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## First Department Declines to Hold Signal by a Driver as a Proximate Cause of an Automobile Accident

In *Ohlhausen v. City of New York*, the Appellate Division, First Department reversed the decision from the Supreme Court of New York County that denied summary judgment to the defendant New York City Transit Authority for its bus driver's actions related to an automobile accident. While the Appellate Division declined to alter the longstanding rule that a driver may be liable to a pedestrian if the driver directs the pedestrian across a street and the pedestrian is subsequently struck by another vehicle, it concluded the bus driver's act in this instance did not proximately cause the accident.

In this case, a police officer chased a perpetrator in his cruiser and came to an intersection in the northbound lane with his lights and siren activated. The bus driver stopped in the eastbound lane during a green light and waved the officer through. The police officer then entered the intersection with his siren off, but paused behind the side of the bus in hopes of catching the perpetrator. After 15-20 seconds, the officer proceeded through the rest of the intersection with the siren off and subsequently collided with the plaintiff, who was riding his motorcycle into the intersection from behind the other side of the bus.

Following Justice Benjamin Cardozo's rationale that "one who assumes to act, even though gratuitously, may thereby become subject to the duty of acting carefully, if he acts at all," the Appellate Division declined the Transit Authority's request to modify the rule that an individual who signals to someone that it is safe to cross a road assumes a duty for that act. It further found there was no difference in the standard of care owed as to whether one signaled a pedestrian or another driver. However, with regard to proximate cause, the Appellate Division noted that a gesture is only a proximate cause of an accident where an individual relies on the implicit assurance of safety by the signaling party, even in instances where the individual collides with a third party. In reversing the lower court's decision, the Appellate Division found in this case that the police officer relied on the bus driver's gesture only to enter into the intersection in front of the bus, where he paused for 15-20 seconds. The Appellate Division noted that the officer then decided to proceed through the rest of the intersection without looking at the bus driver for another signal, and thus the initial gesture was irrelevant to this decision. As such, the Appellate Division determined that the bus driver's earlier gesture was not a proximate cause of the resulting accident and dismissed the plaintiff's complaint against the Transit Authority. ■

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