DECEMBER 2024 – FIRE & EMS LAW NEWSLETTER

[NEWSLETTER IS NOT PROVIDING LEGAL ADVICE.]

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- **2024: FIRE & EMS LAW – RECENT CASE SUMMARIES / LEGAL LESSONS LEARNED**: Case summaries since 2018 from monthly newsletter
- **2024: FIRE & EMS LAW – CURRENT EVENTS**
- **2024: AMERICAN HISTORY – LEGAL LESSONS LEARNED FOR FIRE & EMS**
- **TEXTBOOK:** Updating 18 chapters of my textbook (2018 to current). FIRE SERVICE LAW (SECOND EDITION), Jan. 2017

20 RECENT CASES

Chap. 1 – American Legal System, incl. Fire Codes, Investigations, Arson

OH: ARSON - 2018 HONDA ACCORD – "REAL TIME CRIME" STREET CAMERA / ARSONIST AT GAS STATION – 4 TO 6 YRS

On Nov. 27, 2024, in State of Ohio v. Devontae Sullivan, the Ohio Court of Appeals, Eight Appellate District, Cuyahoga County, held (3 to 0) that there was sufficient evidence presented to the jury that the defendant poured gasoline on the car. The Court wrote: "In his first assignment of error, Sullivan contends that the State failed to present sufficient evidence of identity. We disagree…. Detective David Baker [Cleveland Division of Fire] identified Sullivan as the perpetrator. He viewed surveillance video from a business two doors from the subject house. The video showed a maroon Buick with tinted windows in the area. Using the City of Cleveland's 'Real Time Crime' street cameras, Detective Baker traced the Buick to a gas station located five minutes from the crime scene. The detective was able to obtain a license plate number for the Buick that was registered to a red 1999 Chevrolet Cavalier. *** Detective Baker positively identified Sullivan in court as the person in the driver license photo, as well as the person on the surveillance footage. The license photo and surveillance videos were shown to the jury and admitted into evidence; thus, the State presented sufficient evidence for the jury to determine whether Sullivan was the perpetrator."

FACTS:

In October 2023, Sullivan was charged in a four-count indictment relative to the March 2023 car fire of a 2018 Honda Accord that was parked in a driveway adjacent to a house on Arabella Road in Cleveland.

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According to [Ms. Justice] Farmer, on the evening in question, she and her children walked to a nearby store around 7:30 p.m. As they walked back to the house, Farmer saw someone running out from the back yard. She and her children went inside the house, and she began to prepare dinner. Farmer testified that she looked out the kitchen window and saw that Glover's car was on fire; Glover was not home at the time. Farmer gathered her children and went outside, where she called 911. One of the downstairs neighbors went outside too and tried to extinguish the fire while waiting for first responders to arrive. The car 'exploded,' and the fire spread to the house.

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Cleveland Division of Fire Detective Charles Harris spoke with Glover [Lesie Glover lived with Ms. Farmer and children], who told him she was the owner of the subject car.

Detective Harris also spoke with Chief Lightcap at the scene, after which he concluded that the fire started with the car and spread to the house. The detective also concluded that an ignitable liquid, such as gasoline, had been poured on the vehicle from front to back.

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Cleveland Division of Fire Detective David Baker testified as to how Sullivan was identified as the perpetrator. Surveillance video from a business two doors from the subject house were obtained. The video showed a maroon Buick with tinted windows in the area of the house. Using the City of Cleveland's 'Real Time Crime' street cameras, Detective Baker traced the Buick to a gas station located five minutes from the crime scene. The detective was able to obtain a license plate number for the Buick that was registered to a red 1999 Chevrolet Cavalier.

The detective was also able to determine from video footage from the gas station that, at approximately 7:35 p.m., the Buick 'met up with' a Jeep Cherokee at the gas station. The driver of the Jeep exited the vehicle and pumped gas into a red gasoline container; while he did, the driver of the Buick got out of his vehicle, walked to the Jeep, and interacted with the Jeep's driver. When the Jeep driver finished pumping his gas, the driver put the gas container in a white garbage bag, put the garbage bag in the back of the Jeep, and drove away; the driver of the Buick drove away at the same time and headed in the same direction of the Jeep.

Video footage from the business by the subject house showed that at approximately 7:55 p.m., the Buick was in the area and a person exited the passenger side of the car carrying a white garbage bag. The person ran toward the subject house and a 'flash' of fire on the driveway side of the house can be seen. The footage then shows a person running back to the Buick with a red gas container in his hand.

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Using law enforcement databases, the detective obtained driver license photographs of the suspects. He compared the photos to the video footage and determined that Sullivan was the person pumping the gas into the container and running to and from the subject house."

HOLDING:

"Detective Baker positively identified Sullivan in court as the person in the driver license photo, as well as the person on the surveillance footage. The license photo and surveillance videos were shown to the jury and admitted into evidence; thus, the State presented sufficient evidence for the jury to determine whether Sullivan was the perpetrator. On this record, the State presented sufficient evidence of identity. The first assignment of error is overruled."

Legal Lesson Learned: Surveillance videos are powerful evidence.

TN: ARSON – HUSBAND DIED HOUSE FIRE – WIFE "ALFORD PLEA" AFTER 3 DAYS JURY TRIAL – MAX SENTENCE 4-YRS

On Nov. 26, 2024, in State of Tennessee v. Mendy Powell Neal, the Court of Criminal Appeals of Tennessee, at Nashville held (3 to 0) that the trial court judge properly sentenced her to maximum allowed for voluntary manslaughter; she had been charged with felony murder and aggravated arson ("Alford Plea" – defendant does not admit to the criminal act but pleads guilty). The Court wrote: "In declining to reduce or modify the sentence, the trial court entered a thorough and extensive order in which it reviewed the evidence, including the horrific manner of the victim's death, before affirming its original sentencing determinations. The Defendant has not shown any circumstances, warranting the alteration of her sentence in the interest of justice."

FACTS:

> "In the early morning hours of July 11, 2012, the Defendant's husband, Matthew Neal, died in a house fire that totally consumed the couple's Charlotte log home. The Defendant escaped without any apparent injury, and her two minor children were at a sleepover with a friend. The victim's autopsy revealed that the victim had alcohol and sedatives in his system and died from carbon monoxide toxicity and thermal injury. Investigators' suspicions were immediately raised by the Defendant's demeanor and behavior after the fire, and they subsequently uncovered evidence that led them to believe that the Defendant intentionally set the fire to kill the victim.
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> The Defendant proceeded to a jury trial on those charges on May 16, 2012. During the three days of proof before the Defendant's May 19, 2012 entry of her best interest guilty plea, the State called nineteen witnesses, including the victim's and the Defendant's neighbors, law enforcement officers and detectives, firefighters, the victim's sister, the Defendant's sister, the Defendant's hairdresser, and the Defendant's coworkers and friends.
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> In a conversation with the victim's sister that same day, the Defendant said that she had gotten their belongings out of the house per their fire safety plan but had not gotten the victim out. The Defendant also talked about whether she would receive the victim's $100,000 life insurance policy proceeds, and on the morning after the fire began preparing an inventory list of lost items for their homeowner's insurance policy.
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> On the day of the victim's funeral, the victim's hairdresser asked if the Defendant needed any makeup or clothes. The Defendant responded that she had packed a bag with her makeup and clothing and placed it in her vehicle on the night before the fire. The Defendant's sister, who was with the Defendant at the hair salon at that time, saw a ziplock bag of jewelry in the Defendant's purse. The Defendant had no explanation for how the bag of jewelry had gotten in the purse.
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The Defendant and her children stayed with Ms. Shelton [her friend January Shelton] for several months after the fire. On the Wednesday before Thanksgiving, the Defendant confessed to Ms. Shelton that she had intentionally set the fire and left the victim inside the burning house."

HOLDING:

"At the April 17, 2023 sentencing hearing, Tennessee Department of Correction ('TDOC') Probation Officer Wendy Gale James-Hughey, who prepared the Defendant's presentence report, testified that she had a long conversation with the Defendant, but the Defendant did not tell her anything different from the statement she provided for the report, which read: 'My house caught fire and my husband was inside and was killed. I tried to get him out but wasn't able.' She said the Defendant did not elaborate on how she tried to get the victim out of the house.

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The trial court found as applicable enhancement factors that the victim was particularly vulnerable because of age or physical or mental disability, that the Defendant treated or allowed the victim to be treated with exceptional cruelty during the commission of the offense, that the amount of property damage of the victim was particularly great, that the Defendant had no hesitation about committing the crime when the risk to human life was high, and that the Defendant abused a position of private trust that significantly facilitated the commission of the offense…. The trial court's ruling states in pertinent part:

> 'Of course, I cited in the record along with the testimony the Court found credible. I'm not going to recite it all, but suffice to say, the Court finds that the conduct was horrifying, shocking, reprehensible, and offensive. That you leave your husband in there to burn up and die.'

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We further conclude that the trial court acted well within its discretion in declining to reduce or modify the Defendant's sentence pursuant to Rule 35 of the Tennessee Rules of Criminal Procedure."

Legal Lesson Learned: Not clear why the Prosecution took a plea deal after three days of jury trial, but the maximum sentence for voluntary manslaughter was certainly appropriate.

Chap. 1 – American Legal System, incl. Fire Codes, Investigations, Arson

CA: HOMELESS - RVs CAN NOT BE PARKED ON CITY STREET – CITY ORDINANCE / $60 FINE UPHELD

On November 22, 2024, in David Allen Yesue v. City of Sebastopol, United States Magistrate Judge Kandis A. Westmore, U.S. District Court for the Northern District of California, upheld the City ordinance in a lawsuit filed by the ACLU. The Court wrote: "Plaintiffs are effectively requesting that they be allowed to park their RVs in the city because they need to be able to live

in their RVs, not because they are unable to access parking otherwise. The Court knows of no authority that would support such a demand…. Footnote 4: Plaintiffs also assert there is no direct evidence of, for example, an RV catching on fire. The Court notes, however, that Plaintiff Wetch herself stated in her declaration that her trailer burned down while she was on Morris Street."

FACTS:

"Like many cities, defendant [City of Sebastopol] has experienced a dramatic rise in the homeless population…. Beginning around 2018, unhoused individuals living in Residential Vehicles ('RVs') began to increase in Morris Street and the surrounding residential area, resulting in complaints from the community…. For example, there were complaints about RVs using nearly all of the parking spaces on Morris Street, as well as concerns and complaints about human waste on the sidewalks and in the street, leaking sewage, accumulation of trash and possessions around the vehicles, drug use, a vehicle catching fire and burning, the use of gas generators, a RV occupant passing away in his vehicle, and confrontations between citizens and RV occupants.

On February 23, 2022, Ordinance No. 1136 (the 'RV Ordinance') was passed, and is codified at Sebastopol Municipal Code ('SMC') Chapter 10.76. (7/11/24 Grutzmacher Decl., Exh. 17.) The RV Ordinance states that it is 'intended to ensure there is adequate parking for residents of the city and to regulate the parking of vehicles actively used as sleeping accommodations.' (SMC § 10.76.020.) Thus, the RV Ordinance: (1) prohibits parking an RV on public streets zoned as residential, (2) prohibits parking an RV on public streets zoned as commercial, industrial, or community facility between 7:30 a.m. and 10:00 p.m., (3) prohibits parking an RV on any park, square, or alley, and (4) prohibits parking an RV in a city-owned parking lot unless the person is conducting city-related business during business hours at the location for which the parking lot is designated. (SMC § 10.76.040.)

