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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

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New York, N.Y.

June 10, 2010

7

10:55 a.m.

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Before:

9

HON. ALVIN K. HELLERSTEIN

10

District Judge

11

12

APPEARANCES

13

14 WORBY GRONER EDELMAN & NAPOLI BERN, LLP

Attorneys for Plaintiffs

15

PAUL NAPOLI

WILLIAM H. GRONER

16

DAVID E. WORBY

MARC JAY BERN

17

DENISE A. RUBIN

18

SULLIVAN, PAPAIN, BLOCK, McGRATH & CANNAVO, P.C.

Attorney for Plaintiffs

19

NICHOLAS PAPAIN

ANDREW J. CARBOY

20

PATTON BOGGS, LLP

21

Attorneys for Defendants City of New York and Contractors

JAMES E. TYRRELL, JR.

22

JOSEPH E. HOPKINS

CHRISTOHER M. DiMURO

23

ALYSON VILLANO

24

McDERMOTT, WILL & EMERY, LLP

Attorneys for World Trade Center Captive Insurance Company

25

MARGARET H. WARNER

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1 ALSO PRESENT:
2 KENNETH R. FEINBERG, Claims Appeal Neutral
3 MATTHEW L. GARRETSON, Allocation Neutral
4 JAMES A. HENDERSON, JR., Special Master
5 AARON D. TWERSKI, Special Master

6 MICHAEL A. CARDOZO
7 Corporation Counsel of the City of New York

8 BY: MICHAEL A. CARDOZO
9 Corporation Counsel
10 LAWRENCE S. KAHN
11 KENNETH A. BECKER
12 Assistant Corporation Counsel
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1 THE COURT: Good morning, everyone. Be seated,
2 please.

3 Looking for Ms. Warner, is there a report to me?
4 Mr. Tyrrell?

5 MR. TYRRELL: Your Honor, I think I have been asked to
6 have the privilege of going first, subject to your approval,
7 and mine is a very brief reservation of rights statement, which
8 I think your Honor knows about.

9 Before we begin, I would simply like to make a
10 statement for the record on behalf of the city and its
11 contractors. As your Honor is aware, the parties have reached
12 a private settlement after almost two years of expensive
13 negotiations. The city and contractors fully support the
14 settlement agreement. As your Honor is also aware, the city
15 and the contractors have objected and continue to object to the
16 court's assertion of any jurisdiction over the settlement. The
17 parties believe that the private settlement they have agreed
18 upon is fair to all involved and, while the parties appreciate
19 the court's public acknowledgment of that fact, it is the
20 parties' position that the settlement is effective and binding
21 without any approval by the court.

22 Accordingly, the city and the contractors object to
23 today's hearing and to your Honor's exercise of jurisdiction or
24 authority over the settlement or its implementation. Thus, the
25 city and the contractors expressly reserve and preserve their

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1 rights to challenge your Honor's exercise of jurisdiction or
2 authority over this private settlement or its implementation
3 and any future private settlements.

4 Your Honor, this is the only time I have argued in
5 front of you from a script.

6 THE COURT: Did that improve the argument or reduce
7 its effect?

8 MR. TYRRELL: No one trusted I would get it right
9 otherwise.

10 THE COURT: Objection is overruled. I will make some
11 remarks in a few minutes.

12 MR. NAPOLI: Your Honor, plaintiffs join in the
13 objection and assume it is overruled as well.

14 THE COURT: Overruled, as well; and, yes, I said I
15 would have some comments to make later.

16 I think everyone will profit, Ms. Warner, if there
17 were a summary. I know there is an executive summary, but if
18 you would be good enough to summarize the settlement, and then
19 I think Mr. Napoli and maybe some others want to add some
20 comments, then anyone else, then I will have some comments and,
21 last, Mr. Feinberg wants to say a few things.

22 Good morning, Ms. Warner.

23 MS. WARNER: May it please the court. Good morning,
24 your Honor. Margaret Warner from McDermott Will & Emery, along
25 with Mark Collins, Ryan Smethurst and Andrew Genz, for the WTC

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1 Captive Insurance Company.

2 And, your Honor, I will note that this is the first
3 time I have ever really had to use a microphone; and, as the
4 court knows, I am laboring a bit with my vocal cords. I will
5 attempt to keep my voice up; and if the court reporter has a
6 problem hearing me, please advise.

7 On the afternoon of March 19, as we left the
8 courtroom, after hearing your Honor's concerns about the
9 parties' settlement process agreement, my client gave me a
10 clear, albeit challenging, instruction: Find a way to hold
11 this settlement together. Every party to these cases needs a
12 fair resolution, certainty about what that resolution means to
13 them, and closure as soon as possible.

14 Since March 19, every day and most nights we, all
15 these lawyers here, have worked very hard, your Honor, at these
16 negotiations. After almost three months, three months more of
17 intensive negotiations after the 22 months that we had for the
18 original agreement that we reached, today we present to the
19 court our settlement process agreement as amended.

20 THE COURT: It shall be marked as an exhibit, Court
21 Exhibit 1.

22 MS. WARNER: May I approach, your Honor?

23 THE COURT: Please. If it is the copy that was
24 previously given to me?

25 MS. WARNER: It is the executed version of the copy,

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1 your Honor.

2 THE COURT: Let me inspect it and I will give it back
3 to Ms. Jones for filing.

4 (Pause)

5 THE COURT: What page is the signature page?

6 MR. NAPOLI: 102, your Honor.

7 THE COURT: This one doesn't have the signatures.

8 MS. WARNER: Excuse me, your Honor. That one should.

9 THE COURT: May I assign the exhibit number to the
10 copy with the signatures?

11 MS. WARNER: Yes, your Honor.

12 THE COURT: This has the signatures of Ms. Warner on
13 behalf of the Captive Insurance Company, witnessed by two
14 witnesses; Mr. Tyrrell on behalf of the insureds, as defined in
15 the agreement; Mr. Napoli, Mr. Groner and Mr. Papain,
16 co-liaison counsel for the plaintiffs. I have inspected the
17 agreement. I return it to Ms. Jones for marking it as Court
18 Exhibit 1 and for filing in the matter.

19 MS. WARNER: Thank you, your Honor.

20 Your Honor, I will describe the highlights of the
21 amended agreement that has been reached by the parties, and I
22 hope that at a future time I will have the opportunity to
23 address in some detail the agreement itself.

24 Your Honor, this agreement, as amended, is a 104-page
25 document. There are 18 exhibits, and it provides and

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1 demonstrates in black and white what the parties have been
2 doing since March 19. The amount of the settlement has been
3 increased to a minimum of \$625 million from the previous \$575
4 million, to a potential total amount under this agreement,
5 under certain conditions, of \$712.5 million from the previous
6 \$657.5 million.

7 However, your Honor, and most importantly, due to the
8 efforts that we have undertaken over the last three months, the
9 value of this settlement to the plaintiffs, to the plaintiffs
10 themselves, is approximately \$125 million.

11 The WTC Captive has agreed to place an additional \$50
12 million in cash into this agreement up to a potential
13 additional total of \$55 million in cash if certain of the
14 contingencies are met.

15 In addition, the City of New York and its World Trade
16 Center workers comp insurer have agreed, after extensive work,
17 to waive worker's compensation liens against certain plaintiffs
18 who will settle here. This means, your Honor, that those
19 plaintiffs who have been receiving workers compensation
20 benefits will not have to worry that their benefits will be the
21 subject of a lien and, therefore, reduced or that their
22 benefits will not continue. Their benefits will continue as
23 long as they are entitled under the law to have those
24 continuing benefits.

25 This particular provision, which has been worked on

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1 extensively with the plaintiffs' lawyers and with the city and
2 the workers compensation carrier will add an additional \$25
3 million to individual plaintiffs who are receiving these comp
4 benefits currently.

5 Furthermore, your Honor, I would add that this very
6 important undertaking is a sign of the importance with which we
7 all hold these cases and the individual plaintiffs, and we
8 would hope that other workers compensation carriers would do
9 the same thing and waive their liens as well.

10 In addition, your Honor, the plaintiffs' counsel have
11 voluntarily agreed to reduce their attorney's fees from the
12 rates that were -- the fees that were set in their individual
13 contracts with their clients, which we understand to have
14 generally been 33.3 percent. They have voluntarily agreed to
15 reduce those fees to 25 percent, and they have agreed not to
16 take any attorney's fees on the Metropolitan Life cancer
17 insurance policy that has been a part of this settlement from
18 day one and continues to be a very important part of the
19 settlement.

