

# FDNY WORLD TRADE CENTER HEALTH CLINICS HAVE REOPENED

by Richard Alles, Ret. FDNY Deputy Chief

The COVID-19 pandemic has certainly challenged our daily lives. We at Barasch & McGarry hope that anyone affected has recovered or is on the road to recovery, and we offer our sincere condolences to any family that has experienced a loss as a result. For our part, we have witnessed the tragic loss of nearly 100 clients to this devastatingly effective virus.

As a result of the pandemic the FDNY, in an abundance of caution, was forced to close its WTC Heath Program (WTCHP) clinics. We are happy to report that the FDNY WTCHP offices are now open for in-person annual medical monitoring appointments. This is so crucial for all 9/11 responders, who must remain focused on their personal health and well-being. The program is essential for the continued medical care of those with 9/11 conditions, and for securing prescriptions at no cost to the member.

As a fellow FDNY first responder, I can attest to the fact that although we may be outstanding in our care of the citizens we are sworn to protect, many of us seem to lack that skill when it comes to caring for our own needs. Some of our colleagues unfortunately take a “head in the sand” approach to their own health, and would rather not know if they have an illness such as cancer. But when it comes to your health, ignorance is not bliss. These members intentionally avoid their annual medicals and, as a result, fall victim to an illness that should have been diagnosed much sooner. The FDNY medical staff are superb, but they are not miracle workers. Early detection usually makes all the difference in saving lives. The importance of cancer screening by the WTCHP cannot be overstated. Some cancers exhibit no symptoms at the early

stage but can be readily detected with routine blood screening. The most common cancers in the 9/11 Community are prostate cancer, breast cancer in both women and men, colon cancer, and thyroid cancer. Not surprisingly, the most prevalent cancer is skin cancer, specifically, basal cell carcinoma and squamous cell carcinoma (the PH level of the toxic dust was the same as Drano!). In 2010, I went for my annual skin exam. My dermatologist observed a small raised bump on my neck. I hadn’t noticed it. It turned out to be malignant. Fortunately the doctor fully removed it before it grew any bigger and spread. I now go back for skin exams every 6 months just to be safe.

## Annual Skin Exams

Fortunately, these non-melanoma conditions are not life threatening if detected early. Unfortunately, the WTCHP does not screen for them. So you’ll have to go for screenings with your own dermatologist. You should know that the Victim Compensation Fund (VCF) does award compensation for these conditions. Typical awards for basal and squamous cell cancers are \$90,000, while typical melanoma awards are \$250,000.

Because these conditions are so common, at every 9/11-related event that we speak at we recommend a full body skin exam with a dermatologist. The FDNY WTCHP has a list of recommended doctors throughout the five boroughs and surrounding counties.

Please, don’t become a statistic! Everything starts with knowing your body and being focused on maintaining good health. You owe it to your family to take advantage of the WTCHP and visit the wonderful doctors and nurses at the FDNY WTC.



There wasn’t a dry eye in the house when Michael Barasch presented our client, **FF 1st Grade Nick Monfredo (retired) from 44 Engine**, with a photo of himself operating at Ground Zero. The piece is one of a series that hung in our office for nearly 15 years as a testament to the bravery, service and sacrifice of our firefighters. It was our honor to pass it on to Nick in commemoration of the 19th Anniversary of 9/11. (left to right Richie Alles, FDNY Deputy Chief (Retired) and now Director of Barasch McGarry 9/11 Community Affairs, Bruce Kaye, Esq., Nick Monfredo, Michael Barasch, Esq.)



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# FIREFIGHTERS' NEWSLETTER



## SPREAD THE WORD: DEADLINE!

9/11 VCF extends time to register previously barred claims

A critical deadline affecting the 9/11 community is fast approaching. The Victim Compensation Fund (VCF) has extended the time for hundreds of victims and their families to register claims that had been previously barred.

Previously, cancer victims had two years from certification of a 9/11 illness to register a claim. And, the statute of limitations for family members to register a wrongful death claim on behalf of a loved one who passed away was two years from the date of death.

