

RETURN DATE: SEPTEMBER 14, 2021

SUPERIOR COURT

LORI PEPLER, Individually and as Executor of the Estate of Christopher Pepler, and as Parent and Guardian for NATHAN PEPLER, a minor child as Guardian and Next Friend

J.D. OF WATERBURY  
AT WATERBURY

v.

AUGUST 17, 2021

CITY OF TORRINGTON AND ITS BOARD OF TRUSTEES OF THE POLICE AND FIREMENS' PENSION FUND *By The Following As Members of The Board of Trustees of The Police and Firemens' Pension Fund In Their Official Capacity:*

ELINOR CARBONE; DANIEL FARLEY;  
GLENN MCLEOD; JOSEPH MCELROY;  
GREGG COGSWELL; DOUGLAS BENEDETTO;  
DARLENE BATTLE; DUSTIN BINGHAM;  
SGT. NICHOLAS LETTIERI; OFFICER JAMES FOLEY;  
LT. EDWARD DELISLE; and  
BATTALION CHIEF THOMAS STERLING

### COMPLAINT

#### FIRST COUNT (Declaratory Judgment)

1. The plaintiff, Lori Pepler, brings this action both as the surviving spouse of Christopher Pepler and as executor of Christopher Pepler's Estate. She also brings this action on behalf of her minor son, Nathan.

2. Christopher Pepler was employed as a fireman by the defendant City of Torrington from September 13, 1999 until his death at the age of 43 on November 1, 2017.

3. During his employment by the Fire Department of the City of Torrington, he was promoted from Fireman to Deputy Chief of the Fire Department, which was the position he held at the time of his death.

4. During his 18 years of service with the Fire Department, Christopher Pepler was exposed to fires both in training exercises and when responding to calls from citizens whose properties were on fire. He also was called to the scene of car accidents and chemical spills.

Depending on the materials at the site of the fire, accident or chemical release, Christopher Pepler along with other firefighters was exposed to various chemicals and carcinogens. In addition, many fire extinguishers and fire retardant foams used to suppress fires have been found to contain chemicals which are hazardous. He was also exposed to diesel fumes, which are a known carcinogen.

5. In June 2015, Christopher Pepler was diagnosed with oral tongue squamous cell carcinoma and commenced medical treatment. He continued to report for duty as Deputy Fire Chief. Unfortunately, the treatments were unsuccessful and he died due to this cancer on November 1, 2017, after completing a full day's work as Deputy Chief.

6. The City of Torrington has provided for various pension and disability benefits for its municipal employees, including firefighters, as it is empowered to do pursuant to Conn. Gen. Stat. §7-148 (c) (5). The City has delegated the authority for the administration of these plans to various political bodies it has created pursuant to its charter and ordinances.

7. The pension and benefits plan for firefighters (hereinafter, the Pension Plan) is administered by a body politic created by the City known as the Board of Trustees of the Police & Fireman's Pension Fund (hereinafter, the Board of Trustees). Among its duties is to adopt a written Pension Plan and to determine to whom and when to pay benefits under the Pension Plan and in what amount.

8. The Board of Trustees serve voluntarily and serve *ex officio* or are appointed by the Mayor of the City of Torrington. The Board of Trustees is presently comprised of the following individuals. Elinor Carbone (Mayor); Daniel Farley (City Treasurer) serve *ex officio*. Glenn McLeod, Joseph McElroy, Gregg Cogswell, Douglas Benedetto, Darlene Battle, and Dustin Bingham serve as representatives of the Board of Safety Commissioners. Sgt. Nicholas

Lettieri and Officer James Foley serve as representatives of the Police Department Lt. Edward DeLisle and Battalion Chief Thomas Sterling serve as representatives of the Fire Department. They are made defendants in this matter solely in their official capacity as members of the Board of Trustees. The City of Torrington is made a defendant because it has an independent duty under the statutes to create such plans and pay the benefits according to the statutes and the duly adopted plan.

9. Conn. Gen. Stat. § 7-433b mandates in pertinent part that “the survivors of any uniformed or regular member of a paid fire department or any regular member of a paid police department whose death has been suffered in the line of duty shall be eligible to receive such survivor benefits as are provided for in the Workers’ Compensation Act and in addition they shall receive such survivor benefits as may be provided for in the retirement system in which such department member was a participant at the time of his death.” The Legislature has authorized municipalities to pay these survivor benefits from its general fund as well as from any retirement system.