20 The plaintiffs' counsel voluntary agreement will add
21 at least \$50 million in additional monies that will go to their
22 clients because they have chosen to forego their fees.

23 As I said, your Honor, these items add up to
24 additional benefits to the plaintiffs themselves of
25 approximately \$125 million.

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1 Other aspects of the amendment:

2 We have increased the point values under the amended
3 settlement grid to increase the recovery for solid tumor cancer
4 cases. Under the prior agreement, those were at 650 points.
5 In this agreement, as amended, they are set at 10,000 points.

6 Certain respiratory cancers, as well, will see
7 increased point value in this amended agreement, from a prior
8 point value of 650 points now to 2500 points for certain
9 respiratory cancers.

10 THE COURT: Could you develop that just a bit more so
11 that the general population understands the meaning of the
12 "point."

13 MS. WARNER: Your Honor, in this agreement, we have
14 come up with a settlement grid, and that grid lays out the
15 specific injuries that can qualify for compensation under our
16 settlement. Those injuries relate to the wide range of
17 injuries that are alleged in the complaints by the individual
18 plaintiffs, and they range from what we call the A injuries,
19 which are chronic obstructive pulmonary diseases; B injuries of
20 interstitial lung diseases; C injuries of asthma or RADS.

21 THE COURT: "RADS" means what?

22 MS. WARNER: Restrictive airways disease syndrome.

23 THE COURT: These are the various ailments that are
24 under the general category of respiratory injuries.

25 MS. WARNER: That is correct, your Honor. And I

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1 misspoke. I apologize. RADS is reactive airways disease. I
2 apologize specifically to Mr. Groner for that blooper.

3 THE COURT: Unless you work with these, Ms. Warner --
4 which I don't, you don't -- it's very hard to remember all
5 these words from one day to the next. They are very difficult
6 terminology. But, generally speaking, these are all the
7 various respiratory ailments broken down to various categories.

8 And how do the points come into play?

9 MS. WARNER: Your Honor, in addition to the
10 respiratory ailments that are alleged, there are also digestive
11 ailments, cardiac, cancer, death and other ailments that are on
12 a grid.

13 Now, the points come in --

14 THE COURT: In a word, those working on the pile over
15 the course of approximately eight months that it took to clear
16 up the pile claim to be afflicted by various what they call
17 insults into the body, that the air caused various problems
18 with the person's respiratory tract or digestive tract, because
19 these things that were ingested and respired, were eaten and
20 breathed unwillingly when one works at a certain place are
21 thought to have or are claimed to have had serious health
22 effects on the body and the respiratory parts of the body,
23 performing respiratory functions and those performing digestive
24 funds, and these are the diseases about which we are talking.

25 And then there are categories, according to the

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1 severity of attack, different people have been afflicted in
2 different ways, hence the points.

3 MS. WARNER: Your Honor, that's correct. Of course,
4 these are all allegation in the complaint that would be subject
5 to proof during the proof part of a case, a trial.

6 THE COURT: Very difficult, very difficult proofs.

7 MS. WARNER: They are very, very perplexing and very
8 unseen and never-seen-before situations here that make these
9 cases so difficult, so complicated, and so difficult for all of
10 us who are parties to this case.

11 Your Honor, the way the grid is laid out, all of these
12 alleged injuries are on the grid and there are four tiers of
13 injury, tiers that are in the settlement agreement. Those four
14 tiers are our attempt, after extensive consultation with
15 physicians, with medical experts, with statisticians, to come
16 up with an appropriate, a reasonable, a medically supported
17 manner to consistently and fairly value the injuries that are
18 alleged in this litigation. And we have set up four injury
19 tiers -- tiers one, two, three, four.

20 Tier one represents plaintiffs who allege no
21 qualifying injury under the grid at the current time.

22 THE COURT: Meaning nothing objective, nothing in a
23 medical test that could be pointed to as indicative of a
24 disease, yet people complain about different things.

25 MS. WARNER: And many of these people fear that they

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1 may contract a disease in the future, specifically cancer
2 often, so we have come forward with this settlement to provide
3 a mechanism where they will get some compensation and, even
4 more importantly, they will be able to obtain this Met Life
5 cancer policy that will assist them with a \$100,000 benefit
6 should they contract, down the line, the specific respiratory
7 cancers that are covered by the policy.

8 Tier two are plaintiffs who have a qualifying injury
9 as laid out on the grid, but that injury is not particularly
10 severe and it is not likely related to the exposure at the
11 site. In other words, current medicine is not able, in the
12 view of many physicians, to show a linkage between the exposure
13 at the site and this particular condition at this particular
14 time. Obviously, your Honor, we have had innumerable
15 professional debates with the plaintiffs' counsel about these
16 very, very difficult causation issues, causation issues of both
17 a general nature in terms of what was in the air at these
18 locations, and specific causation of can an individual
19 plaintiff who has a concern condition, can that plaintiff to a
20 degree of reasonable certainty, as is required under the
21 Daubert principles and others, can they prove specific
22 causation.

23 THE COURT: Daubert is a Supreme Court decision which
24 requires the judge to be what is called the gatekeeper of
25 admissible evidence in a trial. In a Daubert hearing, and

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1 there are hearings, where we take testimony and the like, the
2 judge is to make a decision that the expert is reporting on
3 some matter generally acceptable by the scientific or medical
4 community and related to the particular injury that is involved
5 here. So the expert has to truly be an expert in the
6 particular field and he has to develop an expertise, he or she
7 has to develop an expertise related to the particular injury
8 about which he is testifying.

9 What Ms. Warner is saying, a number of things, number
10 one, that we are not involved with a distribution process
11 depending on illnesses alone, the illnesses have to be related
12 to the work in 9/11; and, secondly, that there was, in the
13 settlement conversations, an anticipation of what would be
14 readily proveable at trial or not. If something was readily
15 proveable at trial, it was entitled to a higher recognition
16 than if something was not readily proveable at trial, even
17 though the two people affected might be equally and severely
18 restricted in life's capacities.

19 So the concept of insurance rather than a distribution
20 fund, the VCF, the Victims Compensation Fund with which
21 Mr. Kenneth Feinberg is involved, was involved, so effectively
22 was a distribution fund based only on illnesses and other
23 factors also, but basically on the fact of illnesses or death.
24 This is an insurance policy which is being settled, in effect,
25 by the anticipation of proveable damages at trial.

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1 Do I have it right, Ms. Warner?

2 MS. WARNER: Your Honor, I would say yes, and I think
3 we all need to go back to basics here. We have been engaged in
4 10,000 tort cases, and the law requires certain types of proof
5 in tort cases as opposed to compensation schemes, and that is
6 what we all, including the court, have labored under during the
7 long years of this litigation, given that the exposure at the
8 site was unprecedented, due to the fact that it resulted from a
9 terrorist attack with two planeloads full of jet fuel and two
10 very large 100 story buildings that fell down.

11 So we have tried -- and if I can convey nothing else
12 today, I would like to convey the following: We have tried
13 immensely hard and with a great amount of reference to
14 physicians, practicing doctors who see patients on a daily
15 basis how to deal with these alleged injuries in terms of
16 coming up with a settlement grid. And the tier system and the
17 grid system that I am describing is the result of that
18 intensive work with these physicians.

19 THE COURT: And the points which Ms. Warner referred
20 which led to this digression is a method of trying to measure
21 and reflect in the settlement the degree of severity of injury
22 caused by these diseases related to 9/11. The more points, the
23 more serious, and they affect or limit the potential recovery
24 of the particular plaintiff.

25 I just wanted to make sure that those in attendance

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1 who were not necessarily familiar with all of the terms that we
2 use as cohorts in our practices know what we are doing.

3 MS. WARNER: Your Honor, if I may just quickly finish,
4 tier three relates to qualifying injuries that have a moderate
5 severity with a likely relationship to or the potential
6 relationship; and tier four are the most severe and plausibly
7 caused by exposure injuries and they, therefore, are the
8 injuries that will receive the most potential amount of money
9 after the allocation process is completed. The tiers one, two,
10 and three are fixed levels, plus the ability to access the Met
11 Life policy. The tier four level is more serious injuries are
12 on a point system and under the point system, the allocation
13 neutral and the claims appeal neutral will determine the
14 specific points that any individual plaintiff will have for
15 purposes of then determining under the grid what their basic
16 recovery will be. And so when I pointed out earlier that after
17 these negotiations, since March 19, we had raised the point
18 levels for certain of the alleged injuries, it was specifically
19 with regard to these tier four injuries.

