



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, *Corporation Counsel*

Press Release

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For Immediate Release

COURT RULES IN CITY'S FAVOR AND REVERSES \$5.2 MILLION VERDICT IN BRONX CAR CRASH

JUDGES FINDS A "BLACK HOLE OF IMPERMISSIBLE SPECULATION" IN THE PLAINTIFF'S CASE

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New York, Nov. 15, 2004 – A State Supreme Court Justice has reversed a \$5.2 million jury verdict for a man who was injured when his car apparently struck a concrete barrier in a Bronx underpass in May 1997. Jose Gneco, then a 44-year-old Bronx schoolteacher, suffered hip injuries when his 1989 Toyota struck a lane divider on 167th Street beneath the Grand Concourse in the Bronx. Gneco brought suit against New York City, alleging that the tunnel was poorly lighted and marked. A Bronx jury awarded him \$5 million for past and future pain and suffering, and his wife \$200,000 for her "loss of his services" (a legal term meaning loss of assistance in the household).

Justice Kenneth L. Thompson, who had presided over the trial last April, granted the City's motion to set aside the verdict for lack of evidence as to the cause of the accident. Ordering entry of a verdict in favor of the City, the Justice noted that the plaintiff, who was legally blind in one eye, had no recollection of anything that had happened from the moment he removed his sunglasses upon entering the underpass until he awoke in the hospital, and there were no direct eye witnesses to the accident.

"A jury's verdict must be based on more than mere speculation or guesswork," the judge wrote. "Where the facts proven show that there are several possible causes of injury, for one or more of which the defendant was not responsible, and it is just as reasonable and probable that the injury was the result of one cause as the other, [the] plaintiff cannot have a recovery, as he has failed to prove that the negligence of the defendant caused the injury."

In Gneco's case, Justice Thompson also noted, "No evidence was introduced to establish how the accident occurred...[T]he evidence did not prove a *prima facie* case of negligence; instead, it amounted to nothing more than a black hole of impermissible speculation....Accordingly, [the] verdict is entered in favor of the defendant, the City of New York." The judge dated his order on Thurs., Nov. 4, 2004, and it was recently received by the Law Department.

Noting the decision, Corporation Counsel Michael A. Cardozo said, "It is tragic that Mr. Gneco was in a terrible accident. However, this case is typical of all too many negligence suits today with tenuous liability that tax the City's resources. These in turn force juries to make difficult decisions in the face of serious injuries where the emotional impact may outweigh the many legal considerations that go into proving negligence by a defendant.

"In this case, no memory, no witnesses, and an 'expert' who starts out with a paid-for conclusion – it all adds up to a formula for injustice," Cardozo added.

Senior Counsel Joseph E. Mohbat of the Law Department's Tort Division tried the case for the City.

Assistant Corporation Counsel Matthew Browne, also of the Tort Division, prepared the winning motion. The plaintiff's trial attorney was Bruce Goldstone.

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.

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