

=====
This memorandum is uncorrected and subject to revision before
publication in the New York Reports.

No. 146 SSM 13
Christopher Hotaling et al.,
Appellants,
v.
The City of New York et al.,
Respondents.

Submitted by Jay L. T. Breakstone, for appellants.
Submitted by Cheryl Payer, for respondents.

MEMORANDUM:

The order of the Appellate Division should be affirmed,
with costs. The certified question should not be answered as
unnecessary.

The Appellate Division properly held that the testimony

of plaintiffs' expert was insufficient, as a matter of law, to support a prima facie case of negligent design (see generally Buchholz v Trump 767 Fifth Ave., LLC, 5 NY3d 1, 8-9 [2005]).

* * * * *

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, with costs, and certified question not answered as unnecessary, in a memorandum. Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur. Chief Judge Lippman took no part.

Decided June 4, 2009