

POLICE OFFICER'S RIGHT TO SUE 2013 NEWSLETTER

OFFICER RECEIVES 1.4 MILLION DOLLAR SETTLEMENT FROM CITY OF NEW YORK AFTER BREAKING HER ANKLE IN A POTHOLE NEXT TO A SEWER CATCH BASIN

An Officer assigned to the Yankee Stadium detail suffered a broken ankle when she fell into a large pothole adjacent to a storm sewer catch basin. The Officer had just completed attending roll call on University Avenue. The Officer turned and because of the large amount of police officers at roll call, she failed to see the large pothole. She subsequently stepped and fell into the hole breaking her right ankle. The Officer's injury required surgery and she was forced to retire on a $\frac{3}{4}$ disability line-of-duty pension. The Officer read DCD's newsletters and immediately contacted and retained the firm. DCD filed a notice of claim against the City of New York and then sued the City pursuant to Administrative Code §7-201(c)(2) and New York City Charter §2903(b)(2) claiming the condition of the pothole adjacent to the storm sewer catch basin was in violation of the law and a statutory predicate to GML §205-e. During the discovery phase of the litigation, DCD became aware that the City had prior notice of the pothole thereby satisfying the written notice requirement. During a pre-trial conference, DCD started settlement negotiations with the City. Several months later, the parties agreed to a 1.4 million dollar settlement.

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. 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.

POLICE OFFICER RECEIVES A \$1,085,000 SETTLEMENT FROM CITY OF NEW YORK AFTER DCD REVIVES LAWSUIT

An Officer from Manhattan South received a settlement of \$1,085,000 from the City of New York and the Officer's private automobile insurance company. The Officer was the recorder responding 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 on 11th Avenue and went past a steady red light causing an accident with a motorist making a right hand turn with the green light onto 11th Avenue.

After the accident, the Officer was unaware of his right to sue and let the 90-day time limitation to file a notice of claim against the City of New York lapse. Another member of the service alerted this Officer of DCD's newsletters and expertise in handling line-of-duty accidents. The Officer contacted and retained DCD. DCD immediately filed a notice of claim and then made an application to a New York County Supreme Court Justice seeking permission to file the notice of claim past the 90-day statutory time frame. Fortunately, a Judge granted the application thereby allowing the lawsuit to proceed.

DCD sued the City of New York pursuant to GML §205-e claiming the operator of the RMP acted recklessly in proceeding in the wrong lane of traffic against the traffic signal causing the collision with the civilian motorist. DCD also sued the civilian motorist claiming the motorist failed to yield to an emergency vehicle. The Officer sustained an injury to his knee which required two arthroscopic procedures. The Officer was awarded a $\frac{3}{4}$ line-of-duty disability pension.

Unfortunately, the civilian motorist allowed his automobile liability insurance to lapse and did not have insurance. The Officer did possess \$100,000 supplementary uninsured/underinsured motorist coverage. DCD was able to secure a \$85,000 settlement from the Officer's personal automobile policy. Prior to the trial, DCD negotiated a one million dollar settlement from the City of New York.

PREMISES/PRIVATE

Officer recovers \$200,000 from homeowner and construction company after injuring his knee after falling from second floor construction

A Brooklyn North Officer received a \$200,000 settlement from a private building owner after sustaining a knee injury while responding to a possible burglary. When the Officer arrived at the premises he was met at the door by the owner. The owner directed the Officer to the second floor of the premises which was in the midst of renovations. The Officer stepped into second floor construction area and fell into a hole causing an injury to his knee. The Officer was required to have two surgeries and was awarded a ¾ line-of-duty accidental disability pension. DCD, on behalf of the Officer, sued the private building owner pursuant to GML §205-e alleging the building owner was negligent in failing to maintain a safe and adequately lit construction area. Unfortunately, there was a limited insurance policy and the matter settled for \$200,000 prior to jury selection.

