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COURT OF APPEALS

STATE OF NEW YORK

COURTNEY ANDERSON,

Respondent,

-against-

NO. 16

COMMACK FIRE DISTRICT,

Appellant.

20 Eagle Street
Albany, New York
February 9, 2023

Before:

ACTING CHIEF JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE SHIRLEY TROUTMAN

Appearances:

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Official Court Transcriber



1 ACTING CHIEF JUDGE CANNATARO: Good afternoon.
2 We will begin with our first calendared appeal for this
3 afternoon. That's number 16, Anderson v. Commack Fire
4 District.

5 MR. HANNIGAN: Good afternoon. And may it please
6 the Court, Tim Hannigan of the Hannigan Law Firm on behalf
7 of Appellant, Commack Fire District. Your Honor, I
8 respectfully request three minutes for rebuttal.

9 ACTING CHIEF JUDGE CANNATARO: You have three
10 minutes.

11 MR. HANNIGAN: While this Court has time and
12 again properly applied Vehicle and Traffic Law section
13 1104, the decision appealed from nullifies the express
14 language of that statute with respect to emergency
15 operation of authorized emergency vehicles belonging to
16 fire districts and must be reversed.

17 In appealing this matter, it's clear that both
18 the Second Department - - - the majority of the Second
19 Department and the trial court relied exclusively on
20 General Municipal Law section 205-b, which is a negligence
21 shifting statute, and applied that statute to rules of the
22 road, which it should not have done. Vehicle and Traffic
23 Law section 1104 was adopted in the 1950s, nearly twenty-
24 plus years after General Municipal Law 205-b, and applies
25 in certain instances that this Court has time and again has



1 referenced. Most recently, in - - -

2 JUDGE RIVERA: Is your position that there's no
3 way to harmonize them? One applies in a particular sphere
4 and the other applies in a different sphere? But if not,
5 then how would you harmonize what appears to be the plain
6 the language of 205-b, the fire districts are liable for
7 the ordinary negligence of their firefighters.

8 MR. HANNIGAN: So Judge Rivera - - -

9 JUDGE RIVERA: Volunteer firefighters.

10 MR. HANNIGAN: Judge Rivera, I would harmonize
11 the statutes as much of the same way as this Court did in
12 Thomas. General Municipal Law 205-b applies all the time.
13 Unless, the specifically enumerated vehicle and traffic
14 operations outlined in section 1104 sub b occur, and unless
15 there is a vehicle engaged in emergency operation.

16 JUDGE RIVERA: Yeah. But my problem with that
17 argument is that 205-b refers specifically to the fire
18 district, and 1104, when it comes to the standard of
19 liability is referring specifically to the driver. And one
20 would think, if the intent is as you assert, that 205-b
21 would have made clear that - - - right - - - that somehow -
22 - - or excuse me, 1104 would make clear that the fire
23 districts are subject to the same standard as the
24 firefighter.

25 MR. HANNIGAN: And that's the same path that the



1 second department went on in the majority. However, when
2 you look at the definitions contained within the Vehicle
3 and Traffic Law, specifically section 1101, which defines
4 authorized emergency vehicle, and then section 115-A, which
5 defines fire vehicle as belonging to, among other owners, a
6 fire district. A fire district is clearly captured within
7 the scope of municipal owners subject to the protections
8 afforded under Vehicle and Traffic Law section 1104.

9 JUDGE RIVERA: But since it's the owner - - - I'm
10 sorry, perhaps I'm misunderstanding your argument. But all
11 1104 is referring to is the liability of a driver. Those
12 sections don't say that the fire district is the equivalent
13 of a driver.

14 MR. HANNIGAN: Correct. And that's the same case
15 in any time an emergency vehicle is involved in a motor
16 vehicle collision or other incident. The same with police,
17 city owned, village, town. Any sort of municipally owned
18 emergency vehicle operating. But for purposes of this
19 case, what we're dealing with is vicarious liability. So
20 it is, of course, only the driver's liability that's to be
21 considered.