20 Your Honor, the five components of payments to
21 plaintiffs who choose to opt into this agreement are the same
22 as previously, but I think I should quickly go over that. The
23 first component are the payments under the grid in each of the
24 dockets, the 100 docket, the 102 docket and the 103 docket; the
25 100 docket being the disaster site litigation; 102 being the

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1 building cases off the actual site; and the 103 docket being
2 case involving plaintiffs who were perhaps in both locations.

3 In addition, we have agreed, as previously, that there
4 would be payments under a permanent disability fund for
5 plaintiffs who have been found to be disabled as a result of
6 their work at the site.

7 The third level of payments will be to plaintiffs who
8 can demonstrate that they have had to undergo certain
9 qualifying surgeries as a result of their exposure, surgeries
10 such as lung transplants, sinus surgery, lobectomies.

11 The fourth area of payments, as before, are payments
12 to plaintiffs who suffered orthopedic injuries during their
13 work at the site and who reported those injuries immediately
14 for treatment and that treatment was confirmed by objective
15 medical tests as an orthopedic injury.

16 And finally, the cancer policy, as I have described
17 it, which is underwritten by Met Life, one of the oldest and
18 most stable life insurance companies in the United States, that
19 also does a lot of disability and related types of policies,
20 this policy will cover certain respiratory and blood cancers
21 that may develop in these plaintiffs down the road, and they
22 will be able to obtain up to a \$100,000 benefit.

23 As I noted when I presented the original settlement,
24 your Honor, we strove in our negotiations to arrive at an
25 agreement that can bring this litigation to a just conclusion,

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1 a just conclusion in difficult and complicated circumstances.
2 I said previously, and I stand by it, this is not only the
3 largest mass tort litigation in the country which is pending,
4 it is also clearly the most difficult in terms of these issues
5 that we have been discussing of medicine, science, and legal
6 issues that I will get to in a minute.

7 So what we have attempted in these negotiations over
8 the last three months is to make sure that these additional
9 \$125 million that we have managed to come up with through the
10 means I have discussed will provide closure to these
11 plaintiffs; and, equally important, that the process that we
12 have worked so hard on will provide a transparent, fair,
13 efficient process so that each plaintiff who goes through that
14 process, who opts in to this settlement, can know that their
15 claim has been individually looked at by professionals, it has
16 been done in a manner that is in accord with good medicine and
17 with the best intentions possible so that they can feel that
18 they will receive a just payment.

19 We believe that certain of the process amendments have
20 increased markedly the value intrinsic of this settlement to
21 these plaintiffs. First of all, your Honor, we have appointed
22 the Garretson firm as the allocation neutral, and Mr. Garretson
23 is in the courtroom today. Mr. Garretson and his firm have
24 extensive experience in mass tort claim resolution. That's
25 what his company does. It is what they do all the time, and

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1 they have done it in very major cases that have similarities to
2 this case, although this case is clearly unprecedented,
3 similarities in terms of a mechanism to fairly, efficiently,
4 and medically correctly put a plaintiff through a process for a
5 just resolution.

6 Mr. Garretson has done a tremendous amount of work to
7 develop sophisticated hardware, computer hardware, and computer
8 software systems that make the process very transparent, that
9 does everything electronically so that an individual plaintiff
10 working with his or her lawyer will be able to see every part
11 of this process by which their claim is handled and the
12 decision is made as to where they should fall in the
13 compensation grid.

14 In addition, Mr. Garretson will be working very
15 closely with a blue ribbon panel of physicians, physicians who
16 are particularly skilled, knowledgeable about the specific
17 kinds of injuries that these plaintiffs allege, pulmonologists,
18 gastroenterologists, ENT physicians, and this blue ribbon panel
19 will be available not only to Mr. Garretson, but to the claims
20 appeal neutral as well.

21 Now, Mr. Garretson will develop and already has
22 developed some protocols which he has been working on with the
23 parties to make sure, again, that the ultimate payments that go
24 to plaintiffs are transparent, efficient, and the money gets to
25 an individual plaintiff as efficiently and quickly as possible

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1 under the circumstances.

2 Your Honor, after March 19, we did a lot of thinking,
3 perhaps a lot of hand wringing, as well, if I may be honest,
4 and we decided to add another level of fairness and
5 transparency to this settlement process so that every
6 plaintiff, no matter whether they are in tier one or tier four,
7 no matter whether they just fear they may get sick in the
8 future or they have a very serious illness now, will know that
9 they will have the right, with no charge, to have
10 Mr. Garretson's decision appealed, and that will be to the
11 person that we call the claims appeal neutral. The parties
12 have appointed Mr. Kenneth Feinberg, the former special master
13 for the 9/11 Victims Comp Fund, as the claims appeal neutral.
14 No one in this country is more qualified than Mr. Feinberg to
15 serve in this role. Given his selfless, unstinting service as
16 the special master of the 9/11 Victims Comp Fund, for over a
17 period of several years he determined with his staff how the
18 VCF would be distributed.

19 Your Honor, the parties are most grateful --

20 THE COURT: I think you would say fewer than two
21 years. How long did it take Mr. Feinberg?

22 MR. FEINBERG: Thirty-three months.

23 MS. WARNER: Your Honor, the parties are most grateful
24 that, again, Mr. Feinberg has agreed to serve his country and
25 to serve those affected in the aftermath of the 9/11 terrorist

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1 attack, and to do it pro bono, to agree to serve us and these
2 plaintiffs free of charge with his enormous expertise and his
3 enormous compassion for what happened as a result of the
4 terrorists on 9/11. We are very grateful that he has agreed to
5 take this position, even though he is very busy in many other
6 endeavors for our country currently.

7 THE COURT: And pro bono.

8 MS. WARNER: And pro bono.

9 THE COURT: Which means that Mr. Feinberg is not
10 charging for his services, though he will be charging for the
11 staff services.

12 MS. WARNER: Yes, your Honor. We felt that it was too
13 great of a burden to place on Mr. Feinberg to ask him to do
14 everything pro bono. While he has demanded that his personal
15 services -- and he will look at every file, he tells me -- will
16 be free, we felt it was very important that he be given the
17 opportunity, if he feels it is appropriate, to retain certain
18 outside vendors who will assist him in the review of the
19 appeals if he deems that that is necessary and the parties have
20 agreed that those charges should be paid under the allocation
21 process here.

22 THE COURT: And people should know as well that the
23 additional -- or all of the administrative expenses will be
24 fronted by the Captive Insurance Company. You wanted to
25 mention that, Ms. Warner.

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1 MS. WARNER: Your Honor, under the amendment, the WTC
2 Captive has agreed that the first \$3.5 million of the
3 allocation process which, as I have laid out, is a complicated
4 but a fair and transparent process, the WTC Captive will pay
5 those costs. We believe that that will bring this allocation
6 process up to speed, even as we go forward hopefully from
7 today. Mr. Garretson is doing a lot of work to get that going.
8 That is work that has to be done regardless of whether we
9 achieve a settlement and an optimum rate that we hope we will
10 achieve and that that will be paid by the Captive. We hope
11 that other defendants will join this allocation process and
12 will assist us in defraying the costs, but in addition to the
13 \$3.5 million, the interest on the corpus of the settlement
14 amount that we are pledging will also go to defray those
15 allocation costs.

16 We have made no burden on any plaintiff by this
17 allocation process, no burden in terms of access, access to
18 Mr. Garretson and his expertise, reconsideration to
19 Mr. Garretson if something went wrong in the view of the
20 plaintiff and his or her lawyer, and no burden in terms of
21 going to appeal to Mr. Feinberg. We believe in this way each
22 plaintiff will know that their individual case will be looked
23 at very carefully under these very detailed medical criteria
24 that are laid out in this document.

25 Your Honor, I must also thank Mr. Feinberg because, in

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1 addition to agreeing to do this free, he also agreed to do this
2 fast; and given everything else that's on his plate, he has
3 agreed that any appeal that comes to him will be processed
4 within 60 days of its receipt, when it is completely ready to
5 be received, 60 days of receipt, so that no plaintiff can feel
6 that there is any delay in this process. And I know the court
7 has been very, very careful in advising us that you want no
8 delay here. You want plaintiffs to know that if they opt in to
9 this settlement, this process will proceed apace.

