



Cumberland County Fire Chief's Association
Minutes of January 28, 2013 Monthly Meeting



The meeting was hosted by EMS base and we thank Chief Pearce and his staff for their hospitality.

Opening Prayer: Deputy Fire Chief J.D. Pone, provided the opening prayer.

Roll Call: Roll call was conducted with 17 departments and 5 associate members present.

Members Absent:

Fire Departments: Cedar Creek, Hope Mills, Stedman, Vander

Associate Members: Christian Firefighters, FTCC, FB EMS, Sheriff's Office, NCSHP, Life Link

Approval of Minutes: Minutes from December 2012 meeting were approved.

Guests: None.

Vendors Present: None.

Treasurer's Report: The fund balance as of January 28, 2013 is \$ 345,987.75.

Meeting Point of interests:

Next Chief's Meeting will be February 25, 2013 hosted by the Beaver Dam Fire Department. The meeting will begin at 7:00 pm. Dinner will be served.

- President Johnson advised that the Fayetteville Fire Department will pick up air truck coverage and duties in February 2013.
- President Johnson provided a packet with legal briefs and various informational materials.
- President Johnson briefly updated the membership on the Mobile Data Terminal (MDT's) installation. President Johnson needs everyone to report their issues to him, Chief McLamb and Director Randy Beeman. Timmy Mitchell is to look into why the CCSD MDT's are working more efficiently

than the Fire Departments. There was a lot of discussion on the Verizon service of 3G versus 4G.

- President Johnson thanked everyone for their support in 2012. The organization had numerous accomplishments and we will work together to bring some resolution to the computer and technology issues.
- President Johnson advised everyone that we now have all of the new permanent tags for our trailers.
- President Johnson updated everyone on the pension fund issues, the organizations assistance to Fort Bragg Fire and Emergency Services issue with the Community College tuition waivers and the VIPER system currently managed by the NCSHP.

OLD BUSINESS

1. President Johnson stated that he is still in contact with Utilities about our upcoming technical user class concerning our Rockets and Mobile Data Computers. This class will be forthcoming in the near future and he urged all departments to send representation in order to better understand our technology and the associated benefits.
2. A discussion on VHF re-banding ensued. Deputy Emergency Services Director Tim Mitchell stated that the problem with transmitting and receiving has been corrected. He stated that the VHF output was increased from 100 Watts to 250 Watts. Although many members have not recognized any variance within their VHF receiving coverage, there is a problem with transmitting whereas the out-put frequency will be off, which could cause problems with the FCC and your license. Receiving is not a problem and it appears that both pagers and non-compliance VHF radios are still receiving the signal as usual. President Johnson reminded everyone that Amerizon was hired to update each department VHF-License.

NEW BUSINESS:

1. President Johnson stated that Gene Booth will be leading a committee to update our current outdated fire prevention ordinance and include a Knox Box Program. Chapter 5, Fire Service Features and Section 506 of the North Carolina Fire Prevention Code provide the means when required by the fire code officials to install Key Boxes. The Committee will study the feasibility between all jurisdictions currently participating with automatic aid to have access to the key box (Knox Box) system. Any member that wants to be part of the committee is to contact the Committee Chairman Gene Booth via e-mail at wbooth@co.cumberland.nc or Office phone 910-678-7641. Gene will

e-mail and inform the membership of times and location of any committee meetings.

2. President Johnson reminded the members about the up-coming Mid-Winter North Carolina Association of Fire Chief's conference in Concord, North Carolina next week starting on Wednesday February 6 and running through Saturday February 9, 2013. Senior Rating Inspector AC Daniels is scheduled to present an ISO class announcing all the new changes with the Rating Inspection that will go in effect here in North Carolina on March 1, 2013. He urged any member that can attend the conference to attend. The conference also provides officer professional development classes and concludes with the annual Career and Volunteer Fire Chief of the Year Banquet.

COMMITTEE REPORTS:

ID CARD COMMITTEE Lt. Tara Whitman (Stoney Point) Chairperson

- FYI. Fire Chiefs are required to send a signed letter or memo with a firefighter requesting an ID Card. For any questions or an appointment contact 424-0694 or e-mail at tara@stonepointfire.com

FIRE PREVENTION/EDUCATION COMMITTEE Retired Chief J.F. Hall, Chairperson

- Retired Chief J.F. Hall advised the members that this year's fire prevention theme will focus on the use and installation of smoke alarms.

COMMUNICATIONS COMMITTEE Chief B. Bullard (Stedman) Chairperson

- None.

STANDARDS & POLICY COMMITTEE Chief K. Hall (Cumberland Road) Chairperson

- No report.

MEMORIAL COMMITTEE Chief R. Marley (Pearce's Mill) Chairperson

- Chief Marley requested that the association look into a flag designed for the association or the County Fire Service.

AUTOMATIC AID/MUTUAL AID COMMITTEE Chief Ake (Beaver Dam) Chairperson

- No report.

FINANCE COMMITTEE Deputy Chief Freddy Johnson Jr. (Stoney Point) Chairperson

- No report.

RESCUE COMMITTEE Deputy Chief Hank Harris (Cotton FD) Chairperson

- No report.

BULK PURCHASE COMMITTEE Chief Pearce (EMS) Chairperson

- No report.

FIREHOUSE / MCT COMMITTEE Chief TJ McLamb (Spring Lake) Chairperson

- Chief McLamb brought the membership up-to-date on the recent Firehouse outage as well as required solution in order to better serve our clientele when trouble shooting. A solution he recommended was for each department to provide access in a read only mode to County IT. He stated that it was imperative for IT to be able to get to the second log in screen in order to troubleshoot. Currently IT can only go to the first log in screen which does not provide information as to the on-going issues that require corrections. He stated that can be set up in a read only mode. He will provide additional information on the subject.
- Chief McLamb advised that the City of Fayetteville (COF) has been moved over on to the county server and the entire county fire service is now on the same server. This will provide additional benefits whereas the COF IT staff will be part of the accessible staff for Firehouse Server IT Issues.
- Chief McLamb talked about a 30 minute time limit for a Firehouse user that has become inactive or no movement on the key-board. This simply means that Firehouse will automatically log the account off. In order to get back into Firehouse the user simply logs back in. Currently there are users on the system with no activity for hours at a time.
- He stated that his committee meets regularly and he will keep us informed.

SPECIAL RESPONSE TIME COMMITTEE - Chief Hill (WCFD/FFD) Chairperson

No report.

ASSOCIATE MEMBERS REPORT

EMERGENCY SERVICES DIRECTOR/ ECC-911 (Randy Beeman, Director)

- Timmy Mitchell advised everyone that he needs the run cards turned in as soon as possible

EMS DIRECTOR: Brian Pearce, Director

- No report.

HAZMAT BC Calvin Bishop, FFD - POC telephone for HAZMAT is 433-1729

- No report.

FORESTRY DISTRICT Vacant, County Ranger

- President Johnson recognized Bill Hellmuth with North Carolina State Forestry Department. Bill introduced himself and gave an update on the vacant County Ranger Forestry Position he also introduced Craig Gottfried. Both will be added to our e-mail roster and President Johnson invited both to attend our monthly meetings.
- Bill Hellmuth –(Forestry 6) 910-309-8651 bill.hellmuth@ncagr.gov
- Craig Gottfried – (Forestry 7) 910-309-8602 craig.gottfried@ncagr.gov

FTCC Ernest Ward, Director

- No report.

SHERIFF'S OFFICE Sheriff Butler

- No report.

CHRISTIAN FIREFIGHTERS Chaplain Casanova

- No report.

NC HIGHWAY PATROL

- No report

COUNTY COMMISSIONERS Fire Commissioner Ed Melvin

- No report.

FOR THE GOOD OF THE ASSOCIATION:

- Chief Major advised that Assistant Chief Mike Allen will retire on March 1, 2013. He has served for 40 years. Congratulations Chief Allen
- Chief Melvin advised that the Fort Bragg Fire and Emergency Services received their Heavy Rescue Certifications for both of their units on January 23, 2013.

ADJOURNMENT: A motion was made to adjourn by Assistant Chief Scott Bass, seconded by Chief Owen Harris. The meeting was adjourned at 2015 hours.

