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Nov. 2023 – FIRE & EMS LAW NEWSLETTER

[NEWSLETTER IS NOT PROVIDING LEGAL ADVICE.]

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NEWSLETTERS: If you would like to be added to UC Fire Science listserv, just send him an e-mail.

TEXTBOOK: Updating 18 chapters of my textbook (2018 to current). FIRE SERVICE LAW (SECOND EDITION), Jan. 2017: View textbook via Waveland site.

TRAINING OPPORTUNITY: ETHICS IN FIRE & EMS; also, session on **EMR REPORT WRITING** – March 27, 2024, Ohio BWC Safety Congress, Columbus – with Kenny Schroeder, Lieutenant / Paramedic (ret), Independence FD, Kentucky. Broadcast LIVE on BWC web site.

FREE, ONLINE: 2023: LEADERSHIP & ETHICS IN FIRE & EMS – Lessons Learned In American History & Litigation [for use in Officer I, II, III, IV]:view at @UCScholar

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CA: ARSON – "DELUSIONAL DEFENDANT" – NOT INSANE - FORCED ENTRY "CARDINAL SIGN" STARTED THE FIRE

On Oct. 24, 2023, in The People v. Donald James Hailey, the California Court of Appeals, Third District, Sacramento held (3 to 0; unpublished opinion) upheld the defendant's conviction by a jury of arson (23 years in prison). The defendant was "delusional" – but not insane. The Court wrote: "It was 'either fight or flight' in defendant's mind. Fearing there was no time to flee into the house where he was staying because he would not be able to open both the locked metal "crash gate" that covered the front door and the front door itself, defendant ran across the street to Sheila F.'s house. He decided to run through Sheila F.'s house because he thought the people chasing him would not follow him inside. *** Here, the record indicates defendant may have been delusional on New Year's Day 2020 when he committed his crimes. But the record does not suggest defendant was unable at his May 2021 trial to consult with his lawyer with a reasonable degree of rational understanding. The suggestion of a discrete delusional episode 17 months prior to trial that led to a temporary not guilty by reason of insanity plea, without more, does not amount to substantial evidence of incompetence to stand trial."

The Court referenced the testimony of the fire investigator from Sacramento Fire Department, and the two lighters that police found on the defendant.

> "A fire investigator who examined Sheila F.'s home for the Sacramento Fire Department testified at trial that in his expert opinion, the fire started in the front bedroom, likely spread to the rest of the home in three to five minutes and was extinguished 14 minutes after it began. The fire investigator further testified it was his opinion the fire was 'maliciously set' with an open flame, and not caused by an electrical appliance, faulty wiring in an electrical outlet, candles, or incense. He explained that he found no evidence of any candles, cigarettes, 'or anything like that' in the bedroom where the fire started. Thus, 'other ignition sources ha[d] been ruled out. And there's clear evidence of an open flame being in the home at the time of the fire. There was forced entry to the home, which is a cardinal sign of an incendiary fire. There was a subject in the home. The subject that forced his way into the home had an open flame device': the two lighters police found in defendant's possession that night."

Legal Lesson Learned: The fire investigator was qualified as an expert.

> Note: "Defendant's expert witness was a fire investigator with the Sacramento Fire Department from 1991 to 1993. He testified the cause of the fire should have been 'undetermined,' because the investigation was insufficient to rule out multiple causes of the fire, and he did not believe Sheila F.'s assertion she only smoked outside her home. The defense expert explained that a smoldering item (like a cigarette) could have ignited into an open flame by drafts of air that occurred when defendant broke down Sheila F.'s front door and/or when Sheila F. opened the sliding glass door in her bedroom."

File: Chap. 2 – FF Safety & LODD

OH: SMOKE IN APARTMENT – RESIDENT TACKLED LT. & DREW GUN – LT. TESTIFIED DEF. SENTENCING - 6 MONTHS

On Oct. 26, 2023, in State of Ohio v. Victor Hatcher, the Court of Appeals of Ohio, Eight District, Cuyahoga County, held (3 to 0) that the six-month jail sentence was appropriate for assaulting the Lieutenant of the Cleveland Fire Department, and then pulling a gun on firefighters in front of the building. In a plea bargain, he plead guilty to attempted assault, a felony of the fifth degree. Court described the incident: "While the firefighters were investigating, appellant approached the firefighters and became angry, demanding that they leave. Lt. Todd O'Neill was the last to leave, and as he did so, appellant tackled him to the ground. Two other firefighters had to pull appellant off of O'Neill. Once the firefighters were outside, appellant went to his vehicle and retrieved a firearm. He waved the firearm at the firefighters and yelled at them. The battalion chief ordered the firefighters back to their rigs and called the police, who subsequently arrested appellant."

At the sentencing hearing the Lieutenant testified about the incident.

> "In order to verify that nothing was on fire, we had to remove some ceiling tiles. They were drop tiles. I don't know where exactly Mr. Hatcher arrived from, but the next thing I know, he was standing behind me screaming at me to get out of his apartment. I tried to explain to him that we were there to just make sure that nothing was on fire. He continued to scream at me. I told him, fine we'll leave. We attempted to leave. He stood in the doorway. I asked him to move. He screamed at me that he wasn't going to be told what to do in his house. So we tried to attempt to push past to get out of the apartment, as per his request. I made sure the guys in front of me got out. I was the last one to go out.
>
> As I was going out, I used our thermal imaging camera to kind of scan the ceiling one last time to make sure nothing was one [sic] fire. When I looked up at the thermal imaging camera, that's when Mr. Hatcher attacked me and tackled me to the ground. Lieutenant Jarus and Firefighter Louis pulled Mr. Hatcher off of me. We thought the situation was resolved. We all exited the side of the building.
>
> When we went out the side of the building or the structure, we came to the front. I met my battalion chief there and tried to explain to him the situation. At that time, Mr. Hatcher came out the front door screaming that he wanted a complaint form. I turned around and told him that we don't carry those, that he would have to call city hall to get those complaint forms. As he was still screaming at us that he wanted complaint forms, he went into his vehicle, came out of his vehicle with a pistol, raised it at everybody, showed it to everybody, and his words to us at that point were, I bet you ain't coming back up in this b****.
>
> The battalion chief at that point ordered everybody into their rigs to move down the street as we called for police to arrive and handle the situation.

> I'd just like the Court to know, you know, that particular day, you know, we showed up in good faith to protect Mr. Hatcher and his family and anybody else that lived in that structure from the structure being on fire. We know [sic] in no way or shape wanted to instigate anything with Mr. Hatcher or anybody else in that structure. We just wanted to do our duty and leave. The point where the weapon was raised and brandished at everybody on scene, there [were] four fire companies' worth of men that were then threatened that day and had Mr. Hatcher pulled the trigger, lives would have changed forever that day. Not just the firemen on the scene or Mr. Hatcher's life or anybody else's life, but our families' lives.
>
> I have my wife in the courtroom with me today. You know, her life would have been changed forever had that trigger been pulled, not to mention children, mothers, fathers, anybody else."

