

03jrwtdh

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 In re: WTC Disaster Site 21 MC 100 (AKH)
3 Litigation

4 Hearing

4 -----x

5
5 New York, N.Y.
6 March 19, 2010
6 2:00 p.m.

7
7 Before:

8
9 HON. ALVIN K. HELLERSTEIN

10
10 District Judge

11
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

03jrwtdh

1 (Case called)

2 THE COURT: Good afternoon everybody. I'm not sure
3 you can see me, because Judge Baer, whose courtroom this is, is
4 taller than I am. You may not be able to see me, but you can
5 hear my voice. We have a full jury room and a full courtroom
6 in 14D. I'm grateful to my colleague for lending me his
7 courtroom.

8 Here is what I think we should do this afternoon. We
9 chose at random ten people to speak, ten of those who
10 registered yesterday or by yesterday at noon, and we tried to
11 identify a variety of points of view. This, of course, is not
12 a democratic count; it's only a count of those people who
13 expressed a desire to speak.

14 We have nine people on the list. Each will have five
15 minutes to speak. That will take 45 minutes. It is now
16 quarter past 2:00. I will then allow anyone else not an
17 attorney, at least not an attorney representing anyone here, to
18 speak if there is something that hasn't already been said. We
19 cannot afford repetition, there is just not time for that.
20 This is not an ordinary public hearing.

21 After that, my law clerk will summarize some of the
22 telephone conversations that have come into chambers. I have a
23 few letters that I will summarize. That will end the public
24 part of this program.

25 After that, those who have motions against the stay
SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwtdh

1 can identify their motions, but there won't be time to speak
2 for them. I will not decide those motions today, but I will
3 continue for a time the informal stay that was imposed at our
4 last session. Then I will speak for about a half hour or so
5 and present some of my impressions about the settlement. Then
6 we will see where we go from there.

7 I estimate that we should be finished by 4:30. I know
8 there are members of the press that have to file reports, but I
9 would ask them to stay until we are finished, because the
10 disruptions of people entering and leaving will make it more
11 difficult to conduct these proceedings.

12 Let's go directly to the public part of this, and the
13 first speaker will be Keith Delmar. Where is Mr. Delmar?
14 Please step up, identify yourself at the microphone. Take the
15 stand. Go ahead.

16 MR. DELMAR: My name is Keith Delmar. I'm 35 years
17 old. I live on Long Island with my wife, Shaka, and two kids,
18 Ilana and Patrick. Since July 31, 2008, I have been out of
19 work on three-quarters disability as a direct result from my
20 injuries I suffered while working in and around the World Trade
21 Center. The settlement process with the city is a fair and
22 reasonable way for me to receive guaranteed compensation for my
23 World Trade Center injuries.

24 I graduated from high school in 1993. In high school
25 I ran track and field. I also was an all-county baseball

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwctch

1 player. In addition to the family tradition of firefighting, I
2 was in a Marine Corps family also. My grandfather was a
3 Marine, my father was a Marine, several uncles were Marines.

4 After graduation from high school and training for the
5 Marine Corps, I ran constantly, every day. I joined the Marine
6 Corps on April 4, 1994. While in the Marines I trained five
7 days a week in forced marches and five-mile runs daily. I
8 spent four years in the service and left in 1998 with an
9 honorable discharge.

10 When I got out of the Marine Corps I was 23 years old.
11 I found a job with a crane company in North Carolina. I
12 inspected cranes all throughout the Southeast. I worked that
13 job until February 2000, and then I moved home to New York to
14 fulfill my life's dream of being a fireman. I joined the fire
15 department on February 4, 2001. The fire academy lasted eight
16 weeks, a lot of running, push-ups, sit-ups, physical activity.

17 I was appointed to be in charge of my company, since I
18 was in the Marine Corps. After I graduated the academy, I was
19 assigned to 38 Engine in the North Bronx, part of the 15th
20 battalion. I was later assigned to 63 Engine in the same
21 battalion, and I worked there through 9/11.

22 I lost ten friends on 9/11. They were all firemen. I
23 worked at the World Trade Center site doing search and rescue
24 and debris removal every day, every day from September 12th
25 until December 10th. Through that time and despite the

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwctch

1 terrible smoke and dust, I never was provided a respirator to
2 use at the World Trade Center site by the FDNY or any of the
3 contractors who controlled the various quadrants.

4 In January 2002 I was assigned to work at the Fresh
5 Kills landfill, and I worked there for about six weeks. I was
6 never trained in any proper use and any maintenance of any
7 respirators while there.

8 As you might surmise from my discussion earlier, I was
9 an athletic type person. And being a U.S. Marine, my health
10 was great throughout my entire life. This changed suddenly on
11 September 17, 2002, when I suffered my first asthma attack. I
12 never had an asthma attack before, ever. I was taken directly
13 to Cornell Medical Center.

14 Shortly thereafter, about October, I began to suffer
15 uncontrollable fits of coughing. I went to see Dr. DeJaniero
16 and Dr. Weiden for the FDNY, and they gave me a pulmonary
17 function test. At the time the doctors told me there was some
18 kind of problem, but they weren't sure what it was. They sent
19 me back to work for about six weeks. They prescribed me six
20 different medications.

21 Although I did go back to work, my coughing still
22 persisted. The fire department gave me a methacholine
23 challenge on April 3, 2008, and I couldn't complete it, so I
24 failed. There were five stages to it. I failed. As a result,
25 the FDNY medical board, consisting of Drs. Weiden, DeJaniero,

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwctch

1 and Winkowsky, determined that I was permanently disabled and
2 unfit for firefighting duty. At the time I was 33. When I was
3 told of the board's determination, I cried. I feel like my
4 dream of being a fireman was taken from me.

5 On May 15, 2008, Dr. Anthony Blau of the state pension
6 board wanted me to take another pulmonary function test. He
7 directed me to discontinue all my medicine for four weeks
8 before the test. I only lasted about seven days. By that time
9 my coughing had become so severe that my wife was scared for my
10 health. She called headquarters and told them she was afraid
11 for me. The next day Dr. Blau called my wife and me and told
12 me to go back on the medicine.

13 Two weeks later, on June 12th, the state pension board
14 determined that I was fully disabled and I could no longer work
15 due to my injuries suffered at the World Trade Center site. I
16 was deemed eligible for three-quarters under the World Trade
17 Center bill. As of the result, my last day on the fire
18 department was July 31, 2008.

19 In 2008 I made approximately \$96,000 plus overtime.
20 Now I'm making three-quarters of what I learned in my last
21 year, approximately 72,000. It will never increase with me,
22 and it will die with me when I die. For the three-quarter
23 income, in addition to supporting my family, I need to pay for
24 medical co-payments, doctors visits, and my prescriptions. I
25 currently take Advair, Xopenex, Singulair, Nasonex, and Afrin.

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwtdh

1 As you might imagine, raising a family on three-
2 quarters is very difficult. Because of my injuries at Ground
3 Zero and Fresh Kills, I had lost a career that I dreamed of my
4 entire life. I loved it. It is difficult for me to hear fire
5 engines passing because I'll never be able to ride one.

6 The fire department and the careless people who were
7 supposed to oversee health and safety at the Trade Center and
8 Fresh Kills took my career away from me. Since I have been on
9 disability, I can no longer do any physical activities that I
10 used to do. I can no longer run. I'm 20 pounds overweight. I
11 used to have this tough guy image, but now I'm a stay-at-home
12 dad, which I love, but -- you know.

13 In addition to my physical problems, the dramatic
14 change in my life, and the inability to work have been very
15 difficult for me to accept. My wife and kids are constantly
16 nervous and think something is going to happen to me worse.

17 I believe the settlement process agreed upon that is
18 currently being offered by the city and the contractors will
19 provide me with fair and reasonable compensation for my
20 injuries. The settlement process will take into consideration
21 that I was relatively young, only 25 years old, when the World
22 Trade Center happened.

23 Although my World Trade Center claim is against the
24 nonsettling defendants, such as the Port Authority, this
25 settlement process which the city provides is a way for them

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwctch

1 and me to settle the claims that I think is fair. The
2 settlement process will offer closure to myself and my family.

3 Thank you.

4 THE COURT: Thank you very much, sir.

5 The next speaker is Joseph Greco. All of this is
6 being taken down and the transcript will be available publicly.

7 MR. GRECO: Check Judge Hellerstein, I want to start
8 off by thanking you for this opportunity to speak to you in
9 regards to this settlement. It really means a lot to me. My
10 name is Joseph Greco. I am a retired detective from the NYPD.
11 I have been on disability since July '07. This settlement with
12 the city provides a fair way for me to receive reasonable
13 compensation for my World Trade Center injuries.

14 The NYPD determined that I was disabled due to my
15 severe lung condition as a result of my work at the World Trade
16 Center site and the Fresh Kills landfill. My lung condition
17 has been progressing ever since.

18 I was one of the original 30 people picked to have
19 their trials heard first. I feel that the settlement process
20 is going to take a big weight off of my shoulders. Not a day
21 goes by that I don't think about what's going to happen to my
22 wife and two kids when I'm gone. What a lot of people don't
23 realize is that my disability pension dies when I die, leaving
24 my family with nothing and possibly being homeless. At least
25 this settlement, although no amount of money is going to bring

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwtdh

1 back my health, I can at least have peace of mind and some
2 closure that my family is going to continue in the same home we
3 have lived in for the past 17 years.

4 Judge Hellerstein, my family and myself have suffered
5 so much pain these last few years, including my 12-year-old son
6 and my 15-year-old daughter, who is constantly asking me what's
7 going to happen to us when you're gone. This is something that
8 a 12- and 15-year-old should not be asking their father. At
9 least with your help by approving this settlement, I can now
10 say you guys are going to be in the same home that you have
11 lived in since the day you were born.

