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1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

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3 In re WTC Disaster Site Litigation 21 MC 100 (AKH)
4 -----x

4 New York, N.Y.
5 March 12, 2010
5 2:00 p.m.

6 Before:

6
7 HON. ALVIN K. HELLERSTEIN
7
8 District Judge
8

9 APPEARANCES
9 WORBY GRONER EDELMAN & NAPOLI BERN LLP
10 Attorneys for Plaintiffs

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22 New Jersey
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APPEARANCES
(Continued)

McDERMOTT WILL & EMERY
Attorneys for WTC Captive Insurance Company
MARGARET H. WARNER

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(Case called)
(In open court)

THE COURT: We're here for two purposes this afternoon. The first is to hear the formal presentation of that which the press already carried this morning, and that is an agreement of settlement in the numbers of cases numbering about 10,000 in three master calendar dockets, and I'm going to ask in just a few minutes if Ms. Warner would describe those settlements to everyone. The agreement of settlement is subject to an order that it is fair and appropriate and just to all affected, and that date for that hearing will have to be set.

In a formal sense, what is before us now is a motion to stay all proceedings while the parties go about implementing the various steps called for by their agreement of settlement, and while the Court is able and others are able to study a very complicated agreement. I'm sure there are not enough copies to go around, but the settlement with its exhibits is about three inches thick and complicated, and I just received this document

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1 last night. So I will have to decide this motion for a stay.
2 It's called for a decision now, but I'm not sure that I will be
3 fair if I decided it now, and I have some ideas as to how to
4 deal with that.

5 And then I've scheduled for some time a motion brought
6 on by the Port Authority to dismiss I think all but one of the
7 lawsuits against it because of various preconditions to suing
8 established in the laws of New York and in New Jersey pursuant
9 to the compact that established the Port Authority of New York
10 and New Jersey in the early 1920's, and we'll get to that
11 argument later on, and notwithstanding the motion to stay,
12 since everything is done on that, I will hear that motion.

13 Before Ms. Warner begins, I'll do two things: First,
14 I'll give you an idea of what I think I need to do and then the
15 parties can address that as we go along. And, second, I think
16 I will just discuss very briefly or ask Ms. Warner to discuss
17 who it is that she is representing.

18 It's important for me to deal with this settlement
19 document quickly, because the parties have agreed on numbers of
20 things that have to happen within set time periods and those
21 time periods begin as of yesterday. So it wouldn't be good for
22 the usual leisured time that Courts have to review documents
23 and hold a fairness hearing. And I thought I ought to create
24 an obligation on myself to discuss with you perhaps next Friday
25 my initial impressions on reviewing the document what issues I

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1 need to think about more, what I have concerns about or any
2 other thing that comes to mind in relationship to the ultimate
3 obligation to approve the settlement.

4 And the second is to schedule an actual fairness
5 hearing. I thought first that we could do it in two weeks, but
6 various people have obligations during that second week. The
7 third week is the week of Passover, the second week is the
8 Easter week, the third week is the Passover week. I'll be
9 away, and before we can get together it becomes mid-April,
10 perhaps a little bit earlier than that, and that won't do. Too
11 many things have to happen and there's too much of a high
12 degree of expectation. So at least people ought to be able to
13 know and react to various issues that I spot, if any, and bring
14 to your attention. So I thought this time next week, 2:00,
15 would be the time that we could assemble and I could deliver my
16 impressions. And it's also my idea that there may be a lot of
17 people who want to speak at that time, and present their views,
18 and I want to be receptive to that. So I thought that by 12
19 noon the day before, anyone who wishes to speak should register
20 in a way that we'll develop, identify the person and whatever
21 standing that person has to speak and I'll be liberal on the
22 issue of standing, and, if possible, a very short summary, a
23 sentence or two what that person wishes to speak about. We
24 will not allow redundant information to be given, redundant
25 objections to be given. If one person has said something, it's

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1 not the number who identify themselves with that person, it's
2 the quality of what that person says. So we will have to
3 exercise a discipline so that people don't become repetitive.
4 It's not going to be a planning board hearing. It's going to
5 be much more focused than that.

