



FIREFIGHTERS' NEWSLETTER



THIS DOCUMENT CONTAINS IMPORTANT INFORMATION ABOUT FIREFIGHTER RIGHTS

WHAT ARE YOUR INJURIES WORTH?

Accident Victims Deserve Financial Security

Often, firefighters will tell us that they were reluctant to contact a lawyer after sustaining an injury. However, a firefighter facing a career-ending injury owes it to himself and his family to learn about his legal rights. It could mean financial security for a lifetime.

Here are just a few examples of settlements and verdicts that we have recently obtained for our injured clients.

► We represented the son of a Queens firefighter, an 18-year-old bicyclist who was hit by a truck at night in Suffolk County, suffering terrible pelvic, urological, and gastrointestinal injuries. The truck driver fled the scene, leaving this young man for dead. The truck company argued that our client was to blame for his injuries, and that the truck never touched him. Leaving no stone unturned, we found a surveillance camera in the area and tracked down video footage of the accident that proved that the truck driver, and hence the trucking company, bore responsibility for the accident. After a 12-

hour marathon mediation, we obtained **\$7 million** for our client.

- We represented a 50-year-old retired Staten Island fire officer who suffered horrific injuries when he was struck by a car that mounted the sidewalk and pinned him to a building, crushing his legs. Our client had an above-the-knee amputation of one leg, and multiple surgeries on the other. The owner of the vehicle initially claimed that she had just \$1 million in insurance coverage. But during discovery, we found that the insurance company had "forgotten" to tell us about an additional \$5 million umbrella policy. Once this was divulged, we were able to recover **\$6 million**. The settlement, which included annuity payments for our client's lifetime, will provide financial security for him and his family.
- In Rockland County, a venue that is historically unfavorable for injury victims, we recovered **\$2.25 million** for the brother of a Bronx firefighter, a

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SPOTLIGHT ON DRUNK DRIVING

As the holiday season approaches, we wish you many happy and safe hours celebrating with family and friends. As first responders, you know better than anyone that getting behind the wheel while intoxicated can have devastating, sometimes irreversible consequences. By planning ahead, you can avoid putting yourself and others in a dangerous position. Attorney Bruce Kaye of our criminal division answers some of the most frequently asked questions about the legal consequences of alcohol-related offenses.

What is the difference between Driving While Intoxicated and Driving While Impaired?

Like all states, New York prohibits anyone from operating a motor vehicle while under the influence of alcohol, marijuana, other drugs, or a

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THE WTC VICTIM COMPENSATION FUND REGISTRATION DEADLINE HAS PASSED ...SO, WHAT'S NEXT?

IF YOU REGISTERED YOURSELF AND NOW FIND THAT YOU ARE STUCK, FRUSTRATED OR HAVING A HARD TIME PROVING YOUR ELIGIBILITY, WE CAN HELP YOU OBTAIN THE COMPENSATION YOU DESERVE.

- There are over 200 questions in the eligibility section and over 400 questions in the compensation section. If you need help navigating the waters, we're happy to help you complete the application. We have submitted over 5,000 applications, more than any other law firm in the country.

IF YOU DIDN'T REGISTER YOUR ILLNESSES BY THE OCTOBER 3RD DEADLINE, YOU MAY STILL BE ELIGIBLE FOR COMPENSATION IF:

- YOU HAVE BEEN DIAGNOSED WITH ANY OF THE 62 CANCERS THAT HAVE BEEN LINKED TO THE WTC TOXIC DUST, INCLUDING PROSTATE CANCER, OR
- YOU HAVE BEEN DIAGNOSED WITH A RESPIRATORY ILLNESS WITHIN THE PAST 2 YEARS.

Scientists have recently linked high levels of the inhaled particulate matter to kidney damage. The findings could allow first responders to make a claim for those illnesses. The dust cloud in the air was filled with cement dust, smoke, glass fibers and heavy metals. While exposure to this particulate matter has been linked to lung and heart abnormalities, its effects on kidney health have been less certain, until now.

PLEASE CALL US FOR A FREE AND CONFIDENTIAL CONSULTATION IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS UNDER THE ZADROGA VICTIM COMPENSATION FUND.

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52-year-old laborer who was knocked off a scaffold when another worker backed into it with a forklift. As a result of the accident, he had to have neuro-surgery that included spinal fusion. He will never work again. We proved that the scaffold was improperly constructed and unsafe, and we won the case on summary judgment.

- After seven years of litigation, we obtained \$1 million on behalf of a Manhattan firefighter who suffered career-ending injuries to his hand when he fell on a badly broken section of the sidewalk around a fire hydrant. The case was against the City of New York and a

private landowner. Each blamed the other, but ultimately, each bore some of the blame for the dangerous state of the sidewalk.

