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Liability Exemptions for Emergency Vehicles

New York State recognizes that drivers of authorized emergency vehicles have a special need to respond quickly to emergencies.

The provisions of Vehicle and Traffic Law §§114(b) and 1104^a give operators a qualified exemption from certain traffic laws when involved in an emergency operation. Operators will be exempt from liability if they follow the prescriptions set forth in these statutes unless they exhibit a reckless disregard for the safety of others.

Emergency Vehicle

An emergency vehicle is broadly defined as an ambulance, police vehicle, fire vehicle or any other governmental authority vehicle.¹ Under Vehicle and Traffic Law §114(b), emergency operation includes the operation of an authorized emergency vehicle responding to the scene of an accident, police call, alarm or fire.¹

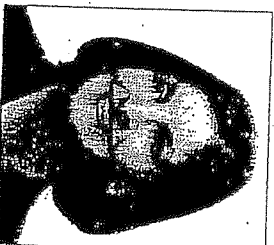
Emergency Operation

Over the years, the courts have expanded the definition of emergency operation under Vehicle and Traffic Law §114(b). In *People v. Bisig*,² an ambulance driver was stopped for speeding while operating his ambulance 25 mph over the speed limit when responding to an emergency call. The ambulance was traveling on a four-lane highway in fairly heavy traffic and all other vehicles were able to yield the right of way to the ambulance. The driver was contacted twice via radio by the ambulance dispatcher emphasizing the emergency nature of his mission.

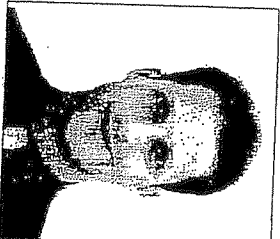
The court found the driver not guilty of speeding and held that even if the emergency is not, in fact, actual, the driver will be afforded the immunity provided for in the Vehicle and Traffic Laws provided he has a reasonable belief that he is responding to an emergency call.

In *Criscione v. City of New York*,³ the Court of Appeals applied a liberal interpretation of Vehicle and Traffic Law §114(b). It held that a radio call to officers on patrol by a dispatcher regarding a 911 complaint falls within the plain meaning of the statutory definition of an emergency operation, regardless of the emergency vehicle operator's belief that he is responding to a nonemergency.

In *Criscione*, two officers received a call from a police dispatcher to investigate a 911 call regarding a family dispute. The dispatcher informed the officers that the call was from a woman who complained of a man kick-



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ing her door. En route to the site of the complaint, their patrol car entered an intersection and collided with a civilian vehicle.

The officer conceded that the police call did not constitute an emergency situation under either departmental rules or his own judgment. The officer described the radio call he received as a "10-52" which the Police Department designated as a dispute under the category of "non-crime incidents."

The court reversed the jury verdict against the City of New York and found that the officers were involved in an emergency operation as defined in Vehicle and Traffic Law §114-b. The court reasoned that there was no legislative intent to vary the definition of emergency operation based on individual department classifications. Under §114-b, a police dispatch call is an emergency operation making it "irrelevant whether the officer believed that the 10-52 call was an emergency or how the Police Department categorized this type of case." The court, however, ordered a new trial due to the lower court's failure to instruct the jury that the officer was subject to a reckless disregard standard of liability.

In *Williams v. City of New York*,⁴ a police officer was injured when a passing bus struck the open driver's-side door of the triple-parked unmarked patrol car from which the officer and the driver of the patrol car had just exited. The collision caused the patrol car to move and strike the officer who was standing between the police vehicle and the double-parked car which the police officer was investigating as being stolen.

In dismissing the complaint the court held that an emergency vehicle operator engaged in pursuing an actual or suspected violator of the law is afforded the protection of the Vehicle and Traffic Law.

The driver of the patrol car was engaged in an emergency operation, that is, the pursuit of an actual or suspected violator of the law. The conduct of the officer was privileged under Vehicle and Traffic Law §114-b and §1104(b)⁵ and under the circumstances there could be no liability without a showing that the officer acted with a reckless disregard for the safety of others. Because the police vehicle had used its portable light and siren to pull over the suspected stolen vehicle and the driver of the police vehicle had observed a damaged steering column on the suspected stolen vehicle, it was clear that the police were engaged in an emergency operation.

