

## **POLICE OFFICER'S RIGHT TO SUE 2015 NEWSLETTER**

### **OFFICER RECEIVES A 1.1 MILLION DOLLAR SETTLEMENT FROM PRIVATE DEFENDANT AFTER COMMERCIAL VEHICLE ROLLED OVER HIS LEFT FOOT DURING A CHECKPOINT**

An Officer assigned to a Manhattan command received a settlement of \$1,100,000 from a corporate defendant after he was seriously injured when a van rolled over his left foot during a checkpoint outside the Battery Tunnel. The Officer sustained a crush injury and developed reflex sympathetic dystrophy (RSD). Ultimately he was awarded a ¾ line-of-duty disability pension.

DCD, on behalf of the Officer, sued the corporate owner of the vehicle in addition to the driver pursuant to GML §205-e claiming the driver's actions in rolling over the Officer's foot violated §§1146, 1180, 1212 and 375(1) of the Vehicle and Traffic Law. Although the Officer did not have surgery, Dominic DiPrisco convinced the defendant's insurance company and a mediator of the high value of the case. The case settled for \$1.1 million at the close of the mediation session.

### **OFFICER RECEIVES A 1 MILLION DOLLAR SETTLEMENT FROM CITY OF NEW YORK AFTER HIS PARTNER CRASHED THE RMP INTO A TRAIN PILLAR**

An Officer from a Queens North command received a settlement of \$1,000,000 from the City of New York after he was seriously injured in a one-vehicle RMP accident. The injured Officer was a recorder performing routine patrol with his partner when his partner's attention was diverted causing the RMP to strike a train pillar. The Officer sustained a serious injury to his neck which required surgery. The Officer was subsequently awarded a ¾ line-of-duty disability pension.

A police union law firm familiar with DCD's expertise in these cases referred the Officer to this office. DCD sued the City of New York (it is not necessary to sue individual members of the service when they are acting within the scope of their employment) pursuant to GML §205-e claiming the operator's action in crashing the RMP into the pillar violated Vehicle and Traffic Law §1180a. DCD also sued the City pursuant to common-law negligence claiming the operator, while on routine patrol and not on an emergency, negligently drove the RMP into the train pillar. On the eve of trial, Dominic DiPrisco, on behalf of the Officer, negotiated a \$1,000,000 settlement with the City of New York.

### **OFFICER RECEIVES A 1 MILLION DOLLAR SETTLEMENT FROM CITY OF NEW YORK AFTER INJURING HIS WRIST AND SHOULDER FROM A FALL IN A SECOND AVENUE SUBWAY TUNNEL**

An Officer assigned to K-9 received a settlement of \$1,000,000 from the City of New York after injuring his wrist and shoulder while training with his canine in a Second Avenue subway tunnel. Prior to this accident, the Officer had not participated in training at this location. After the training was completed, the Officer attempted to leave the tunnel. He exited through a door which had no floor and plummeted approximately five feet causing a right wrist fracture and a rotator cuff tear to his right shoulder. The injuries required two surgeries to his shoulder and a surgery to repair his wrist. The Officer was awarded a ¾ line-of-duty disability pension.

This case was initially featured in the 2010 Police Officer's Right to Sue Newsletter in the late notice of claim section. The Officer was unaware of his GML §205-e right to sue and the 90-day time limitation to serve a notice of claim expired. The Officer was informed by a colleague 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 which was granted.

DCD sued the City of New York pursuant to GML §205-e claiming the City of New York violated Labor Law §27-a(3) in not providing the Officer with a safe place to work. The City of New York brought the MTA into the case claiming the dangerous condition inside the vacant subway tunnel was the MTA's responsibility. The City also filed a motion for summary judgment against the Officer arguing that Labor Law §27-a(3) was not a sufficient statutory predicate under GML §205-e and that the Officer's accident was not a recognized hazard under the Labor Law. Joseph L. Decolator defended the summary judgment motion. The Court held in favor of the Officer and against the City of New York seeking contractual indemnification from the MTA. The matter settled for 1 million dollars from the City of New York after a protracted negotiation.

