SUPREME COURT, APPELLATE DIVISION
FIRST DEPARTMENT

JULY 31, 2014

THE COURT ANNOUNCES THE FOLLOWING DECISIONS:

Gonzalez, P.J., Tom, Friedman, Andrias, Saxe, JJ.

11933N Madeline Annie Rosario, etc., et al.,
Plaintiffs-Respondents,

-against-

New York City Health & Hospitals Corporation, etc.,
Defendant-Appellant.

Index 15185/05

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Michael A. Cardozo, Corporation Counsel, New York (Dona B. Morris of counsel), for appellant.

Fitzgerald & Fitzgerald, P.C., Yonkers (John M. Daly of counsel), for respondents.

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Order, Supreme Court, Bronx County (Douglas E. McKeon, J.), entered August 27, 2012, which granted plaintiffs' motion for leave to file a late notice of claim as to the infant plaintiff alone, and denied defendant's cross motion to dismiss the complaint, unanimously affirmed, without costs.

Upon consideration of the factors relevant to deciding a motion for leave to file a late notice of claim, we find that the court properly granted plaintiff's motion (*see Matter of Dubowy v City of New York*, 305 AD2d 320 [1st Dept 2003]; General Municipal

Law § 50-e[5]). Plaintiffs' failure to demonstrate a reasonable excuse for their delay is not alone fatal to their motion (*id.*). Plaintiffs' expert affidavits show that, from the medical records, defendant had actual knowledge of the facts underlying plaintiffs' theory of a departure from the accepted standard of pediatric care with regard to the diagnosis and treatment of the mother's placental infection and her fetal distress and subsequent self-extubation, and defendant's experts failed to refute this showing (*see Alvarez v New York City Health & Hosps. Corp. [North Cent. Bronx Hosp.]*, 101 AD3d 464 [1st Dept 2012]). In contrast to *Torres v New York City Health & Hosps. Corp. [Lincoln Hosp.]*, 101 AD3d 463, 463 [1st Dept 2012], *lv denied* 21 NY3d 860 [2013]), relied on by defendant, where "the hospital records [did] not suggest any injury attributable to malpractice," plaintiffs' experts explained how defendant's failures caused additional injuries to the already compromised infant, who was born at 26 weeks' gestation.

Defendant is not substantially prejudiced by the delay since the operative facts of the claim are contained in the records,

and the case will turn primarily on those records, rather than on witnesses' memories (*see e.g. Leeds v Lenox Hill Hosp.*, 6 AD3d 232 [1st Dept 2004]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: JULY 31, 2014

CLERK

Gonzalez, P.J., Acosta, Saxe, Richter, Manzanet-Daniels, JJ.

12190 Mooring Capital Fund, LLC, Index 380946/08
Plaintiff-Appellant,

-against-

Bronx Miracle Gospel Tabernacle, Inc.,
Defendant-Respondent,

New York State Department of
Taxation and Finance, et al.,
Defendants.

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Buchanan Ingersoll & Rooney PC, New York (Cameron E. Grant of counsel), for appellant.

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Order, Supreme Court, Bronx County (Sharon A.M. Aarons, J.), entered May 23, 2012, which granted defendant Bronx Miracle Gospel Tabernacle, Inc.'s motion to vacate a judgment of foreclosure and set aside the foreclosure sale, unanimously reversed, on the law, without costs, and the motion denied.

On or about May 21, 2008, plaintiff Mooring Capital Fund, LLC commenced a foreclosure action against defendant Bronx Miracle following a mortgage payment default and nonpayment of taxes and insurance on the subject property; a foreclosure sale of the property occurred on October 18, 2010.

Bronx Miracle has since moved four times, by order to show cause, to vacate the judgment of foreclosure, for a stay, or otherwise to unwind the sale. The first three of these motions

were denied or withdrawn. After the third motion was denied, Mooring commenced a holdover eviction proceeding. A trial was held, and on October 3, 2011, the court (Donald A. Miles, J.), entered a judgment of possession in favor of Mooring, ordering a warrant of eviction to issue forthwith.

