JUNE 2025 – FIRE & EMS LAW NEWSLETTER

[NEWSLETTER IS NOT PROVIDING LEGAL ADVICE.]


Prof. Bennett with his pet therapy dog - FRYE

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25 RECENT CASES

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

OH: HOUSE DEMOL – NOTIFY OWNER UNLESS FD "EMERG"

MA: CLASS ACTION - IONIZATION SMOKE ALARMS – EXPERT

AZ: ARSON – VEHICLE FIRE - "OCCUPIED STRUCTURE"

CA: WILDLAND ARSONIST – 5 FF KILLED – DEATH PENALTY

Chap. 2 – Line Of Duty Death / Safety

U.S. SUP. CT: PD SHOOTINGS - REVIEW TOTAL CIRCUM.

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

RI: 20 STATES – FEMA GRANTS - "HOSTAGE" IMMIGRATION

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

MI: HOUSE FIRE – 2 BOYS DEAD – 2 FF GROSS NEG. CASE

Chap. 5 – Emergency Vehicle Operations

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

KY: MEDIC MVA - WORK COMP & "UNINSURED MOTORIST"

CT: DISAB. PENSION FOR HEARING LOSS DENIED – 3 MDs
LA: CAPT DIED FLU / MRSA – STATUTORY PRESUMPTION
NY: GROUND ZERO – FF's LUNGS - WIFE GET WTC BENEFITS

Chap. 7 – Sexual Harassment, Hostile Workplace, Preg. Discrimination, Gay Rights
CA: TOPLESS PHOTO – NOT PD CAPT – MGT. INACTION - $4M

Chap. 8 – Race / National Origin Discrimination
U.S. SUP. CT: MINORITY CONTRACT FRAUD - NO $ LOSS
MS: FAILED FD "DRIVER" TESTS - 3 TIMES – NOT RACE

Chap. 9 – Americans With Disabilities Act

Chap. 10 – Family Medical Leave Act, incl. Military Leave

Chap. 11 – Fair Labor Standards Act
MA: FLSA –TOWN AGREES TO CHANGES - D/C STILL EXEMPT

Chap. 12 – Drug-Free Workplace, inc. Recovery

Chap. 13 – EMS, incl. Comm. Param., Corona Virus
WA: TRANSGENDER – 15 MO. GET LICENSE – CRIM RECORD
NY: TIMELY TRANS. - NO NEG. – P'S EXPERT NOT ER DOC
MD: MEDIC – "MISCONDUCT IN OFFICE" – MISD TOO LATE
NY: CITY / EMS - NO "SPECIAL DUTY" TO PT – IMMUNITY
AL: EMS RUN OUTSIDE CITY – "GRATUITOUS" IMMUNITY

Chap. 14 – Physical Fitness, incl. Heart Health
Chap. 15 – Mental Health, incl. CISM, Peer Support
WA: MECHANIC – ANXIETY – NO ADA / DIDN'T COOPERATE

Chap. 16 – Discipline, incl. Code of Ethics, Social Media, Hazing
OR: FF FIRED – MISUSE SICK LEAVE – GPS TRACKER / CELL

Chap. 17 – Arbitration, incl. Mediation, Labor Relations
CA: 2 CAPTAINS – POOR INTERVIEWS - NOT RETALIATION
CT: RETALIATION - LT. JOB - 6 DAYS AFTER GRIEVANCE

Chap. 18 – Legislation
"NO SURPRISE ACT" – AIR MED CAN SUE INSURANCE

OTHER FREE ONLINE RESOURCES

- **2025: FIRE & EMS LAW – RECENT CASE SUMMARIES / LEGAL LESSONS LEARNED**: Case summaries since 2018 from monthly newsletters: **https://doi.org/10.7945/j6c2-q930.**

  Updating 18 chapters of my textbook, FIRE SERVICE LAW (Second Edition; 2017): **http://www.waveland.com/browse.php?t=708**

- **2025: FIRE & EMS LAW – CURRENT EVENTS**: **https://doi.org/10.7945/0dwx-fc52**

- **2025: AMERICAN HISTORY – FOR FIRE & EMS**: **https://doi.org/10.7945/av8d-c920**

File: Chap. 1, American Legal System

OH: HOUSE DEMOL – NOTIFY OWNER UNLESS FD "EMERG"

On May 23, 2025, in Matthew J. Nicholson v. City of Youngstown, Ohio et al, the Ohio Court of Appeals for Seventh District (Mahoning) held (3 to 0) that trial court improperly granted summary judgment to the City, since owner was never notified prior to the demolition. Case returned to trial court; the City must file affidavit or other proof than "emergency" existed in order to collect $7,038.05 demolition charge.

The Court wrote:

Appellees [City] admitted they knew or should have known that Appellant was the owner of the property. In their trial court documents they argued that prior notice was unnecessary because the Fire Chief declared that the house was a public health hazard, that it created an immediate threat to public health and safety, and as such, its condition constituted an emergency. They cited Youngstown Codified Ordinance 1525.01(c) that allows the Fire Chief to order the demolition of any unsafe structure in case of an emergency. They also cited Youngstown Codified Ordinance 1309.04, stating that emergency demolitions require no prior notice to the property owner. They submitted no evidence in support of the alleged emergency."
https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2025/2025-Ohio-1915.pdf

The Court held:

> "Appellant alleged he became the owner of 125 Clarencedale Avenue by quit claim deed dated October 14, 2020. The property was continually under a lease during his ownership, and his tenant had not given him any indication that there were problems or defects regarding the property. Appellant's complaint alleged that on August 23, 2021, the Fire Chief of the City of Youngstown issued a demolition order for the property. The house was demolished on September 20, 2021.

***

He separately filed his personal affidavit asserting that the house was in good condition, there had been a tenant occupying the house since 2019, Appellees had not issued any prior notices of violation of the city codes, the house was demolished without a reasonable basis, and that the City gave him no notice prior to the demolition.

***

Appellees at no time supported whether a genuine emergency existed to allow for summary judgment on the due process claim. The judgment of the trial court is reversed as to count two of the complaint dealing with procedural due process. The trial court's decision to grant Appellees' counterclaim for demolition costs is likewise reversed. The trial court's judgment is affirmed as to counts one, three, four, and five. The case is remanded to the trial court for further proceedings."

Legal Lesson Learned: Unless a true emergency exists, City cannot demolish a home without notice to owner and opportunity to challenge the demolition order.

File: Chap. 1, American Legal System

MA: CLASS ACTION - IONIZATION SMOKE ALARMS – EXPERT

On May 16, 2025, in Stephen Pons, Caroline Coleman, Charles Bellavia, and Terri Letzman, on behalf of themselves and all others similarly situated v. Walter Kidde Portable Equipment, d/b/a Kidde Safety Equipment and BRK Brands, Inc., U.S. District Court Judge Julia E. Kobick, United States District Court for the District of Massachusetts, held that the defense is entitled to e-mails and other documents exchanged between Joseph Flemming, former Deputy Fire Chief of the Boston Fire Department, and plaintiffs' legal counsel, even if he was not retained as expert witness for plaintiffs in this class action filed in California. Chief Flemming's deposition was taken in Boston on Feb. 27, 2025 by both sides.

The Court wrote: "Joseph Fleming is a former Deputy Fire Chief of the Boston Fire Department…. He is a 'longtime, vocal advocate of restricting the use of ionization-only devices' and 'has testified as an expert in numerous cases over the past couple of decades involving deaths or grave injuries in which an ionization device did not timely sound during a home fire.'… Between April and July 2024, he exchanged about twenty emails with plaintiffs' counsel regarding his potential engagement as an expert witness…. Ultimately, Fleming was not retained, but the plaintiffs subpoenaed Fleming as a fact witness for a February 27, 2025 deposition to testify about his participation on a committee of Underwriters Laboratories, Inc., which 'sets the standards and protocols for laboratory testing of home smoke alarm products.' … As part of his work on that committee, Fleming supported the development of new fire testing requirements, which resulted in design changes to smoke detectors made by Kidde and co-defendant BRK

Brands Inc. *** [Plaintiffs] on behalf of themselves and all others similarly situated, have moved for a protective order against a subpoena for documents issued by defendant Walter Kidde Portable Equipment, Inc. to third-party fact witness Joseph Fleming. For the reasons that follow, that motion, which will be construed as a motion to quash, will be denied…. In short, the plaintiffs have waived their privilege against disclosure of work product contained in their counsels' emails with Fleming, and they are not entitled to an order quashing Kidde's document subpoena." https://cases.justia.com/federal/district-courts/massachusetts/madce/1:2025mc91106/281992/17/0.pdf?ts=1747471889

The Court held:

> "The plaintiffs deposed Fleming on February 27, 2025 in Boston….By agreement among the parties and Fleming, Kidde conducted its deposition of Fleming that same day…. At the deposition, Kidde asked Fleming to turn over his subpoenaed communications with plaintiffs' counsel…. Citing attorney-client privilege and the work-product doctrine, plaintiffs' counsel objected and instructed Fleming to withhold the documents.
>
> ***
> Fairness now mandates that their communications with him, which may or may not have influenced his testimony, be disclosed to Kidde. This is so especially given the nature of his relation to the litigation, as Fleming is acting as a fact witness based on his participation on a committee of Underwriters Laboratories, Inc., which 'sets the standards and protocols for laboratory testing of home smoke alarm products.' … Though Fleming is not formally designated as an expert, his position on that committee may give him 'a cloak of independence and lack of bias' that retained experts and non-retained party employee witnesses might not enjoy. See Ayotte, 2024 WL 3409027, at *3. Under these circumstances, 'the need for determining the extent to which, if any, [the plaintiffs'] attorney may have influenced [Fleming's] testimony is more acute.' See id.; Trading Techs. Int'l, Inc., 2020 WL 12309208, at *2."

Legal Lesson Learned: Expert witnesses can be deposed, and their communications with plaintiff's counsel can be subject of pre-trial discovery issues.

> Note: See April 2, 2025 video on Ionization v. Photoelectric alarms: https://www.youtube.com/watch?v=pYAlJLy1R8U
>
> See also: U.S. Fire Administration publication. https://www.usfa.fema.gov/prevention/home-fires/prepare-for-fire/smoke-alarms/
> "There are many brands of smoke alarms on the market, but they fall under 2 basic types: ionization and photoelectric. Ionization and photoelectric smoke alarms detect different types of fires. Since no one can predict what type of fire might start in their home, the U.S. Fire Administration recommends that every home and place where people sleep have:
> - Both ionization AND photoelectric smoke alarms, OR

- Dual-sensor smoke alarms, which contain both ionization and photoelectric smoke sensors.

Choose interconnected smoke alarms so that when one sounds, they all sound.
There are also alarms for people with hearing loss. These alarms may have strobe lights that flash and/or vibrate to alert those who are unable to hear standard smoke alarms when they sound."