6 So that's what I envision for next Thursday as a time
7 of registration by noon, and Friday at 2:00 to deliver these
8 impressions. And then I think the first time after that to
9 have a formal hearing will have to be in early April. Perhaps
10 we could do April 12, Monday, at 2:00 for a fairness hearing.
11 So much for that.

12 In 2004, I think, Congress authorized and the Federal
13 Emergency Management Authority funded an insurance company, a
14 captive insurance company which would provide an insurance
15 resource protecting the City and its contractors against loss,
16 liability or expense in relation to the exposures of the City
17 and its contractors with regard to the lawsuits and other
18 claims then asserted and continuing to be asserted against the
19 City and the contractors, a captive insurance company meaning a
20 company that is dedicated in its insurance to a specific option
21 was created. Ms. Warner and her law firm have been the counsel
22 for the captive, and have done, as other counsel have done, an
23 extraordinary job in representing her client. She has been the
24 focal point of carrying on the negotiations that we'll hear
25 about with liaison counsel for the plaintiffs, primarily Paul

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1 Napoli. And Ms. Warner will report what their agreement has
2 achieved.

3 I should say one thing more about this, or two things
4 more about this. There was an issue about the expense and the
5 very substantial expense being incurred by the City in
6 defending itself and its contractors. The City had been
7 successful in obtaining insurance, if I remember correctly, to
8 the extent of approximately \$77 million, which had as one of
9 its features indemnification of the City against litigation
10 expense. Ms. Warner brought a lawsuit on behalf of the captive
11 against the insurers to impress upon the insurers the
12 obligation that she alleged they had to pay those expenses on a
13 continuing basis. I heard argument and delivered judgment in
14 favor of the captive insurance company. The insurers appealed,
15 and that appeal remained pending in the United States Court of
16 Appeals for the Second Circuit.

17 A settlement was reached between the captive and the
18 insurers which was a necessary predicate for continuing and
19 consummating the settlement negotiations which you'll hear
20 about today. That settlement, if I remember the amount
21 correctly, and may I announce it, Ms. Warner? I may not. But
22 I just want you to cover it because there have been many
23 questions that have been raised in connection with availability
24 of funds and who is enriching, arguably, themselves by those
25 funds. And that has to do with the issue of payment of defense

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1 costs.

2 Another point that has been raised, and I'm not sure
3 that's covered yet, it has to be, is the issue of litigation
4 expense on behalf of the plaintiffs. I pointed out in other
5 areas, and perhaps in this case as well, that there are special
6 circumstances involved with the tragedies of 9/11, the national
7 tragedy and the personal tragedies, that do not allow normal
8 rules of how expenses of litigation are defrayed, and require
9 reasonable limits on what attorneys may recover. That was the
10 specific focus of two of my decisions in the wrongful death
11 actions, where all attorneys were limited, where plaintiffs'
12 attorneys were limited to 15 percent of settlements.

13 We have not discussed what rules should apply to these
14 cases, but I want to let everyone know that this will be one
15 area of special attention on my part. Mr. Napoli and his
16 colleagues and his firm and allied firms have done an
17 extraordinary job. He's carried the litigation expense, and
18 they've been substantial expense, throughout. His firm and
19 other plaintiffs' firms deserve reasonable compensation, and
20 it's part of my job to make sure that he gets it. But it's
21 also my job, as it is with all other respects, to make sure
22 that everything that passes through this Court is fair and
23 reasonable, and I want to let everyone know that this will be
24 one point of attention.

25 There have been other points of attention, but I think
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1 I've said enough at this point and I'd like Ms. Warner now to
2 proceed.

3 MS. WARNER: May it please the Court. Margaret Warner
4 from McDermott, Will & Emery for the WTC captive insurance
5 company and its four employees.

6 Your Honor, if I may, I would like to introduce to the
7 Court my partners, Mark Collins and Ryan Smethurst, and my
8 associate, Andrew Genz.