In the order on appeal, Bronx Miracle's fourth motion was granted. Citing CPLR 2003, the motion court (Aarons, J.), reasoned that a discrepancy between the foreclosure Referee's testimony that the property was sold on October 18, 2010 and the Memorandum of Sale on which the date of July 15, 2010 is typewritten was sufficient to set aside the sale, pursuant to the court's equitable powers to prevent fraud, collusion, mistake or misconduct.

We reverse, and deny the motion. CPLR 2003 provides as follows: "At any time within one year after a sale made pursuant to a judgment or order, but not thereafter, the court, upon such terms as may be just, may set the sale aside for a failure to comply with the requirements of the civil practice law and rules as to the notice, time or manner of such sale, if a substantial right of a party was prejudiced by the defect."

Bronx Miracle's motion was made outside the one-year statutory time limit. Even if it had been timely, we would deny it. The typographical error in the Memorandum of Sale, which was

executed following the sale, appears to have been a scrivener's error and does not constitute the kind of irregularity contemplated by CPLR 2003. In addition, Bronx Miracle's claimed prejudice resulting from the unconscionably low sale price is unrelated to the scrivener's error, and the alleged inadequacy of the sale price alone "does not furnish sufficient grounds for vacating a sale" (*Guardian Loan Co. v Early*, 47 NY2d 515, 521 [1979]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: JULY 31, 2014

CLERK

Mazzarelli, J.P., Friedman, DeGrasse, Richter, Manzanet-Daniels, JJ.

11503 In re Fort Washington Holdings, LLC, Index 570049/11
Petitioner-Respondent,

-against-

Maurice Abbott,
Respondent-Appellant.

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Richard S. Neubarth, New York (Richard S. Neubarth and Anette Bonelli of counsel), for appellant.

Borah, Goldstein, Altschuler, Nahins & Goidel, P.C., New York (Paul N. Gruber of counsel), for respondent.

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Order of the Appellate Term of the Supreme Court, First Department, entered May 15, 2012, which reversed an order of the Civil Court, New York County (Arthur F. Engoron, J.), entered April 13, 2010, and reinstated the jury verdict in petitioner's favor, unanimously affirmed, without costs.

Assuming without deciding that respondent preserved for appellate review his objection to the court's decision to issue a verdict sheet that separately asked whether respondent and his aunt had an emotional commitment and interdependence, and whether they had a financial commitment and interdependence, we find that the verdict sheet was not an impediment to the jury's ability to find that respondent qualified as a family member for succession purposes (*see* 9 NYCRR 2204.6[d][3][i]). The regulation explicitly states that a person seeking to succeed to a rent-

regulated apartment based upon a nontraditional family relationship must establish both emotional and financial commitment and interdependence. The verdict sheet merely tracked the regulation. Further, the jury was correctly instructed to consider the totality of the relationship in evaluating the evidence (*see Braschi v Stahl Assoc. Co.*, 74 NY2d 201, 213, [1989]). The evidence was sufficient to support the jury's finding that there was no financial commitment and interdependence.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: JULY 31, 2014

CLERK

Sweeny, J.P., Moskowitz, DeGrasse, Gische, JJ.

11815N National Union Fire Insurance Company of Pittsburgh, Pennsylvania, et al., Plaintiffs-Appellants,

Associated Electric & Gas Insurance Services Limited, Plaintiff,

-against-

TransCanada Energy USA, Inc., et al., Defendants-Respondents.

- - - - -

TC Ravenswood, LLC, Plaintiff-Respondent,

-against-

National Union Fire Insurance Company of Pittsburgh, Pennsylvania, etc., et al., Defendants-Appellants,

Ace Ina Insurance, et al., Defendants.

Index 650515/10
400759/11

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Foran Glennon Palandech Ponzi & Rudloff PC, New York (Malcolm J. Reilly of counsel), for National Union Fire Insurance Company of Pittsburgh, Pennsylvania, ACE INA Insurance and Arch Insurance Company, appellants.

Podvey, Meanor, Catenacci, Hildner, Cocoziello & Chattman P.C., New York (Gregory D. Miller of counsel), for Factory Mutual Insurance Company, appellant.

Anderson Kill P.C., New York (John M. O'Connor of counsel), for respondents.