File: Chap. 1, American Legal System; Arson

AZ: ARSON – VEHICLE FIRE - "OCCUPIED STRUCTURE"

On May 4, 2025, in State of Arizona v. Edward Serrato, III, the Supreme Court of State of Arizona, held (7 to 0) that the State's most severe arson (Class 2 felony) of arson of "an occupied structure" does not apply where the only person present is the arsonist.

The Court wrote: "On Christmas night in 2007, firefighters in Kingman, Arizona extinguished a fire engulfing a pickup truck. Investigators smelled gasoline fumes and discovered a residue of unusual flammable liquids and remnants of a gas can on the driver's seat. Based on the evidence, investigators confirmed that someone had intentionally set the fire inside the truck. Officers traced the truck's registration to Anna Hammond, who lived about a mile from the fire. When police entered her home, they found her and her dog lying on the floor in a pool of blood. The dog was dead, and Hammond later died from her injuries. The kitchen stove was on, gas fumes filled the home, and someone had tried to start a fire on the kitchen table. Hammond's jewelry, gun, coins, and cash were also missing. *** After a seven-day trial in 2023, a jury convicted him of second degree murder, first degree burglary, arson of an occupied structure (the vehicle), theft of means of transportation, and attempted arson of an occupied structure (the house). The court imposed consecutive sentences for each of these charges, totaling 135 years—35 of which stemmed from the vehicle arson conviction. *** We interpret "occupied structure" in §§ 13-1701(2) and -1704 to mean a structure in which one or more human beings—other than the arsonist—are present, likely to be present, or so near as to be in equivalent danger at the time of the fire or explosion." https://cases.justia.com/arizona/supreme-court/2025-cr-24-0264-pr.pdf?ts=1747242027

The Court held:

> "Serrato appealed his convictions and resulting sentences. The court of appeals, on its own motion, ordered supplemental briefing on the vehicle arson conviction. The catalyst was the prosecutor's claim during closing arguments that '[Serrato] himself was obviously present when he set the truck on fire, so his presence alone makes the truck an occupied structure, even if no one was inside the vehicle.'
>
> ***

> Section 13-1704(A), which establishes arson of an occupied structure, provides that '[a] person commits arson of an occupied structure by knowingly and unlawfully damaging an occupied structure by knowingly causing a fire or explosion.' As a class 2 felony, arson of an occupied structure is the most severe arson offense. Compare § 13-1704(B), with A.R.S. § 13-1702(B) (reckless burning: class 1 misdemeanor) and § 13-1703(B) (arson of unoccupied structure: class 4 felony; arson of property: class 1 misdemeanor or class 4 or 5 felony depending on the property's value).
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> ***
>
> We interpret 'occupied structure' in §§ 13-1701(2) and -1704 to mean a structure in which one or more human beings—other than the arsonist—are present, likely to be present, or so near as to be in equivalent danger at the time of the fire or explosion. See Ewer, 254 Ariz. at 330 ¶¶ 14–17 (harmonizing statutory language by interpreting 'person' in the justification statutes to refer to criminal defendants rather than victims based on contextual clues). Our interpretation reflects the contextual meaning and operation of 'occupied structure' in §§ 13-1701(2) and -1704, harmonizes §§ 13-1703 and -1704, and preserves the legislature's tiered arson punishment scheme. We therefore vacate the court of appeals' opinion, vacate Serrato's conviction and resulting sentence for arson of an occupied structure under § 13-1704, and remand the case to the trial court for further proceedings."

Legal Lesson Learned: The Court reviewed the legislature's "tiered arson punishment scheme" to reach its conclusion; defendant will be resentenced to 100 years, instead of 135 years in prison.

File: Chap. 1, American Legal System; Arson

CA: WILDLAND ARSONIST – 5 FF KILLED – DEATH PENALTY

On May 5, 2025, in The People v. Raymond Lee Oliver, the Supreme Court of California held (5 to 0) that jury properly convicted the defendant five counts of first degree murder, 20 counts of arson, 17 counts of possession of an incendiary device, and in the penalty phase returned a verdict of death.

The Court wrote: "Between May 16 and October 26, 2006, 3 more than two dozen wildland fires were reported in the Banning Pass area of Southern California. The series culminated with a fire known as the Esperanza Fire, which killed five firefighters assigned to Engine 57 of the United States Department of Agriculture Forest Service (Forest Service). ***
An arson investigator who investigated all three fires determined they were caused by arson. At the point of origin of each fire, the investigator found a time-delayed incendiary device consisting of a Marlboro Light cigarette with wooden matchsticks attached lengthwise by a rubber band. The devices at the Sunset/Wilson and Sunset/Mesa fires had 31 matches attached and the device at the Gilman/Pump House fire had 30 matches attached. The matches pointed in

both directions, such that some heads were at opposite ends of the cigarette. *** Around 1:10 a.m. on October 26, firefighters were dispatched to a wildland fire at Esperanza Road and Almond Street in Cabazon (about one mile from the origin of the June 14 layover device fire at Esperanza Road and Broadway). This fire would become known as the Esperanza Fire…. Around 7:00 a.m., the fire rapidly advanced on Engine 57, burned through the crew's location, and continued on. The crew members did not have time to deploy their emergency protective gear. Three of the firefighters — Daniel Hoover-Najera, Jess McLean, and Jason McKay — died at the scene. The other two crew members — Captain Mark Loutzenhiser and Pablo Cerda — were badly burned and were evacuated by helicopter. Loutzenhiser died at the hospital about three hours later; Cerda died at the hospital five days later."
https://cases.justia.com/california/supreme-court/2025-s173784.pdf?ts=1746464481

The Court held:

> "Investigators submitted the cigarettes recovered from the June 9 and 10 [2006] layover devices to the Department of Justice (DOJ) for DNA testing. An analyst obtained a complete DNA profile from the June 9 cigarette that matched defendant. The analyst obtained a partial DNA profile from the June 10 cigarette that, to the extent of the partial profile, also matched defendant.
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> ***
>
> In 2000, defendant applied to become a volunteer firefighter and began the training process. He was assigned training regarding emergency safety gear for wildland fires but discontinued the training after a few months. Later, in July 2006 — in the midst of the charged fires — defendant approached CalFire personnel about how to become a volunteer firefighter."

Legal Lesson Learned: Death penalty is the appropriate penalty.

> Note: California Governor Gavin Newsome in 2019 issued a moratorium on imposing death penalty. https://www.cdcr.ca.gov/capital-punishment/

File: Chap. 2, Safety

U.S. SUP. CT: PD SHOOTINGS - REVIEW TOTAL CIRCUM.

On May 15, 2025, in Janice Hughes Barnes, individually and as representative of the estate of Ashtian Barnes, deceased v. Roberto Felix, et al., the United States Supreme Court held (9 to 0) that lawsuit against officer is reinstated; trial court judge when deciding qualified immunity must review all the circumstances involving the incident, as in this case the officer jumped on door of stopped vehicle before the driver tried to speed away. The Court rejected the 5th Circuit

precedent that in police shooting the trial court judge should only review the seconds involving the "moment-of-threat."

Justice Elena Kagam wrote Court's opinion: "On the afternoon of April 28, 2016, Roberto Felix, Jr., a law enforcement officer patrolling a highway outside Houston, received a radio alert about an automobile on the road with outstanding toll violations. Felix soon spotted the car, a Toyota Corolla, and turned on his emergency lights to initiate a traffic stop. The driver, Ashtian Barnes, pulled over to the highway's shoulder…. With his right hand resting on his holster, Felix told Barnes to get out of the car. Barnes opened the door but did not exit; instead, he turned the ignition back on. Felix unholstered his gun and, as the car began to move forward, jumped onto its doorsill. He twice shouted, 'Don't fucking move.' And with no visibility into the car (because his head was above the roof), he fired two quick shots inside. Barnes was hit. but managed to stop the car. Felix then radioed for back-up. By the time it arrived, Barnes was dead. All told, about five seconds elapsed between when the car started moving and when it stopped. And within that period, two seconds passed between the moment Felix stepped on the doorsill and the moment he fired his first shot. *** The question here is whether that framework permits courts, in evaluating a police shooting (or other use of force), to apply the so-called moment-of-threat rule used in the courts below. Under that rule, a court looks only to the circumstances existing at the precise time an officer perceived the threat inducing him to shoot. Today, we reject that approach as improperly narrowing the requisite Fourth Amendment analysis. To assess whether an officer acted reasonably in using force, a court must consider all the relevant circumstances, including facts and events leading up to the climactic moment." *** [W]e return everything else to the courts below. It is for them now to consider the reasonableness of the shooting, using the lengthier timeframe we have prescribed." https://www.supremecourt.gov/opinions/24pdf/23-1239_onjq.pdf

The Court held:

> "The District Court granted summary judgment to Felix. The court explained that to prevail on her claim, Mrs. Barnes needed to show that Felix's use of force was 'objectively unreasonable." 532 F. Supp. 3d 463, 468 (SD Tex. 2021). In the usual excessive-force case, the court noted, the inquiry into reasonableness would involve considering a variety of circumstances. See id., at 468–469. But when an officer has used deadly force, the court continued, 'the Fifth Circuit has developed a much narrower approach.' Id., at 469. Then, a court could ask only about the situation existing 'at the moment of the threat" that sparked the fatal shooting. Ibid. (quoting Rockwell v. Brown, 664 F. 3d 985, 991 (CA5 2011); emphasis in original). The District Court identified that moment as 'the two seconds before Felix fired his first shot,' when he was standing on the doorsill of a moving vehicle. 532 F. Supp. 3d., at 471. At that moment, the court found, an officer could reasonably think himself 'at risk of serious harm.' Id., at 472. And under the Fifth Circuit's rule, that fact alone concluded the analysis. The court explained that it could not consider 'what had transpired up until' those last two seconds, including Felix's decision to jump onto the sill. Id., at 471. Although a 'more robust examination' might have aided in assessing the reasonableness of the shooting, the court was 'duty bound' by 'Circuit precedent' to 'limit[its] focus' to the 'exact moment Felix was hanging onto Barnes's' moving car. Id., at 472.

***

The moment-of-threat rule applied in the courts below prevents that sort of attention to context, and thus conflicts with this Court's instruction to analyze the totality of the circumstances.

***

The courts below never confronted the issue, precisely because their inquiry was so time-bound. In looking at only the two seconds before the shot, they excluded from view any actions of the officer that allegedly created the danger necessitating deadly force. See supra, at 3–4. So, to use the obvious example, the courts below did not address the relevance, if any, of Felix stepping onto the doorsill of Barnes's car. And because they never considered that issue, it was not the basis of the petition for certiorari. The question presented to us was one of timing alone: whether to look only at the encounter's final two seconds, or also to consider earlier events serving to put those seconds in context."

Legal Lesson Learned: The unanimous decision will also be precedent when reviewing Fire & MS actions when facing possible harm, such as mental patient struggling in back of an ambulance.

