

BARASCH & MCGARRY LAW LETTER

"KNOW YOUR RIGHTS"

JUSTICE FOR VICTIM OF BOULEVARD OF DEATH

In 2012, Steve Hanna (name changed to protect his privacy), a 48 year old mechanic, was standing on the sidewalk at the corner of Queens Blvd. and Woodhaven Blvd., waiting for the traffic light to change. As the light on Queens Blvd changed from green to yellow, a truck making a left turn failed to yield to a car going straight. The front of the truck struck the rear left corner of the car, causing the fast moving car to spin around wildly. The car veered toward the sidewalk and barreled into Steve, pushing him through the plate glass window of a restaurant at the corner. The combination of Queens Boulevard's immense width and heavy

automobile traffic has made it one of the most dangerous thoroughfares in New York City. It has earned city-wide notoriety and morbid nicknames such as "The Boulevard of Death" and "The Boulevard of Broken Bones". In fact, from 1993 to 2000, 72 pedestrians were killed trying to cross Queens Blvd, an average of 10 per year, with countless more injuries. Steve was now among its victims.

Steve's injuries were profound and terrible. His left leg was severed just above his knee. His right leg was crushed. After 18 surgeries, hundreds of agonizing physical therapy sessions, and dozens of infections, he has a prosthetic left leg,



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and his right leg has multiple plates and screws in it.

Calculating Steve's economic losses was relatively straightforward. We retained doctors, a vocational rehabilitation expert, a life care planner, and an economist to establish that Steve is permanently disabled, and to project his lost earnings and the future costs he will incur as a result of his disability, including medical costs, and the

continued on page 4



Michael Barasch and the firm's client Joe Zadroga, father of deceased NYPD detective James Zadroga, at a press conference at City Hall.

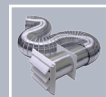
Michael Barasch worked tirelessly with lawmakers, 9/11 advocates and union leaders for the passage of the 9/11 Victim Compensation Fund (known as the Zadroga Act, in honor of our client, NYPD Detective James Zadroga). Congress provided \$2.4 billion for health care and \$2.77 billion for compensation for first responders and WTC residents who have been stricken with 9/11-related illnesses. Since its passage in January, 2011, NIOSH has recognized a link between the WTC toxic dust and 67 cancers.

Our law firm represents nearly 10,000 claimants who are receiving life-saving medical treatment and who are entitled to compensation for their illnesses and lost income. When the Act was passed, Congress stipulated that the health care and compensation would stop in October, 2016. We are fighting to keep the program open, so that people who desperately need assistance are not left to shoulder their burdens alone.

Protect Your Home From a Fire

One of the unique areas of our practice is representing New York City firefighters injured in the line of duty. In the course of investigating hundreds of such cases, we have found that most fires start in very predictable ways, and are usually entirely preventable. We want to share with you some of the recurring causes of fires, and suggest some common-sense things that you can do to prevent a fire in your home.

DRYER VENT



The vent that extends out of the back of your dryer is called a dryer vent. Lint accumulates inside the vent reducing airflow and creating conditions ripe for a fire. Lint is highly combustible. The Consumer Product Safety Commission (CPSC) estimates that over 15,500 dryer-related fires occur each year. The most frequent starting point for these fires was the dryer vent. The typical scenario is simple: the dryer overheats, the lint catches fire and the fire spreads to combustibles in the immediate vicinity (these fires can smolder for hours going unnoticed until after you've gone to bed or left your house for an errand).

There may be warning signs that dangerous lint build up is occurring in your dryer and venting system, including:

Clothes take longer and longer to dry or don't fully dry;

Clothes are hotter than normal at

the end of the drying cycle;

The outside of dryer gets very hot;

The outside exhaust vent flapper does not open very much indicating low exhaust velocity;

The laundry room becomes more humid than normal;

A burnt smell is evident in the laundry room.

How often you should clean your vent depends on many factors. You should consider how much laundry you do, whether you have pets that shed hair, whether your dryer vent is long, and whether the vent has angles. You should of course follow the instructions in the manual that comes with your dryer. As a general rule of thumb though, you should have the vent cleaned at least every 2 years. Just because the dryer seems to be working fine is definitely not a good reason to put off cleaning it. There are many companies that specialize in dryer vent cleaning. It may be smart to invest in a routine cleaning to have peace of mind.

EXTENSION CORDS AND POWER STRIPS



Extension cords can cause deadly fires if not used properly. Overloading the cord, or connecting it to an appliance that consumes more watts than the cord can handle, can cause the cord to overheat. Only use extension cords for portable

devices such as a fan, lamp, etc.

Coiling up an extension cord can also cause the cord to overheat, because the heat cannot dissipate efficiently. Extension cords should be extended out. They shouldn't be run underneath rugs, or crimped in any way. You probably already know that a damaged extension cord can cause a fire. You should check extension cords for visible signs of wear, and discard old or worn cords. If the cord gets hot, stop using it.