Respectfully Submitted By:

Freddy L. Johnson

Freddy L. Johnson Sr. CFO
Fire Chief / President

Mark A. Melvin

Mark A. Melvin, CFO
Fire Chief / Secretary

10 Enclosures

1. Roll call
2. Treasurer report
3. Legal brief's
4. Training site - OSFM
5. DMV report
6. Pension fund letter
7. Letter from Senator Meredith on Community College Waiver
8. Safety report for firefighters
9. 2012 NC Firefighter fatalities
10. Memo from Stephen Fox on CPS program

**CUMBERLAND COUNTY FIRE CHIEF'S ASSOCIATION
ROLL CALL 2013**

MEMBERS PRESENT (21)	17																			
ASSOCIATES PRESENT (11)	5																			
Cumberland County Fire Chiefs Association	28 - Jan - 13																			
MEMBERS																				
BEAVER DAM STA 26	P																			
BETHANY STA 12	P																			
CEDAR CREEK STA 8	A																			
COTTON STA 4	P																			
CUMBERLAND ROAD STA 5	P																			
EASTOVER STA 1	P																			
EMS EMERGENCY MEDICAL SERVICES	P																			
FAYETTEVILLE FIRE DEPT	P																			
FORT BRAGG FIRE DEPT	P																			
GODWIN - FALCON STA 17	P																			
GRAYS CREEK STA 18	P																			
GRAYS CREEK STA 24	P																			
HOPE MILLS STA 21	A																			
PEARCE'S MILL STA 3	P																			
SPRING LAKE STA 22	P																			
STEDMAN STA 23	A																			
STONE POINT STA 13	P																			
STONE POINT STA 19	P																			
VANDER STA 2	A																			
WADE STA 16	P																			
WESTAREA Stations 15,20,25	P																			
ASSOCIATE MEMBERS																				
HAZMAT	P																			
SHERIFF'S OFFICE	A																			
HIGHWAY PATROL	A																			
CC EMERGENCY SERVICES	P																			
FORESTRY	P																			
FTCC	A																			
COUNTY COMMISSIONERS	P																			
CHRISTIAN FIREFIGHTERS	A																			
LIFE LINK	A																			
FORT BRAGG EMS	A																			
RETIRED CHIEF OFFICERS	P																			

Special Notes:

CODES: (P) - Present (A)-Absent (E) - Excused

Melvin, Mark A CIV USARMY IMCOM ATLANTIC (US)

From: spfd1301@gmail.com on behalf of Freddy Johnson [fjohnsonsr@stonepointfire.com]
Sent: Tuesday, January 29, 2013 7:13 PM
To: Melvin, Mark A CIV USARMY IMCOM ATLANTIC (US)
Subject: Fund Balance

Mark the fund balance as of January 28, 2013 is \$ 345.987.75

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Legal Briefings for Fire Chiefs

How fire chiefs, fire commissioners, and other fire service officers use the law to protect their communities... their departments... their officers... and themselves.

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In This Issue

Termination – Fire Chief – “Anti – Slapp” Statute and Meritless Claims

The fire chief was filmed by other firefighters gassing up his personal vehicle with city gasoline. After an investigation, the fire chief was terminated. However, it is clear that the former fire chief has had his disagreements with the firefighters' union.Page 2

Termination – Abuse of Sick Leave?

An outspoken firefighter was terminated for abuse of sick leave. He charged that he was being retaliated against for speaking out about practices and policies at the fire department. He also brought a *whistle blower* complaint about sexual harassment by a battalion chief which was dismissed. When his appeal failed, he tried to appeal through a different administrative process involving the same facts. Should he be *estopped* (“legally stopped”) from doing so?Page 3

Disability - Heart Disease – Presumption – Work Related

Firefighter was diagnosed with a heart condition and applied for workers' compensation benefits. The insurer challenged the presumption that the heart condition was work-related, thus compensable, by providing the testimony of a physician. Was there clear and convincing proof that the firefighter's disease was *not* work-related?Page 5

Disability - Duty Disability - Benefits Denied – Fall From Ladder

The accident occurred during a training exercise. The claimant, a deputy district chief, injured his back and was treated. The medical physicians opined that the claimant reached his maximum recovery and that he could assume duties of a deputy district chief but not a firefighter. His claim for benefits was denied.Page 6

Immunity – Fire Suppression – Damage to Owner's Equipment

Fire chief directed firefighter to use the property owner's equipment to move flammable materials away from the fire. The owner did not give permission, and the equipment was damaged in the process. The owner sued the fire department and firefighter. Are they immune?Page 7

In The Next Issue

Hiring Practices Challenged – Discriminatory?

Firefighter applicant was not hired based on considerable evidence, including psychological examination reports, indicating that the applicant did not have the ability to sufficiently evaluate and process important information during stressful situations.

Legal Briefings for Fire Chiefs

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Termination – Fire Chief

Gassing up his personal vehicle – is there more? – “anti-SLAPP” defense

Editor’s Note: The anti-SLAPP statute was enacted to reduce the number of meritless lawsuits that are filed. It accomplishes this by providing a special procedure for striking meritless and chilling causes of action at the earliest possible stages of litigation. Gerbosi v. Gains, Weil, West & Epstein, LLP, 193 Cal. App. 4th 435 (2011).

The City of Alameda, California (“City”) adopted a resolution establishing the position of fire chief as an “unrepresented classification not included in any bargaining group.” The City’s charter provided that the fire chief shall serve at the pleasure of the City Manager.

Debra Kurita (“Kurita”), the City Manager at the time, offered the job to David Kapler (“Kapler”) with a letter stating that his status would be that of an “employee at will” (he can be fired for any legal reason or no reason). Kapler started his employment as fire chief on October 1, 2007, the terms of which were set forth in an August 17 letter and oral representations made by Kurita.

The letter specified that Kapler would be entitled to “post-retirement insurance benefits” unless he voluntarily resigned within three years of service to the City. The letter also gave Kapler the choice of a City owned vehicle to be used for official business or a \$250 per month allowance for the use of his personal vehicle. The second option would necessitate the installation of emergency response equipment. Further, if he opted for the reimbursement allowance, Kurita orally stated that Kapler could use gas from City owned gas pumps.

Kapler opted for the allowance. He had a pickup truck which he would use mostly for City business. Kapler also owned a BMW sedan, which he would occasionally use for City business.

Later, firefighters witnessed Kapler gassing up his BMW and took photographs as evidence. The pictures were sent to the president of the firefighters’ union, Dominick Weaver, who passed them on to the interim City Manager, the Mayor, and the local media.

Shortly, the pictures made their way to the San Francisco Chronicle and other larger media outlets.

On September 1, 2010, the new City Manager, Ann Marie Gallant (“Gallant”) sent a letter to Kapler advising him that he was being placed on administrative leave while the City investigated his personal file, City documents, and City officials including Kurita.

Kapler could not recall the exact particulars of the conversation with Kurita, but he vigorously denied violating the terms and conditions of his employment. However, Kurita recalled making it clear that the gas benefit was for the vehicle used for City business only. Thus, the free gas would not be for the BMW.

Gallant prepared a report dated September 15, 2010 concluding that Kapler fueled his BMW with City owned gas without authorization. On September 17, 2010, the City sent a letter to Kapler advising him that he was to be terminated as of September 22, 2010 and that he would not be entitled to a “pre-termination *Skelly* meeting” because of his “at will” status.

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He would be allowed to meet with the City Manager. Kapler asked for a later time so that he could bring his attorney.

During the meeting, Kapler denied that his use of City owned gas was unauthorized, and he proposed a settlement wherein the City would pay him \$75,000 and provide post-separation insurance benefits. On November 3, 2010, the City Council rejected the settlement and intended to terminate Kapler.

Kapler resigned in an effort to preserve a 40-year career and his reputation. He was convinced that the photographs and the termination process were politically motivated in retaliation for fiscal decisions which the union objected to. Kapler filed an administrative appeal which the City declined.

Kapler sued the City and named City officials ("Defendants"), alleging nine causes of action, including: breach of contract; intention infliction of emotional distress; breach of the implied covenant of good faith and fair dealing for not providing his post separation benefits; wrongful termination; constructive discharge, and violation of the Firefighters Procedural Bill of Rights ("FFBOR").

Defendants demurred to the complaint, and moved to strike all individual defendants. They also moved to strike all causes of action under the anti-SLAPP statute (Strategic Lawsuit Against Public Participation.) The trial court sustained the demurrer (to dismiss the complaint) with leave to amend. The trial court also dropped the motion to strike the individual defendants pending the first amended complaint. Later, the trial court denied Defendants' anti-SLAPP motion.

The City appealed the denial of the anti-SLAPP motion.

Decision: Kapler's breach of contract claim with regard to the denial of the alleged deprivation of post-resignation benefits is affirmed. The denial of the anti-SLAPP motion is reversed.

The challenged conduct is protected under the anti-SLAPP statute and Kapler has failed to demonstrate a probability of prevailing on the merits. A number of the nine causes of action are not matters of public concern, but since they are coupled with other charges that are matters of public concern, all of the causes of action will be considered under the anti-SLAPP statute.

