

## MORRIS DUFFY ALONSO & FALEY

# MUNICIPAL LAW UPDATE

### A Municipality Is Not Liable Unless Police Officer Acted In “Reckless Disregard”

*Badalamenti v. City of New York*, et al. Supreme Court of New York, Appellate Division, Second Department, 2006 NY Slip Op 4788; 2006 N.Y. App. Dis. LEXIS 7918

The parties’ submissions in this summary judgment motion show that the defendant police officer did not stop at the stop sign of a controlled intersection and that he accelerated his speed upon entering the intersection. There was a question of fact whether the Police Officer had activated the turret lights and siren before entering the intersection. Under these facts the defendant’s motion for summary judgment was denied. The Appellate Division Second Department reiterated the “reckless disregard standard which requires that the officer:

“ intentionally committed an act of an unreasonable character in disregard at a known or obvious risk that was so great as to make it highly probable that harm would follow”. (See *Szczerbiak v. Pilat*, 90 N.Y.2d 553, 557, 686 N.E.2d 1346, 664 N.Y.S. 2d 252; *Saarinen v. Kerr*, supra, at 501; *Campbell v. City of Elmira*, 84 N.Y.2d 505, 644, N.E.2d 993, 620 N.Y.S.2d 302).