Legal Lesson Learned: Excellent to have Lieutenant testify at sentencing hearing.

File: Chap. 2 – FF Safety & LODD

IN: FIREMAN'S RULE EXCEPTION - CAPT. FELL DOWN STAIRWELL - GAP IN WALL, MISSING STUD – MAY SUE

On Oct. 23, 2023, in Richard Dolsen, Jr. v. VeoRide, Inc., the Court of Appeals of Indiana, held (3 to 0) reversed the trial court's grant of summary judgment to the building owner; the lawsuit by Captain Richard Dolsen, Fort Wayne Fire Department may proceed. The Court held: "Based on the foregoing, we conclude that whether VeoRide owed Dolsen a duty to warn him of the gap in the wall next to the stairwell depends upon underlying facts that require resolution by the trier of fact, including whether VeoRide should have realized that the condition involved an unreasonable risk of causing physical harm to Dolsen (who did not know or have reason to know of the condition and the risk involved), whether VeoRide should have expected that Dolsen would not discover or realize the danger, and whether VeoRide had reason to expect that Dolsen would encounter the condition in the exercise of his license."

> "VeoRide 'is a company that rents electric scooters and electric bicycles that are powered by lithium batteries.' Appellant's App. Vol. 2 at 59. In 2019, VeoRide expressed interest in leasing a building in Fort Wayne from Sweet Real Estate–City Center, LLC (Sweet). At that time, the building had no electricity or light fixtures, and the only window was on the second floor, which was 'sectioned off" from the ground floor. Id. at 152. During a walk-through of the building, VeoRide regional general manager Benjamin Thomas and Sweet real estate broker Tiffany Fries had to use 'big flashlights' to be able to see. Id. at 150. Thomas asked Sweet to install electricity, light fixtures, and 'outlets to charge batteries[,]' which was done after VeoRide and Sweet entered into a commercial lease agreement in August 2019. Id. at 153. VeoRide used the building 'to store scooters, scooter parts, batteries, battery racks, and battery recharging equipment." Id. at 61. On June 11, 2020, one of the batteries ignited and started a fire in the building. No VeoRide

employees were on the premises at that time. Around 6:00 p.m., Fries received a call from her company's security chief about the fire, and she started driving toward the building. Fries called the fire department and VeoRide manager Eric Xayarath, who had already been notified about the fire and also was en route to the building. Xayarath called Thomas and said that 'there was a fire' and 'the firefighters had been called[.]' Id. at 185. Xayarath said 'that he would keep [Thomas] posted on kind of next steps what was going to go on.' Id.

> ***
> Dolsen entered the building through a door, 'at which point [he] could not see due to lack of light and smoke.' Id. at 112.3 He 'moved around the perimeter of the inside of the building … to look for a ventilation opening and electrical breaker box by touching and pressing the inside wall to guide [him].' Id. Just after he passed a closed door 'at the southeast corner of the building, [he] extended [his] left arm to press the wall, as [he] had been doing, but contacted nothing but air, and fell through an opening in the wall down into what [he] later realized was a stairwell.' Id. The wall was composed of bare wooden studs, with a gap left by a missing stud. Dolsen 'could not see the opening in the wall due to the lack of light and the presence of smoke.' Id. Dolsen 'fell to the bottom of the stairwell' and was injured. Id."

Legal Lesson Learned: A thoughtful decision; the building owner owed a duty to warn the Captain of the gap in the wall.

File: Chap. 3 – Homeland Security

TX: TEXAS GOV. ORDER - MIGRANTS NOT BE GIVEN RIDES - IMMIGRANT ADVOCATES CAN'T SUE – FED. INJUNCTION

On Oct. 27, 2023, in United States of America v. Greg Abbott, et al., the U.S. Court of Appeals for the Fifth Circuit (New Orleans) held (2 to 1) that the U.S. District Court improperly denied the Governor's motion to dismiss the three non-profits immigration advocates' Fourth Amendment claims, since the Governor enjoys sovereign immunity from private party lawsuits. Sovereign immunity forbids suits against a State and its officers in their official capacities. The Court held: "We agree with the Governor that sovereign immunity bars the lawsuit brought by the private plaintiffs. We reverse and remand with instructions to dismiss the suit against the Governor." However, the Federal Government sued and in Aug. 2021 obtained an injunction against the Governor's order and that injunction remains in place.

> "In July 2021, Texas Governor Greg Abbott issued an executive order that prohibited private individuals from providing ground transportation to migrants who were previously detained or subject to expulsion. The United States brought a lawsuit against Governor Abbott and the State of Texas, arguing that the executive order was preempted by federal law. Three nonprofit organizations and a retired lawyer also brought a § 1983

suit against the Governor and the Director of the Texas Department of Public Safety ("DPS"). The defendants moved to dismiss the suit brought by the private plaintiffs, arguing in part that the plaintiffs lacked standing and the suit against the Governor was barred by sovereign immunity. The district court rejected these arguments, and Governor Abbott appealed.

Legal Lesson Learned: The lawsuit by USA will proceed.

> Note: The ruling does not affect a similar legal challenge brought by the Biden administration, leaving an August 2021 lower court's injunction in place. See Oct. 27, 2023 article, "US appeals court tosses lawsuit over Texas migrant transportation restrictions."

File: Chap. 4 – Incident Command, Training

File: Chap. 5 – Emergency Vehicle Operations

NJ: FIRE TRUCK SHIFTED INTO GEAR DURING TRAINING – DRIVERLESS TRUCK STRUCK BUILDING – INJURED PERSON

On Oct. 27, 2023, in Berta Abreu Flores v. North Hudson Regional Fire And Rescue, et al., the Superior Court of New Jersey, Appellate Division, held (3 to 0), reversed trial court and held that under NJ law the injured person may proceed with claim for continuing medical issue regarding loss of balance. The Court described the incident. "On March 29, 2018, a fire engine owned by defendant North Hudson Regional Fire and Rescue accidently shifted into drive during a training exercise at a fire station in Union City. Driverless, the fire engine crossed the road and struck the front of a residence opposite the firehouse. The impact damaged the building's support columns. Plaintiff Berta Abreu Flores, a sixty-five-year-old woman who had been working on the first floor of the building, was injured by the collision."