File: Chap. 3, Homeland Security

RI: 20 STATES – FEMA GRANTS - "HOSTAGE" IMMIGRATION

On May 13, 2025, in State of Illinois, et al. v. FEMA, et al., twenty states filed a lawsuit in the United States District Court for District of Rhode Island, seeking a declaratory judgment that U.S. Department of Homeland Security cannot deny FEMA grants unless states agree to "Civil Immigration Conditions." The states allege: "they seek to require many States to abandon well-considered policies that advance public safety by promoting trust between law enforcement and immigrant communities as a condition on continued funding of emergency management programs unrelated to immigration enforcement."
file:///C:/Users/lawre/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/PSWGR3E2/state-of-illinois-et-al-v-federal-emergency-management-agency-et-al-complaint-2025.pdf

The lawsuit further alleges: "In furtherance of this funding hostage scheme, on March 27, 2025 and April 18, 2025, DHS issued new sets of 'Standard Terms and Conditions' applicable to all federal awards. The 2025 Terms and Conditions include, for the first time, new requirements compelling States to divert their law enforcement resources away from core public safety missions to federal civil immigration enforcement and to stop operating any program that 'benefits illegal immigrants or incentivizes illegal immigration.' *** WHEREFORE, the Plaintiffs pray that the Court:

a. Declare that the Defendants' promulgation of the Civil Immigration Conditions on receipt of funds under the grant programs they administer are contrary to the Constitution and laws of the United States;
b. Declare that the adoption of the Civil Immigration Conditions and any actions taken by Defendants agencies to implement or enforce them violate the Administrative Procedure Act;
c. Preliminarily and permanently enjoin Defendants from implementing or enforcing the Civil Immigration Conditions against Plaintiff States, including their subdivisions and instrumentalities, as to any grant program administered by Defendants… "

Legal Lesson Learned: The case should be closely followed by all those seeking FEMA grants.

File: Chap. 4, Incident Command

MI: HOUSE FIRE – 2 BOYS DEAD – 2 FF GROSS NEG. CASE

On May 14, 2025, in Crystal Cooper, individually and as personal representative of the Estate of Lamar D. Mitchell and the Estate of Zyaire Mitchell v. City of Flint, and Flint Fire Department, and Sergeant Daniel Sniegocki and Firefighter Michael Zlotek, the State of Michigan Court of Appeals held (3 to 0; unpublished decision) that trial court properly refused to dismiss the lawsuit against the two firefighters since there is sufficient evidence for a jury to find gross negligence by two firefighters in their primary search of the house (City and fire department did not part of this appeal).

The Court wrote: "This case arose from a house fire that took place in May 2022. Defendants were among the first firefighters who responded to the scene, and they were ordered to perform a primary search of the house. Defendants stated in their respective postfire reports that, before searching the house, they had been informed that there might be persons trapped inside, but they found no entrapped victims after they searched the first and second floors of the house. Approximately seven minutes after defendants' search, a second crew was ordered to go to the second floor and open windows, remove an air-conditioning unit, and conduct secondary searches. This crew located Lamar and Zyaire in one of the second-floor bedrooms. Lamar was face-down on the floor, and Zyaire was face-down with his body half on a bed. Lamar and Zyaire were immediately taken to Henry Ford Hospital, where they both died a few days later. The chief of the Flint Fire Department, Raymond Barton, investigated the fire with emphasis on defendants' performance. He prepared a report that included a statement from the lieutenant who led the crew that discovered the decedents during the secondary search. The lieutenant concluded that defendants could not have entered the bedroom where the decedents were found and missed them, and determined that defendants provided false statements about their search. After conducting his own independent investigation at the site of the fire and reviewing defendants' incident write-up reports, Chief Barton likewise concluded that defendants made false statements in their reports because, if defendants had searched the second floor in the way they described, they would have found the decedents. The chief determined that, contrary to defendants' representations, they "neglected to perform the tasks of completing a sweep of the second floor," which led to a delay in finding the decedents. On the basis of his findings, Chief

Barton terminated defendants' employment with the Flint Fire Department. *** Plaintiff's amended complaint does not allege that defendants had an affirmative duty to protect the decedents from harm but that defendants had a duty to use due care when conducting their search of the second floor of plaintiff's home. Accordingly, the lack of a special relationship between defendants and the decedents is not dispositive to whether defendants owed a duty to the decedents. Instead, for the reasons explained, we conclude that defendants had a duty to conduct their search of the decedents' home in a manner that was not grossly negligent. Plaintiff's amended complaint alleges that defendants breached this duty, and that is sufficient to survive defendants' motion for summary disposition at this early stage in the litigation." https://cases.justia.com/michigan/court-of-appeals-unpublished/2025-368583.pdf?ts=1747314007

The Court held:

> "In support of defendants' argument that they were not grossly negligent, defendants rely on the reports that they submitted after the fire, as well as their affidavits that they attached to their motion for summary disposition. In those affidavits, defendants each described in detail how they searched the second floor of plaintiff's home on the day of the fire…. We reject this argument because we conclude that the evidence in the record is sufficient to create a question of fact whether defendants were grossly negligent.
>
> ***
> This evidence was sufficient to create a question of fact whether defendants were grossly negligent when they searched the second floor of plaintiff's home. Plaintiff alleged that defendants were grossly negligent because they either searched the second floor in a grossly-negligent manner or entirely failed to search the second floor, then lied and said that they did. These allegations are supported by Chief Barton's report, particularly his finding that defendants neglected to perform a sweep of the second floor. The allegations are further supported by the fact that a second crew was able to quickly find the decedents when conducting a secondary search of the second floor, and the statement by the lieutenant who led the secondary search that defendants could not have missed the victims if they had searched the second floor as they claimed. Accordingly, while defendants presented a detailed account of their search of the second floor, including the bedroom in question, Chief Barton highlighted compelling evidence that defendants did no such thing then falsely reported that they did, which delayed the secondary search that found the decedents. On the basis of this evidence, jurors could reasonably reach different conclusions with respect to whether defendants' conduct amounted to gross negligence, so defendants are not entitled to judgment in their favor as a matter of law."

Legal Lesson Learned: Immunity denied; sufficient evidence of gross negligence for case to go to a jury.

> Note: See May 15, 2025 article, "Lawsuit Against MI Firefighters Who Issued All-Clear at Fatal Fire Can Continue." https://www.fireengineering.com/firefighting/lawsuit-against-mi-firefighters-who-issued-all-clear-at-fatal-fire-can-continue/?utm_source=fe_daily_newsletter&utm_medium=email&utm_campaign

File: Chap. 6, Employment Litigation

KY: MEDIC MVA - WORK COMP & "UNINSURED MOTORIST"

On May 25, 2025, in Scott Preston v. Nationwide Insurance Company and Kentucky Association of Counties And All Lines Fund, the Court of Appeals of Kentucky held (3 to 0) that trial court improperly dismissed Preston's lawsuit against KALF's, which has a $60,000 policy limit for uninsured motorist claims. While Preston is covered by worker's comp, he may pursue claims not covered by worker's comp.

The Court wrote: "However, any jury award for lost wages and permanent impairment not duplicated by the workers' compensation award would be recoverable by Preston under KALF's UIM policy, as would any award for pain and suffering, as it is not an item of damages covered by workers' compensation." https://cases.justia.com/kentucky/court-of-appeals/2025-2024-ca-0152-mr.pdf?ts=1748009113

The Court held:

> "Preston was injured in a motor vehicle accident while working as a paramedic for Carter County EMS. He filed a workers' compensation claim and was awarded temporary total disability ('TTD') benefits, permanent partial disability ('PPD') benefits, and medical expenses. Subsequently, Preston filed a negligence claim in Boyd Circuit Court against Randy L. Parks, the other driver, seeking medical expenses, lost wages, impairment of his power to earn money, and pain and suffering. He then filed an amended complaint against KALF, Carter County EMS's insurer, and Nationwide, his insurer, for UIM benefits.
>
> ***
> Preston would always have at least $25,000 in UIM coverage under the Nationwide policy. However, its insurance would not apply if greater UIM coverage were available. This is a plain and reasonable limit of coverage. The circuit court did not err in granting summary judgment to Nationwide based upon its 'other insurance' clause.
>
> ***
>
> Preston received workers' compensation benefits for TTD, PPD, and medical expenses. In his complaint, he seeks damages for medical expenses, lost wages, impairment of power to earn money, and pain and suffering.
>
> ***
> However, any jury award for lost wages and permanent impairment not duplicated by the workers' compensation award would be recoverable by Preston under KALF's UIM policy, as would any award for pain and suffering, as it is not an item of damages covered by workers' compensation. Hillman v. American Mut. Liability Ins. Co., 631 S.W.2d 848,

850 (Ky. 1982). As such, KALF was not entitled to summary judgment based on this policy provision."

Legal Lesson Learned: If paramedic can't recover pain & suffering from the other driver, then he can pursue Counties' uninsured motorist insurance.

File: Chap. 6, Employment Litigation

CT: DISAB. PENSION FOR HEARING LOSS DENIED – 3 MDs

On May 15, 2025, in Kenneth Lombardi v. Town of Westport, the Court of Appeals of Connecticut held (3 to 0) that the Pension Board properly denied the firefighter a disability pension; he retired June 1, 2017 and claimed an on-the-job ear injury in 2004 entitled him to disability pension. The pension plan required three (3) physicians to certify total disability, and the third doctor found he could still perform 90% of his job.

The Court wrote: "To aid in its determination of whether the plaintiff qualified for a disability retirement pension, the board accepted and considered medical evaluations from two physicians selected by the plaintiff, who opined that the plaintiff ''suffered from permanent hearing disabilities rendering him unfit for duty as a fire-fighter.'' In addition, the board referred the plaintiff to Craig Hecht, a physician, for an independent examination. ''Hecht's findings were consistent with the conclusions of [the other two physicians], except [for] Hecht's conclusion that the plaintiff could perform '90 percent of his job responsibilities' . . . . In December, 2017, the board denied the plaintiff's request for a disability retirement pension. *** Accordingly, there exists no genuine issue of material fact that the plaintiff was not entitled to a disability retirement pension on the basis that he did not have certifications from at least three physicians." https://www.jud.ct.gov/external/supapp/Cases/AROap/AP232/AP232.214.pdf

The Court held:

> "The pension plan in the present case plainly and unambiguously provides that a participant is entitled to receive and will be granted a disability retirement pension: ''Upon certification by *[at] least three (3) physicians* appointed by the [board] that a Participant is disabled so as to be *permanently disqualified from service of all duties as a regular full time firefighter*, such disability having occurred during actual performance of duty, or resulting from the effects of any injury received, disease contracted, or exposure endured while in the actual discharge of his duties . . . .'(Emphasis added.)"

Legal Lesson Learned: The pension plan was clear; three physicians must certify total disability.

