



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, Corporation Counsel

Press Release

Web: nyc.gov/html/law/home.html

For Immediate Release

CORPORATION COUNSEL MICHAEL A. CARDOZO ADDRESSES KEY TORT REFORM LEGISLATION TODAY BEFORE CITY COUNCIL

Contact: Kate O'Brien Ahlers, Communications Director, (212) 788-0400, kahlers@law.nyc.gov

New York, November 12, 2002 -- Corporation Counsel Michael A. Cardozo engaged in critical testimony and spirited debate today before the City Council's Committee on Transportation regarding a tort reform program that will enable New York City to level the legal playing field, gain control of rampant tort payouts and improve the quality of life for New Yorkers.

The Bloomberg Administration's package will provide incentives to make sidewalks safer and allow the City to gauge better when sidewalk and roadway hazards exist. These proposals were introduced to the City Council in May and follow other tort reform legislation introduced in Albany earlier this spring. In his State of the City address in January, Mayor Bloomberg noted that comprehensive tort reform would be one of the key initiatives of his Administration.

"The City's tort payouts are larger than the budgets of most City agencies," Bloomberg said. "In fact, they are bigger than the budget of most municipalities in New York. In 1978, the City paid out \$21 million in tort payouts. In 2001, the number had skyrocketed to more than half a billion dollars. This money could be far better spent on social issues including better schools, new teachers, more firefighters and police officers, and improving our infrastructure, especially as the City faces a fiscal crisis."

"This crisis is real," Corporation Counsel Michael A. Cardozo said. "More than 14,000 claims are filed against the City each year and 9,000 lawsuits are commenced. The City also has 47,000 pending tort lawsuits." He also noted that the "sidewalk judgments and settlements pay on average \$60 million dollars each year."

The Mayor's package of reforms includes several critical elements, especially two important bills discussed today before the City Council:

- **Adjoining Landowner Liability or "Sidewalk" Bill** -- This bill will hold building owners liable in tort if they fail to comply with their existing duty to repair and maintain the sidewalks in front of their buildings and to shovel snow and remove ice. The law, as it stands now, imposes tort liability only on the City if a landowner fails to comply with his or her duty to maintain the sidewalk or make repairs, giving landowners no incentive to keep their sidewalks safe. If passed, the bill would rectify this situation and save the City up to \$37.5 million a year. It would exempt one-, two- and three-family homes. The bill would help avoid cases like *Johnson v. the City of New York*, in which a woman who tripped on a virtually flawless sidewalk won a \$2 million verdict (reduced to \$880,000 by the judge but resulting in a \$1 million payout due to interest).
- **Prior Notice or "Big Apple Map" Amendment** -- This amendment would ensure that New York City receives fair prior written notice for sidewalk and roadway defects. Current law requires that the City have 15 days' prior written notice before liability can be imposed on the City if an accident occurs. However, a company created by trial lawyers, the Big Apple Pothole and Sidewalk Corporation, has created a way to manipulate the law. It contracts with a map company, Sanborn, to produce "squiggles" on maps that are

supposed to indicate defects. Sanborn pays surveyors to walk the streets, many of whom mark at will. Sanborn's employees have acknowledged that Big Apple has no idea if they receive training or know what constitutes a defect. They have testified that Big Apple does not inspect Sanborn's work. The maps offer no insight into whether a defect is a serious hazard or if it should be repaired promptly. Rather, the sole purpose of Big Apple is to satisfy the legal technical requirement of prior written notice. The City received about 5,200 maps with more than 700,000 "squiggles" last year. Big Apple knows it is impossible for the City to inspect all these conditions. Mayor Bloomberg's proposed amendment to the prior written notice law would require an individual to file a detailed report, including the specific location, nature, size and severity of a defect. False reporting would be a crime. This amendment would significantly advance public safety by giving the City meaningful notice about hazards. It would enable the City to make rational, fact-based decisions as to which defects are critical to fix and how to best allocate precious resources.

In addition to the Council Legislation, the Mayor has several bills pending in Albany:

- **Collateral Source Bill** -- This bill would prevent double recoveries by requiring that tort awards for future lost earnings in cases against public entities be reduced by "collateral sources," including City disability pensions, that are received by the plaintiff. This practice is currently employed for private employers and should apply in the public sector. Its passage would prevent "double dipping" by plaintiffs, ensuring they are not profiting from tragic situations or being made "more than whole." This would save the City over \$133 million when applied to pending cases alone. It would help prevent cases like *Iazzetti v. the City of New York*, in which a Department of Sanitation employee who slipped in a garage, injuring his back, will receive *both* a \$1.1 million tax-free pension benefit and a \$800,000 jury award meant to compensate him for the same loss.
- **Proportional Responsibility Bill** -- This bill would ensure that defendants only bear their proportional responsibility for a plaintiff's injuries. Therefore, if New York City is only 10 percent responsible for an incident, it should only pay 10 percent of all damages. Currently, even if another party is primarily responsible for a plaintiff's injuries, the City is held accountable for the entire award of economic damages. The bill would help prevent cases like *Colicchio v. the City of New York*, in which a taxi driver crossed over the 86th Street Transverse, caused an accident and, although the taxi was held 95 percent responsible for the accident, the City was held liable for the entire \$3 million awarded in economic damages.
- **Predominance of Fault Bill** -- This bill requires that if the plaintiff is "predominantly" -- or more than 50 percent -- at fault for causing the incident in question, he or she should not recover. This infuses a welcome element of personal responsibility in cases and creates a proper balance in the area of comparative negligence.

In looking at Mayor Bloomberg's entire tort reform package, Cardozo emphasized that the City is not removing or questioning a plaintiff's right to sue. "Rather, the Mayor's legislation evens the playing field and creates a fairer, more responsive system that weighs all parties' actions and holds each side accountable as necessary," he said.

Cardozo highlighted the three main tenets of the legislation: 1) the law should put one back to where he or she was before an accident but should not "enrich" someone, 2) the law should create incentives for landowners to maintain their property and rational guidelines for the City to gauge if repairs are necessary, and 3) the law should hold defendants responsible for only their equitable share of fault and plaintiffs responsible for their own actions.

"These proposals provide a sensible way to address the serious issues posed by the huge growth of tort payouts, especially during the City's financial crisis," Bloomberg said. "Tort reform has been discussed year after year. It's time for us, the City Council and the State Legislature to cut through the politics and put into effect creative legislation that makes sense, gives the City a fair chance in court and resolves this serious issue."

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top three largest law offices in New York City and the top three largest public law offices in the country. Tracing its roots back to the 1600's, the Department's 650-plus lawyers handle more than 100,000 cases and transactions each year in 17 separate legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department's attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal

prosecution of juveniles. Its web site can be accessed through the City government home page at www.nyc.gov or via direct link at www.nyc.gov/html/law/home.html.

###