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By Matthew A. Passen

## The Fireman's Rule

# Protecting Those Who Protect Us

**F**IREFIGHTERS AND POLICE OFFICERS are called on to protect our families during times of crisis. These brave men and women literally put their lives on the line each day they go into work. They no doubt understand the considerable risks associated with their profession.

But what about the risks they did not sign up for? What about the firemen or police officers seriously injured or killed in times of emergency because a landowner failed to maintain his or her premises in a reasonably safe condition? Enter the Fireman's Rule.

The fireman's rule is a common law doctrine that limits the extent to which firefighters or other public officers may recover for injuries incurred when, in an emergency, they enter onto private property in discharge of their duty. The rule is premised on the concept of assumption of risk – the idea that firefighters knowingly and voluntarily subject themselves to certain hazards while fighting fires.

### Evolution of the Common Law Fireman's Rule in Illinois

The fireman's rule was originally developed under the English common law during a time where a firefighter was considered a "licensee" to whom the landowner owed no greater duty than to refrain from the infliction of willful or intentional injury. *Dini v. Naiditch*, 20 Ill. 2d 406, 413-14 (Ill. 1960). Illinois adopted the common law rule in 1982. See *Gibson v. Leonard*, 143 Ill. 182, 189 (Ill. 1982).

Over time, the Illinois Supreme Court reshaped the fireman's rule to address what



had been characterized as a “barbaric” formulation of the rule. *Dini*, 20 Ill. 2d at 414. In *Dini*, the Court rejected the common law rule labeling firemen as licensees, and recognized that firemen confer on landowners economic and other benefits that warrant imposing a common law duty of reasonable care. Accordingly, the Court held that a landowner may be held liable “for failure to exercise reasonable care in the maintenance of his property resulting in the injury or death of a fireman, rightfully on the premises, fighting the fire at a place where he might reasonably be expected to be.” *Dini*, 20 Ill. 2d at 416-17.

The Supreme Court substantially narrowed the reasonable care standard in *Washington v. Atlantic Richfield Co.*, 66 Ill. 2d 103, 105 (Ill. 1977), which addressed the specific question of “whether the liability of a possessor of land for injuries to a fireman extends to acts of negligence which cause a fire.” In other words, can landowners be held liable for negligence in *causing* the fire itself? The Court held they cannot.

Instead, the Court held that “while a landowner owes a duty of reasonable care to maintain his property so as to prevent injury occurring to a fireman from a cause *independent* of the fire he is not liable for negligence in causing the fire itself.” *Washington*, 66 Ill. 2d at 108 (emphasis added).

In the cases that followed, the Illinois courts have adhered to this basic formulation of the fireman’s rule, which permits a firefighter to recover for injuries that result from an act unrelated to the specific reason he was summoned to the scene, but not for negligent acts that caused the emergency. See, e.g. *Rusch v. Leonard*, 399 Ill. App. 3d 1026 (2d Dist. 2010). Note that the rule’s limitation on the duty of landowners or occupiers with respect to fires occurring on their premises has no application to products liability actions. *Court v. Grzelinski*, 72 Ill. 2d 141, 150 (Ill. 1978).

### Relevance of Building Code Violations

Under the current common law formulation of the fireman’s rule, evidence of building code or other statutory or regulatory violations may be relevant to whether

the fireman’s rule applies, but *only* if the violation relates to a cause of the injury independent from the cause of the fire or emergency. In other words, landowners or occupiers are not liable for injuries to firefighters (or other emergency responders) even if the negligent conduct that causes the fire is also a violation of a statute, building code or ordinance. See *Washington*, 66 Ill.2d at 109; *Luetje v. Corsini*, 126 Ill. App. 3d 74, 79 (1st Dist. 1984) (holding that evidence of “violations of building and safety codes does not remove the case from the purview of the ‘fireman’s rule’” if those facts relate only to manner in which fire was caused).

