If you have questions or would like further information regarding Landowner Liability for Injured Firefighters, please contact:

Christopher Johnston
312-540-7568
cjohnston@querrey.com

Querrey & Harrow
Result Oriented. Success Driven.
www.querrey.com®

ILLINOIS LAW MANUAL

CHAPTER V
PREMISES LIABILITY

G. LANDOWNER LIABILITY FOR INJURED FIREFIGHTERS AND POLICE OFFICERS

1. Basic Law

Landowners' liability to firefighters who enter onto their property in discharge of their duty is limited because of the presumption that a firefighter assumes the risk of his or her occupation. Zimmerman v. Fasco Mills, Co., 302 III. App. 3d 308 (1998). This doctrine is known as the "fireman's rule." Therefore, the landowner is not liable to the firefighter for injuries arising out of the fire itself. Id. However, firefighters have the right to sue the landowner for unreasonably unsafe conditions. Dini v. Naiditch, 20 Ill. 2d 406 (1960). The rule, as recognized in Dini, has been interpreted to limit a landowner's liability to those instances where the landowner breached his or her duty of care by failing to keep the premises safe so as to prevent injury to firefighters resulting from causes independent of the fire. Zimmerman, 302 Ill. App. 3d at 319.

2. Analysis

By entering onto a landowner's premises to fight a fire, firefighters assume the risk of injury by causes that are related to the fire. However, firefighters do not assume

the risk of injury by causes unrelated to the fire or risks to ordinary citizens who enter upon the property. Zimmerman, 302 Ill. App. 3d at 319.

Several cases have interpreted the extent of the landowner's duty. In Harris v. Chicago Housing Authority, 235 Ill. App. 3d 276 (1992), the court held that the plaintiff stated a cause of action against the landowner for malfunctioning standpipes, which resulted in an explosion and an injury to a firefighter. However, firefighters could not maintain a cause of action against the landowner when the firefighters suffered injury from non-fire retardant materials with which the interior walls were constructed. Coglianese v. Mark Twain Ltd. Partnership, 171 Ill. App. 3d 1 (1984).

A landowner's liability should not extend to those situations where the injury-causing hazard is open and obvious, or where the firefighters were warned of the hazard. Briones v. Mobil Oil Corp., 150 Ill. App. 3d 41 (1986). Horn v. Urban Investment & Development Co., 166 Ill. App. 3d 62 (1988). In Briones, the firefighter fell into a hole in the floor despite warnings that there were holes in the floors. In Horn, the firefighter slipped on a wet floor while inspecting the sprinkler system to determine the cause of a leak that had triggered the fire alarm. In both cases, the courts found that a landowner was not liable when the hazard was open and obvious, or when the firefighter had been warned of the hazard. This rule is consistent with the Premises Liability Act.

The Supreme Court, in Vroegh v. J&M Forklift, 165 Ill. 2d 523 (1995), affirmed the “fireman's rule.” The case involved a fire that originated on a forklift. The forklift was powered by propane, and in the course of the fire, the propane fuel tank exploded. The court determined that the injury resulted from the fire itself, and therefore, the

"fireman's rule" applied. Thus, a firefighter will not recover against a landowner if the injuries are a result of fire-related causes.

In Zimmerman v. Fasco Mills, Co., 302 Ill. App. 3d at 319 (1998), a firefighter died of asphyxia from carbon monoxide fumes he inhaled in a grain bin. The Appellate Court held that the firemen's rule did not apply when the firefighter was killed when the defendant failed to warn him of the latent risk in the bin and failed to provide him with safety equipment mandated by law.

In the recent case of Randich v. Pirtano Construction Co., 804 N.E. 2d 581 (2d Dist. 2004), the court held that the fireman's rule barred the plaintiff from bringing a negligence action against the defendants for injuries sustained in an explosion caused by the ignition of leaking gas. The plaintiff's claim for willful and wanton misconduct against the defendants for failing to expose or locate the live gas mains, which they knew were in the same utility easement, before workers began boring into the ground was not barred by the fireman's rule.

