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COURT OF APPEALS
STATE OF NEW YORK

MATTER OF CLAIM OF MCLAURIN,
MATTER OF CLAIM OF MATTHEWS,
MATTER OF CLAIM OF ANDERSON,
MATTER OF CLAIM OF DJANUZAKOV

Appellants, NO. 88
89
-against- 90
91

NEW YORK CITY TRANSIT AUTHORITY,
Respondent.

20 Eagle Street
Albany, New York
October 15, 2025

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

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Chrishanda Sassman-Reynolds
Official Court Transcriber

1 CHIEF JUDGE WILSON: Good afternoon. The first
2 cases on today's calendar are Matter of Claim of McLaurin,
3 Matter of Claim of Matthews, Matter of Claim of Anderson,
4 and Matter of Claim of - - - let's see if I can get this
5 right, Djanuzakov. Close, I hope.

6 Counsel?

7 MR. MAGNETTI: Good afternoon, Your Honors. If
8 it pleases the court, I'm Ralph Magnetti, from the firm of
9 Cherry Edson & Kelly, representing the City of Yonkers and
10 PMA Management Corporation, the appellants in Matter of
11 Anderson.

12 The first issue we're here to address is does
13 Matter of Wolfe compel the Board to consider a claimant's
14 particular vulnerability when deciding the issue of whether
15 mental stress experienced by the claimant is greater than
16 the stress experienced by similar workers.

17 CHIEF JUDGE WILSON: Counsel, let me just
18 interrupt you for a second. Sorry. Right here.

19 MR. MAGNETTI: Oh.

20 CHIEF JUDGE WILSON: Do you want to reserve time
21 for rebuttal?

22 MR. MAGNETTI: No. I'll use my eight minutes.
23 Mr. Perigoe is taking my rebuttal. Okay.

24 We say, no, because the cases decided by this
25 course - - - court after Wolfe. Matter of Everett, Matter

1 of Wood, and Matter of Leggio did not follow that
2 reasoning.

3 In fact, the Matter of Wood decision specifically
4 states that a person's individual makeup is not a fortuity
5 that should determine whether a claim is covered under the
6 Workers' Compensation Law.

7 JUDGE GARCIA: So Counsel, how should it work?
8 Here.

9 MR. MAGNETTI: How should it work?

10 JUDGE GARCIA: Yeah. What's your rule?

11 MR. MAGNETTI: Well, my rule is - - - and the
12 Workers' Compensation Board's rule is that there are
13 basically three ways to establish - - - you have to satisfy
14 three requirements to establish a workers' compensation
15 claim. The first step is whether an accident occurred.
16 And that is in a - - - in a mental stress claim when we use
17 the test of whether a similar situated worker in that work
18 environment experienced the same stress in - - -

19 JUDGE HALLIGAN: Can I ask you where does - - -
20 over here. Where does the "similarly situated" requirement
21 come from?

22 MR. MAGNETTI: It's a - - - in my brief I - - - I
23 contend that it evolved from Matter of Santacroce which was
24 decided before Matter of Wolfe. There's an argument as to
25 whether or not it was overruled. We say it wasn't. And

1 then, it evolved into the similar situated worker standard
2 in cases like Matter of Loh Lin and right up until this
3 court's decision in Matter of Leggio, which followed it.

4 JUDGE HALLIGAN: And does that rule apply to
5 physical injuries as well as to psychological injuries?

6 MR. MAGNETTI: No, it does not.

7 JUDGE HALLIGAN: Okay. Why - - - why is there a
8 distinction? And where in the case law can we see that?

9 MR. MAGNETTI: I think the distinction comes from
10 the fact that mental injuries are different from physical
11 impact injuries. I - - -

12 JUDGE HALLIGAN: But in what respect that would
13 lead to a different rule, would you say?

14 MR. MAGNETTI: Well, they're very subjective.
15 They're hard to quantify. There's no objective way to
16 determine a person - - - whether a person has experienced
17 mental stress.

18 JUDGE HALLIGAN: Well, presumably - - -
19 presumably, there would be medical testimony about whether
20 or not there is some impact that an individual has
21 sustained. Right?

22 MR. MAGNETTI: Right. Well, I think even in the
23 physical impact cases, and first of all, Matter of
24 Santacroce involved a heart attack, not just a solely
25 mental injury. But even if you look at some of the cases

1 involving physical injuries, there are certain impacts that
2 don't rise to the level of an accident within the meaning
3 of the Workers' Compensation Law.

4 JUDGE HALLIGAN: So if we were to say that the
5 similarly situated requirement - - - what about the normal
6 work environment? Is that physical injuries as well? Or
7 is that also confined just to psychological injuries in
8 your view?

9 MR. MAGNETTI: In my view it's confined to
10 psychological injuries.

11 JUDGE HALLIGAN: So how do we square that with
12 Wolfe, which I think suggests that perhaps they should be
13 treated in a similar way?

14 MR. MAGNETTI: Well, we square it with Wolfe by
15 recognizing the fact that the statement about particular
16 vulnerabilities in Wolfe is addressing the result of an
17 accident, not whether or not an accident occurred. So - -
18 -

19 JUDGE HALLIGAN: So you don't think Wolfe says
20 anything about whether we should treat the two types of
21 injuries equivalently?

22 MR. MAGNETTI: It says that they should be
23 treated equivalently to the extent that a person's
24 preexisting condition isn't something that determines
25 whether or not an accident occurred.

1 We look at the accident first and decide is that
2 an accident or is it not an accident? And I think the
3 particular vulnerability language comes from the fact that
4 employers and even the dissenting opinion in Wolfe were
5 arguing that this claimant didn't have an accident because
6 she had a pre-existing condition. Well, it's not a - - -

7 JUDGE GARCIA: So Counsel, to put it in concrete
8 terms. What you would agree with, I think, is - - - to
9 take the facts from one of the cases. An employee walks
10 in, sees that her supervisor has committed suicide, and
11 then suffers a mental injury. If that employee had a pre-
12 existing condition that made them more susceptible to that
13 type of injury, that wouldn't matter, right?

14 MR. MAGNETTI: Right. Because we - - - whether
15 you had a pre-existing condition or not, those facts are
16 sufficient to establish that an accident occurred.

17 JUDGE GARCIA: Right. And it's - - - the
18 accident is the walking in on the boss is taking his own
19 life, but not - - - and that's where the particular
20 condition of the claimant comes in?