22 And there's no question on this record, because
23 there's no appeal from that fact that reckless disregard
24 applies to the actions of firefighter Muilenburg. And
25 under peer theory of vicarious liability against the fire



1 district, that liability, reckless disregard, is imputed
2 to - - -

3 JUDGE RIVERA: But that would be - - -

4 MR. HANNIGAN: - - - the fire district.

5 JUDGE RIVERA: But 205-b is also about vicarious
6 liability in the way you're suggesting. And it does impose
7 a different standard. Would not the legislature have done
8 the same here if that was - - - if that was the intent?

9 MR. HANNIGAN: I believe the legislature did do
10 that. So General Municipal Law 205-b was enacted in the
11 30s to create liability for fire districts where none
12 previously existed. The earlier - - -

13 JUDGE RIVERA: Yes. So as a consequence, when
14 1104 was enacted, the legislature was well aware of the
15 existing statutes.

16 MR. HANNIGAN: Yes. And 1104 when enacted was -
17 - - allowed and included fire districts among the municipal
18 owners of vehicles for purposes of affording those
19 protections. And I guess what we're looking at here - - -

20 JUDGE WILSON: I'm not sure why you read 205-b as
21 creating vicarious liability for the fire districts,
22 instead of just liability for the fire districts.

23 MR. HANNIGAN: It is. It's just a negligence
24 shifting statute. I agree with that.

25 JUDGE WILSON: Well, why do you say shifting?



1 MR. HANNIGAN: So when looking at the negligence
2 of a vehicle operator, like this Court did in Thomas when
3 it applied General Municipal Law 205-b. You look at the
4 actions of the driver, only. And just like in this case,
5 there are no - - - there are no specific allegations of
6 harm or wrongdoing as against the employer, fire district,
7 et al. So only the actions of the driver can be evaluated.

8 And in the event that the driver, as in Thomas,
9 is liable in negligence only, that negligence is imputed to
10 the fire district under 205-b. It's designed to prevent
11 volunteer firefighters from having personal liability for
12 operation of a motor vehicle.

13 JUDGE RIVERA: Well, they're not absolutely
14 absolved from liability.

15 MR. HANNIGAN: Correct. Correct.

16 JUDGE WILSON: Okay.

17 MR. HANNIGAN: But for purposes of negligence,
18 when a volunteer firefighter, as in Thomas, is not
19 operating an emergency vehicle but still fulfilling their
20 duties, their negligence is imputed to the municipal fire
21 district for which they are - - - they are serving.

22 JUDGE WILSON: So you're reading 205-b, if I
23 understand it correctly, which includes willfulness, right?
24 So that the firefighter could be responsible or willful,
25 right?



1 MR. HANNIGAN: Yes. Yeah.

2 JUDGE WILSON: So you're reading it to say that
3 the standard of negligence for 1104 circumscribes the scope
4 of the district's liability under 205-b. But the
5 willfulness in 205-b itself doesn't.

6 MR. HANNIGAN: So to answer the question, 1104
7 does not apply all the time. It applies only when - - -

8 JUDGE WILSON: Only once the conditions is met.

9 MR. HANNIGAN: Yup. And there are - - -

10 JUDGE WILSON: Yes.

11 MR. HANNIGAN: - - - and there are multiple
12 conditions.

13 JUDGE WILSON: Yes.

14 MR. HANNIGAN: It's got to be emergency
15 operation - - -

16 JUDGE WILSON: Yeah, I got that.

17 MR. HANNIGAN: - - - lights and sirens, and
18 then - - -

19 JUDGE WILSON: Yup.

20 MR. HANNIGAN: - - - one of the four.

21 JUDGE WILSON: But you're reading those into 205-
22 b, but you're not reading the willfulness part that is in
23 205-b into the district's liability.