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Order, Supreme Court, New York County (Barbara Jaffe, J.),

entered August 19, 2013, which, inter alia, upon cross motions to confirm and to reject the special referee's finding that any documents that pre-date the rejection by National Union Fire Insurance Company of Pittsburgh, Pennsylvania, ACE INA Insurance, Arch Insurance Company (the market insurers), and Factory Mutual Insurance Company (with the market insurers, the insurance companies) of TransCanada Energy USA, Inc., TC Ravenswood Services Corp., and TC Ravenswood, LLC's (TransCanada) claims are not protected from disclosure, and a motion for a protective order, ordered the insurance companies to produce to TransCanada all the documents except certain specified ones, unanimously affirmed, with costs.

The motion court properly found that the majority of the documents sought to be withheld are not protected by the attorney-client privilege or the work product doctrine or as materials prepared in anticipation of litigation. Following an in camera review, the court determined that certain documents were privileged because they contained legal advice. As for the remaining documents, the court found that the insurance companies had not met their burden of demonstrating privilege. The record shows that the insurance companies retained counsel to provide a coverage opinion, i.e. an opinion as to whether the insurance companies should pay or deny the claims. Further, the record

shows that counsel were primarily engaged in claims handling — an ordinary business activity for an insurance company. Documents prepared in the ordinary course of an insurer's investigation of whether to pay or deny a claim are not privileged, and do not become so "'merely because [the] investigation was conducted by an attorney'" (*see Brooklyn Union Gas Co. v American Home Assur. Co.*, 23 AD3d 190, 191 [1st Dept 2005]).

We need not reach the question of whether the common interest exception to the attorney client privilege applies, because the documents at issue are not privileged.

The insurers' argument that they actually denied TransCanada's claims before the date identified in the motion court's order, and that therefore any documents prepared after that date are protected attorney work product, is a factual argument improperly raised for the first time on appeal.

The Decision and Order of this Court entered herein on February 25, 2014 is hereby recalled and vacated (*see* M-1354 and M-1384 decided simultaneously herewith).

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: JULY 31, 2014

CLERK

Sweeny, J.P., Renwick, Andrias, Saxe, Kapnick, JJ.

12854 Adelei Padilla, Index 303454/10
Plaintiff-Appellant,

-against-

Montefiore Medical Center, et al.,
Defendants-Respondents.

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Alexander J. Wulwick, New York, for appellant.

Kaufman, Borgeest & Ryan LLP, Valhalla (Edward J. Guardaro, Jr. of counsel), for respondents.

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Order, Supreme Court, Bronx County (Norma Ruiz, J.), entered June 21, 2013, which, after a jury verdict in plaintiff's favor, granted so much of defendants posttrial motion as sought to set aside the jury's verdict, and dismissed the complaint, unanimously reversed, on the law, without costs, and defendants' motion granted only to the extent of remanding the matter for a new trial on the issue of damages for past pain and suffering, unless plaintiff stipulates, within 30 days after service of this order, with notice of entry, to reduce the award for past pain and suffering from $800,000 to of $225,000.

Plaintiff alleges that defendant doctor committed malpractice during a laparoscopic cholecystectomy, i.e. gall

bladder removal surgery. Defendants' motion to set aside the verdict and dismiss the complaint should have been denied. The experts' disagreement as to whether the injury to the right common iliac artery, based upon its location in the body, was an accepted complication of the surgery, was a jury issue (*see Feldman v Levine*, 90 AD3d 477 [1st Dept 2011]). It cannot be said that "there is simply no valid line of reasoning and permissible inferences which could possibly lead rational [jurors] to the conclusion reached by the jury on the basis of the evidence presented at trial" *(Cohen v Hallmark Cards*, 45 NY2d 493, 499 [1978]).

Defendants, however, persuasively argue that a total award of $800,000 for plaintiff's past pain and suffering is excessive and deviates from what is reasonable compensation under the circumstances (CPLR 5501[c]). The award exceeded what would be

reasonable compensation to the extent indicated (*compare Harris v City of N.Y. Health & Hosps. Corp.*, 49 AD3d 321 [1st Dept 2008] and *Cruz v Manhattan & Bronx Surface Tr. Operating Auth.*, 259 AD2d 432 [1st Dept 1999]).