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Plaintiff AoK is a non-profit organization whose volunteers serve individuals experiencing homelessness, providing supplies such as meals, clothing, tents, and sleeping bags…. Plaintiff AoK asserted in its interrogatory responses that because 'vehicularly housed persons have been forced by the Ordinance to move constantly, [Plaintiff AoK] has found it increasingly difficult to locate people to get them meals, increasing the time spent looking for them and thereby reducing the number of people who can be served.' … Plaintiff AoK further states that the time 'spent trying to locate and serve people who have been dispersed as a result of the Ordinance could have been spent making and serving additional meals, in furtherance of Plaintiff [AoK's] core mission and purpose.'"

HOLDING:

"The Court also finds there is evidence in the record that the RV Ordinance was enacted in response to health and safety concerns. City officials reported received complaints about 'blockage on the sidewalks, human waste on the sidewalks and in the street, trash accumulations, blockage of sidewalks, confrontations that sometimes occurred between citizens and occupants of the recreational vehicles,' as well as 'overflowing garbage[,]

the use of . . . generators, which created serious risk[, and] the piles of personal possessions that are around the vehicles.'

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Considering the four factors, the Court concludes that the factors weigh in favor of finding that Defendant's parking fine of $60 per occurrence is not grossly disproportionate to the underlying offense of parking an RV where and when prohibited.

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Thus, the RV Ordinance 'does not offend the Equal Protection Clause because it does not rest exclusively on an 'irrational prejudice' against' vehicularly-housed individuals."

Legal Lesson Learned: The ordinance was enacted in response to health and safety concerns.

Note: See the City's press release about this case. "City of Sebastopol Prevails in Challenge to RV Ordinance," November 23, 2024, City News

"Friday afternoon, November 22, a decision was issued in the case of Yesue et al. v. City of Sebastopol, commonly known as the ACLU litigation. In 2022, the Sebastopol City Council adopted an ordinance regulating where and when RVs could park on public streets. Soon after the ordinance was adopted, the ACLU filed a lawsuit challenging the ordinance on behalf of several plaintiffs. The lawsuit raised 14 different causes of action. The US District Court, Northern District of California rejected all claims raised by the Plaintiffs and granted the City's motion for summary judgment in its entirety. In short, the City of Sebastopol prevailed. The purpose of the RV Ordinance was to address the serious public health and safety issues that arise from RV encampments, and to ensure adequate street parking for the general public. Homelessness is a complex regional and statewide issue, that no one city can solve alone. Sebastopol has consistently done its part, and more, to tackle the crisis in a compassionate manner. 'The parking ordinance was our small town's effort to balance the many interests we serve, to find a solution and not turn away from what was a very challenging situation," said Sebastopol Mayor Diana Rich. 'It's a good-faith heartfelt solution that gives consideration and respect to all in our community, including the unhoused. I'm pleased to see that the Court's decision validates Sebastopol's efforts to do what is right, fair, and equitable.' The City is continuing to review the Court's decision, and the City Council will discuss how to implement the Court's decision and the RV Ordinance in the coming weeks."

Chap. 2 – Line Of Duty Death / Safety

OH: FF KILLED AT MVA SCEEN – MOTORIST FAILED YIELD – MURDER LOWERED TO MANSLAUGHTER – PD NOT CONTROL

On Nov. 7, 2024, in State of Ohio v. Leander Bissell, the Ohio Court of Appeals for Eight District, Cuyahoga County, held (2 to 1) that defendant's conviction and life sentence under the felony-murder statute must be reversed to a lower involuntary manslaughter. The Court wrote:

"[A]s there was no testimony regarding an order or direction, and no officer testified that they were invested with the authority to direct traffic, there was insufficient evidence to support the conviction for failure to comply with the order or signal of a police officer. *** There is no doubt that Bissell caused the death of Firefighter Tetrick. Unlike the cases cited by the State, there is no evidence Bissell knowingly used his car as a weapon to cause serious physical harm."

FACTS:

> "On the evening of November 19, 2022, at approximately 8:15 p.m., Firefighters Johnny Tetrick … Bryan Burvis … Tony Trujillo… and Lieutenant Jeffrey Vollmer … were called to the scene of a collision on Interstate 90 ('I-90") near Martin Luther King Blvd ('MLK'). When they arrived, several police cars were already present, directing traffic into the right two lanes of traffic on the four-lane highway…. The collision had involved a car and a truck. The car had rolled over and was lying at a 90-degree angle on the left shoulder into Lane 1 [high speed lane]. After an inspection, firefighters determined the vehicle was empty and there was no extraction necessary. There was a truck as well parked on the right side of the road next to Lane 4 [low speed lane]. Someone, who was later identified as the passenger of the truck, was seated on the truck bed talking to officers.
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> Traffic slowed in response to the collision and police presence. Bissell, rather than following the flow of traffic to Lanes 3 and 4, drove around the police cars to Lane 2, apparently in an attempt to avoid the gridlock. Around the time that Bissell neared the site of the collision, Firefighters Tetrick and Trujillo, with Tetrick in the lead, approached Lane 2. A large 70-foot tractor trailer was to the right. The driver of that truck had a dash camera that filmed what happened next. As Firefighter Tetrick crossed the highway, he briefly looked to his left, jogged forward, and bent down to pick up some debris in the road with his back to oncoming traffic. As he bent down, Bissell drove through at a speed between 45 and 60 m.p.h., hitting Firefighter Tetrick. The impact knocked Firefighter Tetrick across three lanes of traffic into the berm on the right side of the highway. Bissell did not stop and fled the scene. Firefighter Tetrick died as a result of the injuries he sustained."

HOLDING:

> "Bissell elected to try the case to the bench. After hearing the testimony of the State's witnesses, Bissell elected not to present a case in chief. The trial court found Bissell guilty on all charges.
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> In order to present sufficient evidence on the failure to comply charge, the State needed to establish that Bissell recklessly failed to comply with any lawful order or direction of any police…. Bissell argues that there was no evidence that an officer gave him an order or signaled him to stop; therefore, there was insufficient evidence to support the conviction and the conviction was not supported by the manifest weight of the evidence.
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Based on the foregoing, as there was no testimony regarding an order or direction, and no officer testified that they were invested with the authority to direct traffic, there was insufficient evidence to support the conviction for failure to comply with the order or signal of a police officer. Furthermore, where there is insufficient evidence of guilt, the conviction cannot be supported by the manifest weight of the evidence.

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We find that the record supports a conviction for involuntary manslaughter. The evidence established beyond a reasonable doubt that Bissell recklessly caused serious physical harm to Firefighter Tetrick leading to his death and that this occurred when Firefighter Tetrick was performing his duties as a firefighter. Accordingly, we vacate Bissell's conviction for murder under R.C. 2903.02(B) and modify the finding of guilt to the lesser included offense of involuntary manslaughter under R.C. 2903.04(A), a felony of the first degree. Based on the foregoing, we remand the case for resentencing."

DISSENT:

"Prior to Bissell's vehicle appearing, all vehicles in the gridlock yielded to the slowing traffic and the flashing lights of the many responding vehicles on scene. Bissell's vehicle is travelling noticeably faster than the other vehicles in the video before he traverses around two separate police vehicles; in one instance, Bissell passed a police vehicle, parked with its lights flashing, on the left by going into the shoulder of the road.

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Sergeant O'Haire, after watching State's exhibit No. 1B, footage from Officer Howard's body camera, indicated that he did not see any other cars travelling in the second-from-left lane except for Bissell. My own review of the footage demonstrates that perhaps one or two vehicles aside from Bissell traveled in that lane, but proceeded slowly compared to Bissell, and promptly moved over upon discerning the extent of the scene and the heavy presence of the police and fire departments. None of the vehicles travelling in that lane continued through the lane next to the overturned vehicle in the far-left lane, as Bissell did. Dissell's vehicle can be heard before it is seen in the video, which cannot be said of any other vehicle traveling through the scene in the video. In fact, numerous vehicles stopped on their own initiative and waited for a signal from the responders. It is also clear that prior to and upon striking Firefighter Tetrick, Bissell did not take any evasive action; I cannot say that he swerved or applied his brakes — he struck Firefighter Tetrick and continued driving."

Legal Lesson Learned: High risk scene when firefighters are at MVA and traffic control not yet established; defendant will be resentenced.

Note: See YouTube of defendant's original sentencing.

Leander Bissell apologizes at sentencing for hit-and-run death of Cleveland firefighter Tetrick. Video of apology**.**

NY: FDNY FF STROKE AFTER BLDG FIRE – CAN SUE OWNER BREACH CODE / BLDG NOT SECURED – NY FIREMAN'S RULE

On Oct. 29, 2024, in David Pickford and Rosemarie Pickford v. Noel M. Deleon, Judge Richard Montelione, Supreme Court of the State of New York, County of Kings, Part 99, granted the plaintiffs' motion for default judgment. The Court wrote: "General Municipal Law§ 205-a(l) provides that a firefighter has a cause of action when he or she sustains an injury in the line of duty as a result of any neglect, omission, willful or culpable negligence of any person or persons in failing to comply with the requirements of any of the statutes, ordinances, rules, orders and requirements of the federal, state, county, village, town or city government.'"

FACTS:

> "This is an action for personal injuries sustained by a New York City Fireman commenced by filing the summons and complaint on October 9, 2019. There is also a claim for loss of spousal services. It is alleged that during a fire on July 13 , 2019, at 217 Arlington Avenue, Brooklyn, New York, which was owned, leased, operated, controlled and maintained by defendant, the defendant illegally altered the premises in violation of the Certificate of Occupancy and without permits or approvals for those alterations. It is further alleged that on or before July 13, 2019, there was a vacate order for the premises issued by the New York City Department of Buildings, but the premises was unsealed and unsecured.
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> The plaintiff firefighter testified that on July 13, 2019. He was assigned to Engine Company 293 and arrived at the subject premises because of an active fire. The fire started in the basement and quickly spread to the 1st and 2nd floor…. [A]fter a period of over an hour. He left the building and later learned he had suffered a stroke."

HOLDING:

> "This lawsuit is pursuant to General Municipal Law, § 205-a, 1-3 and alleges various violations of the Administrative Code of the City of New York, the Building Code of the City of New York, the Fire Code of the City of New York, New York City Health Code, the Housing Maintenance Code, Multiple Dwelling Law, and the New York State Property Maintenance Code. Defendant was served by conspicuous service on November 29, 2019, which was filed on December 16 , 2019. Plaintiffs moved by motion for default judgment which was filed on December 10 , 2020. The court by order dated March 8, 2024, and entered on March 18 , 2024, granted plaintiffs' motion for default judgment, and scheduled an inquest as to damages. The inquest was held on September 19, 2024, and plaintiff David Pickford (hereinafter, 'plaintiff firefighter' or 'plaintiff') testified.
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> The record supports that a vacate order was in effect and the premises were unsecured."

Legal Lesson Learned: The New York statute has modified the Fireman's Rule to permit emergency responders to sue for damages for injury arising from code violations.

Note: Some states have abolished the Fireman's Rule, including:

- **New Jersey**: In 2007, the New Jersey Supreme Court ruled that the Fireman's Rule was no longer in effect. Ruiz v. Mero, A28/29-06;
- **Oregon**: In 1984, the Oregon Supreme Court abolished the Fireman's Rule in the case Christensen v. Murphy, 296 Or. 610 (Or. 1984);
- **Florida**: By statute, Florida in the 1990s abolished the Rule.
- **Minnesota:** *Armstrong v. Mailand,* Feb. 9, 1979; Supreme Court of MN;
- **New York**: By statute, the General Municipal Law § 205-a, permits firefighters to sue when they are injured as the result of a violation of a statute, rule, or regulation.

