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## IN BRIEF

### Contractor Files Suit Over Union Rules on New York/New Jersey Tunnel

The Gateway Development Commission—a bi-state agency building a \$16 billion tunnel between New Jersey and New York—has been hit with a suit accusing it of entering into an exclusionary project labor agreement favoring some unions over others.

George Harms Construction seeks to halt bids for a portion of the project, which is set for Dec. 10, and to overturn a Project Labor Agreement, or PLA, that allegedly violates state and federal laws, including antitrust regulations and the New Jersey and United States constitutions.

George Harms claims it maintains a 100% union workforce and is not opposed to labor agreements but is effectively barred from competing on the gateway job because it has a long-standing collective bargaining agreement with the United Steelworkers, a union that was allegedly unlawfully excluded from the PLA.

George Harms of Farmingdale, New Jersey, said in its suit that it is one of four companies to prequalify as a bidder.

But the defendant Gateway Development Commission, or GDC, allegedly disqualified Harms from the project based on a PLA that was added after Harms prequalified and a request for proposals was released after being drafted by the Hudson County Building and Construction Trades Council, AFL-CIO, to the detriment of all other qualified sources of labor, the suit claims.

"Harms repeatedly warned the GDC that its failure to include the United Steelworkers in the PLA would preclude Harms from bidding—estim-



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The suit asks the court to find that forming the labor agreement is outside the GDC's authority and that it violates George Harms' free-speech, free-association and due-process rights.

The Gateway Development Commission was formed in 2019 by New Jersey and New York and is run by a seven-member board of commissioners. It plans to build a new, two-tube railroad tunnel under the Hudson River as well as nine miles of new passenger rail track in New York and New Jersey. It also plans to rehabilitate the existing North River Tunnel, which dates to 1910 and is the source of chronic delays for hundreds of thousands of passengers daily.

George Harms Construction claimed in a statement that it has tried to work with the GDC on an amicable solution that benefits all stakeholders and preserves fair competition. The company previously filed a protest with the GDC over the allegedly illegal labor agreement, but the construction firm claims the GDC has yet to act, despite a looming Dec. 10 deadline for bids.

"We filed this lawsuit after our outreach to the GDC went unanswered," said Kevin J. Coakley of Connolly Foley, coun-

## COURT OF APPEALS

### NY's Voting Rights Act Survives Challenge in State's Highest Court

BY BRIAN LEE

THE EMPIRE State's top court was in accord on Thursday in preventing a downstate town from upending voter-dilution provisions enshrined in the John R. Lewis Voting Rights Act of New York.

The Court of Appeals was posed with whether those provisions violated the Equal Protection Clause of the 14th Amendment to both the U.S. and New York constitutions. A 7-0 holding by Chief Judge Rowan Wilson said the town of Newburgh couldn't assert a facial constitutional challenge to the



Chief Judge Wilson

act because none of the three novel arguments it presented fit exceptions to the state's longstanding rule that local governments cannot invalidate state legislation.

Wilson's holding allows a lawsuit by six Black and Hispanic town residents to proceed to trial, a claim seeking to force Newburgh to overhaul its at-large system for electing town board members.

The lawsuit alleges voting patterns in Newburgh are racially polarized and its at-large system disenfranchises Black and Hispanic voters who cannot elect

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## Online

★ The Court of Appeals decisions are posted at nylj.com.

### Federal Jury Awards \$80M To Estate of Wrongfully Convicted 'Buffalo Five' Member

BY BRIAN LEE

A "BUFFALO FIVE" plaintiff received an \$80 million award from a federal jury on Wednesday in litigation involving two Black teens whose 1977 murder and robbery convictions were vacated, after a court determined city police framed them.



attorney's office at the time failed to disclose material exculpatory evidence, a violation of his right to a fair trial.

The judgment is believed to be the largest single award for a wrongful conviction in U.S. history, attorneys said. The trial spanned more than two weeks.

A spokesman for Erie County said it will appeal, as County Executive Mark C. Poloncarz "feels the \$80 million award stated in the verdict is egregious."

"While we extend our sympathies to the family, that amount is insupportable and thus will be appealed," Peter Anderson, the county spokesman, said in an email

### 'How Does This Survive Any Scrutiny?' Judge Ponders Mandatory Judicial Retirement Laws

BY EMILY SAUL

A MANHATTAN judge on Thursday signaled he might side with plaintiffs in a lawsuit challenging mandatory judicial retirement ages in New York.

During brief oral arguments Manhattan Supreme Court Justice Lyle Frank questioned the law's requirement that judges retire at age 70, or at 76 if they are granted reconfirmation.

"How does this whole thing make any sense," Frank asked as he pondered the arguments. "How does this survive any scrutiny?"

Three justices last month sued the State of New York and the New York State Office of Court Administration, arguing age-based retirement rules amount to unconstitutional age discrimination under the New York Equal Rights Amendment adopted in 1994.

Plaintiffs, represented by counsel with Aida Bertuna & Kamins and Morrison Cohen, are seeking a temporary restraining order.