21 MR. MAGNETTI: Right.

22 JUDGE GARCIA: Not in creating the condition - -
23 -

24 MR. MAGNETTI: Right.

25 JUDGE GARCIA: - - - of the suicide?



1 MR. MAGNETTI: That's our position, yes.

2 CHIEF JUDGE WILSON: So how does the similarly
3 situated requirement help in the case - - - help to
4 determine whether something that occurred is a - - - an
5 accident or not?

6 MR. MAGNETTI: Well, the - - - it simply means
7 that mental stress has to be more than what we usually - -
8 - or what that classification of employee usually
9 experiences in their normal work environment.

10 CHIEF JUDGE WILSON: Well, so that goes back, I
11 think, to Judge Halligan's question is that different from
12 normal work environment, or is it the same thing?

13 MR. MAGNETTI: The same thing.

14 JUDGE SINGAS: And why does the accident - - -
15 why can't the accident be a catastrophic event that affects
16 all workers at the same time or similarly? Like, why does
17 it have to be one worker vis-a-vis another worker?

18 MR. MAGNETTI: Well, that's how the law evolved.
19 It's been codified by the legislature. It's - - - you
20 know, even when they amended the law in 2017, they
21 recognized that this was a valid standard for determining
22 whether a mental stress injury occurred. Then, in the more
23 recent amendment in 2025, they created more exceptions to
24 the rule, but they still recognize the rule. So over the
25 years, it's just come to be that it is the rule that we use

1 in mental stress cases.

2 JUDGE HALLIGAN: So maybe you just answered this
3 in response to the Chief's question. But what's the
4 difference between asking if there are similarly situated
5 workers and if it's a normal work environment?

6 MR. MAGNETTI: Well, I think it has to satisfy
7 both requirements.

8 JUDGE HALLIGAN: But what's the difference
9 between the two requirements? What kind of proof am I
10 looking at to see if it's similarly situated, as opposed to
11 a normal work environment? Could it be one, and not the
12 other?

13 MR. MAGNETTI: Yes. It could be a similarly
14 situated worker working in an environment that's not
15 normal. Like, in the Cox case similarly situated workers
16 were asked to commit fraud. So that's - - -

17 JUDGE HALLIGAN: But there - - -

18 MR. MAGNETTI: - - - that wasn't considered - - -

19 JUDGE HALLIGAN: - - - I thought there was
20 recovery - - -

21 MR. MAGNETTI: - - - a normal work environment.

22 JUDGE HALLIGAN: I thought there was recovery in
23 the fraud case. Maybe I'm misremembering it.

24 So are you saying that they are different - - -
25 you're saying they're different concepts, but I thought you

1 said both are required in order to have recovery for a
2 stress-related injury?

3 MR. MAGNETTI: Not - - - well, maybe I confused
4 it. Not that both are required, but that that's the test.
5 It has to be in a normal work environment. It has to be a
6 similar - - - similarly situated worker in a normal work
7 environment, not an abnormal work environment.

8 JUDGE CANNATARO: So in an extraordinarily
9 stressful work and - - - you know, in a work environment
10 under some abnormal condition, even though all the other
11 employees are similarly situated, there would, if I
12 understand you correctly, could still be something termed
13 an accident?

14 MR. MAGNETTI: Right.

15 JUDGE CANNATARO: Okay.

16 MR. MAGNETTI: Okay. My time is up, I guess.

17 CHIEF JUDGE WILSON: Thank you.

18 MR. MAGNETTI: So I'll let Mr. Perigoe take over.
19 Thank you.

20 MR. PERIGOE: Your Honors, may it please the
21 court. I'm Evan Perigoe, of counsel to Weiss, Wexler &
22 Wornow on behalf of the New York City Transit Authority and
23 MaBSTOA in the three other cases.

24 Unfortunately, I'm going to have to start by
25 pointing out a little intellectual error that was made by



1 counsel on the same side, and it's the same one that I warn
2 against on the very first page of substance on the
3 appellant's brief in this matter. And it's the confusion
4 between psychological injury and emotional strain, and on
5 the other hand, physical impact, and physical injury.

6 Judge Halligan, your question to my cocounsel
7 used the phrase does - - - you asked whether this similarly
8 situated worker standard applies to cases of physical
9 injury. In fact, it does. Santacroce is a case about
10 physical injury. It is a case about a heart attack. All
11 of the early cases about psychological injuries - - -

12 JUDGE HALLIGAN: But what - - - does it apply
13 when the cause is psychological trauma? I'm talking about
14 the cause as opposed to the nature of the injury.

15 MR. PERIGOE: Yes. And I think that's where
16 there was the disconnect between - - -

17 JUDGE HALLIGAN: So it does apply, your - - -
18 your view is - - -

19 MR. PERIGOE: Yes. So Santacroce was a case
20 where - - -

21 JUDGE HALLIGAN: So just to make sure I'm sure -
22 - - I'm clear. You're saying similarly situated applies
23 where the cause is psychological trauma. Does it also
24 apply where the cause is some physical event?

25 MR. PERIGOE: It does not. But the reasoning - -

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JUDGE HALLIGAN: And why the distinction?

MR. PERIGOE: The reasoning is this. Since the inception of the Workers' Compensation Law, and I'll direct the court to the NYCTA's reply brief that goes into this in very detail. It's our point 1 in response with - - - it's the Fowler case. That sets out in 1916, one of the very first cases this court hears about the Workers' Compensation Law. When is something an accident? And it's when something unexpected or unusual happens is the consensus.

Now, that's very easy if you have someone in a fall. We can see the before and the after. We know that an accident occurred. It's the - - - the standard is in the common sense viewpoint of the ordinary observer - - - oh. And I'm sorry. I'm sorry. I was supposed to reserve four minutes for - - -

CHIEF JUDGE WILSON: All right. We'll - - -

MR. PERIGOE: My apologies.

CHIEF JUDGE WILSON: We'll roll that back.

MR. PERIGOE: Got a little distracted there.

The - - - in the common sense viewpoint of an ordinary person, has an accident occurred? This is - - - the first cases where this came up are cases where someone picks something up and strains their back or exerts - - -



1 JUDGE HALLIGAN: So why do we - - -

2 MR. PERIGOE: - - - themselves and has a heart
3 attack physically.

4 JUDGE HALLIGAN: Why do we need the requirement,
5 as I think you're suggesting, where the source is a
6 psychological trauma as opposed to some physical incident?

