

POLICE OFFICER'S RIGHT TO SUE NEWSLETTER

LANDMARK WIN FOR INJURED OFFICER

In a landmark decision featured in the New York Daily News, the Appellate Division, Second Department upheld a lower Court decision which allowed a New York City Police Officer to sue an intoxicated driver even though the driver did not "directly" cause the Officer's injuries.

In Cerati v. Berrios, Police Officer Maureen Cerati, 106th Precinct, responded to a one car accident on the Belt Parkway. The driver of the vehicle was intoxicated and killed his passenger when he lost control of his vehicle causing the vehicle to overturn. Officer Cerati proceeded to safeguard the accident scene before Accident Investigation arrived by placing flares at the scene. Another driver drove past the warnings and struck Officer Cerati causing serious injuries which necessitated her being awarded a 3/4 line-of-duty disability pension. Officer Cerati sued the driver who struck her and recovered the limits of his insurance policy. DCD did not take a fee in this recovery.

Decolator, Cohen & DiPrisco, LLP, also sued the driver which caused her to be at the scene, the intoxicated driver. 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. The Appellate Division stressed that if there is a "reasonable or practicable" connection between the unlawful conduct and the injury, the Officer is permitted to sue. Despite a protracted legal battle, the insurance company representing the drunk driver, relented at jury selection and settled the case for the full limits of the insurance policy.

The importance of Cerati's law cannot be overlooked. This case effectively expands a Police Officer's right to sue in line-of-duty accident cases. If an Officer is injured while responding to a job where there is underlying unlawful conduct, the Officer may be able to sue the individual or corporation committing the underlying unlawful conduct if there is a reasonable or practicable connection between the Officer's injuries and the unlawful conduct, even if that individual or corporation did not directly cause the Officer's injury.

In another case involving the Cerati law, DCD was able to persuade a Kings County Supreme Court Justice to allow a case to proceed to trial after a Brooklyn North Police Officer was injured when she was struck by a car while issuing a no seat belt summons to another motorist. In Reynolds v. Pena, Officer Reynolds conducted a car stop and was in the process of issuing a summons to motorist Andre Ray when another motorist, Violeta Pena, struck her vehicle injuring Officer Reynolds. Officer Reynolds sued Violeta Pena and also sued Andre Ray, the individual who caused Officer Reynolds to stop her vehicle. The insurance company representing Andre Ray filed an application in Kings County Supreme Court requesting that the action against Mr. Ray be dismissed in that their client never struck Officer Reynolds and her injuries clearly were not the proximate cause of Mr. Ray's failure to wear his seatbelt. The attorneys for the insurance company failed to address the GML §205-e argument posed by DCD that proximate cause was not necessary to prove in a police line-of-duty accident case. Justice Laura Jacobson, citing the Cerati law, ruled in Officer Reynolds' favor and stated that proximate cause is not an element of GML §205-e and that Officer Reynolds only needs to show "a reasonable or practical" connection between the violation and the injury.

NEWSLETTER REVIVES NINE MORE OFFICER LAWSUITS

This firm published 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 and 2009 Newsletters have successfully informed thousands of Police Officers of their rights to sue pursuant to GML §205-e. In particular, the 2008 and 2009 Newsletters alerted thirteen Officers of their rights to sue pursuant to GML §205-e after the time limits to file their cases against the City of New York had expired. This firm revived nine cases and three are still pending.

AUTO/CITY

Officer recovers \$750,000 from City of New York in a line-of-duty automobile accident.

