

# FIREFIGHTERS' NEWSLETTER



## HOW TO MAKE A GROWN LAWYER CRY

*"There's a big difference between being late and too late .... You're too late."*

-Tony Soprano

There are some things that we never want to hear. Just ask the guy on the receiving end of Tony's admonition, a certain individual who was late in repaying his loan. He found out that the difference between late and too late is everything. All too often, I find myself in the frustrating position of having to repeat these very words to injured firefighters.

In the law, there is most certainly such a thing as too late. Lawsuits have expiration dates, called statutes of limitations. If an injured firefighter comes to my office for the first time after the statute of limitations has expired, there is not a thing in the world that I can do to help him. It happens more often than you would think.

A perfect example involved a first-grade firefighter who called me just last month. He wanted help getting his 3/4-disability pension. Not sur-

prisingly, the 1B medical board was dragging its heels with respect to his pension application. In talking to this firefighter, I learned that he had a very strong personal-injury case under the "firefighter's statute", General Municipal Law Section 205-a. His injuries were severe, and he was rightfully entitled to a lifetime of financial security. There was just one problem; he was too late. Talk about wanting to cry.

In his case, he was injured in a building owned by the City of New York. The statute of limitations with respect to claims against the City is especially short. A notice of claim must be filed within 90 days of the happening of the accident, and a lawsuit must be filed within one year and 90 days of the accident. In some cases, especially when it comes to firefighters, lawyers

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### HOW MUCH TIME DO I HAVE TO SUE FOR PERSONAL INJURIES? WHEN IS IT "TOO LATE"?

The New York State Legislature has assigned different statutes of limitations to different types of cases. A statute of limitations begins to run from the time a cause of action "accrues". In most personal-injury cases this is when the accident occurs, but not always. For example, with respect to exposure to toxic substances, a cause of action may accrue when the injured person has reason to believe that a toxic substance has harmed him.

In New York State, the statute of limitations for most general negligence cases against **private individuals** is three years from the date of the accident. These cases include line-of-duty accidents, motor-vehicle accidents, slip-and-fall accidents, and construction accidents.

But other personal-injury actions carry shorter statutes of limitations; often much shorter. For example, a claim for wrongful death must be commenced

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# SPOTLIGHT ON DRUNK DRIVING

Our law firm typically gets calls from firefighters who want to understand their legal rights should they ever get pulled over by a police officer while driving home from a party. Bruce Kaye, Esq., of our criminal division, answers the most frequently asked questions about alcohol-related offenses.

*What are the penalties for driving while intoxicated as compared with driving while impaired?*

Driving While Intoxicated is a Misdemeanor. A conviction will result in a criminal record and exposure to stiffer penalties for subsequent DWI convictions, including elevation to a felony offense. The penalties include up to one year in jail, a mandatory revocation of driving privileges for 6 months, and mandatory fines ranging from \$500.00 to \$1000.00. A driver with a prior DWI conviction within the past 5 years must receive a jail sentence of 5 days, or a 30-day community service sentence.

Driving While Impaired is a traffic infraction. It is **not** a crime and will not leave the driver with a criminal record. The penalties include a maximum jail term of 15 days, and a mandatory license revocation period of 90 days. Mandatory fines range from \$300.00 to \$500.00.

A Blood-Alcohol Concentration (BAC) of .08 % or more, creates a rebuttable presumption that the operator is guilty of Driving While Intoxicated. A BAC of at least .05% but less than .07% creates a rebuttable presumption that the operator is guilty of the violation of Driving While Impaired.

*What is the effect of refusing the breathalyzer test?*

If a driver refuses the test, his license will be revoked for six months

(second offense - one year). Evidence of the refusal will be admissible in any trial so long as the person was warned of the consequences of refusing.

While declining the test deprives the prosecution of a test score, and reduces the proof to the officer's observations of the driver (e.g., the presence of the odor of alcohol, the manner in which the vehicle was operated, bloodshot eyes, attitude, balance, coordination, speech, general appearance, etc.), the penalties for refusal are stiff. What's more, most District Attorney's Offices have a policy of not offering a plea to the lesser offense of Driving While Impaired to drivers who have refused the test.