9 THE COURT: Good afternoon.

10 MS. WARNER: Plaintiffs' liaison counsel, Mr. Napoli,
11 Mr. Groner, Mr. Carboy and Mr. Papain, lead defense counsel for
12 the City and the contractors, Mr. Tyrrell and Mr. Hopkins and
13 the WTC captive insurance company bring to the Court today the
14 culmination of 22 months of good-faith negotiations, exhaustive
15 consultation with doctors, scientists, medical experts,
16 statisticians, careful consideration of the Court's and the
17 special master's extensive work and direction in these cases
18 over the past six years. The Court is all too aware of the
19 complexity of these cases. They are the largest, certainly
20 most emotionally wrenching, most medically and scientifically
21 novel and legally complex mass tort litigation in the country.
22 What we bring to you today in that context could only have been
23 achieved due to the Court's and the special master's thorough
24 direction of the litigation, including pressure in the
25 litigation, and the special master's particular work on the

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1 medical severity charts and their memoranda to the Court and
2 the parties on distribution issues. In addition, as the Court
3 has noticed, the Court's ruling in the lawsuit brought by the
4 WTC captive against certain underlying insurers was of immense
5 assistance in bringing this matter to conclusion on behalf of
6 the City and its contractors, and while I am not at liberty due
7 to confidentiality agreements to disclose specifically the
8 amount of money that resulted from the settlement due to the
9 proceedings before your Honor and before the Second Circuit, I
10 can assure everyone that they resulted in a situation where the
11 extensive and appropriate legal fees to defend the City and its
12 contractors were largely reimbursed to the WTC captive, so that
13 the captive's initial grant of federal taxpayer funds could be
14 used for the purpose that it shall be used for now.

15 The parties' agreement is detailed. As the Court
16 already showed everyone, this is the settlement process
17 agreement. It is 95 pages long, it has 22 exhibits. This
18 agreement can bring this litigation to a just conclusion in
19 difficult and complicated circumstances. It will provide the
20 parties with a transparent, fair, efficient process to
21 distribute just payments to individual plaintiffs. The
22 settlement is fairly valued from the ground up for these
23 plaintiffs' claims against the City and its contractors. But
24 it does more, we believe, your Honor, and we appreciate the
25 schedule that you have set forward in Court today, because we

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1 believe that this settlement process agreement which has been
2 the result of these extensive negotiations and consultations
3 can present a pathway for other plaintiffs and other defendants
4 in the 100, 102 and 103 dockets to join it and pledge
5 additional monies for settlement of these cases.

6 This agreement is based upon a careful assessment of
7 the medical issues here, the very difficult medical issues that
8 have been presented by these cases. It reflects the many also
9 difficult legal issues of causation, both scientific, medical,
10 general and specific to each plaintiff. It also reflects the
11 very difficult legal issues associated with immunity, given the
12 nature of the genesis of this litigation, whether duties were
13 owed given the particular plaintiff population here, and very
14 difficult factual issues, because, after all, we are discussing
15 the aftermath of 9/11.

16 We believe, your Honor, and we believe that you will
17 find after careful consideration and after a little bit more
18 than a night to go through these 95 pages and 22 exhibits, that
19 this will provide for a transparent process to evaluate these
20 individual claims in a manner that is fair, consistent and
21 medically reliable.

22 The foundation of this resolution that has been
23 reached is a settlement construct that some could call a grid.
24 This settlement construct was substantially derived directly
25 from the painstaking work of the special masters when they

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1 worked with the parties on the so-called severity chart, and
2 what the parties did in the negotiations was merely add to that
3 very important work done by the special masters with additional
4 diagnostic criteria and medical proof requirements that had
5 been recommended after immense and lengthy consultations by
6 both the plaintiffs' lawyers and the lawyers for the WTC
7 captive and the City and contractors with medical doctors,
8 scientific experts and others. This agreement couples this
9 medical criteria with other indicias of proof for each
10 individual plaintiff, such as detailed work verification for
11 proof that a person worked at the site, and the submission, all
12 electronically, so that it will be the most efficient and the
13 least costly of claims forms that will be submitted by each
14 plaintiff in an easy manner, an understandable manner, under
15 penalties of perjury, so that we can assure that the plaintiffs
16 who should receive this money do receive this money.

