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COURT OF APPEALS

STATE OF NEW YORK

MATTER OF WAYNE SEON,

Respondent,

-against-

NO. 32

NEW YORK STATE DEPARTMENT OF MOTOR
VEHICLES, et al.,

Appellants.

20 Eagle Street
Albany, New York
June 2, 2020

Before:

CHIEF JUDGE JANET DIFIORE
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE EUGENE M. FAHEY
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE PAUL FEINMAN (TELEPHONICALLY)

Appearances:

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Karen Schiffmiller
Official Court Transcriber



1 CHIEF JUDGE DIFIORE: The next appeal on this
2 afternoon's calendar is appeal number 32, Matter of Seon v.
3 New York State Department of Motor Vehicles.

4 Counsel?

5 MS. FANG: Good afternoon, Your Honor. May it
6 please the court, Linda Fang on behalf of DMV. With the
7 court's permission, I'd like to reserve two minutes for
8 rebuttal.

9 CHIEF JUDGE DIFIORE: You may have two minutes.

10 MS. FANG: Thank you.

11 Substantial evidence supported DMV's
12 determination here that petitioner's lack of due care
13 caused the bus that he was driving to strike and run over
14 an eighty-eight-year-old pedestrian's legs, having that
15 pedestrian to be taken to the hospital, where he died three
16 weeks later from those injuries.

17 JUDGE RIVERA: Counsel, if I could interrupt?

18 MS. FANG: The majority of the Appellate Division
19 here - - -

20 JUDGE RIVERA: Counsel?

21 MS. FANG: - - - erred at the - - -

22 JUDGE RIVERA: Counsel? Great, thank you. Can
23 you please set out what - - - what is your position on the
24 interplay between the substantial evidence review and the
25 clear and convincing burden that falls on DMV?



1 MS. FANG: Of course. The relevant standard here
2 is a substantial evidence review, and the question here is
3 whether any rational factfinder, sitting in the first
4 instance, can find the evidence to have crossed the clear
5 and convincing threshold. This is not so dissimilar to the
6 legal sufficiency review that this court conducts all the
7 time of a jury verdict, but relevant re - - - the question
8 is whether or not, you know, so long as there's any
9 evidence in the record, that could rationally support a
10 factfinder's determination in the first instance, the
11 substantial review standard is met, and a court should
12 affirm the Agency's determination.

13 JUDGE RIVERA: But what - - - what's the
14 interplay between that and the - - - and clear - - -

15 MS. FANG: That is to say, it's irrespective
16 whether there is - - -

17 JUDGE RIVERA: Well, what's the interplay between
18 that and the initial burden on the clear and convincing
19 evidence?

20 MS. FANG: The interplay is only that the initial
21 evidence probably has to be a sub - - - a little bit higher
22 than the usual preponderance standard. But the substantial
23 review is the same. It's whether or not a rational
24 factfinder could draw the inferences from the underlying
25 evidence - - -



1 JUDGE RIVERA: Yeah, but does that mean that - -
2 -

3 MS. FANG: - - - and have determined - - -

4 JUDGE RIVERA: Does that mean that the reviewing
5 court has to find substantial evidence that would support a
6 conclusion that there is clear and convincing evidence?

7 MS. FANG: Right. Whether any rational - - - the
8 - - - so the reviewing court could find any rational
9 factfinder sitting in the first instance could have found
10 the evidence to have been clear and convincing.

11 JUDGE RIVERA: Thank you.

12 JUDGE GARCIA: I - - - I'm sorry. Can - - -
13 Counsel?

14 MS. FANG: Yes?

15 JUDGE GARCIA: Have we ever said that? Is there
16 a case from this court? Because the case I see is
17 McKenzie, which is from '76, I think, which, in very
18 similar circumstances, the VTL violation and a similar
19 underlying standard just apply to substantial evidence
20 review.

21 MS. FANG: Right, well, we - - - we haven't seen
22 this standard articulated in a lot of cases, but again,
23 it's - - - it's not dissimilar to a legal sufficiency
24 argument.

25 JUDGE GARCIA: But isn't a legal sufficiency



1 argument. It's an Article 78 proceeding, which has a
2 substantial review standard built into it. So I - - - I
3 don't really see the analogy of a sufficiency case.

