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Attorney Advertising

POLICE OFFICER'S RIGHT TO SUE 2011 NEWSLETTER

TWO POLICE OFFICERS RECEIVED A \$3,000,000.00 SETTLEMENT AGAINST THE CITY OF NEW YORK AND THE NEW YORK CITY HOUSING AUTHORITY AFTER SUSTAINING INJURIES IN A STATION HOUSE ACCIDENT

In a case featured in the New York Daily News and The Chief, two Officers assigned to Recruitment were seriously injured when they fell approximately eight feet from a Housing Authority exterior metal staircase leading to the command. The Officers were situated on the metal platform of the staircase and leaned on one of the railings. The railing collapsed causing both Officers to plummet approximately one story. One of the Officers injured his shoulder which necessitated surgery. The other Officer injured both his knees which required two arthroscopic procedures. Both Officers subsequently received 3/4 line-of-duty disability pensions.

The City of New York and Housing Authority refused to settle the case and the matter proceeded to trial. The City and Housing Authority argued that they did not have the requisite notice that the railing was defective and, therefore, could not be held responsible for the Officers' injuries. Decolator, Cohen & DiPrisco, LLP (hereinafter referred to as DCD), argued the metal platform had rusted causing several holes in the center of the platform thereby providing the City of New York and NYCHA with at least constructive notice of the defective condition of the staircase. Fortunately, photographs were taken by witnesses to this accident which depicted a mat covering the rusted holes. The photographs also showed the holes in the center of the platform without the mats. DCD hired an expert who testified that the rusted portion of the platform had been developing for many years and the Department and NYCHA should have been aware of the condition if they had conducted the proper periodic inspections of the staircase and platform.

After a contentious three week trial, a Kings County jury found the City of New York 70% responsible for the Officers' injuries and NYCHA 30% responsible for the Officers' injuries. After the liability verdict and prior to the commencement of the damages phase of the trial, the City of New York offered to settle the case for \$2 million dollars, and NYCHA settled the case for \$1 million dollars. Each Officer received \$1.5 million.

POLICE OFFICER RECEIVES A \$1,000,000.00 SETTLEMENT FROM THE CITY OF NEW YORK AFTER DCD REVIVES LAWSUIT

As highlighted in the 2008 Police Officer's Right To Sue Newsletter (in the late notice of claim section), an Officer from Manhattan North received a settlement of \$1,000,000.00 from the City of New York after sustaining injuries during a 10-13 when his RMP collided with another RMP in an intersection accident.

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 claiming the operator of the other RMP acted recklessly in driving to the 10-13 when he failed to stop or slow down for a steady red light. Our client alleged that he had the green light and did not cause the accident. The Officer sustained an injury to his knee and developed reflex sympathetic dystrophy to his dominant hand. The Officer was unable to return to full duty and was awarded a 3/4 line-of-duty disability pension by the Article II Medical Board and a \$1,000,000.00 settlement from the City.

NEWSLETTER REVIVES SIX MORE MOS LAWSUITS

This firm publishes newsletters in an effort to educate members of the service of their civil rights in a variety of personal injury settings. DCD is pleased to announce that the 2003, 2005, 2008, 2009 and 2010 newsletters have successfully informed thousands of Police Officers of their rights to sue pursuant to GML §205-e. In particular, the 2010 newsletter alerted twelve 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 six cases and three cases are still pending.

SUPPLEMENTARY UNINSURED/ UNDERINSURED MOTORIST COVERAGE

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

DCD cannot overstate the importance for members of the service to avail themselves of additional monetary protection by taking out maximum SUM coverage. The SUM coverage for Police Officers' personal automobile insurance usually covers line-of-duty accidents. Many motorists in New York State possess the minimum statutory policy limits thereby affording little protection to members of the service who are injured as a result of the negligence of these underinsured individuals. Members of the service can acquire additional protection by informing their insurance companies that they want to increase the SUM coverage to match the liability portion of their personal automobile insurance. The increase in rates are nominal and the insurance rates do not increase if a claim is made under SUM coverage.

A Manhattan North Officer suffered knee and shoulder injuries in an automobile accident. The offending motorist only had a \$50,000 insurance policy. However, the Officer possessed \$100,000 supplementary uninsured/underinsured motorist coverage. DCD recovered the initial \$50,000 policy and filed for an arbitration to recover the remaining \$50,000 of the SUM coverage. Prior to the arbitration, the parties settled for \$45,000.

A New York City Department of Corrections Captain suffered a back injury in an automobile accident. The negligent driver possessed a \$25,000 insurance policy. The Captain possessed a \$100,000 SUM policy. The insurance company for the SUM coverage offered \$1,000 to settle the case. DCD took the case to arbitration and received the maximum award of \$100,000.

