

## **POLICE OFFICER'S RIGHT TO SUE 2017 NEWSLETTER**

### **OFFICER RECEIVES A \$2,950,000 SETTLEMENT FROM A CORPORATE DEFENDANT AFTER THEIR DRIVER COLLIDES WITH RMP**

A New York City Police Officer received a settlement of \$2,950,000 from a private corporate defendant after he was seriously injured in an RMP accident. The injured Officer was the operator of the RMP performing routine patrol in the right-hand lane when an 18-wheel tractor trailer traveling in the same direction as the RMP attempted to make a right-hand turn from the left-hand lane and collided with the driver's side of the RMP. The Officer sustained a serious back injury which necessitated four surgeries. The surgeries were not successful. The Officer was awarded a ¼ line-of-duty disability pension. DCD sued the defendant owner and driver of the truck pursuant to Vehicle and Traffic Law §§1120, 1123(a)(b), 1128, 1144, 1180(a), 1212 and 375(1). DCD claimed the defendants were reckless and negligent in the ownership, operation, management and control of the truck. DCD hired an accident reconstructionist, biomechanical engineer, economist and vocational expert in order to prove liability and damages in the case. In a marathon two-day mediation session, Dominic DiPrisco settled the case for \$2,950,000.

### **OFFICER RECEIVES A \$1,000,000 SETTLEMENT FROM THE CITY OF NEW YORK AFTER SUSTAINING INJURIES RESULTING FROM REAR-END COLLISION WITH OTHER RMP**

An Officer employed by the New York City Police Department received a settlement of \$1,000,000 from the City of New York. The Officer was the operator of an RMP involved in a pursuit of a suspect when he rear-ended another RMP. The Officer sustained an injury to his right knee when the knee collided with the unpadding computer bracket located inside the RMP. The Officer retained DCD. DCD filed a notice of claim against the City of New York claiming the 2008 Ford Crown Victoria had an unpadding computer bracket during the collision. DCD then sued the City of New York pursuant to GML §205-e alleging the 2008 Ford Crown Victoria did not possess the necessary "crashworthy equipment," thereby violating §27-a(3) of the Labor Law, Vehicle and Traffic Law §382-c, 15NYCRR 55.1 and 55.2; failure to warn. DCD hired an automotive expert who examined all the evidence in the case and deemed, to a reasonable degree of scientific certainty, that an unpadding computer bracket in the 2008 Ford Crown Victoria made the vehicle unsafe and "not crashworthy." The Officer required several knee surgeries and was eventually awarded a ¼ line-of-duty disability pension. Dominic DiPrisco settled the case against the City of New York at a pre-trial conference for \$1,000,000.

### **SERGEANT RECEIVES AN \$850,000 SETTLEMENT FROM THE CITY OF NEW YORK AFTER INJURING HIS KNEE ON AN UNPADDED COMPUTER BRACKET WHILE RESPONDING TO AN EMERGENCY RUN**

A Sergeant received a settlement of \$850,000 from the City of New York. The Sergeant was in the passenger seat of an RMP which was responding to an emergency situation with lights and sirens on. The operator was forced to slam on the brakes of the RMP to avoid a collision with a civilian vehicle. As a result, the Sergeant's left knee slammed into the unpadding computer bracket causing a serious injury which necessitated surgery. The Sergeant was subsequently awarded a ¼ line-of-duty disability pension. Unfortunately, the Sergeant did not know he could sue the City of New York and approximately 11 months elapsed from the date of the line-of-duty accident, making it extremely difficult for a Court to approve an application for permission to file a late notice of claim. DCD filed the application for permission approximately 8 months after the 90-day time limitation to file expired. The application was granted by a State Supreme Court Justice. DCD then sued the City of New York pursuant to GML §205-e claiming the City of New York violated §27-a(3) of the Labor Law, Vehicle and Traffic Law §382-c and §§15 NYCRR 55.1, 55.2. The case settled for \$850,000 at a pre-trial conference.

