NRS
INJURY LAW

Nager
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Schneiberg Co.,L.P.A.

Attornevs and Counselors at Law

Jerald A. Schneiberg

Jerry Schneiberg, a Co-Managing Partner with NRS Injury Law, focuses his practice on the management of the firm's Workers' Compensation Administrative and Litigation departments. Jerry is an AVVO Rated 10.0 and AVVO Rated Top Attorney Workers' Compensation – Superb. He is also Lead Counsel Rated – Workers' Compensation.

For more than 20 years, Jerry has defended the rights of thousands of injured workers with respect to matters before the Industrial Commission of Ohio. He also is regularly involved in the litigation and trial of workers' compensation cases in the Court of Common Pleas throughout Ohio. Over his legal career, Jerry has successfully represented clients before the Tenth District and Eighth District Courts of Appeals.

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Occupational Disease Presumption R.C. 4123.68(W)

Cardiovascular, Pulmonary or RespiratoryDiseases

- Once a firefighter presents evidence of exposure to heat, smoke, toxic gases, chemical fumes, or other toxic substances in the performance of his or her duty
- Suffers from any cardiovascular, pulmonary or respiratory disease that is caused or induced by such exposure
- It shall be presumed that the disease was contracted in the course of and arising out of the employment and, therefore, is compensable

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Compensation for Cardiovascular, Pulmonary, or Respiratory Diseases

- Compensation is limited to temporary total disability; permanent total disability or death
- For claims with exposure *before* January 1, 1976, compensation, medical, hospital, nursing expenses and funeral expenses are payable only in the event of such disability or death resulting within 8 years after the last injurious exposure

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Rebutting the Presumption

Firefighter Cancer Presumption

- 6 years of hazardous duty as a firefighter
- Exposure to an agent classified by the International Agency for Research on Cancer as a group 1 or 2A carcinogen
- Shown to be suffering from cancer
- Firefighter's exposure to cigarettes or tobacco products or other conditions outside of work presented an extremely high risk for the development of the cancer alleged
- Firefighter was not exposed to a group 1 or 2A carcinogen
- The cancer preceded his or her becoming a member of the fire department
- Firefighter is 70 years of age or older

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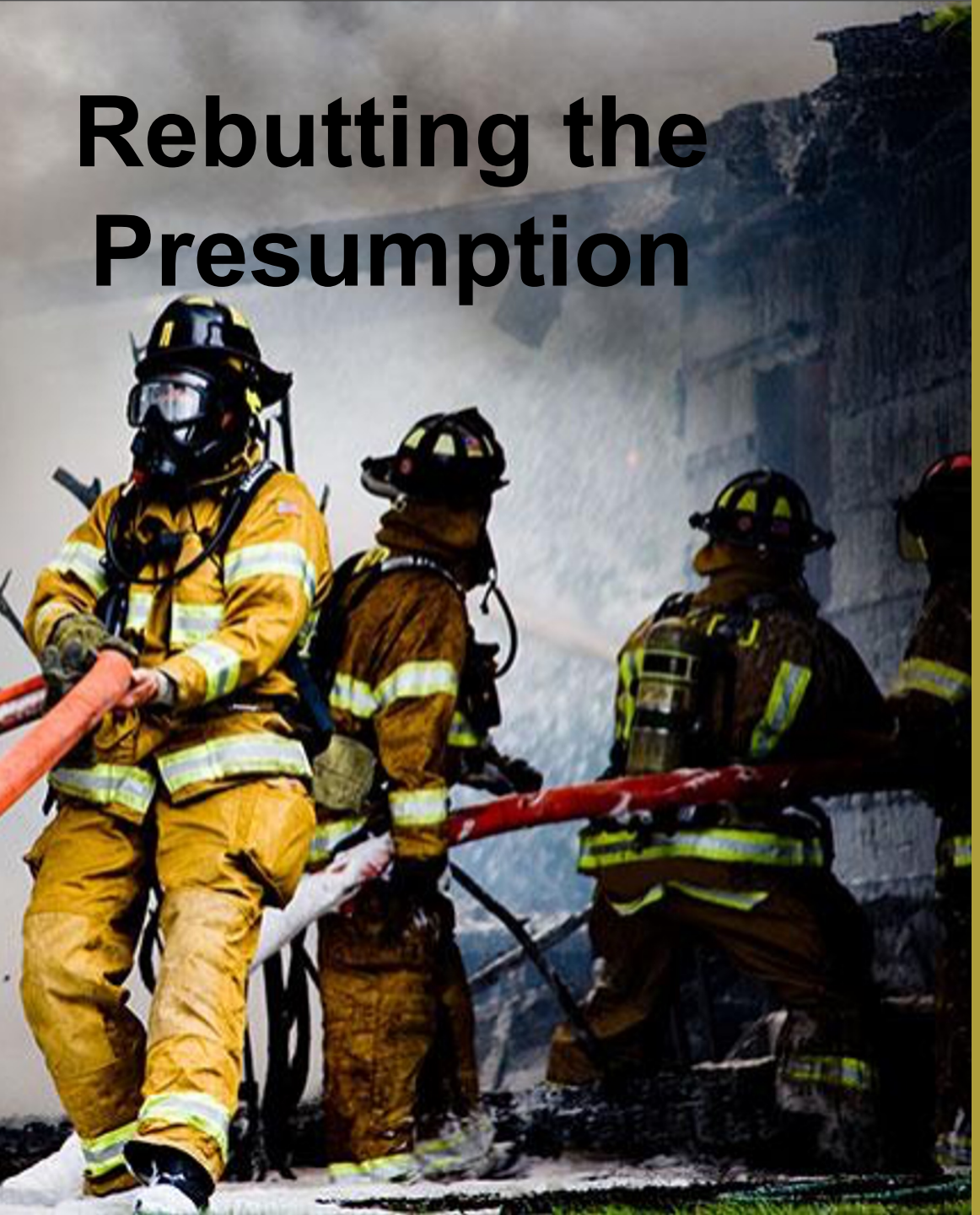
Rebutting the Presumption