## STATION HOUSE

### ***Officer receives \$175,000 settlement from a municipality and the City of New York after falling down on a broken step in a command stairwell***

An Officer assigned to a Brooklyn command received a settlement of \$175,000 from a municipal defendant and the City of New York after falling on a broken step in the rear stairwell of her command. The edges of the steps were worn and did not have the skid-resistant rubber coating. The Officer aggravated a pre-existing injury to her left ankle. As a result of aggravation of the old injury, the Officer was forced to undergo two surgeries. DCD sued both the municipality and the City of New York pursuant to GML §205-e claiming that the defendants violated §27-a(3) of the Labor Law and §§27-127, 27-128, 27-369 and 27-375(e)(f)(h) of the Administrative Code of the City of New York. At a pre-trial settlement conference all three parties had a contentious debate as to which defendant was ultimately responsible for the maintenance of the stairwell. The matter settled for \$175,000 with the Officer's pre-existing injury being taken into account.

### ***Officer recovers \$175,000 settlement from City of New York after falling down in a pothole in the parking lot of his command***

An Officer assigned to a Brooklyn North command aggravated an old line-of-duty injury when he fell in a pothole in the precinct parking lot while responding to a 10-85. The injury required surgery. DCD sued the City of New York pursuant to GML §205-e and GOL §11-106 alleging the City of New York violated Labor Law §27-a(3) and New York City Administrative Code §28-301.1. DCD claimed the City of New York failed to properly maintain the station house parking lot. Although the Officer returned to full duty and many of his injuries were pre-existing, Dominic DiPrisco was able to negotiate a settlement in the amount of \$175,000 from the City of New York.

### ***Officer receives \$125,000 settlement from City of New York after dislocating his elbow on rock salt residue in the precinct's lounge area***

A Brooklyn South Officer received a \$125,000 settlement from the City of New York after he dislocated his right elbow after falling on rock salt residue in the command's lounge area. The injury required surgery. Initially the Officer was unaware of the notice of claim requirements necessary to bring a lawsuit against the City of New York and the time requirements lapsed. DCD was successful in persuading a Kings County Supreme Court Justice to allow the Officer to file a late notice of claim. DCD, upon behalf of the Officer, sued the City of New York pursuant to GML §205-e, claiming the City violated Labor Law §27-a(3) and New York City Administrative Code §27-375(g)(h) and §28-301.1 claiming the City failed to provide the Officer a safe place to work. DCD settled the case for \$125,000.

### ***Officer received \$125,000 settlement from City of New York after slipping in command restroom***

An Officer assigned to a Staten Island command suffered a serious knee injury when he slipped on an accumulation of water in the restroom located on the floor of a commercial building where the New York City Police Department leased the entire floor. The Officer's injury required ACL reconstruction surgery. DCD, on behalf of the Officer, sued both the City of New York and the private building owner claiming the presence of water in the bathroom was a recurring condition which was not addressed by either defendant and their conduct violated §27-a(3) of the Labor Law and New York City Administrative Code §28-301.1. During the discovery portion of the case, the building owner presented a lease which required the City of New York to maintain the condition of the restroom. Accordingly, the City was the responsible party for the Officer's injury. Although the Officer was able to return to full duty status, DCD was able to negotiate a settlement of \$125,000 from the City of New York.

## RANGE

### ***Officer receives \$25,000 settlement from City of New York after sustaining a facial wound when struck by shrapnel at the range***

An Officer assigned to a Bronx command received a \$25,000 settlement from the City of New York after being struck by shrapnel in her forehead while qualifying at the range. The wound turned into a minor scar on her forehead. DCD sued the City of New York pursuant to GML §205-e alleging the City violated Labor Law §27-a(3). DCD claimed the range was inherently dangerous and that a properly designed range would result in no ricochet injuries.

## RMP CONDITION

### ***Officer recovers \$65,000 from the City of New York after injuring his shoulder while closing broken RMP door***

An Officer assigned to a Bronx command suffered a serious injury to his shoulder when he attempted to close a broken RMP door after responding to a 10-85. The door to the passenger side of the RMP was misaligned requiring a great amount of force to close. The Officer suffered a serious injury to his shoulder which required surgery after he hyper-extended the shoulder while using significant force to close the door. DCD sued the City of New York pursuant to GML §205-e alleging the condition of the RMP violated §375 of the Vehicle and Traffic Law. The matter settled for \$65,000 at a pre-trial conference.

### ***Officer recovers \$45,000 from the City of New York after he is ejected from a police vehicle***

An officer assigned to a Manhattan command suffered serious scarring when the front passenger door of the RMP suddenly and unexpectedly opened while the vehicle was in operation causing the Officer to be ejected from the cabin of the RMP. The Officer sustained various cuts and bruises and received seven staples to close a head wound. DCD sued the City of New York pursuant to GML §205-e arguing the condition of the RMP's door was in violation of Vehicle and Traffic Law §375. The Officer returned to full duty and was awarded a settlement of \$45,000 from the City of New York.

