

May 2nd 2016

Expanding Application of the Professional Rescuer Doctrine Beyond Firemen

By Breana Mackey

The professional rescuer doctrine is known to most as the fireman's rule. The doctrine "generally provides that a professional firefighter may not recover damages from a private party for an injury sustained during the course of putting out a fire even though the private party's negligence may have caused the fire and the injury." Waggoner v. Troutman Oil Co., 320 Ark. 56, 894 S.W.2d 913 (1995). The language of the rule suggests that it applies only to firemen responding to emergencies. However, the Arkansas Supreme Court has made it clear the doctrine is not limited to firemen; it also applies to other "professional rescuers".

In 2013, the Arkansas Supreme Court expanded the professional rescuer doctrine to prohibit recovery for the wrongful death of a road-side assistance worker who was killed while assisting the driver of a stalled truck. The Court noted the recitation of the rule in Waggoner, though specifically limited to firefighters, is consistent with the assertion that "the doctrine prohibits recovery by a professional risk-taker for injuries from the negligently created risk that was the very reason for his presence on the scene." Nowicki v. Pigue, 2013 Ark.499 at *6, 430 S.W.3d 765 (2013). The Court further stated, [i]n considering the issue we decline to apply a categorical rule, but rather

evaluate the facts bearing on whether the rescuer was paid to assume the risk in question." Id.

While Arkansas has not expressly applied the rule in cases other than those involving firefighters and the one involving the road-side assistance worker, it is clear Arkansas is willing to expand the rule to other professional rescuers.

Expansion of Arkansas' professional rescuer doctrine to police officers should be a "no-brainer". Most, if not all, states that have adopted the professional rescuer doctrine extends the rule to police officers. Bath v. Excavating & Constr. Co. v. Willis, 847 P.2d 1141, fn. 6 ("Modern-day courts, when facing the question of liability of firemen, have either adopted a fireman's rule that covers firefighters and later extended the rule to include police officers or have adopted a fireman's rule that encompasses both firefighters and police officers."). One court in Michigan reasoned,

The similarity between firefighters and police officers compels and [*sic*] extension of the rule to the latter. Both are paid to confront crises and allay dangers created by an uncircumspect citizenry, a circumstance that serves to distinguish firefighters and police from most other public employees. Citizens summon police and fire departments in anticipation of those inevitable physical perils that burden

human condition, whereas most public employment posts are created not to confront dangers that will arise but to perform some other public function that may incidentally involve risk. In keeping with this distinction, many jurisdictions have extended the rule to police.

Kreski v. Modern Wholesale Electric Supply Co., 429 Mich. 347 fn.6, 415 N.W.2d 178 (1987) *quoting* Berko v. Freda, 93 N.J. 81, 87, 459 A2d 663 (1983). The policy reasons for applying the professional rescuer doctrine to firemen, police officers and other professional rescuers is universal. Specifically, the public compensate[s] its safety officers both in pay that reflects the hazard of their work and in workers' compensation benefits for injuries suffered when the risks inherent in the occupation materialize. Nagy v. Arsenault, 2015 Conn. Super. LEXIS 1250 at *7-*8 (2015). As recognized by the Connecticut Supreme Court,

[B]y permitting firefighters and police officers to recover in tort for occupational injuries caused by the negligence of particular members of the public whom the officer is called upon to aid would impose a double burden on the taxpayers, who already pay such officers to deal with the hazards that may result from the taxpayers' own future acts of negligence. 'Exposing the negligent taxpayer to liability for having summoned the police would impose upon him multiple burdens for that protection.' To avoid this potential

for double liability, in taxes and in tort, most courts have concluded that the public as a whole, rather than individual landowners should bear the burden of the foreseeable losses incurred when firefighters or police officers are injured in the performance of their duties. As more than one court has observed, the public should compensate its safety officers both in pay that reflects the hazard of their work and in workers' compensation benefits for injuries suffered when the risks inherent in the occupation materialize.

Reliance on workers' compensation and other forms of public compensation is also appropriate because 'societal responsibility rather than possible tort recovery is the better, surer, and fairer recourse' for a public safety officer injured in the line of duty. As one court stated, 'the reason of the tax collector is both broader and more persuasive than the premium taker.' In addition, courts have noted that society's recognition of the inherently hazardous nature of the work of public officers has frequently led to the enactment of special benefits for such workers, above and beyond those ordinarily provided by workers' compensation.

Furstein v. Hill, 218 Conn. 610, 618-621 (1991) (internal citations omitted).

Arkansas' willingness to expand the professional rescuers doctrine to a road-side

assistance worker suggests Arkansas would be willing to expand the rule to police officers, and possibly other professional rescuers. The reasoning advanced by other jurisdictions can be used as a stepping stone to encourage an Arkansas court confronted with the issue to expand the rule to police officers, and possibly to other public employees who are compensated to confront hazardous situations by virtue of their employment.

The thanks of the AADC go out to Breana Mackey of The Barber Firm for writing this article.



**We Are Better Together:
Support The AADC**

**Membership Applications at
<http://www.arkansasdefensecounsel.net/application.php>**

**Please share this with friends
and colleagues.**