" law.

Under that law, a plaintiff who claims to have sustained injuries due to a street or sidewalk defect, and seeks to hold the City liable for his or her injuries, must prove that the City received written notice of that defect at least 15 days prior to the accident.

In both cases, plaintiffs relied upon maps prepared by the Big Apple Pothole Corp., which was operated by the New York State Trial Lawyers Assocation. The maps contained symbols denoting purported defects in question on City sidewalks and streets. However, the City argued for years that the maps were often confusing and imprecise. Ten of thousands of maps had been dropped at the City's Department of Transportation annually, with "squiggles" and lines that did not give the agency much, if any, useful information on purported defects.

The state's highest court, the Court of Appeals, issued a decision in the City's favor today that covered two cases:

- In ***D'Onofrio v. City of New York*****,** a plaintiff testified that he tripped on a defective subway grating, but the only symbol on the relevant section of the map denoted a raised or uneven sidewalk. A jury verdict for the plaintiff found that the map provided the City with prior written notice of the defect, but the trial court set the verdict aside and the Appellate Division, First Department, affirmed.
- In ***Shaperonovitch v. City of New York*****,** the trial evidence established that the plaintiff tripped on a raised or uneven sidewalk. The map contained a marking that did not correspond to any symbol on its legend. The jury nevertheless found for the plaintiff, and the trial court denied the City's motion to set the verdict aside. The Appellate Division, Second Department, affirmed, finding that the "ambiguity" in the map's marking created a question of fact for the jury.

In the majority opinion written by Court Justice Robert Smith, the Court of Appeals found, as a matter of law, that:

- 1) The prior written notice requirement is not satisfied where there is no clear match between the

type of sidewalk defect alleged and the symbol shown on the map.

- 2) Likewise, where the symbol shown on the map does not clearly match any of the symbols on the map's legend, there is no notice as a matter of law.

In each case, accordingly, the Court held that no rational jury could have found that the markings on the maps gave the City the requisite notice.

"The Big Apple maps have long been known to be imprecise and confusing," noted Corporation Counsel Michael A. Cardozo of the New York City Law Department. "This decision has clarified for municipalities in New York State that 'prior written notice' of a defect means what it says. The notice must be precise – and must clearly identify the defect."

"The court's decision will help stop exaggerated claims and ensure that only appropriate cases are brought before the City, letting us focus our efforts to keep our streets and sidewalks in good repair," DOT Commissioner Janette Sadik-Khan added.

Senior Counsel Deborah A. Brenner of the Law Department's Appeals Division handled the *Shaperonovich* case, with significant assistance from Barry P. Schwartz, Julie Steiner-Korn, Donna Cole-Sterling, and paralegal Cherrell White, while the Afsaan Saleem (formerly in the Tort Division, now in Special Federal Litigation) tried the case at trial level. Former Appeals Senior Counsel Alan Beckoff (now a Brooklyn Family Court judge) briefed the *D'Onofrio* case, with assistance from Steven McGrath.

Brenner, who conducted oral argument on both appellate cases, said: "I hope today's decision will prevent plaintiffs' attorneys from successfully advocating for a 'close-enough' approach to prior written notice."

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