17 It is also subject to audit, so that the entire
18 process can be transparent to the Court and to the public and
19 can demonstrate the integrity of this resolution, given the
20 public importance of these cases. All of this, your Honor,
21 will be overseen by an independent third party, what we have
22 termed an allocation neutral. That person will work with a
23 claims administrator and a board of certified physicians who
24 will administer and assist this very difficult process of
25 determining how much each plaintiff should receive. All of

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1 these people who will be involved in this process are
2 experienced in mass tort settlement resolution.

3 Your Honor, when these are handed out, and we do have
4 a number of them available, perhaps not enough for the number
5 of people in the courtroom, I would respectfully request that
6 people direct their attention to pages 49 through 59 of this
7 document. This lays out in great detail the painstaking work
8 to develop appropriate medical criteria, impairment criteria,
9 so that each plaintiff receives an individual evaluation of
10 their medical condition. It will deploy rigorous, spelled-out
11 diagnostic and impairment criteria, again, developed in
12 consultation with pulmonologists, oncologists, ear, nose and
13 throat physicians and other experts. These pages also spell
14 out that the test that various plaintiffs will have to show as
15 part of their medical records, which they've already had, are
16 widely accepted tests laid out by the American Medical
17 Association or the American Thoracic Society.

18 Under this settlement process agreement, there are
19 four tiers of injury. These were negotiated to streamline the
20 distribution process and, equally importantly, to assure
21 consistency among the plaintiffs, which will promote fairness.
22 These criteria and the tiers also will allow for the timely
23 distribution to individual plaintiffs, and we are very mindful,
24 your Honor, that the timeliness of this is of great importance.
25 These cases, as you noted, have been pending for a number of

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1 years. They were difficult cases. They took time to get to
2 this point, but we are at that point where we can do this in a
3 manner that is fair, that is transparent, that is consistent
4 and will allow each individual plaintiff to know that his or
5 her situation has been looked at closely.

6 There will be five components of payments under the
7 settlement process. The first will be payments pursuant to the
8 grid or settlement construct for the 100, 102 and 103 dockets.
9 Those payments, as I have said, will be made on the grid based
10 upon the medical condition and impairment levels set forth in
11 the medical records of each plaintiff.

12 THE COURT: 100 is 21 MC 100, which is the collection
13 of cases brought against the City and its contractors in the
14 basic World Trade Center site.

15 102 is the collection of cases brought against various
16 land owners in the area surrounding the World Trade Center,
17 where the City may be a tenant or a landlord, but where the
18 City was not directly involved in the cleanup and
19 reconstruction efforts.

20 103 is a case where the plaintiffs may have worked
21 both at neighboring sites and in the World Trade Center site.
22 This settlement, as Ms. Warner will explain, deals with all
23 three in relationship to the City's and the City's contractors'
24 roles, their direct roles in 100, where the City had a role as
25 landlord or tenant in 102, and in 103. So I just thought it

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1 was useful for everyone to understand what it is those dockets
2 stand for.

3 MS. WARNER: So the five components, again, of
4 potential compensatory payments, the first, the grid, as laid
5 out by the Court with regard to the separate dockets.

6 The second, a permanent disability fund set aside for
7 plaintiffs who have been found disabled already due to their
8 work at the site.

9 The third, plaintiffs who have had certain surgeries,
10 such as lung transplants and certain sinus surgeries, a
11 separate amount payable to an individual plaintiff if they
12 demonstrate through their medical records that they have
13 undergone these certain surgeries.

14 The fourth, payments to plaintiffs who also have
15 certain orthopedic injuries due to their work at the site. And
16 five, a cancer insurance policy, which has been secured after
17 extensive negotiation with the Metropolitan Life Insurance
18 Company, a particular component I would like to address in some
19 detail, your Honor. This component of the settlement goes
20 straight to the very great concern and fear that certain of the
21 plaintiffs in this litigation have about the fear of
22 contracting cancer in the future. Those are very real fears,
23 and those will be covered in terms of a policy underwritten by
24 Met Life. It is subject to regulatory approval by the New York
25 State Insurance Department, but this policy will cover

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1 respiratory and blood cancers that may develop for the current
2 plaintiffs. All plaintiffs must enroll in this policy, and Met
3 Life must accept all plaintiffs except those who already have
4 been diagnosed with one of the covered cancers. The benefit
5 will be \$100,000 if one of these cancers is contracted, and
6 there will be certain other terms and conditions with regard to
7 the policy.

