

# Sheppard Mullin Litigator a Fighter for the Disabled

Posted by Sara Randazzo  
January 6, 2014

Daniel Brown hadn't yet passed the bar when he took on a pro bono case that launched what has become a years-long legal crusade.

As a first-year associate at Bickel & Brewer in 1999, Brown—who is now a commercial litigation partner at Sheppard Mullin Richter & Hampton—sued the New York Road Runners Club over its practice of forcing wheelchair-bound racers to temporarily exit the New York City marathon course ahead of the finish line in order to make way for elite competitors.

The assignment was important to the young lawyer both personally and professionally. Brown's brother, Alan, who had lost the use of his legs and, for the most part, his arms after being struck by a wave as a young man, was one of dozens of wheelchair racers who had been halted at the Queensboro Bridge in 1998 so that runners could pass. Still new to the legal profession, Brown believed race officials had engaged in discriminatory behavior by stopping his brother, who was nearly in tears when he was finally allowed to finish the race, and his fellow competitors in wheelchairs.

With the backing of his firm, Brown filed suit on behalf of a group of plaintiffs that included amateurs like his brother along with elite wheelchair racers such as Bob Hall, who helped pioneer the sport in the 1970s. The litigation ultimately led to a settlement, and in 2000 the New York City Marathon joined the ranks of races that feature a separate wheelchair division and award prize money to the top finishers in that category. Says Brown: "It was the greatest thing I've ever done in my life."

It also proved be the first in a series of disability rights cases that Brown, a native New Yorker raised on Manhattan's Upper East Side, handled on the way to becoming Sheppard Mullin's firmwide pro bono coordinator in 2010.

As 2013 came to a close, Brown—working in tandem with lawyers from the nonprofit Disability Rights Advocates—



Sheppard Mullin partner Daniel Brown, center, with wheelchair racers Miguel Such and Tony Nogueira in 1999.

celebrated the successful conclusions of a pair of suits aimed at improving the lives of disabled New Yorkers, one that expands the size of New York's wheelchair-accessible taxi fleet and a second that ensures adequate measures are taken during citywide emergencies to aid those with disabilities.

Brown stood in the front of a crowded room in downtown Manhattan on Dec. 6 as representatives from the New York Taxi & Limousine Commission, the office of then-Mayor Michael Bloomberg, and four disability rights groups announced the settlement, which requires half of the city's yellow cabs to be wheelchair accessible by 2020. At the moment, only 231 of the city's 13,237 yellow cabs can accommodate wheelchairs.

All city buses have been wheelchair accessible since 1995, but many subway stations are not. That, combined with the scarcity of wheelchair-equipped cabs, frequently

leave New Yorkers with disabilities relying on the often-criticized paratransit service known as Access-A-Ride that costs the city \$500 million a year.

Proponents of the taxi settlement, which still requires a federal judge's approval, hope that—in addition to making life easier for the 60,000-plus New Yorkers who use wheelchairs—boosting the number of accessible cabs will yield savings for taxpayers. City and taxi officials expressed as much enthusiasm for the settlement during the December press conference as those on the plaintiffs' side of the litigation.

Oakland-based Disability Rights Advocates initiated the suit three years ago, inspired by the trouble one of its own lawyers who uses a wheelchair had finding a cab during a visit to New York. The suit, the first-ever taxi-related challenge for the organization, claimed that by failing to increase the number of wheelchair-accessible cabs, the city was in violation of both federal disability laws and local human rights laws.

"The fight for accessible transportation in New York City has been going on for much longer than the lawsuit," says Brown, who joined the case in June when Disability Rights Advocates needed new pro bono counsel. "People are so excited that they'll be able to get a taxi like anybody else."

The announcement of the taxi settlement came about a month after a federal judge in New York issued a ruling in another joint Disability Rights Advocates–Sheppard Mullin case, this one brought over the city's failure to adequately prepare to assist those with disabilities during emergencies.

Filed in September 2011 in the wake of Hurricane Irene, the class action, which covered those in wheelchairs, as well as all New Yorkers with vision, hearing and mental disabilities, took on even greater significance when Hurricane Sandy hit a year later. In the wake of the storm, residents using wheelchairs in flood zones were unable to get to shelters; blind residents couldn't see written evacuation warnings; and others were left stranded when elevators in high-rise apartment buildings lost power.