File: Chap 6, Employment Litigation

LA: CAPT DIED FLU / MRSA – STATUTORY PRESUMPTION

On May 6, 2025, in Roy D. Magee (deceased) / Wallace Magee and Clara Caston Filey v. City of New Orlean Fire Department, the Court of Appeals of Louisiana, Fourth Circuit held (3 to 0) that the Office of Workers' Compensation properly found that the firefighter, who died from influenza A and MRSA pneumonia (methicillin-resistant staphylococcus aureus), was covered by the Firefighter's Heart and Lung Act, and his father and mother each can receive $75,000, and medical and funeral expenses (but not attorney fees).

The Court wrote: "In October 2014, Captain Troy Magee ('Captain Magee'), who had been employed as a Hazmat firefighter with the NOFD for 13 years, was in New Mexico attending a week-long firefighter training course. On the final day of training, he became extremely ill and had to be transported by ambulance to the hospital. His medical condition worsened and required a helicopter transfer to another hospital's intensive care unit. Captain Magee was diagnosed with acute respiratory distress and multifocal pneumonia. He remained in intensive care for four days and later died on October 27, 2014. Dr. Keith Hutchinson ('Dr. Hutchinson'), the critical care physician who treated Captain Magee, was present when he died and completed the discharge summary. Dr. Hutchinson listed the cause of death as 'acute respiratory distress syndrome, secondary to influenza A, and H3/MRSA pneumonia.' *** The Firefighter's Heart and Lung Act ("Act"), set forth in La. R.S. 33:2581, states: "Any disease or infirmity of the heart and lungs which develops during a period of employment in the classified fire service of Louisiana shall be classified as a disease or infirmity connected with employment."
https://cases.justia.com/louisiana/fourth-circuit-court-of-appeal/2025-2024-ca-0747.pdf?ts=1746576943

The Court held:

> "The NOFD contends that to qualify under the Act, the claimant must prove that the underlying cause of the lung condition is itself a disease or infirmity of the lungs. We find the statute does not support such a reading.
>
> ***
> Dr. Hutchinson testified that Captain Magee 'presented with respiratory failure due to a pulmonary cause,' later identified as influenza A (H3) and MRSA pneumonia. He confirmed that these conditions were interrelated and that acute respiratory distress syndrome represents the most severe form of respiratory failure. The medical evidence and testimony establish that Captain Magee's primary causes of death, as listed in the discharge summary and death certificate, were all lung-related infirmities."

Legal Lesson Learned: The statutory presumption in the Firefighter's Heart and Lung Act is very broad.

File: Chap. 6, Employment Litigation

NY: GROUND ZERO – FF's LUNGS - WIFE GET WTC BENEFITS

On April 11, 2025, In the matter of the Application of Susan Michlik-Klipp v. Board of Trustees of the Fire Department of the City of New York, the Supreme Court, New York County, New York, Judge Leslie A. Stroth, reversed the Board, holding the denial of World Trade Center death benefits to widow of FDNY firefighter Kenneth Klipp was "arbitrary and capricious." He joined the FDNY in 1985 and retired in 2016; he died on November 3, 2020.

The Court wrote: "During his employment of over 30 years with FDNY, firefighter Klipp responded to the World Trade Center site after the terrorist attack on September 11, 2001 and 'spent sufficient time . . . to qualify for WTC retirement benefits under the New York City Administrative Code and the New York State Retirement and Social Security Law.' *** In support of her application, petitioner submitted, among other things, firefighter Klipp's medical records and two reports from board certified cardiologist Dr. Bruce Charash, F.A.C.C.[2] ('Dr. Charash'), dated February 17, 2022 and October 7, 2022…. Dr. Charash reviewed firefighter Klipp's medical records and opined that his death was a 'direct consequence of his exposure to inhaled particles due to his work at Ground Zero after 9/11'…. Dr. Charash emphasized that firefighter Klipp 'should have had a normal pulmonary performance' with his normal cardiac status and an absence of obstructive lung disease ….Yet, Dr. Charash opined that firefighter Klipp had a 'catastrophic lung collapse' in 2020, and his exposure to inhaled toxins while working at Ground Zero after 9/11 resulted in 'a degradation of his lungs and a damage to the local architecture of his lungs' ….Dr. Charash opined that exposure to inhaled toxins thus damaged firefighter Klipp's lungs on the 'tissue level; creating a local state of immune compromise' that lead to his death …. Dr. Charash further emphasized that firefighter Klipp's CT scan from October 18, 2020 showed that firefighter Klipp had 'pneumoconiosis caused by inorganic dust,' which Dr. Charash described as damage to the tissue and a 'disruption of the local lung tissue architecture,' associated with the lung's inability to fight infections …. Dr. Charash concluded that firefighter Klipp demonstrated 'a significant failure of his lungs" to fight infections as demonstrated by his extubation on "9/25/19" and re-intubation on "9/27/19" …. Dr. Charash determined that firefighter Klipp died due to his damaged lungs and their inability to fight infections.' *** To the contrary, the medical board's speculative conclusion that firefighter Klipp died 'as a consequence of a cerebral vascular accident, in the face of defined hypertension and hypertensive heart disease, with multiple systemic complications"'(NYSCEF Doc No. 49, p. 4) is not supported by firefighter Klipp's medical records." https://caselaw.findlaw.com/court/ny-supreme-court/117196656.html

The Court held:

> "The beneficiaries of specific retirees who meet the pre-qualifying criteria and then die from a qualifying condition or impairment of health as defined by Retirement and Social Security Law § 2 (36), may be entitled to accidental death benefits under the WTC presumption (see Macri, 92 AD3d at 57). Specifically, the Administrative Code of City of

> NY § 13-353.1 (3) creates a presumption that the retiree's death was 'a natural and proximate result of' their participation in the WTC rescue, recovery or cleanup operations if they die from a qualifying WTC condition (Macri, 92 AD3d at 57)."

Legal Lesson Learned: The NY Administrative Code creates a presumption that the retiree's death was "a natural and proximate result of" their participation in the WTC rescue, recovery or cleanup operations.

File: Chap. 7, Sexual Harassment

CA: TOPLESS PHOTO – NOT PD CAPT – MGT. INACTION - $4M

On May 23, 2025, in Lillian Carranza v. City of Los Angeles, the Court of Appeal of California, Second Appellate District (Division Seven) held (3 to 0) that jury properly awarded the LA PD Captain $4 million, plus attorney fees of $610,050. While the photo was actually not of Captain Carranza, many officers shared the photo and believed it was her.

The Court wrote: "On appeal, the City does not challenge the jury's findings that the challenged conduct was unwelcome, that it occurred because of Carranza's sex, and that the City failed to take immediate corrective action after learning that on-duty LAPD officers were viewing, electronically sharing, and joking with colleagues about the degrading photo of Carranza. Instead, the City contends only that there was insubstantial evidence that the harassment was sufficiently severe or pervasive to alter the conditions of Carranza's employment and create an abusive work environment. *** We conclude substantial evidence supported the jury's determination that Carranza endured severe or pervasive harassment that altered the conditions of her workplace, based on her secondhand knowledge that the photo was widely circulating around the Department."
https://cases.justia.com/california/court-of-appeal/2025-b327196.pdf?ts=1748039442

The Court held:

> "In November 2018, Carranza held the rank of 'Captain III'— placing her among the top 115 sworn LAPD officers and the top one percent of the Department's 13,000 employees. She led the Commercial Crimes Division, overseeing about 100 employees stationed across the city of Los Angeles. In mid-November 2018 while on vacation in Hawaii, Carranza received a call from her attorney, Gregory Smith. Smith told her a nude photo resembling her 'was circulating' within the LAPD and sent her a copy. The photo depicted a closeup of the naked upper torso of a woman pursing her lips with her breasts prominently displayed. Though the woman was not Carranza, she had similar facial features. When Carranza received the call from Smith, she was 'very hurt [and] confused' and '[f]elt betrayed, devalued, [and] objectified.'

Carranza immediately lodged a complaint with MyVoiceLA, an independent City agency that fields sexual harassment complaints from employees, including LAPD officers. She cut short her vacation and flew home.

***

Carranza told Gray she believed the photo was being shared within the LAPD and wanted it to stop. She asked that the LAPD find the source of the photo and send a message that distributing it was misconduct. Specifically, Carranza requested that LAPD Chief Michael Moore issue a notice that sharing the photo was inappropriate.

***

The next day, on December 23, Carranza replied: 'I would request that corrective action be taken immediately informing members of the Department that the picture I'm referring to is not me and that distributing such photos is misconduct and could be a criminal offense. Simply investigating does not stop the action of 100s, if not 1000s, of employees. I would also like to review the email before it is sent.'

***

The benefit, Moore said, would be to 'appease' Carranza. But he had greater concerns that it would cause 'further embarrassment or questions "by an organization of some 13,000 people that would say 'what photograph are we talking about and how can we find it.' He also worried sending a communication could disrupt the pending investigation. In the end, Moore chose not to issue the message. No one ever informed Carranza of Moore's decision or his reasoning.

***

Carranza stated that in December 2018, she began having panic attacks for the first time and started therapy '[b]ecause [she] felt like [she] was in this dark hole and without any support.' Carranza also canceled a vacation planned for mid-December because her blood pressure had 'gone to levels that, according to [her] doctor, it was not safe for [her] to travel.' She was "spiraling" and had to be hospitalized overnight on Christmas Eve. When she returned to work, male officers looked her up and down and grinned at her in elevators, and anytime she approached officers looking at their phones, she feared they were viewing the photo. She had trouble focusing and concentrating at work and felt ashamed, embarrassed, and uncomfortable in public settings. This interfered with her ability to perform her public-facing duties at work, which included press and community engagement.

***

The jury trial began in September 2022 and lasted seven days…. The jury returned a special verdict for Carranza the day after deliberations began. Specifically, it found (1) Carranza was harassed because she is a woman; (2) the harassment was severe or pervasive; (3) a reasonable woman in her circumstances would have considered the

environment to be hostile, intimidating, oppressive, or abusive; (4) Carranza considered the environment to be so; (5) the City knew or should have known of the harassing conduct; (6) the City failed to take immediate corrective action; (7) Carranza was harmed; and (8) the harassing conduct was a substantial factor in causing harm. Ten jurors found the harassment severe or pervasive; two did not. The jury awarded Carranza $1.5 million in past noneconomic damages and $2.5 million in future noneconomic damages, for a total of $4 million. The trial court entered judgment against the City, and the City timely appealed."

Legal Lesson Learned: Given the widespread sharing of the photo, LAPD management needed to take prompt corrective action.

Note: See Oct. 1, 2022 article, "LAPD captain wins $4 million in suit over distribution of topless photo resembling her." https://www.dailynews.com/2022/10/01/lapd-captain-wins-4-million-in-suit-over-distribution-of-topless-photo-resembling-her/
"While Carranza had some stress in her life before the photo surfaced, her psychiatrist, Dr. Brian Jacks, determined that her current condition, which includes thinking about suicide without being close to taking her own life, is 100% attributable to the circulated image, Smith argued."