> "At the time of the incident, plaintiff operated a tax preparation business out of the first floor of the residence. She had arrived at her office around 8:30 a.m. that morning and was working at her desk that faced the front of the building. Plaintiff was speaking with one of her employees, facing toward the employee and away from the front of the building, when they heard 'a loud bang' that plaintiff thought 'was a bomb.' When the employee saw the wall was coming down, she yanked plaintiff from her chair by her right arm.
>
> After being pulled from her desk, plaintiff immediately began to have pain on the left side of her head. She noticed fragments of glass in her hair and a lump on her head. She was taken by responding EMS personnel to a local emergency room, where she reported pain in her left side, head, and shoulder, and dizziness. She was released that same day from the hospital.

> Plaintiff continued to experience pain in the weeks following the accident. However, she managed to continue working for the next two-and-a-half weeks until the end of the tax season. She has not resumed working since that time.
>
> ***
>
> Given the present circumstances, we conclude that plaintiff's frequent and persistent loss of balance post-Lasix presents a genuine issue of material fact under N.J.S.A. 59:9-2(d). We therefore reverse summary judgment in that respect. At trial, the jury verdict form should contain a specific inquiry concerning the loss of balance. If that loss is found by the jury to surmount the threshold, then plaintiffs other injuries caused by the accident can also be compensated."

Legal Lesson Learned: New drivers and experienced Fire Apparatus Operators [FAOs] must always set the brake when a fire vehicle is parked. Tire chocks should also be used when vehicle is parked.

File: Chap. 5 – Emergency Vehicle Operations

GA: SPEEDING MOTORIST RUNS INTO FIRE ENGINE – BUT MOTORIST EXPERT FF SHOULD SEEN HIM – CASE PROCEED

On Oct. 18, 2023, in Chandler v. City of Lafayette, the Court of Appeals of Georgia held (3 to 0) that trial court improperly granted summary judgment to the City. The Court held: "Because there is some evidence to show that the accident still would have occurred despite Chandler's speeding and that both [James Lamar] Chandler and [firefighter] Dennison should have been able to see each other before the collision, we conclude that genuine issues of material fact remain as to whether Dennison proximately caused Chandler's injuries, and thus the trial court erred by granting summary judgment to the City.*** Moreover, Chandler's expert testified that Dennison should have waited at the intersection or ensured that Chandler acknowledged his presence, and that Dennison failed to observe Chandler's vehicle at the intersection. Because there is conflicting evidence as to whether Dennison slowed down as was necessary before proceeding past the red light and entering the intersection, genuine issues of material fact remain as to the City's affirmative defense, and the trial court therefore erred to the extent that it granted summary judgment on this basis."

> [T]he record shows that in the early evening of October 27, 2016, Robert Lee Dennison, a firefighter for the City of Lafayette, was driving a fire truck on Villanow Street with the truck's lights and siren activated in response to an emergency call about a gas leak inside a residence. As Dennison approached a red light at the intersection of Villanow Street and GA-1, he slowed down 'almost to a complete stop,' and he sounded the truck's air horn to signal his presence to the other drivers in the area. According to Dennison, none of the other drivers in the area were moving at that time, he looked 'both ways' to confirm that all of the vehicles in the area acknowledged his presence, and he 'sat there for a good bit' before entering the intersection. He did not recall seeing Chandler's vehicle at this time. As Dennison traveled through the intersection, he again looked to his

left and observed Chandler's vehicle approaching the intersection from GA-1 and that his vehicle was a 'fair distance' away from the fire truck. Chandler, who admitted to law enforcement that he was traveling between 55 and 60 miles per hour in the 45 miles per hour zone, attempted to get in front of the fire truck as it traveled through the intersection and 'thought [that] [he] could get around [Dennison].' Chandler ultimately collided with the left side of the fire truck and suffered various injuries."

Legal Lesson Learned: This case appears to be a "battle of the experts." Some fire departments have adopted a "full stop" policy if entering against a red light, to avoid this type of litigation.

File: Chap. 6 – Employment Litigation

FL: FF DIED BRAIN CANCER – WIDOW ENTITLED TO $150,000 DEATH BENEFITS – PLUS PRIOR $25K PAID

On Oct. 25, 2023, in Christy Siena v. Orange County Fire Rescue / CCMSI, the Florida Court of Appeals, First District, held (3 to 0) that the Worker's Comp. Judge of Compensation Claims is reversed, and widow is entitled to $150, 000. Under Florida statute, a firefighter when diagnosed with cancer is entitled to a one-time cash payout of $25,000. Eric Siena received that amount when he was diagnosed with glioblastoma in January 2020; he died in May of 2021. The Court held: "In this appeal we consider whether receipt of medical, indemnity, and death benefits through section 112.1816, Florida Statutes, bars receipt of death benefits under section 440.16, Florida Statutes. We conclude that it does not and set aside the order below."

> Section 112.1816 - Firefighters; cancer diagnosis
>
> (2) Upon a diagnosis of cancer, a firefighter is entitled to the following benefits, as an alternative to pursuing workers' compensation benefits under chapter 440, if the firefighter has been employed by his or her employer for at least 5 continuous years, has not used tobacco products for at least the preceding 5 years, and has not been employed in any other position in the preceding 5 years which is proven to create a higher risk for any cancer: (a) Cancer treatment covered within an employer-sponsored health plan or through a group health insurance trust fund. The employer must timely reimburse the firefighter for any out-of-pocket deductible, copayment, or coinsurance costs incurred due to the treatment of cancer. (b) A one-time cash payout of $25,000, upon the firefighter's initial diagnosis of cancer.
>
> ***
> 440.16 Compensation for death
> (1) If death results from the accident within 1 year thereafter or follows continuous disability and results from the accident within 5 years thereafter, the employer shall pay:

(a) Within 14 days after receiving the bill, actual funeral expenses not to exceed $7,500.

(b) Compensation, in addition to the above, in the following percentages of the average weekly wages to the following persons entitled thereto on account of dependency upon the deceased, and in the following order of preference, subject to the limitation provided in subparagraph 2., but such compensation shall be subject to the limits provided in s. 440.12(2), shall not exceed $150,000, and may be less than, but shall not exceed, for all dependents or persons entitled to compensation, 662/3 or 66.67 percent of the average wage:

1. To the spouse, if there is no child, 50 percent of the average weekly wage, such compensation to cease upon the spouse's death.

Legal Lesson Learned: The Court has properly examined the legislative intent when interpreting the statutes.

Note: See Oct. 25, 2023 article, "Appeals court ruling paves way for Orange County firefighter's widow to seek workers' comp payout."

ORANGE COUNTY, Fla. — A First District Court of Appeals judge has ruled in favor of an Orange County firefighter's widow, who was fighting for payment promised to her under state law after her husband died of work-related cancer.

The ruling clears the way for her to petition for $150,000 in workers' compensation benefits related to her husband's death; something Orange County had questioned whether she was entitled to seek because her husband had accepted a one-time $25,000 payout when he was first diagnosed with work-related brain cancer.

