

## **POLICE OFFICER'S RIGHT TO SUE NEWSLETTER**

### **POLICE OFFICER RECEIVES A JURY VERDICT OF \$2,600,000 AGAINST THE CITY OF NEW YORK AFTER SUSTAINING INJURY IN A STATION HOUSE ACCIDENT**

An Officer from Brooklyn North was injured in a station house when a defective vertical file cabinet toppled on top of the Officer. The Officer sustained a serious injury to her shooting hand which necessitated surgery to repair a severed tendon. The Officer was completely unaware of her rights to sue when a fellow Officer alerted her to call Decolator, Cohen & DiPrisco, LLP (hereinafter referred to as DCD). DCD was retained by the Officer and DCD immediately filed a Notice of Claim against the City of New York. DCD also hired a safety expert to examine the subject file cabinet. The safety expert determined that the drawer locking mechanism was disabled making the file cabinet extremely dangerous. Multiple drawers would open at the same time causing a shift in weight to the cabinet making the cabinet susceptible to falling.

Investigation revealed that the subject defective file cabinet had been previously discarded by the command and was returned to the office by another supervising Officer. The injured Officer was unaware of the cabinet's propensity for multiple drawers to open at the same time. The Officer was awarded a 3/4 line-of-duty disability pension prior to trial. The City had a no pay position on the case. Dominic DiPrisco and Joseph L. Decolator tried the case in Kings County Supreme Court. After a three week trial, the jury awarded the Officer \$2,600,000 for past and future pain and suffering, and past and future lost wages. Prior to appeal, the matter settled for \$1.5 million.

### **POLICE OFFICER RECEIVES \$1,000,000 SETTLEMENT FROM THE CITY OF NEW YORK AFTER STATION HOUSE JAIL CELL DOOR ACCIDENT**

After reading the 2005 Police Officer's Right to Sue Newsletter, an Officer from Queens North consulted DCD after he injured his neck while closing a jail cell door in the station house. The lock to the cell door was broken causing the cell door to reverberate injuring the Officer. The Officer sustained an injury to his neck due to the force and weight of the jail cell door. The Officer retained DCD who immediately filed a Notice of Claim against the City of New York. DCD commenced an investigation which disclosed that the City had notice of the defective jail cell door lock when the firm discovered an open work order to repair the jail cell door. DCD sued the City of New York on behalf of the Officer pursuant to common law negligence and General Municipal Law § 205-e (hereinafter referred to as GML § 205-e) claiming the dangerous condition of the broken cell door lock created an unsafe work environment in violation of the Administrative Code. Accordingly, the violation of the Administrative Code served as a predicate for a cause of action under GML § 205-e. Although the Officer did not have recommended neck surgery, he was awarded a 3/4 disability pension. Prior to trial, DCD negotiated a \$1,000,000 settlement on behalf of the Officer.

### **NEWSLETTER REVIVES SEVEN MORE MOS LAWSUITS**

This firm published a newsletter in an effort to educate members of the service of their civil rights in a variety of personal injury settings. DCD is pleased to announce that the 2003, 2005 and 2008 Newsletters have successfully informed thousands of Police Officers of their rights to sue pursuant to GML § 205-e. In particular, the 2008 Newsletter alerted thirteen Officers of their rights to sue pursuant to GML § 205-e after the time limits to file their cases against the City of New York had expired. This firm revived seven cases and five cases are still pending.

## *Continued from front page*

In the first case, an Officer from the Bronx was in the station house when he tripped on a box of computer paper as he entered the sitting room. The Officer sustained a serious injury to his left leg which necessitated surgery. The box of paper was used in the command as a door jam. When the Officer entered the room, the door to the muster room was closed. However, the box remained in the vicinity of the door in the middle of the floor. As the Officer walked inside the room, he never saw the box and tripped over the box causing the serious injury. The Officer had no knowledge of his GML § 205-e right to sue and did not seek counsel. Unfortunately, the Officer's time to file a notice of claim against the City of New York had expired. (*Note: A Notice of Claim must be filed within 90 days of the accident when the defendant is a municipality.*) Approximately seven months elapsed from the date of accident when the Officer read our newsletter. The Officer retained DCD and this firm immediately filed an application against the City of New York seeking permission from a Bronx County Supreme Court Justice to file a late Notice of Claim. Based upon this firm's vast experience regarding this legal issue, a Justice from the Supreme Court granted the application and permitted the Officer to file a late Notice of Claim against the City of New York. The matter is now pending in Bronx County Supreme Court.

