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July 16, 2010

Re: *In Re: World Trade Center Disaster Site Litigation  
Amended Settlement Process Agreement*

Dear:

As you already know, after extensive litigation over the past seven (7) years, as well as active negotiations over the past two and a half (2.5) years with the WTC Captive Insurance Company (“the Captive”), our office has reached an agreement in principle to resolve all claims against the Captive’s insureds including the City of New York and its contractors with certain very important conditions. Judge Hellerstein has reviewed this agreement and this letter and fully supports the settlement process. To that end, our office has agreed to an Amended “Settlement Process Agreement” (hereinafter referred to as the “Amended SPA”) with the Captive. If successful, the Amended SPA will settle your claim against many defendants for affiliated work at the World Trade Center site, the Fresh Kills landfill and certain surrounding buildings in lower Manhattan. In this letter, we describe how this Amended SPA affects your claims and what you need to do to have your claims paid now by these parties.

You will be receiving in the mail a shorter letter outlining the information you need to know about the Amended SPA and your rights thereunder. That letter will contain specific information about your individual claim. The letter will also come with a package of documents that you will need to review carefully, most of these will need your signature, some will need to be notarized and most will need to be returned to us in a relatively short time. This more detailed letter, posted on our website<sup>1</sup> contains more detailed information for your convenience. Because of the importance of this communication, this letter has been reviewed and approved by a nationally-recognized legal ethics expert Roy D. Simon, the Howard Lichtenstein Distinguished Professor of Legal Ethics at Hofstra University School of Law, who was appointed by the Court for that purpose. The Court has also approved this communication and has posted the Amended SPA and other documents on its website.<sup>2</sup>

This Amended SPA still has several thresholds that must be reached before any settlement of your claim becomes final. We describe these in detail below. Although Judge Hellerstein, who is presiding over these cases, voiced concerns over the original settlement agreement *in the past*, he believes that all of those concerns have now been resolved by the Amended SPA. Indeed, at a conference before the Court on June 10, 2010, when the Amended SPA was presented to the Court, Judge Hellerstein reacted by saying: “*This is a very good deal. I am very excited about this deal.*”<sup>3</sup>

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<sup>1</sup> [www.877wtchero.com](http://www.877wtchero.com)

<sup>2</sup> The Court’s web page for all 9/11 litigation is: <http://www.nysd.uscourts.gov/cases.php?form=sept11>

<sup>3</sup> See the Statement of Judge Hellerstein about the Amended SPA that is posted on our website.

In this letter, we will set forth the Court's past concerns and give you our answers to them as well. Although you may have heard media reports stating this settlement was "rejected" or "not approved" by the Court, those statements are inaccurate. Although the Court was initially unsatisfied with the original version of the SPA that was presented to him on March 12, 2010, the agreement has since been amended to address and resolve all of the Court's prior-stated concerns. The Amended SPA was formally "endorsed" and "approved" by the Court after a full-day hearing on June 23, 2010. Ultimately, the decision to settle your case is a private matter which you alone will make. In fact, the Amended SPA is a valid agreement that binds the WTC Captive to pay as much as \$712.5 to \$716 million dollars on certain defendants' behalf. However, there remain obligations under that agreement that each of the parties must fulfill in order to gain the benefit of the contract. We intend to continue to meet those obligations on your behalf and to give our clients the chance to decide for themselves whether or not to enter into the settlement process. The reactions we have received from our clients so far indicate that the overwhelming majority want to proceed towards settlement. Whether you want to enter into that process or not is your decision to make, no one else's.

Because there are other documents that are too voluminous to include here, those will be available for your review on our website, [www.877wtchero.com](http://www.877wtchero.com).

**In order to participate in the Amended SPA you will need to review, sign and return the following documents that were enclosed with your settlement package to our office by August 3, 2010:**

1. **WTC Debris Removal Litigation Claim Form** (*which must be signed and notarized*) asking for information about you and your work at the World Trade Center site and/or other related locations, any injuries, and any workers' compensation or other disability.
2. **Injury Point Verification Chart** showing your placement for your injury and each adjustment factor, including whether or not you are set to receive a surgery, orthopedic, or permanent disability award. It is important that you study this carefully so that you are able to confirm whether you are placed in the proper category and are receiving the right amount of points, if applicable;
3. **Release and Covenant Not to Sue** signed by you (and your spouse, if he or she is a plaintiff) and notarized if eligible;
4. **"Second Injury Letter"** to be signed by you (*and notarized*) acknowledging that you understand that the Release and Covenant Not to Sue applies not only to current injuries known to you, but also to (a) injuries that may worsen in the future, (b) current injuries that you do not discover until sometime in the future, and (c) new injuries that develop in the future from this exposure;
5. **Outstanding Lien Checklist** listing all outstanding liens for medical treatment or other benefits paid to you or on your behalf;
6. **Client Disbursement Statement** detailing (a) your case-specific costs and (b) the costs allocated among all plaintiffs that will be deducted from your gross award. These amounts will be subject to some adjustment depending upon whether any additional costs are incurred from the time of the execution of this document to the time of the actual distribution of the award to you. Attorneys fees of one quarter (25%) will then be deducted from the remaining award. This will then result in your net award;

7. **HIPAA Authorization Form**, which is necessary to allow your medical records to be released for review by the Allocation Neutral;
8. **MetLife Enrollment Form** necessary to enroll you for the cancer policy administered by MetLife in the event you later develop one of the covered cancers; and
9. **Settlement Package Checklist** showing everything you need to do if you decide to participate in the settlement.

We will prepare all of the necessary paperwork to file your claim using the records we have in your file. You may need to provide us with additional information. In any event, you will have to sign the above forms under the penalty of perjury for submission to the Allocation Neutral.

**There may be errors or omissions on these forms for whatever reason, so we ask that you read them carefully, correct any errors, and add additional information into the forms where necessary. We will then make all necessary changes in the documents and may reissue you a new (revised) form for your signature. Please recognize that this will probably be the last opportunity for you to file these forms to receive payment.**

**It is imperative that you check the forms that were enclosed in your settlement package for accuracy and completeness before signing these forms since the answers to these questions may affect your settlement amount. Once the forms are submitted it will be difficult to change your answer and doing so will most certainly cause delay in processing your claim.**

You will find the following documents posted for your review on our website ([www.877wtchero.com](http://www.877wtchero.com)):

1. The full Amended SPA and all of the exhibits to that document;
2. FAQ about the Amended SPA;
3. Overview and summary of the Amended SPA;
4. Statement of Kenneth Feinberg about the Amended SPA;
5. Statement of Judge Hellerstein about the Amended SPA;
6. Statement of Paul J. Napoli about the Amended SPA; and
7. Structured Settlement Brochure.

**This Amended SPA will affect only your claims against the City of New York and its contractors – it is not a settlement of your entire case (unless you only have claims against the City of New York and its contractors).** Your claims against the remaining defendants in your case, if any, will continue and may ultimately result in further settlements and additional money to you and our other clients. In addition, if you worked on a barge or at a pier, you may be entitled to additional monies for your exposures at those locations, depending on future developments.

The purpose of this letter is to advise you of the conditions of the Amended SPA, to outline the advantages and disadvantages of entering into the process, to discuss the advantages and disadvantages of settling your case, to provide a timeline of upcoming events and to ultimately recommend that you enter into the settlement process that will provide you with fair and reasonable compensation for your claims against the City of New York and its contractors. Once you have reviewed this letter and the documents enclosed in your settlement package, we will be happy to meet with you in person, schedule a call or provide you with additional information if you would like to discuss the settlement process in further detail. In order to participate in the Amended SPA and to receive a cash settlement and a MetLife Cancer

Policy now, you must sign the settlement documents in your settlement package where indicated and return them to our office in the return envelope provided. The Amended SPA requires that all releases and other documents be provided by September 30, 2010. However, our office needs time to process your forms and gather all necessary documents. Therefore, it is imperative that you respond to this letter as soon as possible – but in any case, ***no later than August 3, 2010.***

## OVERVIEW OF THE SETTLEMENT PROCESS

As you will recall, our office asked for your consent to enter into global settlement talks with the defendants some time ago; nearly one hundred (100%) of our clients assented to this request. As part of the Amended SPA, the City's insurer, the WTC Captive Insurance Co., Inc. ("the Captive") demanded to settle all the cases simultaneously. As a result, the Captive made an "aggregate" settlement offer (*i.e.*, an offer to pay a lump sum in settlement of all of the claims for all plaintiffs, leaving it to the plaintiffs' lawyers and the Court to allocate the lump sum among the plaintiffs). The settlement money will be divided up among the plaintiffs based upon evaluations of each claimant's injuries and prognosis. Those evaluations, in turn, are based on healthcare records, test results, and other information that we requested and received from you and your healthcare providers.