## **STATION HOUSE**

### ***OFFICER ASSIGNED TO CENTRAL BOOKING RECEIVES A \$450,000 SETTLEMENT FROM THE CITY OF NEW YORK AFTER SLIPPING ON A SANDWICH AND FALLING DOWN A STAIRCASE***

An Officer assigned to Central Booking received \$450,000 from the City of New York after suffering serious injuries after slipping on a sandwich on an exclusively used staircase in Central Booking. The Officer was carrying a large milk crate and did not see the sandwich on the steps. The Officer fractured his right arm and tore his labrum and rotator cuff in his right shoulder. Both the shoulder and elbow tears required surgery. The Officer was awarded a ¾ line-of-duty disability pension based on a subsequent line-of-duty injury. DCD sued the City of New York pursuant to GML §205-e alleging the City violated §§28-301.1, 27-381, 27-325(f)(g)(h) of the New York Administrative Code and §27-a(3) of the Labor Law. DCD also hired an architect to do a physical inspection of the staircase. The architect noted that the staircase only had one handrail. Pursuant to NYC Building Code §64.1.12, two handrails were required for that staircase. DCD also discovered the staircase was under the exclusive control of the NYPD and that any debris on the staircase would constitute a “created condition,” thereby obviating the notice requirements necessary when suing a municipality. Dominic DiPrisco settled the case for \$450,000 against the City of New York.

## **ICE/STATION HOUSE PARKING LOT/SIDEWALK**

### ***OFFICER RECEIVES A SETTLEMENT OF \$200,000 FROM THE CITY OF NEW YORK AFTER FALLING ON ICE IN A STATION HOUSE PARKING LOT***

An Officer assigned to Manhattan North broke his right leg when running out of his command responding to a 10-85, he slipped on ice in the parking lot. The injury necessitated surgery; however, the Officer eventually returned to full duty. DCD sued the City of New York pursuant to GML §205-e alleging the City of New York violated New York City Administrative Code §§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 \$200,000.

### ***OFFICER RECEIVES A \$600,000 SETTLEMENT FROM A COMMERCIAL BUILDING OWNER AFTER FALLING ON ICE IN THE PARKING LOT AND INJURING HIS SHOULDER***

An Officer assigned to Queens South sustained a serious injury to his left shoulder when he slipped on a patch of ice after responding to a possible stolen vehicle in the parking lot of a privately-owned commercial premises. The Officer sustained a labral tear which required two surgeries. The Officer was subsequently awarded a ¾ line-of-duty disability pension. DCD sued the owner of the property pursuant to GML §205-e alleging the property owner violated 9NYCRR 1242.3[a][b], 1244.1[c][d], 1245.1[c][g][h]; §§27-479 and 28-301.1 of the New York City Administrative Code and §153.19 of the New York City Health Code, in failing to keep the parking lot free and unobstructed from dangerous conditions such as old ice. The matter settled for \$600,000 at mediation.

## **PREMISES/PRIVATE**

### ***OFFICER RECEIVES A \$600,000 SETTLEMENT FROM PRIVATE BUILDING OWNER AFTER HE FELL ON A DEFECTIVE ENTRANCEWAY PLATFORM IN FRONT OF AN APARTMENT BUILDING***

A New York City Police Officer received a \$600,000 settlement from a private apartment building owner after sustaining injuries on a poorly lit, uneven exterior platform entranceway while leaving a job inside the apartment building. The Officer had proceeded to return to his RMP when he walked on a concrete-paved forecourt of the building and attempted to step on the sidewalk. There was a concealed vertical change in level between the forecourt and the public sidewalk. According to an architect hired by DCD, the concealed level change caused the Officer to twist his ankle and fall, causing serious injuries including aggravating a pre-existing LOD back injury. The Officer was diagnosed with degenerative lumbar disc disease and underwent spinal fusion surgery. The Officer, after a battle with the Article II Medical and Pension Board over “incident v. accident,” was awarded a ¾ line-of-duty disability pension. DCD sued the building owner pursuant to GML

§205-e alleging the owner of the apartment building violated New York City Housing Maintenance Code §27-2040 and NYCBC Local Law 76 in not providing adequate lighting as required in Article 6 of sub-chapter 6 of the same chapter. DCD also alleged the owner violated NYCBC Article 7, “Means of Egress,” in that the concrete forecourt did not have the required level of risers. Although the Officer had a pre-existing lumbar condition, the matter settled for \$600,000 at mediation.

