

STOP PUTTING IT OFF FREE WILLS FOR ACTIVE FIREFIGHTERS

Sometimes it takes hearing the horror stories experienced by other families to convince us to do something that we know is the right thing to do anyway. Our law firm has been drafting FREE WILLS for firefighters ever since 9/11. Despite the fact that we have now provided this service for over 2,500 firefighters, there are thousands of firefighters who have not yet taken advantage of this offer. Those of you that joined the FDNY after 9/11 may not be aware of some of the mean-spirited and contentious fighting that ensued among family members after that horrific day. Left to guess at what their loved ones would have wanted, all too often fighting erupted between siblings, between parents and their daughters-in-law, between current and former spouses, and between grandparents and grandchildren. Parents who had abandoned their children came out of the woodwork to claim their piece of pie. Of course, much of the fighting had to do with money, but all too often it was simply about who should be the executor of the deceased firefighter's estate even though executors don't normally get paid.

Perhaps the following three stories will encourage you to pick up the phone and call our office so that we can send you a free will kit:

1. We represented a firefighter who died on 9/11. A decade earlier he had been married briefly and then divorced. He and his ex-wife had no children. Unfortunately, he never changed his life insurance beneficiary. After his death, his ex-wife, whom he had not seen in a decade, demanded the life insurance proceeds. His family was furious but had no recourse. According to the Surrogate's Court, if he wanted someone else to get the money, he would have changed his insurance beneficiary. Because he hadn't done a Will, there was no evidence to convince a court that he wanted other family members to inherit his property.

2. We represented the estate of a firefighter and his wife, both of whom passed away due to an auto accident. A fight ensued between his parents and her sister over who should bring up their two infant children. Accusations of unfitness were hurled in both directions. If only the parents had designated the children's guardian in their Will, some terrible fighting could have been avoided. More importantly, the parents' wishes would have been followed rather than what judge thought was best for the children.

3. We recently got a significant Victim Compensation Fund award on behalf of a firefighter who died from cancer that was linked to the toxic WTC dust. Because he had no Will, the Surrogate's Court judge ordered that the proceeds of the award be split among his widow and both of his children. The widow was furious when we told her this news because the firefighter had been estranged from his son for 10 years. She said "there is no way that he would want his son to get a dime." Unfortunately, the Surrogate's Court judge had no choice but to give the estranged son hundreds of thousands of dollars.

Please don't let your superstitions or inertia prevent you from doing the right thing for your family. Pick up the phone today and call our office for a Free Will Kit. You fill out the forms and your Wills and health care proxies will be ready for you to sign when you come to our office. It's our pleasure to do this for you and your spouse. Please take advantage of this offer.

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Penson To All Of
You And Yours



This is the SIXTY-SECOND 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

THE "FIREFIGHTER'S RULE": R.I.P.

Under New York State law, injured firefighters have significant legal rights, including the right to recover compensation when they are injured as a result of someone's negligence. But it was not always so. Most members don't realize that there was a time when firefighters were largely prohibited from bringing a lawsuit for line-of-duty injuries. In fact, firefighters were singled out in this respect, because most other workers could sue negligent third parties. Because this harsh treatment was reserved for firefighters alone, it was termed the "firefighter's rule."

Why were firefighters singled out this way? Courts essentially reasoned that firefighters "assumed the risks" of their dangerous profession.

The implications of the firefighter's rule are obvious. A firefighter who sustained terrible injuries as a result of someone's carelessness could never be compensated for his loss. He could lose his career, his ability to work, and to support his family, without legal recourse. Worse still, the firefighter's rule seemed to encourage violations by letting building owners and others get off scot free no matter how bad their acts.

The Legislature struck the first blow against the firefighter's rule with the enactment of General Municipal Law § 205-a

Recognizing the unfairness of the firefighter's rule, the New York State legislature stepped in. It enacted General Municipal Law § 205-a, which permits firefighters to sue when they are injured as the result of someone's violation of a statute, rule, or regulation. (Section 205-e was later enacted to give police officers the same rights). Subsequent court decisions and lawsuits brought on behalf of injured firefighters, many by our law firm, have further strengthened the rights of injured firefighters, by ensuring that the special protections afforded to firefighters are applied expansively, as the legislature intended.

Because GML § 205-a was enacted to protect firefighters, and lessen the harsh effects of the firefighter's rule, courts must interpret it broadly, and certain defenses normally available to negligent parties are not available in 205-a cases. For example, a de-

