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Legal Matters

The Fireman's Rule

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One dark and stormy night, your team is requested to transport a stroke patient from a community emergency department (ED) to tertiary care. After packaging the patient and moving her to your stretcher, you and your partner proceed out the ED doors and onto an adjacent sidewalk and to the edge of the curb. As you navigate the stretcher down from the curb, your view of the curb is blocked and you "went to step down . . . and there was nothing there, and pow," you tear the medial meniscus in your knee that will require surgery, resulting in a permanent injury and necessitating a disability retirement. It is undisputed that the hospital was responsible for maintaining the premises, which included the curb and sidewalk outside the ED. Can you sue the hospital for the damage to your knee and your subsequent disability?

The "fireman's rule" is an old common law doctrine that "bars injured public-safety responders from maintaining a negligence action against a tortfeasor whose alleged malfeasance is responsible for bringing the officer to the scene of a fire, crime, or other emergency where the officer is injured."[1,2] In other words, the fireman's rule affords that rescue personnel has the status of a licensee while upon land and performing a rescue. The rescuer cannot bring an action against the person in possession and control of the land for the breach of a duty owed to an invitee[3] and therefore operates as a qualified immunity for the persons in possession and control of the land.[4] So, if a rescuer is injured or killed while performing his or her duty, there is not an automatic remedy available against the owner or tenant of the property. Exceptions to the rule are 1) wanton, willful, or intentional wrongdoing; 2) independent acts of negligence that occur after the public safety officer arrives on the premises; and 3) when a premises owner or occupier fails to warn of known dangerous conditions of which the public safety officer is unaware.[5] Acts of negligent third parties or arsonists are not protected by the rule. The fireman's rule is the majority rule across the United States and in most cases has expanded to cover firefighters, police officers, first responders, and paramedics,[6] but a sizable minority of states (18 in all) do not currently apply the fireman's rule.* These states have explicitly declined to adopt, rejected, limited, or failed to address it at all.†

The determinative factor in applying the firefighter's rule is whether the injury sustained is related to the particular dangers that rescuers are expected to assume as part of their duties. The requisite connection between the injury and the hazards associated with the duties of a rescuer exists when the performance of the rescuer's duties increases the risk of the injury happening and does not merely furnish the occasion for the injury.[7] To illustrate this point, let's consider the Michigan case of *Kowalski v Gratopp*.[8]

Kowalski worked as a paramedic for a private ambulance service that held a contract with the city of Pontiac to provide ambulance services. On the day of his injury, Kowalski responded to a call to assist the Pontiac Fire Department for a nonemergency patient who was suffering abdominal pain. On the scene, Kowalski slipped and fell on ice that had accumulated on the walkway of the property owned by the defendant Gratopp. Kowalski tore his right bicep tendon and claims permanent restriction of movement, preventing his return to employment as a paramedic. Kowalski filed suit alleging negligence in maintaining the premises. Gratopp moved for summary judgment under the fireman's rule.[9] The trial court agreed and granted the motion for summary judgment. Kowalski appealed that decision.

The trial court relied on a Michigan Supreme Court decision—*Kreski v Modern Wholesale Electric Supply Company*. In Kreski, the Supreme Court held that "as a matter of public policy, we hold that firefighters or police officers may not recover for injuries occasioned by the negligence which caused their presence on the premises in their professional capacities. This includes injuries arising from the normal, inherent, and foreseeable risks of the chosen profession."[9] Application of the fireman's rule is limited by its very nature to public employees. It is the public that hires, trains, and compensates firefighters and police officers to confront danger. Basic to the public policy rationale underlying the fireman's rule is the spreading to the public of the costs of employing safety officers and of compensating them for any injuries they may sustain in the course of their employment. "Firefighters are present upon the premises, not because of any private duty owed the

* These states are Alabama, Colorado, Florida, Maine, Massachusetts, Michigan, Minnesota, Montana, New Jersey, New York, North Carolina, North Dakota, Oregon, Pennsylvania, South Carolina, Vermont, West Virginia, and Wyoming.

† For cases rejecting or declining to adopt the Fireman's Rule, see *Thompson v FMC Corp*, 710 So 2d 1270 (Ala Civ App 1997); *Wills v Bath Excavating & Constr Co*, 829 P2d 405 (Colo Ct App 1991); *Foster v Atwood*, 1995 Me Super LEXIS 192; *Hopkins v Medeiros*, 724 NE2d 336, 48 Mass App 600 (2000) ("the firefighter's rule has no continuing vitality in Massachusetts"); *Fisher v Swift Transp*, 2006 Mont Dist LEXIS 390; *Christensen v Murphy*, 296 Ore 610, 678 P2d 1210 (1982); *Bole v Erie Ins Exch*, 2009 PA Super 38, 967 A 2d 1017 (Pa Super Ct 2009); and *Trousdell v Cannon*, 251 SC 636, 572 SE 2d 264 (2002). See also Fla Stat § 112.182; Mich Comp Laws § 600.2965; Minn Stat § 604.06; NJ Stat Ann § 2A:62A-21; and NY Gen Oblig Law § 11-106.