7 MR. PERIGOE: The question is essentially what's
8 the difference between something happening and nothing
9 happening? What's the difference between a nonaccidental
10 exposure to, I just went to work, and nothing happened
11 versus an accident. And I think the best examples for this
12 are things like physical exertion causing a heart attack,
13 which is the - - - kind of the initial where we get these
14 internal injuries claims, and then the other one would be
15 hearing loss. A certain amount of noise is not injurious
16 to hearing. It doesn't cause hearing loss. If it's below
17 about eighty decibels, that's perfectly safe. It's when it
18 gets above that for a prolonged period of time that it
19 becomes - - - it actually becomes an occupational disease,
20 but it becomes injurious. And we don't have a decibel
21 meter for emotional exposures at work. We don't have a way
22 to see inside people's minds - - -

23 JUDGE RIVERA: Okay. So now compare - - -

24 MR. PERIGOE: - - - to see whether it's
25 injurious.

1 JUDGE RIVERA: - - - compare that to the COVID-19
2 fear of exposure.

3 MR. PERIGOE: So for the COVID-19 exposure, the -
4 - - the question is, is someone exposed to a stimulus that
5 is above an - - - and a level of emotional strain that is
6 above and beyond what other workers in the same line of
7 work have been exposed to? And the answer in all of these
8 cases is no.

9 JUDGE HALLIGAN: Why is the relevant reference
10 point the other workers in that moment and not the other
11 workers, say, in the month before COVID, or once the
12 initial stages have abated? In other words, a temporal
13 comparison.

14 MR. PERIGOE: This argument was made extensively
15 by Mr. Schotter, that we should use a different temporal
16 component - - -

17 JUDGE HALLIGAN: Right.

18 MR. PERIGOE: - - - and that there was a
19 difference between normal work environment and similarly
20 situated workers. Both of those were advanced by all the
21 claimants - - -

22 JUDGE HALLIGAN: What is your response to that?

23 MR. PERIGOE: Yes. In the - - - at - - - in the
24 Third Department. But that wasn't the basis on which the
25 Third Department made its decision here.

1 JUDGE HALLIGAN: But why is it not correct, in
2 your view, in any event?

3 MR. PERIGOE: The reasoning would be that it has
4 never been considered before. It has always been a
5 comparison - - -

6 JUDGE HALLIGAN: But maybe COVID is a unique
7 circumstance in that regard?

8 MR. PERIGOE: And that is what the Attorney
9 General's Office seemed to say in their brief about the
10 initial stages of COVID. They want Matthews and McLaurin
11 to be reversed, but for Anderson and Djanuzakov not to be
12 reversed, apparently. You can ask them about it.

13 Our view is that if that were the line that the
14 Workers' Compensation Board drew, the Workers' Compensation
15 Board is allowed to make that determination. It's allowed
16 to make a finding of fact that this particular stimulus was
17 greater than what similarly situated workers were exposed
18 to, and perhaps by using a different component, a different
19 temporal comparison. But we think that when the - - -

20 JUDGE RIVERA: Because of the nature of events or
21 what was or was not known at one point in time, and then
22 seven months later?

23 MR. PERIGOE: Right. If the board had come to
24 that conclusion, that would be a reasonable conclusion for
25 the board to come to, and that would be within the fact - -

1 - the board's purview - - -

2 JUDGE HALLIGAN: But why isn't that a - - -

3 MR. PERIGOE: - - - as the factual finder to make
4 that distinction.

5 JUDGE HALLIGAN: - - - what - - - why isn't that
6 a question of law? In other words, why isn't that a
7 question about how we understand the meaning of accident in
8 this circumstance as opposed to a factual finding for sure?
9 You know what was the experience of this individual, what
10 was the injury, what did the medical records show. But why
11 isn't this a question of law?

12 MR. PERIGOE: I think to compare - - - you're - -
13 - you're comparing the case before you in the particular
14 events of the particular claimant. You're - - - the - - -
15 when the board chooses to make the comparison, the board is
16 the one that has to select what the comparative group would
17 be, initially. And I think unless that comparative group
18 is that there's no support in the substantial evidence for
19 it, I think the board should be - - -

20 CHIEF JUDGE WILSON: Well, but - - -

21 MR. PERIGOE: - - - should receive the - - -

22 CHIEF JUDGE WILSON: - - - but similarly situated
23 is a question of law. No?

24 MR. PERIGOE: I don't know that I would
25 necessarily agree with that, Your Honor. I think the



1 question of whether they're similarly situated might be.
2 But I think what is - - - what are the conditions of work
3 for the similarly situated workers? That involves asking,
4 well, what are the other transit authority employees doing,
5 for example. Or what are the other employees of a school
6 board doing? There are factual issues that go into that.

7 So perhaps if the - - - if there's a decision
8 that the comparative group is wrong on the law, that is
9 perhaps a decision this court could make, but I think the
10 board would have to find that there was error by the board
11 in making that determination.

12 JUDGE RIVERA: So your red light is off now that
13 you've saved your four minutes.

14 But just to clarify. So what matters is what - -
15 - what the similarly situated worker is exposed to. Not,
16 in this case, potentially - - - well, COVID-19.
17 Potentially contracting COVID-19. Not whether those
18 similarly situated workers are anxious. Right? It's not
19 about the measure of anxiety, correct?

20 MR. PERIGOE: Certainly, when - - -

21 JUDGE RIVERA: It's the source of the anxiety
22 that matters?

23 MR. PERIGOE: It's both issues that matter. It's
24 whether the source of anxiety is present, and whether the
25 similarly situated workers are also receiving - - - or

1 whether they are - - - it's whether they have no untoward
2 effects. That's the language of Santacroce.

3 Is it that the workers who are the other transit
4 authority workers for my cases, are able to go to work
5 without having psychological injuries? That would be the
6 question.

7 CHIEF JUDGE WILSON: Thank you.

8 MR. SCHOTTER: Good afternoon, Your Honors. And
9 may it please the court. Geoffrey Schotter, on behalf of
10 the claimant respondents.

11 At stake today is whether the board may lawfully
12 discriminate against mental illnesses by making them harder
13 to recover compensation for than physical injuries. The
14 board may not impose a disparately higher burden of proving
15 an accident because the injury is psychological or the
16 mechanism is emotional strain. The Appellate Division
17 correctly held this.

