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### **WHAT TO DO IF YOU ARE INJURED IN A LINE OF DUTY ACCIDENT**

Too many members get hurt and think that their injuries are "part of the job." But injuries to firefighters are often preventable, and commonly result from a third party's statutory violation, such as a violation of the Fire Code, the Building Code, the Vehicle and Traffic Law, or the Labor Law, to name a few. Firefighters injured in the line of duty have extensive statutory rights against third parties who violate the law.

Of course, it is imperative that an injured firefighter fill out an accurate and thorough CD-72. A pension application or lawsuit can rise or fall on this singularly important document.

### **SOCIAL MEDIA DANGERS**

Whether it's posting photographs or commenting about our latest adventures, we are all increasingly using social media to interact with, and stay connected to, our friends and family.

However, as public servants, firefighters must be extremely careful about what they post in the virtual world. A seemingly innocent photograph of a firefighter holding a beer at a company barbecue can have detrimental consequences if that member is later arrested or brought up on department charges for an alcohol-related offense. Your social media footprint can be scrutinized by law enforcement or the department so please be smart about what you post.

### **WHAT TO DO IF YOU'RE ARRESTED**

An FDNY member who is arrested *must* report the arrest to the fire department within 24 hours of getting arraigned or released. If you are arrested, you must notify your officer or trustee; you should never rely on others to do this for you. Your failure to report the arrest can result in separate department charges. Also, it's always important to contact a competent lawyer as early after the arrest as possible. Sometimes, a lawyer's prompt intervention can result in the charges being resolved early on in the process. If arrested, it's okay to identify

yourself as a firefighter so long as you don't try to use your position to get the charges dropped. And, lastly, remember that even what you say during casual conversations with the police can be used against you. So, don't confess your guilt, no matter how nice the police officer is. He's not your friend!

### **EQUAL EMPLOYMENT OPPORTUNITY (EEO) INTERVIEWS**

Should you receive a letter from the City requesting an interview concerning an Equal Employment Opportunity (EEO) matter, you will have 48 hours to contact DCAS. An interview will be sought if you are the subject of an investigation or are a witness. Don't make the mistake of calling DCAS without first contacting an attorney. Firefighters are entitled to legal representation at these interviews so call an attorney first and the attorney will properly advise you.

You can always call us with questions about your legal rights.

## **WHERE THERE'S A WILL, THERE'S A WAY**

As firefighters, your job is to protect the citizens of New York. Yet so many of you pointedly avoid doing one of the most important things you can to protect your own families; you avoid making a will.

Putting off making a will is not unique to firefighters. But the realization that a will is necessary can come too late - such as when death or disability occurs. You have the right to decide how your estate is distributed, and who will care for your minor children. If you die without a will, you have no guarantee that your wishes will be carried out.

In order to give something back to the firefighters who protect us, our office has pledged to prepare a will for any active firefighter for free. We have already prepared over 2500 simple wills for firefighters and their spouses, and we have provided this service free of charge. Let us prepare a simple will for you. It will give you peace of mind, and it won't cost you a penny.



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**This is the SIXTIETH 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**

## **UFA AND UFOA DELEGATE CONVENTION ROUND UP**

This spring, Mike Barasch and firm partners Barry Salzman, Bruce Kaye, and Ed Marcowitz attended the UFA and the UFOA Delegate Education Seminars. The conventions always provide us with a unique opportunity to meet with people who, like us, work to protect the rights of firefighters. This year was no exception.

Mike met with IAFF President Harold Schaitberger (see photo) and IAFF VP Pete Gorman, about their common effort to extend the Zadroga Victim Compensation Fund, and with Dr. Kerry Kelly to discuss the rising number of firefighters diagnosed with cancer, autoimmune diseases, and PTSD. Schaitberger and Gorman recently joined Mike and his client Joe Zadroga, along with Senators Gillibrand and Schumer, and Congress members King, Nadler, and Maloney, at a press conference in Washington, D.C., calling for Congress to extend the Zadroga Act.

Our attorneys also discussed firefighters' legal rights with UFA VP Jim Slevin, Recording Secretary and Seminar Director LeRoy McGinnis, Health and Safety Officer Gerard Fitzgerald, as well as all of the UFA borough Trustees. We would be remiss if we didn't also acknowledge the dedication of UFOA President Jake Lamonda, Legislative Director Richie Alles, and the rest of the OA's dedicated Board.



**Mike Barasch with IAFF President Harold Schaitberger**

Mostly, we were delighted to meet with the scores of members (active and retired) who attended the conventions, many of whom had questions for us about the legal rights available to firefighters.

Having attended this year's seminars, we thought we would pass on some highlights that were featured prominently, and may be of interest to you:

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## **A FORMER WTC VOLUNTEER RECOVERY WORKER URGES RENEWAL OF THE 9/11 ZADROGA LAW**

*BY Richard Dodd*

May 30 marks the anniversary of the end of the recovery and cleanup operations at the World Trade Center site when the last piece of debris — a misshapen steel column — was cleared in 2002.

