Emergency vehicle operators protected from liability

Operators of emergency vehicles must work under the burden of two competing priorities: to make haste to arrive at the scene as quickly as possible; but still to arrive safely and without causing an accident themselves. In both instances, lives hang in the balance: the lives first responders are racing to save, and concomitantly the lives they safeguard by exercising appropriate caution en route.

New York law has long recognized these difficulties, and by statute has provided qualified immunity from liability for emergency vehicle drivers. Most recently, New York’s highest court has reaffirmed that legal protection, yet in the context of ensuring that the law is always used as a shield and not a sword. Members of the profession, be they on the side of plaintiffs, defendants or merely interested observers, should take note.

In Ayers v. O’Brien, 13 N.Y.3d 466 (2009), the plaintiff Ayers was an upstate Broome County deputy sheriff. While executing a U-turn to pursue a speeding vehicle, his patrol car was struck by the defendant O’Brien driving a third vehicle. (We can only assume the alleged speeder got away!) Ayers sued O’Brien for his injuries, making the customary allegations of negligence. In his defense, O’Brien sought to hold the deputy accountable for his own lack of care in operating his cruiser. Obviously, O’Brien was asserting the affirmative defense of comparative fault, and sought an apportionment of the fault of each participant in the incident on a percentage basis.

Ayers moved to dismiss O’Brien’s affirmative defense, claiming that New York law allowed him a qualified immunity from liability while operating an emergency vehicle. Although the trial court agreed with his position, the Appellate Division, Third Department did not, and it ruled that this defense was unavailable to Ayers when he stood in the shoes of a plaintiff. New York’s highest court agreed.

The Court of Appeals first examined the statute. Notably, Section 1104 of the New York Vehicle and Traffic Law (the V.T.L.) accords a number of privileges and protections to operators of authorized emergency vehicles, provided they are involved in an “emergency operation.” N.Y. V.T.L. § 1104(a). In relevant part, the operator of an emergency vehicle may exceed speed limits (as long as such actions do not endanger life or property), “run” red lights and stop signs, and disregard normal restrictions on turns and directions of movement. Writing for the tribunal, Associate Judge Pigott summarized the text as “broadly describing the privileges afforded a driver of an authorized emergency vehicle when involved in an emergency situation.” Ayers, A13 N.Y.3d at 458.

Yet these privileges are not without limitation, as the Court went on to note. Again, the statutory text is clear. The emergency vehicle operator must nonetheless bear the burden of driving with “due regard for the safety of all persons,” and will suffer the consequences of driving with “reckless disregard for the safety of others.” N.Y. V.T.L. § 1104(c). Indeed, as Judge Pigott opined, while the law does much to immunize an operator from liability in an emergency situation, nevertheless the statute specifically does not protect the driver “from the consequences of his reckless disregard for the safety of others.” Ayers, 13 N.Y.3d at 458 (quoting N.Y. V.T.L. § 1104(c)).

New York’s highest court found the purpose of the law to be clear cut: to give operators of emergency vehicles the freedom to perform their duties unhampered by the nominal rules of the road. The law overcomes the concern that emergency personnel, worried about incurring civil liability, might be deterred from acting decisively and taking calculated risks in order to save life or property or to apprehend miscreants. The statute therefore precludes the imposition of liability for otherwise privileged conduct by an emergency vehicle operator, except where the driver’s conduct rises to a level of recklessness. This is a heavy burden of proof to be carried by any party suing an emergency vehicle operator for injuries, because it requires that person to prove
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something much more than simple negligence on the part of the emergency vehicle operator. This "reckless disregard" standard, said the Court of Appeals, "allows emergency personnel to act swiftly and resolutely while at the same time protecting the public's safety." Ayers, 13 N.Y.3d at 459 (citing Saarinen v. Kerr, 84 N.Y.2d 494, 502 (1994)). N.Y. at 

Thus the Court of Appeals confirmed this special immunity from liability for emergency vehicle operators. But the point to be made, said the court, is that this statutory protection is a shield, to be employed defensively. It is not a sword to be used offensively, and that meant trouble for Deputy Ayers' legal position.

The essential difference here, said the Court of Appeals, is that Ayers wanted to use the statutory immunity not to defend himself but as a weapon aimed at eradicating O'Brien's defenses. To allow that would be fundamentally unfair, said the state's highest tribunal, because if it is the emergency vehicle operator who is the plaintiff then the operator's conduct could not be held accountable unless it rose to the level of reckless disregard, while the other driver would be denied a defense normally available to him.

In point of fact, the Court of Appeals gave the example of where the emergency vehicle operator, able to use the statutory immunity to undermine the other driver's defense, could recover full monetary damages even from an opposing driver who was only minimally negligent. The court found that New York's lawmakers never intended the statute to be used that way. In the end, New York's highest court declared that the provisions of the VTL were to be used by emergency vehicle operators exclusively as a legal shield from liability in a liability case, and never offensively as a sword to enhance their own recovery in such proceedings. Ayers, 13 N.Y.3d at 459.

In sum, the Ayers case is much more important than it at first seems - and its underestimated significance comes largely from the fact that it is of grave import to everyone who travels the roads of New York State. Certainly, it makes the narrow legal point that an emergency vehicle operator cannot use statutory immunity from liability as a weapon when the operator is the plaintiff in court suing for personal injuries sustained in a vehicular incident. After all, and as the Court rightly emphasizes, the statute is a shield, and not a sword. In so holding, the Court of Appeals consigns Section 1104 of the VTL to its proper place as a grant of a specific privilege to emergency personnel in carrying out their lifesaving duties. Yet at the same time it must be delimited so that it cannot denigrate what would be the otherwise routine defenses of a party to a liability suit. A privilege, but not a license to indulge in reckless behavior.

Thus it is the confirmation of the law as a shield that is the far more important precept to be taken from this case, a lesson of far wider application. After all, many millions of us take to the State's highways and byways every day, and it is virtually undeniable that we civilian drivers would be the other parties to such an unfortunate incident as encountered by the Court in Ayers. Again, both plaintiff and defendant bars take due note: here we have New York's highest state court unequivocally reminding us that our lawmakers fully intended to free emergency vehicle operators from the constraints of the usual rules of the road when responding to an emergency call. An emergency vehicle operator enjoys this qualified immunity, subject to losing the shield only when guilty of reckless disregard in the performance of official duties. And while the Court of Appeals strongly reminds us of the special protections awarded those who put themselves in harm's way to keep the rest of us safe, it reminds the very persons the law protects that they must still exercise due regard for the safety of others on the road. In that light, this latest decision is not only mandatory reading for emergency vehicle operators. It is welcome reading indeed for all New York drivers and those that represent them in court.

Anthony Michael Sabino is a Partner in Sabino & Sabino, P.C., Mineola, concentrating his practice in complex litigation, and is also a Professor of Law, St. John's University, Tobin College of Business.

James N. Sabino, an undergraduate student at Hofstra University, is a volunteer EMT with the Manhasset Lakeville Fire Department, in preparation for entering the medical profession.