10 Now, your Honor, I have spoken about these amendments.
11 They are very material amendments in terms of money flowing to
12 the plaintiffs, in terms of enhancements in the process, in the
13 transparency, in the fairness, in knowing that the best people
14 in the United States are going to look at these claims. But
15 where would we be if we didn't have what we are presenting to
16 you today? Where would we be if we couldn't have worked as
17 hard over the last two years and dealt with these
18 extraordinarily difficult issues of medicine, science, law,
19 public policy, all of these issues that make these cases so
20 difficult and so burdensome certainly for the court during the
21 time that you have handled these cases? It is a very simple
22 answer: We would be here in a trial. The court had ordered
23 trials beginning on May 16. And if we didn't have this amended
24 settlement, we would be talking about a jury in the box, not
25 the press; we would be talking about experts of very serious

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1 Daubert issues, as the court has described, and legal issues,
2 instead of this array of talent, expertise, and compassion that
3 is over here in the corner, the special masters, Mr. Garretson,
4 Mr. Feinberg. What we have is a settlement, a settlement that
5 is fair, a settlement that provides compensation now, certainty
6 now, and closure in the very near future for these plaintiffs
7 who have waited so long.

8 Your Honor well knows that because these cases are so
9 difficult, you could only schedule 12 cases for trial, only 12
10 cases out of 10,000 were scheduled for trial beginning on May
11 16. Instead, we have a settlement. We have a settlement that
12 is fair, transparent, clear, certain.

13 Your Honor, the WTC Captive is required by its policy
14 and the law of New York to provide an appropriate defense to
15 its insureds. We were required to do that when we were set up.
16 And we have endeavored to do that in the most efficient way
17 possible, but in a manner that was appropriate, given what
18 these cases are.

19 If the litigation continues, plaintiffs will face very
20 steep legal hurdles. There will be require to be proved before
21 your Honor that the city and the contractors actually caused
22 injury to them as opposed to the terrorists who caused all of
23 this. Many of the diseases being compensated here are
24 difficult to understand in terms of their clear connection to
25 the exposures at the site, to the substances at the site. We

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1 have done everything possible in these negotiations, in the
2 spirit of what a settlement is, a compromise, to reach a
3 compromise on each of these thorny issues, legal issues,
4 medical issues, scientific issues. We have tried -- because of
5 the good-faith negotiations of the plaintiffs' lawyers and the
6 defense lawyers, we have tried to make sure that the vast, vast
7 majority of these plaintiffs are able to get clear, certain
8 closure and compensation now, rather than have to go through
9 this tort system, as it must be done, for the next additional
10 years.

11 All of this, your Honor, was taken into account when
12 we negotiated this agreement originally. It was taken into
13 account with even greater urgency over the last three months.
14 We believe fervently, your Honor, that we have done a service
15 by agreeing upon the settlement, by giving each individual
16 plaintiff the opportunity to have his or her case looked at
17 carefully by these experts, and that we have provided a pathway
18 so that not just the insureds of the WTC Captive but other
19 defendants can join this settlement and bring a close to this
20 litigation that the court has been burdened with for many, many
21 years.

22 It would be remiss if I did not thank Mr. Napoli,
23 Mr. Groner, Mr. Papain, Mr. Carboy, Mr. Tyrrell, Mr. Hopkins
24 along with my very, very able young lawyers for what we have
25 tried to do together. We thank the court, we thank the special

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1 masters, Professors Henderson and Twerski, for everything that
2 you have done to assist this process and to help these parties
3 reach a private resolution, which we believe is in the public
4 interest.

5 Thank you.

6 THE COURT: Thank you, Ms. Warner.

7 Is there anyone else on defendants' side? We are
8 graced with the presence of the Corporation Counsel of the City
9 of New York, Michael Cardozo. Thank you for coming to court,
10 Mr. Cardozo. Anything that you would like to say?

11 MR. CARDOZO: Thank you, your Honor.

12 On behalf of New York City, I want to say that we
13 believe that this settlement, as Ms. Warner has described it,
14 is very fair to all concerned, appropriately compensates the
15 heros of 9/11, brings an end to a very, very difficult
16 litigation. Mayor Bloomberg has been briefed on what has
17 occurred, shares the view that, taking all the factors into
18 account that Ms. Warner outlined, that this is a very fair and
19 reasonable settlement.

20 Thank you.

21 THE COURT: Thank you, Mr. Cardozo.

22 Anybody else on defendant's side?

23 Paul Napoli for the plaintiffs.

24 MR. NAPOLI: Good morning, your Honor. May it please
25 the court, my name is Paul Napoli, and I am plaintiffs' liaison

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1 counsel, co-liaison counsel with Mr. Carboy, and we, our
2 office, Worby Groner Edelman Napoli Bern, represent
3 approximately 9,000 firefighters, police officers, and
4 construction workers that will have the opportunity to
5 participate in this process agreement.

6 Your Honor, I thank you for allowing us the
7 opportunity to present the court with our amended settlement
8 process agreement. And what, if anything, that can come from
9 Ms. Warner's comments and her detailed analysis of the
10 settlement agreement is that this was a long, hard-fought
11 negotiation and was not a fly-by-night operation. Both sides
12 had experts in all disciplines with which they consulted to try
13 to negotiate the best possible terms for the plaintiffs in this
14 litigation.

15 When we initially presented your Honor in March with
16 the initial settlement agreement, we believed, as we believe
17 today, that it was a substantial sum and it is a substantial
18 sum today. But what we have done in the last 90 days in
19 working and the process we present to you here today can be
20 described in three words: bigger and better. This agreement
21 addresses all of the issues your Honor has asked us to address
22 on March 19, 2010. Through this court's efforts and the
23 assistance of the special masters -- Professors Twerski and
24 Henderson -- the parties have arrived at a process that ensures
25 guaranteed, immediate and just compensation to the men and

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1 women who performed the duties at Ground Zero.

2 As your Honor instructed us to do on March 19, we have
3 crafted a proposal that will make us all proud of our efforts
4 and that provides substantial justice to these men and women.
5 In our view as plaintiffs, we believe a debt was incurred on
6 September 11, a debt to these men and women, and that this
7 settlement that we present to you here today goes a long way to
8 repaying that debt.

9 On March 19, the court, and I won't go into all the
10 issues, but try to highlight some of the issues your Honor
11 addressed on March 19, first, your Honor noted that this was a
12 complex deal and that it was very difficult to understand. So
13 as part of the amendment to this agreement, we have taken great
14 care to select an ethicist who wrote the book in New York, who
15 is nationally recognized, Professor Roy Simon of Hofstra
16 University, to come in and to evaluate all of the client
17 communications and to help us make sure that they are clear and
18 understandable.

19 Part of Professor Simon's job would be to assist us in
20 providing a letter to the plaintiffs that will advise them of
21 the different types of benefits they will receive. Among them,
22 most importantly, is cash payments, cash payments now. They
23 will also receive a question and answer document addressing the
24 most frequently asked questions about this settlement in
25 concise language, in understandable language. The plaintiffs

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1 will also be advised, and it was a major concern of your Honor
2 on March 19, of the information, the different elements that go
3 into determine a client's calculation of points, what tier they
4 fall in, and most importantly, because clients don't want
5 points, they want to know what the dollar value of their claim
6 is worth, what is the range of their award, and these materials
7 will be vetted with Mr. Simon, presented to the court for
8 consideration, and we would ask that your Honor approve these
9 materials and assist us in that communication.

10 THE COURT: Part of the transparency of the process
11 will be that approval and posting it to the court files and the
12 public files, the format that will be used to communicate. So
13 this process, from beginning to end, will be completely
14 transparent.

15 MR. NAPOLI: Yes. And we believe, and we have begun
16 this process already with Professor Simon, we believe that
17 ultimately court-approved documents will offer complete, clear
18 and understandable explanations of this very complicated
19 104-page deal.

20 THE COURT: This deal will be posted on the court web,
21 and I will give you the address so it is also available to the
22 public, the entire deal, the entire transaction, and all the
23 exhibits. I hope we can do this today.

24 MR. NAPOLI: Your Honor, we, at 10:30 this morning, on
25 our Web site 877wtchero.com have posted the settlement

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1 agreement with the exhibits. We also are available to provide
2 an executed copy, and we will replace the signature pages this
3 afternoon. As your Honor knows, this document was signed this
4 morning. We didn't have the opportunity to replace them yet.

