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POLICE OFFICER'S RIGHT TO SUE 2012 NEWSLETTER

OFFICER RECEIVES A \$700,000 SETTLEMENT FROM CITY OF NEW YORK AFTER ANOTHER LAW FIRM ABANDONED HER CASE

An Officer assigned to the Mounted Unit suffered a serious injury when a bathroom window collapsed on the second floor of the command. The Officer suffered a hand injury which required surgery and led to her being awarded a $\frac{3}{4}$ line-of-duty accidental disability pension. The Officer initially hired a relative's law firm which did not specialize in plaintiffs' personal injury. Although the firm filed a timely notice of claim and a summons and complaint against the City of New York, the firm failed to allege a GML §205-e claim which was critical to a successful prosecution of the case. After receiving an answer from the City of New York denying the allegations contained in the complaint, the prior firm did no legal work on the file for eight years. The Officer saw our website www.policeofficersrighttosue.com and immediately contacted DCD. The Officer retained DCD and DCD immediately filed a motion to a Justice in New York County Supreme Court requesting the Officer's summons and complaint be amended to include the General Municipal Law §205-e cause of action. Fortunately, the Court granted DCD's application allowing the GML §205-e cause of action. DCD vigorously pursued the prosecution of the Officer's claim and within two years of being retained, the City offered \$700,000 to settle the matter. The Officer accepted the offer and was grateful that she discovered DCD, whose expertise in police accident cases brought a successful conclusion to this case.

Members of the service have to be aware that if they consult an attorney regarding a line-of-duty accident, the attorney must be familiar with GML §205-e. New York State Officers and particularly, New York City Police Officers, have expanded rights to sue for personal injuries under the GML §205-e statute. In addition to the aforementioned case, many Officers have been given incorrect legal advice regarding potential GML §205-e claims. These lawyers were not aware of GML §205-e nor were they aware of the substantial case law surrounding GML §205-e. These lawyers informed members of the service that their claim was either barred because of the Firefighter's Rule or that New York City Police Officers cannot sue their employer, the City of New York because the claim is barred by Workers' Compensation. DCD has seen Officers losing millions of dollars in potential settlements because of poor legal advice. Members of the service must seek counsel competent in dealing with General Municipal Law §205-e when they seek representation in the prosecution of line-of-duty accidents.

SERGEANT RECEIVES A 1.2 MILLION DOLLAR SETTLEMENT FROM CITY OF NEW YORK AFTER INJURING HER ANKLE IN ROADWAY DEFECT

A New York City Sergeant assigned to Manhattan North received a 1.2 million dollar settlement from the City of New York after injuring her left ankle on a roadway defect in Washington Heights. While conducting a car stop, the Sergeant lost her balance and twisted her left ankle in a significant depression in the roadway. The defect stemmed from a prior excavation on the roadway around a Department of Environmental Protection fire hydrant gate box. After the excavation, the roadway area surrounding the box was inadequately repaired by the City of New York and created a substantial hazard to the public. The City had not repaired the defect in years and a member of the public called 311 to notify the City of New York about the defect. Unfortunately, the City did not respond to this notification and failed to fix the roadway defect.

On behalf of the Sergeant, DCD sued the City of New York pursuant to General Municipal Law §205-e alleging the City violated provisions of the New York City Charter and the Administrative Code in failing to correct the roadway depression thereby causing the Sergeant's injury. The ankle injury necessitated surgery with a recommendation of a second surgery. The Sergeant was awarded a $\frac{3}{4}$ line-of-duty accident disability pension. After protracted and contentious litigation which involved extensive motion practice, the City of New York settled the case for 1.2 million dollars.

NEWSLETTER REVIVES EIGHT MORE MOS LAWSUITS

This firm publishes newsletters 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, 2008, 2009, 2010 and 2011 newsletters have successfully informed thousands of Police Officers of their right to sue pursuant to GML §205-e. In particular, the 2011 newsletter alerted nine 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 and the Housing Authority had expired. This firm revived eight cases.