We have considered plaintiff's remaining contentions and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: JULY 31, 2014

CLERK

Acosta, J.P., Renwick, Moskowitz, Freedman, Feinman, JJ.

12015 In re Nestle Waters North America, Inc., etc., Petitioner-Appellant, Index 104096/12

-against-

The City of New York, et al., Respondents-Respondents.

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Edelstein & Grossman, New York (Jonathan I. Edelstein of counsel), for appellant.

Michael A. Cardozo, Corporation Counsel, New York (Edward F.X. Hart of counsel), for respondents.

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Judgment, Supreme Court, New York County (Eileen A. Rakower, J.), entered March 8, 2013, reversed, on the law, without costs, the petition granted, the determination annulled, the violations vacated and dismissed, and it is declared that respondents' policy of deeming "IRP" an accurate description of "Apportioned" license plates issued outside of New York State is violative of § 238 of the Vehicle and Traffic Law.

Opinion by Renwick, J. All concur.

Order filed.

SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT,

Rolando T. Acosta, J.P.
Dianne T. Renwick,
Karla Moskowitz,
Helen E. Freedman,
Paul G. Feinman, JJ.

12015
Index 104096/12

_____x

In re Nestle Waters North America, Inc., etc.,
Petitioner-Appellant,

-against-

The City of New York, et al.,
Respondents-Respondents.

_____x

Petitioner appeals from the judgment of the Supreme Court, New York County (Eileen A. Rakower, J.), entered March 8, 2013, which denied the petition and dismissed the hybrid CPLR article 78 and declaratory judgment proceeding challenging respondents' policy of deeming "IRP" an accurate description of out-of-state "APPORTIONED" license plates and registrations for purposes of adjudicating parking summonses.

Edelstein & Grossman, New York (Jonathan I. Edelstein of counsel), for appellant.

Michael A. Cardozo, Corporation Counsel, New York (Edward F.X. Hart and Leonard Koerner of counsel), for respondents.

RENWICK, J.

Petitioner Nestle Waters North America, Inc. (Nestle) commenced the instant "hybrid class action for Article [sic] 78 relief, declaratory judgment, injunctive relief and remission of fines unlawfully imposed" seeking to, inter alia, annul the determination of respondent Appeals Board of Parking Violations Bureau of the City of New York (The Board). The Board upheld a finding of guilt as to 38 parking summonses issued to Nestle's trucks with New Jersey "APPORTIONED" license plates.[1] Nestle challenges the New York City Parking Violation Bureau's policy of deeming "IRP" an accurate description of out-of-state "APPORTIONED" license plates for purposes of adjudicating parking summonses. For the reasons explained below, we find that such policy violates Vehicle and Traffic Law (VTL) § 238(2), which requires an accurate description of the five mandatory elements on a parking ticket.

Companies like Nestle, with fleets of trucks operating across state lines, typically obtain "apportioned" license plates from their state of registration. These plates are labeled

[1] New York City Police Department traffic agents issued the 38 summonses at issue here to Nestle's trucks for various parking violations including parking by a fire hydrant, parking in no standing and no parking zones, double parking in Midtown and leaving platform lifts in low positions.

"APPORTIONED" because they are issued under the International Registration Plan (IRP), a privately-administered registration reciprocity agreement, under which the highway use tax paid by the truck owner is apportioned among the states and provinces in which the trucks are used. Trucks registered under the IRP are issued license plates labeled "APPORTIONED."

On May 24, 2012, Nestle appeared at a hearing before the New York City Department of Finance Commercial Adjudications Unit to contest the 38 summonses, arguing that they should be dismissed because the "plate type was described incorrectly." Nestle submitted the following evidence to the hearing examiner in support: (1) the registration cards of the trucks to which the summonses were issued; (2) a letter from an "IRP Supervisor" of the New Jersey Motor Vehicle Commission stating that "APPORTIONED" is the correct plate type issued in the State of New Jersey [and t]here is no plate type IRP"; (3) a letter from the New Jersey Motor Vehicle Commission stating that it "only issues plates with the designation 'APPORTIONED' displayed at the bottom for use on vehicles registered under the International Registration Plan [and it] does not issue plates with the designation IRP displayed on them"; (4) a sample New Jersey "APPORTIONED" license plate; and (5) an excerpt from the New York City Department of Finance Commercial Adjudications Unit's

"Administrative Law Judge Manual" (The Manual) pertaining to "Conflicts in Plate Type Descriptions." The administrative law judge rejected Nestle's argument, adjudicated Nestle guilty on each of the summonses and imposed fines in the total amount of $3,835.00.