- For claims on or after 9/29/2017 (date of diagnosis), the presumption may also be rebutted by scientific evidence that the exposure to the type of carcinogen did not cause the cancer alleged
- In claims *before 9/29/*17, the presumption does not apply if it has been more than 20 years since the firefighter was last assigned to hazardous duty as a firefighter
- In claims *after* 9/29/17, the presumption does not apply if it has been more than 15 years since the firefighter was last assigned to hazardous duty as a firefighter
- "Hazardous duty" means duty performed under circumstances in which an accident could result in serious injury or death. See C.F.R. 550.902, as amended.

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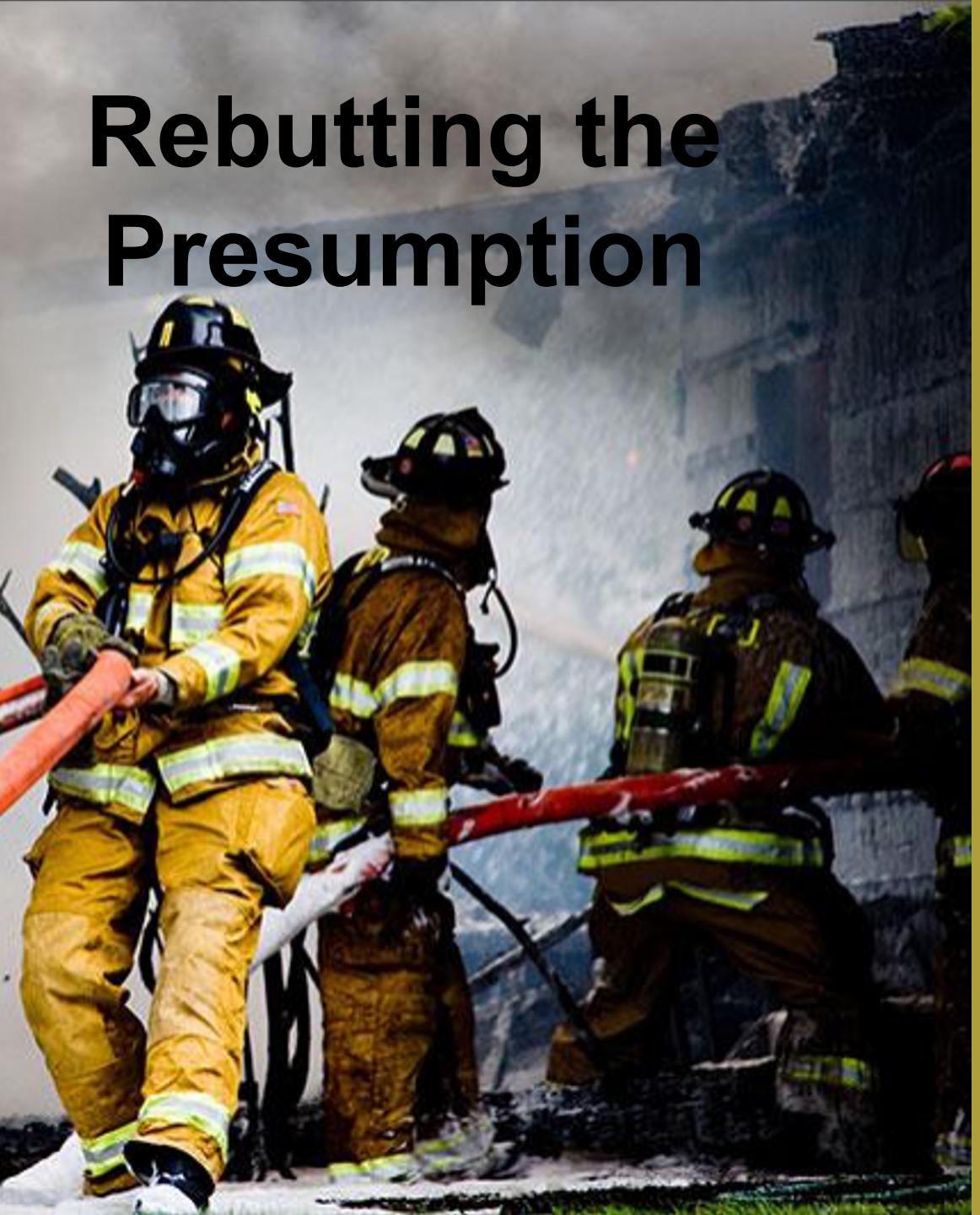
Rebutting the Presumption