### ***OFFICER RECEIVES A \$215,000 SETTLEMENT FROM BUILDING OWNER AFTER A RUNG FROM A DROP LADDER BROKE CAUSING HIM TO FALL TO THE GROUND***

An Officer assigned to Brooklyn North was seriously injured when, while chasing a perp down a fire escape, a rung from a connecting drop ladder broke causing him to lose his balance and fall to the ground. The Officer sustained numerous fractures; however, he did not require surgery, had a miraculous recovery and returned to full duty. DCD, on behalf of the Officer, sued the building owner pursuant to GML §205-e alleging the premises owner violated §§28-301.1, 27-376 and 27-381 of the New York City Administrative Code and Multiple Dwelling Law, Title 3, §75-84, §78 paragraph 7. DCD hired an architect to inspect the fire escape. After the inspection, the architect concluded the owner of the property failed to inspect, maintain and repair the top rung of the drop ladder portion of the fire escape. The Officer received a \$215,000 settlement from the building owner.

## **AUTO/CITY/PRIVATE**

### ***OFFICER RECEIVES A \$750,000 SETTLEMENT FROM CITY OF NEW YORK AFTER SUSTAINING INJURIES IN A ONE-CAR RMP ACCIDENT***

An Officer assigned to a Queens South command received a settlement of \$750,000 from the City of New York after suffering serious injuries in a one-car unmarked RMP accident. The Officer was the recorder responding with his partner to shots fired and a possible injured victim. The operator proceeded eastbound on Jamaica Avenue at a high rate of speed when an unknown van traveling in the same eastbound direction attempted to make a left-hand turn at an approaching intersection. The operator, in an attempt to avoid the collision with the van, swerved left and crashed into a light post. There were differing accounts as to which lane the RMP was traveling in prior to the accident. The operator claimed he was traveling eastbound in the eastbound left-hand lane on Jamaica Avenue. The recorder testified the operator was traveling eastbound in the westbound lanes directly prior to the van cutting off the RMP and the RMP crashing into the lamp post. The unidentified driver of the white van did not remain at the scene. 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 at a high rate of speed in violation of Vehicle and Traffic Law §§ 1144(b), 1104(e) and 1104(b)(2). The Officer sustained a torn rotator cuff which required two surgeries. The Officer was subsequently awarded a ¾ line-of-duty disability pension. The City of New York filed a summary judgment motion requesting the Court dismiss the Officer’s claim that his partner’s “recklessness” caused the accident and his injuries. The City lawyers argued that the operator’s action in traveling at a high rate of speed in the opposite lane of traffic was not reckless under the legal definition. Joseph L. Decolator, on behalf of the Officer, argued that there was a genuine issue of fact that only a jury could decide as to whether the driver’s actions under an “emergency” situation were considered “reckless.” Mr. Decolator prevailed on the motion, and the case remained on the trial calendar and ultimately settled for \$750,000 at a pre-trial conference.

### ***DETECTIVE RECEIVES A \$450,000 SETTLEMENT FROM CITY OF NEW YORK AFTER SERGEANT INADVERTENTLY SLAMMED AN UNMARKED VAN DOOR ON HER HAND CAUSING INJURY***

A Detective employed by the New York City Police Department received a settlement of \$450,000 from the City of New York after sustaining a serious injury to her hand after a Sergeant mistakenly slammed a sliding van door on her hand. The Detective and Sergeant were part of a team on a special assignment. When the team was leaving one scene to go to another location, the Sergeant who was about to be seated in the front passenger seat of an



unmarked van thought all fellow Officers were seated inside the van when he slammed the sliding rear van passenger door. Unfortunately, the Detective had just entered the van and was using the door frame as leverage to get inside. The van door slammed into the Detective's shooting hand causing a crush injury and torn ligaments in the Detective's little finger. The injury required surgery to repair the ligament damage. As a result of the trauma, the Detective lost strength and range of motion in the finger. The Detective 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 §27-a(3) of the Labor Law and §1146 of the Vehicle and Traffic Law by the Sergeant's action in negligently and carelessly closing the van's sliding door. The City of New York's attorney made a motion to the Court attempting to have the case dismissed in that the Detective's claim should have been barred by the Firefighter's rule in that an Officer can't recover where their duties increase the risk of the injury. Joseph L. Decolator argued on behalf of the Detective and stated that the slamming of the van door did not occur in the midst of an emergency and her injuries were "wholly unrelated to the assumed risks of police duty." The Court sided with Mr. Decolator's arguments and the City of New York's application to dismiss the case was denied. The matter settled for \$450,000 at a pre-trial conference.

