



# GVK APPELLATE WIN

## GVK Obtains Dismissal of Action Against Shuttle Bus Owner in Pedestrian Knock Down Case

In *Esen v. Narian*, Partner Matthew Vitucci and Appellate Counsel Kimberly Ricciardi successfully appealed the denial of a motion for summary judgment on behalf of Trans Express, a company providing shuttle bus service to and from Resorts World Casino. The plaintiff sustained significant injuries when he was struck by a car as he attempted to cross a street near a marked pedestrian crosswalk at the casino, and commenced an action against the driver of the vehicle which struck him as well as Trans Express, which owned a shuttle bus that was stopped at a stop sign in the adjacent lane of the roadway.

The trial court denied a motion for summary judgment on behalf of Trans Express, based on its finding that issues of fact were present regarding whether the Trans Express driver, in “waving the plaintiff on”, negligently exposed the plaintiff to danger. GVK appealed the trial court’s decision, arguing that the driver who struck the plaintiff had an independent duty to stop at the stop sign in his lane of traffic, and that his failure to stop at the stop sign constituted an unforeseeable, superseding cause of the accident which severed any causal nexus between the plaintiff’s injuries and any alleged negligence of the Trans Express driver in “waving the plaintiff on”.

In a unanimous decision, the Appellate Division, Second Department agreed with GVK’s argument, holding that, “[E]ven if the plaintiff’s claim that he relied upon the bus driver’s wave to cross the roadway before he crossed the street is true, [the defendant driver’s] unforeseeable failure to stop when approaching a crosswalk marked with a stop sign, in violation of the Vehicle and Traffic Law, constituted an intervening and superseding cause that entitled Trans Express to a judgment of dismissal as a matter of law”.