> **General Municipal Law § 205-a**
> This law allows firefighters to sue the city for injuries caused by a violation of a rule, statute, or regulation. The law was enacted in 1935 to provide relief from the Fireman's Rule.
> **General Obligations Law 11-106**
> This law was enacted in 1996 to ensure that the Fireman's Rule would no longer apply, except for suits against the firefighter's employer and co-workers.
> **General Municipal Law § 205-e**
> This law gives police officers similar rights to those afforded to firefighters under General Municipal Law § 205-a

Chap. 3 – Homeland Security, incl. Active Shooter, Cybersecurity, Immigration

IL: PELLET GUN - MIDDLE SCHOOL STUDENT LOCKER – SAME DAY UVALDE, TX MASS SHOOTING – 1-YR SUSP.

On Nov. 27, 2024, in A.A., a minor, by and through his next friend and parent, Elizabeth Pasillas v. Board of Education, Summit School District No. 104, the Appellate Court of Illinois, First District, held (2 to 1), that the School Board properly suspended the 13-year-old for one-year, overturning decision by trial court judge. The pellet gun was discovered on May 24, 2022, the same day that a mass shooter murdered 19 fourth graders and two teachers at an elementary school in Uvalde, Texas. The Court wrote: "However, it is entirely reasonable for the school officials to have taken the national school shooting landscape into consideration when deciding A.A.'s discipline. One of the determinations that the officials had to make under subsection (b-20) was whether A.A.'s ongoing presence would 'substantially disrupt, impede, or interfere with the operation of the school.' That analysis would logically include a consideration of the effect of A.A.'s presence on his classmates and their educational environment. Given the prevalence of school shootings in this country, it would be natural for A.A.'s fellow students to be wary and concerned about the presence of someone who brought a lookalike gun to school."

FACTS:

"The Board of Education ('the Board') of Summit School District No. 104 ('the District')

appeals a circuit court judgment granting a petition for a writ of certiorari filed by A.A., through his mother, Elizabeth Pasillas, in which A.A. challenged the Board's decision to expel him from school for one year for bringing a pellet gun to school. Because we disagree with the circuit court's conclusion that the Board failed to comply with the requirements of the Illinois School Code (School Code) (105 ILCS 5/10-22.6 (West 2022)), we reverse the court's judgment and affirm the Board's decision.

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The facts of the case are not in dispute. The events leading to A.A.'s expulsion occurred on May 24, 2022, when A.A. was a 13-year-old student at Heritage Middle School ('Heritage'). While in the course of investigating drawings on the wall of a boys' bathroom, Heritage's Dean, Scott Forman, searched A.A.'s locker. Inside the locker was A.A.'s backpack, which contained a loaded pellet gun. The orange safety tip on the end of the barrel of the pellet gun had been painted black, and Forman initially believed it to have been a real firearm. Forman and Assistant Principal Laura Skowronek then met with A.A., who admitted that the gun was his and explained that he had obtained it from a friend. Skowronek then called Pasillas and informed her that they had found the gun in A.A.'s backpack. Skowronek completed a Suspension Notification form stating that A.A. was to be suspended from school for the remaining seven days of the school year for possessing a weapon and engaging in gang-like activities. The Suspension Notification also stated that '[A.A.'s] action of bringing and possessing a gun at school disrupted the school safety of all students[] and staff."

HOLDING:

At the expulsion hearing on July 22, 2022, the District's Director of Expulsion, Kathy Johnson, elaborated on the reference to an administrator conference and explained that it referred to a meeting between A.A. and the Heritage administration on May 24, 2022, the day that the gun was found, during which they 'talked about the situation.' … Johnson added, 'because of the significance of the look-alike weapon and the concern that certainly causes, we believe that [the administrator conference] was the most appropriate intervention, and that is the exhaustion [of appropriate and available interventions] that we can give at this time.'

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This concern that school officials raised regarding the effect of A.A.'s ongoing presence on the educational environment is legitimate and reasonable. Accordingly, we cannot say that the Board's decision to expel A.A. for one year to serve those interests was an abuse of discretion.

DISSENT:

"On May 24, 2022, the same day that a mass shooter murdered 19 fourth-graders and two teachers at an elementary school in Uvalde, Texas, the dean of academics and discipline at Heritage Middle School in Summit, Illinois, searched a locker assigned to A.A., a sixth-grader suspected of committing an act of vandalism in the boys' bathroom. The dean thought that he would find a paint pen. But when he opened the locker, he saw a black handgun in an open pocket in A.A.'s backpack. He showed it to the school's

assigned police officer, who determined that the gun was actually just a pellet gun—dangerous, yes, but not deadly in the way a firearm is. That distinction was an important one. Consistent with state law, district policy mandated a one- to two-year expulsion for possession of a firearm. See 105 ILCS 5/10-22.6(d)(1) (West 2024).

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Essentially, the Board's position is that, when it comes to bringing pellet guns to school, the only appropriate intervention short of expulsion is to tell students not to bring pellet guns to school. That is a zero-tolerance policy in fact, if not in name, and it is contrary to the plain legislative intent to limit mandatory expulsions to students who either possess a firearm or use some other kind of weapon.

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If school boards had plenary discretion in disciplinary matters, I would be hard-pressed to deem that unreasonable, but section 10-22.6(b-20) unambiguously limits the use of expulsion to situations where no lesser disciplinary measure would be appropriate and where the student's exclusion from school is not merely advantageous but necessary to ensure that the school provides a safe environment that is conducive to learning."

Legal Lesson Learned: The 1-year suspension certainly sends a message to all students in the school; nice to read about State statute mandating 2-year expulsion for bringing firearm to school.

Chap. 4 – Incident Command, incl. Training, Drones, Communications

U.S. SUP. CT: NOT HEAR HOMEOWNER'S APPEAL - SWAT $50K DAMAGE - 5th CIR: CITY NOT LIABLE / "EMERGENCY"

On Nov. 25, 2024, in Vicki Baker v. City of McKinley, Texas, the U.S. Supreme Court declined to hear the appeal of the homeowner (need at least 4 or 9 Justices to agree to hear case by issuing a Writ of Certiorari). The homeowner won a jury verdict of about $60,000, but this was reversed by the 5th Circuit. U.S. Supreme Court Justice Sonia Maria Sotomayor, joined by Justice Neil Gorsuch, filed a statement urging the Court to hear the appeal. The Justice wrote: "By the time the officers gained entry, Little had taken his own life. [Little was a fugitive who had kidnapped 15-year-old girl; he had previously done some construction work at house before Baker fired him.] All agree that the McKinney police acted properly that day and that their actions were necessary to prevent harm to themselves and the public. *** The Court's denial of certiorari expresses no view on the merits of the decision below. I write separately to emphasize that petitioner raises a serious question: whether the Takings Clause permits the government to destroy private property without paying just compensation, as long as the government had no choice but to do so."

FACTS:

"On July 25, 2020, in McKinney, Texas, a fugitive named Wesley Little kidnapped a 15-year-old girl. After evading the police in a high-speed car chase, Little found his way to petitioner Vicki Baker's home with his victim in tow. Little was familiar with the home because he had previously worked there as a handyman. Baker had recently retired and moved to Montana, so her daughter Deanna Cook was at the house that day, preparing to put it up for sale. When Cook answered the door, she recognized Little and the child with him: Earlier that day, Cook saw on Facebook that Little was on the run with a teenage girl. Cook feigned ignorance and let them into the house, but told Little, falsely, that she had to go to the supermarket. Once outside, Cook called Baker, who called the police.

McKinney police arrived soon after and set up a perimeter around Baker's home. Eventually, Little released the girl and she exited the house. The girl told the police that Little was hiding in the attic, that he was armed, and that he was high on methamphetamine. Later, while still in the attic, Little told the police that he was not going back to prison, that he knew he was going to die, and that he planned to shoot it out with the police. To resolve the stand off and protect the surrounding community, the police tried to draw Little out by launching dozens of tear gas grenades into the home. When that did not work, the officers detonated explosives to break down the front and garage doors and used a tank-like vehicle to bulldoze the home's backyard fence. By the time the officers gained entry, Little had taken his own life. All agree that the McKinney police acted properly that day and that their actions were necessary to prevent harm to themselves and the public.

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In total, the damage amounted to approximately $50,000…. Baker's insurance refused to cover any damage caused by the McKinney police.* [Footnote: Homeowners' insurance policies generally do not provide coverage for damage caused by the government. See 10A., J. Plitt, D. Maldonado, &J. Rogers, Couch on Insurance §152:22 (3d ed. Supp. 2024) (explaining that 'losses [that] occur because of the actions of a civil authority functioning in its ordinary governing capacity' are 'typically excluded from most property insurance policies')."

HOLDING:

"The city denied the claim in its entirety. Baker thereafter sued the city, alleging a violation of the Takings Clause. [The Takings Clause of the Fifth Amendment provides that private property shall not 'be taken for public use, without just compensation.']

At the summary judgment stage, the District Court held that the City's destruction of Baker's property was a compensable taking under the Fifth Amendment. Baker v. McKinney, 601 F. Supp. 3d 124, 144 (E. D. Tex. 2022). Following trial, a jury awarded Baker nearly $60,000 in damages.

On appeal, the Fifth Circuit reversed…. The court declined to adopt the city's broad assertion that the Takings Clause never requires compensation when a government agent

destroys property pursuant to its police power. Such a broad categorical rule, the Fifth Circuit reasoned, was at odds with its own precedent and this Court's Takings Clause jurisprudence…. Instead, the Fifth Circuit adopted a narrower rule that it understood to be compelled by history and precedent: The Takings Clause does not require compensation for damaged property when it was 'objectively necessary' for officers to damage the property in an active emergency to prevent imminent harm to persons…. Because the parties agreed that the McKinney police's actions were objectively necessary, the Fifth Circuit concluded that Baker was not entitled to compensation.

***

I write separately to emphasize that petitioner raises a serious question: whether the Takings Clause permits the government to destroy private property without paying just compensation, as long as the government had no choice but to do so. This Court has yet to squarely address whether the government can, pursuant to its police power, require some individuals to bear such a public burden."

Legal Lesson Learned: Fire & EMS on occasion may need to force their way into a home. The 5th Circuit standard of "objectively necessary" may be a precedent that a municipality can cite in refusing to pay for the damage.

Note: See Nov. 25, 2024 article and photo of house. "Supreme Court won't hear case of woman whose former McKinney home was 'destroyed' by SWAT team during hostage standoff."

See the 5th Circuit's decision, Oct. 11, 2023.
"Little somehow 'communicated to' police that he 'had terminal cancer, wasn't going back to prison, knew he was going to die, was going to shoot it out with the police.' Police proceeded to use explosive devices, the BearCat, a T-Rex (similar to the BearCat), toxic gas grenades, and a drone to try to resolve the situation. After some time, the drone was able to reach a vantage point to see that Little had taken his own life. *** Nevertheless, the damage to Baker's home was severe. As the district court explained, quoting Baker's motion for summary judgment, '[m]uch of the damage went beyond what could be captured visually.' Specifically, The explosions left Baker's dog permanently blind and deaf. The toxic gas that permeated the House required the services of a HAZMAT remediation team. Appliances and fabrics were irreparable. Ceiling fans, plumbing, floors (hard surfaces as well as carpet), and bricks needed to be replaced—in addition to the windows, blinds, fence, front door, and garage door. Essentially all of the personal property in the House was destroyed, including an antique doll collection left to Baker by her mother. In total, the damage . . . was approximately $50,000."