Thirteen years later, workers, volunteers and survivors can't clear their bodies of the toxic effects of 9/11. As if in some kind of bizarre "Survivor" reality TV show spin-off, their medical and financial benefits authorized under the James L. Zadroga 9/11 Health and Compensation Act of 2010 will terminate in 17 months unless new legislation is passed.

I'm on this show — and I don't like it.

In 2001, I was a middle-aged business executive trying to hold together a troubled marriage while running a software firm in Lower Manhattan. That morning in September, I planned to have a late breakfast at the club at Windows on the World,

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



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the restaurant on the top floor of the North Tower.

I awoke to fire engine horns, police sirens and the sight of air with the consistency of pancake batter streaming through my living-room window.

I left my eighth-floor apartment, walked down a darkened stairwell, and opened the door. The lobby was filled with people looking as if they just came in from a snowstorm. Except this wasn't snow. All of them — elderly, infants, schoolchildren, street vendors, vagrants, my neighbors from the building — were coated from head to foot.

I worked with the concierge to clean the dust and ashes off of everyone. We instinctively knew it was something that needed to be removed. In the weeks that followed, I volunteered to assist in the rescue and recovery efforts.

On Sept. 28, 2001, I worked at the Salvation Army to dispense food and supplies in its Canteen at the foot of Ground Zero. I immediately began experiencing World Trade Center cough — a dry cough that tears at your throat and lungs. I was diagnosed with asthma the following year. Then my health deteriorated severely in 2013.

I had surgery to remove a cancerous tumor that June and underwent six months of chemotherapy. In February of 2014 the World Trade Center Health Program certified my cancer, along with asthma and post-traumatic stress disorder, as being

linked to my exposure to the World Trade Center disaster.

We now have scientific evidence that the air in Lower Manhattan contained a complex mixture of toxic substances. Dr. Philip Landrigan of Mount Sinai Hospital said, "The cement dust had a pH of between 10 and 11, which means that it would be like inhaling powdered Drano."

Ongoing studies funded by the federal government and the New York Fire Department have found that 9/11 responders and volunteers have a higher chance of contracting cancer than the general population.

I joined the relief efforts to make a difference. Now I contemplate an uncertain future along with the over 71,000 other participants in the World Trade Center Health Registry who face the termination of medical benefits and compensation provided us by the federal government's expiring Zadroga Law, signed into law in early 2011.

This will impose an enormous hardship on the workers and volunteers whose lives were forever altered by the terrorist attacks.

On April 14, 2015, New York Rep. Carolyn B. Maloney introduced the James Zadroga Health and Compensation Reauthorization Act on the floor of the House of Representatives. She stated, "The clock is ticking for those heroes and survivors of 9/11. In just over 500 days, the programs that help them cope with 9/11 related illnesses will ex-



**Mike with NYS Senator Kirsten Gillibrand, one of the lead sponsors of the Zadroga extension bill.**

pire." An identical bill was sponsored in the Senate by Sen. Kirsten Gillibrand the same day.

There is more at stake than the reauthorization and extension of the James Zadroga 9/11 Health and Compensation Act. This is not a reality TV show.

The slogan "9/11 Never Forget" should guide Congress in extending the Zadroga Act as a litmus test for upholding our national honor.

*Dodd is a freelance writer and author who lives in Princeton, New Jersey. He recently released his debut novel "Betrayal by Blood and Demons."*

## INJURED FIREFIGHTERS AND POLICE OFFICERS ARE ENTITLED TO COMPENSATION FOR LINE-OF-DUTY INJURIES

### VIOLATIONS OF BUILDING CODES AND SAFETY REGULATIONS TRIGGER LIABILITY

Traditionally, New York courts followed the "firefighter's rule," which barred recovery in negligence for injuries sustained by a firefighter in the line of duty. Several reasons were usually cited in support of the rule. One is that firefighters assume the risk of injuries that go with the job. Another is that firefighters are well-trained professionals hired specifically to confront dangerous situations often caused by someone's negligence. As one court put it, "as a matter of public policy firefighters trained and compensated to confront such dangers must be precluded from recovering damages for the very situations that create a need for their services".

The rule applied to police officers, too. Like firefighters, they are the experts engaged, trained and compensated by the public to deal on its behalf with emergencies and hazards often created by negligence. For example, apprehending an escaped mental patient—who may have escaped owing to negligent supervision, and may be dangerous—is a function particularly within the scope of duty of police officers. They receive both training that enables them to minimize the dangers their occupation requires them to face, and compensation and special benefits to help assure that the public will bear the costs of injuries suffered by its protectors in the line of duty.

But, for decades, New York State's Legislature has been moving consistently in the direction of doing away with the firefighter's rule. The main reason was to encourage building owner's compliance with relevant statutes and ordinances by exposing violators to liability for injuries resulting directly or indirectly from noncompliance.

The first legislative action occurred in 1935, when the Legislature sought to limit the harsh effects of the firefighter's rule by enacting General Municipi-

pal Law § 205-a. It created a cause of action for firefighters who, while in the line of duty, are injured as a result of violations of statutes or regulations. Specifically, it provides that firefighters or representatives of deceased firefighters have a right to sue where the "negligence of any person \* \* \* in failing to comply with the requirements of any of the statutes, ordinances, rules, orders and requirements of the federal, state \* \* \* or [local] governments" "directly or indirectly" causes the firefighter's injury or death during the discharge of his or her duties.

