

FIREFIGHTERS' NEWSLETTER



FROM HEROS TO ZEROS

NO RESPECT FOR NYC'S BRAVEST

"God forbid you get killed doing your job, you're a hero. But you get hurt doing one of the most dangerous jobs, then you're a zero. I'm truly disgusted."

—Anonymous NYC Firefighter

The New York Post recently quoted an anonymous firefighter who was reacting angrily to the FDNY's latest outrageous attack on the brave men and women who risk their lives working as firefighters. Last month, the City of New York accused firefighters of "sick-day abuse" by faking their injuries which, in turn, has caused "surging overtime costs paid by the department for replacements". According to the FDNY, an average of 651 firefighters a day were out sick in the last six months of 2007. This represents an increase from 7.07 percent to 7.28 percent of the 8,500 force.

In 2002, sick leave rose to 8.6 percent with so many firefighters ill from the World Trade Center rescue and recovery. However, that percentage fell once hundreds of sick firefighters retired due to their WTC-caused respiratory illnesses which made exposure

to dust and smoke life-threatening for them. Now that the percentage of ill firefighters has spiked again, FDNY brass is threatening to reduce the number of firefighters assigned to Engine Companies. The City has insisted that the recent hike in sick leave is not related to 9/11 illnesses, despite the fact

that independent doctors confirm, and common sense dictates, that scores of firefighters' WTC breathing and sinus problems are indeed exacerbated by the cold dry air of winter. Moreover, 2007 was the FDNY's busiest year ever, with firefighters responding to more than 490,000 calls. Once again, common

continued on page 4

COURT STRIPS \$1 MILLION FROM FIREFIGHTER'S JURY VERDICT

Case Illustrates Importance of Using a Law Firm that Routinely Handles Cases for Injured Firefighters

All too often we hear nightmare stories about seriously-injured firefighters who mistakenly use their family lawyer to represent them in their accident case instead of a personal-injury law firm that concentrates on this unique area of the law.

Recently, in a case involving a firefighter represented by another law firm, a New York appellate court issued a terrible decision which will have far-reaching consequences for New York City firefighters and police officers who receive 3/4-disability pensions. After a full trial, the jury awarded the disabled firefighter a substantial sum of money to compensate him for his pain and suffering and lost earnings. But it was a short-lived victory. Stripping the firefighter of one million dollars, the appellate court reduced the jury's award by the present value of his accident-disability pension. The court reasoned that the pension was intended to replace the firefighter's lost earnings.

continued on page 2

Compelling Arguments Not Made by Firefighter's Attorney

What our law firm found most troubling about the case is that compelling arguments demonstrating that the firefighter was entitled to keep the lost earnings award were never made to the court. The issue centered on whether a disability pension is intended to replace lost earnings, or whether it is a fringe benefit afforded for undertaking a dangerous job with a substantial risk of career-ending injury. Our firm believes it is the latter. Why, otherwise, would the pension payments differ depending on whether the firefighter was injured in or out of the line of duty? If an accident-disability pension were intended to replace lost earnings, it would not matter if the firefighter were injured working on his roof at home, or battling a fire at work. The injured firefighter would receive the same pension.

Moreover, if an accident-disability pension were intended to replace lost earnings, wouldn't it pay recipients the same amount as active members of their rank? Obviously, it does not. It pays only three quarters of the previous salary, and, because it is not calibrated to keep up with inflation, the pension's purchasing power diminishes enormously with time. Finally, once a recipient reaches the 20th anniversary of his appointment, there is no limit on what he can earn supplementally in retirement. In fact, New York's highest court has already held that this last factor tends to show that a pension is not intended to replace lost earnings. And, two Federal-Court judges have agreed with this finding in other cases.

Unfortunately, none the arguments above were made to the appellate court that issued this damaging decision. That is not to put down the attorneys who handled the case. Undoubtedly, they did the best they could. But, they were up against foes who were more seasoned on these issues, the Transit Authority and the

City of New York. Barasch & McGarry has volunteered to help the attorneys who represented this injured firefighter. It is our hope that we can convince the Court of Appeals, New York's highest court, to re-consider the case. We hope that the firm will accept our offer of help so that we can reverse this unjust ruling.