24 MR. HANNIGAN: And I think we are - - - and this
25 court has in matter of Dutchess County, in terms of



1 statutory construction and reading these two together.
2 Because they need to be read together. When you see a
3 later specific statute like we see here with 1104, and you
4 harmonize it with General Municipal of 205-b, the only
5 logical result from that comparing the two is that this
6 particular class of operation outlined in 1104 has to exist
7 as a special class.

8 JUDGE WILSON: There are versions of - - -

9 MR. HANNIGAN: I see my time is expired.

10 JUDGE WILSON: - - - 1104 that pre-date 205-b,
11 right? If you trace it all back?

12 MR. HANNIGAN: Yeah. The bulk of the sections
13 set forth in 1104 were adopted in the '50s.

14 Thank you.

15 MR. SZCZESNY: Good afternoon, Your Honors. May
16 it please the Court, my name is Scott Szczesny, and I'm
17 from Buttafuoco & Associates, and I represent the
18 Respondent, Courtney Anderson, in this matter.

19 Here, the fire district is attempting to escape
20 its statutory liability for its volunteer firefighters'
21 negligence, and therefore, the second - - - this Court
22 should affirm the second department's decision to deny
23 summary judgement.

24 JUDGE SINGAS: Mr. Szczesny, why should a fire
25 district be vicariously liable if a firefighter is not



1 liable?

2 MR. SZCZESNY: Well, as Justice Rivera pointed
3 out, that 205-b deals with the vicarious liability of the
4 district when the firefighter is negligent, when they
5 commit any crime of negligence on the roads within the fire
6 district. Or as this Court pointed out in Thomas, outside
7 of the fire district - - - even outside of their own - - -
8 outside of a district-owned vehicle, as long as they're in
9 the - - - the perpetuating of their duties as a volunteer
10 firefighter.

11 JUDGE GARCIA: But 1104 is a more specific
12 statute, right? So how do you square your view with
13 Saarinen?

14 MR. SZCZESNY: Well, Your Honor, with regard to
15 how it's a more specific statute, it's a more specific
16 statute with regard to the - - - the actions of emergency
17 personnel in - - - as - - - Kabir pointed out, in those
18 four specific situations. However, section 205-b is a
19 specific statute and the only statute that deals with the
20 liability of - - -

21 JUDGE GARCIA: I understand what 205 does, but
22 Saarinen we applied the reckless standard to Massena,
23 right? It was the village. And I understand 205 wasn't
24 raised or it wasn't discussed in there, 205-b. But we seem
25 to apply that standard under those specific circumstances.



1 So are you saying we just didn't consider 205-b in that
2 case?

3 MR. SZCZESNY: No, Your Honor. And the point
4 that 205-b was not raised there is, again, it did not apply
5 because it wasn't dealing with the volunteer firefighter
6 and with regard to a fire district itself.

7 JUDGE WILSON: So isn't there some reason - - -

8 JUDGE GARCIA: So isn't that what you're asking
9 now? The fire district standard of liability?

10 MR. SZCZESNY: Yes, Your Honor. And that's
11 exactly it. That this wasn't - - -

12 JUDGE GARCIA: So what was the standard of
13 liability that we applied to the fire district in Saarinen?

14 MR. SZCZESNY: It was a different scenario where
15 the reckless disregard standard was applied. But that's
16 not what - - - that's not what needs to be contemplated in
17 this specific situation, because the factual points are
18 different, because 205-b is very clearly met here.

19 JUDGE GARCIA: But I guess I'm going back to my
20 original question. IS that because we didn't consider 205-
21 b in this case, or is there some factual difference between
22 Massena in that case and this case?

23 MR. SZCZESNY: Well, in this case here, 205-b
24 it's - - - every single criteria is met here where as
25 Saarinen, it wasn't. And here we have a fire district



1 vehicle, owned by the fire district, operated within the
2 bounds and the public streets and highways of the district
3 in accordance with their duties. And that's exactly what's
4 happening here.