The Captive's aggregate settlement offer (*i.e.*, their offer of a "lump sum" payment) encompasses your individual claim. If enough individual plaintiffs like yourself agree to participate in the Amended SPA, the Captive will pay between \$625 million and \$712.5 million on behalf of its insureds, depending on the number of plaintiffs who opt-in to the Amended SPA as well as the number of future claims that are presented in the next five (5) years. The more claimants who participate can result in more money for you, depending on what Tier you are in. The final amount will also depend on certain conditions, which are described in detail in Section IV (Contingent Payments) and VI(E) (Opt-In Bonus), of the Amended SPA, which can be found on our website at [www.877wtchero.com](http://www.877wtchero.com). The base amount of \$625 million is divided as follows:

- The *21-MC-100 Docket* - \$514.8 million for approximately 9,600 plaintiffs who claimed to have worked on or near the sixteen acre World Trade Center site, Morgue, Barges, Piers and/or Fresh Kills Landfill in Staten Island.
- The *21-MC-102 Docket* - \$6.1 million for approximately 300 plaintiffs who are mainly building cleaners who worked in buildings near the World Trade Center site.
- The *21-MC-103 Docket* - \$18.2 million for approximately 600 plaintiffs who worked both at the 21-MC-100 and 21-MC-102 locations.
- *MetLife Cancer Insurance Policy* - \$23.4 million for premiums on policies to be issued to all plaintiffs who qualify to participate in this settlement and who don't have certain cancers.
- *Permanent Disability Fund* - \$62.5 million for all plaintiffs found permanently disabled.

We believe that the settlement process that is described in much further detail in the Amended SPA is fair and reasonable. It will be based on objective factors so that similarly situated plaintiffs will be treated equally. It will be managed by Matthew Garretson, Esq., who has been appointed by Judge Hellerstein as the independent claims evaluator and claims administrator (the "Allocation Neutral"). Mr. Garretson's appointment was agreed to by both sides. The Allocation Neutral will review medical and other information sent in by participating plaintiffs and determine the final settlement amount that you will receive based upon your medical condition(s) and specific circumstances.

**All plaintiffs who decide to join in the Amended SPA will remain eligible for continuing medical screening and care provided by the City of New York. There will be no change in your eligibility for those services. More information regarding those benefits is available at the City's website for the WTC Centers of Excellence:**  
**<http://www.nyc.gov/html/doh/wtc/treatment/centers.shtml>**

Any interest earned on the settlement amount before distribution will be paid to you pro rata after paying the costs of the allocation process administrators. If additional money is required for the administrative costs, one half of those excess funds will come from the settlement fund.

**95% OPT-IN THRESHOLD AND  
ACTIVATION OF SETTLEMENT**

We are recommending to you and to all of our clients that they agree to enter into the settlement process set out in the Amended SPA. Since part of the Captive's motivation in offering this Amended SPA is to resolve once and for all the WTC-related claims pending against their insureds, whether you receive any settlement payments under this Amended SPA is conditioned on at least 95% of all eligible plaintiffs opting-in to the Amended SPA. If more than 95% of the eligible claimants participate, the total value of the Amended SPA will increase for every additional percentage point (over 95%) of claimants who opt-in to the Amended SPA. The following table sets forth the number of Plaintiffs in each Master Docket by Tier according to the Eligible Plaintiff Lists ("EPLs") submitted by plaintiffs' counsel on June 18, 2010:

<b>Master Docket</b>			
	21 MC 100	21 MC 102	21 MC 103
Tier 1	2,569	82	157
Tier 2	1,497	48	104
Tier 3	791	36	50
Tier 4	4931	194	308
<b>Total</b>	<b>9788</b>	<b>360</b>	<b>619</b>

The 95% threshold means that the Amended SPA will only take effect if enough of the "Eligible Plaintiffs"<sup>4</sup> agree to enter into the Amended SPA. If not enough eligible Plaintiffs join in, there will not be any payments now and the litigation will most likely continue for many more years. If you agree to settle your claims against the City and its contractors now, you need to complete and sign all of the documents indicated on the "Settlement Checklist" where indicated and return them to our office as described in greater detail below. Once you return your completed settlement package you will become a "Participating Plaintiff" in the settlement. Overall, at least ninety-five percent (95%) of all Eligible Plaintiffs must agree to settle in order for the agreement to become effective. Since this Amended SPA is supported by both Judge Hellerstein and former Victim's Compensation Fund Special Master Kenneth Feinberg, we believe this will be achievable.

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<sup>4</sup> An "Eligible Plaintiff" is defined in the SPA; if you have received this letter, you are an Eligible Plaintiff.

All plaintiffs who filed claims against the City of New York and its contractors before a certain date are eligible to participate in this Amended SPA. If you received a short form client letter, it means that your claim was timely filed and you have the right to participate in this Amended SPA. At this time there are about 10,767 plaintiffs eligible to participate in this Amended SPA. This number includes plaintiffs that are represented by our office and those who are represented by other attorneys.

**DO NOT FOREGO YOUR RIGHT TO SETTLE TO PROTECT  
YOUR RIGHTS UNDER THE ZADROGA ACT**

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Some claimants have asked whether they should opt-out of the Amended SPA so that they will not impair their right to benefits that may later become available if Congress passes the proposed James Zadroga 9/11 Health and Compensation Act of 2009 (introduced in the Senate under S. 1334 and in the House under H. 847). The simple answer to that question is “No.”

Congress has been working for nearly four (4) years to pass the Zadroga Act, the most recent version of which includes a provision to re-open the Victim’s Compensation Act so that first responders’ claims can be considered. The bill has been passed out of both the House Judiciary and Energy and Commerce Committee’s and awaits floor action. (It has been rumored that the bill will be on the floor before the August Recess but nothing has been set in stone.) The bill will receive its first hearing in the Senate Health, Education, Labor and Pensions Committee in late June. Simply stated, the settlement offers you real money that will begin to be paid to you within weeks. The most important thing you should understand is that *the Zadroga Act may never be passed and your ability to recover under the Act is not assured even in the event it does become law.*

Kenneth Feinberg was the Special Master appointed to allocate benefits under the 9/11 Victim’s Compensation Fund. He has also been appointed to act as the Claims Appeal Neutral for our settlement. At a conference before Judge Hellerstein on June 10, 2010, when the amended settlement agreement was presented to the Court, Mr. Feinberg said the following about the choice between the settlement and the possibility that a Victims’ Compensation Fund may be re-opened under the Zadroga Act:

I urge 100 percent of these claimants to file a claim and participate in this compensation program. What is the alternative? What is the alternative? To wait? You are waiting for Godot. You have waited long enough. It’s been seven years since the 9/11 fund expired. Wait? Wait for what? This is a real settlement with real money. The judge says it is not perfect. You have waited long enough. Wait is not an option.

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

At a Town Hall meeting on June 16, 2010, Mr. Feinberg further stated, when asked about the relative benefits of the settlement versus the potential of a future re-opened VCF, that there is currently no

office, no staff and no funding for a re-opened VCF and that he urges all eligible claimants to opt-in to this settlement.

### **FINALIZATION OF THE AGREEMENT**

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As noted above, the Amended SPA will only go into effect if 95% of the Eligible Plaintiffs agree to participate and all the other conditions of the Amended SPA are met. Once the Amended SPA goes into effect, all Participating Plaintiffs' claims against the City and its contractors will be dismissed with prejudice. This means that all of your claims against the City of New York and its contractors will be completely resolved *and you will not be able to sue the City and its contractors again in the future for any claims arising out of post-9/11 rescue, recovery and debris removal activities*. However, if you have any claims against any non-settling defendants in your lawsuit, those claims will not be affected and will proceed in the normal course of litigation toward trial or possible future settlement.

