



# New York State Court of Claims

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**AMINOV v. THE STATE OF NEW YORK, # 2016-016-045, Claim No. 124440, Motion No. M-87609**

## Synopsis

### Case information

<b>UID:</b>	2016-016-045
<b>Claimant(s):</b>	RONEN AMINOV
<b>Claimant short name:</b>	AMINOV
<b>Footnote (claimant name) :</b>	
<b>Defendant(s):</b>	THE STATE OF NEW YORK
<b>Footnote (defendant name) :</b>	
<b>Third-party claimant(s):</b>	
<b>Third-party defendant(s):</b>	
<b>Claim number(s):</b>	124440
<b>Motion number(s):</b>	M-87609
<b>Cross-motion number(s):</b>	
<b>Judge:</b>	Alan C. Marin
<b>Claimant's attorney:</b>	Massimo and Panetta, P.C. By: Frank C. Panetta, Esq.
<b>Defendant's attorney:</b>	Eric T. Schneiderman, Attorney General By: Robert J. Schwerdt, AAG
<b>Third-party defendant's attorney:</b>	
<b>Signature date:</b>	August 10, 2016
<b>City:</b>	New York
<b>Comments:</b>	
<b>Official citation:</b>	
<b>Appellate results:</b>	
<b>See also (mult-captioned case)</b>	

## Decision

Ronen Aminov has brought a claim in this Court for the following: on March 16, 2013 at about 2 a.m., he was struck by a vehicle as he walked along the pedestrian pathway and/or dirt triangle separation located between the northbound Union Turnpike and the entry ramp of the east-bound Grand Central Parkway (and its service road) in Queens. The vehicle and driver have never be identified.

The defendant State of New York moves here to dismiss the claim on the basis that: it lacks the specificity required by section 11 (b) of the Court of Claims Act (the "Act");<sup>(1)</sup>

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highway design decisions are privileged; and the sole cause of the accident was the driver who fled the scene.

The claimant in his October 8, 2015 deposition testified that he was in a coma for three weeks and has no memory of the accident, at which time he was 29 years old (defendant's Affirmation, exhibit C).

The police report describes a vehicle traveling in the right lane, northbound on Union Turnpike which "leaves the roadway onto the right shoulder at the entrance from the GCP service [road] east, where it strikes the pedestrian." The vehicle "then flees the scene [northbound] on Union Tpk" (*id.*, exhibit B). The diagram in the report shows the pedestrian close to the right lane. There is no source for what is contained in the police report; the diagram therein does not, for example, sketch tire tracks. Nor does it state what caused the driver to go off the road.

Claimant presents an affidavit from one Arthur Malayev, who states that he was a passenger in a car behind the one that struck Mr. Aminov, and that he "saw said vehicle travel over the curb, as it made a sharp right hand turn at the intersection of Union Turnpike and Grand Central Parkway . . . The car had no difficulty going over the worn curb" (claimant's Affirmation in Opposition, exhibit C, paragraphs 3 and 4). Mr. Malayev said his car stopped because a person was observed lying on the side of the road.

\* \* \*

In his Affirmation in Opposition (exhibit A), claimant submits an Affidavit from James C. Schultz, a professional engineer. Mr. Schultz states that:

"The State's placement of the marked crosswalk was improper in that the markings are improperly maintained and eroded; the illumination of the roadway and crossing is insufficient; and it does not provide a direct and convenient crossing expected and anticipated by pedestrians."  
[Paragraph 9].

According to the engineer,

"The outside of the curve is poorly marked and the concrete curb is only two to three inches high on the roadway side . . . The New York State Department of Transportation (NYSDOT) Highway Design manual indicates barrier curb should have an exposed face on the traffic side of the curb of six inches. The improper curb height reduces a driver's visibility of the roadway edge . . . [and] increases the likelihood of a vehicle leaving the roadway . . ." [Paragraph 13].

In its Affirmation in Reply, the State criticizes engineer Schultz for being mistaken about the accident history of the location and giving an unsupported opinion on what caused the driver to jump the curb. As for the witnesses, defendant points out that Mr. Malayev and his driver were not identified in the police report; and the Malayev affidavit has the wrong accident location. Malayev and the car's driver, Daniel Barayev, were described by Aminov as friends of a friend of his that he spoke to a year or so later at a party.<sup>(2)</sup>

A good deal of this motion and the opposition to it involves disputed facts. The accident history of the site is important, but with what we have now, is not dispositive. Claimant mentions maintenance, which could implicate the City of New York, but that issue has also not been developed.

The State (and its political subdivisions) have a qualified immunity for road design and planning. "Qualified" because it can be overcome by showing that a design was put in place without adequate study, or lacked a reasonable basis therefor (*Weiss v Fote*, 7 NY2d 579 [1960]; *Affleck v Buckley*, 96 NY2d 553 [2001]).

Finally, it should be noted that even though the Court of Claims does not have jurisdiction over the unknown driver, fault can be apportioned to him or her (*Horst v State of New York*, 6 Misc 3d 1025 [A] [2005]).

In consideration of the foregoing, and having reviewed the parties submissions,<sup>(3)</sup> IT IS ORDERED that motion No. M-87609 is denied.

August 10, 2016  
New York, New York

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- 1. Section 11(b) requires that a claim for personal injury be specific as to: "the time when and place where such claim arose, the nature of same [and] the items of damage or injuries"**
  - 2. "My friend. He's friends with them" (the Aminov deposition, defendant's Affirmation, exhibit C, page 39).**
  - 3. The Court reviewed: From defendant, a Notice of Motion and Affirmation (with exhibits A through D); and an Affirmation in Reply (with exhibits A and B). From claimant, an Affirmation in Opposition (with exhibits A through C).**