4 MS. FANG: Well, I - - - I think the point merely
5 is substantial evidence standard is a - - - a low bar. It
6 - - - it just asks whether or not any factfinder sitting in
7 the first instance could have found the - - - the facts and
8 drawn the inferences. And I - - - I think on this record
9 here, we have - - - we have ample evidence of - - - of VTL
10 1146(c) violation, and we have the accident report here
11 from the reporting officer who responded to the scene that
12 an eighty-year-old pedestrian was found pinned under a bus
13 on - - - this was a New York City Transit bus that had
14 sixteen passengers on board.

15 We have petitioner's own testimony here at the
16 administrative hearing that he heard a loud bump near the
17 front door and tire of his bus, that he - - - it was loud
18 enough to stop the bus and get out to investigate, where he
19 found Mr. Mendez laying just behind the front tire of his
20 bus. We have the police officer's investigation, Ofc.
21 Viera. He determined that the bus had hit the pedestrian
22 and ran over the pedestrian's legs.

23 We have undisputed evidence that the petitioner -
24 - - excuse me - - - Mr. Mendez was taken directly from the
25 scene to the hospital for "severe leg injuries." And he



1 was in the hospital for twenty-four days before he passed
2 away, and the record evidence showed that the cause of
3 death was hit - - - the injuries and the complications
4 resulting from having a bus - - - a New York City Transit
5 bus run over the legs - - -

6 JUDGE STEIN: Do we need to - - -

7 MS. FANG: - - - of this pedes - - -

8 JUDGE STEIN: Excuse me, Counselor. Do we need
9 to - - -

10 MS. FANG: Yes?

11 JUDGE STEIN: - - - to conclude that there was
12 sufficient evidence and that he actually died directly as a
13 result of his injuries? Is that necessary in order for you
14 to prevail here?

15 MS. FANG: No, it's not, Your Honor. We think
16 there is ample evidence that - - - this court's role really
17 is only to determine whether a rational factfinder could
18 find, based on the evidence, that either a death occurred
19 or a protracted impairment of health. That's what the ALJ
20 found here. He found a violation of 1146(c). That statute
21 encompasses both, you know - - - the - - - the relevant
22 term is serious physical injury. And that term in the
23 statute encompasses both - - - both death and a protracted
24 impairment of health.

25 And the Appellate Division here really erred in



1 artificially limiting its review on essentially
2 disregarding certain pieces of ev - - - evidence on the
3 premise that somehow they could only affirm if there's a
4 finding of death, but I think on this record, you know,
5 even assuming the majority's premise here - - -

6 JUDGE RIVERA: But Counsel, I think the question
7 - - - I think the issue, though, as I understood the
8 majority - - - and you'll correct me or if you have a
9 different view, please - - - please say so. I thought the
10 majority's view was that you didn't proceed on the
11 alternative ground. That you only proceeding on causation
12 of death, right? That - - - that the - - - that the result
13 was death, and that - - - that's where the evidence fell
14 short.

15 MS. FANG: That is what the majority said, Your
16 Honor, but there's a couple of reasons why that's not
17 correct, viewed on - - - on this record. First of all, DMV
18 does not proceed on anything. This is a - - - DMV's
19 function here is purely as an adjudicatory body. This is
20 an NYPD summons, as a - - - as an initial matter. But I
21 think what's really important to note is that the evidence
22 here is - - - it's one and the same. It - - - you know,
23 it's the evidence that the individual was - - - had his
24 legs ran over, he went into the hospital, and that he died
25 twenty-four days thereafter.



1 So it would be hard and implausible to find that
2 there was a finding of death without finding also a
3 protracted impairment of health on this record. But also
4 the parties - - - petitioner's questioning - - - I see my
5 time is up; if I could just finish my response?

6 CHIEF JUDGE DIFIORE: Please.

7 MS. FANG: I think what's really important to
8 note is that petitioner's questioning during the
9 administrative hearing made it clear that he understood
10 they were proceeding on both. He questioned the officer
11 both as to the severity of the injuries and also as to the
12 cause of death.

