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STATE OF NEW YORK _____ **COURT OF CLAIMS**

**MARIE A. MADORE, as Administratrix
of the Estate of SOPHIA M. PIZZURRO,**

Claimant,

DECISION

-v-

THE STATE OF NEW YORK,

Claim No. 107759

Defendant.

FILED

j 3 2006

S7 f.t c COURT OF CL44a ;

**BEFORE: HON. THOMAS H. SCUCCIMARRA
Judge of the Court of Claims**

**APPEARANCES: For Claimant:
O'DWYER & BERNSTIEN, LLP
BY: ANGELIQUE NYE, ESQ.**

**For Defendant:
HON. ELIOT SPITZER, NEW YORK STATE ATTORNEY
GENERAL
BY: JUDITH C. McCARTHY, ASSISTANT ATTORNEY
GENERAL**

Marie A. Madore alleges in this wrongful death claim that the Defendant's negligent design and maintenance of the intersection of State Route 9 and Roa Hook Road in the Town of Cortlandt, County of Westchester, State of New York, are the proximate cause of a car accident in which Sophia Pizzurro was fatally injured. Trial of the matter was held on August 2, 3 and 4, 2005. This decision relates solely to the issue of liability.

After carefully considering all the evidence submitted, hearing all the testimony from the witnesses and observing their demeanor as they did so, the Court makes the following findings of fact:

On March 5, 2003, at approximately 9:00 p.m., Sophia Pizzurro was driving her 1990 Honda Civic on Roa Hook Road toward its intersection with State Route 9. This was a route she took three times a week, when she would drop a friend off from a nighttime meeting they both attended regularly, proceed down Roa Hook Road, and then turn left across northbound Route 9 toward home on southbound Route 9.

State Route 9 is a four-lane, two-way roadway running generally in a north-south direction. At its intersection with Roa Hook Road, the two northbound lanes are separated from the two southbound lanes by a grassy median. Roa Hook Road is a two-lane roadway running generally in a northeast-southwest direction. The lanes are delineated by a double yellow line at the center, with solid white lines on the right side of each lane. After curving sharply to the right, the road ends at its "T"-type intersection with State Route 9.

The pertinent portion of the intersection is controlled by two sets of traffic lights. The lights are phased so that those facing Route 9 are always green, and the lights facing Roa Hook Road are always red, until a driver on Roa Hook Road stops at the light and triggers the changeover to green. There is a white stop line on Roa Hook Road at the intersection as well.

Two sets of lights face Roa Hook Road proper. One set hangs on the northbound side of Route 9 in the right lane, the other set is over the left lane of southbound Route 9. On March 5, 2003, the red bulb on the set of lights facing Roa Hook Road that is placed on the southbound side of Route 9 was not working - although the green bulbs facing Route 9 on the same set of

lights were functional - as were all the bulbs on the traffic signal, including red stop lights, placed on the northbound side of Route 9 in the right lane facing Roa Hook Road.

Although the specifics of the speed at which she traveled were the subject of debate throughout the trial, it was not contradicted that on March 5, 2003 Ms. Pizzurro drove through the controlled intersection against a red signal, and was struck by a Ford Explorer driven by Sheila Bayne and proceeding north on Route 9 in the right-hand lane.

Nicholas Bellizzi - the only witness on Claimant's direct case - testified as to his expert opinion of the design of the intersection as well as the speed at which Ms. Pizzurro was traveling at the time of the impact. In his view, the white stop line was not correctly placed, nor was the signal that was working on that evening. Although Mr. Bellizzi is a licensed professional engineer, with an undergraduate degree in civil engineering and a master's in traffic engineering and transportation planning, who has a private design practice and also does forensic work involving accident and engineering evaluations, he is not a certified accident reconstructionist, is not a member of any organizations that certify such individuals, nor has he taught accident reconstruction. He indicated that his "main areas" are both highway design and accident reconstruction, but said that accident reconstruction does not require as much training as highway design. [T-158]¹.

Both Mr. Bellizzi and Nicholas Pucino (the State's expert) agreed that the standards for the design and construction of a signalized intersection are found in the New York State Manual of Uniform Traffic Control Devices (hereafter MUTCD). *See generally* 17 NYCRR Chapter V.

¹ Quotations to pages in the trial transcript are designated as [T- _ J].

