

## **POLICE OFFICER'S RIGHT TO SUE 2008 NEWSLETTER**

### **POLICE OFFICER RECEIVES \$750,000 SETTLEMENT FROM CITY OF NEW YORK AFTER ANOTHER FIRM ABANDONS HIS CASE**

As highlighted in the 2005 Police Officer's Right to Sue Newsletter, an Officer from Manhattan North injured his shoulder after slipping on the locker room floor. The floor became wet when an overhead water pipe leaked for an extended period of time. After he slipped, the Officer grabbed the door frame causing a partial tear to his labrum and rotator cuff in his left shoulder. The Officer needed two surgeries to repair his labrum and rotator cuff and was eventually awarded a 3/4 disability pension. After the accident, the Officer consulted an attorney who advised him that he could not sue his employer, the City of New York, because he was barred by Workers' Compensation. Fortunately, the Officer read the 2003 Police Officer's Right to Sue Newsletter and realized that the advice he received from the attorney was incorrect. The Officer contacted Decolator, Cohen & DiPrisco, LLP (hereinafter referred to as DCD); however, it was after the 90 day notice requirement to the City of New York had expired. DCD immediately filed the notice of claim and also filed an application with a New York County Supreme Court Justice requesting permission to file a late notice of claim. The application was granted and the case was allowed to proceed. DCD sued the City of New York on behalf of the Officer pursuant to common negligence and General Municipal Law §205-e (hereinafter referred to as GML §205-e) claiming the dangerous condition of the leaking overhead pipe 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. Prior to trial, DCD entered into extensive negotiations with the City of New York on behalf of the Officer. The matter settled for \$750,000 against the City.

### **NEWSLETTER REVIVES FIVE 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. Decolator, Cohen & DiPrisco is pleased to announce that the 2003 and 2005 newsletters have successfully informed thousands of Police Officers of their rights to sue pursuant to GML §205-e. In particular, the 2005 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 had expired. This firm revived all five cases.

In the first case, an Officer from Manhattan North was the recorder in an RMP which was involved in an automobile accident with another RMP. The Officer suffered a serious knee 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 long expired. (Note: A notice of claim must be filed within 90 days of the accident when the defendant is a municipality.) Approximately one year 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 New York 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 New York County Supreme Court.

In the second case, an Officer from Brooklyn North injured his back and broke his wrist when he was injured in an automobile accident. The Officer was a passenger in a Department van, when the operator of the van proceeded the wrong way down a one-way street colliding with the subject vehicle. The Officer was advised by another Officer who had read our newsletter that he should immediately contact DCD. The Officer retained this firm. 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 Queens County Supreme Court.

## STATION HOUSE

### *The City of New York is responsible to provide MOS with safe conditions in precincts and surrounding areas*

A Deputy Inspector received a \$1,000,000 settlement from the City of New York after she fell on a broken gas filler pipe in the station house parking lot. As a result of the fall, the Deputy Inspector sustained an injury to her foot which necessitated two surgeries and forced her to retire on a 3/4 disability line-of-duty pension. This firm, on behalf of the Deputy Inspector, sued the City of New York pursuant to common-law negligence and GML §205-e claiming that the gas pipe was a special use eliminating the notice requirement needed to successfully sue the City. The Deputy Inspector received a \$1,000,000 settlement prior to trial.

## STAIRCASE

### *General Municipal Law §205-e allows Officers to sue the City of New York for injuries sustained as a result of a defective exterior staircase*

A New York City Police Officer received an award of \$200,000 for injuries sustained when he fell down an exterior staircase located in the rear of the Manhattan Criminal Court. The Officer sustained a torn quadriceps which necessitated surgery. DCD sued the City of New York pursuant to GML §205-e claiming the City was negligent in maintaining a safe work environment for New York City Police Officers. The subject staircase's center handrail was removed and never replaced. The gap between the two side handrails was too wide and the lack of a center handrail was in violation of the Building Code. The Officer was also successful in obtaining a 3/4 line-of-duty disability pension.

## AUTO / CITY

### *Sergeant recovers \$600,000 from City of New York in a line-of-duty automobile accident due to defective RMP*

A Queens South Sergeant suffered a thoracic fracture when his operator, in response to a 10-85, collided their vehicle with a tree stump upon entering the Grand Central Parkway. The firm, on behalf of the Sergeant, sued the City of New York pursuant to GML §205-e claiming the RMP did not possess either the driver or passenger side mirrors. The firm argued that without the use of these mirrors the operator was not able to see oncoming traffic without completely turning his head. When the operator turned his head, he lost control on the entrance ramp to the Grand Central Parkway and struck a tree stump. The matter settled during trial for \$600,000 against the City of New York. Although the Sergeant did not need surgery, the Sergeant was granted a 3/4 disability line-of-duty pension.