13 So I think on - - - on this record here, there's
14 no basis to limit the finding only to death, but I think
15 the record supports here both, and this court could affirm
16 - - -

17 JUDGE FAHEY: Judge, is it all right if I ask a
18 question?

19 MS. FANG: - - - DMV's determination on both.
20 Thank you. I'll reserve the rest - - -

21 JUDGE FAHEY: Judge, could I ask a question?

22 CHIEF JUDGE DIFIORE: Yes, of course.

23 JUDGE FAHEY: Just one question, Counselor. If I
24 have this right, it seems to be the core of your argument
25 is that we have to answer the question about the



1 substantial evidence standard, and the key here is
2 basically rationality. And in my mind, I see it was it
3 rational for the DMV to find serious physical injury/death
4 by clear and convincing evidence. We're not saying that it
5 would be irrational to find that there was no serious
6 physical injury or there was no death attributed to a
7 serious physical injury, but that it was rational for them
8 to find that in this context. Isn't that the core of it?

9 MS. FANG: That is absolutely correct, Your
10 Honor. That's at the core - - -

11 JUDGE FAHEY: So - - -

12 MS. FANG: - - - and fundamental nature of
13 substantial evidence review. This court's recognized many
14 times that there could conflicting evidence on both sides,
15 and rational factfinders sitting in the first instance may
16 come to different conclusions, but that's not the role of
17 substantial evidence review.

18 JUDGE FAHEY: Thank you.

19 CHIEF JUDGE DIFIIORE: Thank you.

20 MS. FANG: Thank you.

21 CHIEF JUDGE DIFIIORE: Thank you, Counsel.
22 Counsel?

23 MS. CORCHIA: Yes, may it please the court, my
24 name is Vanessa Corchia from Armienti, Debellis & Rhoden,
25 and we represent the respondent, Wayne Seon, in this



1 matter.

2 The order of the Appellate Division should be
3 affirmed on the basis that there was no substantial
4 evidence of either - - - no substantial evidence that there
5 had been clear and convincing evidence that either branch
6 of VTL 1146 was met - - -

7 JUDGE STEIN: Are you saying - - -

8 MS. CORCHIA: - - - spec - - -

9 JUDGE STEIN: Are you saying that - - - that it
10 would require medical evidence or a death certificate or
11 something like that?

12 MS. CORCHIA: Absolutely.

13 JUDGE STEIN: You are?

14 MS. CORCHIA: Here, as the majority had pointed
15 out, there was not even a death certificate presented, and
16 despite Police Ofc. Viera's investigation, he still could
17 not answer the question as to how - - - how the
18 pedestrian's legs were injured. Was it the leg? Was it
19 the foot? Was it both legs? Was it both feet?

20 JUDGE STEIN: But - - - but - - - but does it - -
21 - does it matter - - -

22 MS. CORCHIA: He had no clue whatsoever and this
23 - - -

24 JUDGE STEIN: I guess - - - I guess - - - is that
25 - - -



1 MS. CORCHIA: - - - was despite his
2 investigation.

3 JUDGE STEIN: I guess my question is, Counselor -
4 - - my question is, is that required, because generally,
5 when we decide questions of fact or when factfinders decide
6 questions of fact, they're allowed to draw certain
7 inferences.

8 And here, I mean, you've already heard your
9 adversary recite probably more of these than I will, but
10 the fact that you have an eighty-eight-year-old man, he's
11 found pinned behind the wheel, he's taken to the hospital
12 after hearing the loud thump and I think there was some
13 adjective about the noise - - - some other vocalization
14 that the driver heard. And he's taken immediately to the
15 hospital, and he never leaves the hospital.

16 All of those things put together, just as a
17 matter of common sense and - - - and - - - and drawing
18 inferences from those facts, why - - - why isn't that
19 enough?

20 MS. CORCHIA: Because, Your Honor, the - - - as I
21 mentioned, this officer that testified, presumably, since
22 he's the one that investigated, he would be in possession
23 with the information necessary to sustain the violation.
24 He has - - - if - - - if - - - if the only evidence given
25 is somebody with no clue as to what the severity of the



1 injuries were and what the exact nature of the injuries
2 were, I don't think that it's fair to conclude that there
3 was a causal relationship between the contact with the bus
4 and the death of the pedestrian, which occurred some three-
5 and-a-half weeks later.

6 I - - - I would also like to point out that I
7 believe the affirmance could be sustained on a different
8 basis, which we preserved, is that there was no evidence
9 that the bus operator failed to exercise due care. And the
10 only evidence was - - - the only evidence pointed to the
11 fact that he was careful.