On June 26, 2012, a hearing was held before the Appeals Board. In its appeal submission, Nestle claimed that the basis for the appeal was the rejection of its defense of "wrong plate type" and the failure of the administrative law judge to consider the evidence submitted. It further argued that the administrative law judge failed to abide by the Manual's requirement that "[i]n assessing the accuracy of plate type for a foreign registered vehicle, the ALJ's basic concern is whether the summons writer accurately transcribed to the summons what appeared on the plate." The administrative law judge panel held that, "[u]pon review of the entire record before us, we find no error of fact or law. The Judge's decision is upheld."

In October, 2012, Nestle filed this proceeding seeking a judgment granting it the following relief: (1) vacating and annulling the final determination made by respondents in June 2012, on the ground that such determination was arbitrary, capricious and contrary to law; (2) directing respondents to remit all fines paid by Nestle in connection with the 38 disputed

summonses; (3) "[d]eclaring the [respondents'] policy of deeming 'IRP' an accurate description of 'APPORTIONED' license plates issued outside New York State is violative of Section 238 of the Vehicle and Traffic Law."

The petition alleged that respondents had "adopted a policy of regarding 'IRP' as an accurate description of out-of-state 'APPORTIONED' license plates, because trucks with 'APPORTIONED' plates are registered under the International Registration Plan." However, it further contended that "IRP" is "not an accurate description of the actual, physical plate because states, other than New York, do not issue 'IRP' plates or registrations" but instead issue "APPORTIONED" plates and registrations.

Petitioner alleged that a "large number of summonses describing the plate type as 'IRP' have been issued to out-of-state trucks with 'APPORTIONED' plates and registrations, because the automatic coding machines issued to New York City parking enforcement personnel contain a shortcut key for 'IRP' . . . whereas 'APP' must be keyed in manually."

Pursuant to CPLR § 7803(3), the relevant inquiry in this case is "whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion." As a general rule, an action is deemed to be arbitrary if it is taken without a sound

basis in reason and generally without regard to the facts (*see Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]; *Matter of Trump on the Ocean, LLC v Cortes-Vasquez*, 76 AD3d 1080 [2d Dept 2010]). "An agency's interpretation of a statute it is charged with implementing is entitled to deference if not irrational or unreasonable" (*Matter of Hamil Stratten Props, LLC v New York State Dept. of Envtl. Conservation*, 79 AD3d 747, 748 [2d Dept 2010]; *see also Matter of New York Botanical Garden v Board of Stds. & Appeals of City of N.Y.*, 91 NY2d 413, 419 [1998]; *Flacke v Onondaga Landfill Sys.*, 69 NY2d 355 [1987]).

In this case, as indicated, petitioner argues that the determination of the Appeals Board was based upon an error of law in deeming an "IRP" an accurate description of out-of-state "APPORTIONED" license plates and registrations, for purposes of adjudicating parking summonses. The New York City Parking Violations Bureau issued the disputed 38 summonses pursuant to VTL § 238(2), which provides as follows:

> A notice of violation shall be served personally upon the operator of a motor vehicle who is present at the time of service, and his name, together with the plate designation and the plate type as shown by the registration plates of said vehicle and the expiration date; the make or model, and body type of said vehicle . . . shall be inserted therein . . . . The notice of

> violation shall be served upon the owner of the motor vehicle if the operator is not present, by affixing such notice to said vehicle in a conspicuous place. Whenever such notice is so affixed, in lieu of inserting the name of the person charged with the violation in the space provided for the identification of said person, the words "owner of the vehicle bearing license" may be inserted to be followed by the plate designation and plate type as shown by the registration plates of said vehicle together with the expiration date; the make or model, and body type of said vehicle . . . . Service of the notice of violation, or a duplicate thereof by an affixation as herein provided shall have the same force and effect and shall be subject to the same penalties for disregard thereof as though the same was personally served with the name of the person charged with the violation inserted therein.

