

## Battle on Tort Reform Set To Resume Today

### Hearings Open in City Council

#### BLOOMBERG'S CLAIMS ARE CALLED 'EXAGGERATED'

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A man jumps in front of a subway train, then sues the city and wins a \$17 million jury verdict. Two drunken adults climb a fence at Coney Island, dive into shallow water and cripple themselves, then sue the city and win \$19 million. A drug-addicted driver jumps the curb and hits three innocent bystanders — but because he swerved around a Sanitation Department truck, the city had to pay the accident victims more than \$5 million.

For months, Mayor Bloomberg and the city's chief lawyer, Corporation Counsel Michael Cardozo, have cited these cases and several others as proof of the need for new city and state laws that would limit the city's financial exposure in such cases and generally make it harder to sue the city. On October 18, the mayor delivered a speech to a group of lawyers at the Waldorf-Astoria that called the decision in the subway case "idiotic, unaffordable and, in today's world, unsustainable."

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In some cases, the city's misstatements are inconsequential, like the mayor's mixing up the gender of the plaintiff in the Kim case. Other cases involve exaggeration.

The mayor's Waldorf-Astoria speech includes a condemnation of the state's second-highest court, the Appellate Division, for upholding "increasingly common negligence cases of more than \$50 million," although the state trial lawyers group claims that the Division has never upheld a negligence verdict in that amount.

City officials are also repeating dubious claims of facts that have already been refuted in court.

The three-foot-high barrier at the pier in the Coney Island case, for example, was called by a Law Department press release "an instance where two brothers in their late 20s recklessly scaled a fence and dove off a 10-foot high pier, breaking their necks."

But the Appellate Division found that "the City did not establish that the plaintiffs actually knew the depth of the water into which they dove, nor did it produce evidence sufficient to justify a conclusion that, as a matter of law, a reasonable person in the plaintiff's position should have known the depth of the water at that location."

Although the appeals court agreed to reduce the brothers' initial \$104 million jury verdict to about \$23 million, it also found that "the City's remaining contentions are without merit."

Chief Litigating Assistant Lawrence Kahn of the Law Department doesn't see it that way. The Brown brothers "had absolutely no basis to believe that the water was deep" before diving off the pier, he told the Sun. "They should have been made to assume the consequences."

In the Davis car accident — which Mr. Cardozo mistakenly referred to at an Albany press conference under the name of a different case — the Appellate Division found that, "contrary to the contention of the defendant City of New York, the plaintiffs established a prima facie case of causation. There was sufficient evidence establishing that the City of New York's sanitation truck turning right while the light was red was a substantial cause of the accident."

But the city, facing a yawning budget deficit, is still taking a hard line on the Davis case, even after losing its appeal. "Why should the taxpayers have to pay 100% of the damages?" asked Mr. Kahn.

train's operator was warned by a subway dispatcher to slow down and exercise caution because of reports that a person was on the tracks.

Ms. Kim, the woman hit by the train, had no memory of how she ended up on the tracks but denied attempting suicide. Evidence from the train operator suggested that the train operator saw Ms. Kim from at least 60 feet away and could have stopped within 33 feet if he had been traveling at 10 miles an hour; but the train did not stop until 50 feet after hitting Ms. Kim. The accident let her a quadriplegic.

In the Coney Island case, *Brown v. City of New York*, two brothers stepped over a 3-foot-high barrier around a pier on the beach where others were jumping into the water. Virgil Brown dove into water that was between five and seven feet deep, struck his head on the sea floor and was instantly paralyzed; he remains a quadriplegic. Virgil's brother, John, jumped in to save him and met the same fate.

In court, it turned out that a man dove off the same pier and became paralyzed one year prior to the Brown brothers' accident. The Parks Department had drafted, but not implemented, a plan to post "no diving" signs on the pier and indicate the shallowness of the water.

In a third case, *Davis v. City of New York*, a man driving while high on drugs jumped the curb and pinned three people against a wall who had been waiting for a bus. Linda Davis, along with her daughter and grandchild, was severely injured. Both Ms. Davis's legs had to be amputated.

A jury found that the driver was primarily responsible for the accident, and he went to prison for two years after pleading guilty to assault in the incident.

But the court also found that a Sanitation Department truck making an illegal turn was 23% responsible for the accident. The incarcerated driver did not have assets or insurance to cover the injuries to the Davises. The result, as the mayor put it, is the city "had to pick up the bill for the full amount: more than \$5 million."