

# New York Law Journal



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## Verdicts & Settlements

### WORKPLACE

#### Worker Claimed Proper Goggles Not Provided

**Settlement: \$2.7 million**

*Coombs v. City of New York*, 24033/02  
(10/13/2011)

**Bronx Supreme:** Justice Alexander W. Hunter Jr.

**Plaintiff Attorney:** Ronald W. Gill of Fortunato & Fortunato in Brooklyn

**Defense Attorney:** Vincent P. Pozzuto of Cozen O'Connor

**Facts & Allegations:** On Aug. 20, 2001, plaintiff Andre Coombs, 46, an ironworker, was on the north side of the Triborough Bridge. A co-worker was removing rivets securing a series of plates, necessitating his use of a pneumatically powered tool to split rivets. The tool's punch bit routinely broke and became lodged in the rivet's housing. Those occurrences were addressed by Coombs, who used a sledgehammer and metal pin to dislodge the broken bits. During one such attempt, a bit ricocheted from the housing and penetrated and damaged Coombs' left eye.

Coombs sued the bridge's owner, the City of New York, and the work detail's general contractor, the Triborough Bridge and Tunnel Authority, alleging the defendants violated the state Labor Law.

Coombs acknowledged his employer provided safety glasses, but he claimed he had to wear a double-filter respirator mask, which prevented the glasses from fitting snugly. He claimed the fragment reached his left eye through a gap of two to three inches between the bottom of the glasses and the upper portion of his left cheek. Coombs' safety expert opined that Coombs was not provided adequate protection.

Coombs' counsel contended the defendants violated New York Codes, Rules, and Regulations, title 12, part 23-1.8(a), which states that adequate eyewear must be provided to workers engaged in tasks that may endanger their eyes. Coombs' counsel claimed the violation established the site was not properly safeguarded, as required by Labor Law §241(6).

The defense's expert ophthalmologist opined that medical evidence suggested the fragment struck the front of Coombs' left eye. The defense's expert biomechanical engineer opined that such a trajectory would not have been possible unless Coombs lifted or removed his eyewear.

During cross-examination, Coombs' expert neurologist also opined the fragment likely entered the front of Coombs' left eye.

He underwent a vitrectomy, the removal of damaged vitreous matter, a lensectomy and suturing of his left eye's cornea.

Coombs' expert neuro-ophthalmologist and expert ophthalmologist opined Coombs' injury resulted in legal, though not physical, blindness. Coombs claimed the disability prevents his resumption of work.

Coombs sought reimbursement of two liens totaling \$253,113. He also sought \$2,389,000 for future lost earnings, \$438,200 for lost Social Security and retirement benefits, \$710,100 for lost insurance benefits, \$1,578,600 for lost annuity and pension benefits, \$434,600 for lost vacation pay, a total of \$600,900 for past and future loss of household services, and damages for past and future pain and suffering.

Defense counsel contended Mr. Coombs exaggerated the extent of his future economic losses. They claimed that he can resume work.

**Result:** The parties negotiated a settlement in which the Triborough Bridge and Tunnel Authority's insurer agreed to pay \$2.7 million. The city did not contribute.