12 Judge, there has been a lot of talk about the lawyer
13 fees. I for one can say that Mr. Napoli, Mr. Bern, and Mr.
14 Lopalo and many other members of their staff have been there
15 for my family and myself since day one. They are constantly
16 calling me for see how I'm feeling and if I need anything. The
17 compassion, friendship, and hard work that they have shown is
18 priceless. I ask you to please consider this. They deserve
19 their fee for all their hard work, time, and risk they have
20 spent on the case.

21 This settlement will provide a fair way for me to
22 receive reasonable compensation for my World Trade Center
23 injuries. The settlement also offers a special disability
24 award for others like me who are out of work on a World Trade
25 Center disability. All guys like me who are out on World Trade

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwth

1 Center disability can be eligible for this additional award.

2 I thank you for your time and understanding and I hope
3 you realize how much this settlement means to me and my family.
4 Thank you.

5 THE COURT: Mr. Greco, may I ask you a question? Do
6 you have an estimate of how much you think you will receive
7 from the settlement?

8 MR. GRECO: No, I don't.

9 THE COURT: Mr. Delmar, do you know, any estimate? Do
10 you have any idea how much you will get?

11 MR. DELMAR: I couldn't tell you, Judge.

12 THE COURT: Thank you, sir.

13 Mr. Walcott, John Walcott.

14 MR. WALCOTT: Thank you, Judge. As Mr. Greco said,
15 I'd like to thank the court and yourself for this pretty rare
16 opportunity to speak to yourself. My name is John Walcott. I
17 was 38 years old. I was diagnosed with leukemia. I was at the
18 World Trade Center shortly after the second tower came down. I
19 wasn't scheduled to work until later that night, but due to the
20 magnitude of what was going on and being there in 1993, I felt
21 it was my obligation to go there.

22 THE COURT: Excuse me. I missed what work you were
23 doing.

24 MR. WALCOTT: I was a detective in New York City.
25 Like the fireman and Mr. Greco stated, I also was an athlete.

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwctch

1 I was a hockey coach until I met Mr. Worby. Never went sick
2 but one time in my whole police career, and that was only
3 because I cut my hand with a chainsaw. I was involved in over
4 2,000 arrests, from bribery arrests to you name it, homicides
5 and everything else. So I was very active, very honest. Then
6 that great day of 9/11 came. And also in '93 I happened to be
7 there.

8 The day before I was diagnosed with leukemia, made
9 four A1 felony arrests, life-in-prison drug arrests. The next
10 day I went to the doctor, and the doctor told me you have less
11 than a week to live. That's when my world changed. I had a
12 9-month-old at the time, who couldn't visit me in the hospital,
13 because she didn't have her shots. When they thought I was
14 going to die, they had to seal her in plastic.

15 As I stand here today, I look pretty healthy, but
16 that's totally misleading. I have breathing issues, rashes. I
17 sleep in a cast up to my knee every night because of neuropathy
18 that doctors don't know is from the chemotherapy or it is from
19 the toxins of 9/11.

20 As I stated earlier, I had a stem cell transplant,
21 which if anything positive came out, I met an individual from
22 Germany who didn't hesitate to give me his blood. While I was
23 in the hospital, my partner, who sits in the back, stayed with
24 me for 24 hours a day for 6 months.

25 I would bleed and look like a homicide victim and
SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwctch

1 there was nothing I could do, because I had no platelets and it
2 wouldn't clot. The chemotherapy was so strong that they had to
3 cover it with a sheet or it would explode in the hospital. My
4 eyes would burn and bleed from it right from the pupil, from
5 the chemo.

6 Now I live in pain. Since then I have had tonsil
7 surgery. The doctor who took my tonsils out claimed, in all
8 the years being a doctor, the largest he has ever seen. At my
9 age, which I will now 45, they should be getting smaller. They
10 are getting bigger. I have had a tumor removed on my back.

11 The effect on my family is just insane. My daughter
12 was 9 months old. For the first five years of her life we
13 couldn't allow her to go to birthday parties, because if she
14 got sick, I could die. That isn't a very good life for a young
15 child to lead.

16 Because of my chemo and the toxins, I can't have any
17 more children, which put a strain on my marriage and my family,
18 obviously.

19 My medical bills, I left the hospital with a 30-day
20 prescription. It was \$98,000 for 30 days for the antirejection
21 drugs. I am also on a disability pension. Mine is probably
22 less than these gentlemen because I took the option so my wife
23 would continue getting a quarter of my settlement of the
24 disability so she could live.

25 THE COURT: Who paid the 98,000?

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwctch

1 MR. WALCOTT: My insurance company picked it up, and
2 the city hasn't reimbursed them from anything for the line of
3 duty. It's all come out of my pocket. My insurance company
4 paid them and I paid the co-pays. Some medicines are \$300,
5 some are 320, some are 20. Everybody says you are very lucky.
6 Yes, but when you go to a doctor every day for 3 years at \$20 a
7 clip, it adds up. Not to mention that you have to throw your
8 clothes out because the chemotherapy is in there. Now we have
9 the worry of, while my wife is pregnant, washing my clothes
10 with their clothes.

11 I left for a transplant in November of '03. When I
12 left for the transplant, it dawned on me I may never come home.
13 The day I was supposed to come home, my liver enzymes went
14 through the roof. I had a 1-year-old sitting on the stairs
15 for almost 24 hours and I never came home.

16 On that Christmas my father-in-law was supposed to
17 have come over. It would have been his first Christmas with my
18 daughter. He was sick, couldn't come over. Three months later
19 he passed away. So he never got to spend his first Christmas
20 with his only granddaughter.

21 I didn't hesitate. I went down there, ran down there
22 on days off, like everybody else. People like myself and
23 people behind me -- this courtroom is filled -- because we went
24 down there to get you and your loved ones out of there, it is
25 kind of disheartening to me that it would take six years for

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwtdh

1 even the minute chance of a settlement when there were so many
2 people involved in 9/11 who made millions and millions of
3 dollars, from the former mayor to everybody. Every election,
4 every Republican and Democratic convention, everybody mentions
5 9/11, 9/11. Not too many people mention men and women who went
6 down there.

7 I don't know if I agree or disagree with the
8 settlement, but I have major questions about it. I don't know,
9 like these gentlemen said, what the outcome is going to be, so
10 I couldn't make a decision either/or until I knew that. But I
11 do know that the victim compensation fund had almost \$7 billion
12 for roughly 3,000 people. This is \$600 million, less a few
13 hundred million here and there, for almost 11,000 people.

14 I guess my questions to you here, I know you mentioned
15 it last Friday, I was in your courtroom, about this Zadroga
16 bill, how does that play into this if we do accept the
17 settlement or we don't accept the settlement.

18 THE COURT: Let me hear that again, sir.

19 MR. WALCOTT: I said I was in the courtroom last
20 Friday and I heard you mention about the Zadroga bill briefly.
21 You said it was still on the table. Then I read something
22 yesterday that it passed another hurdle. My question is, how
23 would that pan out if you accept this and then that is turned
24 over?

25 THE COURT: In other words, what is the effect of this
SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwctch

1 settlement, if you were to accept it, on other possibilities of
2 compensation that may come along?

3 MR. WALCOTT: That's correct. I have questions about
4 the voting process, if that's going to be anonymous. All the
5 questions about it. Is it going to be just an open ballot, I
6 accept or don't accept?

7 THE COURT: It will be a transparent process,
8 accountable to the public, filtered through the courts as
9 supervised by the courts so it's fair and in accord with due
10 process. That's your question?

11 MR. WALCOTT: Yes.

12 THE COURT: I have a similar question.

13 MR. WALCOTT: The bottom line is whether I receive
14 nothing or everything, it cannot change the damage that it's
15 put on an infant, my ability not to have any more children, the
16 stress on everyone. It's sad that it's taken to this point.

17 The hardest part about this whole thing is it's going
18 to happen again. We all pray it doesn't. It happened in '93,
19 it happened here. Terrorism has no time. Obviously, you hold
20 the key to the castle, so to speak, in the sense of do I go in
21 section A to help people, because, God forbid, my family would
22 be taken care of better in section A, or do I leave section A
23 alone and go in section D, where, God forbid, I get sick and my
24 family would be taken care of better.

25 I thank you. I appreciate the opportunity.

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwtdh

1 THE COURT: Thank you very much, sir. Paolo Vega is
2 the next speaker. Come up, sir. I have your name wrong. Tell
3 it to me.

4 MR. VEGA: My name is Paco Vega Francisco de la Rio,
5 but everything calls me Paco Vega.

6 THE COURT: Paco Vega, welcome.

7 MR. VEGA: I am Francisco Paco Vega. I'm from the
8 Asbestos Workers Union. I represent hundreds of workers who
9 was at Ground Zero. We were there. We were the fourth group
10 there: Fire department, police department, medical, everybody
11 else. On the 4th at 2 o'clock in the morning we brought down
12 500 workers who were asbestos workers between Local 78, where
13 they had at that time 3,000 workers; Local 1280, who had a
14 thousand workers, Local 79, where they had approximately 14,000
15 workers but they came down approximately 2500 workers' in Local
16 79.

17 We were there to help save and protect millions of
18 people from the dangers of asbestos and silica and other
19 hazardous materials, were there to give service and to protect
20 thousands of people and millions of people.