The Importance of Using Attorneys Who Focus on Firefighter Law

The result points up the importance of hiring attorneys who are not merely committed to doing their best for their clients, but who are also thoroughly experienced in the issues involved. In light of this recent case which created bad law for all firefighters, we hope that injured firefighters will consider the fact that hiring friends may not be in their best interest, especially if the injury sustained is permanent and is going to effect the member's financial situation for the rest of his life.

PROTECTING OUR PARENTS

Holding Nursing Homes Accountable for the Neglect of the Elderly

Many of us have parents who are too sick for us to care for. Their care is entrusted to nursing homes and other long-term senior health facilities.

You should know that there are rules and regulations regarding the quality of care that the elderly receive – no matter how much or how little they can afford to pay.

Unfortunately, bed sores, infections and general neglect are all too common at some sub-standard facilities. To compensate these victims of neglect, and to help enforce the rules and regulations, the NYS Legislature enacted Section 2801(d) of the Public Health law. This law entitles victims of nursing-home neglect and abuse to money damages. Victims must file a notice of claim within 90 days of the injury, and then commence a suit within 1 year and 90 days, if the facility is owned by a municipality. Otherwise, if the facility is privately owned, the victim has 3 years to commence a suit.

Please call our office if you have any questions about this law and your parents' rights.

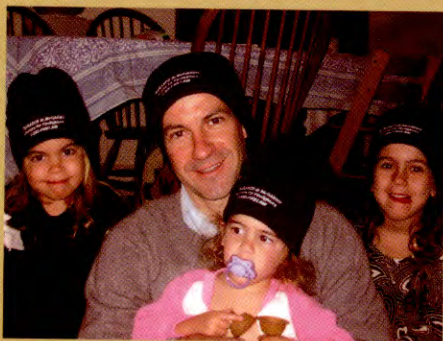
Should you sign up for the WTC lawsuit?

We get calls almost daily from both active and retired members asking whether they should add their names to the pending multi-plaintiff WTC lawsuit against the City and other contractors who failed to provide OSHA-mandated respiratory protection. Our answer is that if you have been diagnosed with cancer or any respiratory injuries, or if you are experiencing breathing or sinus problems (symptoms associated with respiratory illnesses), then you must protect your rights by filing now.

On the other hand, if you are feeling healthy and not experiencing any symptoms, then it isn't necessary to file at this point.

No one knows how the 2nd Circuit Court of Appeals is going to rule on the City's motion to dismiss the claims of 8,000+ rescue workers. However, you must preserve your rights and the only way to do this is to file a claim. You must do this as soon as you are diagnosed with a WTC-related illness. If you have any questions, please don't hesitate to call our office for a free consultation.

In the meantime there is something that we all can do in order to insure that adequate health care and compensation are provided for all who were exposed to the toxins at Ground Zero. Call, write and/or email your congressional representatives as well as your senators and urge them to support the James Zadroga Act which would provide medical monitoring and compensation for all those who served and were exposed at Ground Zero.



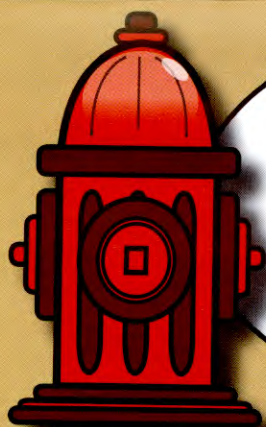
Attorney Dom Penson and daughters



Attorney Bruce Kaye and children

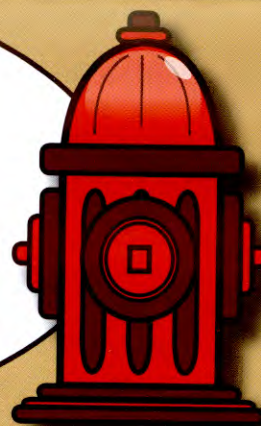


Attorney Barry Salzman and family



**STAY SAFE
STAY HEALTHY
STAY WARM**

*On Behalf of Our Attorneys and Staff:
Enjoy the hats that we recently sent to
your firehouse. Please call our office if
you need more*



Attorney Dana Cutting and son



Legal Assistant Andrea Cowan
and children



Attorney Ed Marcowitz and family



Paralegal Jenaee Long and son



Paralegal Liana Rivera and son

continued from "Heroes to Zeros" page 1
sense dictates that with more calls come more injuries.