Eric Siena was on the top of his game as an Orange County firefighter before being diagnosed with glioblastoma in January 2020. The devastating brain cancer would take his life in May of 2021.

His wife Christy, who was also a first responder, was left alone to fight the system instead of fires.

'There's not another decision in the state that has dealt with this issue so far,' attorney Geoff Bichler said during a previous interview with 9 Investigates. Bichler has been fighting with Siena for the $150,000 payment, arguing that because each portion of the payout is covered by separate portions of the statute, receiving one does not prevent descendants from applying for the other.

'Most employers are operating from the assumption that if they pay this benefit, they're off the hook for worker's compensation, and we do not agree with that,' Bichler said."

File: Chap. 6 – Employment Litigation

OH: CINCINNATI FF – THYROID CANCER – OHIO STATUTORY PRESUMPTION – FF FINALLY WINS WORKERS COMP.

On Oct, 5, 2023, in State ex rel. City of Cincinnati v. Industrial Commission of Ohio (Joseph C. Conley), the Ohio Court of Appeals, Tenth District, refused the City's petition for a writ of mandamus, and upheld the Industrial Commission's award of workers comp for the firefighter. The Court held: "Although Dr. [Rafid] Kakel, M.D. Kakel opined that Conley's exposure to the carcinogens may not have been the cause of Conley's thyroid cancer, Dr. Kakel's report did not show by a preponderance of competent scientific evidence that Conley's exposure to the carcinogens *did not or could not have* caused Conley's thyroid cancer. Thus, because Cincinnati put forth insufficient evidence to rebut the statutory presumption in R.C. 4123.68(X), the SHO's [Staff Hearing Officer] order contained a clear mistake of law."

> On October 28, 2020, respondent, Joseph C. Conley ("claimant"), was diagnosed with thyroid cancer while working as a firefighter for the employer, for whom he had worked since 2008. On February 9, 2021, claimant filed an application for workers' compensation benefits. Accompanying his application was a January 4, 2021, C-265 Presumption of Causation for Firefighter Cancer, in which claimant indicated he was exposed to each of the 16 group 1 or 2A carcinogens, as well as another carcinogen, PAH. Claimant also indicated that he had been assigned to hazardous duty as a firefighter for the employer from October 19, 2008, to the present."

Legal Lesson Learned: It was a three-year fight, with numerous appeals, but the firefighter was victorious under the Ohio statutory presumption statute.

> Note: R.C. 4123.68(X) provides:
>
> (1) Cancer contracted by a firefighter: Cancer contracted by a firefighter who has been assigned to at least six years of hazardous duty as a firefighter constitutes a presumption that the cancer was contracted in the course of and arising out of the firefighter's employment if the firefighter was exposed to an agent classified by the international agency for research on cancer or its successor organization as a group 1 or 2A carcinogen.

File: Chap. 6 – Employment Litigation

PA: VOL. FF WITH CHRONIC LYMPHOCTIC LEUKEMIA [CLE] – DENIED WORK COMP - NO MEDICAL STUDIES LINKED JOB

On April 14, 2023, in Nicholas Caruccio v. Shrewsbury Borough (Workers' Compensation Appeal Board), the Commonwealth Court of Pennsylvania held (3 to 0; unpublished opinion) that even though PA has a firefighter statutory presumption law, the Workers Comp administrative law judge properly concluded there is no medical evidence that CLE was caused

by his exposure to carcinogens. The Court held: "Based on our review of the evidence, and the WCJ's findings and credibility determinations, Claimant was unable to establish Section 108(r) general causation. In other words, based on the credited evidence, Claimant failed to demonstrate that his exposure to several IARC Group 1 carcinogens possibly caused his CLL. In this case, Claimant's expert, Dr. Guidotti, conceded that there is no specific epidemiological evidence demonstrating a link between CLL and exposure to benzene, TCE, or dioxins. Report of Dr. Guidotti at 5-6. *** In response, Dr. Sandler [employer's expert] noted his agreement with Dr. Guidotti that 'there is no scientific/medical literature, comprehensive assessments and meta-analyses to show a causal relationship between possible firefighter exposures especially those potentially received as a volunteer firefighter and the development of CLL/SCL.' Report of Dr. Sandler at 7 (double emphasis in original). *** As in Malone, the WCJ considered the evidence and made a reasoned decision to credit one expert opinion over another. Cf. Malone. In this case, the WCJ found Dr. Sandler's opinion credible and rejected the opinion of Dr. Guidotti. This decision was neither arbitrary nor capricious and is supported by substantial evidence of record. See Morocho, 167 A.3d at 858 n.4; Kriebel, 29 A.3d at 769. We therefore decline to overturn the WCJ's findings on appeal."

> "Claimant worked for Shrewsbury Borough (Employer) as a volunteer firefighter from 1987 to present, eventually achieving rank of fire department President. In December 2018, Claimant was diagnosed with chronic lymphocytic leukemia (CLL).4 On May 4, 2020, Claimant filed a claim petition, seeking disability benefits, payment of medical bills, and counsel fees. Claimant alleged that he sustained CLL due to his exposure to carcinogens as a firefighter. Employer denied liability.
>
> ***
> Footnote 5: The IARC [International Agency for Research and Cancer] is a specialized research group within the World Health Organization that works to identify the causes of human cancers. The agency evaluates various agents, mixtures, and exposures, and classifies them into one of five groups. Group 1 substances are considered 'carcinogenic to humans.' See IARC Monographs on the Evaluation of Carcinogenic Risks to Humans, WORLD HEALTH ORGANIZATION, classified-by-the-iarc (last visited October 2, 2023).
>
> Footnote 6: Dr. Sandler reported that Claimant had known and suspected risk factors, including allergies, obesity, and a history of smoking. See Report of Dr. Sandler at 3, 14.
>
> ***
> In 2011, the Act was amended to include provisions specific to firefighters afflicted with cancer…. For example, in Burnett, a volunteer firefighter filed a claim following his diagnosis for large B-cell, nodular histiocytic lymphoma. 206 A.3d at 590. The claimant's medical expert opined that the claimant's workplace exposures to TCE are associated with an elevated risk of this cancer. Id. at 591 (citing epidemiological evidence, as well as a recognition by the IARC of a specific association between TCE and this particular lymphoma). The WCJ credited this evidence; the Board affirmed; and on further review, this Court agreed. Applying the analytical framework from Sladek, we

concluded that the expert's credible testimony was sufficient to satisfy the general causation requirement in Section 108(r) of the Act. Id. at 608.