10. Section 11 of the City’s Police & Fire Pension Fund provides in pertinent part that “If any member of the Fire Department is killed while in the actual performance of duty, or dies from the effects of any injury received while in the actual discharge of duty...the Board of Trustees, by the affirmative majority of its whole number, shall direct a sum equal to 100% of the employees annual compensation payable in monthly installment to the surviving spouse...” In addition, the surviving spouse and child of a Fire Department member who dies in active duty is entitled to continue such medical benefits as were afforded to her and the fireman’s children while the fireman was alive.

11. Christopher Pepler was a vested participant in the City's Police & Fireman's Pension Fund throughout his career and at the time of his death.

12. Dr. Kenneth Spaeth has reviewed the circumstances of Christopher Pepler's death and issued a report in June 2020 in which he rendered his opinion as an expert in medicine and occupational health that the cancer which caused Christopher Pepler's death was caused by exposures he received during his work for over 18 years as a fireman for the City of Torrington. This report was provided to the City of Torrington.

13. Lori Pepler, acting individually through her attorney has requested that the Board of Trustees pay the benefits described in the Pension Plan ¶11.

14. The City of Torrington and the Board of Trustees have failed to make any payment to the surviving spouse or son of Christopher Pepler despite the request by Lori Pepler that these benefits be paid.

15. The City has not paid or provided Lori Pepler survivor benefits of any kind during the four years since her husband's death.

16. The plaintiff invokes this Court's powers under the declaratory judgment act, Conn. Gen. Stat. §52-29 and requests that the Court determine that Christopher Pepler's death was in the line of duty and that his spouse and son are eligible for death benefits and medical benefits under ¶11 of the Pension Plan.

**SECOND COUNT (Breach of Fiduciary Duty)**

1.-15. The allegations of paragraphs 1-15 of the First Count are incorporated paragraphs 1-15 of the Second Count as if fully recited herein.

16. Trustees of a Pension Fund are fiduciaries under the law who owe the Plan Participants such as Christopher Pepler and their beneficiaries a continuing duty to administer the plan in the best interests of the beneficiaries.

17. By failing to act either on its own or at the request of Lori Pepler to pay death and medical benefits be paid to her and her son as the surviving spouse of Christopher Pepler, the Board of Trustees have breached their fiduciary duty.

18. Lori Pepler and her son Nathan are damaged by this breach in that the City has failed to pay the benefits on a timely basis, denying them the benefits intended by the plan.

19. The court is requested to give declaratory relief directing the Board of Trustees to calculate and pay the death and medical benefits to which Lori and Nathan Pepler are entitled under the Pension Plan and to calculate and pay interest on any payments which were owed but unpaid in the four years since Christopher Pepler's death.

**THIRD COUNT (Breach of Contract)**

1.-15. The allegations of paragraphs 1-15 of the First Count are incorporated as paragraphs 1-15 of the Third Count as if fully recited herein.

16. The Pension Plan adopted by the City and the Board of Trustees is a contract between them and the firefighters who are covered by the Plan.

17. The failure to pay benefits when required is a breach of the contract.


18. Lori and Nathan Pepler are damaged thereby

**WHEREFORE**, the plaintiff seeks as relief:

1. A declaratory judgement of this Court applying the provisions of the Pension Plan to determine that Christopher Pepler was covered by the provisions of the Pension Plan and that his spouse and son are owed benefits pursuant to the Plan;
2. Money damages in the form of survivor and medical payments that the City was obliged to pay to Lori and Nathan Pepler but has failed to pay;
3. Statutory interest on the moneys which have been wrongfully withheld pursuant to Conn. Gen. Stat. §37-3a.;
4. Such other equitable and monetary relief as the Court shall deem appropriate.

**PLAINTIFF**

LORI PEPLER, Individually and as Executor of the Estate of Christopher Pepler, and as Parent and Guardian for NATHAN PEPLER, a minor child as Guardian and Next Friend

By:   
J. Christopher Rooney  
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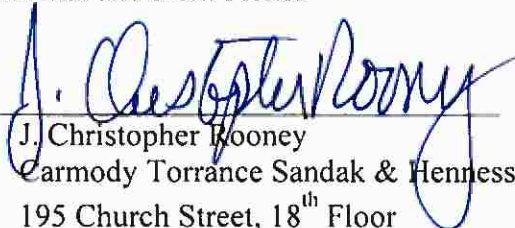
**STATEMENT OF AMOUNT IN DEMAND**

The amount sought by the plaintiff herein is greater than Fifteen Thousand Dollars (\$15,000), exclusive of costs and interest.

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By:



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