8 The financial terms are as follows: The WTC captive
9 on behalf of the City and its contractors to settle all claims
10 against the City and its contractors in the 21 MC 100 docket,
11 21 MC 102 docket and 21 MC 103 docket will pledge the following
12 cash: \$575 million, which will include the premium payment for
13 the cancer policy. In addition, \$25 million also may result
14 from contingent payments over five years if certain conditions
15 develop, or are met. These additional monies will be available
16 for the most severely injured plaintiffs.

17 95 percent of the plaintiffs who have brought claims
18 against the City and its contractors must opt in to this
19 settlement process agreement in order for it to go forward.
20 The plaintiffs' lawyers feel strongly that this can be achieved
21 and that it can be achieved after the plaintiffs have been able
22 to receive a briefing on the agreement. If more than
23 95 percent of the plaintiffs with claims against the City and
24 the contractors choose to opt in, that will result in 2 percent
25 more money going into the settlement for every 1 percent of

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1 additional plaintiffs who opt in, and, therefore, that will
2 allow the WTC captive to pay up to a potential of 657.5 million
3 just on behalf of the City and the contractors.

4 As I said before, we also believe, however, that this
5 construct will allow other plaintiffs and defendants to join
6 and increase the amount of dollars. The settlement also cannot
7 go forward without the Court entering certain case management
8 orders in each of the dockets. Those case management orders
9 will govern the efficient management of all opt-out cases and
10 all future cases should they be filed, and the purpose of these
11 case management orders which build upon the work of the Court
12 already in these cases in its management oversight of these
13 cases since 2004 will assure that only well-evaluated,
14 causally-related cases proceed, and this is very important, as
15 I will set forth in a moment.

16 This settlement, reached after lengthy, careful
17 negotiations, and certainly vigorous litigation, will result in
18 the WTC captive fulfilling its purpose, the purpose that
19 Congress asked it to fulfill, to protect the City of New York
20 and its contractors who answered the call when our nation was
21 attacked on 9/11, and, and equally important, to create a fair,
22 medically-based, rigorous process to distribute taxpayer funds,
23 the taxpayer funds entrusted to the WTC captive to injured
24 workers and first responders who also without hesitation and
25 without self-interest answered the call and went down and

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1 picked up the pieces to allow this City to move beyond Ground
2 Zero.

3 Your Honor, the WTC captive as the result of this
4 settlement will keep certain assets and we will keep those
5 assets, as we are required to do, and as we are entrusted with
6 taxpayer funds, in case that sometime in the future there are
7 other injuries that should arise, because it would be
8 unfortunate and inequitable, it would be unfortunate and
9 inequitable to give all of this money out now and not leave a
10 fair amount for future potential claims. The number of
11 possible future claims cannot be determined, and certainly not
12 now, and certainly the position of the litigants has said a lot
13 about what we do or do not think might arise in the future.
14 But the captive must preserve some funds if there are future
15 injuries that develop. If any remaining dollars ultimately are
16 not paid out after the captive fulfills its commitment as
17 required by Congress to stay in business for 25 years, if any
18 remaining funds are not paid out, they will be returned to the
19 taxpayers.

20 Your Honor, all the components of this agreement
21 connect. And each are dependent upon each other. It is a
22 whole. We believe, both the plaintiffs' lawyers, the defense
23 counsel and the counsel for the WTC captive, that this
24 agreement in its whole rises to the challenge presented by
25 these difficult and complicated cases that present significant

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1 legal and factual hurdles.

