

2007 WL 1650203 (N.Y.Sup.)
For Dockets See [0028777/2002](#)

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Supreme Court, Second Judicial District, Kings County, New York

Wilner Jean-Paul as Administrator of the Estate of Sheila Jean-Paul & Wilner Jean-Paul & Marie Jean-Paul, Individually v. City of New York

No. 28777/02

DATE OF VERDICT/SETTLEMENT: January 30, 2007

TOPIC: PREMISES LIABILITY - TRESPASSERS - PREMISES LIABILITY - DANGEROUS CONDITION OF PUBLIC PROPERTY - DANGEROUS CONDITION OF PUBLIC PROPERTY - WATER SPORTS - SWIMMING - PREMISES LIABILITY - ATTRACTIVE NUISANCE
City Failed to Properly Protect Site of Drowning, Estate Alleged

SUMMARY:

RESULT: Settlement

The jury was first given a special interrogatory that asked whether the accident occurred on city property or federal property. The jurors' answer to that question would determine whether they would receive a verdict sheet based on a premises-liability cause of action or a negligent-access cause of action.

The jury found that the accident occurred on federal property. This partial verdict was read into the record by the court. The jury then continued deliberations with the negligent-access verdict sheet. During the deliberation, the parties entered into negotiation and agreed to settle the matter for \$85,000.

EXPERT WITNESSES:

Plaintiff: [Thomas C. Ebro](#); Aquatics; Lutz, FL [Zhongxue Hua, M.D.](#), Ph.D.; Forensic Pathology; New York, NY

ATTORNEYS:

Plaintiff: [Samuel O. Maduegbuna](#); Maduegbuna Cooper, LLP; New York, NY (Estate of Sheila Jean-Paul, Marie Jean-Paul, Wilner Jean-Paul)

Defendant: [Stephen Z. Williamson](#); Law Offices of Michael S. Lamonsoff; New York, NY (City of New York, City of New York)

JUDGE: [Larry D. Martin](#)

RANGE AMOUNT: \$50,000-99,999

STATE: New York
COUNTY: Kings

INJURIES: Sheila expired as the result of drowning. Her estate sought unspecified pecuniary damages under the wrongful-death statute for funeral services and loss of household services. Her parents brought individual claims for loss of society.

Facts:

On May 4, 2001, plaintiffs' decedent Sheila Jean-Paul, 13, went with friends to Canarsie Beach Park. The 100-plus acre park, located in Brooklyn, is owned by the city and managed by the New York City Department of Parks and Recreation. While at the park, the youths decided to go to a beach on the shores of the nearby Paerdegat Basin.

Paerdegat Basin is a canal-like body of water that opens up into Jamaica Bay. The Belt Parkway runs east to west over and across the mouth of the basin where it meets the bay; the bay is situated to the south side of the highway. Paerdegat Basin and much of the lands immediately north and east of it are owned by city. By and large, this area is composed of the Canarsie Beach Park; a compost station owned the city's department of sanitation; and various marinas serving recreational boats, which travel in and out of the mouth of the basin.

Sheila and her friends walked from the park, traversing through the compost station site, and came upon a trail leading to a beach area formed by the shore of the Basin, just north of the Belt. At some point either under the Belt Parkway or just south of it, the youths entered into the waters of the basin. They became caught up in the current near the mouth of the Paerdegat Basin, and Sheila and another teenager drowned. Sheila's friends were able to make it to the pylons under the bridge and were later saved by two local fishermen.

Sheila's parents, acting individually and on behalf of the estate, sued the city of New York, alleging negligence and premises liability. (The estate of the other deceased youth did not bring forth claims.)

The estate alleged that the kids started wading into the Paerdegat Basin underneath the Belt Parkway and that, within less than 15 feet into the shallow water, two boys of the group encountered a steep drop off and strong current. When the boys shouted in distress, the estate claimed, Sheila and one of her friends went in the water to render them aid, but also encountered the drop off and current and began to drown.

The estate alleged through its aquatics expert that the city should have barricaded the compost station area with a fence or other such barrier to prevent trespassing and that the beach area was an attractive nuisance. Plaintiffs' counsel produced a photo that showed an open area of the compost station site, which served as the kids' access route to the shore. The estate also contended that, given the drop off and current of the basin area, the defendant should have but failed to post warning signs at or near the basin indicating "danger," "strong currents," "no wading" or "no swimming." The estate also claimed that "no trespassing" signs should have been posted in the area by the compost station. The plaintiff claimed that the area was frequented by neighborhood children and that the city knew or should have known of their presence along the shoreline. Estate's counsel put into evidence a photo that showed graffiti in the area where the kids were alleged to have entered the water and elicited testimony from the fisherman who saved two of the kids that the area was frequented by neighborhood children.

The estate further contended that the area of the Paerdegat Basin under the Belt Parkway had been dredged in a north-south line by the city, as part of the Belt's construction. (The parkway in that section is actually a bridge, supported by pylons that extend out of the water.) The estate contended that the building of the bridge necessitated the dredging and explained why the youths encountered the sharp drop off.

The city denied liability. While the defense admitted that the area and waterway under the Belt (as well as the Basin, the Belt and areas north of the Belt) were city property, the defense argued that the city could not be held liable because the decedent's injury occurred on federal land. Defense counsel argued that the trespassing youths crossed underneath the Belt, coming out just south of the highway onto a part of the beach that the federal government owned,

and entered the water at that point. The city maintained that all lands and waterways immediately south of the parkway in that area were granted to the National Park Service in 1970s for the creation of the Gateway National Recreation Area, and it introduced into evidence conveyance maps.

The defense pointed to testimony of one child who was with the group, who stated that the group accessed the area through a hole in the fence near the compost station and seemed unsure whether they entered the water south of the bridge or underneath it. The child was the only one to testify at trial, and the defense noted all of the surviving kids' statements to police, which were admitted into evidence without redaction. The defense noted in statements that the youths encountered trouble far out into basin, as opposed to near the shoreline, and cited the current as source of trouble, but none of the statements mentioned a drop off, and the current was a natural condition for which it could not be held responsible.

The defense also contended that the fence that the kids snuck through separated the park from other city-owned but "non-public" lands and that the compost station and shoreline abutting the basin were enclosed city property, also not open to the public. The defense contended that there in fact was a "no trespassing" sign on the fence. The city also contended that if a drop off existed in the area, it was not manmade, and it claimed that the plaintiffs provided no evidence of the alleged dredging done by the city in that area under the Belt.

Further, the city conceded that people would go to the shore area, but it disputed whether anyone swam in the basin there. The city contended that the area was not intended for swimming. On cross-examination of one of the fisherman who came to the rescue, testimony was elicited that the basin area was used only for boats entering and exiting the basin, because the water was polluted.

The estate countered with the testimony of two park employees, who contended that the sign was a "private property" or "authorized personnel only" sign, and that it was placed at the entrance gate to the compost station, away from what the defense maintained was the "non-public" section of the park, and that, therefore, it could not be seen by members of the public approaching the compost station from inside the park.

The estate also maintained a second theory of liability, which was that the city could be found negligent under a theory of negligently allowing access to the dangerous area, regardless of whether the city owned the land where Sheila drowned.

The city argued that it could not be negligent for allowing access to a federal public area that the kids could have accessed through an alternate route.

Sheila's estate also sought recovery of survival damages for conscious pain and suffering and pre-drowning terror. The estate claimed that, based on the testimony of Sheila's friend, who was a witness, and the estate's expert pathologist, the decedent suffered pain and was aware of her impending death for about five minutes prior to losing consciousness.

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