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Penson To All Of You And Yours*

This is the FIFTY-SEVENTH 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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# FIREFIGHTERS' NEWSLETTER



THIS DOCUMENT CONTAINS IMPORTANT INFORMATION  
ABOUT FIREFIGHTER RIGHTS

## WHAT ARE YOUR INJURIES WORTH?

### *Injured Firefighters Deserve Financial Security*

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

- \$1.75 million for a firefighter who sustained neck, back and shoulder injuries, each requiring surgery;
- \$1.25 million for a firefighter who fell when an iron staircase collapsed, suffering various injuries including post-concussion syndrome;
- \$750,000 for a firefighter who sustained a wrist fracture while fighting a warehouse fire, requiring multiple surgeries;
- \$500,000 for a firefighter who suffered a torn labrum in his shoulder and meniscal tears to both knees; and
- \$250,000 for a firefighter who suffered a torn meniscus in his knee while fighting a fire.

Of course, past results 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!**



Mayor Bill DiBlasio, Deputy Chief Richard Alles of the UFOA and Michael Barasch met at a press conference to lobby for Congress's extension of the Zadroga Victim Compensation Fund

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## WHAT THEY DON'T TEACH YOU IN PROBIE SCHOOL

### *Firefighters Should Know Their Legal Rights*

To the nearly 1,000 of you who recently graduated from the Fire Academy, we extend our congratulations and also our sincerest appreciation, as you embark upon your new career. You learned a lot in Probie School, but that was only the beginning of your training. Your fellow firefighters and your officers will teach you so much more about how to do your job well, and how to protect yourself. But there are some other things that you probably didn't learn in Probie School. For instance, you have *significant legal rights* in the event that you are injured in the line of duty.

### **Know your Rights: Property Owners have insurance in case firefighters get hurt**

The New York State Legislature enacted General Municipal Law 205-a to protect firefighters who are injured in the line of duty by affording them a means to recover against negligent property owners. The statute was also intended to force citizens to comply with the law, thereby diminishing the risks faced by our firefighters. Since nearly all property owners have insurance, they are not left to fend for themselves in the event that they are sued. The insurance company will step in to defend the property owner and also to pay damages up to the insurance policy limits.

Under GML § 205-a, a person or corporation who violates a statute, rule or ordinance is liable to an injured firefighter, so long as the violation played *some part* in causing the injury. For example, if a firefighter injures himself tripping on debris while fighting a fire that began because the owner placed a burning candle too close to

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



### IN MEMORIAM

Liana Rivera defined devotion, whether as a mother, daughter, sister, friend or member of her church.

Last January, she passed away at the age of 49. She died of breast cancer, but she never allowed it to dampen her loving, nurturing spirit for long. To the end, she placed her family and friends, her church, and even her work ahead of herself. Her teenage son, Luis, was her life's love.

Liana was warm, funny, tender and tough, all at once. You could count on her for a hug or a kick in the ass, whichever was needed.

She was our friend and colleague for 10 years at Barasch McGarry. Maybe, some of you had the good fortune to talk to, or meet her.

We do, and always will, miss her.



*continued from "Probie School" page 1*

combustibles (a fire code violation), the owner would be liable to the firefighter for his pain and suffering and lost earnings.

The violations do not have to be fire code violations, nor do the injuries have to be sustained in the course of fighting a fire. Firefighters have recovered substantial monetary awards for injuries that occurred in their firehouse, on the sidewalk, and on the rig. They have recovered for violations of the Labor Law, the Building Code, the Property Maintenance Code, the Penal Code, the Electrical Code, and the Plumbing Code, to name just a few. An experienced attorney can identify whether there has been a violation, and whether a firefighter is entitled to damages for an injury.

Firefighters sometimes tell us that they are reluctant to contact a lawyer after sustaining an injury, often citing anxiety over bringing a lawsuit, and concern that their fellow firefighters will think less of them if they do. However, a firefighter who has sustained an injury, especially one that may be career-ending, owes it to himself and his family to learn about his legal rights. It could mean financial security for a lifetime.

While the decision to sue someone is never something to take lightly, a lawyer can help you to determine whether there is a legal basis to bring a claim. It is our job to help our clients navigate the legal system, so that the process is not intimidating or overwhelming. You should never let concern for what others might think, stop you from exploring your legal rights. In your shoes, they would do the same. Legally speaking, injuries to firefighters aren't always "just part of the job." When the injuries are caused by someone's negligence, a firefighter has substantial rights under New York law.

### Firefighters are permitted to sue their employer

You should also know that New York City firefighters are *not* barred from bringing lawsuits against the City of New York. However, in order to bring a lawsuit against the City, a notice of claim must be filed within 90 days of the accident, and a lawsuit must be brought within one year and 90 days of the accident. Because of these time considerations, and the importance of having the cause and origin of the fire thoroughly investigated, it is important to contact a lawyer promptly after an accident.

### Michael Barasch pushes back on NY Post editorial Criticizing Congress' Effort to extend Zadroga Act for Sick 9/11 First Responders

To the Editor:

I was flabbergasted to read the Post's editorial criticizing the efforts to extend the Zadroga Act. For you to write that "the city's chief medical examiner determined 'beyond certainty of doubt' that Zadroga had died not from Ground Zero dust but from having injected ground-up prescription drugs into his blood vessels", is misleading and scurrilous.