A Queens North Officer was injured when his partner, in response to a man with a gun, collided their vehicle with another vehicle. This firm, on behalf of the Officer, sued the City of New York pursuant to GML §205-e claiming the partner's actions in operating the radio car were reckless in violation of the Vehicle and Traffic Law and also sued the other driver for negligence. The Officer injured his right knee requiring arthroscopic knee surgery and was eventually awarded a 3/4 line-of-duty disability pension. Initially, the Officer was not aware of his GML §205-e right to sue until he read DCD's 2005 Police Officer's Right to Sue Newsletter. The Officer contacted DCD within the prescribed statutory time limits and DCD filed a timely Notice of Claim and subsequent lawsuit against the City of New York. The matter settled prior to jury selection against the City of New York for \$750,000. The Officer received a settlement of \$10,000 against the other motorist.

Officer receives \$275,000 settlement from City of New York after DCD revives lawsuit.

In a case featured in the 2008 Police Officer's Right to Sue Newsletter, a Brooklyn South Police Officer received a settlement of \$275,000 from the City of New York after DCD was successful in receiving permission from a Kings County Supreme Court Justice to file a late Notice of Claim. The Officer injured her wrist which necessitated surgery when the power steering of the RMP she was operating failed. DCD was able to negotiate a settlement of \$275,000 from the City of New York although an examination of the maintenance records and the vehicle did not show a deficiency with the power steering or the power steering fluid.

CITY/STATION HOUSE

Officer receives \$75,000 settlement from City of New York after DCD revives lawsuit.

In another case featured in the 2008 Police Officer's Right to Sue Newsletter, a Queens North Police Officer received a settlement of \$75,000 from the City of New York, after DCD was successful in persuading a Queens County Supreme Court Justice to permit the Officer to file a late Notice of Claim. The Officer sustained an injury to his shoulder when he fell down a defective staircase in the station house. The Officer decided to take a \$75,000 settlement offer from the City in the middle of the liability portion of the civil trial.

CIVILIANS

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

A woman confined to a nursing home was awarded \$500,000 as a result of injuries suffered after falling out a second floor window. DCD claimed the injuries occurred as a result of the lack of supervision. Although the woman had a complete recovery, the insurance company offered the settlement.

SIDEWALK/CITY

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

In this case, a Captain from Manhattan South, sustained an injury to his knee when he fell on a defective sidewalk while walking. The Captain 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 Captain settled the case for \$125,000 after undergoing an arthroscopic procedure on his knee.

FAMILY

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

The father of a New York City Police Officer received a settlement of \$100,000 after sustaining an injury to his knee as a result of an automobile accident. The other motorist and his insurance company ignored the filing and serving of the summons and complaint and DCD was forced to file for a default judgment and a subsequent inquest. A Kings County Justice awarded the client \$100,000, and DCD filed papers to enforce the judgment against the insurance company who was forced to pay the full amount of the judgment.

The husband of a retired New York City Police Officer received a settlement of \$60,000 from the Nassau County Medical Center after a doctor left a glass particle inside his arm during surgery. The client had previously hired an attorney who had abandoned the case. DCD resurrected the case and settled the matter at a pre-trial conference.

The aunt of a New York City Police Detective suffered a broken wrist after tripping on a defective commercial sidewalk. The matter settled for \$50,000 at a pre-trial conference.

DCD RECOMMENDATION

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

UNINSURED/UNDERINSURED MOTORIST COVERAGE

A retired New York City Detective suffered a knee injury after he was rear-ended by another motorist. The motorist only had a \$25,000 insurance policy. However, the retired Detective possessed \$100,000 supplementary uninsured/underinsured motorist coverage. DCD recovered the initial \$25,000 policy and filed for an arbitration to recover the Detective's SUM coverage. After a lengthy arbitration proceeding, an Arbitrator from the American Arbitration Association awarded the client \$75,000, the remainder of the SUM coverage.

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.

DCD cannot understate 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 under the SUM coverage is made.

DCD recently settled four cases for members of the service for the maximum \$25,000 insurance coverage. The value of each case was substantially higher; however, the Officers did not have additional SUM coverage, thereby reducing the potential value of each case.