In the second case, an Officer from Staten Island reinjured his back when the vehicle he was operating struck a pothole causing the RMP to lose control and strike a light pole. The Officer was responding to a 10-54 suicidal EDP when he attempted to make a right turn and struck a depression in the roadway. The depression was probably caused by a construction company's failure to adequately repair the roadway after their work was completed. The Officer contacted DCD after reading the 2008 Newsletter. The Officer retained DCD and DCD once again filed an application with a Supreme Court Justice seeking permission to file a late Notice of Claim. The application was granted, and the case is presently pending in Richmond County Supreme Court.

In the third case, an Officer from Manhattan South injured his knee in an RMP accident. The Officer was the recorder travelling with his partner to a traffic condition. The RMP had its lights and sirens on. The operator proceeded in the southbound lanes in the northbound direction and went past a steady red light causing an accident with a motorist making a right hand turn with the green light. The Officer read the 2008 Newsletter and immediately contacted DCD. DCD once again filed an application with a Supreme Court Justice seeking permission to file a late Notice of Claim. Although nine months had elapsed from the date of accident to the filing of the Notice of Claim, a New York County Supreme Court Justice approved DCD's application. The matter is presently pending in New York County.

In the fourth and fifth cases, two Officers from Staten Island were injured after the operator lost control of their RMP during inclement weather while proceeding to a high priority job. Apparently, the RMP did not have adequate tire pressure which contributed to the vehicle losing control in poor driving conditions. Both Officers read the 2008 Newsletter and immediately contacted DCD. One Officer retained DCD and the other Officer was referred to an attorney with knowledge of GML § 205-c. Both firms received permission from a Justice of the Richmond County Supreme Court to file a late Notice of Claim. The matters are presently pending.

In the sixth case, an Officer from Staten Island injured his back, left shoulder and right knee when a Department van in which he was a passenger was T-boned by a second vehicle at an intersection. The Department van was responding to a 10-10 suspicious vehicle with lights and sirens on when the operator proceeded through a steady red light without slowing down causing the intersection collision. The Officer was not aware of his rights to sue until he observed the 2008 Newsletter in the station house. He immediately contacted DCD. DCD successfully filed an application to file a late Notice of Claim with a Justice of the Supreme Court, Richmond County. The matter is pending.

In the seventh case, a Housing Officer fell down a flight of defective steps in a PSA causing a serious injury to her left ankle. The injury necessitated surgery. The Officer was unaware of her rights to sue until she observed the 2008 Newsletter in her command. The Officer retained DCD. DCD immediately filed an application with a Kings County Supreme Court Justice seeking permission to file a late Notice of Claim against both the Housing Authority and the City of New York. The City did not oppose the application. The application against the Housing Authority was granted over strenuous opposition and the matter is pending.

***Note: It is crucial to seek immediate counsel on any line-of-duty accident in which a municipality (i.e., City of New York, Police Department, Transit Authority, Housing Authority, LIRR, etc.) is involved. There is a 90-day filing requirement against these defendants.***

## **DCD RECOMMENDATION**

***It is important for members of the service to report and document unsafe work conditions and/or defective equipment to a superior Officer. Members of the service should also make memo book entries and/or log entries regarding these conditions. Cases involving unsafe work conditions and/or defective equipment may require actual or constructive notice to the City or Police Department in order to successfully litigate a claim against the City of New York. The proper notice may also enhance the City's ability to cure the dangerous and defective conditions and make conditions safer for all members of the service.***

Joseph L. Decolator, Neil L. Cohen and Dominic DiPrisco have combined legal experience of over eighty years. They have spent the majority of their legal careers vigorously protecting the rights of uniformed members of the service. Joseph L. Decolator was among the co-authors of GML § 205-c. Joseph L. Decolator also successfully argued in the State's highest Court on behalf of the estate of a deceased Police Officer and held the Parole Board responsible for the Officer's death.