***

A recent decision by this Court in Malone v. Workers' Compensation Appeal Board (City of Philadelphia) (Pa. Cmwlth., No. 22 C.D. 2020, filed Jan. 6, 2021), 2021 WL 49929, is instructive.12 In that case, the firefighter-claimant sought benefits asserting that his prostate cancer was an occupational disease caused by his workplace exposure to carcinogens. Malone, slip op. at 2, 2021 WL 49929 at *1. The claimant and his employer introduced competing export reports addressing claimant's exposure to several IARC Group 1 carcinogens contained in smoke. See id. at 4-10, 2021 WL 49929 at *2-3. The employer's expert was particularly critical of the methodology and validity of claimant's expert's opinion. See id. at 6-7, 2021WL 49929 at *3 (rejecting opinion because it lacked a discernible method of evaluating 'whether a certain carcinogen is capable of causing a certain type of cancer') The Malone WCJ did not credit the claimant's expert, finding that he had not established that any IARC Group 1 carcinogens are known to cause prostate cancer. Id. at 10, 2021 WL 49929 at *4 (finding the evidence 'vague at best'). The Board agreed, and upon further appeal, this Court affirmed with express deference to the credibility determinations of the WCJ. Id. at 21-22, 2021 WL 49929 at *9 (observing that none of the credited evidence established that any IARC Group 1 carcinogen can cause prostate cancer)."

Legal Lesson Learned: Firefighters with cancer still must provide credible evidence that Group 1 carcinogens can cause their cancer.

File: Chap. 7 – Sexual Harassment

File: Chap. 8 – Race Discrimination

FL: BLACK FF FIRED – 2nd POSITIVE DRUG TEST – WHITE CAPTAIN NOT FIRED 1st POSITIVE – CASE DISMISSED

On Oct. 10, 2023, in Robert Hodges v. Miami-Dade County, U.S. District Court Judge Beth Bloom, U.S. District Court for Southern District of Florida, granted the defense motion for summary judgment. The Court held: "Unlike Captain Brunetti, however, Plaintiff tested positive *again* in January 2020, violating the terms of his 2019 Agreement. SMF ¶¶ 17-18; SAMF ¶¶ 17-18. As such, the undisputed evidence establishes that Defendant did not treat Captain Brunetti more favorably. The undisputed evidence supports the conclusion that Defendant treated both employees the same, only electing to terminate Plaintiff after his second violation of Defendant's policies *after* signing his 2019 Agreement. The record demonstrates that Plaintiff and Defendant Brunetti do not share the same disciplinary history. *** Accordingly, Plaintiff fails to show that Defendant's proffered reason for his termination was pretextual. Plaintiff has also failed to point

to any evidence supporting an inference that racial discrimination was the real reason. Those deficiencies are fatal to Plaintiff's discrimination claim under *McDonnell Douglas"*

> **"**Plaintiff began his employment as a Fire Fighter with Miami-Dade County in October 2005. SMF ¶ 1; SAMF ¶ 1. In 2007, Plaintiff signed the signatures of other officers who had filled out Plaintiff's evaluation but forgot to sign. SMF ¶2. In lieu of termination, Plaintiff signed a Settlement Agreement and Release Between Plaintiff and Defendant ("2007 Agreement"). SMF ¶¶ 2-3; SAMF ¶¶ 2-3.
>
> Under the terms of the 2007 Agreement, Plaintiff agreed not to violate any provisions of current or future collective bargaining agreements or policies and procedures of Miami-Dade Fire Rescue ("MDFR") or of Defendant Miami-Dade County. SMF ¶ 4; SAMF ¶ 4. The 2007 Agreement specifically provided that such violations may result in immediate dismissal from Miam I-Dade County without the right to appeal. SMF ¶ 5.
>
> On September 12, 2019, Plaintiff took a county drug test during his annual physical, and the results came back positive for THC. ECF No. [15-1] at 199; SMF ¶¶ 7-8; SAMF ¶¶ 7-8, 50, 52. MDFR issued Plaintiff a Disciplinary Action Report on October 29, 2019 ("2019 DAR"), based on the September 2019 positive drug test, which violated the 2007 Agreement as well as Defendant's policies and procedures. SMF ¶ 9; SAMF ¶ 9. The 2019 DAR recommended Plaintiff's dismissal from employment. SMF ¶ 10; SAMF ¶ 10. However, instead of dismissal, Plaintiff signed a Career Long Agreement and Release between Plaintiff and Defendant on December 5, 2019 ("2019 Agreement"). SMF ¶ 11; SAMF ¶ 11. The 2019 Agreement prohibited Plaintiff from reporting for duty until he provided MDFR with a negative drug/alcohol test result, performed by the testing laboratory utilized by Defendant. SMF ¶ 13; SAMF ¶ 13.
>
> On January 6, 2020, Plaintiff took another county drug test. SMF ¶ 17; SAMF ¶ 17; ECF No. [15-1] at 191. A doctor called Plaintiff and informed Plaintiff that his results were positive for THC approximately three days after Plaintiff took the drug test. SMF ¶ 18; SAMF ¶¶ 18, 59. It is disputed whether Plaintiff subsequently failed a second drug test under Defendant's testing protocols. SAMF ¶¶ 59-62; RSAMF ¶¶ 59-62. On March 10, 2020, Plaintiff received a letter from Deputy Fire Chief Arthur L. Holmes, stating that a recommendation for his dismissal from employment with MDFR had been forwarded to Fire Chief Alan Cominsky. SMF ¶ 20; SAMF ¶ 20. Plaintiff met with Fire Chief Cominsky between March 9, 2020 and June 29, 2020. SMF ¶ 21; SAMF ¶ 21. Fire Chief Cominsky made the decision to terminate Plaintiff from his employment, effective July 13, 2020. SMF ¶ 22; SAMF ¶ 22. Deputy Fire Chief Holmes and Fire Chief Cominsky were the only two individuals responsible for Plaintiff's termination. SMF ¶ 23; SAMF ¶ 23."

Legal Lesson Learned: Second violation of the "last chance" agreement was legitimate basis for termination.

File: Chap. 9 - ADA

FL: ADA - FF PARKINSON – CITY CHANGED HEALTH INSUR. TO 2 YEARS – RETIRED FF CAN'T SUE, NOT EMPLOYEE

On Oct. 11, 2023, in Karyn D. Stanley v. City of Sanford, Florida, the U.S. Court of Appeals for the 11th Circuit (Atlanta, GA) held (3 to 0): "Because Stanley cannot establish that the City committed any discriminatory acts against her while she could perform the essential functions of a job that she held or desired to hold, her Title I claim fails. For the same reason, so do her claims under the Rehab Act and the Florida Civil Rights Act."

