

FIREFIGHTERS' NEWSLETTER



THIS DOCUMENT CONTAINS IMPORTANT INFORMATION
ABOUT FIREFIGHTER RIGHTS

DON'T LOSE YOUR HOUSE, YOUR FUTURE INCOME, OR YOUR PENSION BENEFITS

PROTECT YOURSELF IN THE EVENT OF A SERIOUS AUTO ACCIDENT

Let's face it - - you didn't become a firefighter to get rich. Most of you could have made much more money doing other things, like working as a stock broker or insurance salesman, playing for the New York Yankees, or being a plastic surgeon to the stars. On the other hand, you get paid to do something that you love, and you have the satisfaction of knowing that you contribute to society in a way that few people do. We'll be the first to admit that you don't get paid enough for the dangerous and critical work that you do. While we can't raise your salary (we wish we could), here is some advice to help you safeguard the security you have worked for.

No doubt one of the biggest financial attractions of the job is the service pension that fully vests only after 20 years. But some number of firefighters will be disabled from firefighting before they are able to work for 20 years. Aside from line-of-duty accidents, the most common reason why firefighters do not make it to their 20th year is auto accidents.

There are a few similarities, but some major differences between being disabled from firefighting as a result of a line-of-duty accident as opposed to being disabled from injuries sustained in an off-duty car accident. Understanding the differences will help you to plan for your future financial well being.

Regardless of whether you are injured in the line of duty or in an off-duty auto accident, you will have the right to sue the negligent party who caused the accident. If you regularly read our newsletters, you know about some of the verdicts and settlements that we have secured on behalf of our disabled firefighter clients. We are proud that we have been able to obtain financial security for so many. However, the amount that an injured party can actually

recover from a lawsuit, no matter how high the verdict, depends entirely on one completely fortuitous factor: how much liability insurance the defendant has. You cannot foresee whether you will be injured in an accident, and you certainly cannot foresee whether there will be adequate liability coverage if you are. However, you can and should do something proactive to protect your financial future.

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We are heartbroken to report the sad news that our dearest friend, FDNY Captain John Graziano has passed away after a valiant struggle with cancer.

John had a 26-year career with the FDNY, with his first assignment in Ladder 172 in Brooklyn. He was promoted to lieutenant in 1994, and worked at Ladder 132, also in Brooklyn. His promotion to captain in 2003 brought him to Staten Island at Ladder 78. He retired in 2008.

He was not just a heroic firefighter and a leader of his men. John was a wonderful man, a devoted husband and loving father and grandfather. It was an honor and a privilege to say that John was our dear friend. Many of you will remember his larger than life personality, both in the fire houses and at our Hospitality Room at the UFA Seminars in Atlantic City.

Our thoughts and prayers are with his loving wife Pat, and their two terrific sons, John and Joey.

We will miss you buddy.

Love,

The lawyers and staff at Barasch McGarry Salzman & Penson

WTC LEGAL NEWS UPDATE:

NOT TOO LATE FOR SOME CANCER VICTIMS TO SEEK COMPENSATION FROM THE VICTIM COMPENSATION FUND

The deadline for first responders to register a claim with the Victim Compensation Fund (VCF) for respiratory illnesses was October 3, 2013. Anyone diagnosed with a respiratory ailment, or with gastroesophageal reflux disease (GERD) after that date is not covered under the fund. But not all recently-diagnosed diseases are excluded from the fund. People who have recently developed certain cancers may still apply and receive compensation.

In 2012, data became available that convinced the medical community that exposure to WTC toxic dust is linked to an increase in dozens of types of cancer. The latency period for these cancers is believed to be several years, and so the National Institute for Occupational Safety and Health (NIOSH) determined that individuals who were diagnosed with one of the covered cancers after September 11, 2005, could obtain compensation from the VCF. With respect to most of these covered cancers, victims had to file their claims by October 14, 2014.

There are some notable exceptions to the October, 2014 cancer deadline which allow sick first responders additional time to make a claim:

- ☛ The deadline for anyone recently diagnosed with a WTC cancer is **two years from the date of diagnosis**. The date of diagnosis is determined by the date of a biopsy or a pathology report that confirms the cancer. **So, those diagnosed with a WTC-related cancer within the last two years still have time to register a claim.**
- ☛ The deadline for anyone who was diagnosed with **prostate cancer** after September 11, 2005 is **OCTOBER 21, 2015**. After that date, only newly diagnosed prostate cancer will be compensable.
- ☛ The deadline for anyone diagnosed with a "**rare cancer**" is **FEBRUARY 18, 2016**. After that date, only newly diagnosed rare cancers will be compensable.

