

FIREFIGHTERS' NEWSLETTER



WHO SAYS YOU CAN'T FIGHT CITY HALL?

Michael Barasch Takes on the Mayor: Demands an Apology for James Zadroga

When Michael Barasch first met James Zadroga, the 32 year old detective was suffering from end-stage lung disease. After working hundreds of hours at the World Trade Center site without respiratory protection, he needed an oxygen tank to breathe. He took 14 prescribed pills every day. His suffering was immeasurable.

His fight ended in 2005. The New Jersey Medical Examiner who per-

formed his autopsy found carbon, silica, calcium phosphate, talc and cellulose in his lungs. He determined that detective Zadroga died as a direct result of his work at Ground Zero. He had a kind of "black-lung" disease typically seen in coal miners. Our firm was incredibly honored to have represented Mr. Zadroga, and we were deeply saddened by his death.

Recently, Mayor Bloomberg maligned detective Zadroga's memory, and mocked his tragic death in a hurtful and spurious verbal attack. Of the man who spent 400 hours at Ground Zero, who lived with so much pain, and who leaves behind an orphaned six-year old daughter, the Mayor said: "he was a drug user ... he was no hero."

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Michael Barasch and James Zadroga talk to the press after meeting Mayor Bloomberg

THEY SAID "IT COULDN'T BE DONE" BARASCH & MCGARRY CHALLENGES THE 1B PENSION BOARD FOR VIOLATING FIREFIGHTER RIGHTS UNDER THE LUNG BILL

Barasch & McGarry is proud to announce that we have achieved a series of landmark successes on behalf of members who were wrongfully denied their disability pensions after sustaining permanent breathing problems while working at Ground Zero. In response to a flood of calls from firefighters who were denied their disability pensions, our office decided to challenge the pension board despite the fact that many other lawyers were turning these firefighters away – telling them that nothing could be done once the 1B Pension Board ruled against them. We also did it for free!

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Michael Barasch surveys the 15th Floor at the Deutsche Bank Building.



To give our clients who were injured at this horrific fire the absolute best representation, members of our firm underwent extensive hazmat and asbestos awareness training to be allowed to enter and examine the Deutsche Bank building.

After donning protective suits and respirators, we were able to observe first hand the maze-like conditions created by plastic tarps and plywood covering stairwells, exits and windows. We witnessed the infamous standpipe that had been severed which prevented water from reaching the members fighting the fire. Participating in this unique opportunity to familiarize ourselves with the remnants of these dreadful conditions will prove to be extremely valuable when preparing our cases against those responsible.

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The Mayor's hurtful words were borne of ignorance. He never read any of the hundreds of pages of medical records which document Detective Zadroga's respiratory decline. He was unaware that the City's own Police Pension Board formally agreed with the autopsy findings linking Detective Zadroga's illness and death to the toxic dust he inhaled at Ground Zero.

Tyler Ann, Detective Zadroga's daughter, is still too young to appreciate the significance of the Mayor's attack. However, in a few years his words will haunt her. Joe and Linda, Jimmy's parents, cared for him during his illness. They were shocked to the core. We wanted to restore Detective Zadroga's good name, and to correct the record so that Tyler Ann would always know the truth about her father. We began a three-week fight to educate the Mayor

and the public. We enlisted the help of Congresswoman Carolyn Maloney and Congressman Vito Fossella. We received invaluable assistance from noted forensic pathologist Dr. Michael Baden, as well as doctors at the Department of Defense in Washington, D.C. We invited the Press to help spread the truth.

As a result of media pressure and cries of outrage from NYPD and FDNY members, as well as their union leaders, Mayor Bloomberg eventually agreed to meet with us. While he publically apologized to Mr. Zadroga, his words do little to change the fact that many people in government simply do not appreciate the historic and heroic work that was done by thousands of rescue workers. They certainly do not appreciate the physical, let alone the emotional sacrifices made by those workers,

sacrifices which have endangered their lives.

The lawyers and staff of Barasch McGarry are sick and tired of this attitude. Jimmy Zadroga could not speak up for himself to set the record straight. We are proud to be able to speak for him. We will stop at nothing to ensure that rescue workers receive the legal rights and respect that they deserve.



*continued from page 1 -
"Fighting the Pension Board"*

The board's wrongful denial of disability pension benefits to these members struck us as a complete violation of firefighters' rights under the Lung Bill. Before September 11, 2001, firefighters suffering from asthma were routinely granted disability pensions. The pension board relied heavily upon the methacholine challenge test, usually administered by New York University's Rusk Institute, to determine whether a firefighter was fit for full duty.