In Smithers v. Center Point Properties Corp., 318 Ill. App. 3d 430 (2000), the plaintiff, a firefighter, slipped on a sheet of ice of which he was aware while conducting an inspection of a commercial building. The plaintiff's actions at the time of his injury were not uncommon in his profession as a firefighter, nor were they independent of the emergency he was investigating. The court, therefore, found that the fireman's rule applied to bar the plaintiff's claim against the property owner. The Smithers court also ruled that the deliberate encounter exception to the open and obvious doctrine does not abrogate the fireman's rule. Inherent in a fireman's duties is to deliberately encounter certain types of dangers which are unique to their firefighting responsibilities. The Smithers court pointed out that the fireman's rule strikes a balance between the

landowners' duties to maintain their premises in a reasonably safe condition and a fireman's assumption of the risk inherent in his job responsibilities.

In the recent case of Jackson v. Urban Investment Property, 362 Ill. App. 3d 88 (2005), the plaintiff, a police officer, was severely injured when she responded to a call that scaffolding was falling around a theater and damaging cars nearby. She brought suit against the defendants, Urban Investment Property (Urban), owner of the premises, and Designed Equipment (Designed), lessor of the scaffolding equipment to Urban for renovations, alleging negligent construction and maintenance. The court quickly confirmed that 425 ILCS 25/9f (2004) on its face addressed only the owner's or occupier's duty to firefighters and not to police officers, but found that the amendment did "not affect the binding precedent concerning application of the firefighter's rule to police officers." Id. at 90-91. The defendants moved for summary judgment, arguing that the firefighter's rule barred plaintiff from recovering for her injuries because she was injured while performing her duties as a public officer. Id. at 89.

Here, plaintiff did not actually enter onto the defendant's premises and therefore argued that §368 of the Restatement (Second) of Torts, and not §343, applying in instances caused by a condition of the land, governed Urban's liability. Id. at 91-92. §368 provides:

> A possessor of land who creates or permits to remain thereon an excavation or other artificial condition so near an existing highway that he realizes or should realize that it involves an unreasonable risk to others accidentally brought into contact with such condition while traveling with reasonable care upon the highway, is subject to liability for physical harm thereby caused to persons who:
>
> (a) are traveling on the highway, or
> (b) foreseeably deviate from it in the ordinary course of travel."

§368 of the Restatement (Second) of Torts (1965).

The court agreed, but ruled in defendant Urban's favor. The court held that the "negligently constructed scaffolding [did] not present an unreasonable risk to a police officer responding to a call about falling scaffolding." Jackson, 362 Ill. App. 3d at 92. Thus, "the risk [did] not qualify as an unreasonable risk for the plaintiff under the circumstances ... " Id.

Accordingly, Designed argued that §383 of the Restatement (Second) of Torts applied and entitled them to the same immunity that Urban enjoyed. §368 provides:

> "One who does an act or carries on an activity upon land on behalf of the possessor is subject to the same liability, and enjoys the same freedom from liability, for physical harm caused thereby to others upon and outside of the land as though he were the possessor of the land." §383 of the Restatement (Second) of Torts *(1965).*

The court reversed the grant of summary judgment for Designed. The court found that Designed failed to substantiate its claim with supporting evidence finding that it "[did] an act or carried on an activity upon the land on behalf of Urban." Jackson, 362 Ill. App. 3d at 92.

In summary, because plaintiff suffered injury in the course of her duties as a police officer responding to a call concerning the falling scaffolding, the firefighter's rule and §368 of the Restatement (Second) of Torts barred her from recovering from Urban for negligence. Under §383 of the Restatement (Second) of Torts, Design could have shared Urban's immunity, but failed to present evidence that it undertook the requisite activities and failed to show grounds for judgment in its favor.