5 And if we were to read 205 - - - if we were to
6 not apply 205-b here to impute liability onto the fire
7 district, specifically, then 205-b would have effectively
8 no utility whatsoever, because this exactly what - - -

9 JUDGE WILSON: Are you saying the rule for fire
10 districts is different from the rule for municipalities?

11 MR. SZCZESNY: Yes, Your Honor.

12 JUDGE WILSON: And why - - - and do you have any
13 understanding of why the legislature would have wanted
14 that?

15 MR. SZCZESNY: Well, yes, Your Honor. With
16 regard to the difference between a city, a fire department,
17 or anything like that, it goes down to where the
18 legislature specifically references volunteer firefighters
19 as opposed to paid firefighters, police officers, things of
20 that nature, where they're professional - - - professional
21 law enforcement and emergency personnel dealing with the
22 situations. You can see in section 205, 205-a, 205-b.
23 They make specific delineations between paid and volunteer
24 law enforcement and firefighters, specifically, in those
25 statutes. And there's a - - -



1 JUDGE TROUTMAN: So you're saying the intent was
2 that they be treated differently, even though the work is
3 the same?

4 MR. SZCZESNY: Yes, Your Honor. Exactly. And
5 they should be treated differently because they're held to
6 different standards and one is a professional, where a paid
7 firefighter that's hired by the city or appointed by the
8 city, or any kind of municipality in that jurisdiction,
9 they - - - that's their job. That's what they're there to
10 do. They're trained by - - - and they're responsible for
11 their training by the city, by whoever employs them.

12 Whereas volunteers are not necessarily subject to
13 the same - - - the same training, the same legislation.
14 And again, they're treated differently by the legislature
15 in multiple aspects and they should still be treated
16 differently here, in this situation, as - - -

17 JUDGE GARCIA: So under your rule, a fire
18 district would be liable for ordinary negligence for
19 volunteer firefighters?

20 MR. SZCZESNY: Yes, Your Honor.

21 JUDGE GARCIA: And that wouldn't apply to other
22 firefighters, just volunteer firefighters and the fire
23 district?

24 MR. SZCZESNY: Well, yeah. And that's exactly
25 the point from - - - from section 205-b. I mean, the title



1 of the section deals and specifically references volunteer
2 firefighters. And that's exactly the point here, is that
3 we have a volunteer firefighter operating within the
4 district itself and in the - - - in a fire district
5 vehicle, in the perpetuating of their duties. And this
6 exactly the type of situation that was contemplated when
7 205-b was drafted - - -

8 JUDGE RIVERA: And 1104 applies to all
9 firefighters?

10 MR. SZCZESNY: So it applies to all firefighters,
11 however, it does not apply to fire districts, as 11 - - -

12 JUDGE RIVERA: No. But the distinction that
13 you're drawing that is explicit in 205-b you're saying does
14 not apply to 1104 conduct?

15 MR. SZCZESNY: Correct, Your Honor. And as you
16 pointed out, that deals specifically with the drivers
17 themselves, not the districts or anyone else. It deals
18 specifically with the drivers, and that's exactly the point
19 is that the only statute - - - and this Court has - - - and
20 this Court, nor any other court, as appellants pointed out
21 in their brief.

22 At the end of it, they said specifically that
23 1104 has never actually been applied to fire districts, a
24 fire district owned vehicle. And that's I think one of the
25 most important things here, is they weren't able to find

1 any case law in any of the districts, in any of the
2 departments whatsoever in New York that the fire district
3 was ever dealt with or had 1104 applied to it.

4 ACTING CHIEF JUDGE CANNATARO: So 1104 has never
5 immunized a fire district for the negligent operation of a
6 fire vehicle during an emergency response?