## CITY/VACANT LOT

### ***Member of the service receives a 1 million dollar settlement from the City of New York after injuring his knee on debris in a City-owned lot***

A member of the service received a 1 million dollar settlement from the City of New York after injuring his knee on debris in a lot owned by the City of New York. The member of the service was also awarded a ¼ line-of-duty disability pension. Initially, our client was unaware of his right to sue and let the notice of claim time limitation elapse. DCD was able to persuade a Supreme Court Justice to permit the filing of a late notice of claim. DCD, on behalf of our client, sued the City of New York pursuant to GML §205-e alleging that the City violated a section of the Health Code in that the City failed to keep the lot free from debris. After extensive motion practice and an appeal, the City of New York offered to settle the case for 1 million dollars.

## VERTICALS

***Officers often get injured in both private and public dwellings while conducting vertical patrols. Officers routinely encounter deplorable conditions which contribute to LOD accidents. These conditions include poorly lit staircases, broken or worn out steps, broken handrails, lack of skid-resistant steps and foreign substances in the stairway. Recently DCD settled three cases stemming from line-of-duty injuries while conducting vertical patrols.***

In the first case, an Officer assigned to a Bronx command suffered a torn meniscus which required surgery after he slipped on foreign substances in a dimly lit staircase while performing a vertical. The case settled for \$100,000 after the Officer returned to full duty status.

In the second case, an Officer assigned to a Bronx command suffered an injury to his left knee and left wrist which necessitated surgery after he slipped in an unlit stairwell while conducting a vertical. The case settled for \$100,000 at a pre-trial conference.

In the third case, an Officer assigned to a Bronx command received a \$70,000 settlement after injuring his knee requiring surgery when he tripped on a broken step while conducting a vertical.

It is critical in any LOD accident while conducting vertical patrols that photographs are taken of the defect which caused the LOD injury. In addition, the LOD report should be fact specific detailing the defect which contributed to the injury.

## SUPPLEMENTARY UNINSURED/UNDERINSURED MOTORIST COVERAGE

***Lieutenant recovers monetary damages from both the defendant's automobile insurance policy and the Lieutenant's personal SUM coverage after sustaining injuries while trying to remove and arrest the defendant from his vehicle***

A Lieutenant assigned to a Queens command was seriously injured when he attempted to place a defendant under arrest after the defendant refused to leave his motor vehicle. The defendant slammed the vehicle door on the Lieutenant's left knee, causing an injury which required surgery. The Lieutenant was awarded a ¾ line-of-duty disability pension. DCD, on behalf of the Lieutenant, sued the defendant for his injuries claiming the defendant's automobile policy should apply because the Lieutenant was injured by the vehicle's door. Accordingly, the injury occurred in the "use and operation" of a motor vehicle. The defendant possessed the minimum liability policy of \$25,000. DCD collected the \$25,000 for the Lieutenant and proceeded to ask the Lieutenant's personal automobile supplementary uninsured/underinsured insurance carrier for permission to proceed against the Lieutenant's SUM coverage. The attorneys representing the Lieutenant's insurance company objected and attempted to stay the Lieutenant's application to collect an additional \$75,000 under the Lieutenant's policy because they claim the injury did not occur during the "use and operation" of the motor vehicle. Mr. Decolator, on behalf of the Lieutenant, successfully argued to a Justice of the Queens Supreme Court that the act by the defendant of slamming the vehicle's door causing the Lieutenant's injury was in fact involving the use and operation of a motor vehicle. After Mr. Decolator's victory, the Lieutenant's insurance company paid the remainder of the Lieutenant's \$100,000 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 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. An illustration of the need for members of the service to protect themselves with SUM coverage is as follows: A Sergeant from Brooklyn North sustained serious injuries in an RMP accident and was eventually awarded a ¾ line-of-duty disability pension. The defendant only had a \$50,000 personal liability policy. The Sergeant had \$100,000 supplementary uninsured/underinsured motorist coverage. DCD collected the defendant's policy of \$50,000 and then recovered the maximum additional \$50,000 from the Sergeant's personal automobile policy. If the Sergeant possessed more SUM coverage, the recovery would have been greater.