Nothing in R.C. 4123.68(X) Prohibits a Firefighter From Seeking Allowance for Cancer as an Occupational Disease Under R.C. 4123.68(W)

- No permanent partial disability (PPD) for cancer
- No non-working wage loss compensation (NWWL) for cancer
- Can get working wage loss and other forms of compensation

Firefighter Cancer Presumption Does Not Apply To:

- Those who died before 4/6/2017
- Those who were diagnosed, got treatment and were disabled before 4/6/2017
- Those who quit working as firefighter due to cancer before 4/6/2017

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Start a Claim

- File the First Report of Injury Form (FROI-1);
- Form C-265 (Presumption of Causation of Cancer)

Firefighters Can Pursue Both, if Applicable

- Note: R.C. 4123.68(W) gives **firefighters** AND **police officers** the presumption that certain heart and lung diseases (which may or may not include cancer) were caused by his or her employment

Significantly, only a *firefighter* may pursue this presumption for his or her cancer under both R.C. 4123.68(W) and (X), and then only if the cancer is related to heart and lungs (e.g. lung cancer)

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Death Benefits in Ohio

- Workers' compensation death benefits in Ohio can be awarded to dependents—those who relied on the deceased worker for financial support
  - Dependents include:
    - Spouse
    - Child under 18
    - Child under 25 who is a full-time student
    - Disabled child of any age who cannot earn a living
    - There may be other family members who qualify on case-by-case basis

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Death Benefits in Ohio

- Death benefits are paid at 66 2/3 % of the worker's average weekly wage, within the state maximum and minimum, which changes annually
- The BWC decides how to allocate between dependents
- Generally, the spouse receives benefits until he/she dies or remarries
- Upon remarriage the spouse would receive two years worth of benefits in a single lump sum
- Death benefits include up to $5,500 for burial expenses

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Getting a Claim Allowed

- Timely reporting of the incident (verbally and in writing if able to do so)
- Complete Accident/Incident report. If not given one, ask. Keep a copy
- Timely seeking medical attention
- Fully explain how injury occurred; all parts of the body affected; and state the injury happened at work. (Ask provider to read it back to make sure accurate)
- Failure to timely report and failure to timely seek medical attention are two biggest red flags for hearing officers
- Try to get eye-witness statements
- Timely request a copy of any video of the incident in writing

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Voluntary Abandonment

- Used by employers to stop the payment of compensation (usually temporary total disability compensation but can also affect wage loss and permanent total).
- Again a very fact dependent determination with many exceptions:
- Generally, a voluntary abandonment can be found that will preclude further compensation if the injured worker leaves the work force for reasons that are unrelated to the industrial injury. (e.g. fired for violation of written company policy that provides for termination; retirement; left for other work; left due to non-allowed conditions).
- If voluntary abandonment found, compensation can be restarted if the injured worker returns to work (anywhere) and is subsequently disabled due to the allowed conditions in the claim.

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Salary Continuation

- An employer may offer, and in those circumstances employee may elect to receive salary continuation in lieu of temporary total disability compensation
- Salary continuation paid at 100% of pre-injury wages
- Temporary total disability paid at 72% of FWW for 12 weeks and then 66 2/3% of AWW beyond that
- In rare circumstances, temporary total disability rate may be higher than amount received under salary continuation (due to secondary employment in one year prior to injury affecting AWW and/or FWW)

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At NRS Injury Law, we are zealous in our client advocacy. Our elite team cares deeply, providing empathetic and patient service to every person who calls our firm. We relentlessly pursue the best possible outcome on behalf of every client by putting our collective experience, knowledge, and passion to work each and every day.