21 Today I thank you to the legal department for giving
22 me the opportunity to be here. They represent thousands of
23 workers, whether we sent them or they went to different firms
24 to get representation. Not only to try to seek help at that
25 moment, because we were not thinking for help, we were thinking

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwtdh

1 for people, to help people and to save and protect other
2 people.

3 We have now today the opportunity to explain, at least
4 from my side, what they are looking for, who they are going to
5 be protecting, who those guys who never thought today they
6 would be sick and today they are sick, to those immigrant
7 workers who worked at Ground Zero together with everybody else,
8 and the National Guard and the U.S. Army and Army Corps of
9 Engineers, who are not here, they worked together.

10 We followed rules, and the rules was from the top
11 down. We are the last whenever they asked what was the danger
12 to be there, and there they are. Today all we are asking is
13 whatever decision they are going to be making, we see the
14 different views. You have to remember asbestosis,
15 mesothelioma, any of those sicknesses, inhaling the smoke, they
16 go and they become sooner or later cancer, but it will take
17 maybe ten years.

18 Right now we are seeing they are going to cite these
19 legal things, all the dogs that they brought to Ground Zero on
20 that day and nobody thinks about the dogs. I think about the
21 dogs because they were the ones who were finding everybody.
22 All those guys from the police department and the fire
23 department who are sick today, they were there, and they were
24 not waiting for 15 or 20 years.

25 All the guys who are not sick today, in the future
SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwctch

1 they are going to be sick. All those guys who are sick today,
2 they are trying to get help and support for everybody and
3 trying to get support from this Court. And your Honor, you
4 will be the one making the decision. The final decision,
5 together with the colleagues of yours and with the attorneys
6 here, is a decision that has to be made and will be made for
7 the best of everybody and for those immigrant workers who today
8 are not here.

9 In 2003 they made Homeland Security, and we have
10 thousands of people working in Ground Zero, in the hole,
11 outside the hole, and everybody. They are not here because
12 maybe they do not have a legal immigrant situation, they have
13 legal residence, passports, and some of them went back to their
14 own country because they cannot be here. I would like you to
15 count those others in the final decision.

16 THE COURT: The only people who are here are the
17 parties to the lawsuit. The settlement has to be weighed in
18 relationship to the people who are parties. There remain
19 possibilities to file claims and to bring suits, and this is
20 one of the concerns that the defendants have: If they are sued
21 later on, is there enough money for them?

22 One of the balances that has to be made is the
23 relationship between those who show a present need and the
24 concern for what may happen later. It's always a very
25 difficult balance. The United States Supreme Court requires

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwctch

1 that there cannot be a resolution regarding people who might
2 yet sue but who are not here yet. That presents a problem for
3 us. That is one of the conditions that we have to deal with.

4 MR. VEGA: That position that you are saying, it could
5 be the correct one, because in case of anything, they have to
6 have a guarantee for those who come later on. But we could
7 take now the ones that are here and try to help them because
8 they need the help, and begin to clarify. This taking six,
9 seven years already to help whatever they need right now. And
10 whatever will come later on, then we have to reopen and try to
11 help them to get the proper information.

12 I can see in this courtroom and you see at Ground
13 Zero, the people who worked there, 85 percent of the people who
14 all did their best, all the clean-up of the building and the
15 hole and everything, was minorities guys. It was Spanish, it
16 was Polish and Russian. They were union people too. Those who
17 did the cleaning, who was union or not union, but it was
18 workers helping to get the safety of everybody.

19 I appreciate what you are making clear. It should be
20 a fund. What I don't understand is how there can be nothing
21 for those. I will go back but I will try to explain to the
22 workers who gave their time to help us, but from the United
23 States and North America nothing happened at the same time the
24 United States and North America helps other countries when
25 things like this happen. We have to be considerate for those

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwth

1 American works who work here who needed and who gave the
2 support to protect our nation. We need to help to cover that
3 part.

4 We give thanks again to all the attorneys and every
5 defender who was against or not. Each one understands it was
6 not our fault.

7 THE COURT: Thank you, sir.

8 MR. VEGA: Thank you.

9 THE COURT: John Delgado.

10 MR. DELGADO: Good afternoon, your Honor.

11 THE COURT: Good afternoon.

12 MR. DELGADO: My name is John Delgado. I am the
13 business manager of Laborers Local 79 in New York City. I'm
14 here proud to say that on 9/11 all members from Local 79-Local
15 78, without fear of whatever consequences came after that,
16 rushed to Ground Zero, to do whatever we could do to rescue
17 anyone that was in need, to salvage whatever could be salvaged.

18 During that process we were able to clean up Ground
19 Zero in a way where it was under budget --

20 THE COURT: What trade is that?

21 MR. DELGADO: This is laborers, Laborers Local 79. We
22 do demolition work. Right now we are looking at 130 Liberty,
23 the last job at Ground Zero to come down, the last building.
24 We are taking that building down right now. We do general
25 clean-up, mason tending. We do general labor work. We have

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwtdh

1 9,300 laborers. A large number of our members went to Ground
2 Zero to do clean-up there.

3 We have lost quite a few of them. We lost some of
4 them during the tragedy of the building coming down. We are
5 losing some of them. Some of the members have passed away with
6 illnesses because of Ground Zero. Today we have a lot of them
7 that are sick, that are in need. Their families are suffering.
8 They are going through a lot of stress.

9 I thank you for being there, making this settlement.
10 Even though it took long, you have come to a conclusion
11 hopefully in the settlement. I would like to thank you on
12 their behalf.

13 You know what, I see it on their faces. We had a
14 union meeting last week, and when they read in the papers that
15 there was a settlement, the first thing they asked me, are you
16 going to be there on our behalf? will you be speaking on our
17 behalf? can you let him know that we are suffering out here?

18 There are families suffering out here. There is a lot
19 of stress out there of people. Their intentions were and still
20 are, if we had to do it all over again, your Honor, with all
21 due respect, we would do it all over again, regardless of
22 whatever consequences would face us. We are here to serve and
23 we are proud laborers. We are honored to serve, especially in
24 New York City. We built New York City; we built it with pride.

25 But our members have suffered significantly, together
SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwth

1 with Local 1280, together with Local 78, who have done
2 tremendous work, lathing, asbestos, cleaning. All the
3 buildings around New York City had to be abatement cleaned.

4 So our members are suffering today. We ask you to
5 please, as quickly as possible. The fire department, the
6 police department, everybody who worked there, this was a team.
7 You couldn't put this team together. If you looked for putting
8 it together, you couldn't. It was a mechanism that was out of
9 this world. I feel proud for our members and everyone there
10 who was able to participate in this way.

11 I want to thank you, your Honor, for being able to
12 take care of this matter in this proper fashion. Thank you.

13 THE COURT: Thank you, sir.

14 The next speaker is Michael Damato.

15 MR. DAMATO: Good afternoon, your Honor. Michael
16 Damato, Laborers Union Local 79. I want to begin by saying
17 that like the other gentlemen that spoke, I never had health
18 problems. Until 2002 I never even had a doctor. It used to be
19 a running joke with my wife that I never did have to see a
20 doctor. Unfortunately, since then I basically see a doctor
21 once a week.

22 Also, I just want to say that what Mr. Delgado was
23 just saying, if we did have it to do again, I wouldn't go back.
24 To trade off my health for a dollar, I would never do it again.
25 I'm married, I have four children, four little girls. I go to

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwctch

1 the dentist now and my wife gives me the third degree of what
2 happened, what's going on. It was a dentist appointment.
3 Every time I go, I have to worry about my future, my health.
4 They have to worry about it.

5 As a laborer, I responded down there. I was a labor
6 foreman for a company. I was making around 140,000 annually.
7 Since then I've been deemed partially disabled. I had to
8 revamp my entire life. I went from never having a bill to
9 almost losing my house now. I've taken other jobs. I have to
10 work. I have a family. I have bills. My annual income now is
11 like 40,000. We have had to maneuver.

12 THE COURT: What was it before?

13 MR. DAMATO: I was a laborer in Local 79, a labor
14 foreman.

15 THE COURT: You were making?

16 MR. DAMATO: Approximately 140,000 a year. That's
17 when I went out.

18 THE COURT: Now you're making?

19 MR. DAMATO: Around 40,000 a year annually. I know
20 there's a lot of news and everything about the law firm of
21 Napoli Bern, with their fees. If they weren't there for me --
22 they have an associate there, Bill Dubanevich, who calls me,
23 fills me in on every bit of information that's going on. They
24 have been there from the start. Without them I don't know what
25 I would actually be doing right now.

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrw tch

1 I think this is fair. Without having an actual
2 number, I think it is a fair and accurate determination if it
3 would go through that the sicker people would get more and so
4 on and so forth. Basically, I would like to see you, if it was
5 possible, get these other people on board to try to make one
6 settlement. Like me and a lot of these other people that are
7 here, fire department, police department, laborers --

8 THE COURT: A judge can't force anyone to settle.
9 That's a matter of private conviction. All I can do is
10 schedule trials and rule according to the merits.

11 MR. DAMATO: OK.

12 THE COURT: Whether someone else settles or not,
13 that's up to that party.

14 MR. DAMATO: Right. Basically, I appreciate the time
15 and I thank you.

16 THE COURT: Thank you, sir.

17 The next speaker is Candice Baker. Good afternoon,
18 Ms. Baker.

19 MS. BAKER: Good afternoon. My name is Candice Baker.
20 I'm a retired detective from the New York City Police
21 Department. I would like the opportunity to say thank you very
22 much for letting me speak before you today and hearing my views
23 and experiences.

