

## And The Defense Wins

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On January 31, 2017, DRI members [Michael P. Mezzacappa](#), a partner in the General Liability Group at **Kaufman Borgeest & Ryan LLP**, and [Allison Auer Waase](#), an associate with the firm, obtained a defense verdict in favor of their client in *Daniel P. Ronca & The City of New Rochelle v. Pelmar Inc.*, Index No. 053253/2014, Westchester County, New York.

The plaintiff, Daniel P. Ronca, a firefighter with the City of New Rochelle, claimed that the defendant failed to maintain the building's exterior portico, after the decorative outer edge that he stepped upon collapsed under his weight, causing a 25-foot fall, following his claimed emergency egress from the fire apartment. The building in question is a multiple dwelling apartment building, equipped with a fire escape, and on the date of the loss, the plaintiff responded to a fully engulfed structural fire at the building. The City of New Rochelle intervened in the lawsuit in the early stages of discovery in an effort to recover the medical expenses and wages paid out to the plaintiff after he failed to return to work following the accident.

Importantly, the firefighter plaintiff asserted causes of action pursuant to general negligence as well as GML 205-a, the latter of which notoriously affords firefighters in New York a much lower burden of proof, as they are not required to prove proximate cause. Under GML 205-a, the plaintiff need only show a practical or reasonable connection between the violation of statute, rule, or ordinance (statutory predicate) and the plaintiff's injuries, and the defendant may not assert any comparative fault arguments. The City of New Rochelle's claim was premised on plaintiff's recovery, and sought repayment for all of the monies paid to the firefighter plaintiff.

Prior to the trial, a series of statutory predicates were dismissed by the court after a motion for summary judgment was filed on behalf of the defendant. Accordingly, at the time of the bifurcated trial, only two statutory predicates remained along with negligence.

During the trial, the plaintiffs' presented expert testimony from an architect and the City of New Rochelle's Code enforcement officer, as well as testimony from another firefighter who was in the fire apartment performing a vent, enter, and search mission with the plaintiff just prior to the plaintiff's egress. Following successful cross-examinations of plaintiffs' experts, plaintiffs' counsel withdrew their negligence claim and proceeded only on the GML 205-a claim.

In his arguments, Mr. Mezzacappa highlighted to the jury that the portico at issue was never designed or intended to hold the weight and the force that plaintiff exerted upon it. Prior to the withdrawal of the negligence claim, it was also argued that plaintiff acted outside of his training in his attempt to jump onto the portico as he failed to tie off with his rope or hook; call either a "mayday" or an "urgent;" or seek a roof rope

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and/or ground ladder rescue. Ultimately, after a week of testimony, the jury decided that the defendant had not violated either of the predicate statutes at issue.

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