A Detective assigned to the Gang Unit was in an unmarked vehicle when his vehicle was rear-ended by another motorist. The motorist who caused the accident only had a \$25,000 liability policy. The Detective possessed a \$100,000 SUM policy. After the Officer received the \$25,000 from the individual who caused the accident, DCD was able to secure an additional \$45,000 from the Detective's auto policy.

An Officer from Manhattan South was injured while responding to a traffic condition with lights and sirens when his partner crossed double yellow lines and collided with another vehicle who made a right hand turn into the Officer's RMP. The civilian motorist failed to yield to an emergency vehicle thereby contributing to the accident. DCD, on behalf of the Officer, sued both the civilian vehicle and the City of New York for injuries which resulted in his premature retirement. The civilian motorist had no insurance coverage. Fortunately the Officer possessed \$100,000 SUM coverage. DCD was able to collect the entire \$100,000 SUM policy. The case against the City is pending.

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.

AUTO/CITY/PRIVATE

Highway Officer recovers \$315,000 from the City of New York and private defendants in an unusual chain of events accident.

A Highway Officer received a settlement of \$315,000 from multiple defendants after sustaining injuries while attempting to safeguard an accident scene. The Officer was called to respond to an accident where a Daily News Truck collided with a light pole. After the Officer arrived, he attempted to secure the site and divert traffic away from the scene. Other Officers at the scene were attempting to secure and/or remove the damaged light pole. Unfortunately, the light pole fell causing the Officer to sustain a broken arm requiring surgery. DCD sued the Daily News pursuant to GML §205-e claiming the negligence of the driver striking the light pole indirectly caused the Officer's injuries. DCD also sued the City of New York claiming the Police Department violated Section 27-a (3) of the Labor Law in not providing this Officer with a safe working environment. The case settled for \$315,000 at the pre-trial conference with the City of New York contributing to the settlement.

AUTO/CITY

Officer receives a \$750,000 settlement from the City of New York after sustaining injuries in an intersection accident as a result of broken traffic signal light.

A Queens South Officer sustained serious back injuries when the RMP she was operating collided with a civilian motorist at an intersection which lights were not operating properly. The Officer sustained serious back injuries which required surgery and she was awarded a 3/4 line-of-duty disability pension. One of the light stanchions at the intersection had been struck and damaged by a prior automobile accident. This caused the broken stanchion to strike and damage a second light stanchion causing the remaining functioning light to stay on green in all directions for that intersection. DCD hired an accident reconstructionist who determined the City was at fault for the manner in which the lights at the intersection were positioned. The expert reasoned that the light stanchions were situated too close together elevating the possibility of one stanchion affecting the other stanchion if struck during an automobile collision. The City settled the case for \$750,000 during a pre-trial conference.

Officer recovers \$350,000 from City of New York after sustaining injuries in a one-car accident.

A Manhattan North Police Officer sustained serious injuries when the operator of her RMP was cut off by an unknown motorist causing the RMP to strike a legally parked vehicle. The Officer sustained injuries when her body hit the dashboard and windshield. The airbags did not deploy. The Officer retained DCD approximately one month after the accident. DCD immediately forwarded correspondence to the City indicating the RMP was the subject of future litigation and that the RMP must be kept until an accident reconstruction specialist was hired to examine the RMP. Unfortunately, the City destroyed the vehicle prior to the inspection of the RMP. DCD filed a motion with a Justice in Bronx Supreme Court asking the Judge to sanction the City for their failure to keep the vehicle. The Judge refused to immediately sanction the City but permitted DCD to request penalties against the City during the trial. Although DCD received this partial victory against the City, the inability to have the RMP examined by an expert made it difficult to prove the case at trial. The case settled for \$350,000.

Officer receives \$30,000 settlement from City of New York after suffering burns from a defective radiator hose.

A Manhattan South Officer sustained a burn to his shoulder while opening the hood of his RMP after seeing smoke emanating from the engine. When the Officer opened the hood, hot water burned his arms which eventually caused scarring. DCD discovered the RMP was not properly maintained forcing the City to settle the case for \$30,000 at a pre-trial conference.

AUTO/PRIVATE

Officer receives \$575,000 settlement from private defendants in line-of-duty motor vehicle accident.

A Brooklyn North Officer was seriously injured when he was struck by a motorist while assisting another unit during a car stop. The Officer had exited his patrol car when he was struck by a motorist who was struck by an ASPCA truck which failed to stop at a stop sign. The Officer sustained injuries to his shoulder and back which necessitated surgery. The case settled for \$575,000 during the trial.

PREMISES

Officer receives \$60,000 settlement from building owner after striking his head on cement beam.