## PREMISES

An Officer from Brooklyn North received a settlement of **\$550,000** from the Archdiocese after injuring his shoulder in an abandoned church building. The Officer, while responding to a call of a trespasser in a vacant church school building, fell through a large hole on the second floor. The Officer sued the Archdiocese pursuant to common-law negligence and GML § 205-e claiming the Church was negligent in failing to secure the building. Although the lower level of the Church building was secure, DCD was able to demonstrate that the Church left scaffolding up enabling perpetrators to climb the scaffolding and enter through the second floor windows. The Officer required arthroscopic surgery to his shoulder and was awarded a 3/4 line-of-duty disability pension.

In another case, a Queens South Officer was injured on the way to work when, while riding his bicycle to his precinct, he skidded in the driveway of a carwash causing him to fall off his bicycle. The driveway of the carwash contained remnants of soap and other slippery substances. The Officer injured his knee which required arthroscopic surgery. The Officer sued the owner of the carwash alleging that the carwash was negligent in permitting an excess of soapy waters to languish on the ground. The condition made it extremely dangerous for pedestrians and bicyclists to travel on the driveway. The Officer received a settlement of **\$90,000** at a mediation prior to trial.

## POLICE HEADQUARTERS

A Detective assigned to Police Headquarters re-injured his knee when he tripped on broken tiles in an office at One Police Plaza. The Officer sued the City of New York pursuant to common law negligence and GML § 205-e claiming that the City was negligent in failing to repair the broken tiles and in violation of Labor Law § 27a in failing to provide a safe work place. The Officer required arthroscopic surgery to repair his knee and was awarded a 3/4 line-of-duty disability pension based upon an old line-of-duty injury. The case settled for **\$150,000** prior to jury selection.

## AUTO / CITY

An Officer from Brooklyn North received a settlement of **\$715,000** from the City of New York after the RMP he was operating struck an unprotected raised manhole cover on a City street. The Officer sued the City of New York pursuant to GML § 205-e and common law negligence claiming that the City was negligent in failing to maintain the street in a safe condition and also violated the New York City Charters § 2902(b)(2) by failing to provide a safe thoroughfare for motorists. As a result of the accident, the Officer exacerbated a pre-existing back injury necessitating surgery. He was awarded a 3/4 disability line-of-duty pension.

In a case highlighted in the 2008 Police Officer's Right to Sue Newsletter, an Officer from Brooklyn North broke his wrist as a result of an RMP accident. The Officer consulted this firm after another Officer who had read the 2005 Newsletter informed him to call DCD. Unfortunately, the time limits to file a Notice of Claim against the City had expired. DCD was successful in persuading a Kings County Supreme Court Justice to grant the Officer's application allowing the case to proceed to Court. The Officer was injured when the operator of the Department van proceeded the wrong way down a one-way street colliding with another vehicle. DCD sued the City of New York pursuant to GML § 205-e claiming the operator's actions in driving the wrong way down a one-way street was "reckless" in violation of VTL § 1212 and was, therefore, a statutory predicate for a GML § 205-e claim. The Officer sustained a broken wrist, however, he had limited treatment and the case settled against the City of New York for **\$50,000**.

*Note: In cases against the City of New York, it is not necessary to name an individual Police Officer as a defendant to the lawsuit. The City of New York and the NYPD are the only necessary parties. The individual Police Officer does not have civil exposure if the actions are negligent and/or reckless and is deemed to be in the scope of his/her employment.*

## DCD RECOMMENDATION

***It is essential that New York City Police Officer's review and sign the line-of-duty injury report. There have been instances where line-of-duty injury reports were prepared and signed by individuals other than the injured Officer without the injured Officer ever seeing the line-of-duty report. These reports have had inconsistent accounts of the incident and at times, omit injured body parts. The injured member of the service must review and sign the line-of-duty injury report as practicable. The omission and inconsistencies can be used against the injured Officer by the District Surgeon (i.e. surgeon not authorizing treatment for omitted body parts) and in potential litigation (i.e. inconsistent statements or accounts can adversely affect an Officer's credibility.***