The VCF Special Master has made a wonderful change that gives anyone who missed the prior two-year deadline the right to assert a claim, but only through **the July 29, 2021 deadline**.

If you know anyone who had cancer or lost a family member more than two

years ago, please let them know that they can still register with the VCF, **but that they must do so by the deadline**. After that, any newly diagnosed certified illnesses must be registered within two years of certification by BHS, and any wrongful death claim must be registered within two years of the death. This two-year deadline will apply through 2090.

Please don’t let anyone miss out on this extension. There is help available to victims and families, but in order to access what they are entitled to, they must comply with the registration deadlines and filing requirements of the VCF. Please help us spread the word to your friends and coworkers, especially retirees and widows, who might not know their rights.

## HOW SAFE IS YOUR FIREHOUSE?

Imagine that you are washing your hands in the firehouse bathroom, just minding your own business (after *doing* your business), when a chunk of the ceiling strikes you on the head. Or that as you walk into your locker room, a loose tile slides out under your foot, causing you to crash into a metal locker. Or that water had once again dripped onto the stairs in your firehouse from a leaky pipe, sending you tumbling to the bottom. These are just a few examples of preventable injuries that have interrupted, and in some cases ended our clients’ fire-fighting careers.

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This is the 84th Edition of the Barasch McGarry Salzman & Penson Newsletter—attorney advertising which presents topics of interest to firefighters. For question, additional copies, or more information about topics raised in this newsletter, call or write:

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(continued "How Safe Is Your Firehouse?" from Front)

Firehouse injuries due to faulty maintenance are shockingly common. You should know that under the Public Employee Safety and Health Act (PESHA), the City has a legal duty to provide firefighters with a safe workplace and safe equipment, and it is liable to firefighters who are injured when they do not.

Safe workplace

Firehouses 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, a ceiling leaking onto the stairs, and inadequate lighting, are common examples. While these may seem mundane compared to the risks firefighters face during operations, problems like these can and do end firefighting careers.

Firefighters bravely confront dangerous situations. They shouldn’t have to deal with them in their own firehouse.

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 hoseline, tools, pss systems, hoods, gloves, etc.

We currently represent fire officers who were injured as a result of defective seats in spare rigs. In the past, we have represented firefighters who were injured due to faulty placement of apparatus handles, faulty pressure gauges, faulty ladders, over-waxed poles and recently washed steps that weren’t dry.

How to document a PESH 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 reasonably possible after 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.

Deadlines

If you are injured due to an unsafe work environment or defective equipment, do not wait to seek legal advice. A Notice of Claim must be filed with the City of New York within 90 days of the accident. While, under certain circumstances, a judge may grant a request to file a Notice of Claim after the 90 day period, that request must be made within one year and 90 days of the accident, and the court may deny the request.

Our firm is available 24/7 to answer any questions you may have about this topic and always happy to provide you with a free consultation.

UNDERSTANDING VICTIM COMPENSATION FUND AWARD DETERMINATIONS: A FINANCIAL LIFELINE FOR THE 9/11 COMMUNITY

The 9/11 health crisis, compounded by the Covid pandemic, has exacted a terrible emotional, physical, and financial toll on the broader 9/11 community, which includes first responders, downtown workers, residents, and students. The scars of the health crisis are all around us, in the careers cut short, the previously vital people robbed of their health, and the families struggling with unimaginable loss.

The September 11th Victim Compensation Fund (VCF) offers a lifeline to our community. The help it provides can be substantial, easing the financial burden that so often accompanies illness and loss.

One of our overarching missions is to help spread the word about the VCF, and the help it provides. For those who have developed a 9/11 condition, VCF awards generally include compensation for pain and suffering, as well as for economic losses, where appropriate.

Pain and suffering awards vary based upon the severity of the illness, and the VCF is amenable to reviewing medical records and other evidence to demonstrate the impact of the illness. Non-economic loss determinations have ranged from \$10,000 to \$340,000, depending on the severity of the illnesses, whether the illness is permanent, and whether the claimant has already been awarded compensation for the same illnesses in a prior WTC claim or lawsuit.