18 The board improperly opposed such a burden when
19 it held that the same source, exposure to COVID-19, the
20 claim - - - the claimant respondents with psychological
21 injuries that source was normal. It was the new normal, in
22 fact, whereas - - -

23 JUDGE HALLIGAN: So is your position that if a
24 claimant is alleging stress from some condition in the
25 workplace, that there's never a requirement to show that it

1 is greater than the normal work environment or a similarly
2 situated worker? What's the rule you're asking for?

3 MR. SCHOTTER: So the rule I'm asking for is
4 simply the common sense viewpoint of the average person's
5 standard that this court has with the exception of Matter
6 of Chernin, which Wolfe overturned.

7 JUDGE HALLIGAN: So you think there's no need to
8 show greater than similarly situated, or not normal work
9 environment?

10 MR. SCHOTTER: No. It's the same single unitary
11 standard. In Matter of Santacroce - - -

12 JUDGE GARCIA: So I'm sorry. So just to be
13 clear. In that hypothetical we were doing where somebody
14 lifts a box, and lifting box is part of the job, and I have
15 a bad back. Now I'm very - - - I get a condition, a
16 psychological condition, from watching people lift boxes.
17 That's recoverable?

18 MR. SCHOTTER: That's recoverable. It depends on
19 a couple of things. Is there a pre-existing vulnerability?
20 Then it may be - - -

21 JUDGE GARCIA: Yeah. I - - - I - - -

22 MR. SCHOTTER: Then it may be recoverable as an
23 accident.

24 JUDGE GARCIA: Because the accident is what?
25 People lifting boxes in front of me?

1 MR. SCHOTTER: The accident - - - well, the
2 source of the accident is perhaps seeing somebody - - -
3 seeing other coworkers lifting boxes. And if somebody
4 develops a psychological illness, the mechanism would be
5 emotional strain, and the illness would be whatever the
6 claimant is diagnosed with.

7 But back to Matter of Santacroce. The appellants
8 falsely claim that the origin of this separate, higher
9 standard for mental stress comes from Santacroce. If you
10 read Santacroce, Santacroce says that the claimant there
11 did not meet the test in Matter of Schechter, which is the
12 only case that is cited in Santacroce.

13 Matter of Schechter does not contain any language
14 about a higher test, a higher showing than simply
15 extraordinary by the standards of the claimant's job
16 duties. So the appellants advocate for the requirement in
17 a mental - - - in emotional strain mechanism, I should
18 specify.

19 JUDGE RIVERA: Yeah. But they argue that there
20 is some practical reason for this distinction. That is to
21 say that it is harder to identify when someone is feigning,
22 whether or not they're fabricating. That the burdens may -
23 - - excuse me. The proof may be a little bit more
24 challenging even with medical experts' testimony. Why
25 aren't they right about that?

1 MR. SCHOTTER: Because the board is given an
2 enormous amount of discretion to determine credibility of
3 witnesses, medical expert, lay witnesses, and just like
4 anything else, the evidence may be more or less credible in
5 each individual case.

6 JUDGE RIVERA: Well, no. I think the point is it
7 may be very challenging to determine credibility. May be
8 challenging to be able to ferret out the genuine from the
9 inauthentic claims.

10 MR. SCHOTTER: But I think - - -

11 JUDGE RIVERA: That's the argument. It's not
12 that the board doesn't have that authority. At least
13 that's what I thought was the argument. I may be wrong.
14 You can correct it on rebuttal.

15 MR. SCHOTTER: The problem with the appellant's
16 argument is they do not and cannot really specify where one
17 draws the line. Yes. Yeah. So there are these vague
18 notions of - - - they try to characterize similarly
19 situated worker in a normal work environment as this higher
20 than extraordinary standard. You might call it
21 extraordinary-plus standard.

22 But they don't - - - if it's going to be a legal
23 rule and not just the board acting as the finder of fact,
24 then the appellants need to very clearly delineate what
25 that rule is, and - - - and it doesn't seem like they're

1 able to do so. They - - - they can articulate a rationale
2 for having a rule that it's too hard to tell when somebody
3 develops a mental stress injury. But they have not really
4 specified, okay, if it's not simply extraordinary - - -

5 JUDGE RIVERA: So since you say it's the same
6 rule, just articulate what's the rule in the COVID-19
7 exposure context?

8 MR. SCHOTTER: So the board - - - the board, when
9 they developed their prevalence doctrine, determined that
10 COVID-19 - - - that infection with COVID-19 is accidental.
11 It's not an occupational disease. But there's a problem
12 with doing that because the traditional case law has held
13 that in order to prove an infectious disease as an
14 accident, there must be a specific transmission event. The
15 claimant must show a specific transmission event. But with
16 COVID-19 during the pandemic in 2020, it would have been
17 impossible for most claimants to show that specific
18 transmission event. So instead, the board modified the
19 law. Said, even though the claimant does not have to show
20 a specific transmission event if the claimant can show
21 prevalence. And if the claimant shows prevalence, then
22 exposure to the virus is effectively presumed from the
23 showing of prevalence. Prevalence equals exposure. So the
24 common source - - -

25 CHIEF JUDGE WILSON: Prevalence plus contracting



1 disease equals exposure?

2 MR. SCHOTTER: So - - -

3 CHIEF JUDGE WILSON: So - - - sorry - - -

4 MR. SCHOTTER: - - - contracting - - -

5 CHIEF JUDGE WILSON: - - - plus exposure equals
6 contracting a disease?

7 MR. SCHOTTER: So we would submit that
8 contracting - - - contracture of the disease is the
9 physical impact mechanism by which exposure causes the
10 illness, but exposure is the source. Just as exposure that
11 the respondents experienced working under prevalent
12 conditions was the source of their psychological injuries.
13 Emotional strain being the mechanism that - - -

14 JUDGE RIVERA: But in the - - - in sort of the
15 psychological injury or source context, it's - - - it - - -
16 isn't it the fear of exposure?

17 MR. SCHOTTER: No, the fear - - -

18 JUDGE RIVERA: The fear that I'm going to be
19 exposed, and yes, contract?

20 MR. SCHOTTER: The fear was a symptom, not the
21 source. So the - - - the respondents reported that they
22 feared contracting COVID.

23 JUDGE RIVERA: Well, the source can't be the
24 fear. I agree with you there. Right? But isn't the fear
25 of being exposed to COVID which would eventually lead to

1 actual contraction?