5 Your Honor also noted on March 19 a specific concern
6 about cancer cases. Despite the difficulty of proving causal
7 connection between many types of cancers, we have seen that
8 there was a moral imperative to provide for those plaintiffs in
9 the settlement agreement. We certainly tried in the initial
10 settlement to get more compensation for these solid cancers,
11 and it was a serious point of contention. Your Honor's words
12 on March 19 assisted us in achieving that goal, and we were
13 able to substantially increase the amount of money that goes to
14 solid cancers and even more money to solid cancer respiratory
15 tumors. At the same time it is measured, it is measured by
16 those legal issues, Daubert and causation, but it is
17 substantially more than was in the initial agreement.

18 The third thing your Honor wanted to make sure was
19 that there was a transparent, accountable process that would
20 assure the court and the plaintiff that the settlement awards
21 are based on complete, correct, and verifiable information.
22 And through this court's appointment -- we hope, we ask that
23 you consider the appointments -- of Matt Garretson as the
24 allocation neutral and Kenneth Feinberg as the appeal neutral
25 and this court's oversight of the structure, we truly believe

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1 that this settlement is superior in its ability to hold
2 everyone accountable, certainly superior in any settlement that
3 I have been involved in. As Ms. Warner said, you can't ask for
4 two better gentlemen to complement what your Honor has done and
5 what the special masters have done in overseeing this
6 settlement, and the plaintiffs that I represent welcome that
7 oversight.

8 So what the end result is, the process has inherent in
9 this system checks and balances so that the court and
10 plaintiffs will be assured that the distribution of the funding
11 of this settlement are being fairly allocated to deserving men
12 and women.

13 All of these things represent material improvements to
14 the settlement agreement that was originally presented in
15 March, but there was not only substantial improvements, your
16 Honor, in the structure, but also in the value, as Ms. Warner
17 has stated. As a result of your comments, your Honor, on March
18 19, the Captive has put in an additional \$55 million in cash,
19 cash, not contingent, but cash. They have also put in an
20 additional 3 1/2 million plus interest towards the allocation
21 neutral costs. So the ultimate award or cash outlay that the
22 Captive can be responsible ultimately to pay is 716 million
23 plus interest on the corpus until it is distributed and that's
24 the 712.5 million plus the \$3 1/2 million in allocation neutral
25 costs.

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1 In addition to that increase in the Captive's cash
2 contribution, there has been an increase in the amount of money
3 clients can receive because the plaintiffs' lawyers have
4 decided to voluntarily reduce their attorney's fees from what
5 their statutorily entitled to under contract and law in New
6 York. The plaintiffs' attorneys will be foregoing
7 approximately \$57 million in attorney's fees that they would be
8 entitled to collect. That is an additional \$57 million that
9 will remain in the plaintiffs' hands. We have also agreed to
10 waive our fees on workers comp claims recoveries. We have also
11 agreed to waive our fees on the Met Life policy premium, which
12 is part of that \$716 million, and on the future payouts if --
13 to any plaintiffs that they may recover under those disability
14 policies.

15 And I think, your Honor, this shows for over the seven
16 years, since we first began this litigation, when no other
17 firms would, our commitments to the clients have never wavered.
18 We have done everything in our power as attorneys, including
19 the voluntary reduction of fees to achieve the best outcome for
20 the plaintiffs. We have been -- we believe we have been
21 successful, and we are particularly gratified that our efforts
22 have resulted in improvements to the original settlement
23 agreement, all told an increase in value of more than \$125
24 million.

25 I would like to take a moment, your Honor, to

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1 acknowledge the hard work of my co-counsel, Mr. Groner,
2 Mr. Bern, Mr. Worby, Ms. Rubin, Mr. Papain, Mr. Carboy, and
3 also my adversaries. We have spent more time, Mr. Groner and
4 I, with our adversaries I believe than we spent with our
5 families over the last several years in trying to work out a
6 compromise.

7 I would also like to thank the people in our office,
8 the people who don't always get an honorable mention, the
9 paralegals and the secretaries and the receptionists who talk
10 to these people every day and have been talking to them every
11 day, and I can imagine the phones will be ringing this
12 afternoon in all of our office.

13 But most importantly, your Honor, these plaintiffs owe
14 a measure of gratitude to this court and to the special
15 masters, and I want to take a moment to personally thank you
16 for myself and our firm and on behalf of the plaintiffs for
17 assisting the parties in making these improvements. We hope
18 the fairness hearing will better highlight some of the
19 improvements you have shepherded and welcome your support as we
20 proceed.

21 Thank you, your Honor.

22 THE COURT: Thank you, Mr. Napoli.

23 Mr. Papain?

24 MR. PAPAIN: Thank you, your Honor.

25 May it please the Court, your Honor, my name is

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1 Nicholas Papain. I am a member of the firm of Sullivan,
2 Papain, Block, McGrath & Cannavo, and I, along with my partner,
3 Andrew Carboy, thank you for this opportunity to speak, which
4 will be very brief, as I think both Ms. Warner and Mr. Napoli
5 have said it all in terms of what this settlement is about and
6 the opportunity of closure that it brings to the many first
7 responders involved in this litigation. My firm represents 687
8 of those first responders, including over 640 firefighters,
9 many of whom were down there at Ground Zero on day one.

10 I have heard the words "unprecedented," "fairness,"
11 and "transparency" mentioned time and time again this morning
12 and, indeed, this litigation has many unprecedented aspects to
13 it, starting with what happened to this country on September
14 11.

15 On March 19, your Honor publicly addressed a
16 settlement we thought we had reached. Your Honor spoke
17 candidly and from the heart with regard to the court's concerns
18 on that settlement. We acted upon your Honor's concerns
19 because, once again, this was no ordinary case. This was 9/11.

20 Ms. Warner mentioned the challenges that we faced in
21 addressing your Honor's concerns. But we are here today
22 because I believe in another unprecedented way we have
23 addressed each and every one of your Honor's concerns.

24 And before I go further, because I will forget, there
25 are three names that need to be mentioned that haven't been

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1 mentioned, and those are among the lawyers who spent more time
2 with their adversaries than they did their families, and that
3 being Ms. Warner's partners and associates, Mark Collins, Ryan
4 Smethurst and Andrew Genz, along with members of the Captive
5 Insurance Company, Mr. Biester and Ms. LaSalle.

6 In sum, your Honor, through your Honor's involvement
7 we have been able to, as has been pointed out, add an
8 additional \$50 million to this settlement. We, Mr. Napoli's
9 firm and I, together, have agreed on behalf of all plaintiffs'
10 attorneys to reduce their fees by 25 percent from 33 1/3
11 percent to 25 percent.

12 In another unprecedented act, through your Honor's
13 involvement, the City of New York and its insurance company
14 have agreed to waive workers compensation liens and to allow
15 these workers to remain on workers compensation to receive the
16 benefits they so much need.

17 THE COURT: We haven't mentioned this morning yet the
18 continued health examinations and monitoring.

19 MR. PAPAN: Your Honor, this settlement, as you
20 pointed out, will not in any way affect those programs, the
21 benefits, the health benefits that the first responders will
22 continue to be entitled to, unfettered, uninterrupted by this
23 settlement.

24 THE COURT: They are to be continued indefinitely,
25 correct?

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1 MR. PAPAIN: Absolutely, your Honor.

2 THE COURT: That is part of the deal as well.

3 MR. PAPAIN: Yes. This settlement will not in any way
4 result in the interruption of those health benefits provided by
5 those programs.

6 THE COURT: The city is hoping that the federal
7 government will pick up the expense on it, but whoever bears
8 the expense, those health monitoring activities that are so
9 important to so many people will be continued.

10 MR. PAPAIN: That is correct, your Honor, another
11 unprecedented aspect of this settlement.

12 THE COURT: Let me interrupt for a minute. Special
13 Master/Professor Aaron Twerski has to catch an airplane, so he
14 is going to leave now. I would have said later, but I want to
15 say now how much indebtedness I have and all the parties have
16 to the work that Professor Twerski and Professor Henderson have
17 done in this case. I appointed them as special masters to make
18 sure that various kinds of numbers and identities had
19 integrity, but their work has ranged so far beyond that, it has
20 been so invaluable in doing all kinds of activities to promote
21 this lawsuit, move it forward and to help in the settlement,
22 that there is not enough I can say for the work that you and
23 Professor Henderson have done. Have a very good flight.

24 SPECIAL MASTER TWERSKI: Thank you.

25 MR. PAPAIN: Thank, Mr. Twerski.

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1 SPECIAL MASTER TWERSKI: Thank you.