AUTO/PRIVATE

Sergeant receives \$600,000 settlement from private motorist after sustaining a shoulder injury in an automobile accident

A New York City Sergeant assigned to a Queens North command was rear-ended by a private motorist while sitting in his RMP during a car stop. Although there was limited damage to the RMP, the Sergeant suffered a serious injury to his left shoulder which necessitated surgery. The Sergeant retained DCD who hired a bio-mechanical expert from South Dakota in order to demonstrate that the limited impact caused the Sergeant's shoulder injury. The bio-mechanical expert examined the damage to the RMP, the position of the Sergeant in the car and damage of the private motorist's vehicle. After examining all of the evidence, the expert concluded that the impact caused the tear of the ligament in the Sergeant's shoulder. GEICO, the insurance company for the defendant motorist, filed a motion for summary judgment claiming the Sergeant's lawsuit against their insured was barred by the Firefighter's Rule and that tailgating in violation of Vehicle and Traffic Law §1129 was not a statutory predicate to GML §205-e. Joseph L. Decolator countered and filed a cross-motion alleging that the Sergeant was entitled to summary judgment in that his vehicle was rear-ended and there remained no genuine issue of fact for the Court to decide. GEICO's strategy backfired and a Queens County Supreme Court Justice ruled against the insurance company and in favor of the injured Sergeant. Summary judgment was granted and 9% interest started accruing when DCD filed the judgment in Court. At a pre-trial mediation, attorneys for GEICO offered \$100,000 to settle the case. DCD rejected the offer and prepared the case for trial. Shortly prior to the trial date, the insurance carrier for the defendant called DCD and settled the case for \$600,000.

Westchester County Police Officer receives a \$275,000 settlement from private motorist after an automobile accident

A Westchester County Police Officer seriously injured his left shoulder, which necessitated surgery, when he was struck by a private motorist while responding to a disabled vehicle on the northbound side of Hutchinson River Parkway. The Officer approached the disabled vehicle with his emergency overhead lights as well as his front grill lights on. The Officer stopped his vehicle behind the disabled motorist. The Officer positioned his car in the right lane. Approximately five seconds after the Officer opened his driver's side door, the defendant motorist failed to yield to an emergency vehicle and struck the Officer's door causing the Officer to sustain injuries. The defendant claimed the Officer opened his door into traffic and was unable to avoid the collision. The insurance company for the defendant filed a motion in Westchester County Supreme Court asking that the Officer's claim for personal injuries be dismissed because the Officer caused his own injury by opening his door into traffic and that there was no genuine issue of fact to be decided. DCD vehemently opposed the application and was able to convince a Justice of the Supreme Court to deny the defendant's motion thereby allowing the case to proceed to trial. At the eve of trial, DCD was able to obtain an offer of \$275,000, from a maximum policy of \$300,000, to settle the case.

AUTO/CITY/PRIVATE

Two Brooklyn North Officers recover \$307,500 from a private motorist and the City of New York in an RMP accident

Two Officers assigned to Brooklyn North were seriously injured when an intoxicated motorist struck their RMP while the Officers were safeguarding a disabled vehicle on the Kosciuszko Bridge. One Officer injured his shoulder which necessitated surgery and the other Officer injured his back which also required surgery. The Officers were able to split \$292,500, the maximum policy held by the defendant motorist. DCD also sued the City of New York claiming the RMP did not have the "rabbit ears" which contributed to the defendant not seeing the RMP on the elevated Kosciuszko Bridge. The problem with

this equipment claim was that the defendant motorist never denied seeing the RMP with its flashing lights from a distance. The intoxicated motorist testified that he attempted to change lanes to avoid the RMP but misjudged the proximity of his vehicle to the RMP. Accordingly, the issue as to the lack of rabbit ears on the RMP contributing to the accident was a non-factor in light of the defendant's testimony. DCD was still able to get an additional \$15,000 for both Officers to settle the equipment violation claim.

An Officer received a settlement of \$150,000 from the City of New York and a civilian motorist after an RMP accident

A Queens South Officer was injured when, while responding to a 10-34, the operator of the RMP crossed double yellow lines and collided with a private motorist who was making a left hand turn into the Officers' path. The Officer sustained a large cut on his scalp which required numerous stitches. Pursuant to GML §205-e, DCD sued both the private motorist for failing to yield to an emergency vehicle and the City of New York for the operator's reckless actions in crossing the double yellow line. Fortunately, the Officer returned to full duty shortly after the accident. DCD was able to recover \$25,000, the maximum insurance policy from the civilian motorist. DCD was also able to negotiate a settlement of \$125,000 from the City of New York to cover the personal injury sustained by the Officer due to the operator's "recklessness".