The only cause of action wherein Kapler might prevail is the denial of his post resignation benefits. Here, there is a conflict between the terms of his employment offer and the applicable statute. All of the other causes of action show little likelihood of success on the merits. Thus, the anti-SLAPP motion should have not been denied by the trial court.

Citation: Kapler v. City of Alameda, et al., Court of Appeal of the State of California First Appellate District Division One (2012).

Termination – Abuse of Sick Leave?

Retaliation for whistle blowing?

Issue: Was there sufficient evidence to support the termination, separate and apart from any allegation of retaliation?

Mission Statement

Our intention is to report legal matters and the outcomes of lawsuits to fire service officers in order that they learn from the experiences of their colleagues. We do not give legal or any other professional advice, nor do we guarantee the accuracy of our content. Rather, we strongly urge subscribers to have access to competent, experienced attorneys. We hope that this information will help you avoid needless litigation; successfully defend against legal claims that are unavoidable; and use the law to protect your community.

Laws and court decisions are frequently changed, and what you may read in this and other publications might not pertain to all jurisdictions and may have been superseded by new laws, a more current decision, or a different interpretation of the law. Case law and statutes change without notice. Thus, you should not rely on this or other services without first seeking advice from your attorney.

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Around the Nation

Settlement - \$325,000 – Indiscretions of Fire Chief

Volunteer firefighter dismissed after making allegations

A female volunteer firefighter ("Claimant") sued the fire chief, fire board and a number of named parties alleging a number of charges including cyber fraud, assault, sexual harassment, death threats (by the fire chief), spoliation of evidence from a fire scene, and false imprisonment.

The fire chief named in this lawsuit was hired in 2009 as a replacement for the former fire chief who was discharged at that time. The new fire chief was placed on leave and later resigned after the lawsuit was filed. These claims were examined by a county attorney who decided not to file any criminal charges related to this action. However, Claimant pursued her claims in this civil action.

Claimant demanded compensation for her medical treatment, lost benefits and earnings, as well as lost retirement benefits.

The insurance company representing the fire district will cover the settlement, but some predict that the cost of this action will have an upward impact on future insurance costs.

The settlement included a frequently used provision where parties will not admit to any liability nor will they comment any further on the particulars of the allegations on the settled lawsuit.

The fire chief was named in 17 of the 27 counts of the lawsuit, and the fire board was named in 16. The fire chief was alleged to have verbally threatened Claimant and her family in front of witnesses. Claimant also alleged that the fire chief and others

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Steven Winters ("Winters,") was hired as a firefighter with the Union City Fire Department in 1984. In 1997, Winters was promoted to the rank of lieutenant and later to captain until 1999 when the Union City Fire Department merged with other fire departments to form the North Hudson Regional Fire and Rescue ("Regional.")

Winters apparently had a reputation for speaking out about workplace practices and policies with which he disagreed. At one point he allegedly acted as a *whistle blower* involving a sexual harassment charge against a battalion chief. However, this charge was ultimately dismissed as the battalion chief was exonerated.

Later Winters was terminated by Regional following two close-in-time proceedings involving two separate and distinct disciplinary matters. The first incident resulted in a demotion and the imposition of a sixty day suspension. The second incident involved allegations of the abuse of sick leave.

These matters were considered by the Civil Service Commission ("Commission") and were sent before the Office of Administrative Law ("AOL"). Winters claimed that he was being retaliated against for his previous actions. The administrative law judge granted summary judgment, reasoning that Winters failed to provide sufficient evidence of retaliation.

The Commission conducted a *de novo* review where it considered all of the evidence once again. It determined that Winters had "committed, among, other infractions, conduct unbecoming a public employee ... abuse of sick leave by working two other public sector jobs while receiving public benefits." The Commission issued a statement that, in light of the "egregious" nature of the misconduct, removal was the appropriate discipline. The Commission issued a strongly worded decision charging that Winters' misconduct was in breach of the public trust.

Winters filed an unsuccessful appeal of the Commission's decision, but he received no relief. He then filed a Conscientious Employee Protection Act ("CEPA"), continuing to argue that his termination was based on retaliation. The Appellate Court granted Winters leave to bring the CEPA action.

The Regional appealed to the Supreme Court of New Jersey, contending that Winters should be estopped from bringing the CEPA appeal.

Decision: Reversed.

"When an employee and employer engage in a system of public employee discipline and the employee raises a claim that employer retaliation at least partially motivated the decision to bring the charge or the level of discipline sought, both the employee and employer must live with the outcome, including the preclusive effect on related employment discrimination litigation as a matter of the equitable application of estoppel principles."

Here, retaliation was the central theme of Winters' arguments and he chose not to present his comprehensive proof at the administrative level. Thus, he should be estopped from a "second bite of the apple."

Winters was justifiably terminated for reasons completely removed without even a hint of retaliation.

The court noted that a CEPA action is important to the imposition of fair discipline. However, it is tied into the litigation system, and the two systems are not completely independent of each other.

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The Court noted that the Commission's de novo review of this matter weighs heavily in the Court's resolution of this appeal. The matter ends here. In the interest of finality involving consideration of the same facts, Winters is estopped from bringing a CEPA appeal.

Citation: Winters v. North Hudson Regional Fire and Rescue, et al., A-45, A-46, A-47, 066968, Supreme Court of New Jersey (2012).

Heart Disease – Presumption – Work Related Sufficiency of proof

Issues: is a firefighter's heart condition presumed to be work related? If so, what standard of proof is required to refute that presumption?

Roger Thompson ("Claimant"), a firefighter, suffered a heart attack while on active duty. He filed a claim for workers' compensation benefits. SAIF Corporation ("SAIF"), the insurer, denied the claim, pointing to the medical opinions of Drs. Semler and Dawley.

The case was heard by the administrative law judge ("ALJ") who decided that this evidence was sufficient to overcome the "firefighter presumption" in the applicable statute.

ORS 656.802 (4) is typical of many "presumption" statutes and provides: "Death, disability, or impairment of health of firefighters of any political division who have completed five or more years of employment as firefighters, caused by any disease of the lungs or respiratory tract, hypertension or cardiovascular-renal disease, and resulting from their employment as firefighters is an occupational disease. Any condition or impairment of health arising under this subsection shall be presumed to result from a firefighter's employment.

However, any such firefighter must have taken a physical examination, upon becoming a firefighter, or subsequently thereto, which failed to reveal any evidence of such condition or impairment of health which preexisted employment. Denial of a claim for any condition or impairment of health arising under this subsection must be on the basis of clear and convincing medical evidence that the cause of the condition or impairment is unrelated to the firefighter's employment."

The parties do not dispute the fact that Claimant's heart attack is presumed to be work related. However, SAIF denied the claim contending that the medical opinions of Drs. Semler and Dawley amounted to clear and convincing evidence that would overcome the presumption.

Dr. Semler opined that Claimant's heart attack was caused by atherosclerosis, which was unrelated to Claimant's employment as a firefighter. Initially, Dr. Dawley agreed with the opinion of Dr. Semler that Claimant's condition was atherosclerosis, not related to his employment. However, he later stated that Claimant did not really have that condition, explaining that "heart attacks are a random biologic event due to plaque rupture, acute blood clot formation in an artery." In the end, Dr. Dawley was not able to say with authority that Claimant's heart attack was not work related.

Dr. Semler stated that he was unaware of "any scientific evidence that firefighting *per se* leads to atherosclerosis." He further conceded that the

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Around the Nation

engaged in an effort to use Facebook as a means of harassing her.

Settlement - \$75,000

Vacation pay dispute – early retirement buyout dispute

Seven former firefighters who accepted an offer of early retirement sued the city alleging they were owed compensation for six weeks of vacation time. The parties reached an agreement wherein \$75,000 was to be placed into a trust account owned by the law firm which represented the former firefighters. The amount is intended to cover all of the disputed vacation compensation but also all legal costs.

The settlement agreement also included the typical provision that neither party admits any fault or culpability and that the former firefighters would take no further legal action based on the facts presented in this lawsuit or for any lost wages or expenses that might have accrued during their careers as firefighters for the city.

Settlement - \$31,545

Workers' compensation claim

The city council has voted to approve a settlement of a workers' compensation claim filed by a firefighter who sustained injuries during a fire suppression incident. The firefighter was on the roof of a burning building and injured his shoulder as he was trying to remove plywood as a means of opening a vent for the flames.

Lawsuit Filed – Firefighters Challenge New Staffing

City firefighters have filed a lawsuit, asking the court to promote three firefighters to the rank of lieutenant.

(Continued on next page)

Around the Nation

This comes at a time when the city council, struggling with an extremely tight budget, is considering two new ordinances which will have the effect of linking firefighting and public safety staffing and promotions to what is available in the city budget.