One plaintiff in the case was waiting for a bus during the storm but was forced to return home when no bus with a wheelchair-accessible seat ever stopped, according to Brown. Back at home, Brown says, the man rose to the ceiling while still in his wheelchair as water rushed in, and only escaped thanks to a neighbor who heard him banging on the wall.

The original complaint, filed before Sandy struck, details how "as the hurricane approached, New Yorkers with disabilities had no idea how they could be evacuated, what shelters, if any, were accessible, how they would obtain life-

sustaining medications, or how they could be transported when buses and subways stopped running." Televised emergency announcements did not include sign language translators, evacuation maps included text too small for many to read, and many of the ramps at evacuation centers were steep and dangerous or led to locked doors, the complaint says.

"If you read our complaint, it would give you chills because it sounds like we knew something," says Sid Wolinsky, a cofounder of Disability Rights Advocates and a veteran public interest lawyer, of the pre-Sandy filing. "What sounded theoretical and like predictions, i.e., people with wheelchairs would be trapped in their apartments, turned out to be true to a staggering degree."

The class action went to a bench trial in March, and in early November, U.S. District Judge Jesse Furman issued a 119-page ruling in favor of the plaintiffs, based on trial testimony from 35 witnesses, 25,000 pages of exhibits and hundreds of pages in briefs. (In a statement, New York's then-corporation counsel Michael Cardozo said, "While we are disappointed with the court's conclusions, we are gratified it recognized that the city's extensive planning is impressive, and the efforts and valor of those responding to emergencies have been 'extraordinary.'" Cardozo also stressed the importance of planning for the needs of the disabled.)

Even with the ruling, Brown says he knows that putting in place an updated emergency preparedness plan will be difficult. "I think the city will want to fix this and will work cooperatively with us," he says. "It will be a long process. I don't have the answers. What is a good plan to get 900,000 disabled people out of Manhattan if necessary?"

Wolinsky says the ability to work with Sheppard Mullin and utilize the firm's resources was key to achieving the successful outcome in the two cases, especially given the California nonprofit's modest presence in New York.

"You don't always get a partner who actually throws himself into the fray in the way Dan did," Wolinsky says. "In the best sense of the word, he's a killer. He's a trial lawyer. He is not just somebody who manages some team of associates in order to work a big case."

Brown, who estimates that he spends hundreds of hours per year on pro bono work, says he is pleased with the outcomes in the two recent disability rights cases and that working on such matters has yielded some of the proudest moments of his career. "Like most people, I went to law school to do good," he says. "A lot of us forget that. ... To use my bar card, as they say, to make the world a better place for hundreds of thousands of people, that's one of the reasons I became a lawyer."

# New York Law Journal

## Judge OKs 'Historic' Deal for Accessible Taxis

Mark Hamblett, New York Law Journal  
September 18, 2014

A federal judge has approved a settlement that will expand by thousands the number of disabled-accessible taxis in New York City.

Southern District Judge George Daniels (See Profile) on Tuesday signed off on the settlement, expected to help increase the number of accessible taxis from just a few hundred at present to about 7,000, or half the fleet, by the end of 2020.

After the parties spent more than 3 1/2 years in negotiations, Daniels had indicated his preliminary approval in June when he endorsed a 30-cents-per-ride surcharge to pay for the dramatic expansion of the wheelchair-accessible fleet (NYLJ, June 11).

On Tuesday, speaking from the bench about *The Taxis for All Campaign v. New York City Taxi and Limousine Commission*, 11-cv-0237, Daniels praised the deal negotiated by the Law Department, led by Assistant Corporation Counsel Michelle Goldberg-Chan, and plaintiffs lawyers led by Julia Pinover and Sid Wolinsky of Disability Rights Advocates and Sheppard Mullin partner Daniel Brown, working pro bono.

"We should not minimize the importance of this historic moment," Daniels said. "Decades from now, most will take it for granted. But this is one of the most significant acts of inclusion in this city since Jackie Robinson joined the Brooklyn Dodgers. It is an act of a city that equally values all of its residents and visitors."