If you are uncertain whether to take the test, request an opportunity to call your attorney. Inform the arresting officer that you are not refusing the test, just requesting advice from your attorney. While most arresting officers will disallow your request and consider it a refusal, the disallowance may explain the decision of some operator's to refuse the breath test.

*Will there be a Video-tape?*

The NYPD routinely video-tapes the chemical-test request. This taping will take place at a precinct within two hours of the arrest. Because the tapes are played for the jury, they provide a unique opportunity for the motorist to establish his innocence and/or explain his refusal.

*Should I speak to the officer?*

You should be cooperative, but there is no penalty for limiting conversation to pedigree information or even remaining mute. The refusal to engage in conversation is not admissible at trial.

The natural inclination is to explain oneself, but, this can have drastic con-

sequences. It is not uncommon for a motorist to admit having come from a party or having had one or two drinks. Admissions of this nature will surely be offered as evidence at trial, and where the motorist elects not to submit to the chemical test, will confirm the presence of alcohol.

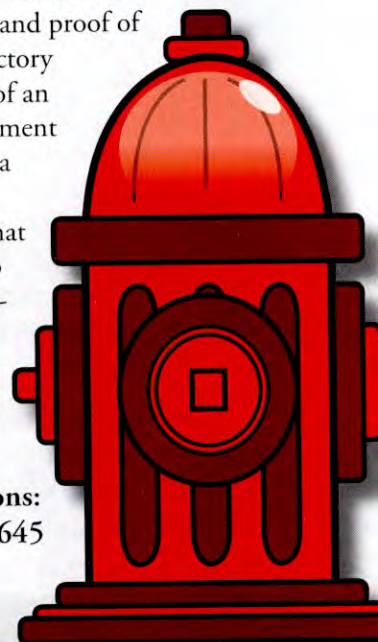
Once placed under arrest, a clear and unequivocal request to speak with an attorney will effectively invoke the constitutional right to counsel. This right cannot be waived unless the attorney is present and will generally render any subsequent statements inadmissible.

*Will my car be impounded?*

The NYPD is empowered to commence a forfeiture action against the owner of a vehicle that was used during the commission of a crime. If the driver is also the owner, a forfeiture action is all but guaranteed. If the vehicle is leased and the lease agreement allows the leasing company to rescind the lease of an impounded vehicle, the NYPD will release the vehicle to the leasing company as the titled owner.

Most forfeiture actions are settled after payment of administrative fees and proof of either satisfactory completion of an alcohol-treatment program, or a competent evaluation that finds that no alcohol treatment is necessary.

**Call Bruce  
Kaye with  
any questions:  
917-626-5645**





# Atlantic City 2007

It was great seeing so many of you at the Delegates' Convention in Atlantic City this past May. As always it's an honor for us to be invited, and our pleasure to be able to host a hospitality suite. We look forward to seeing you all next year!



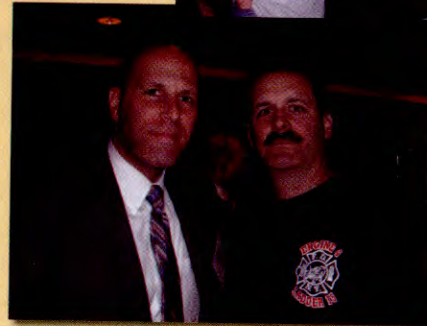
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within two years from the date of death. A claim against an individual for an intentional tort, such as battery, must be brought within one year of the intentional act.

Actions for medical malpractice must be brought within two and one-half years from the date of malpractice. This time period, however, may be extended in cases where the doctor who committed the malpractice continues to treat the patient for the same condition, or when the doctor has left a foreign object in the patient's body.

For cases against the State of New York, the City of New York, a county, town/village, school district, transit authority or similar municipal entity, there are very strict time limits within which a claim must be filed (even if it's a line-of-duty accident). These cases require the filing of a legal document known as a Notice of Claim or a Notice of Intention to File a Claim, usually within 90 days of the accident. Additionally, any legal action must be brought within two years if against New York State and one year and ninety days if against any other municipality.