Chap. 5 – Emergency Vehicle Operations

CA: MOTORCYCLIST KILLED – COLLISION FIRE ENGINE – PL'S EXPERT - FD CAPTAIN / RELATIVE - MAY TESTIFY

On Nov. 7, 2024, in Carol Leigh Kneeshaw v. The Superior Court of Orange County; and City of Orange (Real Party in Interest), the California Court of Appeal, Fourth District, Division 3, held (3 to 0; unpublished decision) that trial court improperly excluded the Fire Captain as an expert witness for the plaintiff. The Captain is also brother of the son-in-law of Christian Bardales, petitioner's co-plaintiff. "There can be no question that Buford's basic credentials are sufficient to qualify him as an expert witness on the capabilities and operation of fire engines. While questions can be raised as to his methodology, the proper remedy is either cross-examination or a limitation on his testimony, not wholesale exclusion. Nor is bias arising from a distant familial relationship an adequate reason to exclude Buford. *** The opinions ultimately offered by Buford were that 'the fire apparatus is not capable of making [the] maneuver described by the engine crew,' 'the fire apparatus is capable of making the maneuver that [certain third party witnesses] described,' and 'the fire apparatus is capable of making [the maneuver described by the accident reconstructionist], yet it's outside of standard operating procedures.'"

FACTS:

> "This case involves a collision between a motorcycle and a fire engine, resulting in a fatality. Petitioner contends her expert witness, fire captain and certified training instructor Lance Buford, was incorrectly excluded by the trial court. We conclude the trial court abused its discretion, grant the petition, and issue a peremptory writ of mandate.
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> ***
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> Petitioner sued real party in interest, alleging (as relevant here) causes of action for negligence and dangerous condition of public property. Before trial, petitioner designated several expert witnesses, including Lance Buford. Buford is a fire captain for the Lakeside Fire Protection District in San Diego County, and a certified instructor in operation of type 1 fire engines, the type involved in the accident.
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> ***
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> At the conclusion of the hearing, counsel for real party in interest argued Buford should be excluded because of his unscientific accident reconstruction approach, and because of his lack of training, experience, or education relevant to the issues in the case. The trial court granted the motion, adding, 'I believe that there's [a] conflict of interest as well given his relationship with the parties involved here. The purpose of an expert is someone who doesn't know the parties, has no knowledge of anything.'"

HOLDING:

> "Moreover, as set forth above, the trial court's other reasons for excluding Buford are inadequate. Buford's credentials are clearly sufficient to entitle him to testify as an expert on the capabilities and operation of fire engines. Buford's accident reconstruction methodology may be subject to criticism, and his credibility on this point can be challenged, but this is not a sufficient basis for excluding his testimony. Buford's testimony is also plainly relevant, as it aims directly at a basic fact dispute in this case, namely what the fire engine was doing in the moments before the accident occurred.

***

The more pertinent source of bias-the fact that petitioner is paying Buford for his testimony-is completely routine, and always goes to the weight of the testimony, not its admissibility. The court's other reasons for excluding Buford's testimony (that he has never previously testified as an expert witness and did not prepare a written report) are similarly insufficient.

***

Let a peremptory writ of mandate issue directing respondent court to: (1) vacate its October 9, 2024 order excluding the expert testimony of Lance Buford; and (2) enter a new order permitting the expert testimony of Lance Buford on the opinions identified at the October 9, 2024 hearing, subject to such limitations as the trial court, in its discretion, deems appropriate."

Legal Lesson Learned: A fire captain who is a certified instructor of Type 1 fire engines may testify as an expert witness (and offer his opinions), even if he is a distant relative to the plaintiffs.

Note: See this article and video; this appears to be the same incident as this case.
June 6, 2019: "Orange: Motorcyclist dies after crash with fire truck." (KABC) -- A motorcyclist has died and three firefighters have minor injuries following a crash involving a fire truck in the city of Orange on Wednesday. According to Orange police, officers responded to the crash at about 4:41 p.m. near E. Collins Avenue and Roberto. The motorcyclist was transported to the hospital with life-threatening injuries and later died. The three firefighters were also transported with non-life-threatening injuries, police said. It's unclear whether the fire truck had lights and sirens blaring at the time of the crash."

Video: (YouTube) Motorcyclist Seriously Injured After Colliding with Fire Truck in City of Orange

Chap. 6 – Employment Litigation, incl. Work Comp., Age, Vet Rights

IL: PROSTATE CANCER – NO WORKER'S COMP – FAMILY HISTORY – CONFLICTING EXPERTS / SCIENTIFIC STUDIES

On Nov. 22, 2024, in Thomas Mangiameli v. The Illinois Workers' Compensation Commission, et al. (Village of Hoffman Estates), the Appellate Court of Illinois, First District, Worker's Compensation Di vision (held 2 to 1, unpublished decision) held that the retired firefighter was properly denied worker's comp. for his prostate cancer (cancer detected in 2017; he retired in 2018). The Court wrote: "We agree with the dissent that the Act affords special protections to firefighters 'because Illinois values the vital services provided by them and because it is

understood that, due to the nature of their work, they come into contact with carcinogens, chemicals, pathogens, and other substances which are detrimental to their health and to which the ordinary person is not regularly exposed.' We note, however, that the scientific studies, at this point in time, regarding the correlation between the development of prostate cancer and the occupation of a firefighter are evolving. We reiterate that, in the present case, the claimant had a family history of prostate cancer which doubled his risk for developing the cancer. Under these circumstances, we will not usurp the function of the Commission to weigh the evidence and make credibility determinations."

FACTS:

"Claimant next testified regarding his medical history. Claimant was 59 years old at the time of the hearing. In 2002, at age 43, he was diagnosed with elevated prostate-specific antigen (PSA) levels, but a biopsy showed no malignancy. Claimant was then diagnosed with elevated PSA in 2015 and again on November 29, 2016. Claimant underwent further testing, including a biopsy, in January 2017 and suffered a neck injury on February 28, 2017. Biopsy results from March 22, 2017, revealed malignancy of the prostate. Claimant was 57 years old when he was diagnosed with prostate cancer. Claimant underwent a prostatectomy and removal of a lymph node on May 17, 2017. Claimant underwent additional treatment in the form of hormone radiation therapy from October 2017 through January 2018. Claimant underwent Cyberknife Radiation for several days in late December 2017 and early January 2018. Claimant's medical provider then recommended hormone replacement therapy for the next two years. Claimant continued the therapy through the time of the arbitration hearing. Claimant's prostate cancer was in remission at the time of the hearing, but he underwent testing every four months. Claimant also underwent neck surgery in February 2018, and he was released to work full duty for that injury in June 2018. He ultimately retired on July 16, 2018. Claimant's medical records confirmed his testimony regarding his diagnosis and treatment of prostate cancer.

***

Both parties presented medical opinions on the issue of causation. Claimant presented the evidence deposition of Dr. Peter Orris, M.D., and employer presented the evidence deposition of Dr. Lev Elterman, M.D.

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[Firefighter's expert - Dr. Peter Orris, M.D.] When asked if claimant's elevated PSA in his 40s related to his occupational exposure as a firefighter, Dr. Orris responded, "\'What we know from the literature is that often firefighters will develop prostate cancer at an earlier age than the general population.' Dr. Orris noted that the general population develops prostate cancer at age 70 or 71 but "the incidence rate of prostate cancer begins to go up in the 50s." Dr. Orris explained that claimant's family history of prostate cancer doubled claimant's risk of developing the cancer. However, Dr. Orris indicated that family history only accounts for 10% of all prostate cancer. Dr. Orris opined that claimant's occupation as a firefighter and his family history increased his risk to develop prostate cancer. Dr. Orris opined that claimant's occupation as a firefighter for 29 years 'was a cause of his prostate cancer.'

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[Village's expert - Dr. Lev Elterman, M.D.] When asked for the basis of his opinion, Dr. Elterman stated, 'Basis was the review of the literature and the fact that he was high risk for prostate cancer due to his family history." Dr. Elterman cited a study showing that a son of a father with prostate cancer was twice as likely to develop prostate cancer than the average man. In Dr. Elterman's opinion, there was no statistically significant increase in prostate cancer incidence among firefighters when compared to the general public. According to Dr. Elterman, the available literature, at best, demonstrated an inconclusive relationship between firefighting and the development of prostate cancer.

***

On June 9, 2019, the arbitrator issued a decision, finding that claimant proved a causal connection between his prostate cancer and his employment as a firefighter. Accordingly, the arbitrator awarded claimant benefits under the Act. Employer filed a petition for review of the arbitrator's decision with the Commission.

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On August 16, 2021, the Commission, with one commissioner dissenting, issued a decision reversing the arbitrator's decision on the issue of causation…. In doing so, the Commission agreed with the arbitrator's finding 'that the preponderance of the testimonial, documentary and expert opinion evidence supports that [claimant] has met his burden of demonstrating exposure to carcinogens under Section 1(d) of the Illinois Occupational Disease Act as a result of his employment with [employer].' However, the Commission disagreed with the arbitrator's finding that employer failed to rebut the presumption that claimant's cancer was causally related to his employment under section 1(d) of the Act. The Commission, relying on Johnston v. Illinois Workers' Compensation Comm'n, 2017 IL App (2d) 160010WC, concluded that only 'some' evidence was required for an employer to rebut the presumption under section 1(d) of the Act. (Emphasis in original.) The Commission found that Dr. Elterman's opinion and the off-work slips indicating that claimant's prostate cancer was an 'off-duty' illness were sufficient to rebut the presumption."

HOLDING:

"We acknowledge claimant's position that the medical opinion of Dr. Orris was more credible and persuasive; however, it was within the province of the Commission to resolve the conflicts in the evidence, assign weight to be accorded to the evidence, and draw reasonable inferences therefrom…. It was claimant's burden to prove a causal connection and it was the Commission's function to weigh the evidence. It appears that the Commission did not find Dr. Orris's opinion credible or give his opinion much weight in rendering its decision. While this court may have weighed the evidence differently, we cannot say that the Commission's finding was against the manifest weight of the evidence where it was supported by the medical opinion of Dr. Elterman."

DISSENT:

> "Dr. Elterman's opinion that claimant's exposures to carcinogens as a firefighter were not a contributing factor to his development of prostate cancer was so lacking in foundation as to be unworthy of credence."

Legal Lesson Learned: Conflicting experts and scientific studies; court won't overturn Commission.

PA: LEUKEMIA – VOL. FF GETS WORKERS COMP – DIESEL EXHAUST / BENZENE - EVEN IF FEW INTERIOR FIRES

On Nov. 19, 2024, in Borough of Hollidaysburg v. Paul Detwiler (Workers' Compensation Appeal Board), Commonwealth Court of Pennsylvania held (2 to 1) that the firefighter was properly awarded worker's comp. The Court wrote: "The second prong of 301(f)'s test for the presumption requires a claimant to 'establish a direct exposure to a carcinogen referred to in [S]ection 108(r) relating to cancer by a firefighter.' The relevant carcinogen in this case is benzene."

FACTS:

> "On December 27, 2019, Claimant filed a Claim Petition seeking benefits for occupational disease pursuant to Section 108(r) of the Workers' Compensation Act (Act),1 77 P.S. § 27.1(r).2 The Claim Petition alleged that Claimant was diagnosed with chronic myeloid leukemia (CML) caused by his exposure to carcinogens categorized by the International Agency for Research on Cancer (IARC) as Group 1 carcinogens while working as a volunteer firefighter.
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> ***
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> Claimant testified there were four pieces of equipment at the Phoenix Fire Department, each with a diesel engine. There was no diesel emissions catcher system inside the Phoenix Fire Department firehouse during the time Claimant served… Claimant would see or smell diesel emissions when the trucks started in the firehouse. When a call came in, the first operator would start the truck. The truck would then run for five to eight minutes. The garage door would be open at those times…. Claimant also stated that he was exposed to diesel emissions at emergency response scenes. He indicated that the trucks were always running.
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> ***
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> Dr. [Tee L.] Guidotti [board-certified internist, pulmonologist, and occupational medicine specialist] issued a report dated December 18, 2019, concluding that Claimant's cancer is causally associated with exposure to benzene…. He stated that benzene is among the toxic chemicals to which a firefighter is exposed. Further, fine particulate matter is produced by both fire and diesel exhaust. Dr. Guidotti stated that benzene is of particular importance in this case because of the known association between the chemical and

myeloid malignancies. Exposure of firefighters to benzene has been quantified and found to vary between negligible to 22 parts per million. This exceeds the short-term exposure limit for benzene according to the Occupational Safety and Health Administration. Dr. Guidotti reviewed studies indicating that prolonged exposure to benzene, particularly at high levels, may be a risk factor for CML"

HOLDING:

"Our research discloses no decisional law suggesting that one must be a 'traditional firefighter' or engage in particular kinds of firefighting duties[interior firefighting] in order to satisfy the continuous-service requirement. Indeed, it appears that all this prong requires is that the claimant show he 'was a firefighter for four or more continuous years.'