The MUTCD provides that there should be two primary signal faces directed toward an approach to an intersection [17 NYCRR §272.11(b)], and that the signal faces "shall be located so that the right-of-way assignment is clear and unmistakable from the driver's normal positions on the approaches to the signal." 17 NYCRR § 272.12 (a). Mr. Bellizzi testified that at least one of those faces should be within the 20° "cone of vision" [T-47], as plotted from the stop line. The cone of vision is measured from the center of the stop line, and is created when two lines are drawn from the center of the stop line to the right and left at an approximate angle of 20° each. MUTCD requires that at least one of the two traffic signals be placed within the cone shape created.

Mr. Bellizzi conceded that the intersection does comply with the provisions of 17 NYCRR §272.12, in that although it was not operating correctly that evening, the traffic signal placed over the left southbound lane of Route 9 was within the cone of vision. Moreover, he also conceded that in addition to a highly visible signal ahead sign on Roa Hook Road, the functioning traffic signal was visible before the stop line was reached, and visible at the stop line with some adjustments to one's seated position in the car. Notably, the decedent was 5 feet 8 inches tall, while Mr. Bellizzi is over 6 feet tall.

With regard to the stop line on Roa Hook Road, Mr. Bellizzi at first found it significant that the original plans provided for two separate stop bars, channelized by a median of some type whether painted flat or raised, [see Exhibit B] and pointed out that the stop line in actuality is drawn at an angle somewhat perpendicular to Route 9 rather than directly parallel. [Exhibits E and UTJ]. At first Mr. Bellizzi maintained that it should have been drawn parallel to Route 9 for safety. Mr. Bellizzi, however, ultimately agreed that if the stop lines had been drawn in a manner

more directly parallel to Route 9, visibility for the driver turning north on Route 9 from Roa Hook Road would be significantly reduced. He agreed that engineering judgment applies overall when applying MUTCD to the actual construction of an intersection.

When Mr. Bellizzi was reminded of the provisions of Vehicle and Traffic Law §1117, requiring drivers to stop at an intersection controlled by a traffic signal when it is malfunctioning, and proceed in accordance with the rules of the road applicable to stop signs provided for under Vehicle and Traffic Law §1172, he conceded that if she was aware of the malfunction, decedent was required to stop as a prudent driver, and that there was ample sight distance down Route 9 to observe oncoming traffic. Mr. Bellizzi also was not aware until the day of trial that the decedent was familiar with the intersection.

Additionally, Mr. Bellizzi opined that the speed at which Ms. Pizzurro was traveling at the time of the impact was "roughly 10 mph" [T-91], although he concurred with the findings of Defendant's witnesses that Ms. Bayne's vehicle was traveling at approximately 40 mph. [T-96]. The report and testimony of Sergeant Robert Antalek, the State Trooper who investigated the accident that night, contradicts this finding concerning the Honda's impact speed. [Exhibit 5]. Indeed, Sgt. Antalek, Nicholas Pucino (Defendant's engineering expert) and Richard Hermance (Defendant's accident reconstruction expert) all determined that the Honda was traveling between 30 and 32 mph at the time of the impact.

Mr. Bellizzi opined that because the cars had moved in a significantly northerly direction after the impact - as opposed to a southwesterly direction that would be suggested by the momentum of the Honda - there was significantly more momentum at impact from the Explorer than the Honda. A review of Exhibits 78, 87, 88 and 92, further supports this idea because the

Explorer shows an absence of a "side-swiping type of motion . . . [I]f the two vehicles were [traveling at] comparable speeds, when the Explorer was hitting the Honda, the Honda would be sliding across the Explorer and there's no signs of that." [T-94]. By inference, presumably Mr. Bellizzi was saying that the ten mile per hour speed difference between the two vehicles posited by the Defense witnesses would not have been "significant" enough to provide the momentum to push the Honda more north than west, but this seems an unsatisfactory leap. In this Court's view an equally significant aspect of the collision - touched on by other witnesses - was the relative weight of the vehicles, with the Explorer outweighing the Honda substantially, and the lack of evidence that brakes were applied prior to impact.