Many people see the FDNY's attacks for what they really are.....an attempt by the City to reduce manning at the Engine Companies. This can happen only if the number of sick firefighters rises to 7.5 percent. When the rate hits 7.5 percent, Commissioner Scoppetta has the option of cutting crews from five firefighters to four at 49 engine companies, according to a contract agreement with the unions. If the rate hits 7.6 percent, the cuts are mandatory. Of the City's 197 engine companies, 64 have five firefighters assigned, mostly because of heavy workloads and difficult buildings. The others have four firefighters each. The FDNY last cut crews from five to four in December 2004, when the rate hit 7.5 percent, but restored them in February 2005, when it dipped to 7.49 percent - after a month in which three firefighters were killed and four seriously hurt. An FDNY study in the 1980s found that a five-man engine company gets water on a fire 50 percent faster than a four-man company

Federal Government Also Shortchanges Sick Firefighters

In a related story, nine Ground Zero rescue workers attended President Bush's State of the Union speech in Washington. These responders, as well as their union leaders and elected officials, have blasted the White House for recently yanking money promised for ailing 9/11-responder care. The spending would have expanded the spending caps for the six local clinics treating and tracking ill first responders, as well as establish an office to handle Ground Zero claims from across the country, using \$108 million already appropriated by Congress.

All too many firefighters have become disenchanted with how the FDNY, and now the Federal Government, has treated NYC's bravest. Is it any wonder why?!

THE IMPORTANCE OF THOROUGH FIRE MARSHAL REPORTS AND FIREFIGHTERS ISSUING VIOLATIONS TO NEGLIGENT LANDLORDS

Perhaps the single most important document in any personal injury lawsuit on behalf of an injured firefighter is the Bureau of Fire Investigation's Fire and Incident Report. But that does not mean firefighters should assume the Fire Marshal's report will prove their case.

Over the past decade, the City has significantly reduced the number of active fire marshals. This translates to a reduction in the number of fires investigated and a limit on the amount of time each fire marshal can dedicate to his investigation. In turn, it is more likely that a firefighter injured at a fire will not have the benefit of a complete and thorough Fire and Incident Report, should they choose to bring a lawsuit.

Despite the very recent increase in the number of fire marshals, for too long they have been spread too thin and have had limited time and resources when investigating fires. This is especially true when the cause of the fire is determined to be "accidental" verses "incendiary".

Incomplete Reports Can be Fatal to Injured Firefighters' Lawsuits

Unfortunately, a reoccurring problem seen by our firm is that many fire marshals have simply determined that a fire was "accidental" and then didn't bother to include violations of codes and ordinances which may

have contributed to the fire and/or the firefighter's injuries. Incomplete reports can be fatal to a firefighter's lawsuit.

We urge hard-working fire marshals to thoroughly document all violations, regardless if the fires are accidental or incendiary, especially a fire in which a fellow firefighter was injured. A fire marshal's report can be the saving grace in a firefighter's case. Don't let a hurried investigation and an incomplete report be the downfall to an injured firefighter's suit for justice.

The burden of properly documenting violations also falls on the heads of firefighters. While a fire marshal's report can go a long way in proving a case, violations that are issued against a building owner or tenant after a fire can also be helpful to the injured firefighter if said violation was the cause of the fire or the accident. We implore firefighters to issue violations to building owners, when warranted, during their routine walk-throughs, as well as after every fire.

Please take the time to issue the violations. It just might be the evidence that an injured fellow firefighter needs to win his case. Just as important, issuing violations is sometimes the best way to encourage landlords and tenants to comply with safety rules and regulations, which in turn will help firefighters avoid injuries.

This is the THIRTY-FOURTH edition of the BARASCH McGARRY SALZMAN & PENSON NEWSLETTER... attorney advertising which presents topics of interest to firefighters. For questions, additional copies, or more information about topics raised in this newsletter, call or write:

**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**