***

Factually, there is no dispute that Claimant served as a volunteer firefighter with Phoenix from 2003 through 2016 and responded to fire calls during that time….Simply put, the continuous nature relates to the time period served, not, as suggested by the Borough, the type of firefighting duties or the frequency of those duties throughout the period of service."

DISSENT:

"First, Claimant did not prove that his service at Phoenix constituted 'continuous firefighting duties.'" … Claimant could not describe any particular fire while he was with Phoenix. The only interior fire Claimant could specify was at Willowbrook Trailer Court that occurred in the 1990s, before he joined Phoenix.

Legal Lesson Learned: With the state's statutory presumption, there is no requirement that the firefighter prove he had extensive interior firefighting experience.

IL: ON-DUTY PENSION - 2 ANKLE INJURIES – NEVER FULLY RECOVERED / DIDN'T HIDE ALSO FARMER – BOARD REV.

On Nov. 15, 2024, in Timothy R. Barz v. The Village of Hazel Crest Firefighters Pension Fund, et al., the Appellate Courts of Illinois, First District held (3 to 0) that trail court judge properly overruled the Pension Board, which had only granted him a non-duty disability pension of 50% of his salary. The Court wrote: "It is clear to us that the Board denied Barz an on-duty pension because it thought he lied to the medical treaters and evaluators about his farming operation by not disclosing it. Barz testified he mentioned it, and it is clear from the medical records and surveillance videos that at least some of the medical providers knew he was walking on uneven surfaces at home, working in his yard, operating equipment, and keeping active overall. No one testified Barz lied or concealed anything."

FACTS:

"The record shows that on January 2, 2018, Barz responded to an elevator alarm at a

multifamily dwelling in Hazel Crest where he suffered a sprained ankle after he stepped off the fire engine and rolled his ankle. Barz testified he felt a 'slow burning feeling' that immediately 'fill[ed] into [his] boot.' Barz did not complete any further activities on the call due to his injury and immediately informed his lieutenant. Barz's shift ended at 7:00 a.m. on January 3, 2018, at which time he went to see Dr. Mark Veldman. Dr. Veldman was the first to diagnose Barz with a sprain on his left ankle and restricted him from working. He advised Barz to engage in physical therapy twice a week for three weeks and provided him with additional care instructions.

***

On May 3, 2018, the Village informed Barz that his surgery was not approved, and he was to return to HCFD for full duty work. Barz testified he would have been terminated had he not reported back to work. So, on May 5, 2018, under the threat of losing his job, he returned to work.

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On May 5, 2018, Barz was dispatched to a residence to help a fall victim. At the scene was an older 300-pound patient who needed help getting out of a bathtub. Barz and his partner stepped inside the bathtub. When they lifted the patient, Barz 'felt his [left] ankle give out again.' Barz felt '[p]ain, instability,' 'swelling, [and] hotness' in his left ankle. After this incident, Barz was dispatched to another location for a 'stabbing call.' He reported his ankle injury to his lieutenant after completing the call and then went to Advocate South Suburban Hospital for treatment. On May 8, 2018, Barz was formally placed on work restrictions.

***

On August 3, 2021, Barz submitted to a formal interrogation with the Village pursuant to the Firemen's Disciplinary Act. 50 ILCS 745/3 (West 2020). The transcript and exhibits from this interrogation were entered into the administrative record and are a part of the common law record. They are relevant mainly to evidence Barz's farming operation [soy bean and corn], which the Board relied on heavily to deny a line of duty disability pension and find Barz was not truthful. At the interrogation, Barz attested that he resides on 52 acres of farmland in Grant Park, Illinois. Barz farms his property and cares for approximately 20 chickens and 10 hogs. In 2020, he began farming an additional 82 acres owned by his neighbor.

***

When presented with the surveillance videos from 2018 [taken by Village's Insurance Carrier], Barz admitted that it was him riding an ATV on his farm, walking across his property, and carrying a hydraulic jack that weighed 20 to 30 pounds. One surveillance video depicted him pushing a cart loaded with 'four or five' 50-pound bags inside a store and loading the bags into his truck. Another video showed him riding a lawnmower around his property. Barz acknowledged he was engaged in 'these sorts of activities' throughout May 2018, even though he was restricted from work duty between April 9, 2018, and virtually all of May 2018."

HOLDING:

> "True, Barz planted seeds and fed his chickens and hogs in Spring 2019, but there is no evidence of a separate and distinct injury between November 2018 and June 2019 that would break the casual connection between his work-related injuries, two surgeries, and continued pain in his left ankle and foot, labeled as CRPS [Complex Regional Pain Syndrome]. There is also no medical evidence connecting his farming activities performed in 2019 or 2020 to his CRPS disability.
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> ***
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> Here, no competent evidence supports the Board's findings that Barz fully recovered following his second 2018 injury, that his 2018 injuries were not a causative or contributing factor of his disability, that he suffered an off-duty injury that broke the causal chain, or that he lied or concealed information regarding his farming activities."

Legal Lesson Learned: Board reversed – "no competent evidence supports the Board's findings that Barz fully recovered following his second 2018 injury."

Chap. 8 – Race / National Origin Discrimination

IL: BLACK FF – FIRED - NO FED. CASE – RETALIATION CLAIM FOR TALKING TO EEOC – HAD DUE PROCESS STATE COURT

On Nov. 18, 2024, in Vairrun Strictland v. City of Markham, United States District Court Judge John J. Tharp, Jr., U.S. District Court for Northern District of Illinois, Eastern Division, granted summary judgment to the City. The Court wrote: "In October 2021, the circuit court entered an agreed order retaining jurisdiction but remanding the case to the Board; the court instructed the Board, on remand, to enter an amended decision containing additional information 'as to the facts, laws, and basis for the [outcome] and discipline issued.' Agreed Order 1, ECF No. 23-2. The Board did so in April 2022, again terminating Strickland, and Strickland 'determined not to pursue [further] action' regarding the amended decision…. Strickland thus had a full and fair opportunity to litigate the claims presented here in state court…. This suit is therefore barred in its entirety by Illinois and federal law."

FACTS:

> "Strickland, an African American man, began working for the City of Markham Fire Department (the 'Department') as a firefighter and EMT in 2007. Things went well for about 13 years: From 2007 until the end of 2019, Strickland performed his duties 'satisfactorily' and 'without any significant discipline or performance issues.'… But that changed in January 2020, when Strickland was interviewed by the Equal Employment Opportunity Commission regarding 'accusations of discrimination and harassment' by a former Markham firefighter…. During the interview, Strickland spoke about the discrimination he witnessed against the former firefighter. He also testified that Anthony Mazziotta, the Department's chief, was aware of the relevant conduct but 'didn't do

anything to stop it.' … Four days later, Mazziotta approached Strickland and said he heard Strickland 'had called [him] a racist….

***

Although Human Resources (to whom Strickland complained) disputed the use of the word 'racist' and indicated that 'retaliation would not occur,' … Strickland alleges that Mazziotta and the Department began to retaliate. After the interview, that is, Strickland 'was continually singled out and written up for minor . . . issues that no other firefighter was disciplined for,' including 'failing to have his gear on the engine' at a precise time and failing to press a certain button…. The Department also changed Strickland's shift, removed him from the Acting Master Sergeant position, and denied him a promotion to Master Sergeant. Mazziotta, for his part, 'opened an investigation into [Strickland's] use of FMLA leave" and threatened discipline when Strickland refused to comply with his directives regarding health-related documents.

***

In January 2021, the Department charged Strickland with 'violating certain [of its] rules and regulations.' Am. Findings & Decision 1-3, ECF No. 23-3. 1 Among other things, the Department accused Strickland of (1) lying to detectives during an arson investigation, and (2) putting the Department at risk by coming into work with COVID. According to Strickland, these accusations were 'merely pretext' for discrimination and retaliation: He did not lie during the investigation, he did not know he had COVID when he came to work, and he violated no Department COVID protocols. Compl. 12 ¶ 83. Nevertheless, following hearings on the charges, the Markham Board of Fire and Police Commissioners (the 'Board') terminated Strickland in April 2021."

HOLDING:

"At least the Board's decision was a final judgment on the merits; Strickland's state and federal cases arise from the same operative facts and involve the same parties; and Strickland could have litigated the claims he raises here in state court. This suit is therefore barred in its entirety by Illinois and federal law. Far from 'ridiculous,' Resp. 10, the defendants' res judicata argument carries the day."

Legal Lesson Learned: If you are claiming retaliation, and appealing the Board's termination to a state court, then do not voluntarily dismissed the state court case.

Note: See article on this case, Nov. 19, 2024; "Black Ex-Firefighter Barred From Bringing Racial Bias Lawsuit." "A Black firefighter fired from an Illinois city is legally barred from pursuing a federal discrimination and retaliation suit because had had already brought these claims in state court, a judge ruled."

WA: NOOSE OVER BLACK FF NECK – FELLOW RECRUIT - NO HOSTILE WORK ENVIRONMENT OR FAILURE TO SUPERVISE

On Nov. 4, 2024, in Elijah Page v. Clark County Fire District 6, et al., United States District Court Judge David G. Estudillo. U.S. District Court, Western District of Washington, granted summary judgment to the Fire Chief and others. The Court wrote: "The Court cannot objectively conclude Page's work environment could be perceived as abusive because of Erickson's onetime misconduct. Page's hostile work environment claim fails as a matter of law. *** And the examples of horseplay provided by the various witnesses did not resemble Erickson's conduct toward Page. Accordingly, Page's negligent supervision claim fails as a matter of law."

FACTS:

> "On February 24, 2022, Page and Erickson were identified as new District hires…. Page was hired as an Entry Firefighter and Erickson was hired as a Lateral Firefighter / Paramedic…. As part of the hiring process, Erickson underwent a background check, which included a Washington State Patrol criminal history check and a review of his social media…. The District also conducted a psychological evaluation….The District did not identify any information indicating that Erickson harbored racial bias or animus…. On May 1, 2022, Erickson and Page started at the District's fire academy with their recruit class as probationary employees…. Page was the only African American member of the recruit class.
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> ***
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> On June 7, 2022, the recruit class was receiving training on knot tying. The District instructed the recruits to practice knot tying during their lunch break…. During lunch, Erickson 'began tying a prussik with a double fisherman's knot' and then placed it over Page's head/neck…. The prusik knot 'could be perceived as a noose [because] it has a barrel-type pattern resembling . . . a noose' though 'it does not function as a noose.' … Page described the incident as follows: 'I was seated at my desk in the training class room. John Erickson walked over to my desk and placed a noose around my neck and tightened the knot.' … 'As an African American, [Page] was acutely aware of the racial significance and historical context of lynching, which made the incident not only threatening but deeply humiliating.' … '[The] act was unwelcome, offensive, and carried a terrifying historical weight for [Page].'
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> ***
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> [Assistant] Chief Russell then spoke with Erickson about the incident…. Chief Russell subsequently placed Erickson on Administrative leave for the remainder of the day, gathered Russell's belongings, and escorted him off District property…. Captain Simukka and Chief Russell met with the recruit class after Erickson was escorted off District property…. They told the class that an investigation had to occur and that the class would be informed as some point of the process and what was happening.
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> After speaking with Chief Russell and Chief Schmitt by phone on the day of the incident, Fire Chief Maurer called Page…. Page acknowledges Fire Chief Maurer called him, asked him how he was doing, and asked permission to speak with Page's wife…. Fire

Chief Maurer also informed Page she planned on contacting the County Sheriff to discuss the incident…. In between calling Page and his spouse, Fire Chief Maurer called the Board of Commissioners.