2 (Pause)

3 THE COURT: Go ahead, Mr. Papain.

4 MR. PAPAIN: Thank you.

5 And, your Honor, when it comes to the court's
6 overriding objective of fairness and transparency, that has
7 clearly been demonstrated with the work that has been done by
8 Special Master Twerski and Special Master Henderson and with
9 the appointment of Kenneth Feinberg and Mr. Garretson and his
10 firm in this settlement process. I need not repeat the great
11 work that we all know Mr. Feinberg has done when it comes to
12 the 9/11 victims and their families. And his agreement to do
13 this pro bono comes as no surprise, knowing Mr. Feinberg.

14 Your Honor, this firm, my firm, strongly believes that
15 what is being offered in this settlement is their best option
16 and, indeed, for all intents and purposes, their only viable
17 option, for we all need just look back for the last six years
18 to see what the other option is, and that is to continue a very
19 contentious, costly litigation with the outcome being very
20 uncertain. This settlement does offer closure, and it offers
21 closure with fairness and transparency.

22 And as a last point on that, under this agreement, 95
23 percent of the claimants must agree to the settlement, must opt
24 in to the settlement for the settlement to be consummated. And
25 when I say this settlement offers the one and only best option,

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1 I say that knowing of course that there is a bill down in
2 Washington called the Zadroga bill, a bill that has been
3 lingering in Congress for many years, since the Victims
4 Compensation Fund of September 11 closed in December of 2003.
5 However, that bill, which, among other things, provides for the
6 reopening of the Victim Compensation Fund, is not a settlement,
7 is not a law. It is merely at this point in time a bill. And,
8 yes, we support that bill and have supported that bill since
9 the bill was first introduced a number of years ago. However,
10 when that bill was drafted, there was no settlement in sight.
11 The bill was written anticipating that a claimant would have a
12 choice between continuing their litigation and going into a
13 reopened fund. However, in that respect, the bill required an
14 "either/or" to continue one's litigation or to go into the
15 Victims Compensation Fund. However, that bill is now, one
16 might say, dated in the sense that our clients, our first
17 responders, don't have two choices. Their only choice is this
18 settlement because the settlement is here with us today, it is
19 real, it is viable, it is doable.

20 To say that our clients have a choice between this
21 settlement and this bill is not a choice. It is asking them to
22 make a gamble, and that, I don't know how else to say, is cruel
23 and wrong. But that is easily fixable by Congress, and that is
24 to take out the "either/or" that is in that bill right now that
25 would force a claimant to choose between a settlement that is

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1 here today and real versus something that is uncertain as
2 evidenced by how long this bill has lingered. Don't make, I
3 say to Congress, these first responders gamble with a choice
4 that is not a choice. So take out the "either/or" so that
5 these claimants can go forward with this settlement and if --
6 and I emphasize the word "if," because that is as far as anyone
7 can go right now -- if that fund were to some day in the future
8 reopen, allow these claimants, who had no choice, to then go
9 into that fund, and if they qualify for benefits under the
10 fund, to have any award reduced by any monies they may have
11 received in a settlement which was consummated at a point in
12 time where that was their only choice.

13 So while I commend and support our Congressional
14 leaders for this bill, please, I ask them to fix it now that
15 this settlement is real and that remains only a bill.

16 THE COURT: The bill o,f course, is for Congress to do
17 whatever it wishes to do.

18 MR. PAPAIN: Yes, your Honor.

19 THE COURT: But we have the settlement, which we have
20 to judge in and of itself, is the settlement fair and
21 reasonable and good, quite apart from the legislation.

22 MR. PAPAIN: Very true, your Honor.

23 THE COURT: To worry about what Congress will do and
24 make that a cause for either coming in or not coming into this
25 case or the settlement is illusive.

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1 MR. PAPAIN: And that's very true, your Honor, and
2 that's why I mention the need to make that simple but very
3 necessary change.

4 And in closing, your Honor, with regard to the
5 client's choice, we intend, as we have done in the past, to
6 hold meetings with all of our clients in furtherance of the
7 need and the demand for transparency and fairness so that our
8 clients, when they make the decision whether or not to accept
9 this settlement or not, will have all the information they need
10 for their particular claim to make an independent, informed
11 decision, and that, your Honor, we promise to do and provide an
12 opportunity to every one of our clients, as I am sure my
13 co-counsel, Mr. Napoli and his firm will do with their clients.

14 THE COURT: Thank you, Mr. Papain.

15 MR. PAPAIN: Thank you.

16 THE COURT: Is there anyone else in the audience who
17 wishes to speak before I deliver some remarks?

18 No? Okay. Thank you.

19 I have before me an order which makes various
20 appointments and sets this down to the public for hearing and
21 comment. The hearing will be held on the 23rd at 10:00. But
22 there is a major difference between what came to me on the 19th
23 of March and what comes to me today. This is a very good deal.
24 I am very excited about this deal. And I want to put four
25 reasons before you that causes me to have this excitement and

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1 to express myself in the way that I did.

2 First, this is a more than 20 percent improvement on
3 the settlement that had been put to me on the 19th of March.
4 More than 125 million additional dollars are coming down to
5 benefit the plaintiffs, as Mr. Cardozo mentioned, the heroes of
6 9/11. 50 to \$55 million in cash will come in from the Captive
7 Insurance Company, so that instead of a settlement that had a
8 basic number of \$575 million, we will have \$625 million and
9 possibly up to \$712,500,000, depending on various contingencies
10 and incentives, the most important of which will be whether we
11 have more than 95 percent of opt-ins.

12 There will be a reduction of legal fees. I mentioned
13 that the Captive Insurance Company might consider paying the
14 fees of the plaintiffs as they did to the defendants' counsel.
15 That is rare and almost unheard of in the United States, but we
16 have something different and just as equivalent, the fees are
17 being reduced by the plaintiffs from a contingency number of 33
18 percent and more down to 25 percent, and not on all aspects of
19 the settlement, as Mr. Napoli points out. That means another
20 \$50 million plus will come down to benefit each and every
21 plaintiff who settles.

22 And then on the elimination of the liens, you know
23 that when a settlement occurs, those who advance money
24 previously to cover disabilities or time off that could not be
25 worked and lost compensation because of it, that money is paid

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1 by the compensation carriers, and the disability insurance
2 companies gets repaid out of the settlements. We call it
3 subrogation, and a lien is asserted against the workman's right
4 to recover or the policeman's or the fireman's right to
5 recover. Well, these liens are being waived by the city, and
6 that is worth another \$25 million. So there is more than \$125
7 million of additional benefits that are flowing to each and
8 every member of the plaintiffs' class who wish to settle.
9 That's more than a 20 percent improvement over the settlement
10 that had been put to me before.

11 In addition, there is a great improvement of process
12 which will ensure fairness. That costs money, and the Captive
13 Insurance Company is putting up \$3 1/2 million to pay for that.
14 It may cost more, in which case we will deal with that subject
15 as it comes up. But that is another element, and that's a
16 second point I want to talk about, a better and fairer process:

17 Mr. Matthew Garretson, who has more experience with
18 mass tort settlements than anybody in America, has told me this
19 protocol for this settlement is the fairest and fastest and the
20 best he has seen. That was another goal I had, not only that
21 there should be fairness, there should be the appearance of
22 fairness. So Mr. Garretson and his company will be working to
23 deal with these plaintiffs and to assure the fairness of each
24 of these settlements, and there will be a process to come to
25 him and to have him reconsider anything that people are

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1 concerned about.

2 And in addition to that, I can't say enough for
3 Mr. Kenneth Feinberg's willingness to be part of this
4 settlement as well as the allocation appeals neutral. Kenny
5 and I have been friends for, I don't know how many years. I
6 had the privilege of being his supervisor in my law firm when
7 Ken first joined it, and I have watched with extraordinary
8 pleasure how he has moved from spot to spot, in the Senate, as
9 a close advisor to the late Senator Edward Kennedy; as a
10 lawyer; as part of the administration; his work on the
11 Sentencing Commission. Wherever there has been some aspect of
12 good government, you will find Kenny's fingers in it. His work
13 on the Victim Compensation Fund, which I supported, fills
14 everyone with extraordinary respect. His involvement here, and
15 when Kenny involves himself, he just is not putting his name
16 on. His heart, his soul is invested in the process. For him
17 to come here and do this as well as a special favor to me,
18 look, I can't say enough. Thank you so much for this process.