An Officer from Manhattan North received a settlement of \$90,000 from the City of New York after she sustained an injury to her shoulder from a one car RMP accident. The Officer was the recorder in an RMP when her partner, in response to a 10-85, lost control of the RMP which caused the vehicle to overturn. DCD sued the City of New York pursuant to GML §205-e claiming the partner's action in causing the accident was reckless. Although this was a challenging liability case, the City of New York settled the matter for \$90,000.

In another case, a Queens South Officer was injured when her partner, while responding to a 10-85 with lights and sirens on, collided their RMP with a center median and a light stanchion. The Officer struck her knees on the computer console and required arthroscopic surgery on both knees but fully recovered. This office, on behalf of the Officer, argued that the City of New York was responsible for her injuries in that the vehicle's computer was improperly situated, that the air bags did not deploy and that her partner's actions in driving the RMP through the intersection against a steady red light causing the accident was reckless. The Officer received a \$150,000 settlement prior to jury selection.

## AUTO/PRIVATE

### *A Queens North Officer recovers \$250,000 from the owner of a carwash after a line-of-duty accident*

A Queens North Police Officer received an award of \$250,000 after he reinjured his back as a result of an RMP accident. While on patrol, the Officer skidded on Armor All which was negligently left on the street in close proximity to the carwash. As a result of the accident, the Officer exacerbated a prior injury necessitating surgery. DCD sued the owner of the car wash pursuant to common-law negligence and GML §205-e claiming the carwash did not have the authority to clean vehicles on the street near the carwash. The employees of the carwash had applied Armor All to customer's tires leaving Armor All residue on the street. The case settled for \$250,000 prior to jury selection despite the fact that the proof showed that his back injury preexisted his accident.

### *Officer recovers \$650,000 from owners of a commercial vehicle in a line-of-duty pedestrian automobile accident*

A New York City Police Officer assigned to Headquarters had her foot run over by a commercial vehicle when she was on her lunch break outside Police Headquarters. The Officer suffered a condition known as RSD, otherwise known as crushed foot syndrome. The Officer received a settlement of \$650,000 prior to trial.

## PREMISES

### *Building owner responsible for injuries suffered by a New York City Police Officer during a fire rescue*

A Manhattan North Police Officer received a \$400,000 settlement from a Harlem building owner when the Officer reinjured his back when he carried tenants from a burning building. DCD demonstrated that the fire emanated from a couch left in the hallway by the building's superintendent. DCD sued the building owner pursuant to GML §205-e claiming the negligence of the owner's employee in not removing the couch from the hallway caused the fire. As a result of the fire, the Officer had to enter the building and carry some of the occupants to safety. The Officer exacerbated a prior injury.

## UNINSURED/UNDERINSURED MOTORIST COVERAGE

### *An Officer may recover monies from their personal auto insurance policy in a line-of-duty car accident*

A Queens South Officer while on routine patrol, suffered serious injuries to both of his wrists which necessitated surgery when his RMP was rear-ended by a motorist. Unfortunately, the motorist who caused the accident only had a \$25,000 minimum auto insurance policy which was offered. The Officer then made an application to his personal automobile supplementary uninsured/ underinsured motorist coverage (SUM coverage) which had \$100,000 in additional coverage. Prior to arbitration, State Farm Insurance offered the Officer's entire SUM coverage, and the matter settled for \$100,000.

A New York State Trooper received a \$900,000 arbitration award through his personal SUM coverage after he sustained a back injury as a result of being rear-ended by a motorist in the vicinity of the Whitestone Bridge. DCD was able to recover the initial \$100,000 coverage offered by the motorist's insurance company. An application was then made to recover the Trooper's remaining \$900,000 SUM coverage.

In another case, a retired New York City Police Detective suffered serious injuries when he was struck by a motorist while he was walking his dog in Glendale, Queens. The retired Detective suffered numerous fractures which required surgery and spent four months in the hospital. Unfortunately, the motorist that struck him only had a \$50,000 automobile insurance policy which was offered. The Detective possessed a \$500,000 supplementary uninsured/underinsured insurance policy. This firm was able to recover \$475,000 for the Detective through the Detective's supplemental uninsured/underinsured policy.

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

## UTILITIES

### *Utilities are responsible to maintain safe and secure work sites for Police Officers while in the performance of their duties*

An Officer from Brooklyn South received a settlement of \$250,000 from Brooklyn Union Gas for injuries sustained as a result of Brooklyn Union Gas leaving a plumber's cut in a roadway causing the Officer to trip. The firm sued Brooklyn Union Gas pursuant to both GML §205-e and common-law negligence claiming Brooklyn Union Gas had cut up the roadway and failed to adequately repair the roadway. The Officer, after exiting his RMP, fell in the plumber's cut and injured his knee. The injury necessitated surgery. The Officer received a 3/4 disability line-of-duty pension.