On June 9, 2022, Fire Chief Maurer terminated Erickson's employment…. The termination letter informed Erickson he had 'not successfully met [the] probationary period and [would] no longer be employed by the District.' … While the letter did not reference the incident at all, Fire Chief Maurer terminated Erickson's employment specifically because of the incident involving Page.

***

On July 1, 2022, Page injured his knee while training…. He then graduated from the training academy but was immediately placed on light duty between August and November 10, 2022…. On November 16, 2022, Page reported to his counselor he planned to return to the Sheriff's office…. In his application for employment, Page wrote why he left his employment with the District: 'I want to return to the sheriff's office as the schedule allows me to be home every night with the kids and family, being away for a full 24 hours has put an increased burden on my wife that she now cares for the kids by herself on top of her managing her career.'"

HOLDING:

"To prevail on a hostile work environment claim, a plaintiff 'must show that her 'workplace [was] permeated with discriminatory intimidation . . . that [was] sufficiently severe or pervasive to alter the conditions of [her] employment and create an abusive working environment.' *Brooks v. City of San Mateo*, 229 F.3d 917, 923 (9th Cir. 2000) (quoting *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 21 (1993)). 'The working environment must both subjectively and objectively be perceived as abusive.' *Fuller v. City of Oakland* 47 F.3d 1522, 1527 (9th Cir. 1995).

***

The Court cannot objectively conclude Page's work environment could be perceived as abusive because of Erickson's onetime misconduct. Page's hostile work environment claim fails as a matter of law.

***

"Page's arguments, however, do not address how or why the District Defendants knew or should have known Erickson posed a risk to Page (or others). The undisputed facts identify that Erickson underwent a background check, including a criminal history check and a social media review…. Erickson also underwent a psychological evaluation…. No information was discovered indicating that Erickson would or could pose a risk to others. And the examples of horseplay provided by the various witnesses did not resemble Erickson's conduct toward Page. Accordingly, Page's negligent supervision claim fails as a matter of law."

Legal Lesson Learned: Stupid act by a fellow recruit; not basis for lawsuit against the fire department or its officers.

Chap. 8 – Race / National Origin Discrimination

NJ: COVID-19 TRAINING – DEPUTY CHIEF MOCKED FF - ASIAN– PROMTLY INVESTIGATED - DC RETIRED - NO CASE

On Nov. 1, 2024, in Timothy Burkhard v. City of Plainfield, et al., Superior Court of New Jersey, Appellate Division, the Court held (3 to 0; unpublished decision) that the trial court properly granted summary judgment to the defense. The Court wrote: "Importantly, the record clearly shows plaintiff was not subjected to discrimination before or after the COVID-19 training incident. [P]laintiff did not suffer any tangible change in his position, duties, or compensation. Indeed, the record shows the fire department supported him. In these circumstances, we do not believe that the failure to deliver the written reprimand renders defendant's overall response ineffective for purposes of the affirmative defense."

FACTS:

> "On March 13, 2020, plaintiff and the other firefighters on his shift attended a COVID-19 training program [Deputy Fire Chief Pietro] Martino presented. Plaintiff dozed off during the training. Martino approached plaintiff, squinted his eyes to parody stereotypical Asian facial features, and asked plaintiff if he had just returned from Wuhan. Nineteen firefighters, including a battalion chief and five lieutenants, witnessed the incident.
>
> ***
>
> Plaintiff alerted his union president and vice president sometime before his next shift, which occurred four days after the training incident. The union officials spoke with Fire Director Kenneth Childress who requested that plaintiff submit a letter describing the incident. Plaintiff submitted the requested letter to Childress on March 17, 2020. Three days later, plaintiff met with Childress who advised him that the complaint would be forwarded to human resources. Plaintiff's battalion chief subsequently advised plaintiff he would not have to participate in any future training that Martino was presenting. The battalion chief then launched an investigation, during which Martino admitted to making the squinting eye gesture. On April 6, 2020, plaintiff met with Childress, union representatives, and Deputy Chief of Operations Joseph Franklin. During that meeting, plaintiff was informed that Martino would be disciplined. Martino went on terminal leave in advance of his impending retirement. He was never served with the letter of reprimand that had been prepared."

HOLDING:

> **"**Defendant promptly investigated the incident and determined that Martino's conduct was inappropriate and deserving of discipline. Plaintiff's argument that the City's anti-discrimination policy was ineffective because other firefighters attending the training

> program did not report the discriminatory conduct does not persuade us. Nor does plaintiff's contention that the affirmative defense was not established because the reprimand letter was never served on Martino. The record shows Martino was on terminal leave and did not return to duty. The failure to transmit the reprimand letter to an employee who was already on terminal leave does not alter the fact that defendant promptly determined Martino's conduct was inappropriate and deserving of discipline. Because Martino was no longer an active member of the force, it is reasonable to assume Martino would have no further contact with plaintiff at the workplace."

Legal Lesson Learned: The incident was promptly investigated, and the plaintiff did not suffer any tangible change in his position, duties, or compensation.

Chap. 9 – Americans With Disabilities Act

MA: NO ADA VIOL. - DOG BITE NOT "DISABILITY" - PROB. FF TERMINATED – FAILED SCBA AT TRAINING ACADEMY

On Nov. 21, 2024, in James Fitzgerald v. City of Lawrence, et al., United States Magistrate Judge Jennifer C. Boal, U.S. District Court for the District of Massachusetts, granted the City's motion for summary judgment. The Court wrote: "Fitzgerald argues that the puncture wound and resulting infection arising from the October 13, 2019, dog bite constituted an actual disability because they affected several major life activities, including the bending of his wrist and fingers, lifting, dressing himself, and carrying out household tasks such as cooking and laundry…. According to his own testimony, however, such limitations lasted, at most, three months…. In addition, it is undisputed that Fitzgerald was cleared to work without any restrictions after only fifteen days…. Given this record, therefore, no reasonable jury could conclude that Fitzgerald's puncture wound and resulting infection constituted an actual disability under the ADA or Chapter 151B."

FACTS:

> "Fitzgerald applied for a firefighter position with the City of Lawrence on September 18, 2018. On October 25, 2018, Fitzgerald received a conditional offer of employment as a firefighter for the City, contingent upon 'being found qualified by the medical screening, passing the Physical Abilities Test (PAT); and successful completion of the Massachusetts Fire Academy operated by the Massachusetts Fire Training Council (MFTC).' The collective bargaining agreement ('CBA') governing Fitzgerald's employment also explicitly stated that '[f]irefighters who are scheduled to attend the Massachusetts Fire Academy and who fail to complete the program will be subject to automatic termination

of their employment.' Pursuant to M.G.L. c. 31, § 61, Fitzgerald's employment was subject to a twelve-month probationary period.

***

In January 2019, Fitzgerald was in the hospital for an anal fissure. [Note: Anal Fissure: "is a small tear in the thin, moist tissue that lines the anus. The anus is the muscular opening at the end of the digestive tract where stool exits the body. Common causes of an anal fissure include constipation and straining or passing hard or large stools during a bowel movement. Anal fissures typically cause pain and bleeding with bowel movements. You also may experience spasms in the ring of muscle at the end of your anus, called the anal sphincter.

***

Fitzgerald was absent from work again in February of 2019…. On or about May 8, 2019, Fitzgerald went to the hospital because he was unable to urinate**.**

***

On September 19, 2019, Fitzgerald started the Massachusetts Fire Academy. After his first week at the Academy, Chief Moriarty received an evaluation report from one of the Academy instructors, explaining that Fitzgerald lacked motivation during physical training and that he tended to slow down or to stop exercising when he thought his instructors were not observing him. Fitzgerald also failed an air pack drill test. During his time at the Academy, Fitzgerald received 59 deficiency points, of which 34 were for his failure of the air pack drill test.

***

On October 13, 2019, Fitzgerald sustained injuries to his right forearm, hand, and wrist after being attacked by a dog.He was treated at Lawrence General Hospital, where he was given a tetanus shot. He was later admitted to Beth Israel Deaconess, where he was diagnosed with 'forearm cellulitis 2/2 animal bite' and given IV antibiotics. Fitzgerald was discharged from Beth Israel on October 15, 2019. He had a follow up appointment on October 23, 2019, at which time he was cleared to return to work without restrictions on October 28, 2029.

***

On October 25, 2019, Chief Moriarty sent a letter to Frank Bonet, the City of Lawrence's Personnel Director, requesting that Fitzgerald's employment be terminated. Moriarty stated, among other things, that Fitzgerald began his class in the Academy 'having used much of his sick leave for the year having been out 3 different occasions during his first 8 months of training;' that he 'seemed to lack motivation;' and that his failure of the air pack drill was 'unacceptable.' He also stated that Fitzgerald 'had to be out on sick leave and use his last vacation time due to another medical issue. He is currently out without leave or sick time being docked pay. He has washed out of the academy due to this medical.'

***

On November 1, 2019, the City terminated Fitzgerald's employment. The termination letter stated, in relevant part:

> As you know, when you were hired as a firefighter, you were provided a condition offer of employment and subject to a 12-month probationary period pursuant to Chapter 31, Section 61 of the Massachusetts General Laws. A number of issues have arisen during your training concerning your judgment, conduct and performance prompting the City to take this action."

HOLDING:

> *"Fitzgerald Has Not Provided Sufficient Evidence That He Had An Actual Disability*
>
> The presence of an actual disability 'hinge[s] on whether the plaintiff has shown a physical or mental impairment that affects a major life activity, and if so, whether the impairment substantially limits the major life activity.' *Mancini*, 909 F.3d at 40. A physical impairment is '[a]ny physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems.' *Id.* (citing 29 C.F.R. § 1630.2(h)). '[M]ajor life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.' 42 U.S.C. § 12102(2)(A). A major life activity also includes the operation of major bodily functions. 42 U.S.C. § 12102(2)(B). Whether an impairment 'substantially limits' a major life activity 'calls for a comparison between the plaintiff's limitations and those of the majority of people in the general population.' *Mancini*, 909 F.3d at 42.
>
> ***
>
> Fitzgerald argues that the puncture wound and resulting infection arising from the October 13, 2019 dog bite constituted an actual disability because they affected several major life activities, including the bending of his wrist and fingers, lifting, dressing himself, and carrying out household tasks such as cooking and laundry…. According to his own testimony, however, such limitations lasted, at most, three months…. In addition, it is undisputed that Fitzgerald was cleared to work without any restrictions after only fifteen days…. Given this record, therefore, no reasonable jury could conclude that Fitzgerald's puncture wound and resulting infection constituted an actual disability under the ADA or Chapter 151B."

Legal Lesson Learned: Poor performance at State Training Academy led to his termination.