Rare cancers are defined as "any type of cancer that occurs in less than 15 cases per 100,000 persons per year in the United States." Some examples of cancers that meet the "rare cancer" definition include, but are not limited to, the following:

Malignant neoplasm of the testis
Neuroendocrine cancer
Male breast cancer
Cancer of the gallbladder/biliary tract
Cancer of the small intestine

Thymus cancer
Central nervous system cancer
Adrenal gland cancer
Penile cancer
Stomach cancer

BALANCE OF VICTIM COMPENSATION FUND PAYMENT AWARDS POSTPONED

Because it is impossible to ascertain how many more responders will be diagnosed with cancers linked to the WTC, Congress has directed Special Master Birnbaum to only pay 10% of award determinations prior to October 3, 2016. At that point, the VCF is supposed to close. If the total amount of awards given out by the VCF exceeds the \$2.77 billion that was authorized by Congress, the Special Master will have to ratably reduce the 90% balances owned to claimants. If Congress does not authorize additional funding, it is possible that claimants will have their awards ratably reduced when final payments are made in 2017. We are working closely with local lawmakers, union officials and doctors to lobby Congressmen outside of New York to extend the Zadroga VCF, and to provide additional funding in order to fairly compensate victims.



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Line of Duty vs. non Line of Duty Disability

Pensions: Huge Differences

When it comes to a firefighter's future pension payments, there is a critical difference between being disabled in a line-of-duty accident as opposed to an off-duty car accident. Most firefighters who suffer disabling injuries in the line of duty will receive a 3/4 tax-free pension. However, if you became a firefighter after July 1, 2009, you are not qualified to receive the generous disability payments given to those hired before that date. Instead, you will receive just half of your final average salary, minus half of any Social Security disability benefits you receive. And, the payments will be taxable.

A disabled firefighter who is injured while off duty is obviously not entitled to a line-of-duty disability pension. Instead, he is entitled to a much smaller ordinary-disability pension. The formula to calculate that pension depends upon the length of the firefighter's service with the City of New York. And, as you have no doubt heard, the disability pension benefits afforded to newer hires are ridiculously low. According to the UFA, it works out to about \$27 a day for a rookie firefighter, far below what colleagues hired before July 1, 2009 would receive. But, no matter when your New York City service began, ordinary-disability pension benefits are far below what you need to survive. In short, you must procure adequate automobile insurance to protect your home, your current income, and your pension.

Having Sufficient Auto Insurance is Indispensable

There are two types of automobile insurance coverage that you should have in order to protect your assets and your future income and pension:

Liability coverage will protect you if you are sued by anyone injured as a result of *your* negligent driving. It will also cover you in case you lend your car to a person who injures someone else in an accident.

You should make sure that you have enough liability insurance to protect your home from a lawsuit against you. In other words, the higher your liability insurance coverage, the less likely it is that an injured person will seek to collect against your personal assets. It also makes it less likely that an injured person will obtain a judgment in excess of your auto insurance limits.

Generally, if your house is worth \$500,000, and you can afford the premiums, you should have at least \$500,000/\$1 million of basic

automobile liability insurance and/or umbrella coverage to protect you in case an injured person sues you. The bank that gave you your mortgage will insist that your homeowner's fire and liability insurance coverage is at least as great as the value of your home. The amount of your auto coverage should also be as much as the value of your home. That amount has proven to be sufficient in the vast majority of the lawsuits that we see against our firefighter clients. Thankfully, your pension can't be garnished by a judgment creditor.

Supplementary Uninsured/Underinsured Motorist (SUM) coverage: There are an awful lot of drivers on the road who have little or no insurance. Incredibly, NYS law only requires car owners to carry \$25,000 of liability coverage. These owners are complying with the law, but are considered "underinsured". Obviously, if you are seriously injured in an accident, \$25,000 won't begin to compensate you for your injuries and lost earnings. The good news is that there is insurance that you can buy that will cover you in the event that you are injured

**SUM auto insurance
is available to
motorcyclists as well!**

by an uninsured or underinsured driver, and, because it's one of the least expensive types of coverage, there's no reason not to have it. SUM coverage allows you to file a claim under your own auto insurance policy for injuries that you sustain as a result of the negligence of an uninsured or underinsured driver.