12 Specifically, he was travelling, and - - - and as
13 the court had noted, he was traveling less than one mile
14 per hour, because he was making a right turn. He was
15 driving slowly. He was continuously scanning his mirrors
16 left and right. He was turning onto a very narrow street
17 with parked cars on either side. Significantly, it's his
18 testimony that when he began the turn, he looked, and there
19 was no pedestrian in the intersection. There's no dispute
20 to his testimony.

21 JUDGE STEIN: Well, the - - -

22 MS. CORCHIA: So what that means - - - and - - -
23 and - - -

24 JUDGE STEIN: Well, Vi - - - Viera - - -

25 MS. CORCHIA: I'm sorry.



1 JUDGE STEIN: Ofc. Viera disputes that, but maybe
2 he doesn't - - - Ofc. Viera says he should have, given the
3 configuration of the bus, and - - - and where he was in the
4 turn, and the - - - the glass door, if he was using due
5 care, he should have seen this pedestrian. Why - - - why
6 isn't - - - he's an expert, right?

7 MS. CORCHIA: Well, Your Honor, I - - - I - - -
8 look, he doesn't exactly say that. He does not exactly say
9 that. The actual - - - the - - - the specifics - - -
10 that's - - - there's a conclusion, but you have to look to
11 see what are the facts. And the facts are, again, the bus
12 operator - - - and this was uncontested - - - he testified
13 that the front wheels of the bus had already passed the
14 crosswalk, okay. That's uncontested. So when Police Ofc.
15 Viera admits that it was just as likely that the pedestrian
16 walked into the bus, that's based on the fact that the bus
17 is already in the intersection. That's uncontested. All -
18 - - all of this evidence is uncontested.

19 Police Ofc. Viera does not ever actually say this
20 accident was because - - - due to driver inattention.

21 JUDGE FAHEY: Counselor - - -

22 MS. CORCHIA: He can't because there's - - - it's
23 raining - - -

24 JUDGE FAHEY: Counselor?

25 MS. CORCHIA: Yes?



1 JUDGE FAHEY: Yes, it's Judge Fahey. Those
2 factual arguments are - - - are significant, more so at the
3 Appellate Division than here. But isn't the Appellate
4 Division essentially restrained? Their function is not to
5 decide whether it would have reached the same factual
6 conclusion as the factfinder below. The only function of
7 the Appellate Division is to see if that was a rational
8 decision, not - - - not to say if I had been on the jury,
9 if I had been the factfinder, I would have found it
10 differently.

11 So the question for us is did they apply the
12 substantial evidence rule correctly? It - - - or did they
13 act as if they were the factfinder in the initial
14 circumstance? Isn't that really what you're, before this
15 court, constrained to argue?

16 MS. CORCHIA: Well, Your Honor - - -

17 JUDGE FAHEY: You - - - you're not - - - you're
18 not really - - - here, you're not really allowed to - - -
19 but it's - - - it's not really relevant to us as to whether
20 or not there are nuances in the facts that could have gone
21 the other way because that's a perfectly reasonable
22 argument. The - - - for you to be successful, don't you
23 have to show that it was irrational and unreasonable for
24 them to find by a clear and convincing evidence that - - -
25 that they met the standard of the burden of proof?



1 MS. CORCHIA: I submit that it was irrational,
2 based on all the objective facts that I listed. There's no
3 objective fact given by Police Ofc. Viera, either on the
4 issue of the serious physical injury resulting in death, or
5 on the grounds of failure to use due care. The re - - -

6 JUDGE GARCIA: But there is one fact you didn't
7 mention, I think, which is uncontested, which is he is in
8 the crosswalk with the light in his favor, with the walk
9 light in his favor. No one contests that, so really the
10 argument, I think, that was made there was he walked into
11 the side of the bus, or the bus turning struck him,
12 proceeded through the crosswalk and he wound up behind the
13 front right wheels I believe.

14 So I mean, there was that uncontested fact in the
15 record also, right? That he was in a crosswalk with a walk
16 light?

17 MS. CORCHIA: No, at the - - - he - - - the
18 uncontested fact which came from the police accident report
19 was that the pedestrian was in the crosswalk. Police Ofc.
20 Viera said when he had canvassed the 911 callers, they were
21 not able to confirm whether or not the pedestrian had a
22 walk signal in his favor. On the other hand, he admitted
23 that the 911 callers verified that - - - that the bus
24 operator had the green light.