Officer recovers \$75,000 from building owner after falling down on wet steps

A Queens North Officer received a \$75,000 settlement from a residential building owner after falling on wet steps while conducting a vertical. The Officer injured his shoulder which required arthroscopic surgery. The liability issues in the case were extremely challenging; water on the steps by itself is not actionable unless the condition was created by the premises owner or their agents or if the insured had actual or constructive notice of the condition. DCD conducted an investigation and hired an architect who conducted a physical examination of the staircase and landing near where the Officer fell. Upon physical inspection, the architect noted the windows above the landing of the staircase had decayed and water had seeped onto the landing and steps through the decaying window frame. Upon further discovery, DCD had ascertained it rained the day the Officer conducted the vertical and the direction of the wind caused rainwater to hit the building on the side of the decaying window frame. DCD sued the building owner pursuant to GML §205-e and common-law negligence alleging the building owner was negligent in failing to properly maintain the windows and window frame which inevitably led to the Officer's injury. The matter settled for \$75,000 at a pre-trial conference.

Officers recover \$70,000 from homeowner when roof of detached garage collapses

An Officer from Brooklyn South fractured his left shoulder after pursuing a perp and falling through the roof of a detached garage. The Officer responding to a 10-31, chased the suspect which led through a rear yard of a private residence. The suspect climbed onto the roof and the Officer followed. The Officer stepped on the roof of the garage and the roof caved in. The Officer fell through the roof. The Officer became lodged between the rafters fracturing his left shoulder. DCD sued the homeowner pursuant to GML §205-e alleging that the homeowner violated Building Code §28-301.1 in failing to maintain the condition of the roof. The homeowner, through its attorneys, attempted to dismiss the case claiming the Officer's presence on the roof of the detached garage was not foreseeable, and, therefore, the homeowner should not have been responsible for the Officer's injury. Mr. Decolator, on behalf of the Officer, countered and argued the Police Officer's Right to Sue statute had diminished foreseeability requirements thereby allowing the Officer to recover against the homeowner in this case. While the application to dismiss was pending, Mr. Decolator negotiated a settlement of \$70,000. The Officer had a full recovery and was able to return to full duty.

WWW.POLICEOFFICERSRIGHTTOSUE.COM

CERATI'S LAW

Officer recovers policy limits from motorist auto insurance after tripping on roadway defect while issuing a traffic summons

General Municipal Law §205-e, the Police Officer's Right to Sue Statute, permits an injured Officer to sue a third party if the person's underlying conduct was unlawful and the unlawful conduct directly or indirectly caused the Officer's injuries. Members of the service can recover compensatory money damages if there is a "reasonable or practicable" connection between the unlawful conduct and the injury. In this case, an Officer from Brooklyn South pulled over a motorist for an expired inspection sticker. The motorist became agitated and when the Officer proceeded to the RMP to verify information, he tripped on a hummock or road defect injuring his left shoulder. The Officer required arthroscopic surgery to repair a slap tear and was awarded a ¾ line-of-duty disability pension. DCD sued the City claiming the road defect caused the injury and also sued the motorist whose conduct of having an expired inspection sticker caused the Officer's presence at the scene and indirectly lead to the Officer tripping on the hummock and injuring his shoulder. The Officer recovered the full limited policy from the motorist and the case against the City is on appeal after DCD successfully won in the lower Court.

Officer recovers \$50,000 from building owner after reinjuring his foot while stepping out from his RMP while responding to a call of wind-blown construction material on roadway

An Officer assigned to Manhattan South reinjured his foot requiring surgery when he misstepped from his RMP while responding to a roadway blockage caused by wind-blown construction material. The building owner was in the process of a construction project when unsecured construction material blew onto the roadway. Using the Cerati principles, DCD sued Goldman Sachs, the building owner pursuant to GML §205-e claiming their failure to secure the construction material was a violation of the Administrative Code and that violation "indirectly" caused his injury. In other words, the Officer would not have been at the location and would have not misstepped had it not been for the unlawful conduct of Goldman Sachs in not securing the construction material.

