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New York public transit fare hike proceeds despite injunction attempt

by Rana Abbasi

New Yorkers must pay a little more to ride the subway these days. The Second Circuit recently vacated a preliminary injunction barring a fare increase for the city's subway and bus system in *New York Urban League, Inc. v. State of New York*, 71 F.3d 1031 (2d Cir. 1995).

The New York Urban League, Inc. ("Urban League") brought suit against the State as well as the Metropolitan Transit Authority ("MTA"), challenging funding allocations to public transportation. The plaintiffs argued that the mostly minority riders of the New York City Transit Authority ("NYCTA") train and bus system pay a higher percentage of operating costs than the predominately white suburban passengers of the MTA's commuter rail lines. The Urban League based its claim on Title VI of the Civil Rights Act of 1964, § 601, 42 U.S.C. § 2000d, which requires federally funded programs to be non-discriminatory. The Second Circuit held that the plaintiffs were unlikely to succeed on the merits of their claim due to insufficient evidence. The court concluded that even if the plaintiffs had demonstrated a prima facie case, (1) the defendants asserted substantial legitimate justifications for the disparate impact and (2) an injunction is an inappropriate remedy to address such a violation.

The mass transit systems in question serve the New York City metropolitan area. The NYCTA provides both subway and bus

service in New York City. The commuter rail lines serve the suburbs of New York. Both the NYCTA and the collective commuter lines operate under the auspices of the MTA. New York law requires that both the NYCTA and the MTA operate within a balanced budget. The NYCTA and the MTA both receive federal, state, and local subsidies in addition to revenues generated from commuter fares.

In 1995, the state budget decreased funding to the NYCTA and the MTA. The MTA calculated that the NYCTA and the commuter lines would run a deficit in 1996 as a result of the budget cuts. The MTA decided to increase fares on both transit systems in order to cover the projected deficit.

Fare hike temporarily enjoined

In reaction to the proposed fare increase, the Urban League sought a permanent injunction to stay the distribution of "funds for mass transit in a discriminatory manner." Complaint for the Urban League at 18, *New York Urban League, Inc. v. Metropolitan Transportation Authority*, 905 F. Supp. 1266 (S.D.N.Y. 1995). Plaintiffs contended that, in violation of U.S. Department of Transportation regulations, NYCTA riders (who are primarily members of minority groups) would pay a higher percentage of the operating costs than their white suburban counter-

parts after proposed fare hikes, due to a revised allocation of subsidies.

The district court granted a preliminary injunction which temporarily blocked the fare hikes. The district court found that the plaintiffs made a prima facie demonstration that a disparate impact on minorities would result from the proposed fare increases and that the defendants failed to show a substantial legitimate justification for their conduct. On appeal, the Second Circuit concluded that the district court had insufficient evidence to support either of these findings. In addition, the circuit court noted that an injunction barring a fare increase is an inappropriate means to remedy the disparate allocation of subsidies to mass transit agencies.

Insufficient evidence of disparate impact

The Second Circuit explained that in a Title VI claim, the district court should have ascertained whether any valid statistics existed that would demonstrate a disparate impact on the protected class because this was a Title VI claim. The plaintiffs' claim relied solely upon the "farebox recovery ratio," a statistic that gauges "the percentage of each system's operating cost . . . that is recovered through revenues from fares." The MTA contended that (1) the relative costs and benefits of the two systems is partly immeasurable

and (2) more appropriate statistics than the farebox ratio are available.

The Second Circuit concluded that it was inappropriate for the lower court to rule that there would be a disparate impact on minorities based upon the farebox recovery ratio. The appellate court reasoned that the ratio fails to sufficiently represent the distinct costs related to each system, resulting in a skewed representation of the subsidies allotted to the transit agencies. The Second Circuit, therefore, held that the Urban League failed to make a prima facie showing of disparate impact.

In the event that the plaintiffs' prima facie case had demonstrated a disparate impact, the circuit court noted that the MTA could have countered plaintiffs'

contentions by establishing that the alleged discriminatory practice was justifiable. The Second Circuit concluded that the district court erred when it found that the defendants had not shown a substantial legitimate justification for the challenged conduct. The MTA contended that due to the subsidization of the commuter lines: suburban riders would be encouraged not to drive to the City, automobile pollution and congestion in the City would decrease, businesses would find (re)locating in the City more attractive, and an increase by the additional pool of fare-paying passengers to ride the NYCTA system. The MTA and the State argued commuter rails bring numerous material benefits to the riders of the NYCTA, thus showing that the commuter lines' higher

degree of subsidization is justifiable.

Injunction inappropriate remedy for alleged violation

The Second Circuit also concluded that the district court erred in granting a preliminary injunction to bar the fare increase. The Second Circuit noted that the plaintiffs' claim was based on differing rates of subsidization between the city and suburban systems. Since no direct relationship between the level of subsidization and the fare rate necessarily exists, an injunction blocking the fare increase was an inappropriate remedy. Therefore, the Second Circuit reversed the district court's order granting a preliminary injunction and remanded the case for further proceedings consistent with its opinion.

Household exclusion in homeowner's insurance policy inapplicable when policy is also for vehicle insurance

by Wendy K. Davis

In *Allstate Insurance Co. v. Brettman*, 657 N.E.2d 70 (Ill. App. Ct. 1995), the Illinois Appellate Court held that an Illinois statute preempted the application of "household exclusions" in homeowners' insurance policies when such exclusions appear in "vehicle insurance" policies and where the policy would ordinarily have provided coverage for the injury.

On October 2, 1991, Nancy Brettman ("Brettman") was walking her bicycle across an intersection in Chicago when David Rozychi ("Rozychi"), driving his car, collided with the bicycle. Brettman and her children, who were being pulled in a carrier behind

the bicycle, were injured. Brettman filed a complaint against Rozychi on behalf of herself and the children, seeking damages for the injuries they sustained in the accident. In response, Rozychi filed a counterclaim against Brettman seeking contribution based on her alleged negligence in causing the injuries to the children.

At the time of the accident, Brettman was insured under "Allstate Deluxe Plus Homeowner's Policy." Based on the terms of her policy, Brettman turned to Allstate to defend and indemnify her against Rozychi's counterclaim, and the company began her defense under a reservation of rights.