> "Karyn Stanley became a firefighter for the City of Sanford, Florida, in 1999. She served the City in that capacity for about fifteen years until she was diagnosed with Parkinson's disease in 2016. Although she managed to continue working as a firefighter for about two more years, her disease and accompanying physical dis abilities eventually left her incapable of performing her job. So, at the age of 47, Stanley took disability retirement on November 1, 2018.
>
> When Stanley retired, she continued to receive free health insurance through the City. Under a policy in effect when Stanley first joined the fire department, employees retiring for qualifying disability reasons, such as Stanley's Parkinson's disease, received free health insurance until the age of 65. But, unbeknownst to Stanley, the City changed its benefits plan in 2003. Under the new plan, disability retirees such as Stanley are entitled to the health insurance subsidy for only twenty-four months after retiring. Stanley was thus set to become responsible for her own health insurance premiums beginning on December 1, 2020. She filed this suit in April 2020, seeking to establish her entitlement to the long-term healthcare subsidy.
>
> ***
>
> We held in Gonzales that a former employee who does not hold or desire to hold an employment position cannot sue over discriminatory post-employment benefits. 89 F.3d 1523, 1531. We recognized that the ADA protects against discrimination in fringe benefits, such as health insurance, because these benefits have always been recognized as one example of a term, condition, or privilege of employment. See Pub. L. 101-336, § 102(b)(2), 104 Stat. 331; Gonzales, 89 F.3d at 1526 & n.9. But because the ADA prohibits discrimination only as to those individuals who hold or desire to hold a job, we reasoned that a former employee cannot bring suit under Title I to remedy discrimination in the provision of post-employment fringe benefits."

Legal Lesson Learned: Some other Circuit Courts have taken an opposite position; perhaps the U.S. Supreme Court will take an appeal and resolve the conflict.

> Note: The Court stated: "The Second and Third Circuits have held that Title I's anti-discrimination provision is ambiguous, however, and have resolved that purported ambiguity in favor of former employees. See Castellano v. City of New York, 142 F.3d 58, 66–69 (2d Cir. 1998); Ford v. Schering-Plough Corp., 145 F.3d 601, 604–08 (3d Cir. 1998)."

File: Chap. 9, Americans With Disabilities Act

File: Chap. 10. Family Medical Leave Act, incl. Military Leave

File: Chap. 11 – FLSA

File: Chap. 12, Drug-Free Workplace

File: Chap. 13 - EMS

KY: JAIL NURSE / GUARDS - "DELIBERATELY INDIFFERENT" INMATE OVERDOSING METH – DIED – NO QUAL. IMMUNITY

On Oct. 26, 2023, in Luanna Grote, Administrator of the Estate of Bradley Grote v. Kenton County, et al., the U.S. Court of Appeals for 6th Circuit (Cincinnati) held (3 to 0) that trial court improperly granted defense motion for summary judgment. Bradley Grote died of acute methamphetamine intoxication three days after his arrest and detention at the Kenton County Detention Center in Covington, Kentucky. The Court held: "Although Grote was visibly in distress when put in a booking cell at the jail, the jail's [nurse] failed to render any treatment at all or seek further medical attention from a doctor on call or emergency medical services. Grote's case exposes myriad failures by county and jail officials, including a lack of basic knowledge concerning overdoses and how to respond to them. Under the facts of this case, we hold that a jury could find that the medical provider was deliberately indifferent to Grote's need for medical attention, but not that the jail deputies acted unconstitutionally."

> "Nurse Caitlin Brand, a licensed practical nurse employed by Southern Health Partners, then made her way to booking, and arrived at around 4:30 p.m. Video 1 at 0:00. By this point, Grote's condition had deteriorated markedly. Id. He was constantly shaking and twitching, appearing to lack meaningful control over his bodily movements. Id. at 0:00–2:00. He could not sit still at all while Brand attempted to take his vital signs. Id. at 3:30. By then, Grote was covered in sweat. Id. Brand testified that upon arriving for the medical assessment, she recognized that Grote was behaving in an erratic fashion, including by twitching and being irritable. R. 116-13 (Brand Dep. at 99:2–13) (Page ID #1403). Grote told Brand that he had taken a half gram of methamphetamine. Id. at 19:24–25 (Page ID #1323). Brand then tried to take Grote's blood pressure; however, she was unable to do so because he was twitching and unable to hold still. Id. at 100:11–22 (Page ID #1404). Eventually, Brand was able to take certain vital signs, including Grote's oxygen levels. Id. at 101:14–25 (Page ID #1405). Grote's oxygen level registered at 89 percent, and he was hyperventilating. Id. at 104:8–18 (Page ID #1408). Brand never took any other vital signs from Grote, including his temperature. Id. at 101:14–103:8 (Page ID #1405–06). At this point, Grote's sweating was "noticeable." Id. at 102:19 (Page ID #1406)."

Legal Lesson Learned: Failure to take full set of vitals is example of "deliberately indifferent" to the inmate's immediate need for medical attention.

File: Chap. 13 - EMS

KY: ALLERGIC REACTION SHELLFISH – 911 SENT EMS TO RESTAURANT, NOT TO HIS VEHICLE – DIED – NO LIABILITY

On Oct. 13, 2023, in Carrie Johnson, individually and as Administratrix of the estate of Denver Stephen Johnson v. Dawn Henry, et al., the Commonwealth of Kentucky Court of Appeals, held (3 to 0; unpublished) that the dispatcher cannot be held liable under the "Public Duty Doctrine." The Court held: "Henry did nothing beyond her responsibility as a 911 operator that would create a special relationship with Mr. Johnson. She answered the 911 call and sent help, as she would for any other citizen. She also did not create a connection with Mr. Johnson and repeatedly foster the continuation of that relationship, like the officers in Gaither. Simply put, the Estate has not shown Henry owed any special duty to Mr. Johnson, beyond the duty owed by a 911 operator to the public at large. Without a special relationship, Henry owed no duty to protect Mr. Johnson from harm or accident. While Mr. Johnson's death is tragic, Henry cannot be held liable under the public duty doctrine. *** It is not enough to allege ineptitude, even shameful and inexcusable ineptitude, by a municipal agency in failing to respond adequately to a call for help. To give rise to a special relationship, the agency's response to the private party must in some demonstrable way exceed the response generally made to other members of the public."); Koher v. Dial, 653 N.E.2d 524, 526 (Ind. Ct. App. 1995) ('Standing alone, a governmental entity's dispatch of emergency services does not create a private duty.')