2 MR. SCHOTTER: So the fear - - -

3 JUDGE RIVERA: We have to start with the fear of
4 exposure?

5 MR. SCHOTTER: The - - - no. It does not start
6 with the fear of exposure.

7 JUDGE RIVERA: Okay.

8 MR. SCHOTTER: It starts with the experience of
9 being exposed because they went into work every day knowing
10 that they were just as at - - - as at risk of contracting
11 COVID as their coworkers who did contract COVID. So it was
12 the - - -

13 JUDGE HALLIGAN: Does the claimant - - - along
14 those lines, does the claimant have to show, in your view,
15 that there was exposure primarily or exclusively at the
16 workplace? What if the claimant leaves work and goes every
17 afternoon to a location where there is also a high
18 incidence of COVID? Does - - - does that relieve - - -
19 does that - - - does that, you know, undo the - - - the
20 causation here?

21 MR. SCHOTTER: So it would - - - the same rules
22 would apply as if the claimant actually did contract COVID.

23 JUDGE HALLIGAN: Right.

24 MR. SCHOTTER: Which is that where you show
25 prevalence, the burden effectively shifts to the carrier to

1 identify a specific transmission event outside of work. So
2 it would be the same - - -

3 JUDGE HALLIGAN: But the carrier could do that if
4 there was facts - - - if there were facts available?

5 MR. SCHOTTER: Of course.

6 CHIEF JUDGE WILSON: So during COVID, why isn't
7 exposure to COVID part of the normal working environment of
8 everybody?

9 MR. SCHOTTER: Well, put very simply because the
10 board says it's not. When somebody gets COVID from the
11 same source exposure, the board very emphatically says,
12 citing cases like Middleton and Johannesen and McDonough v.
13 Whitney Point School District that COVID is not normal. It
14 is extraordinary. It is catastrophic. It is accidental.
15 And yet when our clients - - -

16 CHIEF JUDGE WILSON: So how about swine flu or
17 avian flu?

18 MR. SCHOTTER: Well, if the board created - - -

19 CHIEF JUDGE WILSON: If the board says so, then
20 it is, and if the board says it's not, then it's not?

21 MR. SCHOTTER: If the board created the same
22 doctrine for swine flu or avian flu, then the same
23 principle would apply as applies for COVID. It's because
24 Wolfe says that psychological and physical injuries and
25 mechanisms are compensable to the same extent, that the

1 board violated Wolfe when it held on the one hand that when
2 you get COVID-19 it's an accident, but on the other hand,
3 when you get the psychological injury from being exposed to
4 it, it's just the new normal, it's not an accident.

5 On the issue of particular vulnerabilities, I'd
6 like to touch on that as well. This court has recognized
7 the particular vulnerability principle in Rackley and Henig
8 in - - - in - - - for physical injuries before Wolfe was
9 decided. So Wolfe by - - - simply by saying that physical
10 and psychological injuries and mechanisms are compensable
11 to the same extent, extended that line of cases to mental
12 stress cases, psychological injuries with emotional strain
13 mechanisms. And that's why Rackley and Henig are - - - are
14 not just dicta as the appellants dismiss them as, but are
15 part of the same string of development of the case law
16 through Wolfe.

17 And I think it's very important to understand
18 that the appellants rely pretty heavily on Leggio. Leggio
19 was a case - - - originally it went to the Appellate
20 Division. It was - - - the Appellate Division was split on
21 the issue of whether substantial evidence in the record
22 supported the - - - the finding that the - - - that the
23 rotating shift schedule that the claimant alleged had
24 caused her depression was normal - - - was objectively
25 normal.

1 The claimant had put on several coworkers,
2 supervisors to testify that this rotating shift schedule
3 was not a normal part of her work environment by the
4 standard of her job. The majority found that the
5 un rebutted substantial evidence in the record supported
6 that. The dissent disagreed.

7 Went up to this court. This court reversed.
8 Found that the dissent was - - - you know, was correct that
9 there was conflicting evidence about that. But they
10 remanded it to the Appellate Division because the claimant
11 had also alleged that she suffered an occupational disease.
12 That she pled in the alternative, if you will, that if the
13 rotating shift schedule was normal for her job, then it was
14 an occupational disease.

15 When it got back down to the Appellate Division,
16 the Appellate Division looked at the record and saw that
17 she had pre-existing multiple sclerosis and found that it
18 could not be an occupational disease because the multiple
19 sclerosis played a factor in causing the depression. It
20 wasn't just the rotating shift schedule.

21 And then, citing Hennig, which the appellants
22 again dismissed as dicta, which presumably this court is
23 not even bound to be influenced by. The Appellate Division
24 in Leggio, citing Henig, found that it could not be an
25 occupational disease because of that pre-existing

1 vulnerability.

2 So you have this situation which is shocking to
3 the conscience where somebody who would otherwise have an
4 occupational disease, would not have an occupational
5 disease only because they have a pre-existing
6 vulnerability. This court should hold that that's an
7 accident, otherwise, there's going to be a category of
8 cases that arbitrarily claimants are excluded from.

9 Thank you.

10 CHIEF JUDGE WILSON: Thank you.

11 MS. OSER: Good afternoon. May it please the
12 court. Andrea Oser for the Workers' Compensation Board.

13 The court can affirm here by ruling that the
14 stress claimants allege from the fear of exposure to COVID
15 in these early stages of the pandemic, and the board is not
16 limiting it to two of the four claimants - - -

17 JUDGE HALLIGAN: Counsel - - -

18 MS. OSER: Yes.

19 JUDGE HALLIGAN: - - - I'm sort of perplexed by
20 your position here.

21 MS. OSER: Okay.

22 JUDGE HALLIGAN: So I take it you're not
23 confessing error, because you say that the board's decision
24 was reasonable, but then you also say that you wouldn't
25 object to the opposite result. So that seems unusual to me

1 in an adversarial process. What is the board's position
2 standing here today about what the correct way to interpret
3 the law and to resolve these questions is?

4 MS. OSER: Fair enough. The board feels that it
5 faithfully applied the similarly situated rule as it
6 understood it. This is a court-made rule. It's not in the
7 statute. It has been effectively ratified by the
8 legislature. The court appreciates the reasonableness of
9 the argument on the other side, and it really is not taking
10 a policy position here - - -

11 JUDGE HALLIGAN: So - - -

12 MS. OSER: - - - on what should be the rule.

13 JUDGE HALLIGAN: - - - so you're not - - - you
14 are, or you are not defending what - - - the position the
15 board took below? That seems like a straightforward
16 question, I have to say.