24 Before I begin, I would like to say as a New York City
25 detective, at that time I was assigned to the internal affairs

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwtdch

1 bureau. I had various roles during the time of 9/11. From the
2 first boom when the first plane hit, I was sitting at my desk
3 and I was typing. I chalked it up to no more than somebody
4 moving something, something falling. It was just a noise in
5 New York City. I did not know its importance. I did not know
6 what it was leading to. I did not know what it meant.

7 Once it was viewed and the statement was made
8 regarding a plane hitting the towers, we then went into the gym
9 room which we had, which had a panoramic view of the World
10 Trade Center. I was able to see the second plane come around
11 and the second plane hit. In all honesty, I don't know if it
12 was naiveness, I don't know if it was ignorance, I don't know
13 if it was my age, but I did not know what exactly was going on.
14 The only thing that came to mind is tears flooded my eyes and I
15 looked over at a full bird inspector, and he had tears coming
16 out of his eyes that somebody is doing this to us.

17 At that point we all ran. We all got suited up. We
18 basically wore business attire. On that day I saw that it was
19 discombobulation, it was panic, it was urgency. It was a look
20 on everyone's face that we didn't know really what to do next.
21 People suited up. There were people that their pants didn't
22 fit anymore, there were people that their gun belt didn't
23 fasten anymore, there were people that didn't have their ties.
24 Through all of that, a lot of people looked a mess, but we were
25 running strong, we were running proud.

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwtdh

1 Initially, we were dispatched to go to different
2 hospitals and see how many people were coming in as injured.
3 When we did not have a lot of numbers coming in as injured, we
4 realized that we only had fatalities. From that point on, my
5 role then moved to the missing persons hotline. I took
6 hundreds of phonecalls. I still remember them vividly in my
7 mind: Sounds of desperation, sounds of fear, sounds of just
8 the unknown.

9 When we heard terms like Cantor Fitzgerald or Windows
10 on the World, your heart just sort of skipped a beat. As we
11 sat in the small little room taking all these phonecalls, after
12 each phonecall we wiped the tears away from our eyes, went over
13 to the desk, had a drink of water, and then went back and sat
14 down until next phonecall came in.

15 After that I was dispatched to the Staten Island
16 landfill. I was there for over 400 hours on overtime, I
17 couldn't tell you how many hours on straight time and how many
18 days. I remember having Thanksgiving dinner there provided by
19 the Red Cross.

20 I remember coming in and having to park our cars in
21 one section and then taking a bus over to the site itself.
22 When we got there, the respirators, they had them in a box.
23 They weren't fitted, they weren't adjusted. I don't know if
24 they were small, medium, large. I don't know what they were.
25 As far as filters, no one ever told us that they were supposed

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwctch

1 to be changed. They gave us a filter, we put them on. From
2 that point on after the paper mask we utilized those. Did we
3 change filters? I know a group of us, didn't because we were
4 never told that we needed to.

5 Initially, I started coughing and coughing and
6 coughing and coughing. I thought it could be cured with
7 Robitussin and Theraflu. When my throat started hurting and I
8 had an ear infection, that's what I decided to go to the
9 doctor. They asked me, how long have you had respiratory
10 problems? I said, I don't have respiratory problems. They
11 said, how long have you had a condition? I said, I don't have
12 a heart condition. They were like yes, you do. I said no, I
13 don't. I was adamant and because I was a single parent and I
14 had bills to pay, and I didn't have time to be sick, literally.

15 The hardest thing I had to do was tell my son that I
16 had cancer. To this date I have undergone a total of five
17 surgeries.

18 THE COURT: What kind of cancer do you have?

19 MS. BAKER: I had breast cancer, and now they are
20 checking me for throat cancer. I had chemotherapy for a year
21 and three months. I had had an allergic reaction to one of the
22 treatments and I went in shock. I had my doctor sitting on the
23 floor between my legs, hysterical, crying, telling me she was
24 so sorry.

25 I developed blood clots, causing necessary daily
SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwth

1 injections, countless medications, examinations, and tests;
2 early menopause, causing hot flashes and night sweats. I was
3 told that I would not be able to have any more children; they
4 would not suggest it due to all of the medications in my
5 system.

6 Hair loss, lost toenails, no one ever told me that was
7 going to happen. Mouth sores, daily nausea, pain in my limbs
8 and my joints. I get lymphatic therapy in both arms due to the
9 fact that they removed so many lymph nodes during my surgery.
10 I have gone to occupational therapy to regain my range of
11 motion and sensitivity, lymphatic therapy to offer minimal
12 relief for pain in my arms.

13 As we protect the city, the presumption is that there
14 is something in place to protect us in instances like mine and
15 others who have also randomly fallen ill. I participated in
16 the World Trade Center clean-up and recovery, both voluntarily
17 and assigned, and would not hesitate to do it again. But I did
18 not ask for these illnesses and I did not ask this disease. I
19 have no family history. There is no gene present.

20 When I spent over 400 hours overtime alone and
21 countless hours on straight time sifting through rubble and
22 looking for bodies, I actually did find a body. I was
23 nauseated and I was mortified. Then I actually had this
24 horrible feeling come over me because I realized that on all
25 the days I had been there before I had seen the same thing but

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwtdh

1 I did not know what it was.

2 It's not about blame but it is about accountability.
3 Initially I could not cry; I felt that I did not have the right
4 to. I felt that so many lives were lost and I had a chance of
5 recovery, so how could I complain? As days passed I looked at
6 myself in the mirror and I did not recognize the person before
7 me. I secretly cried in my bed and in the shower. Now daily I
8 put aside the countless medications and the endless doctors
9 visits and I try to regain myself-esteem and my confidence.

10 I would have loved to have worked 20 years, but my
11 injuries sustained were not by choice. As I reflect on my
12 career and my training, it has given me a sense of inner
13 strength and endurance to deal. My life changes day by day.
14 It is not a coincidence of all the random illnesses and
15 conditions such as pulmonary breathing problems, shortness of
16 breath, and cancer.

17 Lastly, I ask you to have compassion for the illnesses
18 derived from the terrorist attack on September 11, 2001, and
19 the understanding that the aftermath will still be unfolding
20 for years to come.

21 As you look at the settlement put before us, please
22 take into consideration the cost of medications, the cost of
23 doctors bills, the cost of co-pays.

24 THE COURT: What do you think my ruling should be?

25 MS. BAKER: Your role?

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwtdh

1 THE COURT: Yes, ma'am.

2 MS. BAKER: You know what, I honestly can't say. In
3 all honesty, if you had the world in your hand, you would
4 definitely undo what was done. But since you did not do that,
5 I understand that. But looking from this day forward, I would
6 like taken into consideration what we have endured, what our
7 families have endured. When I had surgery, my mom went into
8 cardiac arrest because when I came out I was screaming in pain.

9 So what your role can be, sir, I honestly don't know.
10 Just be as empathetic and compassionate as possible. That's
11 all that I can possibly ask.

12 Can I show you these?

13 THE COURT: What's that?

14 MS. BAKER: Photographs.

15 THE COURT: I'm glad to look, but there is no way I
16 can put this into the record. Would you like to describe the
17 photographs? Why don't you hand it up.

18 MS. BAKER: Thank you.

19 THE COURT: There is a picture of a group in front of
20 the destruction with a flag in the back. There is a picture of
21 Ms. Baker --

22 MS. BAKER: Medical conditions.

23 THE COURT: A picture of how her breasts look:
24 Injured, scarred. There is a picture of what you portrayed
25 very vividly.

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwtdh

1 MS. BAKER: Yes.

2 THE COURT: Ms. Baker, thank you for insisting to
3 speaking.

4 MS. BAKER: Thank you very much, sir. Have a great
5 day everyone.

6 THE COURT: Patrick O'Flaherty.

7 MR. O'FLAHERTY: Judge, thank you for this opportunity
8 for my fellow volunteers. My name is Patrick O'Flaherty. Like
9 thousands of other volunteers, I raced into lower Manhattan to
10 assist with the rescue and recovery. I spent just over four
11 weeks at Ground Zero. I was concerned about the toxic dust at
12 the site but hoped that our government agencies, whether they
13 were city, state, or federal, would ensure that we would be
14 taken care of if we had health problems. After all, we as a
15 nation were at war, and, as a U.S. Army veteran, I felt that we
16 could depend on our nation to look out for us.

17 Right after I got home from working at Ground Zero, I
18 developed weird rashes that would not go away. I had been to
19 regular doctors and dermatologists. I then developed a
20 sweating problem that seemed to be localized in only certain
21 areas. At the time I was serving in the Army National Guard
22 and managed to pass all my physical fitness tests, physical
23 fitness requirements, even though it was extremely
24 uncomfortable when taking the tests. The sweating and rashes
25 became worse. Just walking around, became very aggravating.

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwtdh

1 I apologize for stating this, but the city said it was
2 strange that many of the people seemed to get sick around the
3 same time, the 2004 time frame. I'd like to state for the
4 record that I distinctly remember how my health took a turn to
5 the worse. I was at a public safety meeting in Union County,
6 New Jersey, in November of 2004 when I received a phonecall
7 from my wife.

8 As I talked to her briefly, she commented that I had a
9 very annoying cough and a throat-clearing habit, which I really
10 wasn't aware of. She also commented that it was very
11 irritating to people around the table I was at, and I was
12 wondering while they were looking at my so strange. I presumed
13 to have a sinus infection of some kind and made a mental note
14 to make a doctor's appointment.

15 This was a catalyst to my current situation. I have
16 since been found mentally unfit by the army because I do not
17 have the capacity to pass a physical fitness test. My career
18 with the National Guard was destroyed. I could have attained a
19 very high rank in the military but couldn't because of these
20 issues. I have since lost most of my pension, not to mention
21 my drill pay, deployment pay, or any other opportunities I
22 might have had.