25 I do want to mention on another topic - - -



1 JUDGE RIVERA: Counsel, before you do that, I
2 just want to confirm that I'm understanding what you see is
3 the standard of review because I know Judge Fahey has asked
4 you about rationality and irrationality, as he did to
5 opposing counsel. But I thought both counsels' argument
6 was that the standard is whether or not there's substantial
7 evidence to support the determination. So I thought,
8 really, your argument is that there's not substantial
9 evidence to support any of these determinations.

10 MS. CORCHIA: That is - - -

11 JUDGE RIVERA: Have I misunderstood you?

12 MS. CORCHIA: Yes.

13 JUDGE RIVERA: Not - - - and that it would not be
14 rational if there's not substantial evidence. It's not a
15 rational determination if there's not substantial evidence.
16 What - - - am I misunderstanding you?

17 MS. CORCHIA: Actually, I don't think I put it
18 that way in the brief. I - - - my position is you have to
19 still look at the record as a whole, specifically my
20 position as - - - there's a case I had cited in my brief,
21 *Reape v. Adduci*, where the court says, "Substantial
22 evidence consists of proof within the whole record of such
23 quality and quantity as to generate conviction in and
24 persuade a fair and detached factfinder that, from that
25 proof as a premise, a conclusion or ultimate fact may be



1 extracted reasonably, probatively, and logically."

2 So I think when you - - - when you look at the
3 record as a whole, there's zero evidence that Mr. Seon
4 failed to exercise due care and zero evidence on which you
5 could base the conclusion that such failure resulted in a
6 fatality.

7 CHIEF JUDGE DIFIORE: Thank you.

8 JUDGE RIVERA: But why can't you - - -
9 I'm sorry; if I may?

10 CHIEF JUDGE DIFIORE: Yes.

11 JUDGE RIVERA: What - - - I - - - I don't think
12 you've responded to the questions, and I think they may
13 have come from Judge Stein, about - - - or that she raised
14 before - - - about inferences. Why can't there be an
15 inference or inferences that a - - - a elderly individual
16 who's struck by a bus, whether he walks into the bus or the
17 bus walks into him or drives into him, who then ends up in
18 the hospital immediately and stays there until his death,
19 what - - - why can't you draw the inference that either the
20 death is caused by this accident, or that there is the
21 protected - - - protracted impairment of health, given the
22 amount of time that's spent in the hospital before he
23 succumbs to the injuries?

24 MS. CORCHIA: Because in this case, there's a
25 fine line between an inference and guesswork. I submit



1 that the fact that the pedestrian was elderly would - - - I
2 mean, for all we know, he died from a heart attack. I
3 mean, we - - - we - - - we don't know. That - - - that's
4 why it becomes a guesswork. The same factor that the
5 dissent had used to say, oh, come on, of course he died
6 because of the bus. I submit that that factor, that the
7 pedestrian was elderly renders it pure guesswork that there
8 was any connection between contact with the bus and the
9 fact that the pedestrian died some three weeks later.

10 CHIEF JUDGE DIFIORE: Thank you, Ms. Corchia.
11 Counsel?

12 MS. FANG: Thank you, Your Honor. Just three
13 brief points. Just briefly on the due-care point, I think
14 there is substantial evidence to support the DMV's
15 determination on that point, and - - - and I think we have
16 five justices of the Appellate Division all agree that
17 there was substantial evidence for the lack of due care
18 here.

19 And the second point here is there was evidence
20 in the record from which a reasonable factfinder can draw
21 the probable inferences that the death here that Mr. Mendez
22 suffered was caused from the injuries. We have the
23 circumstances of the injuries, which were pretty
24 substantial. He was rushed to the hospital with severe leg
25 injuries. There's nothing contradictory in the record

1 about that.

2 And the officer testified that after his
3 investigation, he determined that the death was result of
4 injuries. There's a reference from a doctor at St.
5 Barnabas Hospital who - - - it's in the record. And in
6 terms of the accident report, that's substan - - - that
7 supports the causal connection here.

8 And - - - and the final point is the one that
9 Judge Stein just referred to, which is common sense does
10 play a huge role in substantial evidence review here. This
11 court's recognized that time and again. And the common
12 sense here is, if an - - - an individual pedestrian, who
13 had the right of way in a crosswalk - - - and this is New
14 York City, so if the bus had a green, the pedestrian also
15 had the right of way. He was legally in the crosswalk. If
16 he walks into the side of a bus, at a - - - with a bus
17 going less than one mile per hour, he does not end up
18 behind the - - - the wheel of the bus or make a loud thump.