7 MR. SZCZESNY: That's correct, Your Honor.

8 ACTING CHIEF JUDGE CANNATARO: And that's by
9 statutory design? Is that your assertion?

10 MR. SZCZESNY: Well, exactly. That is - - - what
11 I'm asserting here is that there is no case law supporting
12 Appellant's argument that 1104 should immunize the fire
13 district. Because with the statutory construction itself
14 between 1104 and 205-b. If 205 - - - if 1104 was to
15 immunize a district here, it would completely render 205-b
16 useless and inert as a statute.

17 ACTING CHIEF JUDGE CANNATARO: Is there anything
18 in the language of 1104 that would indicate that, or are
19 you extrapolating that from your reading of 205-a?

20 MR. SZCZESNY: I'm sorry. No, no. So it's from
21 the language of 1104, and the case law that's determined it
22 specifically with regard to Kabir, which Kabir, as
23 Defendants - - -

24 ACTING CHIEF JUDGE CANNATARO: 1104 says this
25 doesn't apply to fire districts.



1 MR. SZCZESNY: It does not reference that it does
2 apply to fire districts, Your Honor. And again, as there
3 is a fire - - - I mean, we can't presume or read in words
4 to the legislative intent unless it was specifically
5 mentioned in there and again the clear - - -

6 JUDGE RIVERA: Their view doesn't - - - I think
7 you would say it nullifies 205-b, it makes it of no
8 consequence, right? It makes it irrelevant, inapplicable.

9 MR. SZCZESNY: Sure.

10 JUDGE RIVERA: But doesn't 205-b apply to more
11 conduct than 1104? Isn't the conduct in 1104 a subset of
12 the much broader conduct in 205-b?

13 MR. SZCZESNY: Yes, Your Honor, but - - - and
14 this is exactly the point is that what we have here is
15 exactly - - - meets every single criteria of 205-b. It's a
16 fire district-owned vehicle, within the fire district,
17 during the application of their duties as volunteer - - -

18 JUDGE RIVERA: But meets 1104 too, right? I mean
19 the action that occurred.

20 MR. SZCZESNY: Oh, absolutely. And volunteer
21 firefighters, their main jobs, their main duties, are to
22 respond to emergency situations.

23 ACTING CHIEF JUDGE CANNATARO: In emergency
24 vehicles?

25 MR. SZCZESNY: Absolutely.



1 ACTING CHIEF JUDGE CANNATARO: And 1104 refers, I
2 think exclusively, to emergency vehicles, right?

3 MR. SZCZESNY: Right. And as does 205-b, it
4 refers specifically to fire district-owned vehicles.

5 JUDGE GARCIA: And what, again - - - I think you
6 touched on this earlier, what would be the policy reason
7 for carving our volunteer firefighters in 205-b to a
8 different standard of care?

9 MR. SZCZESNY: Well, so just like as the intent
10 is stated through the initial letters as that statute was
11 being passed, it was to encourage volunteer firefighters to
12 actually join the volunteer forces, so they wouldn't
13 actually be responsible for their negligence. That the
14 fire district would be immunizing them.

15 JUDGE GARCIA: And how does that relate to
16 holding the fire district to a higher standard of care than
17 they have - - - are held to? I don't understand the
18 connection. So what's the policy reason after 1104 comes
19 in not to apply it here? Why are volunteer firefighters
20 different? Is there a higher risk in your view? Their
21 conduct is more likely to be negligent if they're - - - and
22 you want to hold the fire district to a higher standard?
23 What's the policy reason?

24 MR. SZCZESNY: Absolutely, Your Honor. And I see
25 my time is almost running out, if I could just respond to



1 your question?

2 JUDGE GARCIA: You can. Sure.

3 MR. SZCZESNY: Thank you so much. The policy
4 reason for holding the volunteer firefighters to a
5 different standard or a separate standard is - - - there's
6 multiple factors. And one of the specifically being that
7 volunteer firefighters are not professional firefighters.
8 That's made very explicitly clear. They're not being paid
9 for responsibilities. And again, as the legislature
10 separately held them to different regulations and rules
11 throughout the General Municipal Law.