> "On June 2, 2021, Mr. Johnson suffered an allergic reaction after eating at Gumbo Ya-Ya, a Cajun-Creole restaurant in Lexington, Kentucky. Mr. Johnson went to his truck in the parking lot and called 911. He told Henry, the 911 operator, that he was having an allergic reaction to shellfish and could not breathe. Henry asked the address and Mr. Johnson told her he was at Gumbo Ya-Ya's on Harrodsburg Road. Henry confirmed the exact address and then told Mr. Johnson she was sending help.
>
> Emergency medical services ("EMS") arrived on the scene within five minutes and searched the restaurant and nearby area, but could not locate Mr. Johnson, who was unconscious inside his vehicle. Although Mr. Johnson was eventually found when a citizen noticed him and called 911, he later died at the hospital. His Estate filed a wrongful death claim in Fayette Circuit Court,1 alleging Henry was negligent in failing to identify Mr. Johnson's exact location when dispatching EMS.
>
> Henry filed a motion to dismiss, arguing she owed no duty to Mr. Johnson as a matter of law, citing McCuiston v. Butler, 509 S.W.3d 76, 80 (Ky. App. 2017). The trial court agreed and granted the motion. *** Absent a special relationship, Henry owed no duty to Mr. Johnson and cannot be liable for his wrongful death as a matter of law. Therefore, the trial court did not err in granting Henry's motion to dismiss."

Legal Lesson Learned: The Public Duty Doctrine protects dispatchers, and their employers, from liability.

File: Chap. 14, Physical Fitness

File: Chap. 15 – CISM, PTSD

WA: NEW PTSD LAW NOT RETROACTIVE – FF HAD EXHIBITED PTSD PRIOR EFFECTIVE DATE – NOT COVERED

On Oct. 2, 2023, in Frank DeYoung v. The City of Mount Vernon and the Department of Labor and Industries, the Court of Appeals of the State of Washington, held (3 to 0) that the new PTSD statute for police and fire, making PTSD a occupational disease, is not retroactive. The Court held that the firefighter's claim on Oct. 24, 2019 is not covered by the statute. "DeYoung also asserts that the requirement in RCW 51.32.185(5) that a firefighter must have served at least ten years before they are eligible to make a claim indicates the legislature's intent to apply the statute retroactively. According to DeYoung, applying the statute prospectively would mean that no firefighter will be eligible to file a claim for occupational disease benefits for PTSD until 2028. Id. The plain language of the statute does not support such an interpretation. The statute establishes that only firefighters who have served the minimum number of years may file a claim for occupational disease benefits for PTSD. Nothing about the provision is indicative of retroactivity."

> "DeYoung was employed as a firefighter for the City of Mount Vernon from August 2005 until November 2017. It is undisputed that, prior to June 2018, DeYoung developed and showed symptoms of posttraumatic stress disorder (PTSD) as the result of the traumatic events he witnessed as a firefighter.
>
> ***
>
> In 2018, the legislature amended RCW 51.08.142 and RCW 51.32.185, both part of the Industrial Insurance Act (the Act). Previously where mental conditions and mental disabilities caused by stress were excluded from the definition of "occupational disease," these amendments now created an exception applicable solely to firefighters and law enforcement officers permitting claims resulting from PTSD. L AWS OF 2018, ch. 264 § 2. These amendments went into effect on June 7, 2018. L AWS OF 2018, ch. 264."

Legal Lesson Learned: Legislatures when drafting new benefits for firefighters should in the statute or the legislative history make clear whether the law is retroactive.

File: Chap. 16 - Discipline

LA: "OFFICE ROMANCE" - WIFE OF ASSISTANT FIRE CHIEF DIVORCES - MARRIES DIST. CHIEF – FIRED – NO CASE

On Oct. 19, 2023, in Stacie Dellucky & Frank Dellucky v. St. George Fire Protection District, et al., U.S. District Court Judge Brian A, Jackson granted defense motion for summary judgment. The Court held: "Specifically, Frank voluntarily resigned to avoid participating in an employee disciplinary investigation, after he sent sordid Facebook messages to the co-worker referenced above. (*Id.* ¶¶ 23-29). In conjunction with his resignation, Frank executed a Settlement Agreement with the District, 'through its duly authorized Fire Chief and Appointing Authority, Gerard C. Tarleton.' *** Here, no evidence suggests that Defendants' 'policy' against Stacie marrying Frank was aimed to prohibit 'one class of people from being with another.' To the contrary, Defendants only prohibited Stacie from marrying Frank to avoid chain-of-command and workplace morale issues that would arise from Stacie being managed by Chad Roberson, the District's Assistant Fire Chief, and Stacie's ex-husband. Stacie disregarded this prohibition, married Frank, and lost her job. But this was merely an 'incidental' consequence because Defendants' actions did 'not prohibit the relationship itself.'"

> "Frank and Stacie were not married to each other when Stacie joined the District in 2013. To the contrary, each were married to other people: Stacie was married to Chad Roberson, the District's Assistant Fire Chief, and Frank was married to Nichole Dellucky, who was never employed by the District. (SOF ¶¶ 4, 7, 9).
>
> Beginning in 2016, when they were each married to other people, Frank and Stacie started dating each other. News of Frank's and Stacie's affair quickly spread throughout the District, in part because Stacie shared details of their liaisons with District employees-even in real time-as the drama unfolded. (SOF ¶ 15; *see id.* ¶¶ 11-19). In addition to their off-the-clock activities together, Frank and Stacie were spending considerable time with each other in the workplace, at the expense of their regular duties. (*Id.* ¶ 17). Defendants' unrebutted Statement of Material Facts describes this stage of Frank's and Stacie's romantic involvement in the following terms:
>
> > Rumors of an affair between Stacie and Frank spread like wildfire, and polarized employees. Frank and Stacie were being ostracized by other employees because of this rumor. Frank was having difficulty making shift relief with other district chiefs, who were friendly with Chad Roberson. Stacie and Frank's relationship was creating havoc in St. George's workplace. (*Id.* ¶ 18).
>
> On October 21, 2016, after receiving a phone call from Nichole Dellucky claiming that she caught the couple in the midst of a tryst, Chief Tarleton held separate meetings with Frank and Stacie, explaining to them that their relationship was causing problems in the workplace. Specifically, Chief Tarleton cited the couple's on-the-job behavior, and the fact that their affair was creating an obvious conflict for Chad Roberson, who was next in line to be Fire Chief, a position in which he would supervise Frank *and* Stacie. (SOF ¶¶ 21-22). At these meetings, Chief Tarleton warned Frank and Stacie that if they got

‘hooked up,’ neither could work at the District, explaining that ‘it just creates a nightmare.’ (Doc. 43-4 at 17).

It seems that, for a time, Chief Tarleton's October 2016 warning had its intended effect, and Frank's and Stacie's relationship temporarily cooled. Or, at least, there is no evidence that the couple immediately continued their affair. To the contrary, throughout 2017 and early 2018, Frank and Stacie each obtained divorces (from Nichole and Chad, respectively), and Frank made sexual advances on at least one more District co-worker, which ultimately resulted in Frank's resignation from the District in February 2018. (SOF ¶¶ 22, 23).