As James Zadroga's attorney, I have read the autopsy report from the impartial Ocean City, N.J. Medical Examiner. Apparently, you have not. The M.E. identified "granulomas that are distributed throughout the lung tissue...contain(ing) unidentified foreign materials that are consistent with dust... It is felt with a reasonable degree of medical certainty that the cause of death in this case was directly related to the 9/11 incident."

Your readers should know that following 200 hours at Ground Zero, NYPD Det. Zadroga was having difficulty breathing. He was diagnosed with pulmonary fibrosis. Doctors at the NYPD and the Social Security Administration agreed that WTC toxic dust caused Mr. Zadroga's lung disease and eventually his painful death. Mr. Zadroga was prescribed both Morphine and OxyContin to help alleviate his profound suffering. Your piece ignored the real reasons why he was prescribed these pain killers.

Dr. John Howard of the National Institute of Health, the doctors at NIOSH, Mt. Sinai and Bellevue Hospitals, and hundreds of other doctors at WTC Health Programs have all concluded that there is a causal connection between WTC toxic dust and many insidious WTC illnesses.

Please take the time to learn the facts before you criticize the sick first responders and the residents whose only mistake was to believe the EPA's pronouncement that "the air is safe".

Thank you.  
Michael Barasch, Esq.

### BARASCH MCGARRY OBTAINS JUSTICE FOR DISABLED NYPD SERGEANT WRONGFULLY ACCUSED OF FRAUD

At 5:30 a.m. this past January, disabled NYPD Sergeant Mike Kull woke up to find himself living a nightmare. Police Officers were at his door to arrest him in front of his family. He had been indicted for Social Security fraud by the Manhattan DA's Office, swept up with 135 other retired NYC employees. Riding a wave of newspaper accounts chronicling abuses of disability pensions, and eager to catch all abusers, the DA's Office cast a wide net, ensnaring not only the guilty, but also innocent disabled firefighters and police officers like Sgt. Kull. Although he had done nothing wrong he was publicly humiliated and accused by the Police Commissioner of dishonoring his badge. In a press release, the DA called him a liar and a fraud to his family and community. Prosecutors froze his credit cards and bank accounts crippling him financially. Even his daughter's Facebook account was searched.



Sergeant Kull was devastated by the prosecution. He responded to the World Trade Center on 9/11, and was assigned to work there for nearly a full year. He worked on the pile, and he was one of the supervisors of the temporary morgue. As a result of his work at the site, he developed life-threatening respiratory injuries, pulmonary disease, and post-traumatic stress disorder. On the advice of a co-worker, he hired a lawyer with experience representing injured police officers and firefighters. He had no reason to know that the lawyer was at the center of a decades-long disability fraud scheme. Sgt. Kull was genuinely sick and had a meritorious claim to Social Security benefits.

Barasch McGarry attorney Bruce Kaye represented Sgt. Kull. He fought hard to clear Sgt. Kull's name. Bruce didn't just want to beat the case he wanted it dropped so that everyone would know that Sgt. Kull was wrongly accused and so that Sgt. Kull could get his life back as soon as possible. Bruce was able to convince prosecutors that they had overlooked Sgt. Kull's well documented medical condition. The New York Times quoted Bruce as saying "They cast a wide net and ensnared an honest cop." All charges were dismissed against Sgt. Kull and with the help of his local Assemblyman, his Social Security Disability benefits were fully restored.



Bruce Kaye



Michael Kull

### IS EVERYONE BUCKLED UP?

Understand both the physical and legal risks of not using a seatbelt

As personal-injury attorneys, we have seen firsthand how important it is that firefighters use seatbelts when they are inside fire apparatus. Until recently, most did not. In some cases, that was because the seatbelts just didn't work. But when they did, they didn't fit well over bunker gear, and were awkward and hard to reach. Some firefighters also believed, mistakenly, that the size and weight of the rig would protect them from injury in the event of a crash. In a campaign that was spearheaded by Sal Casano, the FDNY worked to change that. It implemented a seatbelt program that included retrofitting the City's trucks with the IMMI ReadyReach seatbelt system, which is designed to be easier and more comfortable for firefighters to use.

Motor vehicle crashes are the second highest cause of death for firefighters. The firefighters whom we have represented for

firetruck crashes were most often injured en route to an emergency, and almost always at an intersection. In several accidents, the crash involved two firetrucks responding to the same call. And for some, wearing a seatbelt saved their lives.

In a study analyzing data compiled by the National Highway Traffic Safety Administration (NHTSA) between 2000 and 2009, it was determined that seatbelts were critical to preventing fatalities in fire truck accidents. The study looked at 497 fire truck crashes, and found that 49 resulted in at least one firefighter fatality. Over half of the firefighters who were unrestrained were ejected or partially ejected from the fire truck. Of the twenty nine chauffeurs who were killed in a crash, only three were restrained with a lap and shoulder belt.

### LEGAL RISKS:

If you fail to wear a seatbelt, the insurance company for the car that strikes your rig will most certainly take the position that *you* failed to mitigate your injuries. Their attorney may ask a jury to reduce your award by your own percentage of fault.

For example, if a jury determines that your physical injuries and lost income merit a \$2 million verdict, that award will be reduced by 50% if the jury also determines that your failure to wear a seatbelt was equally responsible for the injuries you sustained.

Is it worth \$1 million, let alone your career, not to buckle up?!

Wearing a seatbelt is mandatory, and it saves firefighters' lives. It might also save you hundreds of thousands of dollars, not just in line of duty accidents, but in all motor vehicle accidents.