- And, after a week-long trial, a Manhattan jury recently awarded \$350,000 to our client, who suffered a fractured ankle when she fell into the gap at the Union Square train station. Although the Transit Authority's lawyer boasted that he had never lost such a case, we prevailed by showing that the gap was dangerously large, and that other people had been injured because of it. Hopefully, the verdict will do more than just compensate our client, but will also encourage the Transit Authority to remedy the dangerous condition so that other riders don't get hurt.

These are just a handful of the recent settlements and verdicts we have obtained for our clients. Of course, they are no guarantee of future success, but we urge all firefighters to discuss their injury cases with a qualified lawyer, one whose law practice concentrates on helping seriously injured accident victims. Before you waive your legal rights, which might provide substantial compensation and financial security, learn what rights you have and what you might be giving up by not filing a claim against the negligent party who caused your injuries.

We welcome you to call our office anytime for a free and confidential consultation. Please remember our advice: **Be safe. Be smart. Know your rights!**

You Protect Us...We Protect You Who Will Protect Them?

Let Us Prepare a Free Will For You.

Stop procrastinating and call us now - 1-888-FIRELAW. We are proud to have prepared over 2000 wills for **active** firefighters. Please take advantage of this offer.

If not for yourself, then for your children.



These kids had fun at our office while their parents were protecting their futures.

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combination of substances. It divides such offenses into different categories.

The law does not require any particular chemical or physical test to prove that a driver was intoxicated. Blood Alcohol Concentration ("BAC") is one way to prove that a driver was intoxicated, but it is not the only way. Other factors that may be used to prove that a driver was intoxicated include the driver's physical condition, appearance, balance, coordination, and manner of speech, an odor of alcohol, an open container in the vehicle, opinion testimony from witnesses, and the circumstances of any accident, to name a few.

If a driver's blood alcohol concentration ("BAC") is .08% or higher, there is a rebuttable presumption that he is Driving While Intoxicated. A BAC .05% creates a rebuttable presumption that the driver is Driving While Impaired.

When drugs are involved, however, New York has not specified minimum levels that establish impairment per se. Having any amount of a drug in your blood or urine, coupled with evidence of impairment, is sufficient to establish that the driver was under the influence.

Driving While Intoxicated is a misdemeanor. This means that a conviction will result in a criminal record and will expose the driver to harsher penalties for second offenses. Driving While Impaired is a traffic infraction. It is not a crime, and will not result in a criminal record.

What are the penalties for Driving While Intoxicated and Driving While Impaired?

The penalties for both offenses are serious, and include jail time and license suspension. A driver convicted of Driving While Intoxicated faces a sentence of up to one year in jail or three years' probation, mandatory revocation of driving

FAKE ID'S CAN CAUSE REAL TROUBLE FOR KIDS

Teenagers are famous for wanting to grow up quickly, and some go to great lengths to appear older than they are in order to get into bars and clubs, or to purchase alcohol. But, ever since 9/11, possession of a fake ID is a serious violation of law, and, depending on the circumstances, could even be chargeable as a felony. Any teenager who is 16 years old or older and is found to be in possession of a fake ID can be arrested, brought to a police precinct, and fingerprinted. He or she can expect to be in police custody for a considerable amount of time and might even be held overnight in a detention cell before being brought before a Criminal Court judge for arraignment.

Parents should know that any criminal arrest and conviction can affect their child's future, especially if the child one day wants to pursue a career in law or law enforcement or the military. Parents should talk to their kids about the potentially serious consequences of possessing and using fake IDs.

privileges for 6 months, and the installation and maintenance of an ignition interlock device in any car owned or operated by the defendant. Mandatory fines range from \$500 to \$1000.

A conviction of Driving While Impaired, while not a 'crime', is still a 'violation'. A driver convicted faces a maximum jail term of 15 days and a mandatory license revocation for 90 days. Mandatory fines range from \$300 to \$500.

What are the consequences of refusing the chemical test?

When a driver is suspected of driving while intoxicated, the officer will routinely administer a preliminary breath test. This is a roadside test in which the driver is asked to blow into a plastic tube attached to a hand held device. Historically, these test results have been considered unreliable and thus inadmissible at trial, but there is now a trend within the court system toward allowing them as evidence of intoxication. They are primarily used to establish probable cause for the DWI arrest and the officer's subsequent request to submit to chemical breath testing. Refusal to take the preliminary breath test is a traffic infraction.

The chemical testing may consist of either blood or urine testing or having the driver blow a sample of air into a chemical test machine in order to determine the driver's "BAC." The NYPD routinely takes video footage of the officers' requests to administer the chemical test at a precinct, within two hours of the arrest.

A driver who refuses to take the chemical test will have his license revoked automatically for one year (second and subsequent offenses - eighteen months). Moreover, evidence of the refusal will be admissible at trial, so long as the person was warned of the consequences of refusing. In the absence of a compelling reason to refuse the test, this can be very damaging evidence.

Should I agree to take the chemical test?

