

General Municipal Law Section 205-e, its History and Purpose

Enacted in July 1989, General Municipal Law Section 205-e (ch. 346, L. 1989) created a new cause of action for police officers injured in the course of their duties. Similar to General Municipal Law Section 205-a (L. 1935, ch. 800, amd., L. 1936, ch. 251, eff. April 4, 1936), the companion firefighter's statute, Section 205-e imposes absolute liability where, as here, a police officer is injured in the line-of-duty by reason of the neglect, omission, willful or culpable negligence of any person or persons in failing to comply with the requirements of any relevant statute, code, ordinance, rule, order or requirement. *See, Campbell v. City of New York*, 31 A.D.3d 594 (2nd Dep't 2006). Liability is imposed under this provision irrespective of whether the injury or death is caused directly or indirectly by lack of compliance. *See, Giuffrida v. Citibank Corp.*, 100 N.Y.2d 72 (2003); *Mullen v. Zoeb, Inc.*, 86 N.Y.2d 135 (1995).

Section 205-e provides, in relevant part, as follows:

Right of action to certain injured or representatives of certain deceased police officers

1. In addition to any other right of action or recovery under any other provision of law, in the event any accident, causing injury, death or disease which results in death occurs directly or indirectly as a result of any neglect, omission, willful or culpable negligence of any person or persons in failing to comply with the requirements of any of the statutes, ordinances, rules, orders and requirements of the federal, state, county, village, town or city governments or of any and all their departments, divisions and bureaus...

The law is now well-settled that the reckless endangerment and reckless assault provisions of the Penal Law (see, e.g., Penal Law Section 120.25) are valid GML Section 205-e predicates even absent proof that the alleged violator was convicted or charged criminally in connection with the underlying incident. *Williams (McCormick) v. City of New York*, 2 N.Y.3d 352, 365, 366 (2004).

In *Schiavone v. City of New York*, 92 N.Y.2d 308, 311 (1998), the New York Court of Appeals stated that GML Section 205-e should be interpreted and applied by the Courts in accordance with its plain language and legislative purpose. *Accord, Ruotolo v. State of New York (II)*, 83 N.Y. 2d 248, 258 259 (1994). In rejecting the City's claim that GML Section 205-e's 1994 revival provision (L. 1994, ch. 664) applied only to actions which were dismissed after July 17, 1992, the Court stated that an expansive interpretation is consistent with the overall goals of this legislation, as demonstrated by the Legislature through its numerous amendments to the statute. *Schiavone*, 92 N.Y.2d, *supra*, at 317. In rejecting the logic advanced by the City founded on a highly technical and restrictive analysis of the statute's legislative history, the Court stated it would be anomalous for this Court to adopt the restrictive

interpretation urged by the City when the Legislature has acted to preserve police officer's rights to sue through amendments to that statute.... When the Legislature's words and actions point out the correct interpretive path to follow, there is no justification for a Court of Law to follow another path. @ Schiavone, 92 N.Y.2d, *supra*, at 316, 317.

In Schiavone, *supra*, the Court of Appeals stated that GML Section 205-e, and the companion firefighter's statute GML Section 205-a, should be given an expansive interpretation by the Courts. Likewise, in Gonzalez v. Iocovello, 93 N.Y.2d 539, 548 (1999), the Court of Appeals stated that the Courts should apply Section 205-e Aexpansively@ so as to favor recovery by police officers whenever possible. The reason why the Court of Appeals has made such consistent rulings in this regard is evident from a brief review of legislative history of Section 205-e.

GML Section 205-e was enacted in 1989 in direct response to the Court of Appeals 1988 decision in Santangelo v. State of New York, 71 N.Y.2d 393 (1988). In that case, the Court applied the long-standing firefighter's rule to police officers injured in the line-of-duty. In Santangelo, *supra*, the Court stated that since police officers are trained and compensated to confront negligently created emergencies, public policy dictates that they should be precluded from recovering damages for the very situations that create a need for their services. @ 71 N.Y.2d, *supra*, at 397. Prior to Santangelo, *supra*, police officers had an unqualified right to bring common-law negligence claims against the City and non-municipal defendants for injuries sustained in the line-of-duty. *See, e.g.*, Buckley/Lawrence v. City of New York, 56 N.Y.2d 300 (1982).

