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toxins at Ground Zero and the Fresh Kills Land Fill. Not a week goes by without us hearing tragic news about one of our clients.

It was not until early 2011, almost a decade after 9/11, that the federal government enacted the James Zadroga 9/11 Health and Compensation Act, named in honor of our client and friend, NYPD Detective James Zadroga. The Act established what is known as the World Trade Center Health Program, including a national network of medical providers for 9/11 survivors and responders who came from all over the country. Though it provides monitoring and treatment services for those with 9/11-related health problems, it is only guaranteed to stay open through 2016. In light of the 67 cancers that have been added to the list of WTC-linked illnesses, it is dangerously underfunded. That means that vital health care and compensation will not be available to those who are sick now and others who become sick and disabled in the years ahead. Congress must do the right thing by extending the Zadroga Act and provide additional funding.

Final Deadline for Cancer Victims to Register for Compensation: October, 2014

The deadline for registering with the Victim Compensation Fund (VCF) for illnesses diagnosed within the past 2 years has now passed. However, for those who have been diagnosed with illnesses within the past 2 years, *there is still time to register. There is also time to register for those have been diagnosed with any of the 67 cancers linked by the WTC Health Program and the NIH.* Potential claimants have until October 12, 2014 to register claims with the VCF in order to be eligible to receive significant compensation for their cancers and lost income. Most recently, the NIH added prostate cancer, pancreatic cancer, brain cancer, cervical and testicular cancer to the list of 62 cancers that had previously been linked. The VCF will compensate eligible claimants for their medical costs, their pain and suffering, and lost earnings, if any. While the VCF has moved slower than anticipated, we have made several trips to

First responders who have been diagnosed with cancer have until October 12, 2014 to register their claims with the Victim Compensation Fund.

Washington to ensure that the Department of Justice aggressively steps up the pace of awards. We are working with other lawyers, lobbyists and politicians to fight for additional funding and to ensure that the program be extended past October, 2016. You don't have to be an oncologist or epidemiologist to understand that these cancers and illnesses aren't going to disappear in October, 2016 simply because the VCF is supposed to close its doors. Those first responders fighting for their lives won't magically get better when the funding dries up. Please talk to your Congressmen and Senators and ask them to fight for you and the rest of the sick 9/11 community.

Vol. 56

FIREFIGHTERS' NEWSLETTER



THIS DOCUMENT CONTAINS IMPORTANT INFORMATION ABOUT FIREFIGHTER RIGHTS

CANCER RATES SOARING IN THE WAKE OF 9/11

Hundreds of WTC First Responders Have Died in the past 13 years

According to an alarming NYPD study, the cancer rate for police officers increased fivefold in the decade after 9/11, and there has been a more than tenfold increase in officers diagnosed with thyroid cancer. A nation-wide study revealed that the number of firefighters who have died of cancer has increased 6-fold in the past decade. Sadly, 58 members of the NYPD and 74 firefighters have had their deaths officially linked to 9/11-related illnesses. Hundreds of construction workers, sanitation workers and volunteers have also been diagnosed with 9/11-related cancers and scores of them have tragically passed away.

Our law firm currently represents nearly 1,000 first responders who have been diagnosed with one or more of the 67 cancers that have officially been linked by the National Institute of Health (NIH) to the

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FIREFIGHTERS WHO RIDE MOTORCYCLES RISK LOSING \$2 MILLION PENSIONS

Riding a motorcycle is exhilarating, exciting, and convenient, but also very dangerous if you are in an accident. There are no airbags, no seatbelts, and nothing protecting you from the impact of another vehicle. Even the safest motorcyclist faces risks that are entirely out of his control. Oil spills in the road, drivers who are careless, drunk, speeding, enraged, distracted, tired or texting, vehicle malfunctions, careless turns, glare, and animals darting into the road have all caused serious motorcycle accidents. Just as this newsletter was going to print, we learned that an off-duty firefighter was critically injured in a motorcycle accident in Queens. Our thoughts are with him and with his family at this difficult time.

The Average Firefighter's 20-Year Service Pension is worth \$2 Million

The risk of physical injury in the event of an accident is obvious. But that's not the only risk firefighters take when they get on a motorcycle - they're also risking their salaries and pensions.

Let's face it, most firefighters don't choose their career with the FDNY to get

wealthy. You would have made a lot more money if you had become an investment banker or played in the NBA. Instead, you chose a tremendously rewarding career that offers a steady salary and generous benefits, including medical coverage and a significant pension. That last item is no small thing. Most non-municipal workers do not receive a pension. But the average firefighter who works for 25 years will likely receive pension payments that exceed \$2 million over his lifetime.