Thus, VTL § 238(2) provides the requirements for initiating a prosecution for parking violations. The statute sets forth five mandatory identification elements which may not be omitted from a parking summons if it is to survive a jurisdictional challenge and avoid dismissal (*Matter of Wheels, Inc. v Parking Violations Bur. of Dept. of Transp. of City of N.Y.*, 80 NY2d 1014(1992); *Matter of Ryder Truck Rental v Parking Violations Bur. Of Transp. Adm. of City of N.Y.*, 62 NY2d 667 (1984). The mandatory five elements are 1) plate designation 2) plate type 3) expiration date of registration; 4) make or model of vehicle and 5) body type of vehicle.

The Court of Appeals has required strict compliance with the requirements of VTL § 238(2). For example, in *Ryder Truck Rental*, the Court of Appeals reversed the Appellate Division and

reinstated the Supreme Court's decision annulling a PVB Appeals Board decision which upheld notices of violation that failed to include the expiration date for the vehicle's registration, as required by the statute. The Court said: "The provisions explicitly prescribed by the Legislature in the statute are mandatory . . . To hold all these elements directory only would evidently be to eviscerate the legislative enactment" (*id.* at 669-670).

Further, in *Matter of Wheels,* the Court of Appeals amplified its decision in *Ryder Truck* by holding that the five mandatory identification elements, which may not be omitted from a parking summons if it is to avoid dismissal, may also not be misdescribed (80 NY2d 1014). Thus, a misdescription of any of the five mandatory identification elements also constitutes a jurisdictional defect mandating dismissal (*id.*).

Similarly, this Court is bound by the plain language of VTL 238(2). We must conclude that the New York City Parking Violations Bureau's policy of deeming "IRP" an accurate description of out-of-state "APPORTIONED" license plates for purposes of adjudicating parking violations violates the statute. As indicated, VTL § 238(2) requires that a notice of parking violation shall include the "plate type *as shown* by the registration plates of said "vehicle" (emphasis added). It is

undisputed that each ticket here described the "vehicle type" as "IRP," while the corresponding license plate described the vehicle type as "APPORTIONED." The choice of the words in the statute "*as shown*" by the vehicle plate is evidence that the legislature intended strict compliance with the statute, and "new language cannot be imported into a statute to give it a meaning not otherwise found therein" (McKinney's Cons Laws of NY, Book 1, Statutes § 94, at 190); see *Matter of Raritan Dev. Corp. v Silva*, 91 NY2d 98, 104-105 [1997], quoting § 94).

We are cognizant that the terms "IRP" and "APPORTIONED" are used interchangeably by the New York City Parking Violations Bureau as a convenience. For instance, the automatic coding machines issued to New York City parking enforcement personnel contain the short cut key of "IRP," whereas "APP" or "APPORTIONED"' must be keyed in manually. Nevertheless, the statute simply does not allow for such administrative expedience, and neither this Court nor an administrative agency is permitted to effectively amend a statute to permit such shortcut. That is a task for the Legislature, if it sees fit.

In short, the petition should have been granted because the final determination made by respondent to adjudicate petitioners guilty on each of the summonses was contrary to well established law. Dismissal of the traffic summonses was warranted since they

failed to comply with the mandatory requirements of VTL § 238(2) (*see Matter of Wheels,* 80 NY2d 1014; *Ryder Truck Rental*, 62 NY2d 667).

Accordingly, the judgment of the Supreme Court, New York County (Eileen A. Rakower, J.), entered March 8, 2013, which denied the petition and dismissed the hybrid CPLR article 78 and declaratory judgment proceeding challenging respondents' policy of deeming "IRP" an accurate description of out-of-state "APPORTIONED" license plates and registrations for purposes of adjudicating parking summonses, should be reversed, on the law, without costs, the petition granted, the determination annulled, the violations vacated and dismissed, and it is declared that respondents' policy of deeming "IRP" an accurate description of "Apportioned" license plates issued outside of New York State is violative of § 238 of the Vehicle and Traffic Law.

All concur.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: JULY 31, 2014

CLERK