At the time the lawsuit was filed, there were sixteen lieutenants in the fire department.

One of the proposed ordinances will dictate the maximum number of lieutenants.

However, there is a provision in this proposed ordinance to allow the director of public safety to ask the city council to add certain positions for a maximum of one year even if the budget for that year is not sufficient to cover this cost.

There is a staffing ordinance which provides that a lieutenant should be assigned to each of the city's fire stations for every shift.

However, in recent years, in order to comply with this ordinance, some senior firefighters who are not lieutenants have been assigned to that rank on a temporary basis to cover the shifts. Those temporarily assigned have been paid extra for those shifts.

City officials have taken the position that the city's budget trumps that staffing ordinance.

Lawsuit Filed – Taxpayers Challenge Fire Prevention Fee

Illegal tax?

Editor's Note: With each issue, we are reporting more and more contentious cases being filed or decided all related to budgets and funding. We anticipate in 2013 more of such cases as there seems to be no end to tight local

Over 800,000 California property

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cause of this disease remains debatable. Nonetheless, Dr. Semler noted that the current consensus was that the disease was caused by a multiple of factors including: smoking; cholesterol disorder; diabetes; hypertension; obesity, etc. Dr. Semler continued that Claimant's employment as a firefighter played "no role whatsoever" in his atherosclerosis and heart attack."

Claimant appealed the denial of his worker's compensation claim.

Decision: Reversed.

SAIF has not established, by clear and convincing medical evidence, that the cause of Claimant's heart attack is unrelated to his employment. Thus, Claimant is entitled to the presumption that his heart attack was work related.

Claimant was also awarded attorney fees and reasonable compensation for the costs of expert testimony and witnesses.

Citation: In the Matter of the Compensation of Thompson, WCB Case No. 10-06391, Oregon Workers' Compensation Division (2012).

Duty Disability Denied?

Medical opinions conflict with deputy district chief

Issues: If the disabled applicant cannot perform the duties as a firefighter, is he able to perform the duties of a deputy district chief? If so, is he eligible for duty disability benefits?

Daniel Payne ("Payne") is a deputy district chief with the Chicago Fire Department ("Fire Department"). On May 10, 2009, Payne was involved in a training accident at the fire station during which he was climbing a "tower ladder" that was about 10 to 12 feet high. At some point during the exercise an actual emergency was called in.

Payne tried to climb down the ladder to respond to the emergency when he fell to the station floor. In doing so, Payne injured his right shoulder and was transported to the hospital.

While at the emergency room, Payne was diagnosed with tenderness at his shoulder and a decreased range of motion. An X-ray showed no acute abnormality to the right shoulder, and Payne was released to go home.

Payne continued to suffer pain to his shoulder, and he went to his own physician, Dr. Bernard Bach ("Dr. Bach") who ordered an MRI. Dr. Bach examined the MRI results and found some damage to the rotator cuff but no tear. Payne was treated with a cortisone shot and ordered to remain off work until he recovered.

Payne went through a considerable amount of further treatment and physical therapy. In March 2010, Dr. Bach opined that Payne had plateaued in terms of his recovery and that he could return to work with certain limitations with regard to lifting certain amounts of weight.

On April 6, 2010, Payne applied to The Retirement Board of Firemen's Annuity and Benefit Fund ("Board") for disability benefits. He testified that he had been employed as a firefighter for 36 years and could have retired with a full pension, but he decided that he would keep working as a deputy district chief. Payne was examined a number of times, and Dr.

Continued on the next page ➤

Motto could not determine surgery had been recommended, but he was aware that Payne would refuse any type of anesthesia.

Dr. Motto also testified that, although surgery could relieve the problem, without it he could perform the duties of a district deputy chief without surgery, as long as his duties were administrative and supervisory.

In the end, the Board denied disability benefits, deciding that Payne sustained only a minimal tear of his rotator cuff and that he could perform the duties of a district deputy chief.

Payne appealed by bringing an action in the circuit court asking the court to review the Board's decision. The circuit court affirmed the Board's decision, and Payne appealed.

Decision: Affirmed.

Dr. Motto testified that Payne was able to perform all of the listed functions in his current position without surgery. Payne also underwent a functional capacity evaluation where it was revealed that there were no limitations with simulated activities except for cardiovascular fatigue. While Payne could not assume the duties of a firefighter, he is able to function as a district deputy chief.

The court noted that Payne failed to prove that a district deputy chief is required to respond to emergencies, nor was there any evidence presented that his own physical restrictions would prevent him from responding to emergencies.

The record contains sufficient evidence to support the Board's decision.

Citation: Payne v. The Retirement Board of the Firemen's Annuity and Benefit Fund of Chicago, No. 1-11-2435, Appellate Court of Illinois First Judicial District Second Division (2012).

Immunity – Fire Suppression

Firefighters uses and damages owner's equipment to fight fire

Issues: Was the fire department immune from liability for damaging privately owned equipment at the fire scene? Was the firefighter, himself, who drove the equipment in an effort to prevent the fire from spreading, immune from liability?

On October 3, 2010, a 911 call was made to the Village of Cygnet Fire Department ("Fire Department") about a fire at the Bates Recycling, Inc. ("Bates Recycling") facility. Fire Chief Luke Schwartz ("Chief Schwartz") was the on-scene commander.

Bates Recycling had been used as a scrap yard with substantial pile of acetylene canisters located within ten feet of the fire. The property was well known by Chief Schwartz and the Fire Department. There had been a number of fires in the past and some of those fires were allegedly intentionally set.

Chief Schwartz directed all firefighters at the scene to keep the fire away from the canisters and other flammable materials. The canisters were pressurized and could explode if they came in contact with the flames. There were also high tension wires above the fire that could break and fall

Continued on the next page ➤

Around the Nation

owners ("Claimants") who reside in areas considered to be at risk of costly wildfires are targeted for paying fire prevention fees of \$150.

The subject area consists of about 30 million acres. This annual fee is intended to offset over \$148,000,000 already spent in fighting wildfires. State officials report that only \$93,000,000 has been allotted for this purpose in the most recent budget.

A growing affected taxpayer group is mounting a vigorous challenge calling the fee a *veiled illegal tax*.

The State has reported that 300,000 bills have been sent out, and have received back over 10,000 appeals, all claiming that the fee is an illegal tax. By the end of the year all 800,000 will have received their bills.

The central element of the Claimants' case is that since the fee is a tax, it should have been passed by a two-thirds vote of the State legislature rather than a simple majority.

They also contend that by calling the "tax" a fee, the State is circumventing the provisions of *Proposition 13*, which limits the State's taxing authority.

The State's response points to the costs of past wildfires and argue that these funds will provide a source of stable funding.

The State of California has been experiencing extremely severe budgetary problems, and fighting wildfires can have the effect of throwing budget allotments for fighting wildfires totally off kilter.

Next Month

Union Challenges Unilateral Changes to Contract

Citing critical budget problems, the city changed retirement benefits for former firefighters. The firefighters' union demanded arbitration, and city officials refuse claiming that retired firefighters are no longer employees.

into the fire.

The fire was extinguished in a few moments, but Chief Schwartz was still concerned about the canisters. He noticed an excavator owned by Bates Recycling on the property which might be used to move the pile of canisters. Since there were no employees at the scene, Chief Schwartz noticed that firefighter Andy Socie ("Socie") was there and had experience driving such equipment. This excavator was rigged with a rake, which could be used to rake the area of the fire to ensure that it would not rekindle at a later time. Chief Schwartz was aware that many of the firefighters at the scene were volunteers, and he was reluctant to keep them at the scene and away from their full time jobs any longer than possible.

While Socie had considerable experience operating excavators, he did not have experience using such equipment for raking. Nonetheless, Chief Schwartz directed Socie to retrieve his universal CAT keys from his truck. Socie did not notice any damage to the excavator when he started raking, nor did he notice any damage any when he finished. While he was raking, the ground temperature was frequently monitored to avoid any damage to the machine.

When the fire was out, firefighters left the scene. Chief Schwartz and Socie returned about 12 hours later, and they were met by Christopher Bates ("Bates"), the owner of Bates Recycling. Bates complained that the excavator that Socie used was damaged. He pointed to broken glass and a vibration on the inside of the compartment. Socie denied having caused any damage.

Bates sued the Fire Department, Socie, and named parties to recover damages from the allegedly damaged excavator. The trial court dismissed the case reasoning that the Defendants were protected by governmental immunity because at the time the damage took place, Defendants were engaged in a governmental action. Thus, a general grant of immunity was applied.

Bates appealed, contending that Socie's operation of the excavator was wanton and reckless. Thus, immunity should not apply.