19 And so here we have protracted impairment of
20 health, just from the fact of the nature of the injuries
21 alone, plus the fact that twenty-four days is a substantial
22 amount of time for anyone to be in a hospital, let alone an
23 eighty-year-old pedestrian, who, again, was in the hospital
24 - - -

25 JUDGE RIVERA: So Counsel, let me ask you - - -



1 let me ask you. If he had been released from the hospital,
2 would you have to have put in evidence regarding his
3 condition at the hospital and upon his release? Let's say
4 he didn't pass away at the hospital. Say he goes home and
5 he passes away within two hours. What - - - what's your
6 burden - - -

7 MS. FANG: I'm sorry?

8 JUDGE RIVERA: I want to know what you think is
9 your burden? What kind of evi - - - or what kind of
10 evidence - - - I'm sorry - - - would have to have been
11 presented to support the outcome here, the determination
12 against Mr. Seon?

13 MS. FANG: If the hypothetical had been that he
14 left the hospital in a week, is that - - -

15 JUDGE RIVERA: Sure, a week, sure, fine. I
16 didn't give you a number of days, but that's fine.

17 MS. FANG: I'm sorry. The - - - so there has to
18 be some connection to - - - there has to be substantial
19 evidence that a reasonable factfinder can conclude that
20 there was protracted impairment of health. And I think in
21 your example is the - - - if the individual left the
22 hospital, was discharged, and then died a day after, then
23 in that in - - - incident - - - in that instance, I think
24 there would have to be more medical testimony presented to
25 causally connect the two things.



1 And here, we don't have that problem because
2 there was a continuous stretch of hospitalization. It's
3 not that this individual left - - -

4 JUDGE RIVERA: What - - - what if, at the
5 hospital - - - since - - - if I could interrupt you?

6 MS. FANG: - - - and was discharged and then dies
7 thereafter.

8 JUDGE RIVERA: Let me interrupt you here.

9 MS. FANG: There's substantial evidence here - -
10 -

11 JUDGE RIVERA: What if, at the hospital, someone
12 committed terrible malpractice, gave him the wrong drug,
13 and that's what's killed him?

14 MS. FANG: Right. And - - - and I think that
15 would be a different circumstance. There - - - in - - - it
16 - - - it de - - - depends on whether there's a sufficiently
17 independent event that breaks the causation. In terms of
18 general causation - - -

19 JUDGE RIVERA: Well, all I'm suggest - - -
20 Counsel, if I can interrupt you? All I'm suggesting is
21 that - - - that the way the evidence is set up in this
22 record, it - - - it - - - it demands of the factfinder to
23 come to what I don't disagree with you is, of course, an
24 obvious view of the evidence. That someone this elderly
25 who's hit by a bus, who's severely injured, or who's

1 injured in the leg, ends up in the hospital, is there for
2 some period of time, and - - - and then passes away, that
3 that seems to naturally flow as a consequence of the
4 accident.

5 I don't - - - but what seems missing there is
6 that someone like this at a hospital may be very vulnerable
7 to other reasons for having passed away or other possible
8 injuries that may occur at the hospital. And it strikes
9 that that's what the majority is pointing out, that - - -
10 that they're concerned about that - - - the record as
11 presented.

12 MS. FANG: I - - - I understand, Your Honor, that
13 is pa - - - maybe part of the concern that drove the
14 majority in the - - - in the Appellate Division here, but
15 again, I think whether there were other causes or not, that
16 was - - - that would just be pure speculation on this
17 record.

18 JUDGE RIVERA: What - - - what if the pedestrian
19 was fifty-five years old?

20 MS. FANG: I - - - I don't think the age matters
21 as much, Your Honor, in - - - in this record, as the nature
22 of the injuries. I think the dissent correctly pointed
23 this out, is any person, whether you're eighteen-years-old
24 or eighty-eight-years old, if you are - - - if you have
25 your legs runover by a New York City Transit bus,



1 reasonable inferences could be drawn from what happens to
2 you thereafter at the hospital.

3 I thank you very much.

4 CHIEF JUDGE DIFIORE: Thank you, Counsel.

5 (Court is adjourned)

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

I, Karen Schiffmiller, certify that the foregoing transcript of proceedings in the Court of Appeals of Matter of Seon v. New York State Department of Motor Vehicles, No. 32 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: _____

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