FDNY fire marshals urge all New Yorkers to **never** plug large-draw electrical appliances - such as televisions, air conditioners, clothes dryers, refrigerators and freezers - into power strips and extension cords. These types of appliances require a lot of energy, which easily can cause power strips or extension cords to overheat, melt or ignite. These appliances must be plugged directly into the wall.

CANDLES



Candles may be lovely to look at, but they are extraordinarily dangerous if not used properly. More than half of all fires occur because the candle is too close to something that can burn. In our law practice, we have seen

many fires caused by candles placed in front of an open window, causing drapes to ignite. Obviously, candles should never be left unattended, and should never be placed in front of any open window or fan, or in a place where they can fall.

3 FEET FROM HEAT



Keep furniture, curtains, dishtowels and anything that could catch fire at least 3 feet from any type of heat source like space heaters, baseboards, fireplaces, pilot lights and hot plates.

SMOKE ALARMS



Change smoke alarm batteries every year. Replace smoke alarms every ten years.

GAS-FIRED HOT WATER HEATERS



The infamous 2001 Father's Day Fire in Queens took the lives of three firefighters. From our work on that case, we learned about the risks associated with pilot lights that are too low to the ground. Water heaters that were

manufactured prior to 2003 are not equipped with flame arrestors. The CSPC has long recognized that water heaters that do not have flame arrestors should be placed on a stand, elevated 18" above the floor. This is because flammable vapors are heavier than air, and will collect at floor level. Elevating the water heater greatly reduces the risk of fire in the event flammable vapors are present. Water heaters that were manufactured after 2003, that are equipped with flame arrestors, do not need to be elevated.

YOU CAN PROTECT YOURSELF IN THE EVENT OF A SERIOUS ACCIDENT WITH AN UNINSURED DRIVER

If you are seriously injured in an accident with an uninsured driver, or a hit and run driver, you could find yourself without any means of obtaining compensation for your injuries. But there is insurance that can protect you and your family. Known as supplementary uninsured/underinsured motorist coverage (SUM insurance), it enables you to obtain compensation for your injuries under *your own automobile* or homeowner or tenant's insurance policy, in the event that you are injured by an uninsured or underinsured driver. Under New York law, insurance carriers are required to offer you this coverage. And there is no question that you should have it.

The amount of SUM coverage that you can buy is dictated by your liability coverage limits. You can and should purchase SUM coverage up to an amount equal to your liability coverage. In other words, if you have liability coverage in the amount of \$100,000, you should buy SUM coverage up to \$100,000. To help you to understand why this insurance is so important, consider the circumstances of our client, Jennifer. While stopped at a red light, she was hit from behind by another vehicle. She sustained a broken back. The negligent driver who hit her had liability coverage of only \$25,000, the bare minimum required in New York. Jennifer had \$100,000 in SUM coverage. She recovered \$25,000 from the car that struck her. Then, she was able to recover another \$75,000 from her own insurance company (for a total of \$100,000). If she had not purchased SUM coverage, her recovery would have been limited to the \$25,000 available from the car that struck her, which was insufficient to compensate her the permanent injuries she sustained.

Fortunately, SUM coverage is relatively inexpensive. You can't control what other drivers do, or how much liability coverage they have, but you can do something to protect yourself in the event you are in an accident with a financially irresponsible driver. If you don't have this coverage, call your broker immediately and obtain as much of it as you have in liability coverage. This is especially good advice if your job requires you to have perfect health in order to work and if you are entitled to a pension after 20 years of service. As an example, we represented a NYC firefighter named Joe. He was injured in a serious auto accident by a driver who had no liability insurance. Unfortunately, Joe's ankle was crushed and he was forced to retire from the FDNY. His recovery was limited to the \$100,000 of SUM coverage that he had on his own insurance policy. This was simply insufficient to compensate Joe for a permanent and painful injury, not to mention the loss of a career making \$100,000+/year and a greatly reduced pension for retiring before his 20th year. We recommend that you protect your future income and pension by having at least \$1million in liability and SUM coverage.



In the cases listed below, we were able to secure verdicts or settlements after unexpected accidents forever changed our clients' lives. We are grateful that so many people have put their trust in us, and proud that we have given so many people the opportunity to regain their sense of security after an accident.

RECENT VERDICTS AND SETTLEMENTS

- \$7 million for an undocumented teenager who sustained severe pelvic and urological injuries when his bicycle was struck by a truck making a left turn - Suffolk County;
- \$1.125 million for a 47-year-old NYC firefighter whose neck injuries required cervical fusion - New York County;
- \$920,000 for a 55-year-old police officer who, after stepping on a defective stair in a housing project, required a total knee replacement - New York County;
- \$650,000 for a 45-year-old sanitation worker who suffered a torn rotator cuff that required multiple surgeries after the driver of a car attempted to pass the garbage truck he was loading - Kings County;
- \$750,000 for a 42-year-old nanny who was hit by a car as she attempted to cross the street while pushing a baby carriage (thankfully, the child was uninjured). Her injuries included a fractured elbow requiring surgery and the insertion of a metal plate and screws, fractured teeth and nose, and a fractured thumb requiring surgery - Rockland County;
- \$350,000 for a 35 year old teacher who fractured her ankle requiring surgery to insert a plate and screws and a 2nd surgery to remove them, as a result of her leg getting caught in the gap between a subway train and the subway platform - New York County;
- \$450,000 for a 41-year-old construction worker whose auto accident aggravated his pre-existing bilateral knee conditions requiring medial meniscectomy surgeries on both knees - Staten Island.

continued from "Justice for Victim" page 1

cost of household help. However, the pain and suffering that Steve endured was incalculable. Through witnesses, doctors, and a videographer who filmed a video of a single day in Steve's life after the accident, we were able to present a compelling picture of Steve's suffering.