### **IF YOU DO QUALIFY**

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If you do qualify for payment under the Amended SPA as a Tier 1, 2, or 3 claimant, the values of your claim are set as described in this letter. If, however, you have a more serious injury and qualify as a Tier 4 claimant, the value of your claims will be determined by a system of point allocation that is set out in the Amended SPA. This system of points to be assigned for the Tier 4 injuries will be administered by the Allocation Neutral. The Allocation Neutral will also pay out the settlement amount monies based on your individual injuries and proof of impairment by applying the medical criteria as set forth in the Amended SPA. In other words, how much you get paid depends on what kind of illness you have, how severe it is, and whether your medical records comply with the requirements of the Amended SPA. The amount you are paid also depends on the number of people who participate in the process and the severity and type of injuries they have as well.

The Amended SPA includes a list of injuries or sicknesses for which you can receive money. These are called "Qualifying Injuries".

The Qualifying Injuries are grouped as follows:

- Chronic Obstructive Pulmonary Disease (COPD);
- Interstitial Lung Disease (ILD);
- Asthma/Reactive Airway Disease Syndrome (RADS);
- Laryngitis/Pharyngitis;
- Chronic Rhinosinusitis;
- Upper Digestive Problems;
- Sleep Problems;
- Death;
- Cancer;
- Cardiac Conditions; and
- Restrictive Lung Disease.

All of these Qualifying Injuries are sub-divided into levels or grades based upon the extent of impairment. These levels or grades are called “Severity Levels”. The Severity Levels generally are based upon objective tests widely used by doctors to decide how severe the illness is for each person. To decide whether you meet the requirements for a given Qualifying Injury and to assess the Severity Level of that injury, the Allocation Neutral will use a procedure for the accurate and efficient review of records. In other words, if you can meet the requirements to participate, your claim will be reviewed by the Allocation Neutral to figure out (a) what illness you have on the list and (b) how severe your injury is. The Allocation Neutral will have a staff of highly qualified people trained to review your claim form and supporting records pursuant to the Amended SPA and will be helped by a panel of physicians.

***Your Claim Form is very important.*** It is designed to make the process easier and to distinguish the high value claims from the low-value claims. All plaintiffs who participate in the Amended SPA must submit a Claim Form. Your Claim Form must be returned to us promptly so it can be sent to the Allocation Neutral by our office. *It must be completed and signed by you under the penalty of perjury.* That means if you lie, misrepresent, omit or conceal facts that are important to the determination of your claim, you are breaking the law and can be criminally prosecuted. All medical records submitted with your Claim Form to the Allocation Neutral must be dated before March 11, 2010 to be considered.<sup>5</sup> (You may submit records that you *obtained* after March 11, 2010, but the records must have been *created* before March 11, 2010.) We will help you complete your Claim Form.

There is one Claim Form for all four levels, or “Tiers” used to streamline the Allocation Process.

The Medical Criteria, which are set forth in Section XII of the Amended SPA (pp. 53-66), determine whether you have a “Primary Qualifying Injury” and, if so, the “Impairment Level”. The Qualifying Injury groups are:

- A0 thru A4 - Chronic Obstructive Pulmonary Disease (pp. 54-55);
- B0 thru B4 - Interstitial Lung Disease (pp. 55-56);
- C0 thru C4 - Asthma/Reactive Airway Disease Syndrome (pp. 57-60);
- D0 thru D3 - Laryngitis/Pharyngitis (pp. 60-61);
- E0 thru E3 - Chronic Rhinosinusitis (pg. 61);
- F0 thru F2 - Upper Digestive Problems (pg. 62);
- G0 thru G2 - Sleep Problems (pg. 62);
- H0 thru H2 - Death (pp. 63-64);
- I0 thru I3 - Cancer (pg. 64-65);
- J0 thru J2 - Cardiac Conditions (pg. 65); and
- K0 thru K3 - Restrictive Lung Disease (pp. 65-66).

In general terms, the Tiers are defined as follows:

- **Tier 1** – for plaintiffs who only are eligible to recover for fear of future injuries or have injuries or symptoms that do not meet the qualifications of Tiers 2-4;
- **Tier 2** – for plaintiffs whose Qualifying Injury (a) requires a physician diagnosis, and (b) falls within these classifications: D0, E0, F0, G0, H0, I0, J0-J2 or K0, and (c) relates to injury severities that are less than those in Tiers 3 and 4;

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<sup>5</sup> Medical records dated after March 11, 2010 reflecting death, a Qualifying Surgery or Permanent Disability are eligible for consideration.

- **Tier 3** – for plaintiffs whose Qualifying Injury (a) may require diagnostic proof of impairment to support a physician diagnosis, and (b) falls within these classifications: A0, D1, E1, F1, G1 or K1 and (c) relates to injury severities that are less than Tier 4;

A plaintiff in Tier 2 or Tier 3 can only be compensated for one injury.

- **Tier 4** – for plaintiffs whose Qualifying Injury (a) requires more stringent diagnostic proof of impairment to support a physician diagnosis and (b) relates to those diagnoses and severity levels considered to be worse than those in Tiers 2-3.

Plaintiffs assigned to Tiers 1, 2, and 3 may submit a Reconsideration Request seeking placement in a higher tier.

The criteria for Tier 4 claims is the most strict because it includes the types of illnesses that will result in the most money being paid per plaintiff. Furthermore, plaintiffs in Tier 4 may recover extra money if they have two (2) injuries on the list, that is, both a “Primary Qualifying Injury” and a “Second Qualifying Injury.” Additionally, plaintiffs in Tier 4 will be subject to the following “Adjustment Factors”, which may increase or decrease the amount of money they get, if any, under the Amended SPA:

- Age on September 11, 2001;
- Timing of diagnosis relative to date of alleged exposure;
- Smoking history;
- Timing of alleged exposure;
- Duration of alleged exposure;
- Pre-existing injuries or illnesses (those pre-dating 9/11); and
- Worsening of pre-existing injuries.

These “Adjustment Factors” will individualize the recoveries of plaintiffs in Tier 4. The Tier 4 process assigns each person points.

In Tier 4 claims, the Allocation Neutral will first identify a plaintiff’s *two* most highly valued Qualifying Injuries (the Primary Qualifying Injury, and a Second Qualifying Injury, if any), then determine the impairment level for both injuries. The plaintiff will then receive points for each Qualifying Injury (“Base Points”). These Base Points will be increased or decreased depending upon the Adjustment Factors. Each Tier 4 Qualifying plaintiff will receive a “Total Score” that combines all of these factors. There are limits on how much a plaintiff’s Base Points can be adjusted up or down. This will ensure consistent valuation of similarly situated plaintiffs and fair relative valuations of differently situated plaintiffs. It also ensures that the Primary Qualifying is the most important part of figuring out how many points a person gets.

At the end of the Allocation Process, after the initial payments to all plaintiffs (including you) and after any additional payments to plaintiffs in Tiers 1-3, most of the money that remains will be distributed to qualifying plaintiffs in Tier 4 in proportion to their respective Total Scores. The Allocation Neutral will inform each plaintiff in Tier 4 of his or her Points Score after the claim is reviewed.

## BENEFITS TO QUALIFYING PLAINTIFFS

**All Tiers.** All Qualifying Plaintiffs who participate in this Settlement Process will receive an “Initial Payment” of \$3,250.00 and must apply for the MetLife Cancer Insurance Policy, if they qualify. The MetLife Cancer Insurance Policy is available to all Qualifying Plaintiffs except for those who have already been diagnosed with certain forms of cancer. The policy will make payments of up to \$100,000.00 to those who are diagnosed with certain forms of cancer during the next fifteen (15) years, subject to certain terms and conditions. Monies paid under the settlement are tax-free, because personal injury awards are non-taxable.

**Tiers 2 and 3.** Qualifying Plaintiffs in Tiers 2 and 3 also will receive a second guaranteed cash payment called an “Accelerated Final Payment” (“AFP”). The amount of the AFP is determined by your Master Docket Number in the Court’s files, that is whether your case is in 21-MC-100, 21-MC-102 or 21-MC-103. The Docket you are in is determined by where you worked on and off the World Trade Center site.

The 21-MC-100 Master Docket is defined generally as those plaintiffs who worked primarily on or near the sixteen acre World Trade Center site in Manhattan, at or near the Morgue, at or near the Barges and Piers, and/or at or near the Fresh Kills Landfill in Staten Island.

The 21-MC-102 Master Docket is defined generally as those plaintiffs who are mainly building cleaners who worked inside of the buildings in lower Manhattan surrounding the World Trade Center site.

