

FACTS ESTABLISHED AT FIREFIGHTER MORRISON TRIAL REGARDING PASS DEVICE

• *NIOSH INSPECTION*

- NIOSH found that firefighter Morrison's PASS device was fully operational.
- The NIOSH expert stated under oath that during the inspection: (i) the PASS device was manually activated using the red control button on the side of the unit; (ii) the PASS operated properly in this mode and was reset; (iii) the armed device was then placed at rest on the inspection table; (iv) the alarm automatically activated after approximately 20 seconds and was then reset and disarmed; (v) the device operated properly *when pressurized* during performance testing; and (vi) the device repeatedly activated due to lack of motion.
- The NIOSH testing of firefighter Morrison's SCBA included 7 tests. In these tests, firefighter Morrison's PASS device alerted, as designed, over 100 times.
- Firefighter Morrison's PASS device sounded when it was supposed to sound every time during the NIOSH testing.

• *SOUND EXPERT TESTIMONY*

- An expert audiologist, Al Yonovitz, Ph.D., testified that his testing proved that the PASS device that could be heard in the background during firefighter Kenneth Walters' mayday radio transmission the night of the fire was that of firefighter Morrison.
- Dr. Yonovitz stated that the initial portion of each PASS device's alert has its own unique signature (sound) and can be uniquely identified.
- Dr. Yonovitz stated that the audio waves of the PASS device recorded at the time of the fire and the audio waves recorded of firefighter Morrison's PASS device recorded during testing are identical.
- Importantly, the plaintiffs did not offer an expert witness, or documents of any kind, to rebut Dr. Yonovitz's opinions.

• **OTHER FACTS ESTABLISHED AT TRIAL**

- When tested at Intertek Testing Services (the independent Nationally Recognized Testing Laboratory that is the sole laboratory used to test and certify SCBAs for NFPA compliance) four years after the accident, firefighter Morrison's PASS device sounded when submerged in water for nearly two hours, and after removal, continued to sound on cycle as anticipated.
- Since its introduction in 1998, there has never been a single reported instance in which the Survivair PASS device did not sound its alert when it was supposed to alert.
- The PASS device is designed so that if water does enter the device it sounds, motion or no motion.
- Expert testimony by Charles Landy, Ph.D., and Cliff Bigelow, P.E., proved that, even when water is placed directly on non-conformally coated portions of the electrical compartment of the PASS device, it still sounds, motion or no motion.
- The plaintiffs' experts did **NO** testing to support their theories or to rebut the defendants' testing.
- The settlement was reached solely for the purpose of compromise and must not be construed by Survivair as an admission of liability. To the contrary, the evidence produced at trial demonstrated that the Survivair products used by firefighter Morrison on the night of the fire performed as they were designed to perform.
- Comments from the jurors to whom Survivair's counsel spoke seemed to be reassuring and supportive of Survivair's position and evidence at trial.