COMMERCIAL PREMISES/POOR LIGHTING

Officer recovers damages from commercial premise owner after injuring his knee as a result of a misstep in a poorly lit area

A Brooklyn North Officer received a \$100,000 settlement from a private building owner when he fell down after misstepping on a singular step staircase in a poorly lit area of a commercial factory. The Officer and his partner were conducting a car stop when the motorist took off into the subject commercial premises. Our client pursued him and entered a dimly lit part of the premises when he didn't see a step down and subsequently tweaked his knee landing awkwardly after missing the step. DCD sued the premises owner pursuant to GML §205-e and common-law negligence claiming the building owner created a dangerous condition by not having adequate lighting near the one-step staircase. The Officer's injury required arthroscopic knee surgery and he returned to full duty. Prior to trial, the parties agreed to settle the matter for \$100,000.

Officer recovers \$150,000 from building owner after tripping on defective sidewalk

A Queens South Officer received a \$150,000 settlement from a private building owner after tripping on a minor defect on a sidewalk located in front of a commercial premises. The Officer injured his knee which required arthroscopic surgery. DCD sued the building owner claiming the sidewalk defect caused the Officer's injury. The matter settled for \$150,000 at a pre-trial conference.

AUTO/PRIVATE

Officer receives \$225,000 settlement after injuring his shoulder in a line-of-duty car accident

A New York City Police Officer suffered a shoulder injury which required an arthroscopic procedure when his police vehicle was rear ended by a civilian vehicle on the BQE. The Officer suffered a right rotator cuff tear and labrum tear which was subsequently repaired by surgery. The Officer received a \$225,000 settlement which nearly exhausted the available insurance.

Officer receives a \$750,000 settlement from a civilian motorist after sustaining injuries in an intersection accident while going on an emergency run

A Detective assigned to Bronx Narcotics sustained a serious injury to his right foot when his vehicle collided with a civilian vehicle during a 10-10 emergency run. The Officer injured his achilles tendon which required three surgeries to repair. The Detective hired DCD to sue the civilian operator pursuant to GML §205-e and VTL §1144(a) claiming the civilian vehicle failed to yield to an emergency vehicle causing a collision with the RMP. The Detective, after a protracted battle with the Medical Board was awarded a ¾ line-of-duty disability. DCD, on behalf of the Detective, settled the matter against the civilian motorist for \$750,000.

AUTO/CITY

Officer receives a \$1,000,000 settlement from the City of New York after sustaining injuries in a collision with a Department of Sanitation Truck

An Officer from Brooklyn North received a settlement of \$1,000,000 from the City of New York after the RMP she was a recorder in collided with a Department of Sanitation truck while responding to a 10-34. The Officer initially retained a law firm which failed to draft and serve a proper notice of claim. The Officer was informed by another DCD client of this firm's vast experience of litigating police officer line-of-duty accident cases. The Officer retained DCD who immediately enlisted the services of Scott Charnas, Esq., to serve as trial counsel to DCD. Mr. Charnas joined DCD's team to potentially start a legal malpractice lawsuit against the prior firm for failing to file a proper notice of claim. Mr. Charnas was successful in filing a motion to Kings County Supreme Court to amend the notice of claim thereby alleviating the need to file a legal malpractice claim. As a result of the collision with the Sanitation truck, the Officer sustained a fractured collarbone and was forced to undergo two surgeries on her shoulder. The Officer was awarded a ¾ line-of-duty disability pension. Mr. Charnas was successful in negotiating a \$1,000,000 settlement with the City of New York at a pre-trial conference.

Officer receives a \$400,000 settlement from the City of New York after DCD revives lawsuit

As highlighted in the 2011 Police Officer's Right to Sue Newsletter (in the late notice of claim section), an Officer from Manhattan South received a settlement of \$400,000 from the City of New York after sustaining injuries while driving to a detail in a non-emergency setting. While driving, the Officer's vehicle was rear-ended by another RMP causing the Officer to injure his neck. The Officer went to the emergency room and returned to full duty after being out a week and placed on limited for a week. Approximately six months later, the Officer reinjured his neck when he attempted to enter his RMP. The Officer sued the City of New York pursuant to GML §205-e and VTL §1129 claiming the other operator was driving too close to the Officer's RMP and negligently rear-ended his vehicle. The challenge in this case was the six-month gap in medical treatment for the Officer's cervical injury. The Officer was awarded a ¾ line-of-duty disability and settled this matter against the City of New York for \$400,000.