23 Also, there is an old airborne saying, not all wounds
24 are visible. There is a psychological factor. That
25 psychological factor has deeply affected me. I went from a guy

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwctch

1 who could do anything anywhere any time with confidence and
2 assurance to a guy that has to force himself to get out of bed,
3 to a guy that can't fill out paperwork when he needs to fill
4 out paperwork.

5 The worst thing I feel, though, is that I have a
6 ticking death sentence and cannot get the right medical
7 evaluation to find out why I'm in excruciating pain every day.
8 Our medical insurance companies were not geared towards our
9 medical needs specifically arising from being exposed to the
10 toxins at Ground Zero.

11 To make matters, I have 4-month-old twin boys that
12 were born with birth defects and they are exposed to an
13 explicit and very rare form of cancer. The doctors tell us
14 that they have a 50 to 70 percent chance of getting sick from
15 this. I can only wonder, was my exposure to the toxins at
16 Ground Zero just like the effects of Agent Orange and
17 thereafter I'm responsible for my boys' terrible health
18 problems? I further wonder, will I be able to finance and
19 support my family, their health issues and my own health issues
20 in the future?

21 I hope, Judge, that you will be able to take all of
22 this into consideration and understand that life is very tough
23 for the average person who worked at Ground Zero. Thank you.

24 THE COURT: Thank you, Mr. O'Flaherty.

25 The last speaker is Scott Chernoff.

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwtdh

1 MR. CHERNOFF: Good afternoon, your Honor.

2 THE COURT: Good afternoon, Mr. Chernoff.

3 MR. CHERNOFF: My name is Scott Chernoff. I'm a
4 former NYPD police officer of NINE years, ALSO an emergency
5 responder, 9/11 responder. I witnessed the first plane flying
6 overhead that day. I was there that day. I was there
7 thereafter. I spent 400 hours down at the site as well as
8 being assigned to police headquarters. And I was forced to
9 retire due to psychological reasons. Numerous
10 hospitalizations, electric convulsive therapy, medications led
11 to divorce, bankruptcy, losing my house, losing my career.

12 My question is, I would like to know why we the
13 plaintiffs will not be compensated for psychological trauma if
14 it caused pain, suffering, and loss of wages. I feel the city
15 was given a pass on this when they lied, denied, and dismissed
16 my claim, my medical claim. And then I sue them. I won one
17 out of three arguments. Even though Judge Sifton gave them a
18 second time to dismiss it, it was dismissed. So here I am
19 today.

20 THE COURT: What was your claim before Judge Sifton?

21 MR. CHERNOFF: It was discrimination against people
22 with disabilities. I was forced out with ordinary disability,
23 nine years, a third. After taxes I receive half. After taxes
24 I receive \$733 a month. If it wasn't for Social Security, I
25 would be homeless. I have had to relocate five times, now

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwctch

1 going on six. I don't think this is fair. I don't think this
2 is fair at all. I'm sorry if I anger everybody else, but
3 that's how I feel.

4 THE COURT: What do you think my role should be as a
5 judge?

6 MR. CHERNOFF: I have no idea. The law is the way it
7 is. People like me will probably be kept underneath the rug,
8 dismissed, like the city did. They fought very vigorously to
9 have my case dismissed. They fought very vigorously to deny my
10 claims, not even admitting that I had post-traumatic stress. I
11 had to hire my own expert to diagnose my 9/11 post-traumatic
12 stress. Their own doctors refused to admit it, saying I
13 suffered from everything else, depression. They even said
14 bipolarism. Lies.

15 My career is over, my family gone, my house gone. I
16 moved off Long Island. I no longer live in New York State
17 anymore. I am very angry. I can understand what your point of
18 view is --

19 THE COURT: It's not a point of view, it's a question.

20 MR. CHERNOFF: I know. But you can understand where
21 I'm coming from, too.

22 THE COURT: Thank you very much, sir. Yes, I do.

23 Is there anyone whose views have not been expressed?
24 Sir, step up and identify yourself.

25 Really, I think there can be thousands of stories and
SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwth

1 maybe there will be a later time to get them all. I'd like to
2 move on to other parts that need to be gone into.

3 Please go ahead, sir. What is your name?

4 MR. MAGUIRE: Your Honor, my name is Thomas Maguire.

5 THE COURT: How do you spell Maguire?

6 MR. MAGUIRE: I'm the last speaker on the list,

7 M-A-G-U-I-R-E.

8 THE COURT: Yes, sir. I have you.

9 MR. MAGUIRE: I'd like to begin by thanking the people
10 from the NYPD, the NYFD, EMS, and the other emergency services
11 that were down there as paid employees of the city. I'd like
12 to also say before beginning my statements that I am appalled
13 that we are going to lengths that we are going to deny our
14 emergency employees, our first responders basic medical care
15 and compensation for their injuries. The idea that this fund
16 had to be adjudicated as opposed to distributed is morally
17 bankrupt. The idea that Rudolph Giuliani and Michael Bloomberg
18 have stood shepherd upon this battle is unconscionable.

19 THE COURT: By fund, what do you mean? What fund are
20 you referring to?

21 MR. MAGUIRE: I'm talking about the \$2 billion fund
22 that was set aside for claims of this nature. The idea that
23 you would pick apart a police detective's body and employ the
24 chief medical examiner to find any possible way to deny this
25 man a line-of-duty death benefit, to deny his family a line-of-

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwctch

1 duty death benefit, is outrageous.

2 In the day of my cousin, Chief Inspector Raymond
3 Maguire, who sat on the Knapp Commission, I can't imagine
4 police being treated that way. This man did not stand in front
5 of the fan as every allegation of the New York City Police
6 Department was fed into the other side of it. For this to
7 happen to police officers today in this day and age?

8 Firemen do not run into burning buildings to be
9 treated like this. I'm not a fireman. My involvement at 9/11
10 was as a volunteer. But I have to tell you that when a police
11 officer is denied a line-of-duty pension, that it is
12 intimidating to somebody like me, who was born in the United
13 States, who has been a citizen of New York City all my life,
14 who has had family members who have given lifetimes of service
15 to the city. It intimidates me to ask for compensation.

16 I think, what does it feel like to a hotdog vendor who
17 might be an illegal alien, who ran into harm's way on our
18 behalf? What does it feel like to that person? How
19 intimidated are they to ask for compensation when a police
20 officer, when a fireman, when an EMS worker is denied
21 compensation? It's so unbalanced. We are never going to get
22 to these people. The idea that the police and firemen, our
23 paid employees, are waiting for compensation this many years is
24 completely outrageous.

25 I'd like to also say something about consequential
SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwctch

1 damages. Obviously in litigation consequential damages is a
2 phrase that's used and everybody pretty much understands what
3 it is. Here in this case consequential damages are children.

4 THE COURT: Everyone but law students.

5 MR. MAGUIRE: Thank you, your Honor. Children,
6 marriages, homes, generations of accumulation of middle class
7 people who own homes. I personally was homeless for six
8 months.

9 THE COURT: I heard from the last speaker about
10 children being born with defects that could well be caused from
11 exposure to the toxins of 9/11. No one will ever know.

12 MR. MAGUIRE: Their problems are far beyond mine, to
13 be honest with you, when a child is born as a result of this.

14 THE COURT: These are the unforeseeable consequences
15 that result from putting yourself on the line.

16 MR. MAGUIRE: Sure. I understand that. However, my
17 son was 5 years old when 9/11 happened, and he had just been
18 diagnosed as being autistic. He has very special needs. The
19 City of New York is unable to provide for his education
20 anywhere within a reasonable distance of the City of New York,
21 so he is exiled a hundred miles away at an institute called the
22 Devereaux Foundation. I seldom get to see him.

23 My wife threw me out. She sold the house and blew
24 through most of the money. She sold the second house the pay
25 the taxes on the first house. If you were to take the entire

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwtdh

1 settlement being offered today and distribute it amongst 567
2 claimants evenly, I could not buy back the personal possessions
3 and real property I have lost as a direct and consequential
4 result of 9/11, of my volunteer service in 9/11.

5 When 9/11 occurred, I was the president of Public
6 Server Limited, a company formed to provide a diverse,
7 nontelephonic digital network across New York City. One of its
8 purposes, and the stimulus for doing it, was to protect the
9 transactional records that were placed at risk by the 1993
10 bombing. I made this my life's work from 1994 until 2002, when
11 9/11 put us permanently out of business.

12 On 9/11, being an engineer, being a designer, being
13 someone with multiple discipline talents, and I say this at
14 risk of someone using it as a means to take money away from
15 me --

16 THE COURT: I have to move you on. We have a heavy
17 program.

18 MR. MAGUIRE: I will. I knew we were being placed at
19 harm's risk. I knew about the chemicals we were being exposed
20 to.

21 THE COURT: I need to put it to you, sir. What you
22 are saying in very graphic form is that there many
23 consequences. Whether you get compensated or not is a
24 question. Whether you will get compensated or not adequately
25 is another question. And why it's taking so long is still

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwtdh

1 another question. Have I really caught the essence of what you
2 are saying?

3 MR. MAGUIRE: Those are the facts, your Honor. But it
4 has been taken to an extreme.

5 THE COURT: I understand. We are eight years into the
6 litigation and almost nine years after an event. I have that
7 very directly in mind, sir.

8 MR. MAGUIRE: I think that everyone here is choking
9 for some kind of help.

10 THE COURT: I understand.

11 MR. MAGUIRE: I don't think they can take another
12 day's delay. I think you're giving them a teaspoon of what
13 they really need. But I can't honestly say that you can delay
14 this one more day. We walked into harm's way because the
15 financial markets needed to be restarted. That's the reason we
16 were down there, aside from trying to help other people. We
17 were put in harm's way in a military type operation to restart
18 our financial system. We knew that. Those people were made
19 whole. We were made whole only at our pay grade. They left
20 off the W.