Because the truck company had no assets, we were limited to the available insurance. After three years of intense litigation, the defendants' insurance companies offered the full amounts of both liability policies, totaling \$6 million. If the truck company had \$10 million of liability insurance, we would have gone

after it. On the other hand, sometimes accident victims find that there is little or no insurance available at all. Frankly, no amount of money was sufficient to fully compensate Steve for his pain and suffering and loss of enjoyment of life. He would have given it all back and more to return to the life he had before the accident if he could. Without attorneys willing to fight for him, the defendants' insurance companies would not have compensated Steve for what happened to him. Unable to earn a living, and saddled with mounting costs, he would have been forced to bear the financial

burden of the injuries himself. The settlement has enabled him to regain his sense of financial security, and to feel as if he has received some modicum of justice for what was done to him.



From left to right: Barry Salzman, Dana Cutting, Bruce Kaye, Nicole Rang, Dom Penson, Chris Carozza, Michael Barasch, O.M. Barbara Mohan, Lee London, Sara Director, Ed Marcowitz.

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CONSTRUCTION ACCIDENTS ARE NOT "JUST PART OF THE JOB" THE THREAT OF HIGH JURY VERDICTS HELPS ENSURE WORKER SAFETY



In 2010, Jose Gonzalez (name changed to protect his privacy), a brick mason, was atop a scaffold pointing bricks, when a forklift operator accidentally backed into the scaffold. The scaffold collapsed causing Jose to be thrown 20 feet to the ground. OSHA's investigation determined that the scaffold was shoddily constructed in that it wasn't braced to prevent movement, and it didn't have a railing to prevent falls. The General Contractor (GC) was fined a nominal amount and work proceeded at the site as usual.

For Jose, life did not return to normal. Jose was the sole breadwinner for his family of 6. But with multiple fractured vertebrae, he was unable to return to the physically demanding

work he had done all of his life. Despite a difficult spinal fusion surgery, his pain and physical limitations persisted.

New York State has enacted tough laws aimed at protecting construction workers and fostering safety at construction sites. Although GC's and property owners are required to follow all safety rules and ordinances to ensure that worksites are safe for their workers, not all of them are willing to comply with the laws. In too many of our serious construction accident cases, we find that the GC and property owners were more concerned with getting the job done cheaply and quickly, at the expense of the safety of their workers, who are exposed to extraordinary risks. But injuries and deaths to construction workers and nominal OSHA fines shouldn't be viewed as the "cost of doing business". Any GC that fails to provide a safe workplace exposing

workers to harm should rightly bear the financial burdens that will necessarily follow. Often, only the threat of a big verdict can make them comply with the law.

New York State Labor Law Section 240(1), commonly known as the "Scaffold Safety Law", empowers workers to bring lawsuits against property owners and general contractors whose failure to provide adequate safety devices at elevated work sites causes injury, even if something the worker did also contributed to the accident. The types of accidents covered under this law are often described by the bench and bar as "related to the effects of gravity". In plain English, such cases usually involve



continued on page 6



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continued from "Construction" page 5

a worker who falls from a ladder, a scaffold, stilts, or some other height, or a worker injured by a falling object. This statute is one of the most important protections for the construction labor force in New York. Workers like Jose count on their employers to provide them with scaffolding that is safe and with proper fall protection. There's no question that without it, more workers would be maimed and killed in preventable accidents.

Because Jose fell from a scaffold that lacked important safety features that would have prevented the accident, our firm alleged that the GC violated Labor Law Section 240(1). After depositions, we won summary judgment on the issue of liability. This was a formal determination by the court, without ever going to a jury, that the GC violated Labor Law Section 240(1) and that it was responsible for Jose's injuries. Knowing that

we had won the liability portion of his case, the defendants' insurance companies finally offered to settle Jose's case for \$2.25 million before trial. Clearly, the summary judgment ruling was instrumental in bringing about the settlement offer.

Just as important, the GC's insurance carrier demanded that the GC no longer hire the subcontractor who had erected the scaffold. Our lawsuit helped put that slipshod company out of business, making future work sites a little safer for some construction workers.

Injured workers like Jose are not alone. If you are a construction worker who has been injured as a result of a safety lapse at a worksite, you should know that the law is on your side. You should always consult an attorney experienced in handling cases for injured construction workers to learn your rights.

This is the FIFTY-EIGHTH edition of the Barasch McGarry Salzman & Penson LAW LETTER... attorney advertising which presents topics of interests to our clients. For questions, additional copies, or more information about topics raised in this law letter, call or write:

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