The mathematical formula used by Sgt. Antalek and Mr. Hermance - the conservation of linear momentum equation - was the same one used by Mr. Bellizzi to arrive at impact speed. Sgt. Antalek, however, had the advantage of visual inspection on the night of the accident, and was the observer whose observations were ultimately used by all the witnesses, including Mr. Bellizzi. [See Exhibits 4 and 5]. It was he who noted the absence of pre-impact tire marks, suggesting that neither car had an opportunity to apply brakes. Although his report reversed the positions in terms of the direction the cars were pointing when they came to rest', their relative positions are accurately plotted on the computer-generated diagram he created [see Exhibits 4 and 5]. The Honda is on the center median between the north and southbound lanes of Route 9 to the north of the intersection, while the Explorer is partially on the same center median slightly

² Sgt. Antalek explained that he should have drawn the Honda facing northeast and the Explorer should be facing southwest, but that did not change the significant calculations. The cars still rotated counterclockwise, but the Honda should be noted as having rotated 219° rather than 39° as noted in his report. [See Exhibit 5]. If anything, he said, the speeds would have been raised.

further south and closer to the intersection. [id.]. The front end of the Explorer, however, is facing in a generally southerly - as opposed to northerly - direction, and the front end of the Honda is facing in a generally northerly direction as shown in photographs. [See Exhibits 77, 86, 90, 91].

The conservation of linear momentum equation relies on the concept that the momentum of a car leaving the accident - after impact - is the same as it had entering the accident. Information concerning the weight of both vehicles, the approach angles of the vehicles, and the departure angles of the vehicles, and friction - among other things - are computed to determine a post-impact speed of the vehicles to their final rest. The post-impact speed is then inserted in the formula - with approach and departure angles and the vehicle weights - to determine the pre-impact speed.

On cross-examination, Mr. Bellizzi conceded that had Ms. Pizzurro been traveling at 10 mph, she would have been both visible to Ms. Bayne and vice versa and there would have been more time to avoid an accident. Ms. Bayne's uncontradicted eyewitness testimony was that she never even saw the car until after the impact, lending credence to the testimony given by the investigating officer who saw the physical distribution of the cars after the accident, and performed calculations and measurements that night, as well as the Defendant's experts in engineering and in accident reconstruction.

Indeed, in almost every respect except the impact speed, the witnesses agreed with the mechanics of the accident. The reason for the difference was satisfactorily and credibly explained by Defendant's accident reconstruction expert, Richard Hermance. Mr. Hermance has performed over 2500 accident reconstructions, has specific training in the area and has also taught accident

reconstruction. Relying on the State Trooper's investigation and measurement of the deep gouge marks evidencing the location of the impact, he agreed that the accident occurred in the right northbound lane of Route 9. He, too, used the conservation of linear momentum equation, and also checked his findings against a crash test analysis. In a crash test analysis, the amount of crush and the location of crushing on the respective vehicles, in consideration of the weight of the respective vehicles among other variables, allows an estimate of the velocity with which they struck. Using the conservation of linear momentum equation, he found that the pre-impact speed of the Explorer was 40 mph and that of the Honda was between 30 and 32 mph.

Mr. Hermance explained that although both he and Mr. Bellizzi used the same computer program to calculate the speeds, Mr. Bellizzi was "off" when he inserted the angles at which the cars went off the roadway, in a manner inconsistent with the on-site measurements taken by the investigating troopers. The troopers had the "Ford going off at thirty degrees, [and] the Honda going off at about twenty-six degrees ...[T]hat's also consistent with what we see in the photos, that they're in the median." [T-521]. While they both used the same starting measurement point - the point of impact as shown by the gouge marks - Mr. Bellizzi used a ten degree figure as the angle at which the cars came to rest. Mr. Hermance explained that if Mr. Bellizzi's pre-impact speed of 10 mph for the Honda were correct, the vehicles would have come to rest in more of a straight line, still in the roadway, in the northbound lanes of Route 9. Placing the cars at rest in that position, however, is inconsistent with the actual on-site evidence of where they came to rest.

Sheila Bayne, the driver of the Ford Explorer, testified that at the time of the accident, she was very familiar with the roadway, having traveled the same route every day for over 23 years.

At first she indicated that she could see the intersection of Roa Hook Road from perhaps "a hundred feet" away as she traveled northbound in the right-hand lane of Route 9 [T-229-230]; however when shown a photograph she identified as demonstrating from how far back she could see a car at the intersection [See Exhibit CC], the actual distance, measured by three telephone poles [T-233-234], would be more in the range of 500-600 feet. [T-369-370]. As she approached the intersection that night, the light was continuously green in her direction, she saw no other traffic and, indeed, had not seen any traffic since entering Route 9 at the Annsville Circle. There was no car stopped at the intersection, nor did she see any headlights from that direction - which would have been the first thing she would have seen. She reported that the accident happened "so fast" that she initially thought she had struck a deer. [T-226]. After the impact, the Explorer's air bags deployed, the car spun and came to rest pointing southbound in the northbound lane and partially on the median.