Chap. 11 – Fair Labor Standards Act

OK: FLSA – EMS SHIFT DIFFERENTIAL – HOURLY RATE OF PAY TO INCREASE – CLASS ACTION $350K SETTLEMENT

On Nov. 21, 2024, in Jerry Sherley v. Muskogee County EMS, United States District Court Judge John F. Heil, III, U.S. District Court for approved the Eastern District of Oklahoma, approved the Notice to go to all EMS to "opt in" to the back pay settlement. The Court wrote: "Plaintiff alleges that between July 18, 2020 and October 31, 2023, MCEMS failed to include EMTs' shift differential pay in the rate for overtime pay, which resulted in less overtime pay than required by the FLSA…. The parties have reached a negotiated resolution…. Their settlement agreement defines the Settlement Collective to include 'any EMT employed by MCEMS who was paid by the hour . . . plus shift differential pay and who worked more than 40 hours in a workweek during the period from July 18, 2020 to October 31, 2023.'"

FACTS:
This requires the sending of an accurate and timely notice concerning the pendency of the action so that other 'similarly situated' employees can make an informed decision about whether to join.

> See May 23, 2024: Court Opinion & Order:
> "Under the proposed settlement agreement, MCEMS agrees to pay the gross settlement amount of $350,000 (including attorney's fees and costs, as well as administration expenses) for up to 130 putative class members… his amount includes: (1) $192,800 in individual settlement awards to the putative class members (which represents 73% of each member's unpaid wages); (2) $140,000 in attorney's fees; (3) up to $7,200 in attorney's costs; and (4) $10,000 in administration expenses."
>
> IT IS THEREFORE ORDERED that:
> 1. Plaintiff's Unopposed Motion for FLSA Notice … is GRANTED.
> 2. The Settlement Collective as defined in the parties' settlement agreement is conditionally certified.
> 3. Plaintiff's proposed notice is approved.
> 4. Plaintiff is authorized to send notice to members of the Settlement Collective during a period of 40 days."

Legal Lesson Learned: Shift differential increases the hourly rate of pay for EMS.

> Note: See article, July 20, 2023: "Okla. EMS Dept. Shorts Workers On OT, Former EMT Says." "A former emergency medical technician for an Oklahoma emergency medical services department hit his former employer with a proposed collective action accusing it of violating the Fair Labor Standards Act."

CA: HEAD-ON MVA – PT REFUSED TREATMENT – LATER HAD A STROKE – MEDICS IMMUNITY / NO REQ. TO TAKE VITALS

On Nov. 25, 2024, in Marites Murphy v. City of Petaluma, et al., the California Court of Appeal, First District, Division 1 held (3 to 0) that the trial court judge properly granted summary judgment to the City and the medics. The Court wrote: "The paramedics did not make Murphy any promises with respect to medical assistance, let alone fail to follow through on such promises. They did not ignore any requests for such assistance. To the contrary, they urged her to let them provide medical assistance and warned her that symptoms of a serious, even life threatening, injury could be delayed. She nevertheless reiterated she did not want medical assistance or transport to a hospital for examination. And while Murphy claims the paramedics failed to conduct a medical assessment sufficient to detect a potential brain injury or hypertensive crisis, the crisis she subsequently experienced was caused by the collision…. We therefore conclude, given the undisputed facts in this case, the trial court correctly ruled the paramedics did not, under the negligent undertaking doctrine, have a duty to render medical assistance to Murphy in accordance with the standard of care applicable such assistance."

FACTS:

> "In February 2020, Murphy was involved in a head-on car collision in Petaluma. Fire Department Captain Jude Prokop and engineer Shay Burke, both licensed paramedics, responded to the scene. When they arrived, the two drivers were out of their vehicles and walking around. Prokop was responsible for initially managing the accident scene and dealing with the individuals involved. He asked Murphy if she was involved in the collision and whether she was hurt or needed medical assistance. Murphy confirmed she was involved in the collision but stated she was not hurt and did not want or need medical assistance.
>
> Burke then spoke with Murphy. Like Prokop, Burke asked Murphy questions to determine her involvement in the collision and whether she needed medical assistance. Murphy again confirmed she was the driver of one of the vehicles, stated she was not hurt, and repeated she did not want or need medical assistance. Although Murphy appeared annoyed that Burke was not attending to the other driver who was obviously injured, Burke told her she needed to speak to him. In response to additional questions, Murphy told Burke she had not hit her head during the collision, did not lose consciousness, was wearing a seatbelt at the time, and was 'fine.' He did not visually observe any signs of injury or that she was in pain. She did not display or complain of any common signs of a hypertensive crisis such as headache, blurred vision, nausea, projectile vomiting, or pupil dilation. And she did not display any signs of cognitive impairment. She did not display any confusion, poor balance, signs of excessive anxiety, panic, or shock. She did not slur her words, appear or sound disoriented, or display repetitive speech patterns. Accordingly, on the Glasgow Coma Scale—used to measure a person's level of consciousness based on their ability to perform eye movements, speak, and move their body—Burke gave Murphy the highest possible score, meaning she was fully responsive and alert.

After Murphy continued to insist she was not injured and did not want or need medical assistance, Burke explained it was possible she had suffered an injury of which she was unaware, that manifestation of such injury could be delayed, and such injury could be life-threatening. Burke therefore recommended she accept transportation to a hospital where she could be examined by a physician as a precautionary measure. Murphy responded she was aware of the risks but again stated she was not injured and declined transportation to the hospital. Burke then advised Murphy of the potential signs of serious injury of which she should be aware.

***

Murphy, in turn, called her boyfriend, who drove her to his house, where she fell asleep. A few hours later, he was unable to wake her. It was subsequently determined she suffered a stroke in her sleep due to a hypertensive crisis caused by the collision. The stroke left Murphy with permanent brain damage, speech and language impairment, and paralysis of her right side. Murphy has no recollection of the collision or her interactions with either paramedic that day."

HOLDING:

"Murphy maintains the paramedics, by virtue of their interactions with her at the scene of the accident, assumed a duty to provide her with appropriate medical care which, according to her allegations, included taking her vital signs, and specifically her blood pressure, and transporting her to a hospital for examination by a physician. [Footnote 5: In the introduction of her opening brief, she claims Prokop and Burke were grossly negligent 'by leaving her at the scene without measuring her blood pressure.']

***

As we have recited, the cases also require more than a voluntary undertaking to provide aid to establish a duty under the negligent undertaking doctrine. A plaintiff must also show the defendant's conduct increased the harm, or the risk of the harm, inflicted by the third party.

***

We therefore conclude, given the undisputed facts in this case, the trial court correctly ruled the paramedics did not, under the negligent undertaking doctrine, have a duty to render medical assistance to Murphy in accordance with the standard of care applicable such assistance."

Legal Lesson Learned: Plaintiff refused treatment; no obligation of medics to take vitals. Best practice – have individual sign a Refusal of Care form.

NJ: INTUBATION 21-MONTH-OLD TODDLER – 3rd ATTEMPT IN TRACHEA – NO GROSS NEGLIGENCE - QUALIFIED IMMUNITY

On Nov. 18, 2024, in Jari Almonte and Yahaira Almanzar, parents of Jeremt Almonte v. Township of Union, et al., the Superior Court of New Jersey held (3 to 0; unpublished decision) that trial court properly concluded there was no gross negligence and therefore the medic enjoyed qualified immunity. The Court wrote: "Here, the extensive record, viewed in the light most favorable to plaintiffs, does not support a finding of gross negligence."

FACTS:

> "On August 18, 2012, Jeremy Almonte, a 21-month-old child, was playing at home when he fell on a hardwood floor, hit his head, and began seizing. Jeremy's mother immediately called 9-1-1, and an ambulance was dispatched. Basic life support (BLS) team members R. Iungerman and John Biedrzycki from the Union Township Volunteer Ambulance Corps arrived at the home by 9:00 p.m. They found Jeremy unresponsive and actively seizing but breathing on his own. They began administering oxygen, suctioning fluid from his airway, and loaded Jeremy into the ambulance.
>
> ***
>
> Defendants David Pernell and Denyel Cusimano, an ALS team from Atlantic Ambulance Corporation, arrived at 9:10 p.m. and took over Jeremy's care. Their initial assessment found Jeremy unresponsive with cool extremities and labored breathing, actively seizing, and being suctioned by the BLS team as he was vomiting large amounts of fluid. Jeremy's jaw was clenched shut. Pernell started an IV, and at 9:17 p.m. he contacted the medical command physician, Dr. Niti Sharma. Pernell relayed the team's assessment of Jeremy to Dr. Sharma, who ordered one milligram of an anticonvulsant for the seizures and authorized a second dose if necessary. Pernell also requested authorization to intubate in case it became necessary, which Dr. Sharma granted. Pernell administered the second one milligram dose of anticonvulsant at 9:19 p.m., and the ambulance left for University Hospital at 9:23 p.m. Jeremy's mouth partially opened at approximately 9:28 p.m. Cusimano was able to insert an oral airway, and the team suctioned large amounts of fluid from Jeremy's oral and nasal airways while performing ventilation via a bag-valve mask. At 9:29 p.m., the paramedics' notes reflect that Jeremy's respiratory drive had decreased. At 9:30 p.m., Pernell contacted Medical Command and requested authorization to intubate. Dr. Sharma authorized intubation via rapid sequence intubation (RSI), in which certain medications are administered to paralyze the patient's facial muscles so the paramedics could complete intubation. Pernell administered the RSI medications at 9:34 p.m., and at 9:35 p.m. Cusimano unsuccessfully attempted to intubate Jeremy. The paramedics continued to suction and ventilate the child using the bag valve mask. The record shows the ambulance arrived at the hospital at 9:37 p.m. Cusimano made a second unsuccessful attempt to intubate Jeremy at 9:38 p.m. The paramedics found Jeremy's airway was still 'completely full of fluid.' Pernell testified at his deposition that when they pulled into the parking lot, they realized Jeremy still needed intubation, and 'the decision was made to stop, secure his airway, and then proceed into the emergency room.' … At 9:42 p.m., Pernell was successful on the third intubation attempt.

***

Pernell testified that they stayed in the ambulance getting ready to move Jeremy until 9:45 p.m. At roughly 9:45, Jeremy's heartrate dropped, and the paramedics began chest compressions. While Jeremy was transferred to the care of the hospital, he suffered a cardiac arrest for nine minutes during which he had no oxygen circulation, resulting in severe anoxic brain damage secondary to the cardio-pulmonary arrest. Jeremy was reintubated after he entered the hospital because there were 'questions with position of the ET tube.'"

HOLDING:

"Whereas negligence is 'the failure to exercise ordinary or reasonable care' that leads to a natural and probable injury, gross negligence is 'the failure to exercise slight care or diligence.

***

Here, the extensive record, viewed in the light most favorable to plaintiffs, does not support a finding of gross negligence. The paramedics had authorization to intubate from their medical command, who testified she did not consider her authorization to be limited to a certain number of attempts, and that she generally trusts the judgement of paramedics because they are able to directly observe and assess the patient. While the record shows an unscheduled stop on the way to the hospital to retrieve a pediatric pulse oximeter, the paramedics' failure to securely attach Jeremy's breathing and intubation apparatus while transiting from the ambulance to the hospital, and the presence of the intubation device in Jeremy's esophagus rather than his trachea—we discern nothing which could be characterized as 'the failure to exercise slight care or diligence,' rising to gross negligence."

Legal Lesson Learned: Failed intubation attempts is not proof of gross negligence.