17 MS. OSER: I understand. I understand the
18 question. And all I can say is that the board feels that
19 it faithfully applied the rule as it understood it, and it
20 recognizes the reasonableness of the argument - - -

21 JUDGE HALLIGAN: Although - - -

22 MS. OSER: - - - and it will follow the rule of
23 court.

24 JUDGE HALLIGAN: - - - I'm sure you appreciate -
25 - -



1 MS. OSER: I do.

2 JUDGE HALLIGAN: Well, I'm sure - - - I'm not - -
3 - I am not questioning whether - - -

4 MS. OSER: I appreciate your concern. And that's
5 what I'm authorized to say.

6 JUDGE GARCIA: But this sounds like you're asking
7 us to make the policy decision for you. Is that what
8 you're asking the court to do?

9 MS. OSER: Well, there are a lot of policy
10 decisions that the court can avoid by ruling in this narrow
11 manner. Right? For example, you don't need to set aside
12 the similarly situated rule, which is what taking into
13 account claimants vulnerabilities for purposes of deciding
14 whether it was an - - -

15 JUDGE GARCIA: If that's true, why can't you do
16 that?

17 MS. OSER: I'm sorry?

18 JUDGE GARCIA: Why can't the board do that? If
19 we don't need to set aside the similarly situated rule, why
20 can't the board make that call and do that? And we'll
21 review it.

22 I'm - - - I don't understand what you're asking
23 this court to do.

24 MS. OSER: The board feels that the similarly
25 situated rule has been affirm - - - has been ratified by



1 the legislature. It can't set it aside on its own.

2 JUDGE GARCIA: And could we if it's been ratified
3 by the legislature?

4 MS. OSER: No. So what we're talking about is -
5 - -

6 JUDGE GARCIA: So what are we supposed to do?

7 MS. OSER: - - - is - - - is whether or not it's
8 satisfied here. And in that - - - in that context,
9 normally the decision whether an accident has occurred is a
10 fact decision for the board to decide based on substantial
11 evidence in the record and reasonable inferences therefrom.

12 But in this case, there's a question about
13 whether that inference was reasonable given the
14 extraordinary situation of COVID.

15 JUDGE HALLIGAN: The - - - the - - -

16 MS. OSER: So that's your question about whether
17 that was a legal ruling.

18 JUDGE HALLIGAN: The - - - the in - - - so is it?
19 Is it an inference in terms of a question of law? Is it -
20 - -

21 MS. OSER: Inferences have to be reasonable.

22 JUDGE HALLIGAN: Yeah.

23 MS. OSER: But the court can find that given the
24 extraordinary situation of COVID, the board has never
25 encountered a situation like that before.



1 JUDGE HALLIGAN: But the board clearly knew - - -

2 MS. OSER: Yeah.

3 JUDGE HALLIGAN: - - - that when this came before
4 the board. I'm just sort of - - -

5 MS. OSER: Yes.

6 JUDGE HALLIGAN: - - - confounded because it's
7 pretty unusual for a party to come in and say, we're
8 defending what we did below, which your brief says, and I
9 hear you just say now - - -

10 MS. OSER: Yeah.

11 JUDGE HALLIGAN: - - - but if you want to rule
12 against us, that's okay too.

13 MS. OSER: The board understands the
14 reasonableness of that position is all. It won't bring the
15 system down.

16 JUDGE RIVERA: Well, I - - -

17 MS. OSER: It won't - - - it won't open the
18 floodgates. The board has no practical concerns.

19 JUDGE HALLIGAN: So why wouldn't the board then
20 have taken that position itself when these questions came
21 before it in the normal course?

22 MS. OSER: I think there's also a benefit of
23 hindsight here, Your Honor. That, you know, the board saw
24 this as a new normal, but it didn't really stay that way
25 very long. Right? As COVID went from pandemic to endemic

1 and we developed measures to protect ourselves, and we had
2 vaccines, we had availability of K and N95 masks and
3 understood all of that, the situation really changed. So
4 with the benefit of hindsight - - -

5 JUDGE RIVERA: Right. So if I'm understanding -
6 - -

7 MS. OSER: Yes.

8 JUDGE RIVERA: - - - this alternative - - -

9 MS. OSER: Yes.

10 JUDGE RIVERA: - - - as you say. You're bound by
11 what you say is the legislative codification of the
12 similarly situated - - -

13 MS. OSER: Yes.

14 JUDGE RIVERA: - - - you believe you applied that
15 properly. But to the extent the court might not view it
16 that way, right? I understood you to be trying to get the
17 narrowest possible rule - - -

18 MS. OSER: That's exactly right.

19 JUDGE RIVERA: - - - which would allow, perhaps,
20 some small subset of claimants to benefit, but not all of
21 them.

22 MS. OSER: Correct.

23 JUDGE RIVERA: Which is why you're presenting
24 this view that perhaps the timing closer to the
25 announcement of the pandemic is where there is an opening

1 for the claimants - - -

2 MS. OSER: Correct.

3 JUDGE RIVERA: - - - am I getting it right? I
4 just want to - - -

5 MS. OSER: Yes. Yes.

6 JUDGE RIVERA: - - - make sure I'm understanding
7 you.

8 MS. OSER: Yes. But what the board does - - -

9 JUDGE RIVERA: So if - - - okay. It's easy here
10 because you've got two claimants who are, whatever it was -
11 - - March, right?

12 MS. OSER: March. Yep.

13 JUDGE RIVERA: So March, April, and then two that
14 are - - - whatever it is - - -

15 MS. OSER: Still 2020.

16 JUDGE RIVERA: - - - some months later, or so
17 forth. A little later down the road.

18 MS. OSER: Um-hum.

19 JUDGE RIVERA: But let's say we're persuaded by
20 what you seem to argue is the more narrow view.

21 MS. OSER: Um-hum.

22 JUDGE RIVERA: So how far into the announcement
23 of the pandemic are we going?

24 MS. OSER: Right. Well, that is going to be - -
25 -

1 JUDGE RIVERA: Yeah. We can't just decide - - -
2 I guess we could just decide for the two, let me take that
3 back. But I don't know that it would help you in that
4 sense.

