

## MORRIS DUFFY ALONSO & FALEY MUNICIPAL LAW UPDATE (NEW YORK STATE)

In an effort to keep our municipal clients apprised of changes in the law we have summarized a recent New York State decision.

### THE NEW YORK STATE COURT OF APPEALS LIMITS WHAT IS CONSIDERED TO BE A "SPECIAL DUTY"

*Laratro v. City of New York*, 8 N.Y.3d 79 (2006)

It goes without saying that the reason for the existence of municipal corporations is to provide services to those within its boundaries. This is especially true when it comes to protecting health and safety. It also goes without saying that a municipality cannot possibly provide all services to all residents, businesses and visitors at all times. The failure to protect health and safety can sometimes lead to tragic consequences. Fortunately, the courts in New York State recognize the limitations of municipalities and place restrictions on the circumstances when a municipality will be held civilly liable for failing to perform a duty.

It is well established that "a municipality is not liable to a person injured by the breach of a duty-like the duty to provide police protection, fire protection or ambulance service-that the municipality owes to the general public." *Laratro v. City of New York*, 8 N.Y.3d 79 (2006). For a municipality to be liable for such a breach, a plaintiff must show that the municipality had a "special relationship" with him or her. The issue of what constitutes a special relationship between an individual and a municipality has been litigated often. In the recent case of *Laratro*, the New York State Court of Appeals, the highest court in the state, has further established the parameters of this special relationship.

In the leading case of *Cuffy v. City of New York*, 69 N.Y.2d 255 (1987), the Court of Appeals established the elements of what constitutes a special duty. They are: "(1) an assumption by the municipality, through promises or actions, of an affirmative duty to act on behalf of the party who was injured; (2) knowledge on the part of the municipality's agents that inaction could lead to harm; (3) some form of direct contact between the municipality's agents and the injured party; and (4) that party's justifiable reliance on the municipality's affirmative undertaking." *Cuffy* at 261.

In *Laratro*, the Court defined "direct contact" and "justifiable reliance." Plaintiff suffered a stroke at work. His co-worker found him sitting at his desk with his head in his hands. She informed plaintiff that she was going to call for an ambulance and then dialed 911. The 911 operator informed the caller that an ambulance would respond as soon as possible, but, unfortunately, the ambulance did not respond until 35 minutes had

passed. Plaintiff suffered brain damage which, according to expert testimony, was made worse because of the delay in getting him to the hospital.

The Court held that plaintiff did not satisfy either the third or fourth requirement of the *Cuffy* test. Plaintiff argued that as he could neither contact nor rely on the 911 operator because he had suffered a stroke, the contact and reliance should be "transferred" to his co-worker who was a long time friend. According to the Court, extending the element of personal contact and reliance to a co-worker or friend would "undermine an important reason for the direct contact and reliance requirements, which serve 'as a basis for rationally limiting the class of citizens to whom the municipality's special duty extends'" *Laratro* quoting *Cuffy* at 261.

The Court has extended direct contact and reliance by someone other than plaintiff to establish a special relationship only where the person making the contact was acting on behalf of a family member who lived with that person. See *Sorichetti v City of New*, 65 N.Y.2d 461 (1985) (mother sought the help of police to protect her six year old daughter) and *Cuffy* (the Court found a special relationship when a man sought police protection for his family who lived with him, but did not extend it to the man's adult son who did not live with him).

Note: A finding of a special duty to an individual does not, by itself, mean liability for a municipality. To hold a municipality liable, a plaintiff must prove that the municipality breached that special duty. Of course, to protect its inhabitants properly a municipality must at times take on a special duty. Thus, it is imperative that a municipality that takes on a special duty through actions or promises to act on behalf of someone carries out its actions or fulfills its promise. Otherwise, a municipality can be held civilly liable if it does not fulfil its duty after an agent of the municipality, through contact with a person or his or her immediate family, causes someone to forgo other avenues of assistance because he or she is relying on the help of the municipality.