All firefighters know that if they suffer career-ending injuries in the line of duty,

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BARASCH MCGARRY ATTENDS UFA AND UFOA DELEGATE EDUCATION SEMINARS



Thank you all for stopping by to say hello. We hope we were able to answer some of your legal questions.



Michael Barasch was invited to speak about firefighters' legal rights to the fire officers delegates at the UFOA education seminar.



This is the FIFTY-SIXTH 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:

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"You protect us...we protect you."

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they will likely be awarded an accidental disability pension. They will be entitled to receive a ¾ tax-free pension for the rest of their lives. However, firefighters with less than 20 years of service who sustain career-ending injuries in a motorcycle accident will suffer a serious financial blow.

- Firefighters with less than 10 years on the job who are injured off duty are only entitled to 1/3 of their final average salary. They will receive no medical coverage as a retiree. This can be financially devastating for a firefighter with permanent disabling orthopedic injuries who needs a lifetime of medical care.
- Firefighters who have put in between 10-20 years, who are injured off duty, are entitled to receive ½ of their final average salary, but they are not entitled to the Variable Supplemental Fund pay (VSF pay is currently

\$12,000/year).

- Firefighters who have put in more than 20 years will get the variable supplement but they will lose years of income as well as additional salary increases by having to retire years before they had planned to do so. As a result, their pension will be significantly less than they had planned.

If you *must* ride, we urge you to purchase adequate insurance coverage to protect yourself and your family in the event of an accident:

Make sure that you buy a plan that will pay for the medical and out of pocket expenses that are not covered by your regular health insurance coverage. Failure to do so may bankrupt you or force you to accept cheap, substandard medical care.

Make sure that you buy long-term health

and catastrophic disability insurance which will pay you for your lost earnings (e.g. - an Aflac plan).

Make sure that you buy significant life insurance to protect your family if you are killed in an accident. After all, they will have to get by without your income and your pension.

Make sure that your motorcycle policy has a significant amount of uninsured/underinsured motorist coverage. It will protect you if you are in an accident with another driver who does not have adequate liability insurance.

Riding a bike is great fun. We always tell our clients that if a lawyer sustains a permanent and significant orthopedic injury, he can still work. But, firefighters can't. Remember that the next time you are tempted to feel the wind in your receding hair.

NO REAL JUSTICE FOR JOHN MONTEVERDE'S FAMILY AFTER FATAL MOTORCYCLE ACCIDENT

In 2012 in New York State, nearly 6,000 motorcyclists were involved in accidents. 164 riders were killed and 1,193 sustained injuries that were serious enough to permanently disable a firefighter. One of those who died from his motorcycle injuries was 56-year-old NYC firefighter John Monteverde. Last October, John was on his way to work at Engine 159 in Staten Island, when he was struck by a vehicle driven by an allegedly intoxicated driver. John leaves behind his domestic partner Nellie, as well as three children; daughter Alexis, 26, and sons William, 23 and John, Jr., 20. John joined the FDNY on June 26, 1982, spending the first 30 years of his career at Engine Co. 22, and then transferring to Engine 159. He was cited four times for bravery and life-saving medical work.

The driver who killed John was 24 years old and reportedly rolled through a stop sign. Witnesses said that John was unable to avoid being hit, and was thrown 30 feet off the bike. By all accounts, John was a safe and cautious cyclist. In fact, he was wearing a reflective vest when he was struck. The driver has been charged with vehicular homicide and driving while intoxicated. If he is found guilty of 2nd degree manslaughter, he faces up to 10 years in jail.

In addition to facing significant jail time, drunk drivers can be held accountable through personal injury and wrongful death lawsuits, and our law firm has brought a case against the driver who killed John Monteverde. Under the law, John's estate is entitled to monetary compensation for the pain and suffering he endured prior to his death, and his distributes are entitled to compensation for their financial losses stemming from his death, and for loss of parental care and guidance. That's small consolation for the grieving family, but it's the only redress the law allows.

Unfortunately, while we would like this story to end on sunny note and assure you that John's family will be well taken care of, the fact is that monetary damages available to anyone injured in an automobile or motorcycle accident are limited to the amount of the defendant's liability insurance coverage. Sadly, the driver who killed John Monteverde had just \$100,000 of liability coverage. That means that the most that our law firm will be able to recover for John's three children is \$100,000. Of course, we will secure a substantial monetary judgment against the driver, but the chances are that if he was only carrying \$100,000 of insurance, he likely has no significant assets to attach. Spending years in jail will certainly not help his future earning power. The judgment that we obtain will likely never be paid in full to the family. Hopefully, John had a significant life insurance policy which will help to take care of his family. Sadly, most firefighters don't.