A Manhattan North Police Officer suffered a concussion when he struck his head on a low ceiling in an outdoor basement (vault) while responding to a false burglary alarm. At the scene, the Officer observed an open street cellar door and proceeded down the steps to see if there were any intruders inside. While inside, the Officer observed inadequate lights. When the Officer attempted to exit the cellar, he hit his head on a low cement beam, sustaining a concussion and cervical injuries. DCD sued the building owner arguing that the inadequate lighting and low beams were in violation of code and led to the Officer's injuries. The matter settled for \$60,000 prior to trial.

Building owner responsible for injuries suffered by a Sergeant after he fell on icy sidewalk.

A Sergeant assigned to Brooklyn North Narcotics sustained a serious injury to his thumb when he fell on old ice on a sidewalk in front of a private building. The Sergeant was waiting to talk to a CI when he stepped from his department van and skidded on ice on the sidewalk. The Sergeant injured his thumb which necessitated surgery. DCD sued the building owner claiming that the owner failed to properly maintain the exterior of their building; mainly the ice buildup on the sidewalk. DCD argued that the ice had been on the sidewalk for several days and the building owner knew or should have known of the existence of the ice. On the eve of jury selection, the Sergeant received a \$125,000 settlement.

STATION HOUSE

Officer receives \$250,000 settlement from the City of New York after DCD revises lawsuit.

In a case featured in the 2009 Police Officer's Right to Sue Newsletter (late notice of claim section), a Bronx Police Officer received a settlement of \$250,000 from the City of New York after sustaining injuries in a station house accident. The Officer tripped on a box of computer paper as he entered the sitting room. The Officer sustained a serious injury to his left leg which necessitated surgery. The box of paper was used by members of the command as a door jam. When the Officer entered the room, the door to the muster room was closed. As he walked inside the room, he never saw the box and tripped over the box causing the 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 expired. (Note: A notice of claim must be filed within 90 days of the accident when the defendant is a municipality.)

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 case settled for \$250,000 at the pre-trial conference.

RANGE

Officer receives 1.5 million dollar settlement from the City of New York after sustaining injuries when struck by shrapnel at the Range.

A Manhattan North Officer received a 1.5 million dollar settlement after sustaining injuries from shrapnel while qualifying at the range. At the 7 yard mark at Rodman's Neck, the Officer felt a sting and immediately noticed blood emanating from his temple. The Officer left the shooting area and filed a LOD injury report. The Officer was taken to the hospital and was treated and released. The Officer's delegate instructed the Officer to contact DCD. The Officer retained DCD who immediately filed a notice of claim against the City claiming the City violated Section 27-a (3) of the Labor Law in not providing the Officer with a safe working environment. The Officer claimed that the target stanchions in his immediate area were reversed making it more likely bullets would ricochet toward the shooter resulting in potential injury. The City of New York vigorously defended these allegations and filed a motion in Supreme Court in an attempt to have the lawsuit dismissed. The City claimed there was no evidence that the stanchions were reversed and that the City could not be held responsible for incidental ricochets causing injury. DCD hired a firearms ballistic and range expert from Indiana. When the expert arrived at Rodman's Neck, the Police Department had removed all the existing target stanchions at Rodman's Neck and replaced them with a sleeker model consisting of a circular pole. The expert was unable to examine the stanchions which were in place at the time of this Officer's injuries but, in fact, concluded after examining the range and witness depositions, that Rodman's Neck was inherently dangerous. Police Officers assigned to the range testified at a pre-trial deposition that they were aware of numerous Officers being struck by shrapnel from ricochets during qualifying. In fact, one of these Officers testified he was struck and injured from a ricochet. The expert opined that a properly configured range should never have a ricochet which endangers members of the service and that the berms located behind the target stanchions were full of lead which were responsible for a majority of the ricochets. Joseph L. Decolator, on behalf of the Officer, opposed the City's summary judgment motion. Mr. Decolator argued the Officer's recollection that the target stanchions were reversed created a genuine issue of fact. In addition, Mr. Decolator referred to the expert's affidavit in raising the argument that the configuration of the range was inherently dangerous and that it is unacceptable for any Officer to be injured as a result of a ricochet. Finally, Mr. Decolator's argument that the City should be sanctioned for intentionally removing and destroying the target stanchions prior to the Officer and his representative's having an opportunity to examine them. Mr. Decolator was successful in defeating the City's application and a Bronx County Supreme Court Justice allowed DCD to renew the spoliation motion against the City at trial for destroying the target stanchions. The strength of Mr. Decolator's arguments gave DCD leverage in settlement negotiations. Dominic DiPrisco negotiated a 1.5 million dollar settlement with the City at a pre-trial conference. The Officer was also awarded a 3/4 line-of-duty disability pension.