File: Chap. 8, Race / National Original Discrimination

U.S. SUP. CT: MINORITY CONTRACT FRAUD - NO $ LOSS

On May 22, 2025, in Stamatios Kousisis, et al. v. United States, the United States Supreme Court held (9 to 0) that the jury properly convicted Stamatios Kousisis and the industrial-painting company he helped manage, Alpha Painting and Construction Co., of wire fraud and conspiracy in two bridge painting projects in Philadelphia where he certified he was doing business with a Disadvantaged Business Enterprise [DBE]. He was sentenced to six years in prison, and the Third Circuit [Philadelphia] and the U.S. Supreme Court Court rejected his argument that government had to prove defendant caused his victim a "net pecuniary loss."

Justice Amy Coney Barrett wrote the Court's opinion, and explained how the scheme worked: "Accordingly, as part of the bidding process, Kousisis represented that Alpha would acquire approximately $6.4 million in painting supplies from Markias, Inc., a prequalified disadvantaged business. *** This was a lie. As later memorialized in a commitment letter, Alpha and Kousisis concocted a scheme in which Markias would function as a mere 'pass-through' entity. The scheme operated as follows: Kousisis arranged for Alpha's actual paint suppliers, with whom he negotiated directly, to "generate purchase orders . . . billed to Markias." Id., at 193. When Markias received an invoice, it tacked on a few-percent fee and then forwarded the inflated invoice to Kousisis. He, in turn, issued two checks: one paid Markias for its mark up, and the

other covered the actual cost of the supplies. In short, Markias was no more than a paper pusher, funneling checks and invoices to and from Alpha's actual suppliers."
https://www.supremecourt.gov/opinions/24pdf/23-909_f2q3.pdf

The Court held:

> "Kousisis's scheme initially went undetected. As the projects progressed, he falsely reported qualifying payments to Markias. PennDOT, satisfied with Alpha's paint and repair work, paid it accordingly. By the time the last coat of pain had dried, Alpha had turned a gross profit of over $20 million. And Markias, for its 'pass-through' services, had pocketed a total of about $170,000.
>
> ***
> The circuits are divided over the validity of a federal fraud conviction when the defendant did not seek to cause the victim net pecuniary loss. Several circuits, now including the Third, hold that such convictions may stand.
>
> ***
> From these rules, Alpha and Kousisis attempt to glean another: A federal fraud conviction cannot stand, they argue, unless the defendant sought to hurt the victim's bottom line. Brief for Petitioners 2; Reply Brief 8. Yet the theory under which petitioners were prosecuted—what they call the fraudulent-inducement theory—is devoid of an economic-loss requirement."

Legal Lesson Learned: Fraud involving a "disadvantaged business enterprise" can be prosecuted even if the government was not financially injured.

> Note: See concurring opinion by Justice Sonia Maria Sotomayor where she commented on baseball tickets– METS v. YANKEE TICKETS:.
> "The Court today rightly rejects petitioners' request to graft an economic-loss requirement onto the federal wire fraud statute. When a defendant tricks a victim out of their money by promising one thing and delivering something materially different, it is no defense to say that the delivered items are of equal economic value. Statutory text, precedent, and history mandate that conclusion, as the majority explains. See ante, at 7–16. Common sense, unsurprisingly, points in the same direction. A Yankees fan deceived into buying Mets tickets is no less defrauded simply because the Mets tickets happen to be worth the same amount as the promised Yankees ones. That straightforward conclusion is all that is necessary to resolve this case, and I would go no further."

See concurring opinion by Jstice Clearance Thomas:

> "The DBE program is the Government's 'most far-reaching federal status-based contracting program." D. Bernstein, The Modern American Law of Race, 94 S. Cal. L. Rev. 171, 208 (2021) (Bernstein). Established in 1983, it sets a goal that at least 10 percent of federal funds authorized for any highway and transit program 'be expended

with small business concerns owned and controlled by socially and economically disadvantaged individuals.' … Among the groups presumptively eligible for DBE benefits are 'Black Americans,' 'Hispanic Americans,' 'Native Americans,' 'Asian-Pacific Americans,' and 'Subcontinent Asian Americans.' "

See also: U.S. Department of Justice Press Release of Aug. 30, 2028. "Downingtown Man Convicted of Exploiting USDOT Disadvantaged Business Program."
"Joyce Abrams, the owner of Markias, has previously pleaded guilty to conspiring to defraud PennDOT and the U.S. Department of Transportation with respect to this scheme. https://www.justice.gov/usao-edpa/pr/downingtown-man-convicted-exploiting-usdot-disadvantaged-business-program

File: Chap. 8, Race

MS: FAILED FD "DRIVER" TESTS - 3 TIMES – NOT RACE

On May 13, 202, in Willie Fry v. City of Hernando, Mississippi, the U.S. Court of Appeals for Fifth Circuit (New Orleans) held (3 to 0) that trial court properly granted summary judgment to the defense, after close of pre-trial discovery. The former firefighter failed "driver" testing three times.

The Court wrote: "Fry worked as a Hernando firefighter for about six years. While in that post, he applied to be promoted to driver. The Hernando Fire Department requires firefighters applying to that position to pass a promotional exam. The exam is comprised of a few tests—each of which an applicant must pass, in sequential order, to be eligible for promotion…. Fry failed the driver promotional exam three times—in 2018, 2020, and 2021. On his first attempt, he failed the pump test. On his second and third attempts, Fry failed the street test. In 2021, the year of Fry's third attempt, the exam had been reduced from five tests to three. But the pump test remained a part of each exam. Fry did not take the pump test in either his second or third attempt because he failed the street test, which was the first round of the exam. *** The record lacks evidence that he was "qualified for" the position of driver in 2018, 2020, or 2021—an essential element of his prima facie case. The Hernando Fire Department requires firefighters to pass a promotional exam to be eligible for the driver position. After searching the record and liberally construing his arguments on appeal, we find no competent summary-judgment evidence from which a trier of fact could infer that Fry passed that exam. Because Fry failed to demonstrate through competent summary-judgment evidence the existence of a genuine dispute on an essential element of his claims, summary judgment was proper as to them."
https://www.ca5.uscourts.gov/opinions/unpub/24/24-60532.0.pdf

The Court held:

"For each of Fry's failure-to-promote claims, the district court concluded that his proffered evidence was insufficient to surmount summary judgment's evidentiary bar. We agree, albeit on slightly different grounds. The record lacks evidence that he was 'qualified for' the position of driver in 2018, 2020, or 2021—an essential element of his prima facie case.

***

[T]he district court dismissed all of his claims and entered final judgment on January 12, 2024. Over the course of those proceedings, Fry went through three different attorneys.

***

In 2018, a black male was promoted to the role. But in 2020 and 2021, only white men succeeded in passing the exam and were promoted.

***

Fry seeks reconsideration on the basis that the three attorneys who represented him in the district court denied him effective assistance. But this is not a legitimate ground for seeking reconsideration in a civil case."

Legal Lesson Learned: The former firefighter failed the driver's test three times; Court held race was not a factor.

File: Chap. 11, FLSA

MA: FLSA –TOWN AGREES TO CHANGES - D/C STILL EXEMPT

On May 14, 2025, Brian Bergeron and Paul Trahon, et al. v. Town of Brookline and Brookline Fire Department, U.S. District Court Judge Julia E. Kobick, United States District Court for the District of Massachusetts, approved the settlement agreement.

The Court wrote: "The plaintiffs are 118 firefighters, fire lieutenants, fire captains, and deputy fire chiefs currently or formerly employed by the Town of Brookline…. The plaintiffs are part of a bargaining unit represented by Local 950, a chapter of the International Association of Firefighters (the 'Union')…. The parties restarted settlement negotiations when the litigation commenced in December 2023, and they agreed to a settlement in principle in April 2024…. After reaching this agreement, the Town modified its FLSA protocols to address the plaintiffs' concerns regarding how their hours were counted and how their rate of overtime pay was calculated."
https://public.fastcase.com/jaEE2PXzRXmZ99jOLMt1IrF9wD4fG884AOwA%2B%2B8sYndkdlA95em2xjLqn6HHRdZo?utm_medium=email&_hsenc=p2ANqtz-_k9MVaO09mpQi5ToQ_rMR2msPFl5QNhVfsnrFCoGgDXkRnW8gb34HMapH4044HXAEb1Ni6dZoKu1yFSWgbbZwBVX_IXQ&_hsmi=226712652&utm_content=226712652&utm_source=hs_email

The Court held:

> "The Town specifically agreed, for purposes of calculating firefighters' FLSA overtime compensation, to: (1) include the ASHER stipend in the regular rate of pay; (2) count each shift as 24 hours instead of 21 hours worked; (3) properly count the hours of employees who swap shifts; (4) count the hours worked for all types of non-FLSA overtime; (5) count out-of-class hours worked; and (6) count the hours for all days worked, including those days that were not previously certified…. The parties agreed that deputy fire chiefs would continue to be classified as exempt under the FLSA, but that the Town would classify all fire lieutenants and captains as non-exempt employees…. On July 14, 2024, the Town implemented the updated FLSA protocols and made them retroactive to the work period starting on June 16, 2024…. Pursuant to the Settlement Agreement, the Town will pay $101,604.22 to resolve the plaintiffs' claims, but it will not admit liability. ECF 26-2, §§ 1, 3. This sum represents the amount that the plaintiffs, with the exception of the deputy fire chiefs, would have earned in overtime pay under the FLSA between March 29, 2020 and June 15, 2024, had the Town factored the ASHER stipend into the plaintiffs' regular pay rate, credited the plaintiffs with 24 hours per shift, properly credited the plaintiffs for hours they were scheduled to work when they swapped shifts, counted all types of non-FLSA overtime worked by the plaintiffs, and counted all out-of-class hours worked by the plaintiffs.
>
> Further, in contrast to many other wage-and-hour settlements, where one-third of the settlement amount is commonly set aside for attorney's fees and litigation costs, the plaintiffs will receive 100% of the settlement amount in this case because their union is covering their counsel's fee."

Legal Lesson Learned: Town wisely corrected their prior FLSA practices.

File: Chap. 13, EMS

WA: TRANSGENDER – 15 MO. GET LICENSE – CRIM RECORD

On May 21, 2025, in Brooklyn C. Clark v. Washington State Department of Health, et al., U.S. District Court Judge Tiffany M. Cartwright, United States District Court for Western District of Washington (Tacoma) granted the State's motion for summary judgment since the EMT license was granted; 15 months delay caused by applicant not getting records from Oregon court.