As your attorneys, our job isn't to tell you not to ride. But, we're not doing our job if we fail to warn you of the financial risks that your family faces every time you get on your bike. Having read this article, now you know.



John Monteverde's funeral and the tragic accident scene

The "Death Gamble" vs. the "Option"

What firefighters learn from the firehouse "kitchen lawyer" may not be totally accurate

Even veteran firefighters and officers sometimes confuse the "Death Gamble" and the "Option". The misconception is understandable since the gamble really isn't a gamble, while the option actually is.

The "Death Gamble" is a benefit payable to a designated beneficiary upon the death of an active firefighter with over 20 years of service or a retired member whose pension has not been finalized. Within 60 days of the date of death, the beneficiary must elect whether to have the benefit paid as a lump sum, or over time as an annuity. The amount of the annuity is determined by the age of the recipient. It's called a "gamble" because no one knows how long the beneficiary is going to live. If the beneficiary lives for a long time, then, obviously, the annuity was a good choice. If the beneficiary dies shortly after the firefighter, then the better

choice would have been the lump sum payment.

In contrast, the "Option" is an arrangement whereby retiring firefighters select a reduced retirement allowance, retroactive to the date of their retirement, in exchange for the payment of a benefit to their beneficiary or estate upon their death. The Option can be selected at retirement or at finalization, but once it is selected and your pension is forwarded to the Office of Actuary for certification, with the exception of Option 4 Lump Sums, it can never be changed or terminated.

There are nearly 10 options available. The two most popular options for married retirees are Option 2, "Joint and 100% survivor", and Option 3, "Joint and 50% Survivor". The retiree receives a reduced monthly lifetime allowance. Upon the death of the retiree, this option allows the named beneficiary (normally

your spouse) to receive either 100% or 50% of the member's reduced pension allowance for life. Only one beneficiary is named, and the designated beneficiary may not be changed once the option is in effect.

We recommend that you speak to one of the people in the pension department, or a lawyer who specializes in pension matters, to help you figure out which option is best for you and your family. The age of your children and balance of your mortgage are the two most important factors which determine which option is right for you and your family.

If a firefighter dies from any illness that can be traced to a WTC illness within 25 years of his retirement date, the spouse will receive yearly payments based on the member's last year's earnings. This will be paid tax-free to her for the rest of her lifetime.

Another reason not to always trust the firehouse kitchen lawyer "IKE"

A few weeks ago our firm received a frightening phone call from the Captain of a Brooklyn firehouse. He called us on behalf of a firefighter in his house who had sustained a serious knee injury in the line of duty. He wanted to know whether the member might have a viable personal-injury case against the building owner who had been cited for multiple electrical code violations. He was worried about the member's legal rights in case the injuries proved disabling. We always preach that firefighters should "know your rights", so we were glad to hear that this particular Captain was taking steps to find out what might be done to help this firefighter. However, what we heard next really scared us. The Captain confessed that he had assured the member that he had 6 years to start a lawsuit against the building owner. While the Captain certainly had good intentions, his information was incorrect. In fact, an injury victim has only 3 years to start a lawsuit against a private landowner whose negligence caused his injury (the time limit to sue a municipality is much shorter). The lesson behind this story is that no matter how smart or experienced the "kitchen lawyer" in your firehouse is, it's a very good idea to consult with a real lawyer if you have sustained a serious injury.

NYS Motorcycle Safety Foundation Tips to Improve Rider Safety



Since we represent so many motorcycle accident victims, the lawyers at this firm have participated in the NYS Motorcycle Defensive Driving Course. We have also been invited to speak at New York State Motor Vehicle Safety Foundation meetings. Below are some safety tips that instructors stress for motorcyclists.

1. Never assume that other drivers see you. Making eye contact with other drivers is one way to ensure you've been spotted. Always approach intersections with caution. "I just didn't see him," is a phrase we often hear in

the wake of a motorcycle accident.

2. Wear reflective clothing. Especially when you are riding at night, you can increase your visibility with reflective clothing. You want to be as visible as possible to other drivers.
3. Watch the weather. Wet streets can significantly affect your traction, and without a windshield or wipers your visibility can also be affected. If rain is in the forecast, wait for it to clear off before riding.

4. Wear protective clothing. In addition to reflective clothing, protective clothing can keep you safe if an accident should happen. Riding jackets, boots, and heavy duty pants can keep you safe if you hit the road. They can also protect you from flying rocks and debris.
5. Take a class. If you are a new rider, a motorcycle safety course can help ensure that you understand all the nuances of motorcycle riding and the best ways to avoid an accident.

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