Decision: Affirmed.

R.C. 2744.02(B) provides that a political subdivision is liable for damages caused by negligent operation of a motor vehicle with two exceptions for police and firefighters responding to emergency calls where their operation of the motor vehicle did not rise to the level of willful or wanton misconduct.

Socie is immune from liability because the evidence establishes that he acted with prudence and in good faith. Even if he did so in a negligent manner, his actions were not malicious, wanton, reckless or in bad faith which would be the recognized exceptions to governmental immunity. *Burlingame v. Estate of Burlingame, 5th District Nos. 2010-CA-00124 and 2010-CA-00130.*

Bates failed to provide evidence that the Fire Department could be held liable for Socie's actions. Here, it should be noted that in most jurisdictions, if a government official (i.e. firefighter) is found not liable in his/her official capacity, then the local government is also immune from liability.

Citation: Bates Recycling, Inc. v. Village of Cygnet Fire Department, et al., Court of Appeals No. WD-11-060, Court of Appeals of Ohio Sixth Appellate District Wood County (2012).

Discrimination in Hiring Case Finally Settled

City will borrow \$80 million to cover settlement costs

In 1995, a firefighter entrance examination was administered to measure the aptitude for firefighting for all candidates. At that time, it was determined that anyone receiving a grade of 64 or below would not qualify. Those candidates who scored higher were told that the city would randomly select candidates who scored over 89 for hiring.

It was later determined that only 11% of African American candidates scored higher than 89. Thus, the policy of hiring candidates who scored over 89 resulted in an overwhelming number of new hires who were white. A number of African American candidates ("Plaintiffs") who scored over 64 but under 89 filed a federal lawsuit alleging unlawful discrimination. Plaintiffs allege that there was no evidence presented showing why an applicant scoring 89 would be better a firefighter than one who scored 64.

In 2005, a federal court ruled that the test and hiring practice using the test results was discriminatory against African American candidates. The case was appealed, and finally was argued in the U.S. Supreme Court, which ruled that the city must hire 111 African American applicants who took the test in 1995 and award them back pay. Some of these new hires are now over fifty. They still must pass a physical examination, drug test, and a background check.

The city has announced that it will borrow \$80 million to cover the costs of this case.

Pocket Tools Training Web Site

Hits from 9/1/12 to 12/31/12 (4mths)

- 1 49 Training Flashes: 1,870 hits
- 2 9 Student Reviews: 630 hits
- 3 Instructor Resources: 2,740 hits
- 4 61 Training Videos: 27,030 hits
- 5 Quick Drills: 3,552 hits
- 6 H & W: 2,370 hits
- 7 Matt & Carnie Show: 8,775 hits
- 8 Ask Vince: 46,600 hits
- 9 20 Featured videos: 28,290 hits



16,641 addresses

POCKET TOOLS HOME

NEW!

- 1 TRAINING FLASHES
- 2 STUDENT REVIEW
- 3 INSTRUCTOR RESOURCES
- 4 VIDEOS
- 5 QUICK DRILLS
- 6 HEALTH & WELLNESS
- 7 MATT & CARNIE SHOW
- 8 ASK VINCE

RESOURCES

Link from your site to Pocket Tools!



Pocket Tools Training

TAKE A QUICK SURVEY!

Pocket Tools Training are short, interesting, informative, and interactive training snippets for the fire and rescue community to watch during any free time or during shift time.

Brought to you by the [North Carolina Department of Insurance, Office of State Fire Marshal](#).

9

Featured Video - High Angle Rescue School (Fall 2012)

The Fire and Rescue Journal

Fire & Rescue
JOURNAL
The North Carolina Department of Insurance, Office of State Fire Marshal



Wayne Goodrich
Commissioner of Insurance
State Fire Marshal

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NORTH CAROLINA DIVISION OF MOTOR VEHICLES
 DMV DEALER RECEIPT FOR FEES PAID
 For Folder: 500031871

DEALER
~~401 HAWK CO~~
~~FAKELPETH RD~~
~~RALPHUR, NC 28376~~

OPEN DATE: 2012-12-20
 PAID OUT DATE: 2012-12-20

SERVICES:

CUMBERLAND COUNTY FIRE CHIEFS ASSOC VEHICLE: 1UK500E2751052593	ISSUE PLATE/STICKER PLATE/TITLE: 62542T	DECON # 3 - Stedman	6.00
CUMBERLAND COUNTY FIRE CHIEFS ASSOC VEHICLE: 1UK500E2551052592	ISSUE PLATE/STICKER PLATE/TITLE: 62543T	DECON # 2 - Spring Lake	6.00
CUMBERLAND COUNTY FIRE CHIEFS ASSOC VEHICLE: 1UK500E2351052591	ISSUE PLATE/STICKER PLATE/TITLE: 62544T	DECON # 1 - Cotton	6.00
CUMB COUNTY FIRE CHIEFS ASSOC VEHICLE: 1S9RT2129SM407032	ISSUE PLATE/STICKER PLATE/TITLE: 62545T	FOAM # 2 - Spring Lake	6.00
CUMBERLAND COUNTY FIRE CHIEFS ASSOC VEHICLE: 1S9RT212XSM407031	ISSUE PLATE/STICKER PLATE/TITLE: 62546T	FOAM # 1 - Stoney Point	6.00
CUMB CITY CHIEFS ASSOC VEHICLE: 1S9RT2123SM407033	ISSUE PLATE/STICKER PLATE/TITLE: 62547T	FOAM # 3 - FFD	6.00
CUMBERLAND COUNTY FIRE CHIEFS ASSOC VEHICLE: 1F9BD36249S217837	OUT OF STATE CERTIFICATE OF TITLE PLATE/TITLE: 779424123553152		190.00
CUMBERLAND COUNTY FIRE CHIEFS ASSOC VEHICLE: 1F9BD36249S217837	ISSUE PLATE/STICKER PLATE/TITLE: 62548T	FIRE SAFETY HOUSE	6.00

TOTAL FEES -----
232.00

PAYMENTS:

MADE BY	CHECK NO	AMOUNT
401 HAWK CO	2025	232.00
Cumb Co. Fire Chiefs Assn.		----- 232.00
TOTAL PAYMENTS		232.00

AMOUNT DUE 0.00

Chief or Chief Officer -

Members' contributions to the Pension Fund, the investment earnings on total contributions, and an annual appropriation by the State from its General Fund pay the cost of providing your Pension Fund benefits. The States' contributions are approximately \$151 per member annually plus any additional accrued liability. Our share of the cost is \$10 monthly. Members must pay into the Pension Fund for 20 years, or a maximum of \$2,400, to receive a monthly benefit at retirement.

March 30, 2013 will be the deadline for departments to submit their turn-around documents and accompanying payments to ensure that eligible members receive proper credit in the Pension Fund for the year of 2012.

Changes with regards to payment due dates were made during 2009 Session Law (House Bill 642) {58-86-35 and 58-86-40}. Please make sure your department is up-to-date with submission of the turn-around document and applicable payments. According to the latest actuarial report, there was a member contribution deficit of \$2,446,193. As of June 30, 2011, there were 39,734 members in the Pension Fund. That means there are roughly 11,000 members who are delinquent. If you are unsure of your department's or squad's status, please contact the Pension Fund Office toll free at 1.877.508.9110. Additional Retirement Systems Division contacts are listed below –

- Rhonda Stevens (Pension Fund Coordinator) by phone at 919.508.5359 or 919.508.5360; by email at Rhonda.Stevens@nctreasurer.com
- Marlene Cooper (Accounting Technician) by phone at 919.508.5339; by email at Marlene.Cooper@nctreasurer.com
- Dani O'Quinn (Deputy Director of Operations) by phone at 919.508.1030; by email at dani.oquinn@nctreasurer.com
- Their fax number is 919.508.5350

Recently the Attorney General's Office has advised the Treasurer's Office that while the language of applicable statutory provisions does not expressly spell out the consequences of a failure to make timely contributions, that Attorney General's Office is of the opinion that it was the intent of the legislature -- in requiring the submission of all member contributions no later than 90 days after the end of the calendar year in which the month occurred – to prohibit the acceptance of delinquent payments in the monthly amount of \$10.00 in exchange for service credit. A delinquent monthly payment would be any payment received later than 90 days after the end of the calendar year in which the month occurred. The Attorney General's Office did not comment on the Fund's use of March 31 as the 90-day marker, as has been its historic practice.