The Court wrote: "On July 3, 2023, Ms. Clark submitted an application to be certified as an Emergency Medical Technician ('EMT') in Washington…. Ms. Clark, who is transgender, had 'disclose[d] her previous name and gender' to the Department as part of her application. On her application, Ms. Clark attested that she had never been 'convicted, entered a plea of guilty, no contest, or a similar plea, or had prosecution or a sentence deferred or [suspended] as an adult or [juvenile] in any state or jurisdiction[.]' … Because Ms. Clark lived in Oregon … the

Department ran an FBI National Fingerprint Database search…. The background check returned an out-of-state criminal history record for Ms. Clark…. Ms. Clark contested the results of the background check…. Defendant Scott Bramhall was the assigned investigator…. Because of Bramhall's role, he was able to request the necessary information from the Court directly…. Ms. Clark eventually provided the necessary documentation about her criminal history…. On September 20, 2024, the Department issued Ms. Clark her certification to work as an EMT in the state." https://cases.justia.com/federal/district-courts/washington/wawdce/2:2023cv01558/327312/54/0.pdf?ts=1747918716

The Court held:

> "The Department is charged with certifying emergency medical services (EMS) providers…. An individual's application is first reviewed by the Department's Credentialing Unit to assess if all requirements are met…. A credentialing specialist runs a background check on the individual, which for out-of-state applicants requires an FBI National Fingerprint Database search…. If the Department receives notice from the search that the individual has a criminal history, the data is placed in a secured area that only a small subset of employees may access…. The Background Check Unit then reviews the criminal history record to determine if the history bars the applicant from certification…. Due to the confidential nature of the information, the applicant is often contacted for clarification…. Once all information is gathered, the Case Management Team (CMT), a group of attorneys and other staff, review the information and make a final decision on whether to issue the certification….
>
> ***
>
> Ms. Clark has not produced any evidence that either shows discrimination or disputes any of the facts set forth in Defendants' motion…. The Court agrees, and Defendants concede, that Ms. Clark was misgendered by Defendant Taylor. But this alone is insufficient to create a genuine issue of material fact."

Legal Lesson Learned: EMT applicants must disclose details of prior criminal history.

> Note: The Court did not describe the prior criminal history that came up on the FBI record check.

File: Chap. 13, EMS

NY: TIMELY TRANS. - NO NEG. – P'S EXPERT NOT ER DOC

On May 15, 2025, in Rosa Rosario, as the Administratrix of the Estate of Noemi La Santa v. Montefiore Medical Center, the New York Supreme Court, Appellate Division, First Department held (5 to 0) that trial court properly granted defense motion for summary judgment; there was

no proof that EMS waited "10 to 15 minutes" outside her apartment before providing aid to the patient who later died at the hospital of respiratory failure.

The Court wrote: "Defendant's EMT and emergency medicine experts both opined that the EMTs 'timely and appropriately transported decedent from her apartment to Montefiore while properly treating her complaints of abdominal pain, nausea, vomiting, cough, and dizziness by administering oxygen in adherence to the standard of care,' and that the decedent showed no signs of respiratory distress while at the scene, in the ambulance, or upon arrival at the hospital. The emergency medicine doctor additionally opined that 'no earlier arrival to Montefiore would have altered decedent's course of treatment since, on admission to the emergency room, decedent's vital signs were normal and she exhibited no signs or symptoms of respiratory distress or an asthma attack. *** The allegation that the EMTs waited outside the decedent's building for 10-15 minutes was also not supported by record." https://law.justia.com/cases/new-york/appellate-division-first-department/2025/index-no-20994-14-appeal-no-4375-4376-case-no-2024-03012-2024-03038.html

The Court held:

> "Plaintiff's expert's affirmation was not sufficient to raise issues of fact precluding summary judgment. Plaintiff's expert, a surgeon who purported to be 'familiar with the proper protocols that should be utilized by paramedics,' was not qualified to opine regarding the standard of care applicable to EMTs (*see Bartolacci-Meir v Sassoon*, 149 AD3d 567, 571-572 [1st Dept 2017]). Plaintiff's expert's opinion with respect to proximate causation was conclusory and failed to address the evidence that the decedent's vital signs were normal at the scene and upon arrival at the hospital. Moreover, it failed to address defendant's emergency medicine expert's opinion regarding the significance of this evidence. Plaintiff's expert's opinion with respect to departure was also not supported by the record, which reflected that the EMTs administered oxygen to the decedent, which plaintiff's own witnesses admitted, and was devoid of any objective evidence that the decedent was in respiratory distress."

Legal Lesson Learned: Vitals were normal at scene, and EMS "timely and appropriately transported decedent from her apartment." The plaintiff's expert was a surgeon without emergency medicine experience.

File: Chap. 13, EMS

MD: MEDIC – "MISCONDUCT IN OFFICE" – MISD TOO LATE

On May 14, 2025 in State of Maryland v. Bridget Elizabeth Weiss, the Appellate Court of Maryland held (3 to 0; unreported decision) that trial court properly dismissed the misdemeanor charge of "misconduct in office" because statute of limitations is one year for misdemeanors, unless you are an "officer" of the government (2-years).

The Court wrote: "Weiss argues that CJ § 5-106(f)(2) cannot apply to her because she is not an 'officer' and, as a result, any case against her had to fall within the general one-year statute of limitations and was brought too late. *** Having applied the four factors, we hold that Weiss is not an 'officer.' As a result, the two-year statute of limitations cannot apply to her. CJ § 5-106(f)(2). Moreover, because CJ § 5-106(f)(2) does not apply to her, the correct statute of limitations for misdemeanor charges against Weiss is one year, as provided by CJ § 5-106(a). Because the charges were brought more than one year after the criminal acts were alleged to have occurred, the criminal information was not timely filed. And, as a result, the circuit court did not err in dismissing the criminal information. We affirm the decision of the circuit court to dismiss the criminal information." https://www.mdcourts.gov/sites/default/files/unreported-opinions/1063s23.pdf

The Court held:

> "Bridget Elizabeth Weiss, a Firefighter III/Paramedic with the Annapolis Fire Department, was charged by criminal information with one count of the common law misdemeanor of misconduct in office. Weiss filed a demand for a bill of particulars, to which the State responded by alleging that Weiss filed a false special incident report and by pointing out the details in that special incident report which it claimed to be false.
>
> Footnote 1:
>
> From the State's answer to the demand for particulars and other pleadings, we understand that the State alleges that Weiss and other paramedics responded to a call for an injured person, found Renardo Green in a disturbed mental state, behaving erratically, and bleeding on the floor. The paramedics bandaged Green's hands and prepared him for transport to the hospital. During transport, Green's condition deteriorated, and paramedics began lifesaving procedures. According to other pleadings in this case, we understand that Green died on the way to the hospital, and the paramedics were ordered to write special incident reports describing what occurred. We may take judicial notice of court dockets pursuant to M D . R. 5-201(b)(2) and observe that Green's survivors instituted a wrongful death action in the United States District Court for the District of Maryland, in which they alleged that the paramedics, including Weiss, restrained Green on the gurney facedown, which they further alleged caused Green's death. Est. of Green v. City of Annapolis, 696 F. Supp. 3d 130 (D. Md. 2023).
>
> ***
> The circuit court dismissed the case against Weiss because, it found, the case was barred by the statute of limitations. It determined that a two-year statute of limitations applies only to 'officers,' and found that Weiss was not an officer. The State of Maryland timely noted an appeal from that decision.
>
> ***
> People who hold the position of Firefighter III/Paramedic do not make the kinds of policy decisions that bind the government. They do not make arrests. They do not detain people.

In fact, in many jurisdictions in our State, the firefighting and paramedic rescue functions are performed in whole or in part by non-governmental actors, either volunteers, or private companies."

Legal Lesson Learned: Carefully review protocol on transporting mental / avoid face down on gurney.

Note: See July 11, 2023 article, "Misconduct Charge Against Annapolis Medic Dropped After Renardo Green's Death." https://patch.com/maryland/annapolis/misconduct-charge-against-medic-dropped-after-renardo-greens-death

See also police body camera videos of the event in this article, including following: https://www.youtube.com/watch?v=D0zf2JSu54o (at 16:22)

File: Chap, 13, EMS

NY: CITY / EMS - NO "SPECIAL DUTY" TO PT – IMMUNITY

On May 5, 2025, in Treverys Scott, as Administrator of the Estate of Alger Scott, deceased v. City of Schenectady, the Schenectady Fire Department, and Mohawk Ambulance Service, Supreme Court Justice Thomas D. Buchana dismissed the complaint.

The Court wrote: "This case arises from the actions of emergency response personnel from defendants Schenectady Fire Department and Mohawk Ambulance Service ('Mohawk'), who were dispatched to Plaintiff's home in response to a 911 call. Emergency medical treatment was administered at the residence and Mr. Scott was transported to Ellis Hospital, where he passed away. *** The City alleges that the Complaint fails to state a cause of action (CPLR 3211[a][7]) because Plaintiff fails to plead the existence of a special duty running from the City to Plaintiff's decedent. *** The starting point for analysis of Plaintiff's claim against the City is to determine whether the City was involved in a proprietary function or a government function, as the answer to that question determines the standard to be applied. Providing emergency medical services has been established as a governmental function (*Applewhite v. Accuhealth, Inc.*, 21 NY3d 420 [2013]). Therefore, in order to cast the City in negligence, Plaintiff must assert that the City owed Mr. Scott a 'special duty'; that is, a duty beyond that owed to the public generally. A special duty can arise in three situations: (1) when the plaintiff belonged to a class for whose benefit a statute was enacted, (2) the government entity voluntarily assumed a duty to the plaintiff beyond what was owed to the public generally, and (3) the municipality took positive control of a known and dangerous safety condition (*Id*. at 426). *** In the absence of a special duty, there is no viable claim of negligence (or negligent hiring or negligent retention, or negligent supervision) against the City. Likewise, Mr. Scott would not have had a viable claim against the City had he survived the events at issue, so that Plaintiff's claim for wrongful death

against the City also fails (EPTL §5-4.1)." https://law.justia.com/cases/new-york/other-courts/2025/2025-ny-slip-op-50759-u.html

The Court held:

> "A plaintiff asserting negligence against a municipality performing a government function must affirmatively plead a special duty as an essential element of the cause of action (*Mancino v. Town of Glenville*, 234 AD3d 1191 [3d Dept 2025]). Here, neither the first nor the second cause of action in Plaintiff's Complaint contains factual allegations that any of the three situations outlined in the *Applewhite* opinion exist in this case to give rise to a special duty. The same is true for the Proposed Amended Complaint. While the Proposed Amended Complaint includes a single statement (at paragraph 41) that the City 'breached a 'special duty' to the plaintiff, the decedent, and his distributes,' this is a legal conclusion rather than a factual allegation and cannot support Plaintiff's claims (*see e.g. Horowitz v. Fallon*, 204 AD3d 1177 [3d Dept 2022])."

Legal Lesson Learned: The "special duty" doctrine protects government agencies when performing a governmental function.