#### **DCD SETTLES CASE AGAINST CITY OF NEW YORK AND CIVILIAN MOTORIST FOR \$775,000 AFTER SUSTAINING INJURIES IN LOD RMP ACCIDENT**

An Officer employed by the New York City Police Department received a settlement of \$775,000 from a civilian motorist and the City of New York. The Officer was the recorder of an RMP performing routine patrol when the operator made an illegal left-hand turn causing a collision with a civilian vehicle who had the right-of-way. The Officer suffered a dominant right wrist injury which necessitated surgery. The Officer was subsequently awarded a ¾ line-of-duty disability pension from an unrelated LOD injury. After filing a notice of claim with the City of New York within 90 days of the date of the accident, DCD sued the City of New York pursuant to GML §205-e and common law negligence alleging the operator of the RMP violated §27-a(3) of the Labor Law; Vehicle and Traffic Law §§1104(e), 1104(b)(2), 1144(b) failure to warn and operating the vehicle in a negligent manner. DCD also sued the civilian motorist for failure to yield to an authorized police vehicle and failure to prevent the collision. The civilian motorist only had \$25,000 in liability insurance coverage which DCD was able to collect. Dominic DiPrisco received an additional \$750,000 from the City of New York to resolve the matter.

#### **CERATI'S LAW**

#### **OFFICER RECEIVES A COMBINED \$300,000 SETTLEMENT FROM TWO CIVILIAN MOTORISTS AND HIS PERSONAL AUTO SUM CARRIER AFTER SUSTAINING INJURIES IN A LINE-OF-DUTY ACCIDENT**

An Officer received a settlement of \$300,000 from two civilian motorists and the Officer's private insurance company. 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, the Officer and his partner pulled over a motorist who was driving erratically on a highway. While he was gathering information from the driver, another civilian motorist struck a third vehicle and the collision subsequently pinned the Officer against the initial stopped vehicle. The Officer sustained injuries to his knees and his lower back. Although surgery was recommended, the Officer chose conservative treatment options which included epidural injections to his lumbar spine. The Officer was subsequently awarded a ¾ line-of-duty disability pension. DCD sued the vehicle which directly caused his injuries; however, that vehicle only possessed the minimum coverage of \$25,000. DCD also sued the initial motorist, invoking Cerati's law. DCD argued that the initial motorist's criminal behavior forced the Officer to be placed in a vulnerable position and indirectly caused his injuries. The insurance company for the initial vehicle made an application to toss that part of the Officer's claim. However, Joseph L. Decolator successfully argued that the Police Officer's Right to Sue Law, GML §205-e, permits Officers to sue any party who violates a law and indirectly causes harm to an Officer.

Once the motion was denied, Mr. Decolator was able to collect the maximum \$25,000 of the defendant's insurance policy. After receiving the \$50,000 combined from the two defendants' insurance policies, DCD filed a request for arbitration pursuant to the Officer's personal auto policy supplementary uninsured/underinsured motorist coverage. The Officer was aware of this coverage and had \$300,000 in coverage. GEICO, the Officer's insurance company, refused to make any offer and the matter proceeded to arbitration. Dominic DiPrisco was able to convince the arbitrator that the Officer should be entitled to the \$300,000, minus the offset of the prior \$50,000 settlement. The arbitrator awarded the maximum \$250,000, making the Officer's final settlement in the case a total of \$300,000.

#### **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*

An example of an Officer's personal auto SUM coverage is as follows: An Officer from the Bronx was seriously injured when his vehicle was rear-ended during a motor vehicle pursuit. During the pursuit, the Officer positioned his RMP on a highway in order to slow and stop the perpetrator's vehicle. The Officer was successful in his efforts; however, he suffered a back injury which required surgery. The Officer was awarded a ¾ line-of-duty disability pension. The defendant's vehicle only had a \$25,000 liability policy. The Officer had \$250,000 supplementary uninsured/underinsured motorist coverage. DCD collected the defendant's policy of \$25,000 and then filed an arbitration notice to collect the additional \$225,000 under the Officer's personal automobile policy. The Officer's insurance company vigorously defended their interests. The attorneys for the insurance company argued that the Officer initially did not treat his injury for over a year and that the Officer intentionally caused his injury by positioning of his vehicle. These issues were heavily litigated over a three year period, and the matter settled for an additional settlement of \$120,000.

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 uninsured/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 increases in rates are nominal and the insurance rates do not increase if a claim is made under SUM coverage.