12 So the fact that they're being treated
13 differently and they're trained differently, they're not
14 held to the same standards as professional firefighters.
15 The cities are not responsible for their training,
16 necessarily. So at that point, if they're not being - - -
17 if they're not being treated as professional firefighters,
18 and they're not necessarily held to the same standards as
19 professional firefighters, that may possibly lead to an
20 increased of potential damage if they're not as trained or
21 as highly trained or as highly skilled in the terms of
22 firefighting, training capabilities in those - - - those
23 ways, as opposed to a professional. So if they're driving
24 around, possibly in - - -

25 JUDGE GARCIA: And is that view of volunteer



1 firefighters and their training - - - is that anywhere in
2 the legislative history of any of these statutes?

3 MR. SZCZESNY: Well, no, Your Honor. Well, not
4 necessarily in these statutes that we're talking about here
5 with regard to the - - -

6 JUDGE GARCIA: Are other statutes?

7 MR. SZCZESNY: In terms of the training, it comes
8 down to the fire districts themselves as they're - - - as
9 they're created. And that's, I think, exactly the point.
10 Is that they're - - - it's not a homogenized standard that
11 the state or any kind of larger municipality would be able
12 to govern.

13 ACTING CHIEF JUDGE CANNATARO: Thank you,
14 Counsel.

15 JUDGE RIVERA: I'm sorry.

16 ACTING CHIEF JUDGE CANNATARO: I'm sorry.

17 JUDGE RIVERA: I'm sorry. If I could just - - -
18 the question was triggered based on what you're saying. So
19 okay, let's say we - - - all of that makes sense, for one
20 moment. Let's just say that. Then why have the reckless
21 disregard standard 1104 for all firefighters, if the
22 legislature you're saying some of this policy of a standard
23 that almost immunizes them? Not completely, obviously.
24 And there is a difference. Well, do you agree there's a
25 difference between the 1104 standard with respect to



1 firefighters, and the 205-b standard, with respect to
2 firefighters?

3 MR. SZCZESNY: Yes, Your Honor.

4 JUDGE RIVERA: Okay. So the both of them give,
5 certainly, the opportunity for a firefighter to not be held
6 liable - - -

7 MR. SZCZESNY: Absolutely.

8 JUDGE RIVERA: - - - given these heightened
9 standards. Why have that all for all firefighters in 1104
10 given what you've just said about the professional versus
11 the unpaid? Although I think there might be some
12 legislative language about that, but let's see what you
13 say.

14 MR. SZCZESNY: Well, Your Honor, with regard to
15 having the reckless disregard standard, it is actually
16 relatively similar to 205-b's standard that they reference
17 with regard to willful - - - willful negligence, and I
18 forgot the exact - - -

19 JUDGE RIVERA: Malfeasance?

20 MR. SZCZESNY: Malfeasance. Exactly.

21 JUDGE RIVERA: In 205-b? Yeah.

22 MR. SZCZESNY: we're talking about a lot of
23 different standards, so - - -

24 JUDGE RIVERA: Yes. Yes.

25 MR. SZCZESNY: So I think that that goes in line



1 with, specifically, the reckless disregard standard of
2 1104, where that's where the driver's actually held
3 responsible for their actions when they expressed that
4 reckless disregard. And that's exactly where the volunteer
5 firefighter would be if they're - - - if they're willfully
6 negligent or acting with any kind of malfeasance.

7 JUDGE RIVERA: Okay.

8 MR. SZCZESNY: Thank you so much, Your Honors.

9 MR. HANNIGAN: In response to Judge Garcia's
10 question, there is no public policy supporting any
11 suggestion that volunteer firefighters are treated
12 differently under the law than paid firefighters for
13 purposes of operating authorized emergency vehicles.