File: Chap. 13, EMS

AK: EMS RUN OUTSIDE CITY – "GRATUITOUS" IMMUNITY

On May 2, 2025, in John D. Richon v. City of Nome, Allen Wright, and Jackie L. Reader, the Supreme Court of Alaska held (5 to 0) that trial court properly granted summary judgment to the city and the EMS personnel; the run was outside the city limits and under a unique Alaska statute there is no liability for "gratuitous extension of municipal services" even if the patient was charged for services. The ambulance department billed Rochon for its emergency services $1,775, which included base fee of $725 for advanced life support and $15 for each mile the ambulance travelled.

The Court wrote: "It does not appear that any other state includes 'extraterritorial' in its municipal immunity statute. However, many states protect those who provide emergency care 'gratuitously and in good faith' from liability for damages resulting from that service. These laws are generally referred to as 'Good Samaritan laws.' Such laws were created because common law did not require strangers to help people needing emergency assistance. But if someone chose to help another and the emergency assistance went wrong, the rescuer could be sued. Good Samaritan laws were passed to encourage rescues by eliminating the threat of liability. Courts outside Alaska that have interpreted these laws conclude that they protect

rescuers who were under no duty to act." https://caselaw.findlaw.com/court/ak-supreme-court/117230404.html

The Court held:

> "Some time after midnight on October 12, 2019, John Rochon and two friends were in a single vehicle accident about 35 miles outside of Nome city limits. Rochon was injured when he was thrown from the vehicle. The three friends stayed in the car overnight until they were able to flag down another vehicle and call for help.
>
> The Nome Volunteer Ambulance Department responded around 10 a.m. One of the responders was an emergency medical technician (EMT) named Allen Wright. Wright worked for the City of Nome, which operated the ambulance department.
>
> The ambulance crew used a backboard to move Rochon from the backseat of the vehicle into a firetruck to take him to the hospital in Nome. Instead of securing him to the backboard with straps, three EMTs held him on the backboard. They drove Rochon over 35 miles on a gravel road to the hospital. Rochon was then medevacked to Anchorage for treatment. He had spinal surgery followed by a rehabilitation program, but continues to suffer from injuries he received.
>
> ***
>
> Footnote 2: Rochon suffered multiple fractures from the accident and has permanent disabilities.
>
> ***
> Alaska Statute 09.65.070(d)(4) states: "An action for damages may not be brought against a municipality or any of its agents, officers, or employees if the claim is based on the exercise or performance during the course of gratuitous extension of municipal services on an extraterritorial basis."
>
> ***
>
> Rochon argues that the legislative history referred only to municipal services billed at a fixed, flat fee or provided without charge. Therefore, he continues, the legislature did not intend to immunize services with a mileage charge. The City counters that the legislature wanted to encourage municipalities to be Good Samaritans and to provide services beyond their boundaries. It says that it did just that when it rescued Rochon and should be protected by the statute.
>
> ***
> The definition of "gratuitous" proposed by the City of Nome furthers the aim of AS 09.65.070(d)(4) to immunize municipalities from liability for providing emergency services outside of city limits. Because the City had no obligation to provide ambulance

services 35 miles away and charged the standard fare, we affirm the superior court's grant of summary judgment in favor of the City and Wright."

Legal Lesson Learned: Alaska's unique statute protects municipalities and EMS personal from liability for ordinary negligence claims. When using a backboard, strap down the patient and consider calling an Air Ambulance to the scene instead of driving 35 miles on gravel road.

Note: The City's attorneys made an "offer of judgment" to settle the case for $7.500. The plaintiff rejected that offer and now must reimburse City for attorney's fees from the date of the offer. "Footnote 4: Under this rule, if the opposing party declines the offer and then receives a judgment that is 90% of the offer or less, it must pay a percentage of the offering party's attorney's fees. Alaska R. Civ. P. 68(a)-(b)."

File: Chap. 15 – Mental Health

WA: MECHANIC – ANXIETY – NO ADA / DIDN'T COOPERATE

On May 20, 2025, in Liam Riley v. City of Tacoma; Tacoma Fire Department, the Court of Appeals of Washington, Division 2, held (3 to 0; unpublished decision) that trial court properly dismissed his ADA claim.

The Court wrote: "The trial court properly dismissed the failure to accommodate claim because the undisputed evidence established that Riley failed to cooperate with the City during the interactive process for evaluating Riley's need for accommodation. Despite several clear requests from the City, Riley failed to provide requested medical documentation addressing the nexus between his disability and his ability to perform the essential functions of his job. Riley's lack of cooperation was fatal to his claim. The trial court also properly dismissed the hostile work environment claim because Riley failed to establish more than isolated incidents of hostility and he did not offer any evidence they were a result of his disability. We affirm."
https://www.courts.wa.gov/opinions/pdf/D2%2058295-3-II%20Unpublished%20Opinion.pdf

The Court held:

"Riley began working for the City of Tacoma as a mechanic for the City's fire department in 2013. He primarily worked on fire department vehicles and equipment in the only fire garage in the City's fire department. Riley repaired fire department vehicles and equipment, including tasks such as welding and fabricating.

Starting in 2013, Riley suffered from numerous health problems, including marked obesity, chronic fatigue, mood swings, irritability, and joint pain. Riley also had high

blood pressure for many years before he started working for the City. He sought treatment from multiple physicians and specialists including Dr. Norman Seaholm, who was his physician for at least 12 years. Riley began testosterone injections as part of his treatment.

***

In January 2018, Riley texted Chief Patrick McElligott and reported that he was 'being illegal[l]y discriminated against.' … He complained about [Carol] Haeger not getting parts and supplies for him to be able to do his job. After Riley sent this text, he had a meeting with McElligott and Voigt, where he also complained about arguments over what radio station should be played in the garage. After the meeting, things got better for about six months.

***

There continued to be conflict among workers in the fire department garage. The City conducted a 'Climate Assessment,' which is an in-depth internal investigation…. The City concluded that Riley did have personality conflicts with two coworkers. The City found that Riley participated in the conflict. The record confirms that Riley engaged in name-calling, foul language, and physical intimidation of coworkers and supervisors. The City's assessment did not find that anyone's safety was at risk.

***

The City emphasized that working at the fire garage was an essential component of Riley's position as a fire mechanic, and he could not work in the fire garage if he were required to avoid all interaction with other employees. The City sought clarification as to whether Seaholm thought Riley could return to work at the garage or not. Riley never responded, nor did he ever return the medical questionnaire confirming he could return to work, and on January 11, 2021, the City medically separated Riley.

***

At trial, Riley's physician and mental health counselor both testified that aside from his personal conflicts with his coworkers, Riley could perform all of the essential functions of his job as a fire mechanic. They also testified that the accommodation Riley needed was to be moved away from coworkers he was having conflict with and to have 'cooperative and congenial relationships with his fellow coworkers.'

***

When Riley testified, he said that he was confused about the entire process. He felt he was passed back and forth among City employees, and he was never offered a reasonable accommodation that did not require him to work at the garage where his interactions with his coworkers were making him ill.

***

The City also argued Riley failed to show he adequately cooperated with the City

in the interactive process. The trial court agreed with the City's last argument and concluded that Riley did not cooperate in the accommodation process. The trial court ultimately granted the City's motion and dismissed Riley's accommodation claim.

***

In sum, there is no substantial evidence or reasonable inference to sustain a conclusion that Riley fulfilled his obligation to cooperate with the City and to provide the medical documentation the City was entitled to obtain. A fair-minded, rational person could not conclude that Riley adequately cooperated in the interactive process with the City. Therefore, the trial court did not err when it dismissed his reasonable accommodation claim."

Legal Lesson Learned: The City promptly conducted a "Climate Assessment" of the garage workplace; plaintiff failed to cooperate with the city, including refusing to provide city access to his medical records.

File: Chap. 16, Discipline

OR: FF FIRED – MISUSE SICK LEAVE – GPS TRACKER / CELL

On May 2, 2025, in Zachary Taylor v. Sweet Home Fire & Ambulance District; Mark Nicholas Tyler et al., U.S. District Court Judge Mustafa T. Kasubhai, United States District Court for the District of Oregon, held that the plaintiff, who was fired on March 29, 2023 for misuse of sick time may proceed with claim that Fire Chief tracked his location using GPS on his personal cell phone. Plaintiff is pro se (no attorney) and six claims were dismissed, but 4th Amendment claim and claim he was denied Civil Service hearing may proceed with pre-trial discovery.

The Court wrote: "Third Claim - Unreasonable Search and Seizure. Plaintiff's Third Claim is a § 1983 claim alleging that Barringer violated Plaintiff's Fourth Amendment rights by using a first responder application installed on Plaintiff's phone to track Plaintiff's location for a non-emergency response purpose. FAC [First Amended Complaint] ¶ 175. Plaintiff alleges that on April 18, 2022, he called in sick to work because he was nervous about Barringer being there. FAC ¶ 71-72. Barringer became immediately suspicious that Plaintiff was abusing his use of sick time. FAC ¶ 72. Barringer located Plaintiff using the first responder application installed on Plaintiff's phone and drove twenty-two miles from work to spy on Plaintiff. FAC ¶ 72. Plaintiff was then placed on administrative leave pending a fit for duty evaluation. FAC ¶ 175. *** The remainder of Plaintiff's FAC relates to an investigation that took place from May 2022 to March 2023 regarding Plaintiff's alleged misuse of sick leave. *Id*. ¶¶ 70-133. Plaintiff was placed on administrative leave for eleven months, and ultimately terminated from his position on March 29, 2023. *Id.* ¶¶ 43, 72, 131, 145. *** The underlying conduct giving rise to Plaintiff's Third

Claim occurred within the two-year statute of limitations. Defendants did not move to dismiss this claim against Barringer on substantive grounds."
https://public.fastcase.com/jaEE2PXzRXmZ99jOLMt1Im1keUzBtfiIHvEUrgtpCe4tsCgV6NtJX3IH6wzppmaYdMf24%2B5puOWV6%2FBXnYGObJXUVli9SMl09cYxEMCDiBI%3D?utm_medium=email&_hsenc=p2ANqtz-_d7OiIN91ZAk7Y1LfM1ALZw-U0OSyNxgKb6pVH2Z92AnZk8gKeX6P0Vdjf87FJH4FQPvAXMckV1s5VI4fjARMOTrnriQ&_hsmi=226712652&utm_content=226712652&utm_source=hs_email

The Court held:

> "Plaintiff's Third Claim against Defendant Barringer and Plaintiff's Eighth Claim [denied Civil Service hearing] against Defendants Sweet Home Fire and [Fire Chief Mark] Tyler may proceed. However, all remaining claims and Defendants are dismissed with prejudice.
>
> ***
>
> For the reasons above, Defendants' Motion to Strike (ECF No. 20) is DENIED. Defendants' Motion to Dismiss (ECF No. 20) is GRANTED in part and DENIED in part. Plaintiff's Third Claim against Defendant Barringer and Plaintiff's Eighth Claim against Defendants Sweet Home Fire and Tyler may proceed. However, all remaining claims and Defendants are dismissed with prejudice."