Specifically, Frank voluntarily resigned to avoid participating in an employee disciplinary investigation, after he sent sordid Facebook messages to the co-worker referenced above. (*Id.* ¶¶ 23-29). In conjunction with his resignation, Frank executed a Settlement Agreement with the District, “through its duly authorized Fire Chief and Appointing Authority, Gerard C. Tarleton.” (Doc. 43-10). Among other things, this Settlement Agreement contained a clause releasing ‘all claims’ among the parties, whether ‘known’ or ‘unknown,’ stating:

> 15. The parties hereby forever release, discharge, compromise and settle all claims and causes of action against each other, whether known of [sic] unknown, and whether asserted or unasserted.” (Doc. 43-10 ¶ 15).

After his resignation, Frank took a job at the Livingston Fire Protection District No. 4, where he remains to this day. (SOF ¶ 30). Stacie, however, remained at the District.

Two years later, on June 30, 2020, Frank and Stacie got married in Florida. (SOF ¶ 31).

On July 7, 2020, when Stacie returned to work, Chief Tarleton called her to his office and fired her, citing his October 2016 warning that Stacie could not continue work for the District if she “hooked up” with Frank. (SOF ¶ 32). Stacie surreptitiously recorded this conversation on her phone, in violation of District Policy….

> MR. TARLETON: I see this as being a big issue for me, so... When all this came about, I probably should have said everybody just needs to go away, and it didn't happen that way. And I've been patient and sitting on it. But when you got married to Frank, it changed the whole deal. I can't see how this can ever work out here. And if he ever sits in this chair, it's even worse. So, here's what I intend to do is, is we'll leave you on administrative leave until August the 10th. So, you'll get paid through August the 16th. And at that time we'll pay you whatever accrued leave you have on the books, whatever that number is. Don't even know what it is.
>
> MS. DELLUCKY: Okay.

After her termination, Stacie worked briefly at the Livingston Fire Protection District No. 4 (with Frank). She now works at a law firm in Baton Rouge. (SOF ¶ 36). (Doc. 44-6 at 2-7)."

Legal Lesson Learned: Many Fire Departments and political subdivisions have anti-nepotism policies.

File: Chap. 17 – Arbitration / Union Relations

AR: UNION VP TOLD CITY IAFF PLANS LAWSUIT – VP FIRED FOR ALLEGED "LYING" JOB APPLICATION - CASE PROCEED

On Oct. 13, 2023, in Shannon Glynn v. City of El Mirage, U.S. District Court Judge Michael T. Liburdi, U.S. District Court for District of Arizona, denied the defense motion for summary judgment on some of the firefighter's claims. He had worked at Buckeye FD for 26 years, and in his application to El Mirage FD he disclosed that he resigned in lieu of termination after a citizen complaint. In March, 2021, he interviewed with the City Hiring Board where he explained that his Buckeye Fire Department resignation related to an incident involving a former girlfriend and her ex-husband (the 'Buckeye Incident'). He was hired – one-year probationary period - and then promoted in Oct. 2021 as a fire engineer – another one-year probation – and he again disclosed the Buckeye Incident. The Court held: "Drawing all reasonable inferences in Mr. Glynn's favor, and as further explained below, the Court finds that Mr. Glynn pleads sufficient factual allegations to support 'a series of acts' that could establish a 'causal connection' between Defendants' wrongful conduct and the constitutional violations."

> "Throughout his employment with the City's Fire Department, Mr. Glynn was a member and Vice President of the Northwest Valley Firefighters Association, International Association of Firefighters Local 4361 (the 'Local 4361'), a labor union that advocates for employees in the Fire Department. (*Id.* ¶ 31.) Local 4361's objectives are to remedy high employee turnover and advocate for firefighter compensation. (*Id.* ¶¶ 33-34.) Mr. Glynn routinely spoke with officials in the Fire Department and City regarding Local 4361's objectives and the Memorandum of Understanding ('MOU') between the City and Local 4361. (*Id.* ¶¶ 32-33.) *** On October 26, 2022, Mr. Glynn met with Defendants [City Manager Crystal] Dyches and [HR Director Dawn] Kurek, along with non-party Deputy City Manager Nilles, to discuss the turnover and pay issues. (*Id.* ¶ 37.) At that meeting, Mr. Glynn notified Defendants Dyches and Kurek, and Deputy City Manager Nilles, that although it was not Local 4361's preference, he sought legal counsel to review the matter and bring a lawsuit. (*Id.*). *** Shortly thereafter, on November 7, 2022, the City terminated Mr. Glynn. (*Id.* ¶ 40.) At his termination meeting, Defendants Kurek and [Fire Chief Michael] Long advised Mr. Glynn that he had one week left of his promotional probation and that the City was terminating him 'for lying on his employment applications' regarding the Buckeye Incident. (*Id.* ¶¶ 40-41.) "

Legal Lesson Learned: Facts alleged by VP certainly raises possible constitutional violations.

File: Chap. 17 – Arbitration / Union Relations

NJ: ARBITRATION AWARD TO TOWNSHIP SET ASIDE – TWP ADMIN. MUST TESTIFY PLAN TO STOP EMS RESPONSE

On Oct. 10, 2023, in International Association of Fire Fighters, Local 1197 v. Township of Edison, the Superior Court of New Jersey, Appellate Division, held (2 to 0) that arbitrator's decision denying Local's grievance which trial court affirmed, is reversed. The Court held: "During oral argument [before trial court], petitioner's counsel asserted that 'in support of a final offer,' the Township business administrator on March 13, 2018, had stated 'in front of everybody' that 'the Fire Department was no longer needed for EMS response due to the Police Department responding to all 9-1-1 calls.' He argued the testimony about the Township business administrator's statement was admissible because it was made 'in support of a final offer, not a mediator settlement.'*** Because the court erred in failing to find the arbitrator had erroneously excluded the testimony about the Township's business administrator's statement, we reverse the denial of the petition to vacate the arbitration award and remand for proceeding consistent with the opinion."

> Specifically, petitioner contended in the grievance that firefighters were working outside the scope of their classification because they were being dispatched to EMS calls: On December 1, 2018[,] EMS response was to cease, as per the [MOA]. The Township[']s Business Administrator stated at that time the Fire Department was no long[er] needed for EMS response due [to] the police department responding to all 911 calls.
>
> The Fire Department has not stopped being dispatched to EMS calls and in fact the number of responses [h]as escalated. Moreover, it is undisputed that the Township is no longer operating a transport-capable vehicle and/or ambulance which includes a horizontal bed."

Legal Lesson Learned: The arbitration award is now vacated; grievance to be proceed back to arbitration.