## EDP ASSAULT

***Officer recovers \$125,000 from EDP's parents' homeowner's insurance policy after Officer sustained a broken leg while wrestling with the EDP***

An Officer assigned to a Manhattan South command suffered a broken leg after wrestling with a suicidal EDP on a street in Manhattan. The Officer and several sectors were looking for the suicidal EDP after receiving a radio transmission. A Sergeant spotted the EDP, however, the EDP ran southbound on Madison Avenue. The Officer caught the EDP. As he attempted to gain control of the EDP, he broke his leg on a utility pipe situated adjacent to an office building. DCD, on behalf of the Officer, sued the EDP pursuant to GML §205-e alleging the EDP violated §§140.05, 205.30 and 125.05(3) of the Penal Law. Fortunately, the EDP was still living with her parents and the parents possessed homeowner's insurance. After an intense back and forth negotiation with the law firm representing the homeowner's insurance company, Dominic DiPrisco settled the case for \$125,000. The Officer didn't require surgery and returned to full duty.

## AUTO/CITY/PRIVATE

***Officer receives \$215,000 settlement from City of New York and private defendant after his RMP was struck by a commercial vehicle***

An Officer assigned to a Brooklyn South command received a \$215,000 settlement from a private commercial motorist and the City of New York after sustaining injuries in an RMP accident. The Officer was a recorder responding to an emergency radio run. Both the operator and the civilian commercial motorist were traveling in the same direction. The operator of the RMP went into the opposite lane of traffic with lights and sirens on to bypass slow traffic. The defendant commercial operator was unaware of the RMP and attempted to make a wide left-hand turn striking the RMP on its passenger side thereby pinning the Officer in the RMP. The Officer sustained injuries to his right shoulder, neck and back. The Officer, although injured and in need of shoulder surgery, decided to bypass the surgery and returned to full duty. Unfortunately, the Officer had a second line-of-duty injury while wrestling with a perpetrator and was compelled to have shoulder surgery. As a result, he was awarded a ¾ line-of-duty disability for the second line-of-duty which greatly diminished the value of the RMP accident. DCD sued the City of New York pursuant to GML §205-e claiming his partner's actions in traveling the wrong way into oncoming traffic was reckless in violation of VTL §1212. DCD also cited VTL §§1104(e), 1144(b) and 1104(b)(2) as statutory predicates against the City. DCD sued the private commercial defendant claiming the driver's actions in making a wide left striking the RMP was negligent and in addition the commercial driver failed to yield to an emergency vehicle. Although the Officer didn't have the authorized surgery on his right shoulder as part of the RMP line-of-duty accident, DCD was able to negotiate a combined \$215,000 settlement on behalf of the Officer with the City of New York contributing \$25,000 of the settlement amount.

***Officer receives \$230,000 settlement after injuring his hip and shoulder in a line-of-duty accident***

A New York City Police Officer suffered a hip injury which required surgery when his police vehicle was rear-ended by a civilian vehicle on the FDR Drive. The Officer, who also suffered a torn labrum, was awarded a ¾ line-of-duty disability pension. The Officer received a \$230,000 settlement which nearly exhausted the available insurance.

## CIVILIAN

***Civilian octogenarian receives \$500,000 settlement from private homeowner after a household member threw shopping cart which injured civilian at a Costco***

A civilian octogenarian recovered a \$500,000 personal injury settlement from a homeowner when a member of the homeowner's household threw a shopping cart at another customer at a Costco and the cart accidentally struck the octogenarian causing injuries. The individual who threw the cart was arrested for assault. The injured party hired DCD to prosecute the individual who caused her injuries. DCD sued the individual and instructed the defendant to give the lawsuit to the homeowner's insurance carrier. DCD then monitored the criminal proceeding against the defendant to determine whether the homeowner's insurance would represent and indemnify the defendant. The homeowner's insurance carrier would have disclaimed coverage if the defendant pled guilty to an intentional assault. The defendant eventually pled guilty to reckless assault which required the insurance company to provide coverage. DCD was then successful in filing a summary judgment application with a Suffolk County Supreme Court Justice claiming the criminal conviction served as a civil judgment. Although the client did not require surgery, DCD was able to demonstrate that her injuries changed her lifestyle. The case settled during a mediation for \$500,000.

## NEWSLETTER REVIVES SEVEN 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 2014 newsletter alerted nine 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, Housing Authority and Transit Authority had expired. This firm revived seven cases.