Emergency vehicle operators cannot disregard all rules of prudent and responsible driving. Vehicle and Traffic Law §1104(c) imposes upon drivers of authorized emergency vehicles engaged in an emergency operation a duty to use audible signals "by bell, horn, siren, elec-

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tronic device or exhaust whistles as may be reasonably necessary." The vehicle must also be equipped with at least one lighted lamp so that, from any direction and under normal atmospheric conditions, it is visible from a distance of at least 500 feet and must have at least one red light displayed and visible.¹⁰

In *Abood v Hosp. Ambulance Servs.*,¹¹ the defendant's ambulance collided with another vehicle while at a traffic-controlled intersection. The ambulance had its red turret light on, but did not sound a siren. The issue before the Court of Appeals was whether "an ambulance, on an emergency call, is required at a traffic-controlled intersection to sound an audible emergency signal in order to be entitled to the privileges of an emergency vehicle" under §1104 of the Vehicle and Traffic Law.¹²

The statute requires the use of a signal "as may be reasonably necessary" and the Court noted that construction of this phrase "is the pivotal point in controversy."¹³

The ambulance service argued that this phrase negated an absolute requirement that an emergency signal be given and that it was in the ambulance driver's judgment as to whether it was "reasonably necessary" to sound a siren and that a jury would then decide if his judgment was correct. The Court found that the phrase "as may be reasonably necessary" was directed at other traffic regulation immunities, such as speed limitations, and not at the immunity from observing red lights. Accordingly, it is the law of New York State that when proceeding against a red traffic signal, caution and statute require that audible warnings be sounded loud enough to be heard and given soon enough to be acted upon so as to avoid a collision.

Reckless Disregard

Vehicle and Traffic Law §1104(e) provides that the driver of an authorized emergency vehicle has the duty to drive with due regard for the safety of all persons. The immunity provisions of §1104 may not protect the driver from the consequences of his reckless disregard for the safety of others.¹⁴

The Court of Appeals has held that reckless disregard can be demonstrated only by a finding that the driver consciously disregarded known risks of harm and that he ignored a grave risk, which was likely to result in harm to others.¹⁵

In *Scarinen v. Kerr*,¹⁶ a village police officer observed a van that was speeding and making erratic maneuvers. After witnessing the van speed through a stop sign, the officer activated his patrol car's emergency lights and siren. The officer pursued the van and concluded that it was not going to stop. The officer reached for his radio to call for help, but was interrupted by the sound of a crash that ensued between the van and a civilian driver. At the time of the collision, the police officer and suspect were traveling at approximately 60 mph in a 35-mph zone.

The Court granted the defendant's motion for summary judgment and held that a police officer may be civilly liable to bystanders injured as a result of a high-speed chase only if the officer acted with a reckless disregard for the safety

of others. In order to demonstrate such a reckless disregard, evidence must be presented that the actor intentionally performed an unreasonable act in disregard of an obvious risk that made it likely for harm to follow and had a conscious indifference to the outcome.

Traveling in excess of the speed limit alone does not constitute a predicate for liability since it is expressly privileged under the Vehicle and Traffic Law. The Court found that the officer's actions did not, as a matter of law, overstep the limits of the statutory qualified privilege for drivers of emergency vehicles. The officer's top speed of 60 mph was reasonable for police pursuit on a relatively empty residential street and the risk posed by wet roads and possibility of traffic was a risk the officer was entitled to take in light of the interest in stopping a motorist whose conduct was a clear and immediate threat to safety.

Similarly, in *Sczerbiak v. Pilot*,¹⁷ a police officer struck a bicyclist while responding to a police dispatch report of five males fighting a few miles away. During the moment of impact, the officer momentarily glanced down from the road in order to turn on his emergency lights. There was conflicting testimony as to whether the officer was driving 39 mph or in excess of 55 mph. There was testimony at trial that the bicyclist darted out in front of the officers car midblock, rather than from an intersection.

The Court affirmed the order of the Appellate Division granting judgment as a matter of law for the defendant. Applying the reckless disregard standard, it held that a momentary lapse of judgment alone does not rise to the level of recklessness required of the driver of an emergency vehicle in order to subject him to liability.

In *Patella v. New York*,¹⁸ a police officer was engaged in a high-speed pursuit with a group of minors driving a stolen vehicle. The ensuing chase lasted for approximately 15 minutes at speeds up to 70 mph on a curved road. The officer lost sight of the stolen vehicle, but continued pursuit until he observed that the vehicle had overturned on a curve down a hill, causing severe injuries to the claimant, a passenger in the stolen vehicle.

The Court held that in order to judge whether the operator of an emergency vehicle ignored a grave risk, which was likely to result in harm to others, the reasonableness of the driver's conduct must be gauged at the time and under the circumstances in which he acted, not in retrospect. The Court reversed the lower court and granted the defendant's motion for summary judgment on the grounds that the officer's conduct was reasonable under all the known circumstances and that it was clearly proper for him to initiate pursuit of a stolen vehicle and to maintain pursuit given the erratic manner in which the vehicle was being operated.