In 1989, the Legislature enacted General Municipal Law § 205-e to confer on police officers the same benefits that section 205-a offered firefighters, namely, a cause of action for line-of-duty injuries caused by statutory or regulatory violations.

Finally, in 1996, the lawmakers enacted General Obligations Law § 11-106, which largely abolished the firefighter's rule by giving firefighters and police officers a right to sue in negligence for injuries suffered while in the line of duty (except as to actions against municipal employers and fellow workers). That same year, the Legislature significantly expanded GML 205-a in response to court decisions interpreting the statute too narrowly.

Ninety percent of the calls we get from injured firefighters don't lead to lawsuits. When a firefighter has suffered only minor injuries, we normally advise him not to sue. At the very least, a firefighter should know what his legal options are so that he can make an informed decision whether or not to litigate.

Know Your Rights! Always consult with an experienced firefighter's attorney if you are injured in the line of duty.

## COMPENSATION DECISIONS RENDERED BY THE 9/11 VICTIM COMPENSATION FUND

*Government touts statistics which support claims of progress*

Victim Compensation Fund Special Master Sheila Birnbaum has reported that as of March 31, 2015, the VCF has made 4,415 compensation determinations totaling more than \$1 billion, an average of \$257,000 per claimant. Clearly, the VCF is making tremendous progress. Among our clients who are firefighters, the key factor that has greatly increased the awards is whether the firefighter was deemed disabled as a result of the illness. Moreover, claimants with cancer are receiving more than those with non-life threatening illnesses.

The following are some recent award determinations by the Victim Compensation Fund, and the illnesses that were certified for compensation:

-\$75,000.00 for non-disabling esophageal reflux, obstructive sleep apnea, extrinsic asthma, cough;  
-\$250,000.00 for malignant neoplasm of thyroid gland;

-\$90,000.00 for non-disabling asthma, chronic rhinitis, esophageal reflux, simple chronic bronchitis, sinusitis;  
-\$265,000.00 for esophageal reflux, obstructive sleep apnea, melanoma of skin;  
-\$45,000.00 for non-disabling esophageal reflux, asthma, sinusitis;  
-\$95,416.54 for non-disabling asthma, cough, chronic airway obstruction, chronic laryngitis, chronic rhinitis, obstructive sleep apnea, chronic rhinitis, esophageal reflux;  
-\$95,416.54 for non-disabling asthma;  
-\$55,000.00 for non-disabling asthma, chronic rhinitis, simple chronic bronchitis, sinusitis;  
-\$90,000.00 for non-disabling asthma, chronic rhinitis, esophageal reflux;  
-\$1,139,800.00 for disabling asthma, rhinitis and severe reflux;  
-\$50,000.00 for non-disabling asthma, chronic rhinitis, esophageal reflux, appealing award af-

ter amending claim to add malignant neoplasm prostate;  
-\$265,000.00 for chronic rhinitis, esophageal reflux, sinusitis;  
-\$1,391,756.89 for disabling pulmonary fibrosis and post inflammatory pulmonary fibrosis, other chronic pulmonary heart diseases and cough (oad), sleep apnea;  
-\$75,000.00 for non-disabling asthma, esophageal reflux, chronic bronchitis, sinusitis;  
-\$801,058.00 for malignant neoplasm of colon;  
-\$340,000.00 for malignant neoplasm urinary organ;  
-\$1,622,332.00 for disabling asthma, chronic rhinitis, obstructive sleep apnea, esophageal reflux;  
-\$964,419.65 for disabling asthma, esophageal reflux, obstructive sleep apnea;  
-\$594,092.94 for disabling asthma, esophageal reflux.

## NEW KME RIGS GET A "THUMBS DOWN" FOR SAFETY

### IMPROPERLY PLACED HANDLES POSE RISK OF CRUSH INJURIES TO FIREFIGHTERS



of New York within that time, or you will be forever barred from bringing an action against the City for your injuries. It is important that you seek help from an attorney experienced in representing firefighters injured in the line of duty.

Last year, the FDNY received the first delivery of new pumper trucks manufactured by Kovatch Mobile Equipment Corp. (KME). But the rigs came with an unhappy surprise for some firefighters. Since their debut, several firefighters have suffered crush injuries to their thumbs as they closed the rig's doors. The problem has occurred in the rear cab, where door handles and bars are placed very close to the edge of the door. In each case, the firefighter pulling the door closed perceived that his thumb was clear of the door jamb although it wasn't. In some rigs, the bars and handles have now been removed.

The problem is no laughing matter. Several firefighters are likely to lose their careers as a result of the crush injuries to their thumbs. If you work on a KME pumper, be especially mindful of this risk.

You should also know that if you are injured as a result of the poorly placed handles, you have just 90 days from the date of the accident to preserve your legal rights. You must file a notice of claim with the City



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