N.Y. / REGION

# New York City to Alter Preparations for Disabled in Disasters

By BENJAMIN WEISER SEPT. 30, 2014

New York City has agreed to make sweeping changes in its accommodations for people with disabilities during disasters and other emergencies, according to newly filed court papers.

The agreement seeks to resolve a lawsuit filed in 2011 after Tropical Storm Irene, which accused the city of failing to develop adequate plans to help shelter, transport and evacuate disabled residents. The issues became more urgent after Hurricane Sandy, which caused widespread flooding and lengthy blackouts and left many residents trapped in high-rise buildings, waiting for help.

Under terms of the proposed deal, which needs the approval of Judge Jesse M. Furman of Federal District Court in Manhattan, the city agreed to have in the next three years at least 60 shelters across the five boroughs rendered accessible and capable of sheltering about 120,000 people with disabilities, according to the filing.

The city will immediately move to make eight to 14 such shelters accessible by mid-October, which will create an estimated capacity of 10,000 to 17,000 people, more space than was needed for either Tropical Storm Irene or Hurricane Sandy, the agreement says.

“Emergencies and disasters can happen at any moment, and the hurricane season is upon us,” said Christine Chuang, a senior staff lawyer with Disability Rights Advocates, one of two firms that represent the

plaintiffs — the city’s estimated disabled population of about 900,000 people — in the class-action lawsuit.

The city’s corporation counsel, Zachary W. Carter, said in a statement that he was “extremely pleased” that the parties had “arrived at an agreement placing our city at the forefront of emergency preparedness nationwide in assuring that individuals with disabilities will have meaningful access to essential services during emergencies.”

Mr. Carter called the agreement “a great example of how city agencies and disability rights groups can work together to ensure that those in the disability community have a meaningful voice in coordinating these services.”

The deal also provides for a rapid canvassing operation after disasters that significantly affect more than 5,000 households over 48 hours, the documents say, with city personnel and volunteers conducting door-to-door surveys to determine critical needs, like food, water, power, medical care and evacuation.

The class-action settlement was disclosed in a letter to the judge from the city’s Law Department and the disability rights group.

Last November, Judge Furman ruled that the city had been in violation of the Americans With Disabilities Act for its failure to develop adequate emergency plans for disabled residents, like evacuation plans. “Hurricane Sandy dramatically demonstrated the consequences of this failure,” the judge said in a 119-page opinion, which followed a March 2013 bench trial.

The judge said that there was no evidence of “intentional discrimination by the city against people with disabilities,” but that the law also seeks to prevent discrimination resulting from “benign neglect.”

Judge Furman had directed the parties to reach a deal, indicating that he would impose remedies if they failed. The United States attorney’s office in Manhattan, which was not involved in the lawsuit but had filed a “statement of interest,” also reviewed the “key proposed remedies and approved of their substance,” Ms. Chuang said.

The agreement also calls for the creation of a task force, which will

include representatives of the Fire Department, to address high-rise evacuations. Judge Furman had expressed concern about the predicament of disabled residents of high-rises, especially “if a power outage has rendered elevators inoperable.”

“I think we have achieved a really comprehensive settlement,” Ms. Chuang said, adding that Mayor Bill de Blasio’s administration had worked “cooperatively” to reach the deal. “It took a long time, but we both came to the table in good faith,” she said.

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# City Settles Litigation Over Disaster

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REPRINTS



Members of the New York Army National Guard work to clear streets in Far Rockaway, Queens after Hurricane Sandy.

*Courtesy New York National Guard 204th Engineer Battalion*

A settlement reached in protracted litigation that was punctuated and defined by Hurricane Sandy will provide better evacuation and sheltering for the disabled during major storms and other disasters, city officials and advocates said Wednesday.

In September 2011, advocates filed suit in the Southern District charging violations of the Americans with Disabilities Act, (ADA) in the wake of Hurricane Irene a month earlier.

The suit, *Brooklyn Center for Independence v. Bloomberg*, 11-cv-6690, alleged that city planning was deficient for keeping the disabled out of harm's way during disasters.

The city countered that it already had evacuation and shelter procedures in place and were constantly evaluating and improving them.

