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about any legal matter.

We support your wonderful union - - but we are most assuredly, completely independent. Our only loyalty is to our clients.

The attorneys and staff at my firm have helped shape firefighter law in this state. We have represented many members whose cases were rejected by other firms because those lawyers misunderstood the law, or thought the case was too difficult. And, we support nearly every one of your charitable events.

### CONCLUSION

We appreciate the role we have helping NYC's Bravest. It's an honor to help those who help everyone else. Thank you for your trust.



Nev Schulman of "Catfish" fame and Cleo want you to have a Will!

**WE HAVE NOW PREPARED OVER 4000 FREE WILLS FOR NYC FIREFIGHTERS, ACTIVE AND RETIRED. IF YOU STILL DON'T HAVE A WILL, PLEASE TAKE US UP ON OUR OFFER TO PREPARE YOURS. IT'S FREE, AND WE MAKE IT EASY.**

Vol. 72

# FIREFIGHTERS' NEWSLETTER



## WE ARE NOT THE UFA'S ATTORNEYS - WE ARE *YOUR* ATTORNEYS

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memory.

### Some of our Recent PESHAs cases

**KME pumper trucks** - Seven firefighters crushed their thumbs in the crew cab doors of the KME pumper trucks during the rollout period for these new apparatus. The location of the door handles was extremely dangerous, and posed a risk that firefighters would close the door on their thumbs. Our PESHAs-claim lawsuits were instrumental having the problem corrected. We have no doubt that if the handles had not been changed, firefighters would have continued to be injured in this manner.

**Electrical shock** - A fire officer was shocked by a live wire when he reached down to retrieve his tool inside an old and unsafe spare rig. Bare hanging wires were connected to a floor pedal that was no longer in use, and should have been removed years earlier. A small piece of electrical tape could have prevented the accident. The exposed and hidden electrical wire violated PESHAs.

**Randall's Island broken concrete** - There are a number of places on Randall's Island where the concrete sidewalks, islands, and curbs have been in horrible shape. We represented a chauffeur-training instructor who blew his knee out while dismounting a training rig when he stepped into a crumbling concrete hole. Photographs taken immediately after the incident show the pavement

in disrepair, and witnesses confirmed that it had been like that for a long time.

**Command Tactical Vehicle** - Our client was inspecting and cleaning equipment on the roof of a command tactical vehicle when his foot became caught in unsecured wires and cables. He fell 12 feet and shattered his ankle. A supervisor said that the cables should have been tacked down. The failure to do so was a violation of PESHAs.

**Crumbling basement floor in firehouse** - Our client was a firefighter who tripped on one of several holes in the firehouse basement floor. He sustained a torn rotator cuff that required surgery. The City was repeatedly asked to make repairs but failed to do so.

### How to document a PESHAs violation

The best case scenario is that the City addresses problems before someone is hurt. If you see a defect that could cause an injury, you should report it to your officer, and document it in the company journal. Officers should request repairs for unsafe conditions as soon as they learn of them.

You should note on your CD-72 if an unsafe condition played some part in causing your accident. If possible, obtain photographs of the condition as quickly as possible after the accident. Conditions can change, especially after an accident. A photo really is worth a thousand words!

Recently, the UFA sent out a "65-2" to remind you of legal resources available to all members. The message concluded with the reminder that Barasch McGarry is NOT affiliated with the UFA. After 25 years, we thought everyone knew this, but we certainly welcome the UFA's reminder.

We believe that the members benefit from competition. No, we are not the UFA's paid attorneys. Instead, we embrace our role as independent legal counsel for firefighters who are injured in the line of duty or who were injured as a result of their exposure to the WTC toxins or who are seriously hurt in off-duty accidents. We have received over \$1 Billion for injured members.

The union is not our client - the individual firefighter is our client and that's who we work for.



Mike Barasch along with DC Rich Alles, ret. and FF Bill Romaka, IAFF 1st Dist VF, ret., presented Dr. Kerry Kelly and Dr. Viola Ortiz with Chief's helmets to commemorate their dedicated service to the FDNY

We are also proud to be the attorneys who have been offering you free wills and health-care proxies (over 4,000 and counting).