Sergeant Antalek arrived at the accident scene after the drivers had been removed to area hospitals. He indicated that he had participated as either the primary reporter or as an assistant on between 75 to 100 accident reconstructions. He tested the traffic lights that night, successfully tripping the changeover mechanism on the bulbs facing Roa Hook Road from red to green on two tests. He also noted the post-impact tire marks relative to the placement of the vehicles at rest, and took measurements to create a scale diagram using a "total work station", a survey-equipment-type tool. [T-268]. [See Exhibit 4].

The impact occurred in the right northbound lane of Route 9, based in part on his assessment of the gouge marks on the road. He explained that a "[gouge] mark is produced by the undercarriage of one vehicle as it is overridden by the other vehicle ... compressing the springs,

the shock absorbers and the suspension system and forcing it down into the pavement which leaves a distinguishing mark in the pavement which helps you to determine the area of collision." [T-273].

The designated speed limits for the two roads were noted. Route 9 had a posted speed limit of 45 mph, and there was a speed limit sign shortly before the intersection on the northbound side. Although there was no posted speed limit for Roa Hook Road that he observed, the town speed limit was 30 mph. The traffic signal ahead sign was in place, and unobscured, approximately 235 feet before the intersection.

When Sgt. Antalek observed the cars, the drivers had already been removed. Both air bags had been deployed. The Honda had damage on the front fender, and the front wheel on the driver's side had locked up. There was "contact damage to the front end and drivers (*sic*) side front fender and door . . ." [Exhibit 5]. The entire "A pillar" - the area from the door to the windshield - had "been cut but also there was a lot of damage to the door and the driver's side of the vehicle . . ." [T-271; *see also* Exhibit 92]. The primary damage to the Explorer was on the front driver's grill and fender. [Exhibits 88, 93]. From the respective vehicle registrations, Sgt. Antalek noted that the Explorer weighed 4,250 pounds while the Civic weighed 2,282 pounds. The Honda was struck forward of the center of mass of the car, and rotated counterclockwise, as did the Explorer.

Nicholas Pucino, a licensed professional engineer now primarily working as a consultant engineer in the investigation and analysis of highway related accidents, and with a depth of experience in highway planning, design, construction, and safety through his career with the New York State Department of Transportation and the parkway authorities, testified as the State's

expert engineer. He conducted an investigation of the case, including reviews of the police accident report and reconstruction, record plans, among other documents, and several on-site visits to examine the intersection during the day and night and under similar vegetative conditions to those present on the night of March 5, 2003.

He found that a vehicle stopped at the intersection of Roa Hook Road and Route 9 could see approximately 800 feet down the northbound lane of Route 9. Finding that at least one of the signal faces directed at Roa Hook Road was in compliance with the 20° sight line requirement of MUTCD, he further opined that the signal conformed with good practice standards existing at the time of construction. Mr. Pucino pointed out that the manual is actually not explicit with regard to whether the sight angle should be measured perpendicularly to the stop bar, or with the center along the angle of approach, so he measured from both vantage points. As noted above, Mr. Bellizzi testified that it is proper to measure perpendicularly to the stop bar to determine the cone of vision. When Mr. Pucino measured on either side of the center line perpendicularly to the stop bar, he found that the operating signal was within the 20° angle required, while the malfunctioning signal was outside the zone. [See Exhibit VV]. When Mr. Pucino measured using an angled approach, the malfunctioning signal fell within the 20° cone of vision, while the operational signal fell roughly four feet to the right of the 20° cone of vision. [ibid.].

Mr. Pucino also addressed other MUTCD requirements met by this intersection, including "lateral" requirements that the signal cannot be any farther to the right than 10 feet from the edge of the approach roadway lane, and a "vertical viewing angle" requirement that the signal head be at least 15 feet away from the stop bar. On Roa Hook Road, the traffic light is approximately 19 feet from the stop bar. [T-342-343]. Mr. Pucino, who is approximately 5 feet 8

inches tall, and was driving an Acura Integra at the time, took a photograph of his night time view of what would have been the functioning traffic signal from the stop bar. [Exhibit Z].