2 We thank the Court. We thank the Court, your Honor,
3 for the compassion with which you have presided over these
4 cases for the last six years, and for your unstinting
5 commitment to fairness and transparency. If I may say, your
6 Honor, for us at the WTC captive and its counsel, this is the
7 Court's admirable legacy to the bench, the litigants and the
8 residents of New York for being asked to preside over these
9 difficult and complicated cases, and we hope that you will find
10 that what we have done with the utmost of care will rise to the
11 levels that you have always evidenced and always require.

12 Thank you.

13 THE COURT: Thank you, Ms. Warner. Before I -- excuse
14 me, sir, lady. If you're here, you need to stay here. There
15 will be no early filing of reports. I've always been
16 accessible to the press, I've always wanted to make sure that
17 each member of the press who approached me understood what was
18 going on. No one got an unfair shake. No one is allowed to
19 get a quick deadline. You will be here until it is over.

20 There are a few things I want to bring up. First of
21 all, Ms. Warner, I want to thank you for your remarks and for
22 your summary. If people want copies of the briefing, can
23 people pay a modest amount moment to your office to get a copy?

24 MS. WARNER: Yes, your Honor.

25 THE COURT: First of all, you used the phrase "ground
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1 up" settlement, the settlement was made from the ground up and
2 the term was used yesterday in explaining the settlement to me
3 early on and Ms. Warner, could you tell us what you mean by it?

4 MS. WARNER: I apologize, your Honor, for a little bit
5 of use of perhaps the insurance and defense lawyer vernacular.
6 What we mean by that is that an attempt was made in negotiating
7 the settlement and in negotiating the amount of the settlement
8 and the various components, the five components that are laid
9 out. The plaintiffs' lawyers and us tried very hard to look at
10 these cases on the basis of what the level of injuries were
11 that were presented by the plaintiffs, and how those level of
12 injuries ultimately could be compensated in light of these
13 difficult other aspects of the cases, such as the causation
14 issues.

15 THE COURT: There were defenses raised by the City and
16 its contractors that were unique, and which have been the
17 subject of some of them, of opinions and orders and appeals.
18 For example, the City contended that it had immunity because of
19 emergency responses for the benefit of all under a state
20 statute passed in the aftermath of World War II. The City
21 raised a defense that many of the people were not in an
22 employment relationship and only could benefit from the strict
23 features, the beneficial features of the labor laws of New York
24 State if they had an employment relationship, and that was the
25 subject of the opinion and a question of fact. There were

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1 other defenses that made this unique and what Ms. Warner is
2 saying is that in evaluating the case an effort was made to
3 value each case in accordance with various kinds of precedents
4 and creating a certain merits-oriented discipline. One, of
5 course, can argue with the application of all these different
6 criteria, but when the term is used "ground up," it means that
7 there's an effort to create a merits-oriented settlement with
8 regard to each of these cases.

9 MS. WARNER: Yes, your Honor, and if I may add, also
10 to evaluate these cases on an individual basis, given the
11 complexities of any trial that might be had for an individual
12 plaintiff, the fact that prior to the trial, during the trial
13 and subsequent to the trial, it would have to be a whole number
14 of very difficult questions decided both by a judge, your
15 Honor, or a jury, and in fact, as the Court knows, there are
16 pending before the Court approximately 120 motions for summary
17 judgment that address a number of these issues, and the need to
18 decide those motions, in our view, would be completely
19 precluded and unnecessary by going forward with this
20 settlement. Which means in looking at it in toto, an
21 individual plaintiff would not need to go through the rigors
22 that the tort system requires to ultimately get the
23 compensation and the sheer practical problem that we all face
24 and that the Court has grappled with for years, that there are
25 so many of these cases, that it is very difficult to have

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1 trials in them at any near time in the future other than a few
2 trials.