APPEALS COURT REVERSES LOWER COURT RULING AND ALLOWS A NEW YORK CITY POLICE OFFICER TO SUE THE CITY OF NEW YORK IN LOCKER ROOM SHOOTING

The Appellate Division, First Department overturned a lower Court ruling which had dismissed a lawsuit brought by a Manhattan South Police Officer against the City of New York after he was shot by a fellow Officer in a station house locker room. Police Officer Vincenzo Ferriolo was in the locker room getting ready for his midnight tour of duty when another Police Officer fired his weapon striking Officer Ferriolo shattering his left femur. Officer Ferriolo was forced to retire on a 3/4 line-of-duty disability pension as a result of the injury. DCD sued the City of New York (*note: It is not necessary to name an individual Police Officer as a defendant in a civil lawsuit if this Officer was working within the scope of his/her employment at the time of the accident*) claiming the Officer's actions in shooting Officer Ferriolo were negligent and not barred by the "Firefighter's Rule." Since the shooting occurred in the station house locker room, DCD reasoned that the locker room is not "inherently dangerous," and Officer Ferriolo was not "engaged in any specific duty that increased the risk that he would be shot." The City argued that they were insulated from civil liability by the Firefighter's Rule which raises the standard for Police Officers to sue for injuries sustained in the line-of-duty accidents. New York County Justice Eileen Rakower ruled against Officer Ferriolo and dismissed the lawsuit citing the Firefighter's Rule. Justice Rakower stated the act of changing in a station house locker room is an "inherently dangerous activity" which heightens the risk of getting shot because firearms are present. The Appellate Division disagreed and adopted the arguments made by Mr. Decolator, concluding that the act of changing in a locker room is not inherently dangerous and a lawsuit should not be barred by the Firefighter's Rule. The Court concluded by stating Officer Ferriolo will be permitted to sue under a common-law negligence cause of action. The matter is pending in New York County Supreme Court.

DCD RECOMMENDATION

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

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In the first case, an Officer from the Bronx was on foot patrol when he tripped on raised Belgium blocks near Van Cortlandt Park and suffered a torn peroneal tendon necessitating surgery. 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 six months elapsed from the date of the accident to when the Officer read our Newsletter. The Officer retained DCD and this firm immediately filed an application against the City of New York seeking permission from a Bronx County Supreme Court Justice to file a late Notice of Claim. Based upon this firm's vast experience regarding this legal issue, a Justice from the Supreme Court granted the application and permitted the Officer to file a late Notice of Claim against the City of New York. The matter is now pending in Bronx County Supreme Court.

In the second case, an Officer from Manhattan South injured his neck in an RMP accident. The Officer was the recorder traveling with his partner going on an emergency run with lights and sirens. The driver of the RMP went through a steady red light and collided with a yellow cab. The cab failed to yield to the emergency vehicle. Initially, the Officer and the driver of the RMP hired another law firm to sue for damages sustained in the accident. However, the law firm did not advise the recorder that there was an inherent conflict of interest between the recorder and the operator and that the recorder had a potential claim against the City for the operator's recklessness (i.e., traveling through a steady red light without slowing down). The recorder did not know he might have a claim against the City until he read the 2008 Newsletter. The Officer immediately contacted DCD. Unfortunately, the Officer's time to file a Notice of Claim against the City of New York had long expired. Approximately one year elapsed from the date of accident to 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. 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 third case, a Brooklyn North Police Officer suffered a shoulder injury necessitating surgery when her partner drove the RMP into a parked auto during a 10-85. The operator drove the RMP at an excessive rate of speed and the vehicle skidded on wet pavement causing the collision. The Officer did not know she could sue the City until a fellow Police Officer and a client of DCD informed her of her rights. Unfortunately, her time to file Notice of Claim had expired. The Officer retained DCD and DCD immediately filed an application with a Kings County Supreme Court Justice seeking permission to file a late Notice of Claim. Although months had elapsed from the date of accident to the filing of the Notice of Claim, a Kings County Supreme Court Justice approved DCD's application. The matter is presently pending in Kings County.