Effective February 1, 2013, the Treasurer's Office will not award service credit in instances in which the regular monthly payment is made later than 90 days after the end of the calendar year in which the month occurred. The Treasurer's Office will return contributions for prior year(s) service to the submitting department, where the department has remitted the contributions at the regular \$10.00 rate. With that, all payments for service credit in 2011 (and prior), at the regular \$10.00 a month rate, must be received by February 01, 2013. In addition, all payments for 2012 must be received by March 31, 2013, to provide credit for service rendered in 2012. See attached letter - titled - **"Treasurer's Office Letter"**.

Late last week the Treasurer's Office shared a list of Pension Fund Members who are delinquent. Attached is a file listing your members with a past due balance according to the reported roster service as of Jan 31, 2011. This is the impacted population for the February 1, 2013 deadline. Amount due is listed in the column titled "Total Balance Unpaid" (highlighted pinkish-orange). In order to provide the impacted members for the March 31, 2013 deadline, the Treasurer's Office will need to review the 2012 rosters (for service credit 01/12-12/12) which are due January 31, 2013. There are roughly 5,500 names listed as "inactive", so we suspect many of these listed names have left the fire/rescue services and are no longer on any current roster and many have likely not been on a certified fire/rescue roster for some time now. **Remember, changes were during 2005 Session Law (House Bill 710) {58-86-35 and 58-86-40}, "A member may elect to terminate membership in the fund at any time and request the refund of payments previously made to the fund. However, a member's**

delinquency in making the monthly payments required by this section does not result in the termination of membership without such an election by the member. With that, there are three options to remove names from your turn around document (TAD) or Pension Fund -

1. Transfer the account to another Department if said member is serving with another organization. This form requires the Members signature. Use Form 359 (F&R Transfer); see attached form.
2. Ask said member to withdraw contributions from the Pension Fund (thus, removing them from the Fund completely). This form also requires the Members signature and must ne notarized. Use Form 5FR (F&R Refund); see attached form.
3. Contact the Treasurer's Office and have those name/names of past member/members hidden from your TAD. #1 and #2 is best for the fund if at all possible. #3 does nothing to help the actuarial valuation if the Pension Fund.

Many questions are routinely asked regarding refunds from the Pension Fund. **These changes in the refund methods were made during 2009 Session Law (House Bill 1073) {58-86-60} -**

- If you (the member) are no longer eligible or choose not to participate in the Fund for any reason other than retirement or death, you can receive a refund of your contributions. However, if you have less than five years of contributing service, a refund of contributions will be made directly to your department or squad provided they made the contributions on your behalf and have specified that these proceeds are to be refunded to the department or squad.
- If you (the member) have five or more years of contributing service and you withdraw from the Pension Fund, you will receive both your contributions and contributions paid by others on your behalf.
- No interest will be paid on the amount of the refund.

It is important to remember, that in order to become a member of the Pension Fund, you must complete an enrollment application (Form 350) through your department or squad and mail it with your first payment (contributions are \$10 per month) to the Pension Fund Office. Your enrollment date in the Fund will be effective in the month in which both the application and contribution are received by the Fund. Roster time, reported from NCSFA or NCAREMS, prior to joining the Pension Fund will not show up on the turn-around document.

Members are also encouraged to establish an ORBIT account. ORBIT stands for "Online Retirement Benefits through Integrated Technology". This system was created by the North Carolina Department of State Treasurer to allow members convenient access to their retirement account information 24 hours a day, seven days a week. This secure site enables you to view your personal information, account information, and other relevant details specific to your retirement system account. Members of the Pension Fund can check and verify their roster credit (from NCSFA certified roster) and contributions credit (member's contributions made by the member or department).

To access ORBIT, go to their website at www.myncretirement.com, click on the ORBIT icon (under the "Retirement&Savings" tab) and follow the instructions to log into your personal ORBIT account.

1. Register for ORBIT via the Register button on the login page.
2. Follow the prompts for registration.
3. Once you have registered, you are able to gain access to ORBIT using the User ID and Password that you created.

Please feel free to contact me or the NCSFA Office if we can assist you and/or your Department.



North Carolina General Assembly
Senate Chamber
State Legislative Building
Raleigh 27601-2808

January 24, 2013

Dear Mr. Johnson,

RE: Community College Tuition Waiver for Federal Firefighters

The above subject was brought to my attention regarding firefighters on military posts. They are often involved in mutual aid calls with local firefighters. Ft. Bragg, for example, ran more than 600 mutual aid calls with Fayetteville, Cumberland County, Hoke County and Harnett County last year; they provide a significant amount of service to northeastern Cumberland and southeast Harnett. Similar issues exist for federal firefighters at Sunny Point, Camp Lejeune, Seymour Johnson and Cherry Point. This request is supported by the Co-Chairs of the Education Committee, Senator Soucek and Senator Tillman along with the NC Association of Fire Chiefs and the NC State Firemen's Association.

Thank you in advance for your consideration of reinstating Community College Tuition Waivers for Federal Firefighters into the budget.

Regards,

A handwritten signature in black ink that reads "Wesley A. Meredith". The signature is written in a cursive style with a large, stylized initial "W".

Senator Wesley A Meredith
North Carolina General Assembly
District 19

CC: Freddy Johnson
Benny Nichols

FireRescue1 News



Product News
with Robert Avsec

01/16/2013

Blocking schemes: Using apparatus to protect firefighters on MVCs

Firefighters working motor vehicle crashes are extremely vulnerable to injury from other motorists, using the apparatus as a shield can save lives

By now, most of us are familiar — or should be — with using our emergency vehicles as a shield against oncoming traffic to protect first responders and civilians while operating on a roadway. In addition, we use emergency warning lights and other items such as road flares and traffic cones to capture the attention of oncoming drivers.

Despite these efforts, we still see far too many stories such as this one that came out of Prince George's County, Md.

"For the second time within a month, a piece of fire apparatus was struck by a motorist while operating on the scene of a motor vehicle crash on a high speed, limited-access highway," said fire department chief spokesman Mark Brady.

Scope of the problem

This is not a new phenomenon. In March 2012, the U.S. Fire Administration and the Federal Emergency Management Agency published the revised document Traffic Incident Management System; it was first published in August 2004 and later revised in April 2008.

In it the authors stated that from 1996 to 2010, 70 firefighters were lost as a result of being struck by a vehicle while engaged in emergency operations. These are what are known as secondary incidents — the primary incident being the event that brought first responders to the scene in the first place.

A Department of Transportation report indicates that approximately 18 percent of all traffic fatalities nationwide occur as a result of secondary incidents. This secondary collision is often more serious than the first, especially if it occurs between free-flowing and stopped traffic.

To reduce and prevent the frequency of firefighters being struck while operating at emergency roadway incidents, it's important to understand some of the common causes that lead to these secondary incidents.

- Reduced vision and driving conditions from heavy rain, ice, snow, fog, curves and summits.
- Lack of situational awareness. Firefighters fail to recognize the dangers associated with emergency

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[Vt. fire chief pleads guilty after throwing flash light at car](#)

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roadway incidents because of insufficient training and lack of experience.

- Failure to use high-visibility apparel. Too many firefighters continue choosing to rely on their structural firefighting ensemble for visibility while working at secondary incidents on roadways. The reflective striping is minimal protection compared to that provided by safety vests that conform to DOT standards.
- Improper apparatus positioning.
- Failure to establish a temporary traffic control (TTC) zone. Many fire departments don't have sufficient training, equipment or SOPs for correctly setting up a properly marked TTC zone or, if they have them, fail to follow them.

The big picture

The safety of first responders when working at the primary incident is one of several significant issues that arise from the motor vehicle crash, and each issue has its own proponent, for example:

- Fire: Hazard control.
- EMS: Patient care and transportation of the injured.
- Law enforcement: Crash investigation and traffic management, first to protect first responders and then to get traffic flow back to normal.

But we're all on the same team, right? Not all the time, unfortunately, because too frequently we hear of incidents where fire officers are taken into custody by police on the crash scene because of conflicting priorities. Why?

Law enforcement personnel are very cognizant of the likelihood and severity of secondary collisions. This often translates into one of the causes of friction that sometimes occurs between police and other emergency responders at the scene of roadway incidents.

The police are under pressure to keeping traffic flowing and clear the scene as soon as possible, as this helps to minimize traffic delays and reduce the possibility of a secondary collision. In their view, the more apparatus and people brought to an incident, the more time it will take to eventually clear the scene, putting more sources of contact for secondary collisions on the roadway.

The needs of both agencies must be balanced. This needs to be done in pre-incident planning and interagency cooperation. Trying to iron these issues out while standing in the roadway at an incident is rarely successful.

Arriving on scene

The scene safety officer has two possible first tactical priorities to initiate when arriving on scene. The officer must communication with on-scene law enforcement to establish a temporary traffic control zone or deploy resources to establish that zone and coordinate that effort with the first-arriving law enforcement officer.