Albeit not the most scientific of comparisons, since Mr. Pucino did not ascertain if there was any basis for comparison for the windshield size of an Acura as opposed to the Honda at issue, it nonetheless suggests the seemingly awkward vantage point for viewing the traffic light directly at the stop bar. Additionally, the traffic signal ahead sign is placed approximately "two hundred and some odd feet in advance of the intersection," as allowed by MUTCD. [T-352]. Finally, Mr. Pucino found that the traffic signal that was functional on the night of March 5, 2003 is continuously visible in the winter as one approaches the stop line on Roa Hook Road from the signal ahead sign, except for "a pole every once in a while or something that would cut it but not really take its visibility away." [T-354]. He concluded that there was "ample visibility for the signal, particularly at night." [T-355]. He said the signal was in conformance, both laterally and vertically, with MUTCD, and there "should not have been any difficulty seeing it from the roof line of a car for normal people . . . if you were extra tall, you . . . might have to bend down a little bit . . . the manual provides for that vertical control as being governed by allowing a fifteen foot setback from the signal to the stop bar . . . [T]here's no reason why motorists in general shouldn't be able to see that signal stopped at the stop bar." [T-355].

He also investigated, as did Mr. Hermance, whether it would be possible to accelerate from a stop to the 32 mph impact speed within the 46 feet to the point of impact using basic physics calculations and the acceleration rates for a 1993 Honda Civic. He found that decedent could not have made a full stop, and then accelerated to the impact speed within that distance. This information, together with the testimony by Ms. Bayne that she never saw the vehicle, and

the evidence of no pre-impact tire marks to show braking also support the conclusion that decedent did not stop. In evaluating Mr. Bellizzi's hypothesis that decedent's pre-impact speed was 10 mph, assuming she stopped, she would have been exposed to view by Ms. Bayne for at least 6 seconds or longer, allowing far more reaction time. Mr. Pucino explained he also analyzed it based on decedent not stopping but proceeding at 10 mph. There, too, he said, the decedent would have been in view for at least 3 seconds, allowing reaction time. In Mr. Pucino's view, a 10 mph pre-impact speed is simply not consistent with the other information available.

Additionally, Mr. Pucino confirmed that using Ms. Bayne's lay estimate of how far back from the intersection along Route 9 she could first see the traffic signal as she drove north - 100 feet - would be an unreliable factor to use in analyzing the accident. There was other information from the investigation by the trooper to the effect that the first sighting was at one tenth of a mile and, additionally, Mr. Pucino himself assessed the actual viewpoint of a northbound driver as starting at 700 feet as well as the telephone pole photograph identified by Ms. Bayne as accurately depicting the distance. [Exhibit CC].

In explaining the differences between the record plans [Exhibit B] and the survey of the intersection as it was built [Exhibit E], with respect to the stop bar, he confirmed that engineering judgment may step in when faced with the actual construction and changes may be implemented. He said that notations may not necessarily be made if they do not impact on construction costs. Thus, since the record plans call for a painted, but divided, stop bar, even though the stop bar actually painted is different it did not involve any additional contract costs so it would not be marked down in his experience.

Mr. Pucino further explained on cross-examination that the standards required by MUTCD concerning the location of the stop bar vis-a-vis the traffic signal addresses the issue based upon the setback between the stop bar and the traffic light. MUTCD standards are not concerned with low car rooflines, or what a tall person might have to do to see the signal.

DISCUSSION AND CONCLUSION

The State has a non-delegable duty to maintain its roads and highways in a reasonably safe condition to prevent foreseeable injury, but is not an insurer of the safety of its roads. *See Friedman v State of New York*, 67 NY2d 271 (1986).³ No liability may attach unless the ascribed negligence in maintaining the roadway is a proximate cause of the accident (*Hearn v State of New York*, 157 AD2d 883(3d Dept 1990), *iv denied* 75 NY2d 710 (1990). In fulfilling its obligation the State may assume that those using the roads will use reasonable care and obey the law governing the operation of motor vehicles. *See Tomassi v Town of Union*, 46 NY2d 91 (1978).⁴

Where a claim is based upon negligent design, the State's planning and decision-making function enjoys qualified immunity. *Weiss v Fote*, 7 NY2d 579 (1960), *rearg denied* 8 NY2d 934 (1960). Liability attaches only when the design was evolved without an adequate study or lacks reasonable basis. Once the State has implemented a traffic plan, it is under a continuing duty to review its plan in the light of its actual operation. *Friedman v State of New York*, *supra* at 284; *Olson v State of New York*, 139 AD2d 713, 715 (2d Dept 1988).

³ These three cases decided concurrently all involved so-called 'crossover' accidents occurring on State-constructed and maintained highways in which the alleged negligence is the State's failure to install median barriers.