In the fourth case, a Sergeant assigned to the Gang Unit suffered a serious knee injury during a foot pursuit for a male with firearms. He stepped onto a wooden board which collapsed causing the Sergeant's right leg to fall through a wood platform. A homeless person had purportedly built a shack and had been living in the shack on City property for years. The wooden board was part of the structure. The Sergeant was forced to retire on a 3/4 line-of-duty disability pension as a result of these injuries. The Sergeant was informed by a colleague and DCD client that he should contact DCD. Unfortunately, the ninety-day limitation to file a Notice of Claim against the City of New York had expired. DCD filed an application with a Richmond County Supreme Court Justice seeking permission to file a late Notice of Claim. The City did not oppose the application and permission to file a late Notice of Claim was granted. The matter is presently pending in Richmond County Supreme Court.

In the fifth case, a New York City School Safety Officer fell down a flight of defective steps in a Richmond County school sustaining a serious injury to her left foot. The Officer did not know she could sue the New York City Department of Education until she saw the 2008 Police Officer's Right to Sue Newsletter in a Staten Island precinct. Unfortunately, her time to file a Notice of Claim expired. The Officer retained DCD and DCD immediately filed an application for permission to file a late Notice of Claim with a Justice in Richmond County Supreme Court. The application was granted and the case is presently pending in Richmond County.

In the sixth case, an Officer from Brooklyn South sustained serious injuries to both his shoulders and left knee as a result of falling on uneven, cracked asphalt in the street during a car stop. The Officer had no knowledge of his GML §205-e rights until he saw one of our Newsletters in the station house. Unfortunately, approximately five months elapsed from the date of accident until he retained DCD to represent him in the lawsuit. DCD successfully filed an application with a Justice in Kings County Supreme Court seeking permission to file a late Notice of Claim. The matter is presently pending.

In the seventh case, a New York City Housing Officer sustained a broken left leg when he fell on a liquid substance left on a dimly lit defective stairwell in a Housing Authority project. The Officer was unaware of his GML §205-e rights to sue and did not file a Notice of Claim within the ninety-day time limit. The Officer saw our latest Newsletter approximately four months after his accident. DCD immediately filed an application seeking permission to file a late Notice of Claim. The application was granted and the matter is presently pending in Kings County Supreme Court.

In the eighth case, an Officer from the Bronx was severely injured when a broken locker fell on her in the female locker room. The locker had been broken for an extended period of time with numerous work orders unfilled. The Officer did not know she could sue the City of New York until she saw our latest Newsletter. Unfortunately, approximately one year elapsed from the date of accident making it extremely difficult for a Court to approve an application for permission to file a late Notice of Claim. However, DCD filed the application for permission and the application was granted by a Bronx County Supreme Court Justice.

In the ninth case, a New York City Police Officer assigned to K-9 fell during a subway training session which was held in the abandoned 2nd Avenue subway tunnel. Upon exiting the subway after the training ended, the Officer exited through a door he believed was an exit. Unfortunately, the door he entered had no floor and the Officer fell sustaining a broken wrist necessitating open reduction surgery and a separated shoulder. The Officer was informed by a colleague who was represented by DCD that he might have grounds for a lawsuit. The Officer retained DCD and DCD immediately filed an application for permission to file a late Notice of Claim with a Justice in New York County Supreme Court. Although approximately seven months elapsed from the date of accident to the filing of the Notice of Claim, a New York County Supreme Court Justice, after oral argument by Mr. Decolator, granted DCD's application. The matter is presently pending in New York County Supreme Court.

DCD RECOMMENDATION

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

Joseph L. Decolator, Neil L. Cohen and Dominic DiPrisco have combined legal experience of over eighty years. They have spent the majority of their legal careers vigorously protecting the rights of uniformed members of the service. Joseph L. Decolator was among the co-authors of GML §205-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.