To establish a safe, effective and efficient zone, block with first-arriving apparatus parked at an angle to protect the scene, patients and emergency personnel. Angle parking will help deflect a vehicle that strikes the apparatus away from first responders.

Block at least one additional lane and block so the pump panel is down stream. Also, block the most critical or highest traffic volume direction first and consider asking for additional law enforcement assistance.

Ensure that all personnel wear proper PPE, this includes a DOT-approved Class III vest and helmet. When full PPE is required, like during extrication operations, DOT-approved Class III vest must be worn over PPE.

Establish more-than adequate advance warning by deploying a minimum of five traffic cones at 15-foot intervals; expand the safe work zone as necessary.

Direct the ambulances to park within shadow of larger apparatus and in a position that makes leaving the scene easy. Position the ambulance so the patient loading area faces away from the closest lane of moving

traffic. And make sure that all patient loading is done within a protected work zone.

Low visibility

At night or in reduced-light conditions, turn off vehicle headlights and Opticom or other traffic-management systems. Apparatus headlights can blind oncoming drivers. Provide overall scene lighting and illuminate cones with flares.

Place cones or cones illuminated by flares upstream of the blocking apparatus with the last cone approximately 150 feet upstream of the apparatus. Establish flagger position equipped with portable radio to monitor approaching traffic and sound emergency signals when necessary. It is also important to establish a staging area remote from TTC for additional apparatus and vehicles.

For all incidents, ensure proper transfer of command to law enforcement agency on scene. Pay as close attention to picking up as you do when deploying at the scene initially. Deploy two-person teams to pick up traffic cones and warning devices; one person acts as lookout and the other picks up equipment.

Firefighters can be sitting ducks on roadside incidents — the statistics and anecdotes bear that out. But they don't have to be. Positioning the apparatus to protect firefighters and ensuring firefighters are aware and equipped with PPE will reduce the chances of secondary incidents.

About the author

Battalion Chief Robert Avsec (Ret.) served with the Chesterfield (Va.) Fire & EMS Department for 26 years. He was an active instructor for fire, EMS, and hazardous materials courses at the local, state, and federal levels, which included more than 10 years with the National Fire Academy. Chief Avsec earned his bachelor of science degree from the University of Cincinnati and his master of science degree in executive fire service leadership from Grand Canyon University. He is a 2001 graduate of the National Fire Academy's Executive Fire Officer Program. Since his retirement in 2007, he has continued to be a life-long learner working in both the private and public sectors to further develop his "management sciences mechanic" credentials. He makes his home in Alexandria, Virginia. Contact Robert at Robert.Avsec@FireRescue1.com

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USFA Releases 2012 Firefighter Fatality Report

Fire & Rescue Journal | 1.22.13

The U.S. Fire Administration released its preliminary statistics on firefighter fatalities for 2012.

Eighty-three firefighters lost their lives through line of duty deaths last year, the same number as in 2011.

These reported 2012 statistics are provisional and are likely to change as USFA contacts state fire marshals to verify the reported LODD during 2012. The final number of firefighter fatalities will be reported in USFA's annual firefighter fatality report, expected to be available by July.

Some of the significant statistics for 2012:

- 41% of the LODD fatalities were from heart attacks, 32% from trauma.
- 60% of the fatalities were between the ages of 41 and 60.
- Volunteer firefighters accounted for 48% of firefighter fatalities.
- Pennsylvania and North Carolina each had 9 firefighter deaths, tying for the highest number of firefighter deaths in a year.

Statistics, reports, and more information from past years are available on the USFA Firefighter Fatalities page of the USFA [web site](#).

Samuel Butler

While responding to a motor vehicle accident in his privately owned vehicle, Fire Chief Butler was struck and killed by a semi-trailer truck as he attempted a U-turn at the end of the eastbound I-74 onramp at Cabinet Shop Road.

Incident Location: Onramp eastbound lanes I-74 & Cabinet Shop Road (USNG: 17S PU 5819 3877)

Fatality status is provisional and may change as USFA contacts State Fire Marshals to verify fatality incident information.

Age: 52

Rank: Fire Chief

Classification: Volunteer

Incident Date: Jan 8, 2012 22:55

Date of Death: Jan 8, 2012

Cause of Death: Vehicle Collision - Includes Aircraft

Nature of Death: Trauma

Activity Type: Driving/Riding Personal Vehicle

Emergency Duty: Yes

Duty Type: Responding

Fixed Property Use:

Memorial Fund Information:

Department Information

Evans Crossroads Volunteer Fire Department

3440 Elrod Road

USNG: 17S PU 5648 3821

Maxton, North Carolina 28364

Pending

Robert S. Cannon

Four members of the North Carolina Air National Guard, members of 145th Airlift Wing, were killed and two seriously injured while working a fire attack mission in South Dakota on the White Draw fire near Edgemont. The firefighting crew of the Air Force C-130H3, carrying a U.S. Forest Service Modular Airborne Fire Fighting System (MAFFS), had been battling wildfires in the days leading up to the crash, including those around Colorado Springs, Colorado.

Incident Location: White Draw fire (near Edgemont, SD - USNG: 13T EJ 99 04)

Fatality status is provisional and may change as USFA contacts State Fire Marshals to verify fatality incident information.

Age: 50

Rank: Senior Master Sergeant/Flight Engineer

Classification: Career

Incident Date: Jul 1, 2012 18:30

Date of Death: Jul 1, 2012

Cause of Death: Vehicle Collision - Includes Aircraft

Nature of Death: Trauma

Activity Type: Advance Hose Lines/Fire Attack (includes Wildland)

Emergency Duty: Yes

Duty Type: On-Scene Fire

Fixed Property Use:

Memorial Fund Information:

Department Information

145th Airlift Wing
4930 Minuteman Way
USNG: 17S NU 0673 9707
Charlotte, North Carolina 28208
BG Tony McMillan

Ryan S. David

Four members of the North Carolina Air National Guard, members of 145th Airlift Wing, were killed and two seriously injured while working a fire attack mission in South Dakota on the White Draw fire near Edgemont. The firefighting crew of the Air Force C-130H3, carrying a U.S. Forest Service Modular Airborne Fire Fighting System (MAFFS), had been battling wildfires in the days leading up to the crash, including those around Colorado Springs, Colorado.

Incident Location: White Draw fire (near Edgemont, SD - USNG: 13T EJ 99 04)

Fatality status is provisional and may change as USFA contacts State Fire Marshals to verify fatality incident information.

Age: 35

Rank: Major/Navigator

Classification: Career

Incident Date: Jul 1, 2012 18:30

Date of Death: Jul 1, 2012

Cause of Death: Vehicle Collision - Includes Aircraft

Nature of Death: Trauma

Activity Type: Advance Hose Lines/Fire Attack (includes Wildland)

Emergency Duty: Yes

Duty Type: On-Scene Fire

Fixed Property Use:

Memorial Fund Information:

Department Information

145th Airlift Wing
4930 Minuteman Way
USNG: 17S NU 0673 9707
Charlotte, North Carolina 28208
BG Tony McMillan

John McClelland Hall

Deputy Fire Marshal Hall responded to and actively participated in fighting a fire in the Carvers Creek Community. He was also the primary investigator of the fire. During the incident, Hall fell ill and was put on bed rest. Several days later, he was taken to the hospital where he passed away from a heart related cause.

Incident Location: 308 Cord Rd, Council, NC (USNG: 17S QU 3625 1328)

Fatality status is provisional and may change as USFA contacts State Fire Marshals to verify fatality incident information.

Age: 48

Rank: Deputy Fire Chief

Classification: Career

Incident Date: Nov 3, 2012 17:00

Date of Death: Nov 7, 2012

Cause of Death: Stress/Overexertion

Nature of Death: Heart Attack

Activity Type: Advance Hose Lines/Fire Attack (includes Wildland)

Emergency Duty: Yes

Duty Type: On-Scene Fire

Fixed Property Use:

Memorial Fund Information:

Department Information

Clarkton Volunteer Fire Department
205 Peach Street POB 38
USNG: 17S QU 14870 18572
Clarkton, North Carolina 28433
Allen Robinson

Joseph M. McCormick

Four members of the North Carolina Air National Guard, members of 145th Airlift Wing, were killed and two seriously injured while working a fire attack mission in South Dakota on the White Draw fire near Edgemont. The firefighting crew of the Air Force C-130H3, carrying a U.S. Forest Service Modular Airborne Fire Fighting System (MAFFS), had been battling wildfires in the days leading up to the crash, including those around Colorado Springs, Colorado.

Incident Location: White Draw fire (near Edgemont, SD - USNG: 13T EJ 99 04)

Fatality status is provisional and may change as USFA contacts State Fire Marshals to verify fatality incident information.