On the other hand, evidence of building code violations *unrelated* to the cause of the fire or emergency may preclude application of the fireman’s rule. For example, in *Harris v. Chicago Housing Authority*, 235 Ill. App. 3d 276 (1st Dist. 1992), a fireman was seriously injured when he attempted to connect a fire hose to dysfunctional standpipes on the fourth floor of a housing project during a fire, and a continuous buildup of heat and gasses produced an explosion. The court held that allegations of building code violations involving the standpipes, which did not produce any water to douse the fire and resulted in injuries to the firefighter, were independent of any negligence which caused the fire, and therefore the fireman’s rule did not bar the negligence cause of action.

### Duty to Warn Firefighters of Latent Defects

Illinois courts have also interpreted the fireman’s rule to impose a duty on property owners to warn against latent dangerous conditions constituting an unreasonable risk of harm that the owner should expect the firefighter will not discover or protect himself against. Accordingly, in *Zimmerman v. Fasco Mills Co.*, 312 Ill. App. 3d 308, 315 (2d Dist. 1998), even though a literal application of the fireman’s rule would have precluded a cause of action by the estate of a fireman who died of carbon monoxide asphyxiation while attempting to rescue men inside a grain bin, the court held that “public policy” required the defendants to have informed the firefighter of the latent dangerous condition inside the bin, and

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to provide him with the safety equipment mandated by law. Consequently, the court held that the cause of action was not barred by the fireman's rule.

Similarly, in *Lurgio v. Commonwealth Edison Co.*, 394 Ill. App. 3d 957 (1st Dist. 2009), the court rejected ComEd's argument that a claim brought by a police officer who was injured when he ran away from an explosion caused by a downed power line coming in contact with a street light was barred by the fireman's rule. The court held that the rule did not relieve ComEd—who failed to shut off the downed power line in a timely manner—of its legal duty to remedy a dangerous condition and protect the police officer from the danger of the downed power line.

**Allegations of Willful and Wanton Conduct**

There is conflicting authority in Illinois regarding whether the fireman's rule applies to allegations of willful and wanton conduct. As noted above, under the early common law version of the fireman's rule, a plaintiff could recover for the infliction of willful or intentional injury. See *Bandosz v. Daigger & Co.*, 255 Ill. App. 494 (1st Dist. 1930) (recognizing the principle that an owner or occupier of property is liable for willful and wanton misconduct to a firefighter in discharge of his duty); *Marquart v. Toledo, Peoria & Western R.R.*, 30 Ill. App.

3d 431, 432 (3d Dist. 1975) (same).

But, in *Luetje*, 126 Ill. App. 3d 74, the First District Appellate Court took a contrary position, holding that it was irrelevant whether the plaintiff's injuries stemmed from negligence acts or willful and wanton misconduct. The court stated, "We do not believe that the nature of a defendant's conduct is determinative of the issue of landowner liability to an injured firefighter." *Id.* at 79. Under the court's interpretation, if the defendant's wrongful conduct related to the cause of the emergency, the plaintiff is barred from recovering under the fireman's rule.

Conversely, in *Randich v. Pirtano Const. Co.*, 346 Ill. App. 3d 414, 420 (2d Dist. 2003), the Second District Appellate Court took the opposite position, reverting back to the original interpretation of the fireman's rule, which distinguished between negligence and willful and wanton conduct: "we conclude that the immunity of the fireman's rule does not protect a defendant whose willful and wanton misconduct created the emergency or danger that caused injury to a fireman." The court criticized the First District's reasoning in *Luetje* as contrary to the purpose of the fireman's rule and inconsistent with precedent.

**Revision or Codification of Fireman's Rule?**

Until 2003, the fireman's rule was a creature of case law. Effective July 22, 2003,

however, the legislature amended the Fire Investigation Act, 425 ILCS 25/0.01 *et seq* ("the Act"), to include section 9f, which provides in relevant part:

The owner or occupier of the premises and his or her agents owe fire fighters who are on the premises in the performance of their official duties conducting fire investigations or inspections or responding to fire alarms or actual fires on the premises a duty of reasonable care in the maintenance of the premises according to applicable fire safety codes, regulations, ordinances, and generally applicable safety standards, including any decisions by the Illinois courts. The owner or occupier of the premises and his or her agents are not relieved of the duty of reasonable care if the fire fighter is injured due to the lack of maintenance of the premises in the course of responding to a fire, false alarm, or his or her inspection or investigation of the premises.