The 21-MC-103 Master Docket is defined generally as those plaintiffs who worked both at the 21-MC-100 and 21-MC-102 locations. The following table outlines the Accelerated Final Payment amount by Master Docket:

### Amount of Accelerated Final Payment by Master Docket

<u>Tier</u>	<u>21-MC-100</u>	<u>21-MC-102</u>	<u>21-MC-103</u>
Tier 1	Not eligible	Not eligible	Not eligible
Tier 2	\$4,250.00	\$1,085.00	\$1,625.00
Tier 3	\$7,750.00	\$2,170.00	\$3,250.00

**Tier 4.** Plaintiffs in Tier 4 have to undergo a different process because these plaintiffs may get more money. The Tier 4 process will take longer because of the point system described above. Qualifying Plaintiffs in Tier 4 will not receive an Accelerated Final Payment. Instead, they will receive two additional payments – an “Interim Payment” and a “Final Distribution” – based upon their Total Scores. For the Interim Payments, a Qualifying Tier 4 plaintiff will get forty percent (40%) of the projected payment. The Interim Payments will be paid to each Qualifying Plaintiff part way through the Allocation Process. The exact timing of these Interim Payments will depend upon when their claims are evaluated. The Final Distributions will be made at the end of the Allocation Process for each Master Docket. Any differences in the Initial Payments to plaintiffs with identical total scores will be corrected by changes to the Final Distributions. This process is set up so that Qualifying Plaintiffs in Tier 4 will receive partial payments as soon as possible, leaving time after these partial payments to make sure that everyone’s claim is evaluated and compensated fairly. Further, Tier 4 plaintiffs in the 21-MC-102 and 21-MC-103 Dockets will have their offers adjusted based upon the amount of time they worked in the buildings.

Because Qualifying Plaintiffs in Tier 4 receive payments based upon their respective Total Scores, and because the Total Scores of all participants will not be determined until the Allocation Process is

complete, *the exact amount of Tier 4 payments cannot be determined at this time*. However, based upon the data provided in the “Eligible Plaintiff List” by all claimants, we believe we can predict and estimate the range of your award. In addition, throughout the settlement process the Allocation Neutral will readjust the value of a point so we can better predict the amount each Tier 4 claimant will receive. To be clear, a Tier 4 plaintiff ultimately may end up receiving more or less than the predicted amount of money. If you allege a Tier 4 claim, we are willing to go over your file with you and give you our best individualized assessment of your approximate recovery. If you are a Tier 4 plaintiff we are attaching a summary to your settlement package of all the criteria and adjustments that we believe establish your points and an estimated range for the value of those points.

Based upon your medical records, the highest category of injury (your “Primary Injury”) is Matrix J1. Your next highest category of injury (*i.e.*, your “Second Qualifying Injury”), is N/A. You will find a Claim Form enclosed in the settlement package that has been completed based upon the information we have in your file. If you believe that there is anything missing or if there are mistakes on your Claim Form or you fit in a higher tier or have a higher category of injury, please insert your edits directly on the Claim Form and provide the documentation that supports your edits to the Claim Form. Remember that the Claim Form will be submitted with your signature under the penalties of perjury. After you have completed your Claim Form you must sign it and return it to our office along with the remainder of completed documents in your settlement package.

The papers that we will submit to the Allocation Neutral will contain our best estimate, based on your medical records and other records, of the proper classification for your injury on the severity matrix. It is possible, under the terms of the Amended SPA, that the Allocation Neutral may disagree, in which case he will have the authority to change your classification.

In all Tiers, spouses (also called “derivative plaintiffs”) who meet certain criteria will also get a payment. Any lawfully married spouse of a worker or volunteer who was (a) married to the plaintiff before September 11, 2001, (b) remained married and cohabitating until either the date of diagnosis of injury or, if no injury was diagnosed, the worker or volunteer’s last day of alleged exposure, and (c) who was named as a derivative (spouse) plaintiff in the lawsuit or notice of claim shall receive payment(s) totaling three-and-one-half-percent (3.5%) of their spouse’s Qualifying Injury payment (*i.e.*, 3.5% of the payment made to the primary plaintiff).

Although initial, accelerated and interim payments will be made sooner, the entire Allocation Process and final payments could take as long as one year. In addition, Tier 4 plaintiffs may be entitled to additional “Contingency Payments” over the next five (5) years.

#### **ADDITIONAL PAYMENTS FOR CERTAIN QUALIFYING PLAINTIFFS**

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##### **Qualifying Surgery Payments**

You may qualify for additional money if you have undergone (or if your physician recommended that you undergo) a particular surgery because of your Qualifying Injury. If you qualify for this additional payment, the Allocation Neutral will approve extra payments for any Qualifying Plaintiff in Tiers 2-4 who had (or was recommended to undergo) one or more of the surgeries listed in the SPA. Qualifying Surgery payments range from \$5,000 to \$150,000 depending upon the type of surgery had or recommended. Plaintiffs must provide proof that they underwent the surgery after their exposure, that the reason for the surgery was a listed Qualifying Injury, and that they meet other factors listed in the SPA. (If a physician recommends that a plaintiff undergo a lung transplant, that plaintiff is eligible for payment whether or not the surgery is performed; the payment is based on the severity of the injury.)

### **Mixed Orthopedic Injury Payments**

Qualifying Plaintiffs in Tiers 2-4 who had an orthopedic or similar injury due to their 9/11-related work or volunteer service may be eligible to receive additional payments for those injuries (“Mixed Orthopedic Injuries”). Mixed Orthopedic Injury payments require objective medical proof that the plaintiff (a) sustained an orthopedic injury during their work at the World Trade Center Site, (b) sought immediate treatment and (c) sued the City of New York and its Contractors or served a Notice of Claim against the City of New York for that injury within the time provided by the applicable statute of limitations. Payments for Orthopedic Injuries can be up to \$10,000. The exact amount will be at the discretion of the Allocation Neutral.

### **Permanent Disability Fund Payments**

A separate fund of money is available to be shared by plaintiffs who are now deemed (or preliminarily deemed) to be permanently disabled because of alleged exposures at the World Trade Center Site. Qualifying plaintiffs in Tiers 2-4 may be eligible for an award from the Permanent Disability Fund if they have been disabled due to their WTC-related rescue, recovery, debris removal or other clean-up work. Representatives, heirs or assigns of deceased plaintiffs also may be eligible for Permanent Disability Fund awards. To calculate Permanent Disability Fund payment amounts, the Allocation Neutral will start from the same baseline for all plaintiffs eligible for the Permanent Disability Fund and then make adjustments. The adjustments are for age, which Master Docket your case is in, whether the disability is based upon pre-existing injuries or orthopedic injuries, whether the disability is pending or final, whether the disability is for death benefits, and/or whether the plaintiff can prove serious ILD, Asthma/RADS or Blood Cancer Qualifying Injuries. The downward adjustment to any one person is restricted so that each person’s award is within a range of all other disabled persons’ awards.<sup>6</sup> All payments due to Qualifying Plaintiffs from the Permanent Disability Fund will be *in addition to* and paid separately from payments made for Qualifying Injuries, Qualifying Surgeries, and Mixed Orthopedic Injuries.

## **DEFICIENCY NOTICES AND RECONSIDERATION REQUESTS**

Upon review of the Plaintiff’s Claim Form and Qualifying Medical Records, the Allocation Neutral may issue a “Deficiency Notice”. The Deficiency Notice is written notice to the plaintiff and his or her counsel that some aspect of the Claim Form, the Qualifying Medical Records and/or other necessary records that you have submitted regarding the Work Verification process have been deemed insufficient for some reason by the Allocation Neutral. The Deficiency Notice process is described in Section XI.K of the Amended SPA. Following receipt of a Deficiency Notice, the Plaintiff’s counsel shall have fifteen (15) days to respond to the Allocation Neutral. This response shall be limited to (a) a revised Claim Form, if appropriate in the Plaintiff’s counsel’s judgment, (b) additional Qualifying Medical Records, if available, and/or (c) additional records pertaining to the Work Verification procedure. A Plaintiff who fails to timely respond to a Deficiency Notice and/or who timely responds but who, in the Allocation Neutral’s judgment, fails to address some or all of the deficiencies identified in the Deficiency Notice, will not be entitled to any payment under the Amended SPA relating to the deficiency (except that

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<sup>6</sup> See SPA Section XVI(D)(vi): “If the net result of the above calculations reduces an eligible Primary Plaintiff’s Adjusted PDF Score to less than twenty-five (25) Points for those Primary Plaintiffs in Master Docket 21 MC 100, eight and one-third (8.33) Points for those Primary Plaintiffs in Master Docket 21 MC 102, and twelve and one-half (12.5) Points for those Primary Plaintiffs in Master Docket 21 MC 103 (collectively, Master Docket-Specific PDF Score Floor), the Allocation Neutral shall increase that Plaintiff’s Adjusted PDF Score to his or her Master Docket-Specific PDF Score Floor.”

the Plaintiff may keep the Initial Payment if the Initial Payment was issued before the Deficiency Notice was issued).