The amount of SUM coverage that you can buy is dictated by your liability coverage limits. Therefore, 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 \$500,000, you can and should buy SUM auto coverage up to \$500,000 (or talk to your broker about getting a \$300,000 basic liability policy *plus* a \$1 million umbrella that covers both liability and SUM). We recommend that if you can afford it that you have \$1 Million of both.

Crushed Ankle Destroys Dreams of Financial Security

To help you to understand why you should think carefully about the amount of SUM auto insurance that you have, consider the

circumstances of our client Joe. Joe was in his 8th year at a busy Brooklyn engine company. Thanks to significant overtime, he was making close to \$100,000 a year. He had 2 young kids and had planned to work for 17 more years. If everything went according to plan, Joe would have earned approximately \$2 million in salary until his retirement after 25 years of service. Moreover, his 50% service pension at that point would have been based on his income 17 years from now. He also would have been entitled to a Variable Supplement Fund (VSF) payment of \$12,000 per year, and his "1/60th" payments.

Unfortunately, Joe was seriously injured in an auto accident by an uninsured driver. 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 his career and a greatly reduced pension for retiring before his pension had fully vested.

Because Joe was forced to retire before he completed his 10th year, his non-line of duty disability pension is 33.3% of his last year's salary. He will get no VSF, nor 1/60th payments. There will be no cost of living increases. Joe and his family were forced to sell their house and move in with his in-laws. Today, he has to make do on a taxable \$33,333 per year non-line of duty disability pension, plus \$10,000 more from social security disability. His life would be much different had he purchased a \$1 Million SUM policy.

Conclusion

Fortunately, SUM coverage is relatively inexpensive. You can't control what other drivers do, nor 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 or with a hit and run driver. If you aren't sure how much SUM coverage you have, call your insurance broker immediately and obtain as much of it as you have in liability coverage. Protect your future income and your future pension payments.

Remember: your SUM coverage should equal your liability insurance!

**KNOW YOUR RIGHTS!
PROTECT YOUR ASSETS,
INCLUDING YOUR FUTURE
INCOME AND PENSION!**

PAYING IT FORWARD

BARASCH MCGARRY DONATES \$10,000 TO FIREFIGHTER FAMILIES IN NEED

Our firm is proud of the free legal services that we provide to the firefighter community. As you hopefully know, since 9/11 we have been doing free wills and health care proxies for active members in service. To date, we have prepared over 2,000 wills. A few years back, when some members were getting stonewalled by the 1B Medical Board, partner Ed Marcowitz took up their cause and represented many injured members *pro bono* at Article 78 proceedings to secure their $\frac{3}{4}$ disability pensions. Ed personally represented over 60 firefighter widows and hundreds of injured firefighters before the first Victim Compensation Fund (VCF). Recently, based on his unique experience, Ed was asked to testify in a case on behalf of the family of a husband and a father who lost his life on that terrible day.

The defendants were impressed when Kenneth Feinberg, the first VCF's Special Master, personally certified Ed as an "expert" in matters concerning the original September 11th Victims Compensation Fund. Consequently, after Ed's testimony, the case was settled for \$7.4 million, an amount that would have actually made it the highest amount awarded by the VCF. Ken Feinberg sent Ed a note congratulating him for a job well done. "You have set a very high bar for other lawyers to emulate," Mr. Feinberg said. "I salute you."

Barasch McGarry refused to take any fee. Instead, Ed arranged for donations to be made on behalf of the family to the UFA Widow's and Children's Fund and the UFOA Bravest Scholarship Fund in the total amount of \$10,000. The funds were set up to help the widows and children of deceased and disabled NYC firefighters.



Ed Marcowitz and Mike Barasch with President Jake Lemonda and members of the UFOA Executive Board

"NOBODY IS IMMUNE FROM LIFE'S MISFORTUNES. WE ALL FACE UNCERTAINTY AND RISK. ALL THE MORE REASON TO PAUSE TODAY AND CAREFULLY PLAN FOR TOMORROW."

-Ken Feinberg, Esq. Special Master of the 9/11 Victim Compensation Fund

SEE YOU IN ATLANTIC CITY AT THE UFA DELEGATE SEMINAR!



This year at Tropicana Casino & Resort. We're looking forward to seeing the good friends we've made over the years and to meeting those of you attending for the first time. Please look for us at our information table and at our hospitality suite.

DON'T PROCRASTINATE!

Free Wills for Active Firefighters

Whether single or married, you need a Will. Don't wait until tragedy strikes - take care of your family - NOW!

We prepare simple Wills for FREE
Call us - 1-888-FIRELAW



A recent visitor who's happy now that his future is secure. His parents brought him to our office when they signed their Wills.

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