Legal Lesson Learned: Case will now proceed to pre-trial discovery. If Fire or EMS department requires personnel to have a GPS locator on their personal cell, consult with legal counsel about laws in your state on requiring personnel to sign a written consent.

> Note: See this article: "Stay Compliant: Employee GPS Tracking Laws by State."
> https://timeero.com/resources-page/employee-gps-tracking-laws
> "Wondering if it's legal to track your employees' location with GPS?
> The answer isn't as simple as yes or no. While federal laws offer some guidance, state-specific regulations play a crucial role in determining what's permissible. For example, in California, you must get explicit consent from your employees before tracking their location, even if they're using company-owned vehicles. But, in states like Georgia, there are no specific laws regarding GPS tracking."

File: Chap. 17, Arbitration, Mediation, Labor Relations

CA: 2 CAPTAINS – POOR INTERVIEWS - NOT RETALIATION

On May 16, 2025, in David Shenbaum and Timothy O'Brien v. City of Manhattan Beach, Chief U.S. Magistrate Judge Katen L. Stevenson. United States District Court for Central District of California, granted the City summary judgment, finding there was no proof of retaliation. The

two Captains claimed they were not promoted in retaliation for (1) their union voting in 2018 "No Confidence" in the fire chief and three battalion chiefs, and (2) union lawsuit on Nov. 3, 2022 challenging city reducing the pay of Battalion Chiefs.

The Court wrote: "In December 2022, Fire Chief Michael Lang and the City replaced the Battalion Chief position with the Division Chief position and opened the position to internal candidates only… Five internal candidates applied for the Division Chief position, including Plaintiffs…. Chief Lang subsequently announced that the traditional examination and interview process would be replaced with an interview-only process…. Chief Lang selected an external panel of fire chiefs to conduct the Division Chief interviews, which included Monrovia Fire Chief Jeremy Sanchez, Arcadia Fire Chief Chen Suen, and La Verne Fire Chief Chris Nigg (collectively 'Fire Chief Panelists')…. On January 17, 2023, the Fire Chief Panelists conducted interviews for all Division Chief candidates, including Plaintiffs…. The Fire Chief Panelists concurred that both Shenbaum and O'Brien should receive failing scores based on their responses and conduct during their interviews…. Specifically, the Fire Chief Panelists gave Shenbaum a failing score in the 'Judgment and Decision Making' category and commented that he used profanity in his interview…. The Fire Chief Panelists gave O'Brien failing scores for 'Leadership and Management' and 'Innovation and Strategic Thinking.' *** Yet, here, Plaintiffs only speculate that the Fire Panelists had any knowledge of the lawsuit. In fact, all three members of the Fire Chief Panelists attested that they were not aware of or notified of any pending lawsuit by Plaintiffs against the City."
https://public.fastcase.com/jaEE2PXzRXmZ99jOLMt1IhwREi1fEuXa5IBCMUROo3DApdLLsb4vyoe8B%2BNXnfOO?utm_medium=email&_hsenc=p2ANqtz-8ABWS4rvuUksFiiSiWwUxDOv17WyJKZy-5as8oPUYz_An6byDKPPy12elR6z5qE4TfB84ipL9se-rQu7mIzXpACN0LEw&_hsmi=226712652&utm_content=226712652&utm_source=hs_email

The Court held:

> "Some two years later [after No Confidence vote; VONC], in November 2020, the City entered a new contract ('2020 Agreement') with the Manhattan Beach Fire Management Association ('MBFMA') to alter Battalion Chief compensation.*** Indeed, the Court can find no record evidence that raises a reasonable inference that Defendant's adoption of the 2020 Agreement revising the Battalion Chief compensation, two years after the 2018 VONC, had any tangible impact on Plaintiffs' positions, responsibilities, or compensation as Fire Captains. Plaintiffs have also failed to present evidence showing that the 2020 Agreement had any bearing on Plaintiffs' eligibility for the Division/Battalion Chief position or that they were at all deterred from applying for the Division/Battalion Chief position beyond their personal financial considerations of the reduced pay, which they have not shown was specifically targeted at them."

Legal Lesson Learned: No proof that No Confidence vote by union. or recent lawsuit, caused three outside Fire Chiefs to rate two Captains as "failed."

File: Chap. 17 - Arbitration, incl. Mediation, Labor Relations

CT: RETALIATION - LT. JOB - 6 DAYS AFTER GRIEVANCE

On May 12, 2025, in Town of Suffield v. State Board of Labor Relations and Suffield Firefighters Assoc. Local 3565, IAFF, the Superior Court of Connecticut (Judicial District of New Britain) held (Judge Matthew J. Budzik; unpublished decision) that Town's appeal was denied.

The Court wrote: [The State Board] "may make the reasonable factual inference, based on very close temporal proximity, that the board's [Town's Board of Selectman] March 15, 2023 vote to defund the lieutenant position was in retaliation for the [union's] filing of the March 9, 2023 grievance."
https://civilinquiry.jud.ct.gov/DocumentInquiry/DocumentInquiry.aspx?DocumentNo=29998787

The Court held:

> "As relevant to this appeal, the SFD consists of six career firefighters and 30 volunteers…. Since January 2018, Brian Gauthier has been the sole career lieutenant in the SFD and a member of the union. In July 2020, the SFD's sole captain retired, leaving the position vacant.
>
> On December 16, 2022, SFD fire chief Charles Flynn resigned. Shortly thereafter, First Selectman [Charles] Moll met with Mr. Gauthier to discuss Mr. Gauthier assuming command of the SFD. Mr. Gauthier agreed to assume command of the SFD while also performing his regular lieutenant's duties and also receiving his regular compensation as a lieutenant in the SFD.
>
> ***
> In January, 2023, the union filed a grievance regarding Mr. Gauthier continuing to receive compensation as a lieutenant while also performing duties of a captain.
>
> ***
> On February 23, 2023, the Suffield Fire Commissioners [FD Board] discussed whether to defund the lieutenant position with the SFD because some members of the Fire Commission it would be better to have a 'Chief and Captain," rather than a 'Chief and Lieutenant.' Nevertheless, while a motion to this effect was made at the February 23, 2023 meeting, the minutes from the February 23rd meeting do not reflect that the relevant motion was ever voted upon.
>
> ***

> On March 9, 2023, the union filed the underlying grievance alleging that Suffield had changed Mr. Gauthier's working conditions and alleging that Suffield was retaliating against Mr. Gauthier for engaging in protected activities.
>
> ***
>
> On March 15, 2023. The board [of Selectmen] held a regular meeting. The minutes from that meeting state that First Selectman Moll explained to the board that the Fire Commission had approved the decision to defund the lieutenant position at their February 23rd meeting as the Fire Commissioners thought it would be better to have two officers to potentially six (6) firefighters as opposed to three (3) officers to five (5) firefighters.
>
> ***
>
> On June 29, 2023, Suffield informed Mr. Gauthier that the board had eliminated the rank of lieutenant and that it was demoting him to the rank of line firefighter.
>
> ***
>
> Because the SBLR made the factual determination that the Fire Commission did not defund the lieutenant position at its February 23rd meeting, and because the SBLR did not credit First Selectman Moll's alternative explanation for defunding the lieutenant position, the SBLR may make the reasonable factual inference, based on very close temporal proximity, that the board's March 15, 2023 vote to defund the lieutenant position was in retaliation for the filing of the March 9, 2023, grievance."

Legal Lesson Learned: To avoid a retaliation charge, document in detail the business reasons for eliminating the Lieutenant position and the formal vote of the Board.

> Note: See May 21, 2025 article on this decision. "Court upholds finding of retaliation against Suffield firefighter." https://insideinvestigator.org/court-upholds-finding-of-retaliation-against-suffield-firefighter/

File: Chap. 18, Legislation

CT: "NO SURPRISE ACT" – AIR MED CAN SUE INSURANCE

On May 14, 2025, in Guarding Flight LLC, Reach Air Medical Services LLC, Calstar Air Medical Services LLC, Med-Trans Corporation, and Air Evac EMS, Inc. v. Aetna Life Insurance Company, Aetna Health, Inc., Aetna Health and Life Insurance Company, and Cigna Health and Life Insurance Company, U.S. District Court Judge Michael P. Shea, United States District Court for the District of Connecticut, denied the insurance companies motion to dismiss; the Air Medical companies allege a "low pay, late pay or no pay" scheme has become a widespread business practice.

The Court wrote: "Though Defendants received the benefit of Plaintiffs' services, they made unreasonably low initial payments for these transports…. Defendants have failed to comply with

these IDR [Independent Dispute Resolution] determinations [under the 2021 No Surprise Act]…. In some cases, they made late payments and did not include interest to account for their payment delays…. In other instances, they have made only partial payments or have not made any payments whatsoever. Id. At the time Plaintiffs' complaint was filed, several of these awards were more than 500 days past due and Defendants had late-paid or not paid over $20 million in IDR awards. *** Defendants' alleged failure to timely pay these awards is sufficiently frequent to constitute a general business practice. Plaintiffs have thus plausibly alleged that Defendants engaged in 'unfair methods of competition and unfair and deceptive acts or practices in the business of insurance' in violation of CUIPA [Connecticut Unfair Trade Practices Act] and so have stated a plausible CUTPA claim. See Conn. Gen. Stat. § 38a-816(6)(F)."
https://cases.justia.com/federal/district-courts/connecticut/ctdce/3:2024cv00680/159059/264/0.pdf?ts=1747297635

The Court held:

> "Plaintiffs are national air ambulance providers….Air ambulances transport patients requiring critical care to healthcare…. Without air ambulances, more than 85 million Americans would be unable to access a Level 1 or 2 trauma center within an hour when emergency care is needed. Id. To deliver air ambulance services, providers must make substantial investments in specialized aircraft, air bases, technology, personnel, and regulatory compliance systems.
>
> ***
>
> Congress enacted the No Surprises Act ('NSA'), Pub. L. 116-260, 134 Stat. 2758 (2021), in 2020 'to protect patients from surprise medical bills in situations where they have no choice over whether their provider is in-network.' … The NSA thus 'aims to cap the patient's share of liability to out-of-network providers at an amount comparable to what the patient would have owed had the patient received care from an in-network provider' in circumstances where the patient has no choice over his or her provider—such as emergency transportation by an air ambulance. *** Defendants' 'low pay, late pay or no pay' scheme has become a widespread business practice, as evidenced by 1) the numerous unpaid and/or late paid IDR awards at issue in this lawsuit, and 2) the number of plaintiffs in this lawsuit that have failed to receive timely payment of IDR awards…. (listing hundreds of IDR awards owed to Plaintiffs that Defendants either paid late or have yet to pay)."

Legal Lesson Learned: This is a significant win for Air Medical industry; hopefully patient insurance companies will "get the message" that they are facing liability for low pay, late pay or no pay' scheme.