## AUTO / PRIVATE

A Queens North Sergeant received a settlement of **\$100,000** after he injured his shoulder during a car stop in a known drug location. The Sergeant, while on a narcotics detail, was performing an investigation of a driver of a vehicle parked at a gasoline station on the Grand Central Parkway. The Sergeant approached the driver's side of the vehicle and opened the driver's door. The Sergeant extended his arms on the door frame when the vehicle lurched backwards. The vehicle's movement caused the Sergeant to hyperextend his shoulder. A subsequent MRI reflected potential damage to his shoulder. The Sergeant underwent an arthroscopic procedure on his shoulder. Although the operative report reflected minimal damage to the injured shoulder, the Sergeant was able to recover **\$100,000** from the motorist who caused the Sergeant's injury.

An Officer from Queens South received a settlement of **\$75,000** after a liability verdict as a result of being injured in a line-of-duty RMP accident. The Officer was the recorder in an RMP when a yellow cab blew a steady red light striking the passenger side of the RMP. The Officer injured his shoulder and knee. After undergoing an arthroscopic procedure on his knee, the Officer was awarded a 3/4 line-of-duty disability pension. American Transit Company, the insurance company for the yellow taxi, offered to settle the case pre-trial for **\$15,000** and hired a bio-mechanical engineer to testify that the impact between the two vehicles could not have caused the Officer's injuries. Apparently, American Transit Company was forcing other plaintiff firms to settle their cases for numbers which were significantly less than the true value of the case. Firms did not want to spend funds to hire experts when the recovery is limited to **\$100,000**, the auto policy limits required by the Taxi and Limousine Commission for taxis to possess. DCD refused to acquiesce to this tactic and hired their own bio-mechanical engineer from a firm in South Dakota to testify that the Officer's injuries were caused by the impact of the two vehicles. The case proceeded to trial and the jury found 100% for the Officer. After considering the additional cost of flying the expert to New York to testify at the damage phase of the trial, the Officer decided to accept a **\$75,000** offer from the insurance company.

*Note: In automobile accident cases, it is essential that New York City Police Officers avail themselves of additional monetary protection by increasing their supplementary uninsured/underinsured coverage. This coverage will protect members of the service if the member suffers a serious injury and the offending motorist has little or no liability insurance coverage. Counsel should be contacted immediately after a line-of-duty accident to preserve the Officer's rights for SUM coverage.*

## STATION HOUSE

An Officer from Brooklyn South received a settlement of **\$65,000** from the City of New York after he tripped on cardboard mats placed in the vestibule of a station house. The mats were placed on the staircase leading to the exterior doors to prevent a slippery condition during an inclement day. The Officer injured a knee which required an arthroscopic procedure. The Officer sued the City of New York pursuant to GML § 205-c and common-law negligence in permitting the placing of the cardboard mats on the steps. The Officer also alleged that the City violated Section 27a of the Labor Law in that the City of New York failed to provide a safe work environment.

## PRODUCTS LIABILITY / PRIVATE

A Brooklyn South Officer received an award of **\$92,500** after he injured his thumb when a Department van's sliding door slammed shut on his hand. The safety mechanism on the door was defective causing the door to rapidly close. The safety mechanism was designed to prevent the door from closing at a rapid speed. The injury occurred when the van made a sharp turn causing the sliding door to slam on the Officer's thumb. As a result, the Officer needed surgery to repair a torn ligament. The Officer contacted DCD after the time limits to sue the City of New York expired. DCD commenced a lawsuit against the van's manufacturer and the maker of the sliding door pursuant to common law negligence and GML § 205-c. The matter settled during mediation for **\$92,500**.

## DCD RECOMMENDATION

*After a line-of-duty accident, members of the service, if physically capable, should take the necessary steps to conduct an investigation of the accident scene. An investigation includes taking photographs of the accident scene and gathering witness pertinent data. The injured member of the service should contact counsel immediately in an attempt to preserve evidence. Totaled RMP's are routinely destroyed by the Department immediately after an accident thereby eliminating the opportunity for an expert to examine the car to discover any defects which contributed to an injury. At times, accident scenes do not remain the same and it is difficult to prove an underlying violation or defect if an expert is unable to inspect the cause of the accident (i.e. street defects which get repaired after an accident; structural defects on stairs and steps subsequently get repaired).*