In contrast, in *Campbell v. City of Elmira*,¹⁹ a fire truck entered an intersection at a speed of 10-15 mph against a red light when it collided with a motorcyclist. The fire truck was responding to a general alarm at the county jail. At trial there was conflicting testimony regarding whether the fire truck driver accelerated into the intersection without looking for oncoming motorists, whether any emergency sirens were heard and whether the defendant

driver knew the color of the light before entering the intersection. The court upheld the verdict and found that the jury had a rational evidentiary basis to find that speeding through an intersection against a red light "indifferently and in disregard of any modicum of statutory required attentiveness"²⁰ constitutes such a conscious disregard even during an emergency.

In *Digan v. Longo*,²¹ a paramedic was injured while aboard an ambulance that was involved in a collision while responding to an emergency call. The driver of the ambulance attempted to pass a vehicle stopped in front of it by moving to the left and into the oncoming lane of traffic. The stopped vehicle then turned left into the path of the emergency vehicle causing the collision.

The Court held that the standard of reckless disregard is applicable even where the injured party was a passenger in the authorized emergency vehicle. The Court upheld the jury verdict finding that the operator of an emergency vehicle could be held liable for the paramedic's injuries if he operated the vehicle with a reckless disregard for the safety of others.

Conclusion

The reasonableness of the operator's conduct must be gauged at the time and under the circumstances in which he acted, not in retrospect. A driver must use a horn and siren and as long as there is no reckless conduct, then an emergency is deemed to be in the eye of the beholder.

1. NY CLS Vehicle and Traffic Law §114(b) defines an emergency operation as follows: "The operation, or parking, of an authorized emergency vehicle, when such vehicle is engaged in transporting a sick or injured person, transporting prisoners, delivering blood or blood products in a situation involving an imminent health risk, pursuing an actual or suspected violator of the law, or responding to, or working or assisting at the scene of an accident, disaster, police call, alarm or fire, actual or potential release of hazardous materials or other emergency. Emergency operation shall not include returning from such service."

2. NY CLS Vehicle and Traffic Law §1104.

3. NY CLS Vehicle and Traffic Law §101 defines an authorized emergency vehicle as follows: "Every ambulance, police vehicle or bicycle, correction vehicle, fire vehicle, civil defense emergency vehicle, emergency ambulance service vehicle, blood delivery vehicle, county emergency medical services vehicle, environmental emergency response vehicle, sanitation patrol vehicle, hazardous materials emergency vehicle and ordinance disposal vehicle of the armed forces of the United States."

4. See NY CLS Vehicle and Traffic Law §114(b).
5. 46 Misc.2d 299, 259 N.Y.S.2d 452 (Monroe County 1955).
6. 97 N.Y.2d 152, 736 N.Y.S.2d 656 (2001).
7. 1d at 158.
8. 240 A.D.2d 734, 659 N.Y.S.2d 302 (2nd Dept. 1997).

9. NY CLS Vehicle and Traffic Law §1104(b) prescribes the following actions as permissible when exercised by the driver of an emergency vehicle engaged in an emergency operation: (1) stop, stand or park irrespective of the provisions of this title; (2) proceed past a steady red signal, a flashing red signal or a stop sign, but only after slowing down as may be necessary for safe operation; (3) exceed the maximum speed limits so long as he does not endanger life or property; (4) disregard regulations governing directions of movement or turning in specified directions.

10. See NY CLS Vehicle and Traffic Law §1104(c).
11. 30 N.Y.2d 295, 332 N.Y.S.2d 877 (1972).
12. 1d at 297.
13. 1d.

14. See NY CLS Vehicle and Traffic Law §1104(e).

15. See *Campbell v. City of Elmira*, 84 N.Y.2d 505, 620 N.Y.S.2d 302 (1994). See also *Hughes v. Chiera*, 4 A.D.3d 872, 772 N.Y.S.2d 772 (4th Dept. 2004).

16. 84 N.Y.2d 494, 620 N.Y.S.2d 297 (1994).

17. 90 N.Y.2d 553, 664 N.Y.S.2d 252 (1997).

18. 141 A.D.2d 999, 530 N.Y.S.2d 650 (3rd Dept. 1988).

19. *Campbell*, 84 N.Y.2d at 508.
20. 1d at 511.
21. 169 A.D.2d 672, 564 N.Y.S.2d 601 (3rd Dept. 1991).