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change the 1-B Board's determination that a member is disabled, but it can overrule the 1-B Board's determination as to whether the injuries occurred as a result of a line-of-duty accident. Disability pension determinations are finalized by the Board of Trustees, or may be referred back to the article 1-B Pension Board for additional clarification, if more information is needed for re-evaluation.

If the Board of Trustees cannot reach the necessary number of votes to award the member an accident disability pension, the member will be retired for ordinary disability. In other words, a tie vote will result in an ordinary-disability pension.

Reach out for help if you need it

If you are going through the process, we want you to know that there are resources available to assist you whenever you have questions. Both firefighter unions are excellent resources. And, our firm is always available to answer any questions that you may have.



FIREFIGHTERS' NEWSLETTER

GETTING THE PICTURE

Make smart use of your smartphone at an accident scene

We've all heard the old adage: a picture is worth a thousand words. That's certainly true in the courtroom, where pictures can be invaluable. It is no easy thing for jurors to form a clear understanding of a place or a thing or an event purely from a description. Lawyers can use photographs to help the jury understand the testimony of the witnesses. Pictures can also substantiate what a witness is saying. People's memories fade and differ, and (gasp) sometimes people lie; but a photograph doesn't lie, and can shed light on what really happened.

With the advent of smartphones, most of us have a camera at our fingertips. After a line-of-duty or car accident, taking photographs might be the last thing that you are thinking about. But if you are able, taking pictures at an accident scene is a smart thing to do. Here are some tips.

Car accident: If you are in a car accident, and it is safe to do so, either you or someone at the scene should take photographs of the damage to your car, as well as to the other car involved. Also, if you were injured in the line-of-duty responding to a car accident, you may have a viable claim against the driver(s) who caused the crash. Take photographs of the position of both cars. Take a step back so that you capture the full scene. If you believe there was a roadside defect, you should take a photo of it. After a car accident, cars are removed from the scene rather quickly, and these photographs could be the key to the case.

Line-of-Duty Accidents: If you or a fellow firefighter gets injured while in the line-of-duty at an emergency, or even in your own firehouse or apparatus, use a smartphone to capture what caused you to be injured. Was it a rusted out fire escape? Was a handrail missing causing you to fall down the stairs? Were the stairs broken or otherwise defective? Was the firehouse's driveway cracked and deteriorated? Was the rear yard or roof of a fire premises loaded with debris? Ask one of your fellow firefighters to take a photo of it, or, better yet, several photos. Whatever you think will document the problem, and how it was dangerous, should be photographed.

Broken steps and fire escapes can be repaired by the time you hire an attorney. Transient conditions like debris on the floor may be cleaned up immediately after your accident. The photographs will show what it looked like and what caused your accident. Without photographs, it is your word against the building owner that the defective condition even existed.

We cannot overemphasize how important photographs are to a personal injury case. Be smart and put your smart phone to good use.

WHERE THERE'S A WILL, THERE'S YOUR 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. 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 active and retired firefighters-for free. We have already prepared over 3000 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.

Children whose future is secure!



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Penson.



BREAKING NEWS:

VICTIM COMPENSATION FUND EXTENDS THE ELIGIBILITY DEADLINE FOR WTC-RELATED CANCERS

Active and Retired Firefighters are still eligible to receive compensation for 68 cancers linked to the WTC toxic dust

The U.S. Department of Justice has made an extremely important change to the 9/11 Zadroga Victim Compensation Fund (VCF). As a result, thousands of cancer victims who missed the prior deadlines to register may do so now.

Doctors have linked 68 cancers to the WTC toxic dust. Skin cancers and prostate cancer are the two most common. Any first responder diagnosed with one of the 68 cancers who spent more than 4 hours at the WTC site between 9/11 and 9/14, or 24 hours between 9/11 and 9/30, is eligible for significant

compensation from the Fund. The new regulation allows people diagnosed with cancer to register a VCF claim within 2 years of the date that the WTC Health Program Bureau of Health Services, or a governmental agency such as the FDNY pension fund, certifies that the cancer was caused by exposure to the WTC toxic dust. And, if a loved one has passed away due to cancer, their families may assert a claim within two years of their death.

Please help us spread the word about this new regulation, especially to retirees.

If you know any
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"DISTRACTED DRIVING" LEGISLATION

First responders know better than anyone that texting, using apps or searching the web while driving can have devastating, sometimes irreversible consequences. According to the National Highway Traffic Safety Administration, driving a vehicle while texting is six times more dangerous than driving while intoxicated.

The NYS legislature is presently working on S-6325, a first of its kind Bill that would give police two new weapons in the fight to reduce distracted driving: The first is a portable electronic device with an interesting name, the "Textalyzer," which will presumably allow a police officer at the scene of a motor vehicle accident to determine whether the operator was using a cellphone immediately preceding an accident. If the officer has reasonable grounds to believe that the operator was using a "portable electronic device" at the time of an auto accident, the operator shall be required to submit his smart phone to the officer for a field test. In an

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newsletter, call or write:

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www.firelaw.com



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active or retired firefighter who has been diagnosed with cancer in the past 10 years, they should ask the BHS (or LHI if the person lives out of NYS) to have their cancer certified. The date that a cancer is certified starts the 2-year period to register a VCF claim.

Our firm proudly represented Jimmy Zadroga. We have been lobbying for this deadline extension since doctors first linked cancers to the WTC toxins.



We are grateful that many more people will now be able to get the compensation that they deserve.

If you would like additional information, please call our office at (212) 385-8000.

NEWS ABOUT THE NEW LAW THAT PERMITS 9/11 VICTIMS TO SUE SAUDI ARABIA

What Does JASTA Mean for You?