Thousands of firefighters have come to us for help with their injuries, their estate planning, and more personal issues than you can possibly imagine.

We are the firm you can call if you want a free confidential consultation

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## PREPARING A CD-72 THE RIGHT WAY

You already know that your CD-72 can mean the difference between an accident-disability pension and an ordinary-disability pension. But firefighters and officers are given surprisingly little guidance on how to fill out a CD-72 in a way that takes your legal rights into account. This article is intended to give you some pointers.

### No injury is too minor for a well-prepared CD-72

Every time you are injured, even if you feel it's minor, a CD-72 must be completed, and it must be done completely, carefully, accurately, and descriptively. The long-term implications of your injuries will likely not be immediately apparent, and you may be creating the report that the pension boards will scrutinize in determining your pension rights, or that a jury will see when it decides whether you are entitled to compensation for your in-

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**THIS DOCUMENT CONTAINS IMPORTANT INFORMATION ABOUT FIREFIGHTER RIGHTS**



# 9/11 Victim Compensation Fund Update: \$3.3 Billion Awarded to Date

The VCF has announced that it has now awarded over \$3 billion to more than 15,000 people. More than 5,000 people in the 9/11 community have been diagnosed with one or more of the 68 cancers linked to the WTC toxins.

The FDNY has reported that more than 2,000 firefighter cancers have been diagnosed and 172 firefighters have had their deaths linked to the WTC toxic exposure. “Not a day goes by without 5-10 people calling me with the sad news that they have been diagnosed with cancer, or that their loved one has passed away due to cancer. It’s truly heart breaking” said Mike Barasch. The VCF has pledged to expedite claims for those who are terminal-ly ill. And, the length of time to render an award has also been shortened. The VCF pledges to render awards within 12-18 months of registration.

Several firefighters whose wives are downtown NYC school teachers have also been diagnosed with 9/11-cancers. Altogether, over 3 dozen downtown teachers have been diagnosed with cancer. And, not surprisingly, several dozen former downtown school children have also been diagnosed with cancers. Young men and women, now in their 20’s, have had their cancers certified by the WTC Health Program.

Medical experts agree that early detection is the key to survival. Since skin cancer is the most common of the 9/11-linked cancers (the WTC dust had the same PH level as Drano), every fighter is urged to go for an annual full body skin exam.



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juries. Every time you prepare or review a CD-72, remind yourself that this is an extremely important record of the injuries and the accident.

### The Injuries

When it comes to identifying your injuries, the biggest mistake that you can make on your CD-72 is leaving out an injured body part.

When someone injures more than one body part in an accident, they tend to focus on the areas that hurt the most, and to ignore areas that feel less serious. People also mistake where their pain is coming from. Pain in your hip can actually mean a problem in your back. Pain in your shoulder may actually happen because of a problem in your neck. Pain is tricky - it can radiate and it can be diffuse. Pain may not be immediately apparent, it may come on over hours or even days. But there are things that you can do to minimize the risk of leaving an injury out of your CD-72.

Take a head-to-toe inventory. If you feel pain, tenderness, discomfort, stiffness, achiness, numbness, tingling, throbbing, pressure, tightness, soreness, or anything unusual to any body part, no matter how minor, include that body part in your CD-72. It’s better to err on the side of inclusion.

If you aren’t sure where your pain is coming from, list all possibilities. For example, if you feel pain in your shoulder, consider including your neck as well. If you leave the neck out, it may

be difficult to relate a neck injury to the accident later on.

If you realize that you did not list an injury in your CD-72, you certainly want to consider an amendment. This should be done as soon as possible after you recognize the problem.

### The accident description

The most common problems that we have seen in the accident description section of the CD-72 is inadequate detail and errors in the description of the accident. The errors often happen because the report is not adequately reviewed or corrected by the member. If you are not filling out the accident description yourself, and chances are you won’t be, you must review it carefully, and you must not let it go in with mistakes.

For pension purposes, the difference between an “accident” and an “incident” can turn on the level of detail in the accident description. You may have heard that New York courts define an accident as a “sudden fortuitous mischance, unexpected, out of the ordinary, and injurious on impact.” But you cannot just use those words. In fact, you should not use those words. Rather, you must specifically describe what it was about the accident that made it sudden, unusual and unexpected.