14 JUDGE WILSON: Well, except that 205-b looks like
15 it does treat them differently, right? 205-b gives the
16 volunteer firefighters a blanket immunity for anything, not
17 just 1104 violations, correct?

18 MR. HANNIGAN: Correct. For all activities - - -

19 JUDGE WILSON: So they are treated differently.

20 MR. HANNIGAN: Yes. But when that activity is
21 specifically relative to the rules of the road and
22 operating authorized emergency vehicles, 1104 as the later
23 specific statute comes in and supplants 205-b for purposes
24 of the standards of liability that applies.

25 JUDGE WILSON: Well, 205-b might be broader than



1 1104, no?

2 MR. HANNIGAN: Yes. I agree, it is broader than
3 1104, but - - -

4 JUDGE WILSON: So why supplant it with - - -

5 MR. HANNIGAN: - - - the later specifics - - -

6 JUDGE WILSON: So you would supplant it with
7 something narrower than as you would give the volunteer
8 firefighters themselves less protection than 205-b gives
9 them?

10 MR. HANNIGAN: No, Your Honor. The section 1104
11 is a later specific statute - - -

12 JUDGE WILSON: I understand. But it's narrower -
13 - - the protection given the volunteer firefighters in 205-
14 b is they're not liable civilly for any acts done by them
15 in the performance of their duties, other than willful
16 negligence of malfeasance.

17 MR. HANNIGAN: Correct.

18 JUDGE WILSON: Right. That seems to me if I
19 could choose between that or 1104, even in the circumstance
20 where I'm running a red light, I would pick 205-b, not
21 1104. Seems better.

22 MR. HANNIGAN: I think they're both good, but the
23 issue in this case is that 205-b does not apply. It - - -

24 JUDGE WILSON: Well, because it's supplanted by
25 the later enacted 1104, even though that may be less



1 protective than 205-b.

2 MR. HANNIGAN: I submit that 1104 is more
3 protective because it subjects the emergency vehicle
4 operator the heightened standard of reckless disregard.

5 Finally, I did want to note the discussion about
6 paid versus volunteer. Fire districts are political
7 subdivisions of the state. They're governed by publicly
8 elected - - - public officers. They can pay firefighters,
9 and many do. In Arlington Fire District in Dutchess
10 County, North Greece Fire District in Rochester. There are
11 combination paid and volunteer departments.

12 The focus here is on the municipal owner and the
13 liability that attaches to the municipal owner of the
14 apparatus. And there is no distinction there. 1104
15 applies across the board when those specific examples are
16 met.

17 JUDGE RIVERA: Yeah. But I want to get to this
18 issue that you're saying 1104 is the more specific and
19 therefore controls. It is specific in a different way,
20 from 205-b. I mean, 205-b is specific to volunteer
21 firefighters, specific kinds of conduct, and specific to
22 the fire districts liability.

23 Whereas 1104, of course, applies to all
24 firefighters, not just volunteer firefighters. There is a
25 difference in the standard with respect to their - - - the



1 heightened standard for liability in these respective
2 sections. So they're specific in different ways.

3 MR. HANNIGAN: Yes. But 1104 applies and the
4 focus is on the actual municipal owner - - -

5 JUDGE RIVERA: Yeah, but 1104 applies to all
6 firefighters.

7 MR. HANNIGAN: Correct.

8 JUDGE RIVERA: It's much broader in that way
9 than - - -

10 MR. HANNIGAN: Yes.

11 JUDGE RIVERA: - - - 205-b.

12 MR. HANNIGAN: Yes.

13 JUDGE RIVERA: Yeah. Okay.

14 MR. HANNIGAN: Thank you.

15 ACTING CHIEF JUDGE CANNATARO: Thank you.

16 (Court is adjourned)

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C E R T I F I C A T I O N

I, Nicole Oranges, certify that the foregoing transcript of proceedings in the Court of Appeals of Courtney Anderson v. Commack Fire District, No. 16 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Signature: Nicole Oranges

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