19 We will have a process that is second to none. There
20 are 10,000 people out there, and I hope 100 percent of them
21 will come and come into this settlement, because it is worth
22 it. But part of that reason for them to come in is that they
23 are assured a fair deal. This is not going to be a run-around.
24 This is going to be a process that puts money in their hands
25 fast. How fast can we do it once we start, Mr. Garretson?

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1 MR. GARRETSON: We are talking about a matter of weeks
2 once this is approved.

3 THE COURT: That's when the money will come in.

4 There are more elaborate parts to this, but we have
5 split off the elaborate from the simple. Everyone in the
6 process will get a check in weeks after this settlement begins.
7 Now, these people have been looking for money because many of
8 them have been sick and many -- some of them very sick. And
9 this is going to be the first flow of money to them. I can't
10 tell you what this means in terms of settling a mass tort case.

11 And in addition to Mr. Garretson and Mr. Feinberg,
12 Professor Roy Simon of Hofstra University, and one of the
13 leading experts on professional responsibility and ethics, is
14 joining this settlement. In every mass tort case, a
15 plaintiffs' lawyer has a dilemma because not everyone is the
16 same, and what the law has to do with what we call a common
17 representation is to be concerned that not only is it fair for
18 all, but it is fair for each. And so there is an obligation on
19 the part of the lawyer to make full disclosure to each of his
20 clients and to get the clients' informed consent to have one
21 lawyer or two lawyers or three lawyers act for all.

22 Now, when a lawyer's fee is involved as well in a
23 settlement, and he has to make full and fair disclosure to each
24 of his clients, and where when there are not other lawyers
25 around, that is a very tough job, because it is very hard to be

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1 fair, and you can say things thinking it is fair, which in
2 hindsight you wish you would have said a little more or in a
3 different way. So I have reached out to Professor Simon to get
4 him to be involved, to be the neutral guide to make sure that
5 it is not only fair to the group, but fair to each individual.
6 So each individual, as Mr. Napoli pointed out, will have the
7 ability clearly to understand what's good for him and to make
8 an informed decision whether to opt in or not. This has to be
9 fair. And we may want settlements -- courts love to clear
10 their dockets, plaintiffs love -- the lawyers love to finish
11 cases, most of them anyhow, but the touchstone is what is fair
12 to the individual, and that's why I am so heartened by this
13 process, because the combination of Garretson, Feinberg and
14 Simon will make sure that this process is thoroughly fair and
15 will appear to be fair.

16 The third reason is because the allocation people,
17 Mr. Garretson in particular, and I will be looking at fees and
18 expenses so that only that which is reasonable and proper will
19 be charged, and we will do this quickly and completely so that
20 when the checks start to roll, the money that comes to the --
21 each of these plaintiffs will be immediately usable. It won't
22 be tied up in other disputes. A person will get his check and
23 be able to go to the bank and do whatever he wants with that
24 money, save it, spend it, do whatever he wants.

25 And fourth, because this settlement agreement, like

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1 all settlement agreements, although made by the parties, has
2 the stamp of the court on it. I have been involved intimately
3 throughout this process. It has been a very long process. But
4 how do you do, for example, discovery on 10,000 cases? Do you
5 have depositions in each of these cases? It would take
6 forever. It would take a phalanx of people, the supervisor,
7 judges, magistrate judges, and special masters and all kinds of
8 things. We have cut through this with the help of Professor
9 Henderson and Professor Twerski and the involvement of the
10 parties. We have reduced the discovery to approximately 400
11 questions. We have gotten this completely systematized and put
12 on the computer, we have had as a criterion the gradations of
13 severity of injury measured objectively by medically approved
14 tests and gradation provided by the American Medical
15 Association, the American Thoracic Society, so everything is
16 open, fair, and objective, and we have been able to distinguish
17 degrees and gradations of severity of injury.

18 We had a discovery process that worked the lawyers
19 very, very hard, ending with cases that were sampled and ready
20 for trial. I would hear all disputes, and the trials were
21 ready to go, as Mr. Tyrrell said, May 16. We suspended that
22 process because of the nearness of the settlements. And when
23 the settlement came through, we were there to help the parties
24 and bring about a process that ended in a very fair and very
25 beneficial result.

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1 I will sign this order today that approves who we are,
2 that makes the neutral appointments of Feinberg, Garretson, and
3 Simon, and gets this rolling to a June 23 fairness hearing,
4 where people can come and speak on the settlement and how this
5 may impact them.

6 Everything will be spread on the court dockets.
7 Mr. Napoli mentioned that he has it already on his docket, but
8 we will have it on the court docket and, I will read out to you
9 what it is. It is a long, what they call a URL, but you can
10 get it from the transcript or from a call. So it's
11 <http://www.nysd.uscourts.gov/cases.php?form=sept11>.

12 A VOICE: What was after the question mark?

13 THE COURT: Form=sept11. This is the 9/11 court Web
14 site, and you can get it -- you will have this entire agreement
15 of over 100 pages and Exhibits A through T. Most important of
16 these pages will be beginning on page 54, which describe all of
17 the various illnesses, and then there is an Exhibit C that
18 creates a settlement grid of which Ms. Warner spoke and has A
19 through K in the disease groups and different impairment levels
20 and the points of which she spoke. It is a hard document to
21 understand. The attorneys will be available to describe it in
22 greater detail.

23 I have been told about the various benefit numbers
24 that are available, but I have left that upstairs, so you will
25 get that from the attorneys as well.

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1 MS. WARNER: Excuse me, your Honor. I didn't hear
2 you.

3 THE COURT: I was talking about the range of numbers
4 that are available for the most seriously injured.

5 MS. WARNER: Yes, your Honor, I have that.

6 (Pause)

7 THE COURT: We have compared the numbers. I can't
8 give them to you right now. We have compared the numbers with
9 other settlements. These are very good. People will do
10 what's, I think, very good for them, but they will have to make
11 that decision.

12 These are not ordinary cases. That's why we are
13 involved. There are many reasons why judicial supervision is
14 important. It is clear that there are no sound precedents
15 either to guide the judge or not to guide the judge. Normally
16 speaking, parties are free to make their own settlements and
17 the judge has no role in the ending of a case. But when you
18 come to a case of 10,000 people and just a few lawyers
19 representing them, and in a case where the judge has had to
20 deal with the case on a comprehensive basis, very much like a
21 class action, there are precedents for judicial supervision of
22 the settlement. And in a basic way, what we are about in a
23 settlement of all these cases, investing so much time of the
24 court, and involving so many people and invested with all the
25 public involvement of public money and public activity, it just

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1 begs for judicial supervision, and I have exercised it and I
2 will continue to exercise it because we are all interested in
3 producing something that is fair, and in my judgment we have it
4 here. It is not a perfect settlement. Settlement by its very
5 terms means compromise, and compromise means that you are
6 dealing with imperfection. This settlement can't restore
7 people to who they were and what they were the day before
8 September 11. This settlement, however good, cannot restore
9 health to those who lost health and it can't restore life to
10 those who lost life. And it reflects the entire complexity of
11 the litigation system, the enormous expense, the difficulty,
12 the complexity and the risk involved in these cases. The
13 entire question whether a plaintiff, although clearly injured,
14 can trace those injuries back to 9/11, is a cancer something
15 that just grows out of life or has it been related in a proved
16 way to the activities of 9/11? It's a very difficult question.
17 There is very little science or good science on it, very little
18 medical answers on this question. Would the plaintiffs have
19 been able to have proved their cases before how many juries and
20 what kind of consistency or inconsistency? Would the city have
21 been able to prevail on its defense of immunity, a defense that
22 I held was fact intensive, but it goes back to a statute
23 involved in New York State law and a comparable statute in
24 federal law going back to the 1950s, I think, in the aftermath
25 of our society's fear of an atomic bombing by the Soviet Union

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1 and various statutory measures that gave government the right
2 to do that which is in the public good on an emergency basis.

3 The government, the city asserted that defense. I
4 ruled it was fact intensive and many different kinds of fact
5 problems. That defense remained to be asserted. There are
6 many other defenses. This case has twice gone up to the Court
7 of Appeals, costing about four years of progress, first on
8 jurisdictional issues and second on the immunity issue. And
9 there was another appeal pending that is now made academic by
10 the settlement. If that appeal went forward on a question that
11 is really new in American law, we were looking for a possibly
12 two-year delay while the case went through the court in the
13 Second Circuit, and it is a question that the United States
14 Supreme Court might well have wanted to take up. So we were
15 looking for possibly a five-year delay.