Nothing about your job is routine. It’s up to you to describe the unique circumstances that caused your injury. We have an acronym that can help you to think through your accident description:

M.I.C.E. (Movement, impact, conditions, emergency care).

Movement: Describe the movement involved in the accident. Was it caused by twisting, falling, or jerking? Was it caused by a striking blow? Or a crushing impact?

Impact: Note any body parts that received an impact and describe the chain of events leading to the impact.

Conditions: Note any condition that contributed to the injury such as heavy smoke, ice, poor lighting, a hole in the floor, a broken step, a loose floor tile, a collyer’s mansion, a falling object, a missing railing, defective equipment, etc.

Emergency Care: Describe any emergency care and anything immediately noteworthy. Did you go to the ER? Did you see an FDNY physician? Were you removed from the scene on a back-board?

### Beyond the CD-72

While your CD-72 is an extremely important document, your medical records are equally important. You must be careful in how you describe your accident and your injuries to your physicians. When a doctor or nurse asks what happened to you, be accurate and thorough. Moreover, if you are experiencing pain or other symptoms, you must let the doctor know. If you are having problems, your medical records should reflect that. Never go in for a follow-up appointment and say you are doing well if you are still having problems.

# KNOW YOUR RIGHTS WHEN FLYING

The airline industry has deserved-ly been the focus of negative media attention in the past year, with several disturbing reports of fare-paying passengers being physically assaulted and ejected from planes for refusing to give up their seats on over-booked flights. We all remember the shocking cell phone video showing one man being dragged down the aisle of a plane by airline security. During that incident, the passenger suffered a concussion, broken nose and other serious injuries. The widespread outrage against the airline, and the public relations nightmare that followed, forced the airline to quickly and substantially compensate the injured passenger.

Thankfully, these dramatic, high profile incidents are rare. More common, however, are the significant number of injuries airline passengers suffer each year due to the airlines’ negligence. These incidents, which do not get the media spotlight, occur in a wide range of scenarios, from passengers falling because of

ill-maintained boarding equipment to those being struck by overhead luggage due to turbulence. Did you know that airlines can be held legally accountable to pay passengers compensation for such preventable injuries?

In a recent case we handled against an airline, we obtained a substantial recovery for a firefighter’s wife who suffered serious leg injuries during a rough landing. In that incident, an unsecured beverage cart came loose from the plane’s rear galley, rolled up the aisle and violently struck our client’s leg. The force of the cart’s impact caused

deep lacerations and multiple broken bones, which required surgery. In the lawsuit, we argued that the incident would never have occurred, even with the plane’s rough landing, had the cart been properly secured in place. By holding airlines accountable in cases like this, we hope to make flying safer for all passengers.

With the rise of airline travel, passengers need to know their rights if injured while flying. The airlines use their significant resources to hire competent attorneys. Make sure you have a capable lawyer on your side as well.



## Fighting For A Safe Workplace For All Firefighters

New York City Firefighters have a legal right to a workplace and equipment that is safe. The Public Employee Safety and Health Act (PESHA) mandates it. When the City breaches that duty, firefighters are entitled to compensation for any injuries that result. Unfortunately, in our experience, firefighter injuries that result from PESHA violations are not as rare as one would hope.

### Safe workplace

Your firehouse and FDNY training facilities and everything in them must be maintained in a safe manner, free from “recognized hazards”. Things like loose floor tiles, falling ceiling plaster, a cracked or crumbling apron, and inadequate lighting, are real-life examples of conditions that have seriously injured our firefighter clients. While these may seem mundane compared to the risks

firefighters face during operations, problems like these can and do end firefighting careers.

### Safe equipment

PESHA also mandates that firefighters be provided with safe and proper equipment. This includes everything that you use for work, including your apparatus and all of its components, your hoses, tools, pss systems, hoods, gloves, etc.

The failure to provide safety equipment where protection is required may also be a violation of PESHA. For example, the failure to provide firefighters with ropes, which led to the deaths of three firefighters, and horrible injuries to three others at the Black Sunday fire, was one of the more horrific PESHA violations in recent

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