Age: 36

Rank: Major/Instructor Pilot

Classification: Career

Incident Date: Jul 1, 2012 18:30

Date of Death: Jul 1, 2012

Cause of Death: Vehicle Collision - Includes Aircraft

Nature of Death: Trauma

Activity Type: Advance Hose Lines/Fire Attack (includes Wildland)

Emergency Duty: Yes

Duty Type: On-Scene Fire

Fixed Property Use:

Memorial Fund Information:

Department Information

145th Airlift Wing
4930 Minuteman Way
USNG: 17S NU 0673 9707
Charlotte, North Carolina 28208
BG Tony McMillan

Paul K. Mikeal

Four members of the North Carolina Air National Guard, members of 145th Airlift Wing, were killed and two seriously injured while working a fire attack mission in South Dakota on the White Draw fire near Edgemont. The firefighting crew of the Air Force C-130H3, carrying a U.S. Forest Service Modular Airborne Fire Fighting System (MAFFS), had been battling wildfires in the days leading up to the crash, including those around Colorado Springs, Colorado.

Incident Location: White Draw fire (near Edgemont, SD - USNG: 13T EJ 99 04)

Fatality status is provisional and may change as USFA contacts State Fire Marshals to verify fatality incident information.

Age: 42

Rank: Lieutenant Colonel/Evaluator Pilot

Classification: Career

Incident Date: Jul 1, 2012 18:30

Date of Death: Jul 1, 2012

Cause of Death: Vehicle Collision - Includes Aircraft

Nature of Death: Trauma

Activity Type: Advance Hose Lines/Fire Attack (includes Wildland)

Emergency Duty: Yes

Duty Type: On-Scene Fire

Fixed Property Use:

Memorial Fund Information:

Department Information

145th Airlift Wing
4930 Minuteman Way
USNG: 17S NU 0673 9707
Charlotte, North Carolina 28208
BG Tony McMillan

Donald L. Suggs

Sunday, June 10, 2012, at approximately 1100hrs, Assistant Chief Suggs had responded to an emergency call. After returning home, he collapsed at about 2100hrs that evening. He was taken to the hospital where he passed away on Monday, June 11, 2012, at approximately 0100hrs from an apparent heart attack. An autopsy is being performed to determine the exact cause of death.

Fatality status is provisional and may change as USFA contacts State Fire Marshals to verify fatality incident information.

Age: 55

Rank: Assistant Chief

Classification: Volunteer

Incident Date: Jun 10, 2012 21:00

Date of Death: Jun 11, 2012

Cause of Death: Stress/Overexertion

Nature of Death: Heart Attack

Activity Type: Other

Emergency Duty: No

Duty Type: After

Fixed Property Use:

Memorial Fund Information:

Pending.

Department Information

Summerville Fire and Rescue Department

111 East Harnett ST

Lillington, North Carolina 27546

Melvin R. Yow

Walter M. Summerville III

Fire Chief Summerville responded with his fire department to a triple shooting incident. Near the end of the incident, Summerville complained to fellow firefighters that he didn't feel well and went to sit in one of the department vehicles while the incident finished up. The following day while at work, Chief Summerville complained again to coworkers that he still did not feel well and departed work early for home. A short time later, Summerville was discovered by a family member passed away from an apparent heart attack.

Incident Location: 1035 Duggins ST, Kernersville, NC 27284 (USNG: 17S NV 8312 9605)

Fatality status is provisional and may change as USFA contacts State Fire Marshals to verify fatality incident information.

Age: 55

Rank: Fire Chief

Classification: Career

Incident Date: Nov 7, 2012 15:37

Date of Death: Nov 6, 2012

Cause of Death: Stress/Overexertion

Nature of Death: Heart Attack

Activity Type: Incident Command

Emergency Duty: Yes

Duty Type: On-Scene Non-Fire

Fixed Property Use:

Memorial Fund Information:

At the request of the family, any donations in honor of Fire Chief Walter M. Summerville III may be given to the Kernersville Firefighter Burned Children's Fund.

Department Information

Kernersville Fire Rescue Department
PO Box 728, 316 W Bodenhamer ST
USNG: 17S NV 8335 9832
Kernersville, North Carolina 27284
Interim Fire Chief Terry Crouse

David Mitchell Tatum

Lieutenant Tatum became sick at the scene of an emergency response but did not request treatment at that time. Later in the day, he began having trouble breathing and became unconscious. Tatum was treated and transported to Bladen County Hospital and then transferred to Cape Fear Valley Hospital in Fayetteville where he passed away from a cause still to be determined.

Fatality status is provisional and may change as USFA contacts State Fire Marshals to verify fatality incident information.

Age: 55

Rank: Lieutenant

Classification: Volunteer

Incident Date: Nov 4, 2012 00:45

Date of Death: Nov 5, 2012

Cause of Death: Unknown

Nature of Death: Unknown

Activity Type: Other

Emergency Duty: No

Duty Type: After

Fixed Property Use:

Memorial Fund Information:

Department Information

White Oak Fire Department

PO Box 130, 10838 NC 53

USNG: 17S QU 0971 4856

White Oak, North Carolina 28399

Tim Tatum

Freddy Johnson Sr.

From: Fox, Stephen A CIV (US) <stephen.a.fox.civ@mail.mil>
Sent: Monday, January 28, 2013 12:21 PM
To: Melvin, Mark A CIV USARMY IMCOM ATLANTIC (US)
Cc: 1301 Hoke Sheriff; 1302 (SHP); 1302 Chief Johnson; 1303 Chief Williams; 1304 Capt. Johnson; Andrew Snyder; B/C Calvin Bishop; B/C Spell; B/C-David Hargis-FFD; Brian Mims ; Brian Pearce; Captain Bowen; cedar creek fd; Chief Autry 1202; Chief Autry 23; Chief Bass 2002; Chief Bullard 200; Chief Bullard 2301 (sfd2301@aol.com); Chief Chavis 201; Clark, Richard W CIV USARMY MEDCOM WAMC (US); Chief Freddy L. Johnson; Chief Godwin 2001; Chief Hall 501; Chief Hall 501-H; Chief Harris 401; Chief Harris Jr. 402; Chief Herndon 1801; Chief Hill 1601; Chief Hodges, HMFd; Chief Jackson 1203; Chief JF Hall; Chief Lloyd 2403; Chief Lucas 1701; Chief Major Ben-FFD; Chief Marley 0301; Chief Marsh; Chief Marsh Joe 2401; Chief Matthews; Chief Matthews 1802 ; Chief McLamb; Chief McLaurin 0101; Chief McLaurin 0101-H; Chief Middleton ESS; Chief Nobles 23; Chief Parrish; Chief Pierce 0103; Chief Pone 2402; Chief Riddle; Chief Rosser; Chief Smith 0302; Chief Spiller 0502; Chief starling 1703; Chief Teague; David Pulliam; Ed Melvin Fire Com.; Ernest Ward-FTCC; GFFD; J. Devane; K Bramble; Mccammitt, William E (Billy) III CIV USARMY IMCOM ATLANTIC (US); Michelle Bass; Paul Pirro 23; Phil Tarantro; President Morgan; Randy Beeman, CCES Director; Scott Bullard; Sgt Hodges; Station 26; kassie howard
Subject: Child Passenger Safety Meeting (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: NONE

Chiefs, my name is Stephen Fox. I am a Captain at Ft. Bragg Fire & Emergency Services and also the POC for Child Passenger Safety through Cumberland County Safe Kids. We know there are great things being done in the Cumberland County Area regarding CPS, and so we would like for all of your POC's concerning Child Passenger Safety to attend a meeting that is being held at Fayetteville Fire Station #14 on Feb 15, 10:00 am - 12:00 p.m. The goal is to communicate all of our efforts and possibly consolidate some of them to provide an even better service to our residents. If you are not involved in CPS and would like to be, then please feel free to send someone from your department to this meeting. Please contact me with any questions you have. Thanks.

Stephen A. Fox, Captain
Ft. Bragg Fire & Emergency Services
Office: (910) 396-3015
Cell: (919) 618-5004

-----Original Message-----

From: Melvin, Mark A CIV USARMY IMCOM ATLANTIC (US)
Sent: Monday, January 28, 2013 11:46 AM
To: Fox, Stephen A CIV (US)
Cc: 1301 Hoke Sheriff; 1302 (SHP); 1302 Chief Johnson; 1303 Chief Williams; 1304 Capt. Johnson; Andrew Snyder; B/C Calvin Bishop; B/C Spell; B/C-David Hargis-FFD; Brian Mims ; Brian Pearce; Captain Bowen; cedar creek fd; Chief Autry