3 THE COURT: For example, in a tort case, in most cases
4 you have to prove causation. You have to prove that the
5 negligence of the defendant or some other degree of fault by
6 the defendant or some degree of responsibility by the defendant
7 caused the illness. For one thing, many of the toxic quality
8 of elements in the air had no precedent, so it's very hard to
9 prove causation. Another instance, another aspect of the
10 problem, the ailments that were complained of were ailments
11 that in some degree or another are common among the population,
12 and so to prove causation, the relationship to the cases here
13 presents a unique set of problems. With regard to cancers, for
14 example, that they are slow developing, and many people,
15 unfortunately, are subjected to it, so how do you prove that
16 there's an element of causation. This is one aspect of the
17 proof, by a grounds-up settlement was one of the means that
18 there was an effort made to discount all these features and
19 creating a merits-oriented settlement with respect to
20 individuals, and Ms. Warner says there are 120 motions before
21 me. Yes, that's true. Some of them had unique difficulties,
22 and while we have yet to see what we call the Daubert motions,
23 for a Supreme Court case with that name, which requires the
24 judge as a gatekeeper to measure the quality of the expert that
25 is brought to bear to show causation, and one problem I could

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1 let you know is that there's no science, because there's no
2 experience. It's very hard to have enough expertise that
3 passes muster. All of these would have been coming before me.
4 All of these would have had to have been settled before the
5 trials that were set for mid-May. And even if we were to have
6 these trials, there would be enough questions that they would
7 give us enough consistency of experience to be able to apply
8 them in a general way.

9 So what this settlement does, again, without passing
10 on the reasonableness and fairness of each particular quotient
11 of the settlement or of the whole, is to avoid all this work,
12 to avoid all these major questions and to make sure that the
13 plaintiffs have a recovery, a recovery that is graduated
14 according to the severity of their injuries, measured by the
15 degree of severity according to the AMA and American Thoracic
16 Society standards, and also in terms of their ability or
17 disability to continue to do work, if they have died or some
18 other calamity has occurred, some other noticeable injury has
19 occurred or they've undergone some operation to help them and
20 which also should be considered. So there's an effort to
21 graduate results according to the severity of injury. Not
22 everybody will be equally awarded. Indeed, there will be
23 unequal awards in relationship to the way that this work caused
24 an impact on the health and welfare of the workers.

25 In addition, we are going to build a system in which
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1 we have built in throughout to make sure that what people say
2 about their health is objectively measured, and accurately
3 measured. So this will not be a give-away. But it will be,
4 especially after we go through with this in terms of criteria
5 of fairness and application of fairness, fair and just results,
6 as fair and as just as we can make them. This in a way is a
7 culmination -- Ms. Warner, go ahead.

8 MS. WARNER: Your Honor, if I may just say one thing
9 in practicality. I am properly advised that this morning when
10 the papers were filed for this matter today, the settlement
11 process agreement was filed with the Court and is therefore
12 available by looking at the Court's docket.

13 THE COURT: Yes. But it's not so easy to get copies
14 of the docket and it will be a lot easier if your office can be
15 set up to make copies available at the cost of reproduction or
16 thereabouts.

17 MS. WARNER: Yes, your Honor. And I should note that
18 pursuant to your direction yesterday, we have a number of
19 copies in the courtroom today that I can make available.

20 THE COURT: Excellent. Thank you.

21 And the criteria which Ms. Warner was speaking about
22 that was put in place to identify people most severely impacted
23 owes a great debt in this respect and in so many other respects
24 to the quality of the two special masters that I appointed in
25 this case. Professor Eric Twerski of Brooklyn Law School is

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1 here. Professor Twerski, please stand. And Professor James
2 Henderson of Cornell Law School who was here yesterday but had
3 an important matter with his grandchildren that takes
4 precedence. He is not here today, but both will be here, I
5 hope, next week.

6 With regard to the sessions next week, those who wish
7 to speak should register. May I, Mr. Napoli, ask you to give
8 your address so people can identify themselves to Mr. Napoli,
9 to Mr. Tyrrell and to Ms. Warner, and they will make these
10 lists known to me as well. Mr. Napoli, do you wish to comment
11 on the things that Ms. Warner said?

12 MR. NAPOLI: No, I don't, but I would like to point
13 out that on our website we've now posted the settlement
14 agreement and all the agreements in PDF so they can be printed
15 and downloaded from there as well.