In the first case, a Lieutenant assigned to CPV was seriously injured while exiting a temporary wooden staircase leading from the front of the CPV's temporary headquarters. The Lieutenant slipped on icy steps causing injuries to his right shoulder and right knee. The Lieutenant had consulted another attorney from the union who was familiar with DCD's work. The Lieutenant contacted and retained DCD. Unfortunately, the Lieutenant was approximately 280 days late in filing the notice of claim against the City of New York. DCD was compelled to file a late notice of claim application to a Justice in New York County Supreme Court. Although the City vehemently objected to the late filing, the Court granted the Lieutenant's application to file a late notice of claim. The matter is pending in New York County.

*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, a Detective assigned to Brooklyn North was injured when while qualifying at the Rodman's Neck range he was struck by a ricochet and sustained a burn and a scar to the back of his neck. The Detective never filed a line-of-duty injury report. He also did not know he had a potential claim against the City of New York for the injuries sustained as a result of the ricochet. The Detective read the DCD newsletter and retained DCD to seek late notice of claim approval from a Bronx County Supreme Court Justice. Although the notice of claim was filed 140 days late and there was no line-of-duty injury report filed, the City of New York did not object to DCD's application and the Court granted the application. The case subsequently settled.

In the third case, an Officer assigned to a Staten Island command suffered a fractured left leg when he slipped on a Housing Authority staircase during a vertical. The steps of the staircase had a foreign substance on them. As the Officer descended from the sixth floor to the fifth floor, the Officer did not see the foreign substance because of inadequate lighting. The Officer fell and broke his left leg. The Officer was unaware of his right to sue until the Officer read DCD's newsletter. Unfortunately, 41 days elapsed from the date of the accident to the date that DCD was able to file the notice of claim. DCD filed a late notice of claim application with a Justice in Richmond County Supreme Court. The Housing Authority consented to the application and the notice of claim was deemed timely served. The matter subsequently settled.

In the fourth case, a Sergeant assigned to a Brooklyn South command slipped and fell on old ice in the command parking lot. The Sergeant suffered serious injuries to her neck as a result of the line-of-duty accident. The Sergeant was unaware of her right to sue until another Officer alerted her to DCD. The Sergeant retained DCD one day after the 90-day notice of claim time limitations had elapsed. DCD filed the notice of claim the next day which made the notice two days late. DCD filed the late notice of claim application to a Justice of the Kings County Supreme Court requesting permission to file a late notice of claim. In light of the fact that the notice of claim was filed only two days late, the City of New York didn't object to DCD's application and the Court granted the late notice of claim petition. The case is pending in Kings County Supreme Court.

In the fifth case, an Officer assigned to a Brooklyn South command suffered a broken hand which required surgery when the metal door to a narcotics safe fell on her right hand causing the injury. The door to the safe had been broken for an extended period of time. The Officer was unaware of her GML §205-e right to sue until approximately seven months after the 90-day statutory time frame elapsed. The Officer hired DCD who immediately filed the notice of claim to "stop the clock" and then filed a petition with a Justice of the Kings County Supreme Court seeking permission to file the late notice of claim. After a contentious argument with the City and the Court, a Kings County Supreme Court Justice granted the Officer's application. The matter is pending in Kings County.

In the sixth case, an Officer assigned to a Transit Conditions Unit suffered a torn ACL which necessitated surgery after twisting his knee on an out-of-service escalator in a subway station in Washington Heights. The Officer was unaware of his right to sue until 21 days elapsed after the 90-day filing requirement to file a notice of claim expired. The Officer hired DCD which immediately filed the notice of claim against the MTA and New York City Transit Authority. DCD filed an application to a Justice of the New York County Supreme Court requesting the Officer be permitted to file the late notice of claim in light of the notice of claim being only 21 days late. Neither the MTA nor the New York City Transit Authority objected to the Officer's application and the application was granted. The case is pending in New York County Supreme Court.

In the seventh case, an Officer from Manhattan North suffered a serious injury to his left knee when while responding to a radio run of a violent EDP, the Officer's partner stopped the police vehicle suddenly causing the Officer to strike his knee on the unpadded computer. The Officer suffered a tear which required surgery. The Officer was subsequently awarded a ¾ line-of-duty disability pension. It was approximately eleven months after the accident when the Officer was alerted to DCD. DCD filed the notice of claim and then the petition for late notice of claim approval. The fact that the application was filed eleven months after the accident and over eight months after the 90-day time limitation expired made this application challenging. The application was granted by a New York County Supreme Court Justice because the line-of-duty paperwork was so detailed the City could not claim they were prejudiced by the late filing. The matter is pending in New York County Supreme Court.