⁴ "... [S]o long as a highway may be said to be reasonably safe for people who obey the rules of the road, the duty imposed upon the municipality is satisfied....", (*id.at 97*).

Whatever kind or degree of negligence is asserted, however, it is the Claimant's burden to show that the negligence claimed is the proximate cause of decedent's injuries. Jordan v State of New York, 249 AD2d 279 (2d Dept 1998); Hearn v State of New York, *supra* at 885. While Claimant is not obligated ". . . to rule out all plausible variables and factors that could have caused or contributed to the accident . . . [or] positively exclude every other possible cause of the accident . . . the proof must render those other causes sufficiently `remote' or `technical' to enable the . . . [fact finder] to reach its verdict based not upon speculation, but upon logical inferences to be drawn from the evidence (*citation omitted*)." Gayle v City of New York, 92 NY2d 936, at 937 (1998); *See also* Burton v State of New York, 283 AD2d 875 (3d Dept 2001).

In this case, the only eyewitness to the accident, Sheila Bayne, reports that she had a green light, was proceeding at a reasonable speed, and never saw decedent's car. The mechanics of the accident are that decedent entered an intersection with which she was unarguably familiar against the light. While the impact speed was discussed at length, even assuming the lower impact speed on the part of the decedent proposed by Claimant's expert - which the Court finds is not supported by the weight of the evidence in any event - the slower speed would not tend toward a finding of liability on the part of the State, but rather suggests that the other driver, or decedent, were less attentive than was warranted by the circumstances. Both drivers were concededly familiar with the intersection.

There was no evidence of prior accident history at this intersection, or any other evidence presented allowing the court to infer that the State had any notice that this was either a dangerous intersection, or that the State had any prior notice that one of the two red bulbs facing Roa Hook Road was not functioning, and that there was thus a lack of proper maintenance. There was no

evidence that the design and implementation of the intersection was somehow evolved without adequate study, or had not been adjusted based upon new information such as, for example, accident history.

Unlike those cases where a claim is brought concerning an unwitnessed fatal accident⁵ and the burden of persuasion is relaxed under the so-called "Noseworthy doctrine,"⁶ here both Claimant and ". . . the State were `similarly situated insofar as accessibility to the facts of the [accident] is concerned' (Wright v New York City Hous. Auth., 208 AD2d 327, 332, 624 NYS2d 144) . . . " Ether v State of New York, 235 AD2d 685, 687 (3d Dept 1997); *See also* Gayle v City of New York, 256 AD2d 541, 542 (2d Dept 1998). The witness to this accident, Sheila Bayne, testified credibly.

Even if the intersection was negligently designed, either because - based on the theories advanced by Claimant - the stop bar was in the wrong location or the traffic signals were improperly placed, on this record, the Claimant has simply not shown ". . . that the asserted negligence of the State was a substantial factor in bringing about . . . [the accident]." Murray v State of New York, 38 NY2d 782, 784 (1975); *See also* Sosa v City of New York, 281 AD2d 469 (2d Dept 2001); Stanford v State of New York, 167 AD2d 381 (2d Dept 1990), *appeal denied* 78 NY2d 856 (1991); Sebukaty v State of New York, 73 AD2d 705 (3d Dept 1979).

Where, as here, the driver was familiar with the intersection, failed to stop at the intersection that was controlled by traffic lights, and nonetheless proceeded across a State highway, any purported negligence on the part of the State was not the proximate cause of this

⁵ *See e.g.* Wraege v Lizza Asphalt Constr. Co., 17 NY2d 313, 319 (1966).

⁶ *See* Noseworthy v City of New York, 298 NY 76 (1948).

accident. *See* Rose v State of New York, 19 AD3d 680 (2d Dept 2005); Martinez v County of Suffolk, 17 AD3d 643 (2d Dept 2005); Sinski v State of New York, 2 AD3d 517 (2d Dept 2003).

While it is tragic that an error of judgment resulted in the death of a young woman, the State was not liable for this unfortunate accident.

The Claimant has failed to establish by a fair preponderance of the credible evidence that the State is responsible for this fatal accident because she did not show that Defendant deviated from accepted engineering standards and that such departure was a proximate cause of decedent's death, and Defendant's motion to dismiss, reserved on at the time of trial, is hereby granted, and claim number 107759 is hereby dismissed in its entirety.

Let judgment be entered accordingly.

**White Plains, New York
May 15, 2006**



**THOMAS H. SCUCCIMARRA
Judge of the Court of Claims**