**A Tier 1, Tier 2 or Tier 3 plaintiff who believes that the Allocation Neutral's decision on any part of their claim is incorrect can submit a Reconsideration Request.** A Reconsideration Request can challenge the determination of work verification at the World Trade Center Site, Tier placement, or determination of eligibility for a Qualifying Surgery Payment, Mixed Orthopedic Injury Payment, or Permanent Disability Fund Payment. Reconsideration Requests must be based solely upon the Claim form<sup>7</sup>, the Qualifying Medical Records submitted with the Claim Form<sup>8</sup> and/or any additional Qualifying Medical Records the Primary Plaintiff elects to submit in support of his or her Tier 1-3 Reconsideration Request. The challenge must show that the Allocation Neutral's decision is inconsistent with the Amended SPA and/or the Participating Plaintiff's Claim Form and medical records. After the Allocation Neutral evaluates the Tier 1-3 Reconsideration Request, the Allocation Neutral will issue a notice to the Primary Plaintiff's counsel informing the Primary Plaintiff of any action the Allocation Neutral has taken on the Reconsideration Request. Notably, if warranted, the Allocation Neutral may find upon reconsideration that the Primary Plaintiff should be placed in a *lower* Tier than originally designated. There is no charge to the Plaintiff for a Tier 1, 2 or 3 Reconsideration Request filed with the Allocation Neutral.

**A Tier 4 plaintiff may also request that the Allocation Neutral reconsider his determination.** Such Tier 4 Reconsideration Requests must be based solely upon the Claim form<sup>9</sup>, the Qualifying Medical Records submitted with the Claim Form<sup>10</sup> and/or any additional Qualifying Medical Records the Primary Plaintiff elects to submit in support of his or her Tier 4 Reconsideration Request. The Tier 4 Reconsideration Request must be limited to the plaintiff's contention that the Allocation Neutral (a) misapplied the Tier 4 proof requirements with respect to the Primary Plaintiff's claims; (b) misapplied or failed to apply any of the Adjustment Factors; (c) failed to apply Mixed Orthopedic Injury or Qualifying Surgery payments; (d) misapplied the Work Verification Procedure to the Primary Plaintiff's case; (e) failed to calculate the Plaintiff's total score correctly; or (f) misapplied the Permanent Disability Fund provisions. Upon reconsideration the Allocation Neutral can adjust the Tier 4 Primary Plaintiff's Total Score or Tier placement up or down, and once the Allocation Neutral has ruled upon a Tier 4 Reconsideration Request, no further Reconsideration Requests pertaining to that plaintiff will be permitted. There is no charge to the plaintiff for a Tier 4 Reconsideration Request filed with the Allocation Neutral, but each plaintiff is only allowed one such request.

**The only appeal of the Allocation Neutral's rulings on a Reconsideration Request shall be to the Claims Appeal Neutral pursuant to SPA section XIV.C.** The appeal will consist of a letter no more than two (2) pages long setting forth the basis of the appeal and the Primary Plaintiff's requested remedy. Upon considering the appeal letter, the Claim Form and Qualifying Medical Records, the Claims Allocation Neutral will consider whether the Allocation Neutral's decisions regarding the Primary Plaintiff demonstrate an abuse of the Allocation Neutral's discretion. Absent a finding that the Allocation Neutral abused his discretion in reaching a decision on the Primary Plaintiff's claim, the Claims Appeal Neutral will affirm the Allocation Neutral's decision(s) for that Primary Plaintiff and the Claims Appeal

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<sup>7</sup> Including Claim forms revised in response to a Deficiency Notice.

<sup>8</sup> Including Qualifying Medical Records submitted in response to a Deficiency Notice.

<sup>9</sup> Including Claim forms revised in response to a Deficiency Notice.

<sup>10</sup> Including Qualifying Medical Records submitted in response to a Deficiency Notice.

Neutral's decisions shall be final, binding and non-appealable by any means. There is no charge for an appeal to the Claims Appeal Neutral.

### **AUDITS**

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Five to ten percent (5-10%) of Qualifying Plaintiffs who submit Claim Forms for Tiers 3 and 4 will be audited by the Allocation Neutral. For each plaintiff who is selected for Audit, the Allocation Neutral will request supplemental medical records from a plaintiff or from his or her lawyer or doctors. For this reason, all plaintiffs who submit Claim Forms for Tiers 3 and 4 must provide a HIPAA release of medical records that authorizes the Allocation Neutral to collect any relevant medical records, for settlement purposes only. If material misrepresentations, omissions, or concealment are detected by the Neutral, a plaintiff will receive no payments under the Agreement and may be referred to authorities responsible for bringing criminal charges. If the Neutral determines that more than ten percent (10%) of audited plaintiffs committed fraud, the Neutral will conduct a second, targeted audit of additional plaintiffs whose claims the Allocation Neutral feels are likely to contain material misrepresentations in the same manner.

### **EFFECT OF SIGNING A RELEASE AND COVENANT NOT TO SUE**

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**By signing and submitting the Release and Covenant Not to Sue, you are agreeing to be bound by all terms and conditions of the Agreement, including agreeing to accept the final value money award, if any, for your claim under the Amended SPA.** You are also agreeing to release FOREVER any and all claims against the City of New York and its contractors for any and all future injuries allegedly arising out of your work or volunteer service in rescue, recovery, or debris removal operations. Once the Agreement is deemed final and 95% of the plaintiffs agree, all claims against the City of New York and its contractors brought by you will be dismissed with prejudice and they cannot be brought again. The submission of a Release and Covenant Not to Sue is *irrevocable* once the Agreement becomes final. In other words, under no circumstances and for no reason may you request the return of your Release and Covenant Not to Sue, or otherwise exit the Settlement once you sign a release and the Agreement becomes final.

### **ADVANTAGES AND DISADVANTAGES OF SETTLEMENT**

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There are several reasons why we recommend that you opt-in to this settlement process rather than take your case against the City of New York and its contractors to trial. The chief reason is that we believe that it is a fair and reasonable settlement process for all of our clients and for you individually. Also, it is unlikely that the Captive's global settlement offer will increase or the terms of the Amended SPA will change with further litigation or negotiations. Going to trial is inherently risky and any verdict can be appealed. The settlement process offers more certainty<sup>11</sup> and finality.

The global amount being offered to settle all of the plaintiffs' claims is our best estimate of the present settlement value of all claims against the City of New York and its contractors. Our recommendation is not an estimate as to what a jury might award if your case went to trial. We have been trying personal injury lawsuits for many years. Trials, as you know from reading the newspapers, are

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<sup>11</sup> "Certainty" refers to the certainty of a settlement and a positive result on your claim without the chance of a later appeal or re-litigation that might occur with a jury verdict. Since we can only provide a likely range of Tier 4 plaintiffs' individual settlement amount at this time, if you qualify for Tier 4 we cannot offer you "certainty" in the form of a definite settlement amount that will ultimately be achieved.

unpredictable. While juries may award more than the proposed settlement amount for your injuries, they also may award less than the amount you would receive from the Captive's offer. In some cases, juries may award nothing at all, finding that the defendants did not have liability for the injuries we allege. There is no way to accurately predict the ultimate outcome of a trial. Predictability is one of the factors favoring a settlement, provided it is a fair one. Based on our professional judgment, training and experience in this area of the law, as well as our evaluation of your case, together with the other cases being settled, we believe that under all the existing facts and circumstances, it is a fair and reasonable settlement offer.