Then, in the middle of the case, with trial before Judge Jesse Furman ([See](#)

[Profile](#)) less than six months away, Hurricane Sandy hit in October 2012, putting the plaintiffs' allegations—and the city's defense—to the ultimate test. Some 118,000 of the 889,651 New Yorkers who have disabilities lived in areas that were evacuated during Sandy.

"Hurricane Sandy was as an incredible tragedy, but for the case, it was a treasure trove of evidence about how devastating the failure to plan for emergencies really is for New Yorkers," said Julia Pinover of Disability Rights Advocates, one of several lawyers who represented the plaintiffs in the class action.

Furman presided over a six-day bench trial in April 2013 that saw some 25,000 pages of documents put into evidence, including more than 20 city plans for evacuation and shelter.

In November 2013, Furman found the city liable for violating the ADA, the Rehabilitation Act and the New York City Human Rights law. He said the city's plans were "inadequate to ensure that people with disabilities are able to evacuate before or during an emergency, they fail to provide sufficiently accessible shelters; and they do not sufficiently inform people with disabilities of the availability and location of accessible emergency services."

But the judge also praised the city in many respects, in an opinion that set the stage for negotiations that ended with a settlement notice filed Monday.

"This mountain of evidence and argument confirms that planning for and responding to emergencies and disasters is a Herculean task, and that in many—perhaps most—respects, the city has done an outstanding job," Furman said ([NYLJ, Nov. 8, 2013](#)).

The judge told the parties to start working on remedies, or he would hold a trial and set the remedies himself.

A trial date was set for Monday but Furman took the case off the trial calendar on Sept. 3 after the parties told him they were seriously close to settling.

In [court papers](#) filed Monday, attorneys for the plaintiffs and the city Law Department submitted memorandums of understanding on sheltering, door-to-door canvassing, accessible transportation (the fact that less than 20 percent of the subway system is accessible was a significant issue), emergency communications, power outages, the appointment of a coordinator for "disability access and functional needs" the creation of a disability advisory community

panel and, in an area of acute need, high-rise evacuation plans.

In the memorandums, the city agrees to establish a minimum of 60 accessible shelters to accommodate some 120,000 people with disabilities by September 2017.

By August 2017, the city is expected to have a fully operational post-emergency canvassing operation, led by employees from city agencies. Staffers will go door-to-door after disasters to see what people need in terms of food, water, electricity, medical care and medical equipment.

The canvassing operation builds upon city efforts during Hurricane Sandy when it coordinated groups of volunteers to help people get prescriptions filled and supply them with food and water.

Also by August 2017, the city is expected to have an improved transportation plan for evacuating people with disabilities, including plans for expanded deployment of accessible vehicles during emergencies.

And by September 2018, a soon-to-be-established high rise building evacuation task force is expected to have a high-rise evacuation plan in place.

Corporation Counsel Zachary Carter issued a statement calling the agreement "a great example of how city agencies and disability rights groups can work together to ensure that those in the disability community have a meaningful voice in coordinating those services."

Pinover echoed that sentiment Tuesday, saying that once the liability issue was settled, "both sides really came to the table with a willingness to work together. The city and DRA are on the same side in many ways because we all want to save as many lives as possible in the next disaster."

Plaintiffs counsel are Pinover, Sid Wolinsky, Christine Chuang and Rebecca Williford of Disability Rights Advocates; and Daniel Brown, a partner with Sheppard Mullin Richter & Hampton, who worked on the case pro bono.

Assistant Corporation Counsels Mark Toews and Carolyn Kruk represent the city.

# PORT CHESTER & RYE BROOK

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**NEWS**

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1/2/2015 3:00:00 PM

## Rye Brook attorney files lawsuit to compel P. C. station accessibility

Jananne Abel  
Editor

Metro-North Railroad has been hit with a lawsuit in order to compel the commuter rail service "to honor its moral responsibilities and comply with its legal obligations under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act by making the Port Chester Metro-North station accessible for people with mobility disabilities."

The Federal Transit Administration (FTA) of the U. S. Department of Transportation is holding Metro-North's feet to the fire over the same issue. In fact, a corrective action plan and expected completion date to carry out that plan are due to the FTA by Jan. 6.