## NEWSLETTER REVIVES TEN 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 Police Officer's Right to Sue newsletters have successfully informed thousands of Police Officers of their right to sue pursuant to GML §205-e. In particular, the 2016 newsletter alerted eleven Officers of their right to sue pursuant to GML §205-e after the time limits to file their cases against the City of New York and other municipalities had expired. This firm revived ten cases.

In the first case, an Officer assigned to a Bronx Command was seriously injured when he slipped and fell on icy pavement inside the precinct parking lot while attempting to respond to a 10-53. The Officer sustained an injury to his right ankle necessitating surgery. The Officer was subsequently awarded a  $\frac{3}{4}$  line-of-duty disability pension. 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. The Officer contacted DCD who immediately filed the notice of claim 117 days late in order to "stop the clock from running." DCD then prepared a petition to persuade a Supreme Court Justice to permit the late filing of the notice of claim. Joseph Decolator argued that in light of the Officer filing a line-of-duty injury report along with a witness statement, the City had notice of the accident and could not claim they were prejudiced by the 117-day delay. The application was granted and the case is pending in Bronx County Supreme Court. *[One of the key elements in gaining approval from the Court in filing a late notice of claim application is the detailed LOD injury report. 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 slipped and fell on wet steps while descending a staircase after responding to a radio run. The stairs were wet as a result of the building's failure to place mats at the entrance in the lobby of the building. The Officer injured his back but did not take an MRI to determine the extent of the damage. The Officer was unaware of his right to sue until 129 days elapsed after the 90-day filing requirement. DCD filed the notice of claim against the City of New York and also filed an application to a Justice of Bronx County Supreme Court requesting that our client be permitted to file the late notice of claim. The City did not oppose our application and the Justice granted the motion. The matter settled for \$15,000.

In the third case, an Officer slipped and fell on ice while exiting his RMP. The Officer fell on the street near the command which designates the entire block as parking for Police Department vehicles. The Officer suffered a serious injury to his knee which required surgery. The Officer waited 118 days after the 90-day time limitation expired to file the notice of claim against the City of New York. DCD was successful in convincing a New York County Supreme Court Justice to grant the filing of the late notice of claim.

In the fourth case, an Officer was injured when he slipped on ice in the SH parking lot. The Officer injured his back when he fell while exiting an NYPD van. The Officer waited 75 days after the 90-day time limitation expired to file the notice of claim. The late notice of claim petition was granted and the matter is currently pending.

In the fifth case, an Officer slipped off the driver's side running board and then he slipped on an icy sidewalk causing an ankle injury. The Officer waited 115 days after the line-of-duty accident to file the notice of claim against the City of New York. DCD then filed a petition to a Justice in Kings Supreme Court for permission to file the notice of claim 25 days late. DCD won the petition and the case settled for \$30,000 at a pre-trial conference.

In the sixth case, a Sergeant was participating in a training session when he was tackled to the ground by a fellow Officer who prevented him from using his hands to break his fall. The Sergeant was then piled on by other Officers who unnecessarily bent his knee causing a serious injury which required surgery. The Sergeant was unaware of his right to sue and didn't contact DCD until 35 days after the 90-day notice of claim requirements expired. DCD filed the notice of claim and then persuaded a Justice from Queens Supreme Court to grant the application permitting the late filing. The case is pending in Queens County Supreme Court.

In the seventh case, an Officer was injured when a car jack fell from a high pallet fracturing the Officer's foot. The car jack had been inappropriately left on top of a pallet stacked with paper. The Officer waited 192 days after the line-of-duty accident, making the notice of claim 102 days late. DCD filed the notice of claim to "stop the clock" and then filed a successful late notice of claim motion. The matter is pending in Queens County Supreme Court.

In the eighth case, an Officer was injured after he fell down a flight of steps in a Housing Authority building while chasing a perpetrator. The Officer suffered a knee injury which necessitated surgery. The Officer was unaware of his right to sue until 42 days elapsed after the 90-day filing requirement. DCD filed the notice of claim against the Housing Authority and also filed an application to a Justice of the Bronx Supreme Court requesting that our client be permitted to file the late notice of claim. The Housing Authority did not oppose the application and the matter is pending in Bronx Supreme Court.

In the ninth and tenth cases, two Officers sustained minor injuries when, while engaged with perpetrators, they tripped on a raised sidewalk at a Housing Authority building. The Officers were unaware of their right to sue until 180 days elapsed from the line-of-duty date. Both Officers retained DCD and DCD was successful in convincing the Housing Authority to consent to the granting of the late notice of claim applications.