It is always advisable to consult with a lawyer soon after an accident. When a firefighter is injured, the last thing he thinks about is whether the building where he was injured is owned by the City of New York or a private individual. Only a lawyer is qualified to determine when a cause of action accrues, which statute of limitations will apply, and what has to be done to protect your rights.





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can convince a judge to extend the initial 90-day period. But the year-and-90-day statute of limitations is strictly enforced. This particular firefighter was out of legal options.

### The Consequences of "Blowing" the Statute of Limitations

After 27 years of practicing law, I can't count the number of times that I have had to tell seriously-injured people that they were too late. Although I wanted to help them, there was nothing that I could do. I always ask firefighters why they waited so long. Most often, I'm told that "getting hurt is just part of the job," or "I'm not the kind of person that sues."

I certainly respect that an injured person can come to a reasoned decision not to bring a lawsuit. As a lawyer, I do not take the prospect of suing somebody lightly. But a reasoned decision can only come with a full appreciation of your legal rights, and the limitations that will bind you. This means that an injured firefighter should not just dismiss his injuries as "part of the job" or bow to some vague and false notion that firefighters shouldn't sue. It is foolhardy not to inquire about your legal rights early on.

For a variety of reasons, firefighters who initially opt not to bring a lawsuit often later have a change of heart. Sometimes, this is motivated by unremitting pain, or prolonged medical treatment including surgery. Sometimes it is borne out of a desire to provide for one's family, as the end of a firefighting career looms. And other times, it springs from a growing acceptance that the accident was preventable, and not just part of the job. In fact, one of the reasons the firefighter's statute was enacted, was to encourage property owners and others to comply with the safety provisions of the law which protect firefighters. By bringing a lawsuit, you actually help to enforce those statutes. Few things are as effective as a monetary award from a jury when it comes to forcing a build-owner to comply with the law.

Therefore, if we can impart one bit of wisdom to the firefighters who read this article, it is this: there is such a thing as too late. Understandably, after an injury, a lawsuit may be the last thing on your mind. But remember this - contacting a lawyer early on will ensure that you do not forfeit important legal rights. Most personal-injury attorneys, including our office, charge nothing for a consultation. A good attorney will ensure that you have the information that you need to make an educated decision about whether or not to bring a lawsuit, and *when* you need to do so.

## PROTECT YOURSELF AGAINST UNINSURED DRIVERS

Did you know that you can purchase insurance that protects you and your family in the event of an automobile accident with an uninsured driver or one that has less liability coverage than you? For the privilege of writing policies in New York, automobile insurance companies are required to offer you this coverage. It is known as UM/SUM Coverage (UM meaning Uninsured Motorist and SUM meaning Supplementary Uninsured Motorist).

Simply put, if you or a loved one has an auto accident (and suffers an injury) with a driver who has either no insurance or less liability coverage than you, you or your family member could (if you purchase this coverage) **recover under your own auto policy.**

You cannot purchase an unlimited amount of this insurance. You can, however, purchase as much of this insurance for your family as you do to protect someone else's family. In other words, you can have uninsured/underinsured motorist coverage for up to the same amount as your liability limits. An illustration demonstrates the importance of this coverage. Let's say your vehicle, while stopped at a red light, is hit from behind by another vehicle and you suffer an injury which requires major surgery. Further, assume that the other car has liability coverage of only \$25,000, the minimum amount required in New York. Assume your liability and UM/SUM limits are \$100,000. In seeking compensation for your injuries, pain and suffering, you will not be limited to \$25,000 insurance that the negligent driver has. Rather, you will now be entitled to collect up to another \$75,000 (for a total of \$100,000) from your own carrier.

We strongly encourage you all to look at the declaration page(s) of your automobile policy (where the coverages are listed) and see how much UM/SUM coverage you have. If it is less than your liability coverage, call your carrier and buy this additional (all too often inexpensive and overlooked) coverage that will protect you and your family in the event of an unfortunate automobile accident with an uninsured or underinsured vehicle.

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