SUPPLEMENTARY UNINSURED/UNDERINSURED MOTORIST COVERAGE

Note: It is essential that New York City Police Officers avail themselves of this additional monetary protection by increasing their supplementary uninsured/underinsured motorist coverage. Counsel should be contacted immediately after a line-of-duty accident to preserve the Officer's right for SUM coverage

DCD cannot overstate the importance for members of the service to avail themselves of additional monetary protection by taking out maximum SUM coverage. The SUM coverage for Police Officers' personal automobile insurance usually covers line-of-duty accidents. Many motorists in New York State possess the minimum statutory policy limits thereby affording little protection to members of the service who are injured as a result of the negligence of these underinsured individuals. Members of the service can acquire additional protection by informing their insurance companies that they want to increase the SUM coverage to match the liability portion of their personal automobile insurance. The increase in rates are nominal and the insurance rates do not increase if a claim is made under SUM coverage. To illustrate the need for members of the service to protect themselves with SUM coverage, a Police Officer from Manhattan North was seriously injured in an RMP accident. The injury necessitated back fusion surgery. The offending vehicle possessed a minimal liability policy of \$25,000. The Officer only possessed the minimum \$25,000 SUM coverage. In New York State you are not allowed to stack the two coverages. Accordingly, the Officer was only able to recover \$25,000 for an injury which was worth substantially more.

CONSTRUCTION

Construction company responsible for injuries sustained by a member of the service after Officer tripped on bracket on top of cement barrier

An Officer assigned to the Bronx tripped on a bracket on top of a cement barrier in a construction site while chasing a perpetrator. The Officer sustained a knee injury which necessitated surgery. Although the Officer had no proof or photos of the actual construction site, DCD negotiated a \$50,000 settlement on behalf of the Officer.

ASSAULT

Officer receives \$237,500 settlement from homeowner after sustaining injuries in a struggle with an EDP inside residence

A Manhattan North Police Officer was injured after a struggle with a 70 year old EDP inside the EDP's residence. When the Officer arrived at the scene, the Officer attempted to enter the residence. However, the EDP barricaded himself inside his apartment. The Officer attempted to wedge himself with his shoulder against the door and a struggle ensued with the EDP. The Officer injured his shoulder which necessitated arthroscopic surgery. The Officer was awarded a ¾ line-of-duty disability pension. DCD sued the homeowner pursuant to common law negligence and GML §205-e claiming the homeowner's actions against the Officer amounted to resisting arrest, a statutory predicate. The insurance company representing the EDP homeowner filed a motion to dismiss the case alleging the Officer did not have a valid claim. The maximum limit of the insurance policy was \$300,000. The Officer decided to negotiate a settlement rather than risk a dismissal of the case. The matter settled for \$237,500.

SIDEWALK/CITY

Officer receives \$950,000 settlement from the City of New York after sustaining injuries when he tripped on a tree stump while escorting a prisoner to Central Booking

A Queens South Officer aggravated a preexisting hip condition when, he was escorting a prisoner to Queens Central Booking, he tripped on a tree stump near the entrance of Central Booking. The Officer had a congenital hip condition prior to the fall. As a result of the fall, the Officer's condition required surgery and he was forced to retire on a ¾ line-of-duty disability pension. DCD sued the City of New York pursuant to GML §205-e claiming that the City's failure to remove the entire tree stump left a dangerous condition in violation of the Administrative Code and Labor Law. During the litigation, DCD uncovered documents revealing that the City of New York Park and Recreation Department had previously cut down the tree and left the stump at the location where the accident occurred. DCD settled the case against the City of New York for \$950,000 at a pre-trial conference.

SIDEWALK/CITY/PRIVATE

Officer receives \$700,000 settlement from building owner and the City of New York after he fell on a defective sidewalk and broken curb while chasing a perp

A Brooklyn South Officer received a \$700,000 settlement from a private building owner and the City of New York after sustaining injuries while chasing a perp. The Officer responded to a 10-34 and started chasing the perpetrator when he tripped on a broken sidewalk, lost his balance, and then tripped on a broken curb causing him to fall in the street. The Officer sustained injuries to his right knee and right shoulder. Both injuries required arthroscopic surgery. DCD, on behalf of the Officer, sued the private building pursuant to GML §205-e claiming the owner was negligent and in violation of the Administrative Code in failing to maintain the sidewalk in a reasonably safe condition. DCD also sued the City of New York pursuant to GML §205-e alleging the City of New York violated provisions of the Administrative Code in failing to maintain the curb in a reasonably safe condition. Both the insurance company for the building owner and the City of New York filed motions for summary judgment asking the Court to dismiss both causes of action upon the grounds that neither defendant was responsible for the defects of the sidewalk and curb. Joseph L. Decolator defended both motions and was successful in convincing a Supreme Court Justice to allow both causes of action to proceed to trial. At a pre-trial conference, Dominic DiPrisco settled the case for \$250,000 against the private building owner and \$450,000 from the City of New York. The Officer, after a protracted battle, received a ¾ line-of-duty disability pension.

