NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

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Press Release

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IN UNANIMOUS DECISION, APPELLATE COURT DISMISSES $10 MILLION VERDICT AGAINST NEW YORK CITY, FINDING THAT A POLICE OFFICER ON TRAFFIC DETAIL ACTED RESPONSIBLY IN CARRYING OUT HIS DUTIES

COURT FINDS PLAINTIFF'S EXPERT HAD NO SOUND BASIS FOR OPINION;
CASE INVOLVED MOTORIST WHO DIDN'T HAVE A LICENSE BUT MOVED A CAR AND STRUCK A PEDESTRIAN AFTER THE OFFICER GESTURED TO HER THAT SHE WAS ILLEGALLY PARKED

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New York, July 30, 2003 – The Appellate Division, Second Department set aside a $10 million jury verdict yesterday against the City of New York, finding that there was no basis for the opinion of the expert whose testimony was the sole ground for the City's alleged liability. The move was unique insofar as the Court completely struck the expert testimony. The case also established that the police officer, who was on traffic detail, had acted responsibly in rendering a common-sense decision in carrying out his official duties. Justices Sondra Miller, Robert W. Schmidt, Sandra L. Townes and Stephen G. Crane delivered a unanimous ruling.

The case, *Deodat Persaud v. City of New York*, arose from a routine action taken by a police officer on traffic patrol in 1994. The defendant, Carmela Mero, left her 19-year-old daughter, Maithe Mero, sitting in the front seat of her car, which was parked in a no-standing zone on a weekday afternoon. Police Officer Francis Knowles, while on traffic patrol, saw the illegally parked car and waved to Maithe Mero to move the vehicle. Ms. Mero had no driver's license and did not know how to drive, but she did not inform the officer. Rather, she attempted to move the car, drove around a corner, jumped a curb and crashed into Mr. Persaud, who suffered a partial amputation of one leg. The jury found Ms. Mero 25 percent at fault and the City 75 percent at fault for the accident and awarded a total of $10 million in past and future pain and suffering.

Michael O'Looney, Deputy Commissioner for Public Information at the New York City Police Department, expressed satisfaction with yesterday's decision, noting that it supported the ability of officers to take reasonable action in carrying out their duties. "If an individual sitting in an illegally parked car is asked to move it and does not know how to drive, it is incumbent upon that person to inform the officer of that fact," he said.

Before trial in the case, the City had moved for summary judgment, claiming that any fault was solely that of the car's owner and driver. The motion was granted, but in a 1999 decision, the Appellate Division, Second Department reversed, finding that an "issue of fact" required a trial. The Court based its decision on an affidavit submitted by Henry Branche, a retired police officer who routinely testifies against the City in cases alleging negligent police actions.

Mr. Branche's affidavit stated that "standard police practice" required that an officer directing a person

sitting in a front passenger seat to move a car first had to inquire whether that person knew how to drive. In its decision yesterday overturning the jury's verdict against the City, the Appellate Division found that Mr. Branche's court testimony lacked a sound basis and was "overwhelmingly contradicted" by the evidence presented at trial by the City. "Where an expert's ultimate assertions are speculative or unsupported by any evidentiary foundation, the opinion is of no probative value," they wrote.

Corporation Counsel Michael A. Cardozo, whose office litigated the case, stated, "We are gratified that the Appellate Division recognized that expert testimony at trial, which contradicts both common sense and evidence, cannot be used to impose extraordinary liability upon the City. The City taxpayers have suffered for years as a result of expert opinions presented at trial that defy logic and sound practices."

The appeal was briefed by Linda Young, a Senior Counsel with the New York City Law Department Appeals Division who has since retired. It was supervised by Pamela Dolgow, a Senior Counsel in the Appeals Division. In the lower court, Senior Counsel Jennifer A. Coyne of the Tort Division tried the case, and Deputy Chief Gary P. Shaffer handled the case during discovery. The law firm Sullivan Papain Block of Long Island represented Mr. Persaud.

The court's decision yesterday left intact the finding that the Meros were negligent. Had the initial $10 million decision stood, the Meros would have been responsible for 25 percent and the City for 75 percent – but under joint-and-several liability law, the City would have been required to pay the entire $10 million amount if the Meros couldn't afford their portion. Yesterday's decision eliminates the City from the case. In its ruling, the Court also reduced the final award (for which the Meros are now fully responsible) to $5 million.

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