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occupant, but because of the duty owed to the public as a whole."[9]

"[There is a] fundamental difference between the function of safety officers and that of other occupations peripherally involving danger. The very nature of police work and firefighting is to confront danger. The purpose of these professions is to protect the public. It is this relationship between police officers, firefighters, and society which distinguishes safety officers from other employees."[9]

Safety officers are employed, specially trained, and paid to confront dangerous situations for the protection of society. They enter their professions with the certain knowledge that their personal safety is at risk while on duty. Property owners and occupiers cannot reasonably predict visits by safety officers or control their activities while on the premises. Finally, injuries suffered by safety officers while in the course of their employment are compensable by workers' compensation, thereby spreading the cost and risk to the public.[9]

The Michigan court's interpretation is narrow in that they insist on applying it only to firefighters and police officer. The court specifically carved out emergency medical services when they opined "Paramedics are employed and paid to treat injuries or illnesses which may arise out of dangerous situations. The paramedic's occupation is one which may peripherally involve hazards, but they are not employed, trained, or paid specifically to confront those hazards."[9] Obviously, the judge does not have a full understanding of what helicopter emergency medical service physicians, nurses, and paramedic teams encounter on a daily basis.

The important trigger for invoking the fireman's rule is the nature of the danger encountered. Even in situations that involve significant dangers, the fireman's rule will apply if the risks are ones that are normally associated with a firefighter's job and should be anticipated.[10] Several cases apply the fireman's rule because the risk involved was known by the firefighters. For example, in *Armstrong v Mailand*,[11] the explosion of a liquid propane gas tank was a known risk. In *Jackson v Velveray Corporation*,[12] the fireman's rule was applied in a case in which a burning wall collapsed and killed a firefighter. In Jackson, the court held that "[t]he collapse of a floor, ceiling or wall of a burning building, without more, is a hazard a fireman must ordinarily anticipate. Undue risk beyond these inherent hazards is something more. It includes hidden perils . . . and other conditions independent of the fire itself."[12] What the court is enforcing here is that regardless of how dangerous a fire is, the fireman's rule will apply unless the injuries are caused by an independent harm or intentionally misconduct. If there is malice, criminal prosecution is an available remedy.

In the beginning, the hypothetical suggested that you could sue the hospital for negligence in not maintaining the sidewalk and curb in such a fashion that eliminated their liability. The hypothetical was constructed from *Madonna v American Airlines*.[13] In the actual case, Frank Madonna, a New York Port Authority police officer responded to a call for an unconscious person in the American Airlines terminal. When carrying the stretcher out of the terminal, Madonna injured himself by falling off the curb. Madonna sued American alleging negligence for failure to maintain the curb, claiming that the firefighter's rule does not preclude recovery on his common law negligence claim. The court disagreed and Madonna was barred from any recover.

By virtue of the name alone—fireman, the concept shows its age. A number of states have abandoned the rule, finding it to be unfair to rescuers injured in the line of duty. Because the majority of states continue to recognize the rule, courts have attempted to modernize it by allowing several exceptions that allow emergency rescuers to sue under certain circumstances.

References

1. 62 AM. JUR. 2D Premises Liability § 432 (1990).
2. *Higgins v Rhode Island Hospital*, 35 A 3d 919 (RI 2012).
3. *Morin v Bell Court Condominium Ass'n*, 223 Conn 323, 328 (1992).
4. *Roberts v Rosenblatt*, 146 Conn 110, 113 (1959).
5. 62 AM. JUR. 2D Premises Liability § 433 (1990).
6. *Babes Showclub, Jaba, Inc. v Lair*, 918 NE 2d 308, 313 footnote 3 (Ind 2009).
7. *Madonna v American Airlines*, 82 F 3d 59 (2d Cir NY 1996).
8. *Kowalski v Gratopp*, 442 NW 2d 682 (Mich Ct App 1989).
9. *Kreski v Modern Wholesale Electric Supply Co*, 390 NW 2d 244 (Mich Ct App 1986).
10. Lopson, 31 Cal 3d at 371, 644 P 2d at 827-28, 182 Cal Rptr at 635.
11. *Armstrong v Mailand*, 284 NW 2d 343 (Minn 1979).
12. *Jackson v Velveray Corp*, 82 NJ Super 469, 475, 198 A.2d 115, 118-19 (1964).
13. *Frank Madonna v American Airlines*, Inc, 82 F 3d 59 (2d Cir 1996).