CERATI'S LAW

DEP Police Officer receives \$500,000 settlement from defendants after sustaining injuries while pursuing trespassers at the Catskill Aqueduct

A New York City Department of Environmental Protection Police Officer sustained serious injuries when the ATV he was patrolling in struck an object on a dirt road while he was pursuing two trespassers. The Officer was investigating unauthorized tree cutters in the vicinity of the Catskill Aqueduct in Cortlandt Manor, New York. While investigating the location, he noticed two individuals on ATV's traveling in a no trespass zone. The trespassers took off and the Officer pursued them in his ATV. Shortly after the beginning of the pursuit, the Officer's ATV struck an object causing the ATV to flip. The Officer sustained numerous fractures to his body which necessitated surgery. The Officer retained DCD in an attempt to recover money damages for his physical injuries against the owners and operators of the ATV's. DCD sued the owners and operators of the ATV's pursuant to GML §205-e claiming that the defendants' criminal trespassing constituted a statutory predicate and indirectly caused the Officer's injury. DCD argued that Cerati's Law (i.e., Cerati v. Berrios) was applicable to the facts of this case by establishing that the defendants' actions in violating the law (i.e. trespassing) indirectly caused the Officer's injuries. *In other words, the Officer would not have had to take police action and would have not been injured if the defendants did not criminally trespass in their ATV's.* Ultimately, the matter settled for \$500,000 during the discovery phase of the case, which was the limit of the defendants' insurance policies.

PREMISES/MUNICIPALITY

Officer receives \$475,000 settlement from City of New York and a municipal agency after sustaining injuries after falling from a defective staircase inside a command

A New York City Police Officer assigned to Recruitment sustained injuries to both his knees when he tripped on garbage bags which were improperly placed in the middle of a defective circular staircase in a public office building. The Officer required arthroscopic surgery on both knees. The procedure on one of the knees did not show any damage. The procedure on the other knee revealed a tear which was subsequently repaired. The Officer received a ¾ disability pension; however, the Medical Board ruled the disabling event occurred during a 1999 line-of-duty accident. This fact gave the City of New York leverage in determining the damages aspect of the case. The matter settled for \$475,000 during a pre-trial conference.

ICE/STATIONHOUSE PARKING LOT

City of New York is responsible for maintaining and properly shoveling stationhouse parking lot from icy conditions

A Queens North Officer was awarded a \$20,000 settlement from the City of New York after falling on ice as a result of an improperly plowed station house parking lot. The Officer suffered a fractured wrist.

FAMILY/CIVILIANS

Contractor recovers \$750,000 from Department of Education after falling from ladder

A contractor fell off a ladder and injured his heel while taping at a Department of Education construction site. The Department of Education settled the case for \$750,000.

Police Officer's mother recovered \$100,000 from defendants in a motor vehicle accident. The mother was seriously injured when the vehicle she was a passenger in blew a stop sign causing a collision with a mini-school bus.

In the first case, an Officer assigned to Manhattan North injured his shoulder necessitating surgery while responding to a 10-85 he tripped and fell on an uneven and raised manhole cover. 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 ten months elapsed from the date of accident to when the Officer was informed about our newsletter. The Officer retained DCD and this firm immediately filed the late notice of claim and then made an application to a Justice in New York County Supreme Court seeking permission for acceptance of the late filing. Based on 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 presently pending.

One of the key elements in gaining approval from the Court in filing a late notice of claim application is the detailed line-of-duty injury report (hereinafter referred to as LOD). Courts have consistently held that the filing of the LOD injury report gives the City immediate notice of the accident and also typically includes the underlying theory as to what caused the accident. One of the City's main arguments in opposing the filing of the late notice of claim application is that the municipality would be prejudiced by not being afforded the opportunity to immediately investigate the accident and to prepare a defense to any claims made against the City. Accordingly, the LOD injury report eliminates the City's claim of prejudice since the report gives the City immediate notice of the accident and an opportunity to investigate.

In the second case, an Officer assigned to Brooklyn South injured his hip when he tripped on a metal protrusion on the sidewalk. The protrusion stemmed from a remnant of a removed signpost and/or street sign. The Officer was responding to a 10-34 in progress when he observed two possible suspects running from the scene. The Officer started to run when his foot tripped on the metal protrusion causing him to fall and suffer a serious injury to his hip. The Officer was unaware of his GML §205-e right to sue when he was informed of the 2010 newsletter. Unfortunately, eight months had elapsed from the date of accident and the Officer's time limitation to file a notice of claim had expired. The Officer retained DCD and DCD immediately filed the notice of claim to "stop the clock" from running. DCD then filed the petition seeking permission from a Supreme Court Justice to permit the late filing of the notice of claim. Fortunately, the Officer's LOD paperwork was sufficiently detailed regarding what caused his injury thereby permitting a Supreme Court Justice to conclude that the City of New York would not be prejudiced if the Officer filed late. The case is presently pending in Kings County Supreme Court.