## SIDEWALK

### *General Municipal Law §205-e allows Officers to sue the City of New York for injuries sustained as a result of falling on a defective sidewalk*

In this case, an Officer from Brooklyn South, while chasing a perpetrator, sustained an injury to his shoulder when he fell on a defective sidewalk. The Officer sued pursuant to GML §205-e, claiming the City's failure to adequately maintain the public sidewalk was a violation of the Administrative Code and a predicate statutory violation for a cause of action under GML §205-e. The Officer settled the case for \$80,000 after undergoing an arthroscopic procedure on his shoulder.

## FAMILY

### *Decolator, Cohen & DiPrisco represents family members of New York City Police Officers involved in personal injury matters*

The son of a New York City Police Officer received a settlement of \$275,000 from his school when he injured his knee while playing basketball in high school. This firm argued that the bleachers in the gym were situated too close to the basket causing our client to collide with the bleachers when he attempted a layup. The client sustained a serious knee injury which necessitated surgery. The matter settled during the trial.

## CIVILIANS

### *Decolator, Cohen & DiPrisco also represents civilians involved in personal injury matters*

A 27 year old female received a \$2,250,000 settlement after her vehicle was struck by an oil tanker in upstate New York. The woman suffered facial scarring and a severed supraorbital nerve. The matter settled in Bronx County Supreme Court during trial for \$2,250,000.

### ***Continuation from bottom of page 1***

In the third case, an Officer from Queens North suffered serious injuries when he fell down a defective staircase in the station house. The Officer waited nearly a year without filing a notice of claim when he came across the 2005 newsletter. The Officer immediately contacted and retained DCD. DCD successfully received permission from a Justice of the Queens County Supreme Court to file a late notice of claim. The matter is presently pending.

In the fourth case, a Brooklyn South Officer received a significant injury to her wrist which necessitated surgery when the power steering of the RMP she was operating failed. The Officer tore the ligaments of her wrist when she attempted to make a left hand turn. As she was turning the steering wheel, the steering wheel stopped because of the lack of power steering fluid. The Officer did not know she could file a claim against her employer, the City of New York. DCD successfully received permission from a Justice of the Kings County Supreme Court to file a late notice of claim. The matter is presently pending.

In the fifth case, an Officer from Manhattan North received serious injuries to his wrist which necessitated surgery when another RMP, while responding to a 10-85, drove recklessly through a steady red light broadsiding our client's RMP. The Officer was unaware of a potential claim against the City of New York until another Officer alerted him to DCD's newsletter. DCD successfully received permission from a New York County Supreme Court Justice to file a late notice of claim. The matter is presently 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.***

## **LEGAL BLOTTER ENTRIES**

1. Prior to 1996, a Police Officer who was injured in the line-of-duty was not permitted to sue a third party for common-law negligence because of the inherently dangerous nature of their work. In 1989, the legislature created GML §205-e. In 1996, the legislature created General Obligation Law §11-106. Taken together, the laws permit an Officer to sue a third party other than their employer in common-law negligence and to sue any party, including their employer, the City of New York and New York City Police Department pursuant to statute. Section 205-e imposes strict liability where a Police Officer is injured in the line-of-duty by reason of the neglect, omission, willful or culpable negligence of any municipality (including New York City), person or persons in failing to comply with applicable statutes, codes, ordinances, rules, orders and requirements.

2. A Bronx County Supreme Court Justice allowed several New York City Police Officers to proceed to trial after the City of New York made an application to dismiss their hearing loss cases. These Police Officers sustained various degrees of hearing loss when the City provided them with inadequate and defective headsets while these Officers attempted to qualify at the range.

3. A New York County Supreme Court Justice allowed an Officer from Manhattan South to proceed to trial against the City of New York after he was accidentally shot by a fellow member of the service while changing in the station house locker room. The City claimed that the victim of the shooting was barred from suing his employer, the City of New York because changing in the locker room is inherently dangerous, and, accordingly, lawsuits of this nature would be barred by the Firefighter's Rule. DCD claimed that the act of changing in a station house locker room is not a risk inherent in police work, and the Officer who discharged his firearm acted recklessly in its handling.

4. A Queens County Supreme Court Justice allowed an Officer from Queens South to proceed to trial against a motorist who indirectly caused a chain of events which led to the Officer being struck by a second vehicle. In this case, the Officer, while securing the scene of a fatal one car accident, was struck by an oncoming vehicle. DCD sued the driver who caused the fatal one car accident claiming that pursuant to GML §205-e, the initial accident was reasonably connected to the subsequent accident making the first motorist responsible for the second accident.

## **DCD RECOMMENDATIONS**

It is essential that New York City Police Officers review and sign the line-of-duty injury report after a line-of-duty accident. The Officer must specify sufficient facts necessary for the reader to make a determination as to whether the line-of-duty event was an accident or incident. In addition, the injured Officer should specify each body part which was injured. The omission of an injury on the line-of-duty report may prevent the District Surgeon from authorizing medical treatment on parts of the body not mentioned in the line-of-duty report.

Joseph L. Decolator, Neil L. Cohen, Dominic DiPrisco, and John V. Decolator 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 and John V. Decolator were among the co-authors of GML §205-e. 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.