21 THE COURT: Thank you, sir.

22 MR. MAGUIRE: Thank you, your Honor.

23 THE COURT: Your name, sir.

24 MR. VOLPE: Good afternoon, your Honor. I'll be
25 brief. My name is Richard Volpe. I'm a retired New York City

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwctch

1 detective. I don't want to reiterate everything everybody said
2 about what they did on 9/11. I just want to let you know I
3 spent six months there in the Staten Island landfill, the World
4 Trade Center site, and all different areas.

5 Prior to September 11th I've never been sick a day in
6 my life. Aside from four orthopedic surgeries, I have never as
7 much as visited a doctor except for physicals. Prior to my
8 surgeries, I went under a series of pre-op testing to examine
9 my heart, my lungs, blood pressure, and my blood, none of which
10 showed any abnormality.

11 Following 2001, I am now visiting rheumatologists,
12 pulmonologists, endocrinologists, nephrologists, and ENT
13 doctors. In addition to my other ailments, I was diagnosed
14 with a kidney disease which is normally found in adults over
15 the age of 60. I was 34. I lost 50 percent function in my
16 kidneys in less than six months, which is unheard of. Yet this
17 settlement does not recognize my illness.

18 My whole life I've been very athletic, exercising,
19 working out on a consistent basis since the tenth grade. Along
20 with my kidneys, my lung, stomach, and sinus problems, I sit
21 here in front of you, your Honor, with a very uncertain future.
22 All I do know is my health will decline, the worst being double
23 kidney failure.

24 September 11th was a difficult time for everyone here
25 in this courtroom. The rescue workers were asked to do at

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwctch

1 times a job that was impossible. We did this job with no
2 regard for our safety. We questioned the air quality but were
3 assured it was safe. The site conditions were dangerous, but
4 we still did the job we demanded of us.

5 I'm a 43-year-old man, your Honor. I was raised to do
6 things for myself and was proud to do so. But since September
7 11th I am forced to ask for help because of the resulting
8 health issues that I have. My future is in the hand of your
9 Honor and all of the attorneys present here today. I thank you
10 for your time and your consideration and hope that some sort of
11 justice is done.

12 Real quick, my partner was John Walcott. I sat and I
13 watched all his suffering with my own eyes. I had a lot of
14 compassion for him. But at the same time I saw my future. My
15 suffering is down the road.

16 I appreciate your time. Thank you.

17 THE COURT: Thank you, Mr. Volpe.

18 I received a few letters. The first is by Phil Harmon
19 of Wilburton, Oklahoma. "Judge Hellerstein: Thank you for
20 bringing this litigation to an end. Those of us who served at
21 the World Trade Center really need this help. Although I only
22 served four months with the American Red Cross as a volunteer,
23 my health has deteriorated. Some served longer.

24 "Of the six volunteers at our local, some have passed
25 on. I have had four cystoscopies, removed tumors from my

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwctch

1 bladder, and still owe money. My neighbor's friend," whom he
2 names, "is unable to stand without help from complications of
3 diabetes. His organs are shutting down. Like myself, he was
4 hale and hearty prior to 9/11.

5 "We were not informed about this fund nor the health
6 problems. I signed up with Napoli Bern and, left no choice
7 about the 40 percent expenses fee, I ask you to make this fee
8 reasonable." There is something else about toxins.

9 The next letter is from Rudy Washington, who was a
10 deputy major at the time. "Dear Judge: On Thursday, March 11,
11 2010, I was listening to the 11 p.m. news when I heard about
12 the proposed settlement. I was first excited until I heard
13 what the offer was. It didn't take long to figure out that
14 people such as me will virtually get nothing. I'm the former
15 deputy mayor of New York City. Contrary to popular belief,"
16 and he tells some of the things that he did.

17 "I was in perfect heating, never missed a day's work.
18 I was at Ground Zero every day until January except for my
19 hospitalization and sickness during 9/11." His doctors
20 surmised that he picked up the bacteria from body parts. "I
21 was there until January 2002.

22 "Immediately after leaving the government I became
23 sick again. This went off and on for a whole year. My primary
24 physician recommended I go to Mount Sinai to be diagnosed for
25 the World Trade Center program." He filed a workmen's

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwtdh

1 compensation claim in 2004 because the medical bills were
2 getting too expensive. "I was denied coverage by the city and
3 went to fight them in court, where I failed."

4 "I now have asthma, sinusitis, surgeries, and
5 procedures. I've lost track of how many. Chronic infections,
6 sore esophagus, sleep disorder, cysts, and others. Every few
7 months I have to go in for endoscope biopsies to monitor the
8 cells in my esophagus. I'm told that if they go cancerous, I'm
9 done.

10 "When this lawsuit got started, everyone sitting at
11 the table knew that this federal fund would be the source of
12 funding along with any private insurance money. The only
13 question is if the city would have to lay out any money. The
14 city delayed this process for nine years, an inhumane act.
15 They should not be able to subsidize New York City Law
16 Department's money that was for sick and dying heros.

17 "The fund should be turned over to the special master,
18 including all the interest. According to the newspaper, people
19 who have died and their families will receive \$2 million.
20 People with cancer will receive \$1 million. Where does that
21 leave me? My offer will be less than a million dollars." Etc.

22 The next letter is from Michael Miller, who is a
23 prisoner in Moravia, New York. "I was on the WTC site from the
24 day of the attack. I was a registered fire guard and
25 volunteered my services for rescue and recovery." He

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwtdh

1 volunteered with Local 731 to do hand digging and removal of
2 debris, including body parts, 12 hours a day, 7 days a week,
3 approximately 6 months. "I've been told that I suffer from
4 post- traumatic stress disorder. I have sinus and breathing
5 problems, consistent heartburn, disturbed sleep, and so on. I
6 continuously receive medications to aid with these ailments.
7 These things did not exist before Ground Zero.

8 "I am incarcerated now. Unfortunate habits I picked
9 while at the World Trade Center site" made him dependent on
10 prescription medicines. He wants me to advise him what to do,
11 whether to opt in or opt out to the settlement.

12 Father Stephen Petrovich called. He's worried about
13 his healthcare bill. They are enormous. He is paying out of
14 pocket almost \$2,000 a month to get hospice care plus having
15 substantial monthly bills and morning payments. He's concerned
16 what would happen if he takes the settlement. Apparently he
17 doesn't know how much he can get.

18 He needs more medical care. He fears loss of his
19 house. He can't afford a nursing home. He doesn't know what
20 the settlement involves. He was in Washington, gave opening
21 prayers to Congress before he was elevated to archbishop. He
22 can't even make back what he owes this medical bills. He can't
23 serve mass anymore. He worries about going on welfare.

24 Another letter, this one from Bun Di Chung. "Dear
25 Judge Hellerstein." He is not able to attend, 40 years old.

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwtdh

1 "I was a fire department New York Engine 10 firefighter
2 assigned to the 10 house directly across from where the World
3 Trade Center was in downtown Manhattan. I became a firefighter
4 in January 2002 after 9/11 but took part in rescue recovery as
5 well as normal firefighting duties in and around Ground Zero
6 for several years after the attacks."

7 He lost 30 to 40 percent of lung capacity, developed
8 post-nasal drip, World Trade Center cough, reactive airway
9 disease, and GIRT symptoms. He was forced to retire after 3
10 years because of his condition. He received an accidental
11 disability pension based upon 3 years of service. He is on
12 medication, suffers from the same conditions and other unknown
13 problems.

14 "The recent settlement proposed is not favorable to me
15 or any other 9/11 first responder, because it does not address
16 our main concern, which is compensation for medical coverage
17 for life and sufferings we endured because of it. I don't know
18 the actual settlement amount, but the loss of my career, the
19 loss of my health, the loss of the quality of life, physical,
20 emotional, and mental anguish, and the future of unknown
21 medical problems such as cancer do not seem enough and fairly
22 represented by the current proposed settlement."

23 Mr. Cannatas, Mr. Grochow, who represent the
24 plaintiffs in the allied litigations in two other master
25 calendars, 102 and 103, have given me a list of 12 issues,

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwctch

1 which I will not read to you, because they mirror what a lot of
2 other people said.

3 My law clerk Michael Cabot has received a lot of
4 telephone calls. If he could take two or three minutes to
5 summarize some of them, we will be finished with this part of
6 the program.

7 MR. CABOT: They were mainly from people outside of
8 New York who couldn't attend. A lot of people wanted to tell
9 their stories, and there was a lot of concern about medical
10 bills and whether their illnesses would be covered.

11 I think one main theme that ran through everybody's
12 call was confusion about the settlement. They just didn't
13 really know what it entailed. There was fear about whether
14 they will be able to make a truly informed decision about it.
15 Those are really the main concerns that people voiced.

16 THE COURT: At this point I'd like to know what
17 motions are made against the stay. I don't want argument. I
18 just want you to identify the motions.

19 MR. RUDDEN: My name is John Rudden. I am the
20 attorney on Godbee. We have a pending motion for summary
21 judgment before the Court and we are waiting for the city's
22 reply. I don't know how that would --

23 THE COURT: What is the nature of your client?

24 MR. RUDDEN: My client is a police officer who died,
25 and he was given an accident disability pension by the City of

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwctch

1 New York. My basic argument was that the city should be
2 precluded from contesting anything that the board of trustees
3 of the medical board decided. In addition, on the GML 205(e)
4 claim, that the facts are sufficient to give us liability as a
5 matter of law. I would like that to be decided outside of
6 this.