After 9/11, without explanation, the 1B Pension Board began denying disability pensions, even where firefighters failed methacholine tests administered by Rusk. The board justified its denials based on the results of pulmonary-function testing, which we argued, is not effective for diagnosing reactive-airways disease. The board also ignored reality (firefighting imposes rigorous physical demands on firefighters), holding that small-airways disease and intermittent asthma would not prevent firefighters from carrying out their duties.

SICK FIREFIGHTERS IN CATCH-22

Since 2002, many firefighters have found themselves in "light duty" limbo. Prior to being evaluated by the Pension Board, the FDNY's Bureau of Health Services (BHS) recognized that members with intermittent asthma were not fit for full duty; it routinely found them permanently disabled and warned that these firefighters could suffer life-threatening bronchospasms if forced to return to full duty. On the other hand, the 1B Pension Board found that many of those same firefighters were fit for full duty.

We felt that it was an obvious case of the Board putting fiscal concerns above a concern for the welfare and safety of firefighters.

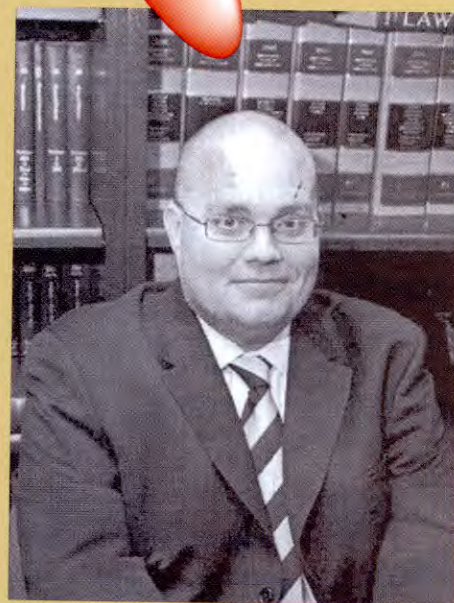
For our firm, the real question was whether anything could be done to reverse these wrongful denials and get these firefighters their well-deserved pensions. It is no secret in the legal community that it is extraordinarily difficult to convince a court to force the City to give a firefighter a disability pension. Pension boards are given a great deal of deference and leeway. Indeed, many other firms told us that these cases were "sure losers," and that our chances of success were slim to none.

Ultimately, we decided that it would have been morally reprehensible not to try to have these decisions overturned. It seemed clear to us that forcing sick firefighters to return to full duty was a tragedy waiting to happen.

3 VICTORIES AND COUNTING

We are proud to announce that we have surprised the naysayers. Indeed the New York Law Journal, the Daily News, and The Chief have all written about our extraordinary victories on behalf of 3 firefighters who were wrongly denied their disability pensions. In one of these cases, in a scathing opinion, the Court questioned the pension board's competence and ordered it to reconsider its "illogical" and "unfair" decision. Criticizing the board for its failure to substantiate its reasoning behind these denials, the Court wrote:

"There is nothing in the Medical Board determinations denying Petition-



**Attorney Ed Markowitz has
handled dozens of FF pension
cases for free.**

ers' applications ... that would suggest that the members of the Medical Board have familiarity with the performance requirements of firefighting, or the respiratory conditions of firefighters who participated at Ground Zero, comparable to that of Drs. Prezant and Kelly The Court finds that the Medical Board's determinations ... are completely devoid of any articulated basis for concluding that 'mild intermittent asthma' is not a disabling or incapacitating condition for firefighting...."

Upon re-review of these cases after the court's order, the board reversed itself and granted disability pensions to all three firefighters.

We are very proud of our work on behalf of all firefighters in general, and these 3 firefighters in particular. Other lawyers would have turned these cases down. We turned them into victories. Our law firm will continue its mission of fighting for all injured firefighters, no matter how difficult the battle.



Season's Greetings



from the Attorneys and Staff at
Barasch McGarry Salzman & Penson.
Have a Happy and Safe New Year!

A letter of appreciation from one of our pro bono clients...
It's our pleasure, Robert!

October 24, 2007

Dear Ed,

I think I can speak for everyone you & the firm are helping when I say just how much I appreciate what is being done on our behalf.

It's a deep sense of pride you should feel winning these cases against overwhelming odds.

No matter how this case turns out for me I just want to congratulate you & once again thank you for your efforts.

Thanks,

Lt. Robert Moore
12th Battalion

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topics of interest to firefighters.
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**BARASCH McGARRY SALZMAN &
PENSON
11 PARK PLACE SUITE 1801
NEW YORK, NEW YORK 10007
Toll Free No. 1-888-FIRELAW
(1-888-347-3529)
or 212-385-8000
www.firelaw.com**