5 MS. OSER: I think the board would treat these
6 four cases the same. But when that light switch changes -
7 - -

8 JUDGE RIVERA: Yes.

9 MS. OSER: - - - that's something that's going to
10 be developed through the adversarial process on the basis
11 of records. The board will make decisions. If they're
12 sustained, that will be precedential. You know, you - - -

13 JUDGE RIVERA: This is March-April, so the next
14 one is May?

15 MS. OSER: No. I'm saying the board would treat
16 these four cases alike.

17 JUDGE CANNATARO: Counsel - - -

18 JUDGE RIVERA: Well, I'm saying in the
19 alternative - - -

20 MS. OSER: Down - - - down the road.

21 JUDGE RIVERA: I'm sorry. I'm just talking about
22 your alternative, which I thought you were saying that
23 there might be an opening for the claimants from that
24 March-April group, but not from the later group?

25 MS. OSER: No, I wasn't distinguishing among the

1 four cases.

2 JUDGE RIVERA: Oh, I'm sorry. I misunderstood
3 that then.

4 MS. OSER: Yes. When we went from pandemic to
5 endemic, I think, the board sees as down the road.

6 JUDGE RIVERA: Okay.

7 MS. OSER: Sometime later.

8 JUDGE RIVERA: Which is where? Where is that
9 line?

10 MS. OSER: Well, again, that's something to be
11 determined in ongoing cases. I - - - I can't - - -

12 JUDGE RIVERA: But you would say all - - -

13 MS. OSER: - - - give you a date.

14 JUDGE RIVERA: - - - all four, then, in your
15 view? Would say - - -

16 MS. OSER: All four of these are 2020.

17 JUDGE RIVERA: - - - if - - - if we're going to
18 take this alternative path - - -

19 MS. OSER: Yes.

20 JUDGE RIVERA: - - - who knows? That you would
21 say, then, your position is yes, then you'd recognize that
22 all four are at that point in time when the world is turned
23 upside down, everything is extraordinary and every day - -
24 -

25 MS. OSER: Right.



1 JUDGE RIVERA: - - - there's something new, every
2 hour there's something new?

3 MS. OSER: Right?

4 CHIEF JUDGE WILSON: So how do you - - -

5 MS. OSER: That's exactly right. But - - -

6 CHIEF JUDGE WILSON: - - - so there - - - there
7 are measles outbreaks in different pockets in the United
8 States - - -

9 MS. OSER: Yes.

10 CHIEF JUDGE WILSON: - - - reported in the press
11 now. So what happens if somebody has to go to work in a
12 place that has a localized - - - you know, in the
13 workplace, measles outbreak and has this sort of stress
14 from that but doesn't get measles. Recoverable? Not
15 recoverable? How much of this turns on the fact this is a
16 global pandemic, as opposed to something in this particular
17 workplace, which is the way the Workers' Compensation Law
18 reads, I think.

19 MS. OSER: Yes. I agree. And part of the
20 confusion here, I think, is that - - - and this gets back
21 to some questions that were being asked earlier. That
22 these claimants, well, two of them alleged somewhat
23 differently, but the facts didn't come in. These are not
24 claims of actual exposures that, for whatever reason,
25 didn't develop into COVID.

1 CHIEF JUDGE WILSON: Right.

2 MS. OSER: They're claims of potential exposures.
3 Right?

4 CHIEF JUDGE WILSON: Yeah.

5 MS. OSER: And if you had actual exposure to
6 something and you develop a psychological injury rather
7 than a physical one, it certainly seems like that should be
8 treated the same. But it's very hard to determine whether
9 you had an actual exposure when you don't develop the
10 condition.

11 JUDGE SINGAS: Has the board - - -

12 MS. OSER: Especially in a case of COVID, which
13 was so transmissible.

14 JUDGE SINGAS: Has the board had any cases post-
15 May claiming the psychological injury? And how are you
16 treating those? As closer to - - -

17 MS. OSER: We have two cases here.

18 JUDGE SINGAS: No. I'm saying just in general.
19 Because I'm sure you're confronting them in other time
20 periods - - -

21 MS. OSER: None of them - - -

22 JUDGE SINGAS: - - - and are you treating them as
23 close to epidemic onset or later? Like, where's your line?

24 MS. OSER: There actually have been very few
25 cases alleging stress from - - -

1 JUDGE GARCIA: Well, that may change.

2 MS. OSER: Very few. Yes.

3 JUDGE GARCIA: But so do you want us to set a
4 date - - -

5 MS. OSER: No.

6 JUDGE GARCIA: - - - like the legislature? So we
7 would just say when the pandemic ended?

8 MS. OSER: No. You would just rule in these four
9 cases that it's reasonable to say that these claims - - -

10 JUDGE GARCIA: But we don't really do that,
11 right? So we have to look for - - -

12 MS. OSER: You would affirm. It's affirming,
13 right?

14 JUDGE GARCIA: Right. But we have to set a rule,
15 right? We have to give guidance. Because we don't want
16 the next month coming back here.

17 MS. OSER: Yes.

18 JUDGE GARCIA: So what would our rule be?

19 MS. OSER: So the rule would simply be that it's
20 reasonable to view the stress that these claimants faced in
21 the early stages of the pandemic as extraordinary. Now
22 what they would have - - -

23 JUDGE RIVERA: But why?

24 JUDGE GARCIA: What is early stage?

25 MS. OSER: Not that they would have anticipated.



1 JUDGE GARCIA: What is early stage? What
2 guidance are we giving to the board as to what early stage
3 would be?

4 MS. OSER: When we had a - - - we had a global
5 emergency, and we didn't know how to protect ourselves.
6 But - - - but the board does urge the court to clarify that
7 it - - -

8 JUDGE HALLIGAN: Does the board have any more
9 cases in the pipeline?

10 MS. OSER: There are none that are awaiting board
11 review. And if there are any in the Appellate Division,
12 I'm not aware of them. There may be a handful.

13 JUDGE HALLIGAN: So at what point did the board
14 change its position?

15 MS. OSER: I'm not aware that it has - - - has a
16 - - - has it - - -

17 JUDGE HALLIGAN: At what point did the board say
18 that it would not object to providing benefits in these
19 circumstances?

20 MS. OSER: In the briefing for this court.

21 JUDGE HALLIGAN: Okay. And so has - - - have
22 there been any cases before the board since the point in
23 time when this brief was filed before this court?