However, according to the court papers filed by attorney Daniel L. Brown on behalf of the Westchester Independent Living Center, Michael Hellmann and Joseph Bravo on Dec. 23 in the U. S. District Court Southern District of New York in White Plains, "plaintiffs have been forced to bring this action against Defendant MTA Metro-North Railroad because Metro-North has ignored its obligations under the Americans with Disabilities Act to people with disabilities who reside in or visit the Village of Port Chester."

On Oct. 6, plaintiffs sent a letter to Metro-North describing the lack of accessibility issues at the Port Chester Metro-North station. Independent Living Centers are places where people with disabilities go for advice and resources. Hellmann and Bravo are two of WILC's members. They are both

Westchester residents with mobility disabilities who wish to enjoy full access to the Port Chester station but cannot do so because of Metro-North's failure to make the station accessible.

On Oct. 8, the FTA issued a letter of findings in response to a complaint against Metro-North filed by the



One of four sets of stairs that can be used to reach and descend from the northbound platform at the Port Chester train station, all of which are inaccessible to people with mobility disabilities.

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Village of Port Chester almost a year earlier. Their findings concluded that the renovation of the Port Chester Metro-North station failed to satisfy ADA requirements as it included an alteration to the path of travel and altered elements must be accessible.

Plaintiffs subsequently requested assurances from Metro-North that it would finally address "the civil rights violation that still exists at the Station, but Metro-North has failed to provide any such assurances and the Port Chester Metro-North Station remains inaccessible to people with mobility disabilities," according to court papers.

When asked to explain that lack of assurance, Brown, a Rye Brook resident who commutes to his job as a partner at Sheppard, Mullin, Richter & Hampton LLP in New York City out of the Port Chester station, said: "I gave them the opportunity to provide assurances to my clients that they would in fact make the station accessible in order to avoid a lawsuit. They refused. They have also made comments publicly that indicate they do not believe they are obligated to make the station accessible."

The Village of Port Chester and the Westchester Independent Living Center lawsuit argue that the only access to the northbound platform is via multiple flights of stairs and that the reopening of the Capitol Theatre and the opening of Port Chester Hall and Beer Garden have greatly increased the need for access to the station and highlight the ongoing civil rights violation there.

Metro-North working with the FTA

Marjorie Anders, spokesperson for Metro-North, said Tuesday that she was not going to comment on the lawsuit.

"We're working with the FTA," she said. "We will be replying to them by Jan. 6."

She said she didn't read the court papers. "All I can tell you is we looked at accessibility at that station. The price of an elevator is very costly there because of the topography. It's high in the sky there and there is bedrock. We have a very limited budget. We would make every station accessible if we had an unlimited budget."

As far as details about the corrective action plan, Anders said "I'm not going to tell you before we tell the FTA."

Once that plan has been sent to the FTA, she said "I'm sure you and the rest of the world" will have access to it.

She then e-mailed a prepared statement on this issue: "MNR is in an ongoing, productive dialogue with the Federal Transit Administration regarding improving accessibility at the Port Chester station. MNR is committed to enhanced accessibility to its commuter rail services and has made investments over the past several capital programs to make the majority of its stations available to the wheelchair-bound. Improvements in accessibility such as new elevators require significant additional resources. MNR looks forward to a fully funded 2015-2019 Capital Program that will permit continued progress to be made in this important area."

FTA's findings letter to the Village of Port Chester stated that Metro-North's Port Chester station was recently subject to a station improvement project funded by FTA through a grant, "but upon the completion of construction MNR failed to provide full access to the station for riders with disabilities who cannot climb stairs."

The cost of the work performed on the platforms and station infrastructure exceeded \$4 million.

The village's complaint focused on accessibility of the station's platforms and contended that although Metro-North had included an ADA-compliant ramp to the southbound platform, it had not ensured access to the northbound platform.

When Metro-North undertook the design phase of the station improvement project in 2008, it included a feasibility study for the inclusion of an ADAcompliant ramp and/or elevators to provide ADA access to the northbound platform into the scope of work. Metro-North determined that a ramp could be constructed with a series of switchbacks, required because of the topography and incline issues. The estimated cost was \$762,400.

Metro-North determined that the installation of an elevator would cost \$1.2 million.