7 THE COURT: I can tell you this, sir. I have to give
8 all my time and attention to the issues raised by this
9 settlement. They affect numerous people. I doubt that I can
10 get to you much before the fairness hearing of April 12. I can
11 do my best. I also feel it's not right to ask the city to
12 focus on various motions affecting particular people when, as
13 you will see from my remarks, I think there is going to be a
14 bigger problem.

15 MR. RUDDEN: Your Honor, if I could ask this. All the
16 city has to do now is reply. They made a cross-motion. They
17 to reply.

18 THE COURT: I understand.

19 MR. RUDDEN: Get them to reply and then the Court stay
20 it, depending on what the Court --

21 THE COURT: I'll take that under advisement.

22 MR. RUDDEN: Thank you, your Honor.

23 THE COURT: Yes?

24 MS. STEVENSON: My name is Lee Ann Stevenson. I
25 represent Verizon, New York, in the 102 docket and the 103

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwctch

1 docket. We filed on Wednesday, I believe, an opposition to the
2 motion to stay as it applies to the 102 and the 103 dockets,
3 which are largely unaffected by the proposed settlement that
4 your Honor is considering now.

5 Based on meetings that we have had with other
6 defendants in the 102 and 103 dockets, my understanding is that
7 the vast majority, perhaps all, of defense counsel in 102 and
8 103 likewise oppose a stay as to those dockets, as we believe
9 it will hinder any possibility of those dockets settling and
10 the defendants involved in those cases being able to progress
11 their cases to the point where they might be able to reach a
12 settlement with the plaintiffs.

13 THE COURT: Thank you.

14 Next, Mr. Grochow.

15 MR. GROCHOW: Your Honor, also I am liaison in 102.
16 We were two days away from submitting a plan to the Court for
17 an expedited discovery schedule which would not involve any
18 city buildings. If the stay is lifted, we will proceed with
19 that and proceed with the expedited discovery of six buildings
20 and 60 plaintiffs, which I think will help resolve some of
21 these cases.

22 THE COURT: Thank you, sir.

23 Mr. Stein.

24 MR. STEIN: Thank you, your Honor. I'm speaking on
25 behalf of all of defendants in 21 MC 102. As was said earlier,
SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwth

1 we prefer not to have a stay. But if there is going to be a
2 stay, there are three areas that we think should be carved out
3 so that we can properly evaluate the settlement.

4 First of all is that the plaintiffs agree to sign
5 authorizations upon request. At the moment there are only one
6 request for authorization out there for 58 transcripts. But if
7 there are others, we would like authorization so that we can go
8 and get medical records and other records without involving any
9 of the parties of the settlement.

10 THE COURT: Can that be done, Mr. Napoli?

11 MR. NAPOLI: We have been exchanging on a regular
12 basis all --

13 THE COURT: The answer is yes or no.

14 MR. NAPOLI: Yes, we have exchanged medical reports.

15 THE COURT: OK, you have that.

16 MR. STEIN: Second is do we need to be permitted to
17 ask the justice department for victim compensation fund
18 records.

19 THE COURT: To know how much people received?

20 MR. STEIN: To find out whether anyone did in fact.

21 THE COURT: I will permit that.

22 MR. STEIN: The third thing is for plaintiffs to
23 continue to provide the documents that have previously been
24 ordered by the Court that we haven't yet received.

25 THE COURT: I'm not going to require that at this
SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwth

1 point in time.

2 MR. STEIN: Thank you, your Honor.

3 THE COURT: Next. Yes? Please identify yourself.

4 MS. WEINSTEIN: Anita Weinstein on behalf of Tishman
5 Construction Corporation of New York and Tishman Construction
6 Corporation of Manhattan. If the stay is imposed, your Honor,
7 we would ask that we on behalf of our clients be able to work
8 with plaintiffs' counsel to secure additional dismissals on our
9 clients' behalf. We have worked with them before and were
10 successful in having some stipulations of dismissal.

11 THE COURT: Yes or no, Mr. Napoli?

12 MR. NAPOLI: Yes, we will continue to do that.

13 MS. WEINSTEIN: Thank you.

14 THE COURT: Thank you. Anybody else? Mr. Cannata, I
15 would be very grateful if you could give me a schedule of the
16 motions that will be continued.

17 MR. CANNATA: Yes, your Honor, certainly.

18 THE COURT: Thank you.

19 Let me address you at this time. I have no formal
20 notes. I speak, as it were, from the heart.

21 I have been the judge on these cases since they began.
22 The first cases were wrongful death actions that came in. The
23 cases involving the responders grew out of that. Originally
24 they were in one docket. I split them into a second docket,
25 and now there are two additional dockets. There are many other

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwtdh

1 related cases as well, more than I care to address at this
2 particular point in time.

3 It has been the greatest burden in my life. It's been
4 the greatest challenge this my life. I feel enormously
5 grateful that I have been able to stay with these cases and
6 handle them and move them along at a pace that I believe most
7 of you feel has been much too slow, others might feel a little
8 fast, but reflecting the best that I could do in these
9 circumstances. This docket has been appealed twice to the
10 Court of Appeals, costing about four of the eight years with
11 which we have been engaged with one another.

12 From the beginning I felt that these are special, that
13 the people who responded on 9/11 were our heros. They did
14 their jobs. They put themselves at risk. They were in the
15 first line. They cushioned the blow that was inflicted on our
16 city and our state and our nation and on each of us as
17 individuals. And they brought us back from that below still a
18 strong and vital city in a strong and vital nation.

19 I have heard arguments about immunities, about
20 privileges, about defenses, but I have managed to keep all of
21 these cases alive and they have reached this point. That's not
22 to say they will all survive. That's not to say that I will
23 change law that must be applied. But it is to say that I feel
24 as best I can that I understand the mix of passions that have
25 been expressed today and the needs, as well as the defenses and

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwtdh

1 rights of the defendants, including among them the city.

2 These are special cases not only because of the
3 subjects of them, not only because under the Air Transportation
4 Safety and System Stabilization Act -- it's very hard to
5 remember the acronym -- they have all been accumulated in one
6 court and it's the only court that could hear them. And not
7 only because it is my privilege and obligation to be the
8 presiding judge over these cases, but because of the
9 difficulties that they presented and because of some of the
10 things that have happened in these cases.

11 These are not just private cases, where a lawyer signs
12 up a client in a hospital and champions that client's cause
13 against a well-healed defendant or insurance company. These
14 are 10,000 cases which in my judgment have been brought with
15 very little intake procedure but have been filed because people
16 have said I've been injured.

17 These are cases that have followed the general forms
18 of conclusory pleadings that defied my interest in having
19 specificity and detail. These are cases that have been
20 defended with such vigor and aggressiveness as to put a
21 metaphor in my mind of leaving no bridge unburned and no field
22 unravaged. It's taken us to today, on the eve of a trial, to
23 produce an agreement of settlement.

24 I have enjoyed some very nice press about this, as my
25 friends have come to congratulate me. But I'm not ready to be

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwtdh

1 congratulated, and neither are the attorneys, because I feel
2 that there are some serious questions that have to be
3 addressed. I have in mind that people are tired. I have in
4 mind that people have felt the onus of their illnesses and
5 ailments and the looks of their wives and spouses and the looks
6 of their children and they are impatient. They want to get on
7 with their lives. What I'm going to say is going to suggest
8 some delay, but I nevertheless want to say this.

9 In my judgment, this settlement is not enough. Why do
10 I say that's not enough?

11 (Applause)

12 No, I don't want that. I'm a judge. I'm not a
13 negotiator. I'm giving my impressions.

14 Most settlements are private; a plaintiff and
15 defendant come together, shake hands, and it's done with.
16 Although the judge may look and see if there's some infant or
17 some compromise or something else, basically it's the parties
18 that decide. It's the parties that grant the fee. The judge
19 has no part in it.

20 This is different. This is 9/11. This is a special
21 law of commons. This is a case that's dominated my docket, and
22 because of that, I have the power of review. If I don't think
23 it is fair, I'm going to tell you that, and you will make the
24 judgment how to deal with it.

25 Why do I say it's not enough? I compare, as hard as
SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwtdh

1 it is to compare, what the victim compensation fund did,
2 without delay, without lawyer's fees, but with distributions.
3 It's hard to make comparisons. Some of the numbers look to be
4 comparable, many do not. But every plaintiff here, according
5 to this agreement, is burdened by a lawyer's fee that's hard to
6 gauge and will take a very large bite out of his recovery.

7 That wasn't the case with the victim compensation
8 fund. People did not have to wait eight years. People could
9 get on with their lives immediately. People were given the
10 money to deal with their ailments quickly. Where there were
11 deaths, people were given the money to move on if they wanted
12 to. This is eight years later and with very large legal fees.

13 Legal fees are earned. The people who spoke for the
14 Napoli Bern firm are correct, they took on the cause. They
15 financed this cause at great, great expense. And although I
16 have various criticisms of their work, by and large their work
17 was productive. They brought us to this point in time. They
18 deserve to be compensated.

19 I want to say two things about it. Number one, in my
20 opinion, just as the captive insurance fund and the private
21 insurers of the city paid the city's expenses and in effect
22 fueled this vigorous and aggressive defense, so they should pay
23 the plaintiffs fee.

24 (Applause)

25 No, no, I don't want this. This is not a political
SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwtdh

1 speech.

2 There are precedents for this. There are settlements
3 that are made with the defendant picking up the expense. This
4 is one of those settlements.