SIDEWALK/CURB CITY

Officer receives \$75,000 settlement from City of New York after tripping on broken curb and sustaining a knee injury

An Officer assigned to a Staten Island command was injured when he tripped on a broken curb and sustained a knee injury which required arthroscopic surgery. The Officer was responding to a 10-34 domestic dispute. On the way to the residence the Officer tripped on a broken curb located in front of the house. DCD discovered the City had the required prior written notice and sued the City pursuant GML §205-e alleging the City violated New York City Charter §2903(b)(2) and §2904 and the New York City Administrative Code §19-152 and §7-201(2). The matter settled for \$75,000 at a pre-trial conference. The case against the homeowner is pending.

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

A Bronx Officer was awarded a \$25,000 settlement from the City of New York after falling on ice as a result of an improperly shoveled stationhouse sidewalk.

PRECINCT

Officer receives \$450,000 settlement from City of New York after sustaining injuries when he tripped on broken tiles in a Transit District Command

An Officer assigned to a Transit District injured his knee when he stepped on broken tiles in a Manhattan Transit command. The Officer tweaked and injured his right knee which required arthroscopic surgery. The Officer subsequently received a ¾ line-of-duty disability pension. DCD, on behalf of the Officer, sued the New York City Transit Authority and the City of New York pursuant to GML §205-e alleging the defendants violated Administrative Law §28-301.1 and Labor Law §27a(3). The Officer claimed the defendants did not provide the Officer with a safe working environment. DCD negotiated a settlement against the City of New York, the tenant in the Transit Command, for \$450,000.

Sergeant receives \$85,000 settlement from City of New York after falling in Housing Command on water from leaking ceiling

A Sergeant assigned to Housing Authority received an \$85,000 settlement from the City of New York after slipping in a Housing Authority command on water emanating from a leaking ceiling. When the Sergeant fell, he attempted to grab the door frame and hyperextended his shoulder causing a tear of his supraspinatus tendon in his right shoulder. The injury required arthroscopic surgery to repair the damaged shoulder. Upon discovery, DCD ascertained the ceiling was leaking for an extended period of time and the Department knew about the condition and failed to address it. DCD sued the City pursuant to GML §205-e and Labor Law §27-a(3) alleging the City failed to provide a safe work place for the Sergeant. The matter settled for \$85,000 at a pre-trial conference.

Lieutenant recovers \$125,000 from the City of New York after falling in a darkened staircase inside command

A Lieutenant from a Queens North Command received a \$125,000 settlement from the City of New York after he injured his finger after falling in a darkened staircase located inside his command. The Lieutenant's office was located in the basement of his command. He walked up one of the staircases which did not have any lights and misstepped causing him to partially fall injuring a ligament on a finger in his hand. The injury required a series of trigger point injections. The Lieutenant hired DCD to sue the City pursuant to GML §205-e claiming the City of New York did not provide a safe work place. The matter settled for \$125,000 at a pre-trial conference.

Detective receives \$60,000 from the City of New York after DCD revives lawsuit

A Detective assigned to a Staten Island command received a \$60,000 settlement from the City of New York after falling on motor oil left behind by a motorcycle which was parked inside the command near the front desk. 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 the firm. Although the Detective was four months late in filing a notice of claim against the City, DCD was able to convince a Richmond County Supreme Court Justice to grant DCD's application to file a late notice of claim. DCD sued the City pursuant to GML §205-e and Labor Law §27-a(3) claiming the City and its agents created a dangerous condition inside the command resulting in the Detective reinjuring his back.

ICE/STATIONHOUSE PARKING LOT/SIDEWALK

Lieutenant receives a settlement of \$750,000 from the City of New York after falling on ice in a station house parking lot

A Lieutenant assigned to Manhattan North sustained a serious injury to his right shoulder when he slipped on old ice which was covered by a couple of inches of fresh snow. The Lieutenant was conducting an inspection of an RMP in the command's parking lot when he slipped on ice and sustained a superior labral tear to his right shoulder. The Lieutenant was compelled to undergo two surgeries to repair the damage. Unfortunately, the Lieutenant could no longer perform full duty functions and was awarded a ¾ line-of-duty disability pension. DCD sued the City of New York pursuant to GML §205-e alleging the City violated New York City Administrative Code Sections 27-479, 19-152 and 7-201(c)(2) in failing to keep the parking lot free and unobstructed from dangerous conditions such as old ice. During a pre-trial conference the City settled the matter for \$750,000.