Illinois courts have not opined whether section 9f of the Act abolished the common law fireman's rule, or simply codified existing law. For example, in *Randich*, the court stated that section 9f "may" have abolished the common-law fireman's rule, although it was not clear: "The statute may intend to impose a duty of reasonable care upon an owner/occupier where none existed under the common law. Alternatively, it may serve as an attempt to codify the portion of the fireman's rule that places upon an owner/occupier a duty of reasonable care to maintain his or her property so as to prevent injury to a fireman from a cause independent of the emergency." 346 Ill. App. 3d at 426; *see also Rusch v. Leonard*, 399 Ill. App. 3d 1026, 1032 n.1 (2d Dist. 2010) (stating that "it was not clear how the statute affected the common-law fireman's rule... [but] in the absence of a clear directive in the statute, we would not be inclined to read it as inconsistent with the common law").

Nevertheless, the Illinois Supreme Court recently suggested that section 9f expanded

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the duty owed by landowners to firemen. In *Lazenby v. Mark's Construction, Inc.*, 923 N.E.2d 735, 745 (Ill. 2010), although the Court's holding related to the statute's lack of retroactive application, it also noted that section 9f imposes a duty of reasonable care on landowners and occupiers to firefighters who are injured due to the lack of maintenance of the premises in the course of responding to fires, and stated that "*the parties agree that the duty did not exist prior to enactment of the statute.*" 923 N.E.2d at 745 (emphasis added).

The question becomes whether, under the statutory version of the fireman's rule, landowners may be held liable for injuries to firefighters if the negligent conduct that causes the fire itself is negligent maintenance of the premises, as evidence by a violation of the relevant fire safety codes, regulations, or ordinances. If section 9f of the Act merely codifies existing law, no such recovery is permitted. See e.g., *Washington*, 66 Ill.2d at 108-09. If, however, a literal interpretation of section 9f is given, such as the one acknowledged by the Illinois Supreme Court in *Lazenby*, firemen who are injured or killed responding to fires caused by the negligent maintenance of the premises should be able to pursue a claim against the landowner, regardless of whether the negligent conduct caused the fire itself.

### Application to Non-Firefighters

The common law fireman's rule applies not just to firefighters responding to fires, but to all public officers responding to emergencies. The rule is triggered in any context involving the duty of a landowner to a public officer in an emergency situation. See, e.g., *Jackson v. Urban Investment Property Serv.*, 362 Ill. App. 3d 88 (1st Dist. 2005) (police officer injured by piece of falling scaffolding); *Randich*, 346 Ill. App. 3d 414 (2d Dist. 2003) (EMT injured in a gas explosion); *Zimmerman*, 302 Ill. App. 3d 308 (volunteer firefighter responding to emergency call of persons trapped inside grain bin).

As with firefighters under the common law rule, public officers may not recover

from landowners or occupiers "whose negligence caused the emergency that required their presence when their injuries were caused by the emergency." *Jackson*, 362 Ill. App. 3d at 90, citing *Knight v. Schneider Nat'l Carriers, Inc.*, 350 F. Supp. 2d 775, 780 (N.D. Ill. 2004).

On its face, Section 9f of the Fire Investigation Act *only* applies to firemen. Therefore, the common law iteration of the fireman's rule still applies to all non-firemen public officers. See *Jackson*, 362 Ill. App. 3d at 91 ("the amendment does not affect the binding precedent concerning application of the fire fighter's rule to police officers").

### Conclusion

The men and women who serve as firefighters and emergency responders voluntarily assume a great degree of risk on a daily basis. Illinois courts have noted that because most fires are caused by negligence, to hold a landowner liable to all injured firefighters would impose an unreasonable burden.

But as early as 1960, Illinois courts have recognized that landowners owe firefighters a duty of reasonable care to maintain their property in a safe condition. When firefighters or other emergency responders are seriously injured or killed because the landowner failed to exercise reasonable care, the "fireman's rule" must not stand in the way of accessing the civil justice system. ■

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