The VCF will only award compensation for economic loss to a claimant who has been found to be disabled as a result of a 9/11 certified physical illness (not a psychological illness). The disability finding must be made by an independent governmental entity (such as the FDNY, NYCERS, Workers’ Compensation Board, or the Social Security Administration).

Economic loss awards are based on a claimant’s age, work history and prior income. Where a claimant has received a disability pension, Social Security disability award, or WTC litigation settlement, the VCF award will be commensurately reduced. The range of awards is evidence that the VCF is making awards on a case-by-case basis.

Families who have lost a loved one to 9/11 disease are entitled to recover additional compensation for the victim’s pain and suffering, as well as non-economic losses for the spouse and each dependent, replacement services, burial costs, and economic losses resulting from the death. If a personal injury claim was not made during the victim’s lifetime, the family will also receive the personal injury award that would have been awarded directly to the victim during his or her lifetime.

Here are some recent awards to our clients by the VCF. Be advised, each case is different and many factors determine the amount of the award, including one’s age, his/her salary, side-effects of the illness, etc.



Past awards are no guarantee of future awards.

Wrongful Death (where the death was caused by claimant’s 9/11-certified condition)

- \$3,254,242 Asthma
- \$1,422,694 Lymphocytic leukemia

The following are awards for clients whose 9/11 certified conditions resulted in a disability determination:

Cancer

- \$1,848,836 Intrahepatic Bile Duct Carcinoma
- \$1,827,279 Malignant Neoplasm of Breast
- \$1,544,371 Malignant Neoplasm of Lower Third of Esophagus
- \$1,368,869 Malignant Neoplasm Skin

Non-Cancer

- \$1,929,789 Asthma; Chronic Rhinitis; Esophageal Reflux
- \$1,926,336 Asthma; Esophageal Reflux; Chronic Bronchitis; Diseases of Vocal Corps; Sinusitis
- \$1,881,017 Esophageal Reflux; Barrett’s Esophagus; Asthma; Sinusitis; Obstructive Sleep Apnea

The following are some of the hundreds of noneconomic loss awards that the VCF has issued to our clients with non-disabling cancers and other WTC-related illnesses:

Cancer

- \$340,000 Malignant Melanoma of Skin; Malignant Neoplasm of Larynx
- \$340,000 Malignant Neoplasm of Colon; Malignant Neoplasm of Mouth
- \$250,000 Malignant Neoplasm of Prostate
- \$250,000 Melanoma of Skin
- \$250,000 Malignant Neoplasm of Thyroid
- \$125,000 Malignant Neoplasm of Skin

Non-Cancer

- \$90,000 Chronic Bronchitis
- \$90,000 Interstitial Lung Disease
- \$90,000 Asthma; Chronic Rhinitis; GERD; Obstructive Sleep Apnea
- \$90,000 Sinusitis; Obstructive Sleep Apnea; Chronic Rhinitis
- \$65,000 Severe Asthma
- \$65,000 Chronic Rhinitis; Reactive Airways Dysfunction Syndrome
- \$35,000 Asthma; Chronic Rhinitis
- \$30,000 Sinusitis; Esophageal Reflux
- \$25,000 Asthma; Obstructive Sleep Apnea

2019 WTC MEMORIAL WALL CEREMONY FDNY adds 27 more names

9/11 didn’t end on 9/11. It has been 19 years since the deadliest domestic terrorist attack in our country’s history, and the losses continue to mount. More people have now died of 9/11-related disease than died on 9/11. And tens of thousands of people are in the fight of their lives as they battle cancers and serious respiratory ailments caused by the toxic dust. More than 20,000 of our clients are sick, or have lost a loved one, and the enormity of this tragedy is with them and with us every single day.

For us, this is personal. At this year’s 9/11 memorial service at Metro Tech, another 27 names were added to the WTC Memorial Wall. The majority were our clients. During the past 2 decades, 226 FDNY members have succumbed to their

WTC illnesses. Six of their children work at our firm, doing incredibly meaningful and important work for other families who have lost loved ones. The number of heroes lost to illnesses from the FDNY’s

response to the attacks on the WTC will no doubt continue to grow. We pledge to continue to do everything we can to help the families they left behind.