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 to 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 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. An example of the need for members of the service to protect themselves with SUM coverage is as follows: an 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.

Queens North Officers recover monetary damages from their personal auto policies after being intentionally struck and injured by a stolen vehicle.

A Sergeant and two Police Officers from a Queens North command sustained serious injuries when a convicted felon stole a civilian vehicle and intentionally ran down several members of the service with the stolen vehicle. Two Officers sustained injuries to their shoulders which required arthroscopic surgery. The Sergeant sustained an injury to his knee which required surgery. Unfortunately, stolen cars do not possess liability insurance coverage and the perpetrator

had no assets. However, the law allows members of the service to make a claim for personal injury compensation under each member's personal supplementary uninsured/underinsured motorist coverage if there is no other insurance coverage. The Sergeant recovered \$65,000 from his auto SUM coverage. One of the Officers recovered \$85,000 from his personal supplementary uninsured/underinsured automobile policy. The third Officer is awaiting his arbitration date.

CIVILIAN

Pedestrian recovers \$1,575,000 from City of New York after being struck by a Municipal vehicle

A civilian crossing Queens Boulevard with the right of way was struck by a municipal vehicle which was proceeding through the intersection against a steady red light. The pedestrian, unemployed at the time, suffered significant fractures which required surgery. He also spent three months in the hospital. Fortunately, the civilian had a good recovery. The matter settled at a pre-trial conference for \$1,575,000 against the City of New York.

CONSTRUCTION

Highway Officer receives \$500,000 settlement from private contractors after his motorcycle fell into a roadway depression causing injuries

An Officer assigned to a Highway Unit, while en route to an assigned walkathon suffered a serious wrist fracture when his motorcycle hit a depression in the road causing it to topple over. The Officer initially hired an attorney to represent him in a potential personal injury action. However, the attorney placed a low value on the case. The police officer heard about DCD from other Officers and decided to switch lawyers and retained DCD. DCD sued numerous private contractors who had previously performed work on the street alleging these contractors failed to adequately refill the pavement previously removed by the construction. After years of contentious litigation which included several summary judgment motions, DCD and three defendants settled the matter for \$500,000 during a five-hour marathon mediation session. The Officer also was awarded a ¼ line-of-duty disability pension.

NEWSLETTER REVIVES THREE 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, 2008-2012 newsletters have successfully informed thousands of Police Officers of their right to sue pursuant to GML §205-e. In particular, the 2012 newsletter alerted five 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 three cases.

In the first case, an Officer from a Staten Island Command seriously injured his lower back while responding to a 10-34 when his partner slammed the RMP into a utility pole. 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 eight 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 Richmond 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 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, a Sergeant from a Staten Island Command injured her knee which necessitated surgery when she fell while chasing a perp in a Housing Authority building's poorly lit, debris strewn staircase. The Sergeant was unaware of her GML §205-e right to sue when she was informed of our newsletter. Unfortunately, three weeks had elapsed from the 90 day time limitation. The Sergeant 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 Sergeant's LOD paperwork was sufficiently detailed regarding what caused her injury thereby permitting a Supreme Court Justice to conclude that the Housing Authority would not be prejudiced if the Sergeant filed late. The case is presently pending in Richmond County Supreme Court.

In the third case, a Detective assigned to Brooklyn North was seriously injured when he slipped on wet steps while walking from his office to the first floor of his command. The water came from an open roof hatch that was inadequately left open by an NYPD employee prior to a storm. The Detective was unaware of his GML §205-e right to sue when he became aware of our newsletter. The Detective retained DCD and DCD immediately filed the notice of claim and then filed an application with a Justice of Kings County Supreme Court for permission to file a late notice of claim. The Detective was less than four months late in serving the City with the notice of claim and the LOD report included a detailed statement describing the accident and the open hatch. These facts compelled a Kings County Supreme Court Justice to approve the Detective's application to file a late notice of claim. The matter is presently pending in Kings County Supreme Court.