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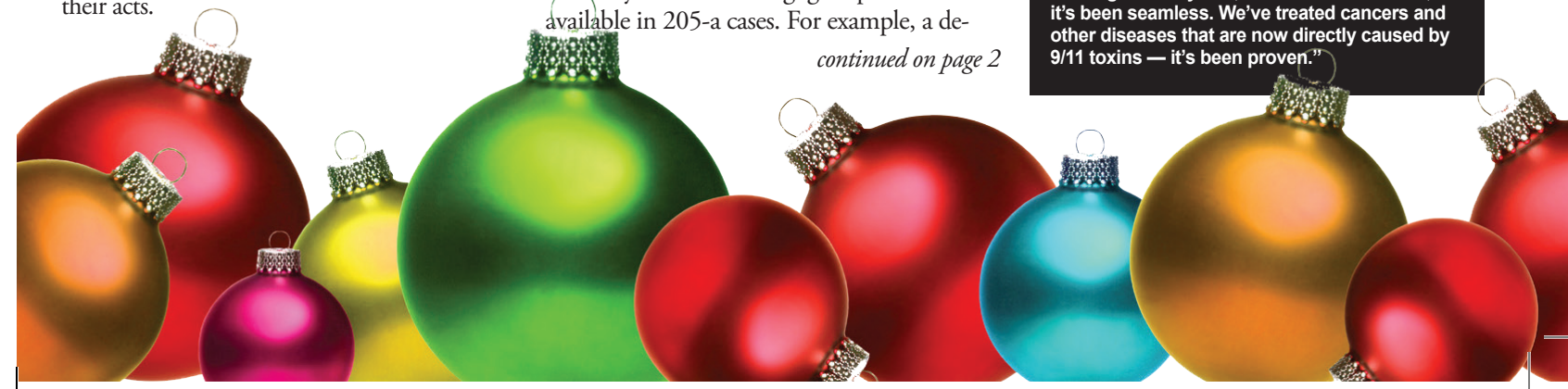


On Monday, November 2, 2015, Mike Barasch attended a press conference at Ground Zero to support Congressional Reps. Carolyn Maloney, Jerry Nadler, Frank Pallone, Nydia Velázquez, and Steve Israel, who criticized recent Republican proposals that would provide an underfunded and temporary extension of the James Zadroga Health and Compensation Act.

Unless a permanent extension is approved by this Congress, the health program will begin to shut down next Spring and claimants will receive less than 50% of their VCF awards. Steve Cassidy, President of the UFA, and Jake Lemonda, President of the UFOA, both spoke to the crowd of first responders and demanded that Congress "do the right thing" by permanently extending the Zadroga Act.

Senator Kirsten Gillibrand, speaking on CBS' "Face the Nation," described the expiration of the Zadroga Act a "moral outrage."

Gillibrand said that those legislators who opposed the extension of the Zadroga Act were "putting politics before people." "It's expired, and I think it's a moral outrage that we are not standing by our first responders.... We need to reauthorize the program, it needs to be permanent. We've had this program up and running for five years, there's been no fraud, it's been seamless. We've treated cancers and other diseases that are now directly caused by 9/11 toxins — it's been proven."



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defendant may not argue that a firefighter was injured because of his own negligence, or that he "assumed the risk" of injury. The requirement that an injured firefighter prove that a building owner knew about a statutory violation is reduced in these cases, and so is a firefighter's burden of proof. In a regular negligence case, the injured person must show that the negligent conduct was a "substantial factor" in causing the injury. On the other hand, injured firefighters need only show that the statutory violation "played a part" in causing the injury, a much lower standard.

In 1996, the legislature also enacted General Obligations Law § 11-106. This provision largely abolishes the firefighter's rule, (it still applies in cases against municipal employers and fellow workers), giving firefighters the right to sue negligent parties. Thus, an injured firefighter now has two potential avenues for recovery from negligent parties. First, if the violation of a statute, rule or City ordinance caused injury to a firefighter, he may bring a lawsuit under GML § 205-a. Second, if someone's negligence caused the injuries, regardless of whether there was a violation of a statute, the firefighter may bring a lawsuit for negligence.

Courts: Injured Firefighters Deserve Financial Security

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 and preserving 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 the legislature and courts have given firefighters substantial rights under New York law.

The recent settlements and verdicts reported in this newsletter were awarded to New York City firefighters and police officers who were injured in the line of duty. By seeking legal advice, these members learned that they had viable claims against the parties responsible for their injuries. Before you waive your legal rights, which might provide substantial compensation and financial security, seek legal advice from an experienced and qualified attorney, one whose law practice concentrates on helping seriously injured accident victims in general and firefighters in particular.

We welcome you to call our office anytime for a free and confidential consultation.

**Be safe. Be smart.
Know your rights!**

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WHAT ARE INJURIES TO FIREFIGHTERS WORTH?

Here are a few recent settlements and verdicts that have been awarded to firefighters and police officers who were injured in the line of duty. They are listed for illustrative purposes only, so that you can see what jurors and liability insurance companies believe these types of claims are worth:

- \$3,825,000 for firefighter with first-, second-, and third-degree burns to his legs, back, and hands requiring multiple skin grafts;
- \$1.5 million for a firefighter who while in the line of duty tore his hip's labrum requiring surgery and loss of his career;
- \$1.2 million for a firefighter injured in a crash while in a vehicle headed to a fire. He sustained a herniated lumbar disc requiring surgery and forcing his retirement from the fire department;
- \$1.125 million for a firefighter whose line-of-duty neck injuries required cervical fusion and loss of his career;
- \$1 million for a firefighter who sustained a shoulder injury in the line of duty due to a building owner's failure to maintain its property, requiring surgery, and forcing his retirement from the fire department;
- \$850,000 for a firefighter who sustained herniated cervical discs in the line of duty due to a building owner's failure to maintain its property, forcing his retirement from the fire department;
- \$600,000 for a police officer who while responding to a 911 emergency call from a fellow officer, fell on an icy step to an elevated subway platform, tearing his ACL and requiring surgery;
- \$550,000 for a police officer who fell down defective steps when responding to a call for help, resulting in a wrist injury requiring surgery;
- \$500,000 for a firefighter who sustained a right orbital fracture when a civilian vehicle failed to yield right of way to his fire apparatus, which required surgery;
- \$450,000 for a firefighter who suffered a torn meniscus to both knees, requiring surgeries and the loss of his career;
- \$300,000 for a police officer who fractured his heel due to the failure to have a proper handrail and adequate illumination on the stairwell outside his precinct, resulting in a disability retirement;
- \$250,000 for a firefighter who suffered a torn meniscus in his knee while fighting a fire and was forced into early retirement;
- \$175,000 for a firefighter that required two surgeries to his torn meniscus in his knee; and
- \$110,000 for a firefighter that suffered a large laceration requiring numerous stitches to his cheek, resulting in a scar.

OFF-DUTY ACCIDENTS

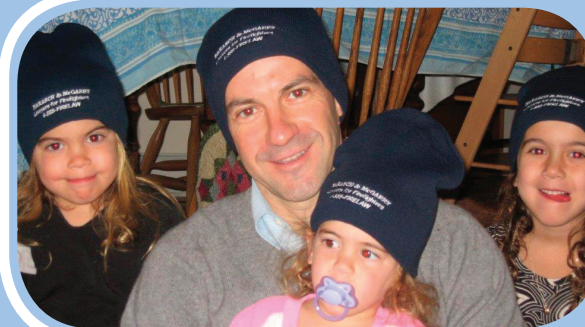
Most firefighters know us best for the important work that we do on behalf of FDNY members who are injured in the line of duty. But, as a full-service personal-injury law firm, we represent injured people in a broad spectrum of cases, including automobile accidents, medical malpractice, premises liability, and construction accidents, to name a few. In fact, when firefighters are injured in an accident off duty, it is often our firm that steps in to help them.

After line-of-duty accidents, motor vehicle accidents are the most common cause of serious injuries to firefighters. When a person has been injured in a motor vehicle accident, there are certain things that must be done quickly, including completing a no-fault application, contacting witnesses, notifying insurance companies of the accident, and obtaining video footage before it is destroyed. If you are in an accident, the smartest thing that you can do, is contact an attorney quickly.

No two cases are ever identical, which is why it takes an experienced personal-injury attorney to properly assess the value of a case in order to maximize the victim's recovery. Key factors include the percentage of responsibility that each driver bears for the accident, the severity of the injuries, and whether there has been a loss of earnings. Of course, the available insurance coverage is also an important part of the picture. Even if the defendant driver was at fault for the accident, the compensation that an accident victim can hope to obtain is usually limited to the amount of the defendant's liability insurance coverage. Sometimes, that is \$25,000; sometimes it's nothing. This is why we are always preaching to our clients to buy the maximum amount of uninsured/underinsured motorist coverage that they can. This coverage allows an injured person to make a claim to his own insurance company, in the event that the defendant driver is uninsured or underinsured.

With the caveat that every case is unique, and that many factors go into determining the value of a claim, here are some recent awards and settlements on behalf of victims of motor-vehicle accidents:

- \$100,000, which was the maximum amount of insurance available for a pedestrian who was in the cross walk and had the right of way was hit by a taxi and suffered a fractured ankle with surgery;
- \$600,000 was awarded to a driver that suffered from two herniated discs that required their replacement via surgery;
- \$110,000 for driver who claimed the car crash aggravated latent spinal condition;
- \$200,000 for a jogger who sustained fractures of several ribs and tear of a ligament of his right ankle with 18 months of physical therapy;
- \$952,000 for a motorcyclist who sustained a compound fracture of his right leg's femur requiring a surgery that inserted a rod into his leg and 6 months of physical therapy;
- \$140,000 for a plaintiff involved in a multi-car crash who suffered a tear to her shoulder requiring surgery;
- \$300,000 for a driver who was rear-ended and suffered from 5 herniated discs and a tear to his shoulder requiring shoulder surgery; and
- \$300,000 for a plaintiff who suffered from a tear to his knee's meniscus requiring surgery and bulging and herniated discs.



STAY WARM HATS

This marks our 8th year of providing free quality winter hats to any Company that requests them. Please feel free to call our office and we will make arrangements for our elves to deliver as many as needed.

Sara Director, one of our senior Associates, was asked to lecture at the New York State Bar Association Fire Law 2015 continuing legal education course. She joined an impressive panel, all experts in the field of fire litigation. Sara's lecture focused on General Municipal Law 205-a, the statute that grants firefighters the right to sue for line of duty injuries caused by another's negligence.



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