16 THE COURT: Announce your website.

17 MR. NAPOLI: It is 877 WTC hero. It's specifically
18 for this litigation.

19 THE COURT: 877WTChero.com.

20 MR. NAPOLI: Also, our address is 350 Fifth Avenue,
21 New York, New York 10118.

22 THE COURT: Mr. Napoli will stay a few minutes later
23 and give this information to anyone who wants it. Mr. Tyrrell.

24 MR. TYRRELL: Your Honor, now that everyone in the
25 Court has had an opportunity to hear a reasonably detailed

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1 presentation from Ms. Warner concerning the settlement
2 agreement, I do wish to circle back to the question that your
3 Honor left open at the outset. The application that we made
4 was of course to enter a stay today for an appropriate period
5 of time. We do not want to waste resources. There are
6 deadlines because of the May trial date. I think yesterday we
7 filed 30 more summary judgment motions. This is
8 extraordinarily expensive and time consuming, and, frankly, to
9 submit that much more to the Court is a problem.

10 I recognize that there may be issues that some wish to
11 speak about the stay, but I think there is -- it is undoubted
12 that people need, including the Court and the special masters
13 time to read this, that this impacts everything else that we
14 have been doing. So we would urge the Court to enter the stay
15 as soon as possible, or if necessary to do it in bites, so that
16 we get a stay for a period of time until we come back to you,
17 but to force all of these parties in all of these cases to now
18 proceed with the things that they are doing when they need time
19 to decide if they wish to join this, if they wish to comment on
20 this, seems unduly wasteful of resources.

21 THE COURT: Is there anyone here representing any
22 party who objects to a stay?

23 MS. JACOB: Your Honor, Beth Jacob for the Port
24 Authority of New York.

25 THE COURT: Please come up, Ms. Jacob.

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1 MS. JACOB: Beth Jacob for the Port Authority of New
2 York and New Jersey. I'm not objecting to the stay. We
3 haven't seen the settlement agreement. We don't know what the
4 terms of the stay are. But as the Court has mentioned there is
5 a motion we have pending before the Court --

6 THE COURT: I'm going to hear it.

7 MS. JACOB: Thank you, your Honor.

8 THE COURT: Anybody else?

9 MR. CANNATA: Your Honor, Gregory Cannata, the
10 plaintiff's liaison for the 102 litigation. Do I understand
11 that the Court is staying the entire 102 litigation, not only
12 the City defendants but all defendants?

13 THE COURT: That's the motion. I want to hear
14 objections.

15 MR. CANNATA: Your Honor, we have not been served with
16 any of the papers on the order to show cause. I understand
17 there was a brief that was not included in the --

18 THE COURT: Mr. Cannata, let me suggest this, because
19 I think a lot of people are in your shoes. I'll take the
20 objections next week. My disposition is to grant the motion,
21 unless there's some showing in some particular matter of
22 injustice. Obviously, we cannot go through this very complex
23 document while at the same time working hard to push forward
24 various matters in the litigation. And obviously, if I'm
25 taking away valuable pretrial time, I can't expect people to be

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1 ready to try the case when the cases were set. So my
2 disposition is to grant the motion next Friday with the
3 possibility of discrete exceptions where people show a need.

4 MR. TYRRELL: Your Honor, may we understand that
5 between now and Friday, so that people who are taking
6 depositions and what have you --

7 THE COURT: They should stop.

8 MR. TYRRELL: -- should know that there's an interim
9 stay?

10 THE COURT: Yes. They should stop. Anybody disturbed
11 by that? Ms. Rubin?

12 MR. RUBIN: Your Honor, should we also assume that
13 papers due on the pending motion next Friday --

14 THE COURT: Don't send them to me. I have no more
15 room, anyhow.

16 All right, so that deals with everything here. And I
17 will see you next Friday to continue this. Sir?

18 MR. PAPAIN: Nicholas Papain from the firm of Sullivan
19 Papain Block McGrath & Cannavo, 120 Broadway, New York, New
20 York 10271. Your Honor, I just want to put that on the record
21 so that as co-liaison counsel we are also available for any
22 questions that may arise.

23 THE COURT: Thank you very much. If you stay where
24 you are, Ms. Jacob and Mr. Mace, everyone else can adjourn.

25 (Adjourned)

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