In 1935, the Legislature gave firefighters relief from the harsh effects@ of the firefighter's rule in the form of GML Section 205-a, which created a right of action where a firefighter is injured in the line-of-duty by reason of the violation of a relevant statute, code or regulation. Since firefighters had such long standing relief, the Legislature thought it only fair and equitable that police officers should have the same right of action. Accordingly, this inequity was remedied by the Legislature with unprecedented speed@ with the enactment of GML Section 205-e which served to correct a perceived misstatement of public policy by the Court of Appeals and restore fully the pre-Santangelo rights of action of police officers. @ Brown v. Harrington, 150 Misc. 2d 375 (App. Term 2d A.D., 11th District, 1990).

Consistent with that goal, in 1990, the Legislature expressly declared that Section 205-e was remedial@ in nature and again amended that statute, this time to make it retroactive to revive 205-e claims pending, dismissed or which would have been actionable between January 1987, and June 30, 1991 (L. 1990, ch. 701, sec. 1). This amendment was enacted in direct response to the refusal of some Courts to apply that statute retroactively. *See*, Ruotolo v. State (I), 157 A.D.2d 452 (A.D. 1st Dep't 1990), mot. lv. App. Denied; 75 N.Y.2d 710 (April 26, 1990), mot. rearg. lv. app. denied., 76 N.Y.2d 773 (June 14, 1990).

Then, in 1992, the Legislature acted with dispatch once again in response to judicial attempts to limit the scope of Section 205-e to premises-related violations. For example, on April 12 of that year, the Appellate Division in Cooper v. City of New York, 182 A.D.2d 350 (1st

Dep't 1992), dismissed the common-law common-law and Section 205-e claims of police officer injured when the RMP in which she was a passenger collided with another motor vehicle. The plaintiff's statutory claim was dismissed because the Court found that a Section 205-e claim may be premised only upon building code violations, not violations of the Vehicle and Traffic Law. See, Kenavan v. City of New York, 77 N.Y. 2d 558 (1987). A scant three months later, the Legislature amended the body of the statute to explicitly provide that a GML Section 205-e claim may be premised on violations occurring at any time or place (L. 1992, ch. 474). Once again, that statute was made retroactive to revive claims dismissed pursuant to this perceived misinterpretation (L. 1992, ch. 474, sec.2).

In 1996, the Legislature acted once again to remove Court-imposed restrictions on Section 205-e which sought to limit the benefits and protections of that statute. In St. Jacques v. City of New York, 215 A.D.2d 75 (1st Dep't 1995) , aff'd on other grounds, 88 N.Y.2d 920 (1996), the Court held that Section 205-e did not apply to statutes which codified common-law duties and the violation of which did not increase that dangers already inherent in the work of police officers. To eliminate those restrictions, the Legislature amended Sections 205-e to add a new Section 3 which reads as follows:

3. This section shall be deemed to provide a right of action regardless of whether the injury or death is caused by the violation of a provision which codifies a common-law duty and regardless of whether the injury or death is caused by the violation of a provision prohibiting activities or conditions which increase the dangers inherent in the work of any officer, member, agent or employee of any police department.

(L. 1996, ch. 703, sec.3)

In so doing, the Legislature made its intentions very clear:

Since the enactment of chapter 474 of the law of 1992, our courts have continued to differ on the scope of the remedy afforded by chapter 346 of the laws of 1989. This act is to ensure once and for all that section 205-e of the general municipal law is applied by the courts in accordance with its original legislative intent to offer an umbrella of protection for police officers, who, in the course of their many varied duties, are injured by the negligence of anyone who violates any relevant statute, ordinance, code, rule and/or regulation.

In view of all of the above, in Gioffrida, *supra*, the Court of Appeals stated that over the last several decades, the legislative response to the so-called firefighter's rule has been, clear,

consistent and undoubtedly in the direction of doing away with the firefighter's rule. @ Gioffrida, 100 N.Y.2d, *supra*, at 76, 77. GML Section 205-e, as the Court of Appeals has stated, should be applied by the courts Aexpansively@ so as to favor the right of recovery of the injured police officer. For this reason, it comes as no surprise that a Section 205-e claim, as here, may be based upon the reckless endangerment provisions of the Penal Law, even absent proof of a conviction or the filing of criminal charges against the alleged violator. William v. City of New York, *supra*.