24 MS. OSER: Not to my knowledge.

25 JUDGE HALLIGAN: Okay. Thank you.

1 MS. OSER: No.

2 But as I said, if the court were to adopt the
3 claimant's view that a - - - that particular
4 vulnerabilities would be enough to establish an accident,
5 that really would set aside the similarly situated rule.
6 Vulnerabilities come into account for purposes of the
7 causation decision, which is a medical determination based
8 on medical evidence, but not for purposes of deciding
9 whether there's an accident in the first place. And - - -

10 JUDGE HALLIGAN: Just - - -

11 MS. OSER: - - - yet the Third Department's
12 instructions say just the opposite.

13 JUDGE HALLIGAN: Just one last question - - -

14 MS. OSER: Yes.

15 JUDGE HALLIGAN: - - - if I can, Chief? I know -
16 - - I know the light is on.

17 Does the board have any mechanism available to it
18 to, for example, provide for reargument of these cases, or
19 has the board's jurisdiction been completely divested by
20 the subsequent appeals of the four cases before us? In
21 other words, what I'm asking is, is - - - you're coming to
22 us, it seems to me and saying we'd like you to essentially
23 reach a different conclusion than the conclusion we reached
24 below.

25 Does the board have any authority to do that on

1 its own with respect to these four cases? Or does it lack
2 the jurisdiction to do so because they're on appeal?

3 MS. OSER: Well, these four cases are nonfinal.
4 Right?

5 JUDGE HALLIGAN: Yeah.

6 MS. OSER: So in these cases, the Third
7 Department reversed and sent these back to the board to
8 follow instructions. So that enables the board to make any
9 ruling that the court should make here.

10 JUDGE HALLIGAN: I don't think I'm asking my
11 question very artfully. What I'm saying is was there some
12 opportunity for the board to revisit this prior to
13 perfecting this appeal before this court?

14 MS. OSER: No. Because the board had finally
15 dismissed the claims. I - - - well, I guess I should say
16 there is a process when a board panel denies a decision, to
17 ask for full board review, and I can't recall whether that
18 happened. But the decisions that were appealed to the
19 third Department were final - - -

20 JUDGE HALLIGAN: Thank you.

21 MS. OSER: - - - from the board's perspective.
22 Yeah.

23 MR. PERIGOE: And may it please the court.

24 I think the questioning of the Solicitor
25 General's Office just now was very telling. If we - - - if

1 the - - - if the court wants to look at an argument that is
2 fully supportive of basically everything the appellant
3 said, I urge the court to look at point 2 of the reply
4 brief that the Solicitor General's Office filed in response
5 to the amicus brief filed by the Injured Workers' Bar
6 Association. It essentially adopts almost all of the
7 appellants' positions wholeheartedly. And yet, as we can
8 see, stops short of saying that that should result in a
9 full affirmance of the board's decisions being made in this
10 case for what seems like an inexplicable reason. My own
11 understanding is that the board does have authority under
12 Section 123 to reopen claims essentially sua sponte if it
13 wanted to.

14 I think the issue here is that the board didn't
15 decide that it had the position that it has now until it
16 got to this court. If it had decided to reopen the claims
17 at the Appellate Division stage before the Third Department
18 decision was reached, it could have absolutely instituted a
19 decision reversing all of the findings that it had
20 previously made.

21 If I could, I'd also like to draw the court's
22 attention to the decision in Leggio, which, again, the
23 Solicitor General's Office agrees with the appellants that
24 it is a binding decision of this court; that it is correct;
25 that it stands for the principle that particular

1 vulnerability must be wrong. That it essentially overrules
2 Henig and Rackley to whatever extent they might have ever
3 been good law. You can see it when you look at the Westlaw
4 citations, essentially for Henig and Rackley on these
5 points. What happens is there are four cases that are
6 progeny of Rackley that are cited by the Leggio majority at
7 the Appellate Division, that got overruled by this court.
8 Those four cases, when you look them up in Westlaw, they
9 have negative treatment. Leggio. It's - - - - - they've
10 - - - they've all been overruled. Rackley doesn't show
11 that when you look it up in Westlaw, because the Leggio
12 majority at the Third Department didn't cite Rackley
13 directly.

14 You can tell that what happened in this case,
15 very simply, is that the idea that Wolfe had overruled
16 Santacroce, and that Rackley and Henig were the law of the
17 land, and that they set this particular vulnerability
18 standard, was brought out for the first time by the reply
19 brief in Anderson. And then with essentially no
20 opportunity for anyone at the Transit Authority, or really
21 for anything but oral argument by the City of Yonkers to
22 really address that point, what happened was very clearly
23 the Third Department went and they looked up Henig and
24 Rackley, and they said, oh, these haven't been overruled,
25 there's no negative treatment in Westlaw for them. And

1 they just missed the fact that we've got a decision in
2 Leggio that is squarely on point for the appellants, and
3 that show that particular vulnerability language in Wolfe
4 doesn't mean what the appellants say that it means.

5 This case is also unique in that I don't think
6 I've ever seen a case where, after the Appellate Division
7 makes its decision, we get new legislation coming from the
8 legislature that makes the exact same ruling or would - - -
9 would have the exact same effect that was what the
10 Appellate Division said happened fifty years earlier, and
11 then, the legislature changes its mind. The legislature
12 literally passed a law that said you can't use the
13 similarly situated worker standard to kick out cases
14 anymore. And then they change their mind. And the - - -
15 the new law that has - - - that is - - - was in effect
16 brought back Santacroce and brought back - - -

17 JUDGE SINGAS: Yeah. But they didn't make it
18 retroactive. So isn't that significant?

19 MR. PERIGOE: It's significant that it's not
20 retroactive, in that the new law doesn't apply to these
21 cases unless they get sent back to the board. In which
22 case, essentially, we lose automatically if these go back
23 to the board because the new law would be applied to them.
24 But what's significant is the legislature read Santacroce
25 and read Leggio and read Weinstein and all of this court's

1 decisions to mean exactly what the Third Department said
2 that they meant the first time when they decided Matthews
3 and Djanuzakov in favor of the transit authority before
4 they reversed themselves and decided Anderson.

5 And I think that what we see is the legislature
6 agreeing with the long-standing holdings of the - - - of
7 this court in its assessment of the law prior to the
8 passage of the new legislation.

9 CHIEF JUDGE WILSON: Thank you.

10 (Court is adjourned)

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C E R T I F I C A T I O N

I, Chrishanda Sassman-Reynolds, certify that the foregoing transcript of proceedings in the Court of Appeals of Matter of Claim of McLaurin; Matter of Claim of Matthews; Matter of Claim of Anderson; Matter of Claim of Djanuzakov, No. 88, 89, 90, 91 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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