We recommend that you join the settlement process and not continue toward trial for many reasons, including:

1. The City of New York and its contractors claim, *and there is evidence to support their contention*, that they had no legal duty to you, and therefore you can not recover against them. They also claim that under the law, they have immunity from liability and would owe you nothing;
2. The Court may ultimately hold that some plaintiffs may not be entitled to some or all of the protections of New York's Labor Law or the other laws that we claim apply;
3. The City of New York and its contractors claim they did nothing wrong and that due to the emergency created by the 9/11 attacks and the virtual impossibility of adequately protecting the workers due to the extreme conditions, that they are not liable. If the Judge or a jury believes any of this, you may not be able to recover any compensation from them;
4. There are practical difficulties in proving under the evidence standards in federal court that you inhaled a sufficient quantity of dangerous dust to cause injury;
5. It will be difficult to prove you were injured by inhaling WTC-generated dust, or by the dust you encountered while working at the specific relevant locations, as opposed to by the inhalation of dust downtown generally; and it will be difficult to prove that the inhalation of WTC-generated dust was a cause of your injuries;
6. For many clients, it will be difficult to prove the severity of many injuries due to the amount of treatment (which has made many injuries less severe than they once were) and due to the frequent lack of objective tests to support the claims; and
7. It will be difficult to prove the injuries you suffer from didn't come from other sources of toxic exposure or from other causes because many of these injuries are common in the community. Further, for some injuries such as cancers, sleep apnea, cardiac conditions, etc., there is currently little or no medical or scientific evidence to show that the WTC-generated dust caused these injuries.

8. The City of New York and its contractors have filed motions to dismiss every single case that has been selected for trial and discovery. These motions are currently pending. If the City of New York and its contractors are successful in having any of these cases dismissed, the value of all cases that are not settled may go down.
9. If we proceed to trial, the trial preparation and trial expenses on your case may amount to as much as \$75,000-\$150,000<sup>12</sup>, not including attorneys' fees, which would be deducted from any verdict on your case to reimburse us for those expenses, as provided in the retainer agreement you entered with our office. As you can imagine, given that trial expenses are likely to be substantial, we would have to recover a significantly higher amount from a jury than what is being offered to you now for you to receive the same "net" amount after a trial.
10. Whatever the outcome at a trial, the side that does not prevail may appeal. The costs of an appeal can be significant – at minimum, in the range of \$10,000 to \$15,000. Such costs would also be charged against any future recovery. In addition to the costs of an appeal, the outcome on appeal may be worse than your recovery in this settlement or at the trial. For example, the appellate court may reduce a trial verdict or vacate the verdict altogether, with or without ordering a new trial.

There are also a number of other reasons to settle your claim, including: (i) you will be compensated sooner as opposed to much later when your case goes to trial; (ii) your litigation costs will be much lower now than they would be if we took your case to trial; (iii) you will have more certainty in the amount you will receive for your injuries; and (iv) you will avoid the inherent uncertainty of a trial, where there is a possibility that the jury could find for the defendants, or could award less than the amount of any settlement even if you prevail at trial. Notably, moreover, even if you were to win a large award from a jury at trial, there is always the possibility that such a verdict could be reduced by the Court on a post-trial motion by the defendants or by an appellate court on appeal. Also, appeals can take a long time, and if an appellate court does not affirm a verdict in your favor, it may reduce your award, or decide in favor of defendants on legal or factual grounds, or order a new trial, or order new hearings on specific issues. That would delay compensation for your injuries even more.

In addition, the litigation may take several years before each party has gathered enough evidence to be ready for trial. As well, there is a value to you and your family in putting this litigation to an end and obtaining some measure of closure and peace of mind. Even when ready for trial, because there are approximately 10,000 cases, the practical problem exists that the court system may not be capable of conducting all these trials. Even if the Court allowed a small percentage of the cases to proceed toward trial, it could take years for them to actually get to a trial. At the present time, we cannot predict when your individual case will be set for trial.

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<sup>12</sup> These are very conservative figures for a complex litigation like the *In re: World Trade Center Disaster Site Litigation* matters.

The disadvantages of agreeing to this settlement are that you are giving up all of your claims (present *and future*) and you are giving up your right to a jury trial against the City of New York and its contractors. You are giving up the possibility that you might recover more from these defendants if you win at trial and the jury awards you a larger sum. However, as noted above, the City of New York and its contractors could appeal a trial verdict and your award could be reduced or even overturned on appeal.

### **WAIVER OF POTENTIAL CONFLICTS OF INTEREST**

As you know, we represent you in your efforts to obtain compensation for injuries relating to your work following the World Trade Center terrorist attacks. You are among approximately 10,767 individual plaintiffs who believe they suffered injuries as a result of their rescue, recovery and debris-removal work at the World Trade Center site, the Fresh Kills landfill or certain surrounding buildings in lower Manhattan. Our law firm represents the overwhelming majority -- more than 9,000 of these plaintiffs.

Over the past six years, we have worked hard to negotiate the most favorable agreement we can for all of the plaintiffs. As a result of our efforts, we have now negotiated an agreement with the WTC Captive Insurance Corporation that would require it to pay up to \$712.5 to \$716 million in total to settle the claims of all of the plaintiffs collectively. That would settle the plaintiffs' claims against the City of New York and its contractors. *It would not settle claims against many other defendants, which we will continue to litigate vigorously.*

We recognize that you and each of the other plaintiffs would like to obtain as large an award as possible. That means that if you participate in the settlement, you would want as much as possible out of the total amount that the Captive is offering to pay to settle all the claims. With the assistance of the Court and the Special Masters appointed by the Court, we have sought to develop a process that will result in a fair division of the total award among all the plaintiffs. The process depends on medical records and the information in your claim form. We will help you fill out your claim form completely and truthfully, but we cannot increase the amount of your settlement beyond the amount that the Allocation Neutral determines based on your medical records and claim form. Therefore, we are not in a position to favor one plaintiff over another.

The process we are proposing recognizes that some plaintiffs differ in important respects and some are alike. We try to treat the similar plaintiffs in the same way but to take account of important differences. Some plaintiffs would have stronger claims than others if their cases were to go to trial. Some have suffered greater injury or different types of injury than others. The purpose of the settlement process we are proposing is to provide that the amount each plaintiff is paid, if he or she accepts the settlement, will fairly reflect important differences such as these. Under this process, groups of plaintiffs who are in similar situations will obtain similar amounts. But different groups will receive different amounts depending on such considerations as the nature and extent of their injuries and the strength of the evidence that their injuries were caused by the City of New York and its contractors.

It is up to you to decide whether or not to accept the proposed settlement by participating in the process we have developed. The settlement will go into effect only if at least 95% of the plaintiffs decide to accept it. If they do not, then we will continue to litigate. We do not believe that further negotiation will lead to a better offer. In any case, further negotiation would cause further delay, which would not be in the best interest of the majority of the plaintiffs.

Our obligation now is to give you the information and advice you need in order for you to make an informed decision whether to accept the settlement offer. That means that we have to explain the settlement process to you so that you understand it, and we have to give you our candid advice about

whether it is in your best interest as an individual plaintiff to accept the settlement. We are also prepared to meet with you face-to-face and to speak with you by telephone. In the end, the decision whether to accept the settlement is yours and yours alone. We believe it is in your best interest and in the best interest of almost all of our other clients to accept the settlement. However, we are prepared to continue to represent you regardless of which decision you make. That is true for all of our clients.

In any case like this one, concerns may also be raised about whether the plaintiffs' lawyers are representing the plaintiffs as vigorously as possible and about whether the lawyers are giving their clients candid and truthful advice as to whether it is in their best interest to accept the proposed settlement. Sometimes, it is said that the lawyers have a "conflict of interest" that may tend to cause the lawyers to put some other interests ahead of their clients' interests, making it hard for the lawyers to act with the clients' best interests at heart. While we are confident that we can and will represent you and all of our other clients competently and diligently, it is important that we be completely open with you about what our interests are and who we are serving, and that we inform you of any risks that the quality of our representation may be compromised. That way, you can make an informed decision whether you want to rely on our advice or seek the assistance of a different lawyer, as you are entitled to do. In addition to giving you information by letter, we would be happy to arrange to meet with you to discuss this matter by telephone or face-to-face.

As you already know, we represent many plaintiffs. The proposed settlement will not take effect unless at least 95% of the plaintiffs accept it. One might worry that to help reach the 95% figure and serve the best interests of the many plaintiffs who will benefit from the settlement, our firm might advise some clients to accept the settlement even if it is not in the best interest of those particular clients to do so. One might also worry that we would advise clients to accept the settlement simply because we are interested in collecting a substantial legal fee, not because the settlement is in the clients' best interest. And because the available settlement funds will increase with each additional percentage point of plaintiffs above the threshold of 95% who opt-in to the settlement, some plaintiffs may fear that we have a strong motivation to pressure them to settle their claims even after the 95% threshold is reached. Although it is important for you to be aware of these risks, we are confident that we can and will give candid advice to each individual client.

