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MORRIS DUFFY ALONSO & FALEY  
MUNICIPAL LAW UPDATE (FEDERAL)

In an effort to keep our municipal clients apprised of changes in the law we have summarized two recent federal cases: A U.S. Supreme Court decision and a recent settlement.

THE UNITED STATES SUPREME COURT  
RULES ON HIGH-SPEED POLICE PURSUIT

Scott v. Harris, 550 U.S. \_\_\_\_ (2007)

1. The videos taken from police vehicles can be viewed from the official U.S. Supreme Court website at [www.supremecourtus.gov/opinions/06slipopinion.html](http://www.supremecourtus.gov/opinions/06slipopinion.html)

On a rainy night in Georgia, an incident occurred that resulted in the United States Supreme Court issuing a decision on police pursuits. In Scott v. Harris, the Court considered this question: "Can an officer take actions that place a fleeing motorist at risk of serious injury or death in order to stop the motorist's flight from endangering the lives of innocent bystanders?" In an eight to one vote, the Supreme Court answered yes.

A county deputy observed a motorist (Harris) traveling at 73 miles per hour on a road with a 55 mile per hour speed limit. When the deputy attempted to pull Harris over by activating his flashing lights, Harris, instead of stopping, sped away on a two lane road at a speed in excess of 85 miles per hour. To stop Harris's speeding car, Deputy Scott, who was driving behind Harris, pushed the rear of Harris's car with the bumper of the police car. After being struck, Harris lost control of his vehicle. The car quickly went off the roadway, down an embankment, overturned and crashed. Harris was seriously injured and was rendered a quadriplegic.

Harris sued Deputy Scott and others under 42 U.S.C. § 1983 for the violation of his civil rights under the Fourth Amendment. In deciding this case under the applicable standard of objective reasonableness, the Court balanced the risk of bodily harm that Deputy Scott's actions posed to Harris verses the risk to the public caused by Harris's conduct. When considering this balance, the Court took into account the relative culpability of Harris and the members of the public placed at risk. According to the Court, "[i]t was [Harris], after all, who intentionally placed himself and the public in danger by unlawfully engaging in the reckless high-speed flight that ultimately produced the choice between two evils that Scott confronted.... By contrast, those who might have been harmed had Scott not taken the action he did were entirely innocent."

Accordingly, the United States Supreme Court held: "A police officer's attempt to terminate a dangerous high-speed car chase that

threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk."

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A MUNICIPALITY CANNOT FORM AN AGENCY TO ENFORCE MOVING VIOLATIONS THAT DOES NOT HAVE OFFICIAL STATE POLICE POWER

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New York State Vehicle and Traffic Law ("VTL") § 207 provides the authority for police officers to issue summonses for moving violations under the VTL. However, three villages within the County of Suffolk, which surrendered their police authority to the Suffolk County Police Department, created a position of constable. The villages had these constables issue summonses under the VTL.

In addition to surrendering police authority, the request to the New York State Division of Criminal Justice Services to register their constables as peace officers was denied.

Under this set of facts, village constables would only have authority to issue summonses for violations of village rules and ordinances. However, the villages concerned used these constables to enforce the laws of the VTL. People who have received summonses from the constables, as a class, sued the villages in federal court under the civil RICO statute and for the violation of their civil rights under the Fourteenth Amendment.

After motions to dismiss the cases were denied, the villages settled the lawsuits. Each village was required, by the terms of the settlement, to pay refunds that reached into seven figures in the aggregate.

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