16 That's intolerable for the particular individuals.
17 Plaintiff may be interested in this case, but plaintiff is not
18 interested in the academic issue whether the judge can or
19 cannot exercise jurisdiction over a settlement. Just as
20 Ms. Warner said that she had her client's instruction to get
21 this done, it was my instruction to myself to get this done
22 because the niceties of federal practice have to be secondary
23 to the compelling needs of people to get a recovery that is
24 almost, almost, almost within their grasp.

25 So this deal, although a compromise, is a good deal.

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1 It is a very good deal. It is ready for everyone to consider
2 and for people to comment at the fairness hearing I am setting
3 by this order for June 23 at 10:00. As I say, this has been
4 spread over the court Web site.

5 I want to thank Mr. Napoli, Mr. Papain, all their
6 colleagues, Mr. Tyrrell, Mr. Hopkins and all their colleagues,
7 Ms. Warner, Mr. Biester, Ms. LaSalle, all their colleagues, for
8 this impressive piece of work that comes into this agreement,
9 the settlement. It was a long, hard road, but we have it here.
10 It is not perfect, but it is very, very good.

11 So what should people be thinking about as they
12 prepare for the June 23 hearing and beyond? The first question
13 everyone should ask is this a good deal for me? Will I be
14 getting a fair amount of money for this? Is it worth it for me
15 to keep going in this lawsuit, because everyone has that
16 choice, and to risk going to trial and being subjected to all
17 these motions and countless additional expenses and time and
18 effort through the appeals process, the trial process and
19 beyond?

20 And if the person thinks it is good, when should I
21 sign up, you might ask? Should I wait to see what everyone
22 else does? Shall I wait to see what Congress does? Should I
23 wait to see if maybe Judge Hellerstein can do some magic and
24 get me a better deal? There is no better deal. There is no
25 better deal than this deal. This is the deal on the table.

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1 This is the deal that people have to consider. This is the
2 deal that people have to decide whether to accept or reject,
3 and there is no deal unless 95 percent of the people say yes.
4 That's a tough number. It's almost unanimous. And it's very
5 hard to get unanimity. We did it once when we elected George
6 Washington as our first president, and with much difficulty in
7 a second election because then the federalists and the then
8 democrats were at each other's throats. But we never did it
9 again. And a few times we were tied in the Congress and we had
10 it very recently to be tied. But we need 95 percent.

11 So people can think, well, maybe Congress will do
12 something. It's possible, but the old saw applies, a bird in
13 the hand is worth two in the bush. What's good should not be
14 defeated by what possibly might be better. This is the deal,
15 and if they want to look to Congress, they have got to persuade
16 Congress to get rid of this "either/or" proposition and let
17 this deal be a credit. Whether it is or not, that is for the
18 Congressmen and Senators to decide. What people have to decide
19 is whether this is a good deal. I think it is, but it is up to
20 them to decide, and it will depend on the information they get
21 and their own private assessments.

22 And one last point, Ms. Warner mentioned it, there are
23 a large number of defendants who are not part of this deal. I
24 hope that they will also want to settle, and I am going to see
25 if that's possible. Because it is time that this lawsuit

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1 ended, and settlements are a good way to end it. Not perfect.
2 People won't get their day in court. Defendants won't have
3 their chance of being vindicated. But it's an opportunity in a
4 fair and compromising way to end this lawsuit and mend this
5 terrible tear in the social fabric of this country. So I am
6 going to try to get people to think about this. Whether I
7 succeed or not, I don't know. But that's in the future also.
8 What's at the table is this deal.

9 So I have already introduced Professor Henderson. Ken
10 Feinberg is going to say a few words, and then I am going to
11 sign this order.

12 Mr. Garretson, do you want to stand up and let people
13 look at you, and the rest of the people on my staff.

14 This is Mr. Feinberg.

15 MR. FEINBERG: Thank you, your Honor. A few comments.

16 I am honored to serve the court, to serve the parties,
17 and especially to serve the 9/11 heroes of this settlement.

18 This settlement brings to an end one of the final chapters of
19 this 9/11 tragedy.

20 As I have said publicly for the last seven years, the
21 only reason many of these 10,000 people did not get paid under
22 the 9/11 Victim Compensation Fund is because the fund expired
23 by statute before these victims manifested an injury, so they
24 were foreclosed. The statute had expired. They couldn't get
25 paid.

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1 I have publicly stated over and over again that
2 something must be done to correct this unfairness. This
3 settlement does that. It does that. I will urge every single
4 claimant to participate in this fund, in this settlement. I
5 urge 100 percent of these claimants to file a claim and
6 participate in this compensation program. What is the
7 alternative? What is the alternative? To wait? You are
8 waiting for the dough. You have waited long enough. It's been
9 seven years since the 9/11 fund expired. Wait? Wait for what?
10 This is a real settlement with real money. The judge says it
11 is not perfect. You have waited long enough. Wait is not an
12 option.

13 In some very important ways this settlement is
14 consistent with the 9/11 Fund statutory principles that govern
15 and resulted in 97 percent participation. Don't forget, that
16 9/11 Fund drew 97 percent eligible participation. And in many
17 ways, this proposed settlement that I have examined is better
18 than the 9/11 Fund. You will get payment of dollars quicker,
19 you are guaranteed by filing a simple claim form and
20 demonstrating you were there at the site, you are guaranteed
21 quicker payment and a minimum payment that wasn't available to
22 you in the 9/11 Victim Compensation Fund. So in many respects,
23 when I examine this settlement, it is actually in many respects
24 an improvement over the 9/11 Victim Compensation Fund.

25 I want to thank the parties. I take this very

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1 personally after seven years of waiting to see if these
2 claimants were going to be provided compensation. I want to
3 thank the parties to this lawsuit. I want to thank the lawyers
4 for their effort. I want to thank the mayor of New York. The
5 mayor of New York has been urging me for seven years to testify
6 in Congress and to promote the notion of fair compensation.
7 And I want to thank Michael Cardozo and his colleague Larry
8 Kahn, who is here also today. We have talked over the years --
9 the years -- about trying to bring some sort of settlement that
10 would get compensation to eligible claimants.

11 But, most importantly, I have agreed to do this at the
12 request of Judge Hellerstein. I have publicly stated that the
13 9/11 Fund would have never achieved the success it did without
14 the help of Judge Hellerstein and this court. This court, back
15 in 2002 and '3, urged eligible claimants to come in to the
16 Fund. It wasn't just my urging. It was the court urging. And
17 the fact that the court, that the same judge is now signing
18 this order with the credibility that this court has about the
19 wisdom of this settlement, just like the court promoted the
20 wisdom of the 9/11 Fund I think is an enormous credible factor
21 in encouraging every litigant to come into this program.

22 I will do this at the court's request. I will do it
23 pro bono. I am not interested in doing anything but
24 encouraging the heroes of 9/11 to take advantage of this
25 program. Under the settlement, as I understand that, I have

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1 final authority under the program, the judge ultimately rules,
2 but I have final authority over who is eligible and how much
3 those individuals will receive. I will be glad, as I was
4 during the 9/11 Fund, to meet with those claimants, to review
5 their claim, to review the amount that they have been awarded,
6 and to rule on whether that eligibility determination is valid
7 and whether that amount is appropriate under the settlement. I
8 have agreed to do that, I will do it pro bono. We owe it to
9 those heroes of 9/11.

10 Final point, I will take time, as I did under the 9/11
11 Fund, I will take time over the next few weeks to visit
12 firehouses, to conduct town hall meetings, to explain to any
13 claimants who want to meet at convenient times and places to
14 ask me, as they did seven years ago, why, Mr. Feinberg, is it
15 in my interest to come into this program? I will do that. I
16 will make time to make sure that every claimant who wants to
17 understands why I am a proponent of this settlement, why I
18 think it is fair and reasonable, why I am glad to stand with
19 the court in promoting the settlement, and why I think that, in
20 the absence of a realistic alternative, every single claimant
21 should take advantage of this settlement.

22 Thank you, your Honor.

23 THE COURT: Thank you, Mr. Feinberg.

24 I have signed the order. There are a number of
25 exhibits that will be considered at the June 23 hearing and

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1 develop the details and protocols for administration. I am
2 giving this to Ms. Jones to file. It will be on the court's
3 Web site this afternoon.

4 I thank you all for your attention. Mr. Feinberg and
5 I believe various counsel will be on the outside courthouse
6 steps for further discussion with the press, picture-taking,
7 and the like.

8 Good afternoon, all.

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