Manhattan Supreme Court Justice Lyle Frank

"The two most fundamental civil rights we have in New York are equal protection and the right to vote," New York Civil Liberties Union attorney Thomas Munson said Thursday. The NYCLU has filed as amicus in the case.

"You said the right to vote," Frank responded. "You don't have the right to be a judge. Let me tell you: It took years."

Retired Appellate Division Judge John Leventhal, » Page 8



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Darryl Boyd died on Feb. 26

The massive judgment was in favor of the estate of Darryl Boyd, who served more than 28 years in prison, and against Erie County's government, which was found liable because its district

attorney's office at the time failed to disclose material exculpatory evidence, a violation of his right to a fair trial.

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"While we extend our sympathies to the family, that amount is insupportable and thus will be appealed," Peter Anderson, the county spokesman, said in an email to the New York Law Journal and law.com.

A team of pro bono lawyers from Wilmer Cutler Pickering Hale and Dorr, led by partner Ross Firsenbaum, along with co-counsel The Law Offices of Joel B. Rudin P.C. and Spencer Durland, of the Buffalo law firm Hoover & Durland, won the historic award out of federal court in Rochester, after the jury deliberated for under an hour.

The same legal team won a jury verdict of \$28 million for Boyd's co-defendant, John Walker, who served more than 22 years in prison and 17 years' parole for his wrongful conviction.

Boyd, Walker and Darryl Gibson, were convicted of the

# Buffalo Five

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1976 murder of William Crawford, a 62-year-old Buffalo resident who had been attacked in his driveway.

Boyd and Walker's convictions were vacated in 2021, after a court found police withheld evidence and coerced witnesses. The county opted not to retry them.

Gibson was released from prison in 2008 and died the following year. A fourth friend, Floyd Martin, was acquitted of charges.

The convictions rested almost exclusively on testimony by a fifth friend, Tyrone Woodruff, whom police coerced to falsely implicate himself and accuse his friends of the crime in exchange for immunity, according to Boyd's attorneys.

Boyd and Walker were arrested as 16-year-old youths. The DA's office, led at the time by Timothy Drury, was found to have suppressed at least 19 items of Brady material that would have exposed the police misconduct, showed the teens' innocence, and pointed to two other far more likely suspects.

Drury became a county judge and then a state Supreme Court justice shortly after the convictions. He served 30 years on the bench until he retired in 2016.

Drury, now 85, denied any wrongdoing. But the juries in each case found that the DA's office had unlawful policies and practices to suppress Brady material and to commit summation misconduct.

Alluding to his summation, Firsenbaum called it "an honor of a lifetime for me personally, and for our entire team, to represent Darryl and John in this case. I told

both of them when I first met them that I appreciated that in 1976 they felt like the government had all the power and that they never had a fair fight, and I promised them that in these civil cases we would do everything we could to uncover the real facts and help them clear their names."

"For decades," attorney Spencer Durland said, "Darryl kept the faith that if he and John Walker could just tell their story, they'd see a measure of justice in the end. Darryl believed that to the day he died. This verdict is a complete vindication of Darryl's faith, Darryl's life, and the value we place on human freedom."

"Erie County prosecutors knew all five boys told the same story and corroborated its truthfulness, but then they threatened one of them with prosecution unless he implicated the group, in which case he would receive complete immunity," Rudin said. "Based essentially on that, and covering up all the evidence of innocence that was in the police file, the prosecutors destroyed the lives of our client and his co-defendants. The scary thing this trial showed is that such behavior was routine at the Erie County DA's office at the time.

He added: "I am so in awe of how WilmerHale threw a team of nine lawyers and paralegals into this because it was the right thing to do, at considerable cost to the firm. Working with such a talented and professional team, together with Spencer Durland from Buffalo, has been one of the highlights of my career."

WilmerHale said the law firm devoted almost 16,000 hours in attorney time representing Boyd and Walker pro bono.

Judge Meredith Vacca of the U.S.

District Court for the Western District of New York presided.

Boyd died in February from pancreatic cancer after his nearly 50-year battle to clear his name.

Walker is ill and bound to a wheelchair, but after winning his epic battle for vindication testified for Boyd last week. Woodruff also testified.

The plaintiffs' attorneys said Woodruff has been haunted his entire adult life because police and the DA's office coerced him into falsely accusing and testifying against his friends to escape prosecution.

The legal team had previously settled with Buffalo for the police misconduct after its Common Council issued a proclamation celebrating their exonerations and admitting they were framed. Boyd and Walker each received \$4.35 million from the settlement with Buffalo.

Boyd's civil rights suit alleged the county prosecutor's office had a policy of "deliberate indifference" toward fair-trial rights because prior to April 1977, it was on notice—and failed to discipline—assistant district attorneys who repeatedly failed to share exculpatory Brady evidence.

Attorneys from Lippes Mathias represent Erie County, which denied liability, asserting an apportionment defense that contends it wasn't entirely at fault of violating Boyd's rights because Buffalo detectives fabricated evidence.

The defense sought to apportion fault to six former members of the police department whom were not parties to the lawsuit.

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