On the one hand, declining the test deprives the prosecution of a test result score. The prosecution's case will be based upon the observations of the officer, the videotape, and any presumptions created by the refusal. On the other hand, the penalties for refusal are stiff, and although most chemical test instruments give a reli-

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able measurement, they are not incontrovertible. Moreover, most District Attorney's offices have a policy of refusing to offer a plea to the lesser offense of Driving While Impaired to drivers who have refused the test.

Most people need approximately one hour to metabolize one alcoholic beverage. Other factors such as the type of drink, gender, weight, whether the person has eaten, and whether the person has taken medication can affect BAC. Obviously, if you are certain that your score is under .05%, you should take the test.

If you are uncertain whether to refuse the test, you should ask for an opportunity to call your attorney. Inform the arresting officer that you are not refusing the test, just requesting advice from your attorney. Police are required to make a reasonable effort to

contact your attorney at a number that you provide, as long as it does not interfere with the administration of the chemical breath test within two hours of arrest. Most arresting officers will accommodate the request. Those that do not will consider the request a refusal, but, under some circumstances, the disallowance may provide an explanation for declining the test.

Should I speak to the officer?

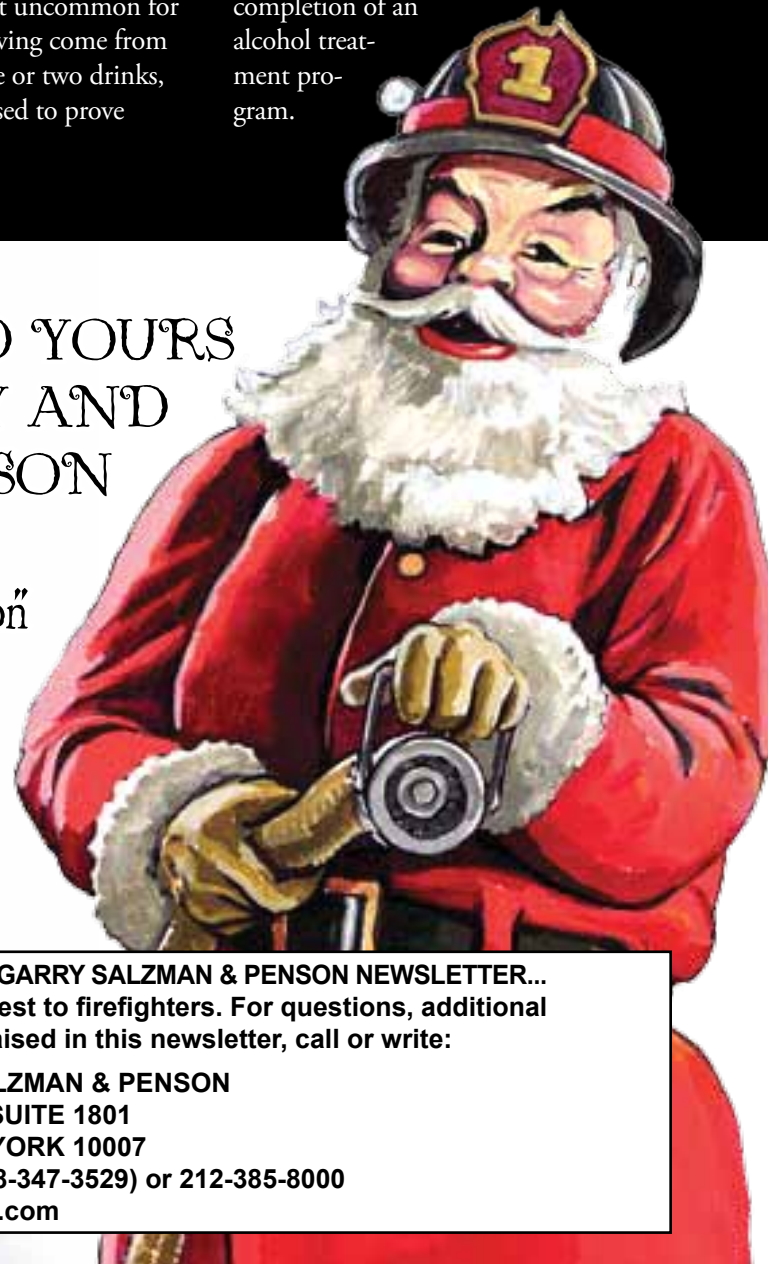
You should be cooperative, but there is no penalty for limiting conversation to pedigree information. The refusal to engage in conversation is not admissible at trial, but statements that a motorist makes to the officer can be. It is not uncommon for a motorist to admit to having come from a party, or having had one or two drinks, statements that may be used to prove intoxication.

Once a motorist is placed under arrest, a clear and unequivocal request to speak with an attorney will 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 the owner, a forfeiture action is likely. Most forfeiture actions are settled after payment of fines and fees, and proof of completion of an alcohol treatment program.

**"WISHING YOU AND YOURS
A HAPPY, HEALTHY AND
SAFE HOLIDAY SEASON
from all of us at Barasch
McGarry Salzman & Penson"**



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