UTILITIES

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

An Officer from Manhattan South received a settlement of \$125,000 from Consolidated Edison for injuries sustained as a result of Con Ed's failure to properly maintain the area surrounding the edge of a manhole cover. While conducting a car stop, the Officer twisted his knee on an uneven edge of the manhole cover. The Officer injured his right knee which required two arthroscopic procedures. DCD sued Consolidated Edison pursuant to GML §205-e and 34 New York Rules of the City of New York Section 2.07(b)[1] claiming that Consolidated Edison failed to maintain the 12 inch area around the manhole cover. The case settled for \$125,000 at a pre-trial conference.

CIVILIANS

Tour bus operator recovers \$675,000 from parking lot owner after falling in an open sewer grate.

A tour bus operator had parked his bus at a Yankee Stadium parking lot and was exiting the lot when his body fell into an uncovered sewer grate rupturing his quadriceps muscle. The injury required surgery. On the eve of jury selection, the insurance company for the parking lot offered \$675,000 to settle the case.

Motorist receives \$250,000 after sustaining a back injury in an intersection accident.

A female was injured after being struck by a vehicle while driving through an intersection. The motorist suffered a back injury which required surgery. DCD sued the negligent motorist and recovered \$250,000, the maximum limits of the insured's policy.

Continued from front page

In the first case, an Officer from the Bronx assigned to a High School was injured when she fell down a flight of defective steps at the school. The Officer had no knowledge of her 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 and the New York City Department of Education had expired (*Note: A notice of claim must be filed within 90 days of the accident when the defendant is a municipality*). Approximately nine months elapsed from the date of the 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 Bronx 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 and the New York City Department of Education. 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, an Officer from Queens North injured her shoulder necessitating surgery as a result of tripping on a ladder left in the basement hallway. The lights were out in the hallway due to electrical work being done in the precinct. Approximately nine 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 Justice of Queens County Supreme Court to file a late notice of claim. A Justice from Queens County Supreme Court granted the application and permitted the Officer to file a late notice of claim. Once again, the LOD report was concise and detailed and compelled the Judge to grant the application.

In the third case, an Officer from Staten Island was seriously injured in an RMP accident after her partner crossed double-yellow lines on a winding road responding to a possible suicide radio run. The Officer sustained an injury to her left wrist which necessitated surgery. The Officer was unaware of her GML § 205-e right to sue when another Officer alerted her to read our newsletter. Unfortunately, approximately six months elapsed from the date of the accident. The Officer retained DCD who successfully filed an application in Richmond County Supreme Court seeking permission from a Staten Island Justice to file a late notice of claim. The Court granted the application and the matter is pending.

In the fourth case, an Officer from Manhattan South was injured when he was rear-ended by another RMP while on a detail. Approximately nine months elapsed from the accident date to when the Officer read our newsletter. The Officer retained DCD. Although six months late, DCD filed the notice of claim to "stop the clock". DCD then filed an application with a New York County Supreme Court Justice requesting permission to file a late notice of claim. Fortunately, the LOD report had sufficient details to persuade the Justice that the City would not be prejudiced by the delay in filing. The Court granted DCD's application to file a late notice of claim and the matter is presently pending in New York County Supreme Court.

In the fifth case, an Officer assigned to Internal Affairs was seriously injured during a tactical defensive training exercise when she tripped on a hole in the floor while engaged with another member of the service. The Officer was unaware of her GML §205-e rights to sue when she became aware of our newsletter. The Officer 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 Officer was less than one month late in serving the City with the notice of claim and the LOD report included a detailed witness statement describing the accident and the defective floor. These facts compelled a Kings County Supreme Court Justice to approve the Officer's application to file a late notice of claim. The matter is presently pending in Kings County Supreme Court.

In the sixth case, an Officer assigned to Headquarters was seriously injured when while conducting a vehicle survey inside the Headquarters annex garage he accidentally stepped in a drain that was backed up with water and could not be seen. The Officer injured his right foot and back and underwent spinal surgery. The Officer was unaware of his GML §205-e right to sue until a lawyer who is familiar with DCD instructed the Officer to retain this firm. DCD immediately filed an application with a Justice of New York County Supreme Court seeking permission to file a late notice of claim. The Officer was less than 45 days late in filing the notice of claim and the LOD report was concise and detailed regarding the accident. These facts compelled a New York County Supreme Court Justice to grant the Officer's application. The matter is presently pending.

Nursing home patient receives a settlement of \$500,000 from Brookdale Hospital after developing bed sores during a one week stay at the hospital.

An elderly male living in a nursing home was taken to Brookdale Hospital for an undisclosed illness. While at the hospital, our client developed bed sores due to the lack of adequate medical care. The bed sores have lingered for years. Prior to jury selection, Brookdale Hospital settled the case for \$500,000.

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 which held the Parole Board responsible for the Officer's death.