"MNR's determination that a ramp would be 'impracticable' due to the cost is irrelevant...MNR was required to make that side of the station accessible to the maximum extent feasible regardless of cost," the findings letter states, adding that "MNR did not explore the options of installing an elevator or a ramp at the easternmost end of the northbound platform" where the topography is flatter.

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Thursday, July 17, 2014

## Handicapped inaccessibility at the Port Chester train station

*Rye Brook attorney offers to help Port Chester fight this civil rights violation*

Jananne Abel  
Editor

Thursday, July 17, 2014

A Rye Brook attorney has offered his assistance and that of his law firm to the Village of Port Chester to tackle a civil rights violation that exists-and has existed for decades-at the Port Chester train station.

Daniel L. Brown, a partner and litigator with the law firm of Sheppard, Mullin, Richter & Hampton LLP in New York City, wrote to Village Attorney Anthony Cerreto on June 26 and then followed up with a presentation at the July 7 Port Chester Board of Trustees meeting.

Brown, an advocate for people with disabilities, commutes to his office from the Metro-North station in Port Chester, the northbound platform of which is not accessible for persons with disabilities.

"While this oversight has always presented a serious barrier to individuals with disabilities, the construction of Port Chester Hall and related renovation of the station has made the situation untenable," he wrote in his letter.

At the meeting, he related two incidents he has observed where individuals in wheelchairs have come to Port Chester from Grand Central Station to meet friends at Port Chester Hall and were "essentially stuck on the platform." In frustration, one of them said he was going to crawl down the stairs at which point "some good citizens carried him down," the attorney explained.

"I am here to offer my services to the Village of Port Chester," said Brown, whose brother is a



Commuters coming from New York City descend from the northbound platform at the Port Chester train station, one of four sets of stairs to choose from but all inaccessible to the handicapped.

RICHARD ABEL|WESTMORE NEWS

quadriplegic and uses a wheelchair. "This is an extremely egregious civil rights violation." He said he has spoken to the conductors on the train and they don't even know about it.

"If my brother wanted to come visit me and get off on the Stamford side, he would have a problem," Brown said. "I know the MTA says he could get off at another stop."

"There is no ulterior motive here," Brown continued. "I want to join this good fight with you."

The lack of handicapped accessibility at the Port Chester station is a problem that has exasperated village officials for years and one that local residents have chimed in on in recent months.

Metro-North's response up until this point has been that as long as there are stations within a certain distance that offer handicapped accessibility-for example Rye and Greenwich-there is no requirement for Port Chester's to do so.

Cerreto said he had told Brown the village had filed a complaint with the Federal Transit Administration and that the investigation was still pending.

"Would he be looking for the Village of Port Chester to be a plaintiff in the lawsuit?" Mayor Neil Pagano asked.

"He said it would be up to us," Cerreto replied. "He feels it is an important issue. Obviously we're looking for the same thing."

Pagano explained that Metro-North was well aware of the issues in Port Chester, reiterating the almost 20 violations the railroad received "just to shovel the sidewalks [around the station] in the winter." He added that a member of the MTA board paid a visit to Port Chester "and we gave him a tour." He welcomed any additional strategy Brown could come up with.

"I'm sure I can help," Brown responded. "I am committed to make this happen whether the village is on board or not. I would really like you to join me. Hopefully this doesn't have to be litigated. I work for a big law firm. We are going to put our resources behind it. I am ready to act and now."

Cerreto said he would invite Brown to come speak to him immediately to discuss legal strategy. When reached late Wednesday afternoon, July 16, Cerreto said he had not yet met with Brown but planned to set something up soon. "We certainly have a common interest," he said. "My expectation is to go back to the board and maybe invite him along once I know a little more of what he has to offer and what he has to say."

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CHAMBERS OF  
GEORGE B. DANIELS  
United States District Judge

We should not minimize the importance of this historic moment. Decades from now, most will take it for granted. But this is one of the most significant acts of inclusion in this city since Jackie Robinson joined the Brooklyn Dodgers. It is an act of a city that equally values all of its residents and visitors.

I commend the plaintiffs and their lawyers for their persistence, and the mayor and the city's representatives for the good judgment that today's agreement represents. It makes us a better city. It is simply the right thing to do.