

## Highway

### Liability of Town Highway Emergency Vehicles

**T**his is the season to be plowing. Unfortunately, roads aren't always the only thing that gets plowed — sometimes a plow will strike mailboxes in the right of way, sometimes parked cars, and occasionally a moving vehicle. The same adverse weather conditions that make plowing the roads necessary can lead to very poor visibility and difficulty in handling vehicles, factors which contribute to accidents. It is therefore important to know exactly what the Town's exposure to liability is in these instances. Experienced Highway Superintendents may already be familiar with what's to follow; coming off a biennial town election, however, there will be a number of newly elected Superintendents who are hearing this information for the first time. Either way, it's important to know what your exposure to liability is.

Five years ago the New York Court of Appeals held that highway vehicles, when "actually engaged in work on a highway," are exempt from the rules of the road, and their liability is limited to reckless conduct (a person acts recklessly when he acts in conscious disregard of a known or obvious risk that is so great as to make it highly probable that harm will follow). In *Riley v. Broome County*, victims of two accidents sued Broome County and the State of New York respectively, asking the court to find liability for damages for the negligent operation of highway equipment which cause them injury.

With the exception of driving under the influence of drugs and alcohol, the Court held that "the rules of the road

explicitly do not apply to persons, teams, motor vehicles, and other equipment while actually engaged in work on a highway" under Vehicle and Traffic Law § 1103(b). Similarly, Vehicle and Traffic Law § 1202(a), which regulates stopping, standing and parking, does not apply to "hazard vehicles while actually engaged in hazardous operation on or adjacent to a highway. . ." The Court went on to find that "the language of these statutes seems clear: all vehicles 'actually engaged in emergency operations' are exempt from the rules of the road." As a result, liability in such cases attaches to reckless, rather than negligent, conduct.

Five years later, this standard continues to be applied by courts at all levels when determining liability stemming from highway vehicles "actually engaged in work on a highway". Most recently, the Court of Appeals confirmed the application of this higher standard in *Primeau v. Town of Amherst*, 2005 N.Y. Slip Op. 07866. In *Primeau*, the evidence at trial established that the driver of a snowplow failed to apply his brakes with enough time to stop at a stop sign. As a result, the snowplow entered the intersection at 3-4 miles per hour and inadvertently struck the plaintiffs vehicle. Although a jury found the defendant liable, the verdict was overturned on appeal. The Court of Appeals unanimously agreed with the Appellate Division that the evidence presented at trial was not sufficient to find the driver of the plow guilty of "operating a snowplow recklessly within the meaning of Vehicle and Traffic Law."❖