JASTA, or the Justice Against Sponsors of Terrorism Act, became law on September 28, 2016. Before the passage of JASTA, foreign governments like Saudi Arabia were immune from prosecution in U.S. courts even if they provided material support for terrorist acts, including the September 11 terror attacks. Now, nations can be sued in U.S. federal court if they are suspected of playing any role in terrorist attacks that killed Americans on United States soil.

The law allows families of the Sept. 11 victims to amend lawsuits already underway — or file new suits — to directly sue Saudi Arabia. However, much is still unclear. The US Attorney General has the right to intervene in the lawsuits and get a judge to stay the litigation as long as there are continuing discussions with the Saudis about a possible resolution. Moreover, many in Congress want to amend the law so that other countries aren't tempted to retaliate against the U.S. when we mistakenly injure and kill citizens in other countries. It remains to be seen what the lame-duck Congress does, if anything.

Please be aware that the passage of JASTA does not mean that the battle is won. It is just beginning. There are many issues that will be resolved in the coming months and years. Aside from the task of proving the liability of the government of Saudi Arabia, there are legal issues concerning which of the different groups of victims will have claims that are recognized in court. It is unclear whether passengers on the planes, office workers in the Towers and first responders who were killed on 9/11 will be treated the same as first responders, local residents, students and office workers who were later diagnosed with 9/11 illnesses. For the survivors, the court may very well make distinctions based on location and the amount of time that someone spent near the WTC site. Nevertheless, we will file suit against Saudi Arabia to get the answers that the 9/11 community deserves!

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effort to comply with the Fourth Amendment, the field test would keep conversations, contacts, numbers, photos and app data private.

The second new law that the legislature is debating would add an "implied consent" component which means that by taking advantage of the "privilege" of driving in NYS, the operator is deemed to consent to this search of his or her phone. As presently written, refusal to permit the search will require the officer to prepare a report documenting the refusal. A refusal to show the smart phone will be admissible evidence at trial and a negative inference may be drawn by the judge.

The Textalyzer may prove to be an effective tool in determining the cause of serious motor vehicle crashes. Whether it will have a deterrent effect on driving while texting remains to be seen. We urge you to pull over if you cannot pry your fingers from the phone. There is no text that needs to be answered so urgently, that it is ever worth risking a life. Tell your teenagers!

STAY WARM HATS

This marks our 9th year of providing warm winter hats to any Company that requests them. We have already mailed or delivered hundreds of caps. If you want any more, please feel free to call our office and we will make arrangements for our elves to deliver as many as needed.



DISABILITY PENSIONS 101

By Richard Alles

The New York City Fire Department's disability retirement process can be overwhelming, especially for members who are retiring due to a job-related disability. The process can take a long time, and, since your financial security is tied to the pension, it's undeniably stressful. The purpose of this article is to help you understand the basics of the process.

What triggers a BHS Board evaluation?

The first step of the disability process involves the BHS Physician Board. It consists of FDNY Medical Officers who confer on a member's fitness for duty. The BHS Full Board is also considered a BHS Board, but it is reserved for complex medical issues. A member will be recommended for a BHS Physician Board evaluation for any of the following reasons:

1. The member is on light duty or medical leave for more than 60 days;
2. The member has had extensive surgery;
3. The member has submitted a disability retirement application;
4. The member is returning from leave (e.g., personal leave, military leave, or reinstatement) at least one year in duration;
5. At the discretion of the Medical Officer, if additional input is desired for complicated cases or decisions;
6. The member has an injury/illness that is considered permanently disabling by the Medical Officers.

An order for a BHS Physician Board appearance is initiated by an FDNY Medical Officer.

What should I do if I am called before the BHS Physician Board?

Members are responsible for the submission of all pertinent information prior to their appearance at the BHS Physician Board. You must make sure that your BHS

file contains all medical records and reports that are relevant to your injury. If anything is missing, it is up to you to get it before you appear before the Board. This includes hospital records, operative reports, and reports of diagnostic testing such as MRI's and EMG's.

How is a disability case opened?

If the Board deems the injury/illness to be temporary, the member will be evaluated again at a later date. The Board will summarize the medical plan for follow up evaluation/treatment and a date for reevaluation.

If the BHS Physician Board deems a member to be permanently disabled, then the designation given in the report is "Recommend Limited Service Squad" or LSS. The disability case is now automatically opened and the member can submit a disability retirement application. If the member does not submit a disability retirement application, the Bureau of Personnel will submit a Fire Commissioner's disability application for the member.

What is the function of the 1-B Pension Board?

The second step of the disability retirement process involves the 1-B Board's review of the BHS Physician Board's recommendation. The Article 1-B Pension Board is composed of three non-departmental physicians who evaluate fire-disability cases.

The 1-B Board will answer two questions. First, it will determine whether it agrees with the BHS Physician Board that the member is disabled from full firefighting duty. If it decides that the member is disabled, it will determine



Richard Alles, former Legislative Director of the UFOA, joined Congressman Peter King and 9/11 activist/celebrity Jon Stewart at 9/11 workers benefit. Barasch McGarry is proud that Rich has joined the firm as Director of 9/11 Community Affairs.

whether the injury was due to a line-of-duty accident. While the 1-B Board's disability determination is binding upon the Pension Board of Trustees, it may only make recommendations with respect to whether the injuries occurred as a result of a line-of-duty accident.

The 1-B board will find either 1) that the member is disabled due to a line-of-duty disability, 2) that the member is disabled due to a non-line-duty injury, 3) that the member is not disabled for retirement purposes, or 4) it will defer its decision in order to review the outside consultant's report or other evidence.

What is the function of the Board of Trustees?

The third and last step of the disability retirement process is at the Board of Trustees. The Board of Trustees is made up of representatives from the City and union representatives.

The Board of Trustees cannot

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