5 Secondly, in my judgment, given the nature of this
6 case, given the economies that I brought to this case, avoiding
7 large-scale discovery with every individual plaintiff,
8 tremendous economies were created and this case was moved. It
9 took 12 years to go to trial in the 1993 cases. We have shaved
10 time and we have brought great economies.

11 Mr. Napoli and his colleagues in his firm and in
12 allied firms are entitled to a reasonable and perhaps even
13 generous fee. In my judgment, they are not entitled to their
14 contract rights of a third, thereabouts. So I will fix the
15 reasonableness of the fee, and the fee will be payable by the
16 captive insurance, and that amount of money will be available
17 for distribution to the plaintiffs.

18 Second, the way this is structured is like a class
19 action. In a class action the defendants agree to pay a fixed
20 amount and that amount is distributed among the plaintiffs. In
21 this case there were actuarial assumptions that led to the
22 fund, the amount that you see in the agreement of settlement,
23 \$575 million plus various bonuses and adjustments.

24 Let's focus on the \$575 million. We are told that
25 this was a sum that was arrived at from what they call a

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwctch

1 ground-up settlement, meaning that there was an effort to
2 reflect the merits of each case, of each of the 9,000 some-odd
3 cases in the 21 MC 100 docket. A lot of this is very
4 arbitrary. I know because I'm involved in a lot of these
5 settlements. You can't put a scientific number or measure on
6 anybody's life or health or disease or loss or suffering. You
7 try, but you can't. So negotiations focus on an aggregate and
8 then it's distributed. That is inevitably the case.

9 My point is that the actuarial risk should not be
10 borne by the plaintiffs. Each of those plaintiffs has to
11 decide: What am I getting? is it worth it for me to give up my
12 chance of getting more or losing everything? what's it going to
13 do with my life? They don't know. Nobody in this settlement
14 can figure it out. The points in this settlement can make a
15 Talmudist's head or a canonical scholar's head spin and revolve
16 24 hours a day and still it would be hard to grasp these
17 numbers.

18 There has got to be a valuation of whatever criteria
19 are set out to create the settlement. A plaintiff should know
20 if things go as he thinks, what approximately he can get at the
21 end of the day. Then he can make an intelligent decision if he
22 is educated in a proper way to know about the benefits or
23 detriments of the settlement.

24 I will not preside over a settlement that is based on
25 fear or ignorance or request opt-outs or opt-ins without people

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwctch

1 fairly being aware of what's at stake for what may be the most
2 important decision of their lives. That is the second big
3 point.

4 The points or the criteria have to have values.
5 People ought to be able to understand on the basis of their
6 ailments and maybe some hypotheticals that would be useful,
7 what they are likely to get. If it comes up more or less,
8 that's the risk of the captive insurance.

9 Another point. You can't understand how much is
10 enough and how much is not enough unless you know the aggregate
11 size. Congress appropriated a billion dollars for this captive
12 insurance fund, Mr. Tyrrell arguing that it's to protect the
13 city. Yes, that's right, but it protects the city against the
14 claims of the people who lost their health and some of them
15 their lives in responding to 9/11.

16 So there are two parts to it, the benefit and the
17 detriment. How much will be spent and how much is left?
18 What's the reason for what's left? What's it going to do?
19 Well, there are claims still to come. The New York State
20 legislature and Jimmy Nolan's law has enlarged the statute of
21 limitations so we don't get all the cases yet.

22 Last week 600 cases, new cases, were filed. How can
23 the city protect itself against that? Congress is considering
24 a law, I don't know if they have the constitutional right to do
25 it, to require the states to enlarge their statute of

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwtdh

1 limitations or perhaps some federal statutes of limitations.
2 Every time the statute of limitations is enlarged, it becomes
3 more and more difficult to compensate adequately people who
4 have real present injuries.

5 The city is right, the captive insurance is right,
6 they have got to reserve. But how much has to be reserved?
7 And is the conjectural right of the future cogent enough to
8 outweigh the real and present needs of the present? In my
9 judgment, too much is put aside for the future.

10 There are techniques that Judge Weinstein in the
11 Eastern District of New York has pioneered following the case
12 of Stevenson in the United States Supreme Court where the judge
13 has certain powers, not entirely clear, to put a ceiling on the
14 future. Together with the attorneys, we can try to find ways.
15 But I think more has to be given to the present.

16 I looked at what's done for cancer. Cancer is a very
17 difficult injury. It is a long gestational period. We have
18 toxins in the World Trade Center that have never been heard of
19 before, but the diseases that people come down with are
20 categorized according to diseases that are present in our
21 everyday lives. Who can really say how a cancer is caused?

22 If we went to trial, that would be a very difficult
23 problem for experts, more difficult perhaps than with
24 respiratory injuries, though they, too, have their
25 difficulties. And we would have extended hearings called

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwctch

1 Daubert hearings on the qualifications of experts to be able to
2 give expert testimony on these kinds of issues, which a
3 settlement avoids. I understand all that.

4 But the people who went in to 9/11 did not make
5 calculations on cancers and whether they would get or wouldn't
6 get cancer or whether they would be afflicted with cancer or
7 whether the cancer would have effect on their children. They
8 responded. And I think since we are talking about settlements,
9 there is a certain degree of morality that goes with it. And
10 because it's 9/11 and because we have a public fund
11 appropriated by Congress, it's not so wrong to think about
12 cancers.

13 We have a cancer policy in the settlement that will
14 pay \$100,000 per person, plus or minus, through 2016, and then
15 maybe only \$50,000 after that because we don't know what
16 experience will come of it. I'd rather that that experience be
17 somebody else's risk to a much larger degree. I think there is
18 more money to pay for the cancers, given all the issues, given
19 all the problems with it. And there are other diseases that
20 some of the speakers have presented that are not easily
21 categorized into the group as we have done.

22 I'm not going to go into the details of other things.
23 But these hit the major points why I think there has to be
24 additional negotiations to come up with what is a better and
25 fair settlement. I don't think this is fair.

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwctch

1 The second major category has to deal with process.
2 How does a person understand, opt in or opt out? A person has
3 to know. In a class action settlement the judge decides based
4 on the presentations of the parties whether a notice is fair or
5 not in relation to the information it gives to a person to
6 decide whether to participate in the settlement or not. Most
7 of these times that come up in securities cases, we are dealing
8 with investments; and they need to know, but it's not so
9 critical.

10 We are dealing with life issues. We are dealing with
11 families. We are dealing with survival. We are dealing with
12 vitality. We are dealing with doctors' visits. I think people
13 have a right to know what's involved.

14 It's not so easy to take this very complicated
15 settlement and present it in a way that people can understand,
16 but we've got to try to do it. And I think something is needed
17 on my part. I think we will need meetings. I think people are
18 entitled to a neutral presentation so they can decide what's in
19 their best interest. I will make myself available, in union
20 halls, in fire department houses, in police precincts, in
21 schools. I'll come and I'll talk to you just as you have
22 talked to me. And let's decide, is it good or is it not good?

23 But it will be your decision. No one is going to
24 twist your arms and no one is going to add to the complexities
25 and no one's going to make you feel afraid to exercise the

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwctch

1 right choice. There has to be judicial supervision of the
2 communications issue because it has to be fair. If it's not
3 fair, it doesn't deserve a judicial imprimatur.

4 Third, there is a process in here by which a person,
5 called an allocation neutral, has to make decisions what
6 category you belong to. Are you eligible for this category
7 where you get more money or will you be put in that category
8 where you get less money? That's a judicial function. A judge
9 doesn't have to do it, but a judge has to supervise it.

10 Then information is developed which allows that
11 person, whoever it is, to make the decision. A judge is a
12 prisoner of the information he gets. He gets his information
13 from advocates of each side. I have the benefit of two
14 excellent law clerks -- you know Michael from things and you
15 know Michael's predecessor -- to help me filter the information
16 and understand it.

17 But at every point there are assurances of fairness.
18 The agreement has the parties appoint all of these experts:
19 The board of doctors, the company that collects all the
20 information, and the like.

21 I have had two special masters, Professor Twerski and
22 Professor Henderson, working on this case for a few years.
23 With their computer experts, they have built up a data bank.
24 The settlement wants to create an entirely new data bank. So
25 it's impossible for me as a judge to understand the process.

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwth

1 I can understand why the defendants are concerned,
2 because we have had no verifying check on the process that
3 created our data bank. But if there are discrepancies, I want
4 to know about them. If people have been feeding information
5 into our data bank that is not accurate or for which they wish
6 to escape, I want to know about it. If there's been fraud, I
7 want to know about it and so does the United States Attorney.

8 I want an integrated data bank. I want transparency.
9 I want accountability. I want judicial control over this
10 process, because that's what's fair. If I'm the judge, I can
11 be reversed. If the parties appoint someone, he's the
12 dictator. We don't have dictators.

13 So there will be judicial approval of the allocation
14 neutral and of the experts that the allocation neutral picks,
15 all under judicial supervision. This is no ego trip for me.
16 This is work. I have enough work. I have enough personal
17 responsibilities. But this is what's fair and I will preside
18 over a process that's fair. That's the third point, judicial
19 control, judicial supervision, judicial accountability, and a
20 public record, so we can all be proud of the results that we
21 achieve.

22 I'm not going to bore you with other details. These
23 are the highlights and these are what the parties are going to
24 negotiate for. The special masters will be available to help
25 them, but they've got to come up with an agreement under

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

03jrwth

1 judicial supervision that will make us all proud and will do
2 justice.

3 It is now 5 minutes after 4:00. I have completed my
4 remarks. That is the end of the program unless someone really
5 has something more he or she wishes to say.

6 Thank you all.

7 (Adjourned)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

