Exhibit G

To: The Honorable Alvin K. Hellerstein

From: Matthew L. Garretson on behalf of Garretson Firm Resolution Group, Inc.

Date: August 5, 2010

Re: World Trade Center Litigation Settlement

Memorandum Regarding Reimbursement of Attorneys' Litigation Finance Costs

In conjunction with the World Trade Center Litigation Settlement, some plaintiffs' attorneys have sought Court approval for allowing litigation financing interest to be considered a litigation expense billable to their clients. The following memorandum summarizes the research and experience of the Garretson Firm Resolution Group, Inc., ("Garretson Firm") relating to the legal and ethical constraints pertinent to allowing such expenses.

MRPC 1.8(e)(1) provides that an attorney working on a contingency-fee basis in a civil matter can advance litigation expenses and make reimbursement contingent on the outcome of the litigation. The ABA Committee on Ethics and Professional Responsibility has identified the types of expenses that can and cannot be billed to clients. Formal Op. No. 93-379, Dec. 6, 1993. General costs, including overhead expenses such as those "generally associated with properly maintaining, staffing and equipping an office," cannot be billed to clients. *Id.* Case-specific costs, such as "photocopying, long distance telephone calls, computer research, special deliveries, secretarial overtime, and other similar services" can be billed. *Id.* However, the amount billed must "reasonably reflect[] the lawyer's actual cost for the services rendered," and "[a] lawyer may not charge a client more than her disbursements for services provided by third parties . . . except to the extent that the lawyer incurs costs additional to the direct cost of the third-party services." *Id.*

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State legal ethics oversight committees generally agree that attorneys may properly include litigation finance interest as a billable expense. The New York State Bar Association Committee on Professional Ethics has specifically addressed the issue: "a lawyer may borrow to finance litigation expenses in a contingent fee matter and pass on to the client the interest costs incurred in connection with such borrowings." New York State Bar Association, Committee on Professional Ethics, Op. No. 754, Feb. 25, 2002, *available at* 2002 WL 1303479. The committee noted that several requirements apply in such cases:

- that the lawyer has no interest in the lender;
- that client confidences and secrets are not compromised;
- that the terms of the borrowing are on adequate advance notice to the client;
- that the time periods after which interest is charged the client and the interest rate are reasonable;
- that the client consents in advance;
- that the client may avoid the interest charge by paying the disbursements; and
- that the disbursements are themselves appropriate.

Id.; *see also Brandes v. North Shore University Hospital*, No. 59651997, 2008 WL 80629, at *3 (Queens County Sup. Ct. Jan. 8, 2008).

Ethics committees in other states as well as the City of New York have reached similar conclusions, generally allowing attorneys to include such interest as a billable litigation expense, subject to similar requirements as those set forth by the New York committee. *See*, *e.g.*, Connecticut Bar Association, Committee on Professional Ethics, Informal Op. No. 02-03, Feb. 27, 2002, *available at* 2002 WL 570600 ("[W]e are of the opinion that a lawyer may charge a personal injury client interest on costs and expenses of litigation that are advanced by the lawyer . . . ."); New Jersey Supreme Court Advisory Committee on Professional Ethics, Op. No. 603, July 30, 1987, *available at* 1987 WL 221736; Utah State Bar Ethics Advisory Opinion

Committee, Op. No. 02-01, Feb. 11, 2002, *available at* 2002 WL 231939; The Association of the Bar of the City of New York, Formal Op. No. 1997-1, March 1997, *available at* http://www.abcny.org/Ethics/eth1997-1.htm (collecting state professional ethics opinions).

Generally, the most common issue that arises in relation to these requirements is what constitutes an appropriate disbursement. The Supreme Court of Louisiana has specifically addressed this question in a case involving an attorney who, after being replaced by other counsel, sought to recover interest in the amount of $40,859.25 from the client for monies borrowed to finance the litigation as per the terms of their contingent fee agreement. *Chittendon v. State Farm Mutual Automobile Insurance Company*, 788 So.2d 1140 (La. 2001). The court held that the agreement, which did not specify an exact interest rate, was permitted under the ethics rules. *Id.* The court also limited the recovery to the actual interest charged by the bank, which, of note, is consistent with the ABA's interpretation of MRPC 1.8(e)(1) as limiting reimbursement for third-party expenses to the actual costs, as discussed above. *Id.*

It is important to note that the financing agreements that have been set aside have generally involved third-party lenders making loans directly to plaintiffs, often in exchange for a financial interest in the results of the litigation itself. *See*, *e.g.*, *Rancman v. Interim Settlement Funding Corp.*, 789 N.E. 2d 217 (Ohio 2003); *Johnson v. Wright*, 682 N.W.2d 671 (Minn. App. 2004). Such third-party financing arrangements—again, which entail direct lending to plaintiffs, not to attorneys—can be differentiated from plaintiff reimbursement of litigation finance expenses in a number of ways: (1) such finance companies are not subject to the same ethical rules and disclosure requirements that govern attorneys; (2) such finance companies often negotiate directly with the plaintiffs, who are often inexperienced in negotiating such arrangements and who do not have the benefits associated with economies of scale that their attorneys usually have; and (3) such finance companies are engaged in the business of lending, not advocacy. Accordingly, these types of finance companies are substantially more prone to negotiate unfavorable agreements with plaintiffs.

The reasonableness of litigation financing interest expenses can be difficult to determine from case law because the matter tends to fall more within the scope of attorney professional responsibility than civil liability. State legal ethics committees tend to evaluate the reasonableness of such fees based on the costs of similar loans from alternate sources. For example, the New York State Bar Association's Committee on Professional Ethics "believes that to satisfy the requirement regarding the reasonableness of the interest rate, the borrowing lawyer must investigate other borrowing opportunities." Op. No. 754, Feb. 25, 2002, *available at* 2002 WL 1303479. Market rates for such costs vary with economic forces such as supply and demand, and, therefore, it would be inappropriate for the Garretson Firm to comment directly on the reasonableness of the rates charged in the present matter. However, based on other litigation in which it has processed disbursements, the Garretson Firm believes that the rates in the present matter are comparable to the prevailing rates in the industry.