We are prepared to continue to represent plaintiffs who decide not to enter into the settlement – that is, clients who decide to "opt out" of the settlement. We do not anticipate that many of our clients will decide to opt out of the proposed settlement, but we are willing to continue to represent clients in continuing to press their claims if they do choose to opt-out. We believe this is fair because we are the attorneys most familiar with each of our clients' cases and because we have the same contractual obligation to represent their interests as we have to represent those of our clients who accept the settlement. Some clients may worry that our firm will favor the clients who "opt out" over those who accept the settlement. It may later appear that way if the clients who "opt out" obtain higher awards at trial (or higher settlements at a later time) than similarly situated plaintiffs who settle now, or even if we merely seek higher awards on behalf of the opt-outs. If you have this concern, you may wish to obtain a different lawyer. But you should understand that we intend to pursue the best interests of each and every one of our clients. We will vigorously pursue the interests of any client who decides not to accept the settlement and who wishes to continue with our services.

Another area of concern for some Tier 4 clients is that they are entitled to certain additional, later payments under the settlement agreement known as "Contingent Payments." As the name suggests, these payments are contingent upon, among other factors, the number of later-filed claims that are filed in the Court; the higher the number of later-filed claims, the lower the amount of the contingent payments.

Some clients may feel that we are not protecting their interests fully if we agree in the future to represent persons who file claims based on injuries that develop in the future, because these future claims may reduce the amount of the contingent payment to the Tier 4 clients who are eligible to receive them. However, we believe that the number of future claims will be minimal in this litigation for a number of reasons.

First, the work was largely complete at the World Trade Center site by June of 2002 and most of the people who suffered injuries due to toxic exposures have already manifested their illnesses. The statute of limitations for a toxic exposure injury under New York law is three years, computed “from the date of discovery of the injury by the plaintiff or from the date when through the exercise of reasonable diligence such injury should have been discovered by the plaintiff, whichever is earlier.” In other words, a person has only three years to file a lawsuit after they learn of an injury, and for most people that time has already expired. Based on this fact, we believe that the statute of limitations will likely bar most future claims in this litigation. It has been our experience that the respiratory injury claims that are most prevalent among WTC workers do not have a particularly long latency period – they become quickly apparent to the person who has been exposed and to his or her physician(s). Similarly, the blood cancers that we have seen among our clients have largely asserted themselves by this time and we do not anticipate many new claims in this category of injury. Finally, although solid cancers tend to take longer to present signs and symptoms, the factual data already available does not support a causal connection between these illnesses and WTC-type toxic exposures. For this reason, we anticipate that such claims (*i.e.*, for solid tumor malignancies) will be difficult to prove.

It is important for you to understand that you are entitled at any time to hire another lawyer in addition to us or in place of us. For example, if you want a lawyer to advocate for you to receive a larger share of the total settlement amount, or if you want a different lawyer to give you a “second opinion” about whether to accept the proposed settlement, that is entirely up to you. We would be happy to help you find another lawyer, or you may do so on your own.

We would also be happy to help you obtain information from other objective sources. Judge Hellerstein has offered to make himself available to answer plaintiffs’ questions about the settlement. So has Kenneth Feinberg, whom the judge has appointed to serve as the Claims Appeals Neutral. That means that Mr. Feinberg is a neutral lawyer who will oversee the settlement and resolve appeals brought by plaintiffs who believe they have not been treated fairly. The Judge and Mr. Feinberg have promised to make themselves available to speak with plaintiffs at Town Hall meetings or other gatherings to answer questions about the settlement.

In order for us to comply with the Rules of Professional Conduct for attorneys, it is important that we help you understand the risks of continuing with only our representation and that you have the alternative of retaining a different or additional lawyer. If you do not understand this section on potential conflicts of interest, we would be happy to discuss it with you. If you have any questions, please contact us at your earliest convenience.

#### **ATTORNEYS’ FEES AND LITIGATION COSTS**

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You will owe fees to our office based upon your recovery. Your attorneys’ fees shall not exceed those set forth in your contract with our office (your “retainer agreement”). Indeed, if you opt in to the Amended SPA, your attorneys’ fees will be voluntarily reduced by eight and one-third percent (8.333%) as compared with your contingency agreement with our office. However, this reduction is part of the Settlement Process Agreement and ***may not apply to opt-out claims, that is, to claimants who do not choose the settlement.***

Specifically, your contingency agreement, which is a contract between you and our office, provided for your attorneys to be paid one third of the net recovery on your claims after the payment of expenses incurred litigating your claim. Under the Amended SPA, we have agreed to forego part of that attorneys' fee, making your contingency attorneys' fee now one quarter (25%) of the net recovery on this settlement. As noted above, you may also owe your attorneys common-benefit expenses, case-specific expenses and general expenses (all of which are consistent with the terms of your retainer agreement with our law firm). The Court has set out a "Protocol" to evaluate and approve each type of expenses.

Three categories of expenses will be deducted from your settlement award. "*Common Benefit expenses*" are expenses that we incurred in the prosecution of the litigation that benefited all of the World Trade Center plaintiffs as a group (including those plaintiffs who were not represented by this office). Each claimant's recovery will be slightly reduced by an allocation to be paid into a fund called the Common Benefit Expense Fund. All claimed Common Benefit Expenses will be submitted to the Court by the attorneys who incurred those expenses on behalf of the entire group of plaintiffs with supporting documentation, and the Court will then reimburse the attorneys for the approved expenses accordingly out of the Common Benefit Expense Fund. "*Case-specific expenses*" also referred to as "*Inventory-Wide Expenses*" are those that benefit a specific client (e.g., the costs of obtaining that individual client's medical or pharmacy records). "*General expenses*" are those that benefit a larger group of clients represented by the same attorney (e.g., fees paid to a medical expert) and are allocated on a pro rata basis (depending on the terms of the individual contract) across the group of benefited clients. All of these fees will be deducted from any settlement award payable to you before you receive any money.

To equitably address these "common benefit costs" among our clients, we have utilized a pro-rata approach, using "costs per point" for each settling claimant. For Tier 4 claimants, that was done by using their "Docket Neutral Base Points" as set forth in the claim form and confirmed by the Allocation Neutral upon his review of the claim form. Since claimants in Tiers 1 through 3 are awarded a set dollar amount rather than points, we have taken their settlement value (in dollars) and divided that number by ten to arrive at the number of "points" to be utilized in valuation of their common benefit costs. Accordingly, for Tier 1 claimants, the settlement amount of \$3,250 was divided by ten to arrive at a point value of 325 (for Tier 2:  $\$7,500/10 = 750$  points and for Tier 3:  $\$11,000/10 = 1,100$  points).

To calculate the total number of points we multiplied the number of claimants in each Tier times the point values noted above for Tiers 1-3 and then added *that* total to the sum of all Tier 4 claimants' Docket Neutral Base Points. Our current best estimate for the dollar value "Cost Per Point" is \$0.231262043, which is determined by dividing the total Common Benefit Costs by the total number of client points. Hence, an individual client's share of Common Benefit Costs can be calculated by multiplying their points by the Cost Per Point from above. For example, to determine a Tier 3 claimant's Common Benefit Costs, you would multiply 1,100 (the number of points for a Tier 3 claimant) times the Cost Per Point:  $1,100 * \$0.231262043 = \$254.39$ .

It is important to note that the cost per point used for these illustrations is our best estimate; it may be higher or lower based on the Common Benefit Costs that are approved or precluded upon review by the Allocation Neutral and the Court.

A copy of the Court's Order setting forth the protocol for submission and approval of litigation expenses and for the payment of claims can be found at [www.877wtchero.com](http://www.877wtchero.com).