Chap. 13 – EMS, incl. Community Paramedicine, Corona Virus

ID: MEDICAL AMNESTY LAW - UNCONSCIOUS DRIVER – FD FORCED ENTRY – DRUGS FOUND – NO IMMUNITY

On Nov. 4, 2024, in State of Ohio v. Adrian Renee Soliz, the Idaho Supreme Court held (4 to 1) that the "medical amnesty law" does not apply to protect the defendant from prosecution. The Court wrote: "The legislature's careful consideration of potential abuse scenarios indicates that the legislature was concerned that the bill would grant expansive immunity. The overall tenor of the Senate committee minutes supports an interpretation of the statute that requires the drug-related medical emergency and the need for medical assistance to be the sole cause of the discovery of evidence to prevent misuse of the statute. This interpretation ensures that immunity is granted only when the drug-related medical emergency and the need for medical assistance produce the discovery of evidence. This interpretation aligns with the statute's protective purpose while also preventing potential abuse."

FACTS:

"On May 2, 2021, while driving southbound on Eagle Road in Meridian, Corine Duncan noticed a blue Chevrolet Trailblazer in front of her, traveling 'very, very slow' and impeding traffic. The driver of the Trailblazer was "passed out" behind the wheel. His eyes were closed, his head slumped over, and his arms flopped by his side. Concerned, Duncan called 9-1-1. Without knowing the cause, she thought the driver needed medical assistance. The Trailblazer eventually traveled slowly off the road into a nearby parking lot where Duncan and a group of people intervened. They stopped the vehicle with their hands on the hood and blocked it from rolling into a nearby building. The unconscious driver remained unresponsive while individuals tried to open the vehicle's locked doors and pounded on the vehicle's windows, to no avail. Unbeknownst to them, Soliz, the driver of the vehicle, was experiencing a drug overdose. The Meridian Police Department, the Ada County Paramedics, and the Meridian Fire Department responded to the scene. The fire department forced entry into Soliz's vehicle to provide medical assistance. During this intervention, drug paraphernalia was observed and seized from Soliz's lap. The State subsequently charged Soliz with possession of a controlled substance, possession of drug paraphernalia, and driving under the influence, among other charges, along with a persistent violator enhancement."

HOLDING:

"This appeal presents an issue of first impression regarding the meaning of the phrase 'as a result of' in Idaho Code section 37-2739C(2). The statute provides immunity to a person experiencing a drug-related medical emergency when medical assistance is requested 'as a result of' the drug-related medical emergency…. Soliz argues that because the evidence of his possession charges (fentanyl and drug paraphernalia) was obtained as a result of his overdose medical emergency and need for medical assistance, the district court erred as a matter of law when it ruled that the 'as a result of' causation element under Idaho Code section 37-2739C(2) was not met. The State counters that Idaho Code section 37-2739C(2) does not apply to this case because the statute calls for immunity from prosecution only when the discovery of evidence is a direct result of a drug-related medical emergency and the need for medical attention, not where the medical emergency and need for medical attention occurred at the same time as a traffic investigation.

***

Consequently, Idaho Code section 37-2739C(2) does not apply to Soliz under the facts of this case. Soliz's drug overdose and need for medical assistance were not the only cause that, from a legal viewpoint, produced the discovery of the controlled substance and drug paraphernalia; rather, the medical emergency and traffic investigation together produced the discovery of the contraband. We hold that the district court did not err in denying Soliz's motion to dismiss."

DISSENT:

"I dissent from the Court's decision today because I agree with Soliz that the phrase 'as a result of' as used in Idaho's overdose immunity statute should be interpreted in its plain, ordinary sense to mean 'because of.' In this case, the Meridian Police Department found

> the fentanyl and drug paraphernalia in Soliz's vehicle because of a medical emergency and the need for medical assistance-Soliz was unconscious behind the wheel of a moving vehicle, his lips were blue, and he was struggling to breathe."

Legal Lesson Learned: Many states have enacted "Good Samaritan" statutes designed to encourage 911 call when you or an associate is overdosing; this case does not fit that scenario.

Chap. 16 – Discipline, incl. Code of Ethics, Social Media, Hazing

PA: AIR MEDICAL PILOT FIRED – NO PRE-FLIGHT CHECKLIST – "AT WILL" – VERY LARGE JURY VERDICT SET ASIDE

On Nov. 18, 2024, in Patrick DeVore v. Metro Aviation, Inc., et al., the Superior Court of Pennsylvania held (3 to 0) that the pilot was properly fired. The Court wrote: "[T]he trial court erred in allowing DeVore to invoke the public policy exception and pursue a wrongful termination claim under the facts of this case. *** The jury awarded DeVore $1,142,582.00 in economic damages, as well as non-economic damages in the amounts of $500,000.000 for harm to reputation, $300,000.00 for pain and suffering, $300,000.00 for embarrassment and humiliation, and $257,418.00 for loss of the ability to enjoy the pleasures of life".

FACTS:

> [DeVore was] a seasoned pilot with various high ratings and certifications.1 [Footnote 1: DeVore] has more than 35 years of experience and holds Certified Flight Instructor and Certified Flights Instructor Instrument certifications issued by the Federal Aviation Association ('FAA'), a single engine airplane commercial rating, and an Air Transport Pilot rating in multi-engine aircraft and helicopters.
>
> ***
>
> In 2017, Metro began using a smaller aircraft ('EC-135') for AHN [Allegheny Health Network] transport from the Base [in Canonsburg, Pennsylvania]. Due to the new-found lack of space, AHN medical personnel began requesting reconfigurations to allow for better in-flight access to patients. Sometime before September 2017, [DeVore] discussed the nurses' requests with supervisor David Taggart (Taggart), Metro's then-Aviation Site Manager, who responded to [DeVore] that reconfiguring the EC-135 was illegal.
>
> ***
>
> After nurse complaints persisted, two AHN nurses (Candice Myrgo and Robert Fareri) visited the Base to explore possible reconfigurations of the EC-135 during [DeVore's]

shift on September 20, 2017.5 [DeVore] attempted to telephone Chad Slovick (Slovick), a Metro mechanic, to inquire about the safety of the reconfiguration. However, [DeVore's] call was transferred to Metro's headquarters where he spoke to Mark Breton (Breton), Metro's Head Director of Maintenance. During the conversation, [Breton] confirmed that the reconfiguration was safe so long as [it was] done in accordance with any flight manual and/or supplements. The EC-135 remained in the reconfiguration at turnover when Lead pilot Gene Zalutsky (Zalutsky) began his shift. When [DeVore] reported back to work the next day, [Zalutsky] accused [DeVore] of failing to follow the chain of command and verify the EC-135's airworthiness before turnover, which led [DeVore] to a brief outburst directed toward [Zalutsky] and [Slovick]. On October 4, 2017, [DeVore] was suspended for three days due to [his behavior, conduct, and insubordination, together with a safety policy violation]. Shortly thereafter, Metro [directed DeVore] to make a rare trek to Metro's headquarters for failing to follow the chain of command. Finally, on October 10, 2017, Metro terminated [DeVore], asserting that he failed to complete a pre-flight checklist on October 4, 2017.

***

[DeVore] initiated this action on September 17, 2018, upon filing a complaint against Metro. Devore's complaint alleged one count of wrongful termination in violation of Pennsylvania's public policy, as expressed in the Emergency Medical Services System (EMSS) Act, 35 Pa.C.S.A. § 8101-8158. At the conclusion of trial on March 10, 2022, the jury began deliberations and found that DeVore was terminated contrary to the policy declared in the EMSS Act. Accordingly, the jury awarded DeVore $1,142,582.00 in economic damages, as well as non-economic damages in the amounts of $500,000.000 for harm to reputation, $300,000.00 for pain and suffering, $300,000.00 for embarrassment and humiliation, and $257,418.00 for loss of the ability to enjoy the pleasures of life."

HOLDING:

"Pennsylvania courts have consistently maintained that exceptions to at will employment should be few and narrowly construed so as to preserve an employer's inherent right to operate its business as it chooses. Nevertheless, as the foregoing cases establish, public policy exceptions to at will employment have been recognized where adverse employment actions have impaired rights or duties established by statutory or constitutional law, or where employers have retaliated against employees who attempted to enforce specific statutory rights created by the General Assembly.

***

DeVore's position is that the EMSS Act establishes a public policy favoring the creation and development of an emergency medical services system that is capable of rapid adaptation and evolution to meet the needs of the residents of Pennsylvania for urgent medical care. See DeVore's Brief at 15-16. He asserts that the purpose behind the reconfiguration of the EC-135 aircraft was to better store equipment and improve patient access during emergency medical transport. Id. at 21-22. DeVore further contends that his communications to Metro's headquarters aligned with the public policies found in the EMSS Act because his intention was to assist AHN flight nurses in enhancing their ability

to treat patients during emergency flights. Id. at 24-25. DeVore concludes that Metro violated the policies found in the EMSS Act when it terminated him for reporting, to Metro headquarters, issues surrounding the reconfiguration of the EC-135 aircraft without first communicating his concerns to immediate supervisory personnel.

***

[W]e are persuaded that nothing in the composition of the EMSS Act creates the sort of statutory rights and administrative structures that traditionally have been viewed as critical components of any finding that the General Assembly intended to upset the strong presumption of at will employment which has occupied a deeply-imbedded status in Pennsylvania jurisprudence for over a century."

Legal Lesson Learned: The pilot was an "at will" employee and was terminated for allegedly failing to perform a pre-flight checklist.

Chap. 16 – Discipline, incl. Code of Ethics, Social Media, Hazing

MI: FIREFIGHTER HAD SEX WITH 14-YEAR-OLD GIRL – FIRE CHIEF'S DAUGHTER – TO PRISON – 180 TO 540 MONTHS

On Nov. 18, 2024, in People of State of Michigan v. Caleb Zechariah-Lee Kimel, the Court of Appeals of Michigan held (3 to 0; unpublished decision) that trial court judge properly sentenced the defendant to prison. The Court wrote: "The trial court stated that it wanted defendant to think about how 'for just a couple of moments of selfish gratification [he had] caused this child a lifetime of pain,' she would never forget what defendant had done, and she would 'need help for the rest of her life.' … Accordingly, the trial court sentenced defendant, within the guidelines, to 180 to 540 months in prison for the CSC-I [criminal sexual conduct] conviction and 71 to 180 months in prison for the CSC-II convictions."

FACTS:

"The victim was 14 years old when she met defendant, who was in his mid-twenties and worked for the victim's father as a firefighter. The night after her fifteenth birthday, the defendant picked up the victim and her friend and took them to the defendant's girlfriend's home. Defendant provided the victim and her friend alcohol, and he became intoxicated. The victim knew that the defendant sometimes carried a gun, which concerned her. Defendant touched the victim's upper thigh and told her not to tell her father. Later, defendant's girlfriend took the victim upstairs, and defendant sexually assaulted the victim. Afterward, the victim had a bruise on her thigh from the defendant biting her, and bruises on her neck from defendant forcefully turning her head. Defendant's girlfriend was charged as an accomplice.

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Defendant's presentence investigation report (PSIR) described that, about a week after the charged offense, defendant asked to see the victim and arranged to pick her up at school. Defendant drove to a baseball field and told the victim that he could 'make her feel better' about her recent breakup, and he started to kiss her. Defendant then had sexual

intercourse with the victim. The victim was afraid to stop the defendant because of his size. When the victim asked the defendant whether she could tell anyone what happened, the defendant told her that he would be shot and that people at the fire department would hate him. Further, the PSIR explained that defendant and his girlfriend had previously manipulated two others 'victims to participate in their sexual tryst.'"

HOLDING:

"Although defendant had no prior convictions until these offenses, there was evidence that he had engaged in other uncharged acts of sexual assault. 'A judge is entitled to rely on the information in the presentence report, which is presumed to be accurate unless the defendant effectively challenges the accuracy of the factual information.' … Defendant did not challenge the PSIR as to these other sexual assaults."

Legal Lesson Learned: Firefighter was properly sentenced to prison.