In the third case, an Officer assigned to Housing was seriously injured when she was shot on her right wrist with a simulation round during an "intac" training session. The Officer was shot by a fellow Officer at the Intac Village, Rodman's Neck. Unfortunately, the Department gave her inadequate protection for her wrists and she suffered a serious injury necessitating surgery. The Officer did not realize she could sue and the 90 day time limitation elapsed. The Officer saw the 2010 Police Officer's Right to Sue Newsletter and immediately called DCD. DCD filed the notice of claim approximately eight months after the date of the incident and then filed a petition to a Bronx County Supreme Court Justice seeking permission to file a late notice of claim. The application was granted and the matter is pending.

In the fourth case, a Detective assigned to a Staten Island command exacerbated a prior back injury when he slipped on oil leaking from a motorcycle which was parked inside near the front desk of the command. The motorcycle belonged to a member of the service assigned to the command. The Detective was unaware of his GML §205-e right to sue when another law firm familiar with DCD's expertise on police accident cases referred the Detective to DCD. DCD immediately filed the notice of claim. Unfortunately, approximately seven months elapsed from the date of accident to the date the notice of claim was filed. DCD was compelled to make an application to a Justice of the Supreme Court of the State of New York requesting permission to file a late notice of claim. DCD was able to convince the Court that the City would not be prejudiced by the late filing because the LOD paperwork was detailed and concise regarding the specifics of the accident. The motion was granted and the matter is presently pending in Richmond County Supreme Court.

In the fifth case, a Manhattan South Officer was injured while attempting to exit his Department van, he slipped on a cracked running board. The Officer sustained a serious injury to his left shoulder necessitating surgery. The Officer was unaware of his right to sue his employer, the City of New York, pursuant to GML §205-e until he saw one of DCD's newsletters. Unfortunately, the time limit for the Officer to file a timely notice of claim expired. A period of nearly nine months elapsed when the Officer retained DCD. DCD immediately filed a notice of claim and then made an application to a Justice in New York County Supreme Court requesting permission to file a late notice of claim. The Court accepted DCD's argument that the City could not be prejudiced by the late filing because the LOD paperwork detailed the specifics as to what caused the Officer's injuries. The matter is presently pending in New York County Supreme Court.

In the sixth case, a New York City Police Officer assigned to the Bronx suffered a serious injury to his knee when he fell on a broken step while conducting a vertical in a New York City Housing Authority building. The Officer was unaware of his GML §205-e right to sue when he read our 2011 newsletter. Unfortunately, the time to file a notice of claim against the Housing Authority expired. The Officer retained DCD who immediately filed a notice of claim. DCD then filed an application to a Justice in Bronx County Supreme Court seeking permission to file a late notice of claim. In light of the fact that the notice of claim was only 50 days late, the Housing Authority did not oppose DCD's application and the Bronx County Justice granted this application.

In the seventh case, an Officer assigned to the Bronx suffered a serious injury to his shoulder during a motor vehicle accident when he was returning to his command after a prisoner drop off. The Officer's partner who was operating the RMP allegedly went through a steady red light in a non-emergency situation according to the civilian operator. The Officer was not aware of his potential right to sue the City of New York until after the 90 day notice of claim limitation expired. The Officer hired DCD. DCD filed the notice of claim 53 days late and then filed an application to a Justice of the Bronx County Supreme Court requesting permission for the late filing. The City did not oppose the application in light of the fact that the notice of claim was filed less than 60 days late. Accordingly, the application was granted. The matter is currently pending.

In the eighth case, a Queens North Officer was seriously injured when the RMP he was a recorder in smashed into a firebox while responding to an emergency run. The operator of the RMP claimed the brakes locked up when he attempted to make a right hand turn causing him to lose control of the vehicle. The RMP then collided with a firebox. The Officer injured his back and wrist and was forced to undergo surgery. The Officer was unaware of his right to sue until a former DCD client alerted the Officer of his own success with DCD. Unfortunately, eleven months elapsed from the date of the accident to the date the notice of claim was filed. DCD filed a late notice of claim application with a Justice in Queens Supreme Court. The application was granted because the LOD report and the PAR was so detailed the City could not claim they were prejudiced by the late filing.