## **THE DECISION TO OPT-IN TO THE SETTLEMENT PROCESS IS SOLELY YOURS**

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We recommend that you should accept the Settlement Process, but only *you* can decide whether you wish to settle your case against the City of New York and its contractors pursuant to the terms of the Amended SPA. (Even if you settle, you can continue litigating your case against the other defendants, if you have any such claims.) If you reject our recommendation and decide not to settle, your case will not be part of this settlement, and it will proceed with discovery and eventually to trial or to a later settlement (which may be better or worse for you than this one). If more than 5% percent of the Eligible Plaintiffs reject the settlement process, the Captive has the right to walk away from the settlement process and there is no assurance that it would later make a better settlement offer – or any offer at all. The Captive might go to trial instead of settling and we cannot guarantee that any particular claimant will win at trial. You may choose to reject the settlement process proposed by the City of New York and its contractors and proceed to trial. However, we do ask that if you are thinking of rejecting the settlement, *please call us to discuss this before you make a final decision.*

## **THIRD PARTY LIENS AND BANKRUPTCY**

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If you have received certain benefits, including medical care and monetary assistance, from certain programs such as Workers' Compensation, Social Security, Medicare, Medicaid and other similar programs for your alleged World Trade Center related injuries, these programs may have the right to claim a share of your settlement based upon your injuries. These claims are called "liens." These liens must be satisfied pursuant to the law, although we are working to try to get some of these potential lien holders to waive such liens. On several occasions, Judge Hellerstein has made it known that he wants all workers compensation carriers to waive their liens and waive future credits, thereby continuing future benefits to the settling plaintiffs without interruption. Thus far, Liberty Mutual, Medicare, the City of New York have waived their liens and credit.

Similarly, if you have declared bankruptcy, some or all of the settlement may be directed to settling your outstanding debt. It is imperative that you advise us if you are currently in bankruptcy. If so, tell us the court, the case number, and the name of any attorney representing you in the bankruptcy or the Bankruptcy Trustee assigned to your case.

## **WHAT HAPPENS NEXT?**

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The settlement process will become effective and finalized only if the following conditions are met: We must receive consent to participate in this settlement process from at least ninety-five percent (95%) of all Eligible Plaintiffs with claims against the City of New York and its contractors. If less than 95% of the Eligible Plaintiffs accept the settlement process, the Captive can withdraw the settlement proposal. Given the amount of the aggregate settlement we have negotiated, the fairness of the allocation process and the problems with continued litigation against the City and its contractors, we expect that the settlement will be approved by at least 95% of the claimants.

As soon as we receive approval for the settlement process from 95% of the Eligible Plaintiffs, the Allocation Neutral can start reviewing and paying claims. If things move along well, this process could be initially implemented as early as September and all payments should be completed within a year.

## **POTENTIAL AVAILABILITY OF STRUCTURED SETTLEMENT OPTION**

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Attorneys are not financial advisors, so we would not presume to tell you what to do with any money you receive as a result of the proposed settlement. But we have worked hard on your behalf to obtain compensation to you for your WTC-related injury, so we want to ensure that you have access to information about a common tool for handling a large sum of money that you receive all at once. That tool is called a “structured settlement.”<sup>13</sup> Structured settlements are often used by people like you at the resolution of a lawsuit to protect their money and maximize its value going forward on a tax-free, guaranteed basis.

Please read through the information in the next few paragraphs as well as the brochure and the examples we have included for you. We also strongly encourage you to watch a brief audio/visual presentation on structured settlements which you can view from any computer. A link to the presentation is located at our website [www.877wtchero.com](http://www.877wtchero.com), or you can navigate directly to it at [www.brainshark.com/ifs/StructuredSettlementOverview](http://www.brainshark.com/ifs/StructuredSettlementOverview). It is important that you do so now because there are critical timing requirements with respect to structured settlements. If you would like to take advantage of the benefits of a structured settlement, you must inform us of your decision before you receive your settlement money.

Please note that only specially licensed structured settlement consultants can provide you with a structured settlement. For your convenience, we have established the Structured Settlement Hotline. **Just call the hotline at (877) 381-7026 and ask to speak with the Mass Tort Settlement Services (“MTSS”) group.** Our receptionist will transfer you so that you can speak with a specially licensed structured settlement consultant who will be familiar with this matter and ready to help answer all of your questions. If you want to explore your structured settlement options, the consultant will help you design a program to meet your individual needs. These services are provided to you by the MTSS group free of charge, and Worby Groner Edelman & Napoli Bern, LLP, has no financial interest in the MTSS group and will not profit in any way from such structured settlements. We encourage you to call us with any and all questions so that you have every opportunity to make an informed decision about your recovery.

In order to ensure that you have enough time to receive information and make an informed decision, please contact the WGENB Structured Settlement Hotline on or before August 3, 2010.

### ***What is a Structured Settlement?***

Structured settlements provide a way for you to receive some cash now plus additional payments over time for your injury or loss. The amount of money paid to you up front, the size of each future payment and the timing of the future payments can be designed to meet your specific long-term needs. A structured settlement is a common alternative to an all-cash settlement.

### ***What are the Main Benefits of a Structured Settlement?***

1. Tax-free, guaranteed income over time (compensation for personal injuries is not taxable);
2. Security (you know that your money is safe);
3. Flexibility (you can put some or all of your money in a structured settlement).

*Please review the brochure on our website for more detail on these three benefits*

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***Are There Any Deadlines Or Timing Issues I Need To Be Concerned With In Order To Take Advantage Of A Structured Settlement?***

Timing is crucial. You must make the decision whether to use a structured settlement prior to receiving your settlement money. If you have any questions about structured settlements or would like additional information, it is important that you contact the MTSS group before receiving your settlement money.

As noted above, to ensure you have enough time to weigh your options you should contact the Structured Settlement Hotline on or before August 3, 2010. The phone number is (877) 381-7026 and when you call you should ask to speak with the Mass Tort Settlement Services (MTSS) group.

***If I'm Interested in a Structured Settlement Do I have to Put My Entire Settlement Recovery Into the Structured Settlement?***

Structured settlements are very flexible and can be set up many different ways to meet your individual needs. There is not a "one size fits all" requirement and you are *not* required to put your entire settlement amount into a structured settlement. You can put just part of the award in a structured settlement – as much or as little as you want.

One of the specially licensed structured settlement consultants in the MTSS group can work with you to establish a program that works for your specific situation. That will likely include some cash payment immediately upon receipt of your settlement combined with a stream of future tax-free payments.

## **CONCLUSION**

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Upon consideration of all of the relevant factors, we strongly recommend that you approve the overall aggregate settlement amount and that you consent and opt-in to the Settlement Process. *You have the absolute right to accept or reject this settlement process.* We fought hard to achieve a settlement that we believe is the best possible result for you under the circumstances of this case. We believe that this is a good and fair settlement process for you, as well as for the other clients whom we represent and who are eligible to participate in this settlement process.

If you wish to approve the settlement process with the City of New York and its contractors, please sign and return the documents included in this settlement package and return them to our office immediately. If you would like to discuss this matter further or if you are reluctant to approve the settlement process, please call us as soon as possible.

As you know, settlements are ultimately compromises. We believe that this is a good compromise, since there are some serious potential problems we may encounter if we go to trial against the City of New York and its contractors. We are also concerned about the delays in this case, which has already been going on for several years. There is a serious risk that even if we go to trial and are successful at trial, the defendants will appeal and after appeals, you may not receive more after these appeals than you will receive in this settlement process. Of course, you must decide what is in your best interest.

If you have any questions after have read this letter and the rest of the enclosures, please contact our office. Our office has assigned a specific person to handle your settlement process. Your personal contact is Marisol Vega. Please feel free to call Marisol with any questions at (212) 267-3700, Ext. 126. As always, thank you for your patience, cooperation and confidence.

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Very truly yours,

WORBY GRONER EDELMAN & NAPOLI BERN, LLP

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Marc Jay Bern

## Enclosures

(All items below marked with “\*” must be signed and returned to our office by August 3, 2010):

- WTC Debris Removal Litigation Claim Form (must be signed and notarized)\*
- Your Specific Injury Point Verification Chart \*
- Release and Covenant Not to Sue (must be signed and notarized)\*
- Client Disbursement Statement\*
- Outstanding Lien Checklist \*
- Second Injury Letter (must be signed and notarized)\*
- MetLife Enrollment Form\*
- HIPAA Authorization\*
- Settlement Package Checklist\*

**Documents Not in This Package but available on our Website ([www.877wtchero.com](http://www.877wtchero.com)) for Your Review:**

- FAQ about the Amended Settlement Process Agreement (“Amended SPA”);
- Overview and summary of the Amended SPA;
- Structured Settlement Brochure
- Statement of Kenneth Feinberg about the Amended SPA;
- Statement of Judge Hellerstein about the Amended SPA;
- Statement of Paul J. Napoli about the Amended SPA;
- Projected Payment Ranges for Average Plaintiffs with Tier 4 Qualifying Injuries (Table);
- Projected Average Permanent Disability Fund Payments (Table);
- Fixed Payments for Tiers 1, 2 & 3 (Table);
- Qualifying Surgery and Mixed Orthopedic Injury Payments (Table).