

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE: WORLD TRADE CENTER  
DISASTER SITE LITIGATION

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THIS DOCUMENT APPLIES TO ALL  
WORLD TRADE CENTER DISASTER SITE  
LITIGATION

Docket No.: 21 MC 100 (AKH)

NOTICE OF MOTION FOR  
DEFAULT AND PRECLUSION  
AGAINST DEFENDANTS FOR  
FAILING TO TIMELY AND  
COMPLETELY RESPOND TO  
PLAINTIFFS' FIRST SET OF  
DEMANDS FOR  
INFORMATION AND  
DOCUMENT PRODUCTION

-----X  
PLEASE TAKE NOTICE THAT upon the Declaration of Denise A. Rubin dated August 19, 2009 and the exhibits annexed thereto, this Court's Order of May 20, 2009, CMO7 and CMO 8; plaintiffs' duly served demands, as well as upon the facts and legal authority cited in the Plaintiffs' Memorandum In Support Of Their Motion For Preclusion and Default Against Defendants For Failing To Timely And Completely Respond To Plaintiffs' First Set Of Demands For Information And Document Production, Plaintiffs' Liaison Counsel will ask this Court to Order:

1. Pursuant to Fed. R. Civ. P. 37(b)(2)(A) *et seq.*, that
  - a. Defendants who remain in default of this Court's May 20, 2009 Order, CMO 8 and more than 30 days in default of plaintiffs' duly-served demands for documents, shall be and hereby are precluded from offering at the time of trial any evidence related to the documents sought by plaintiffs pursuant to Fed. R. Civ. P. 37 (b)(2)(A)(ii);
  - b. Defendants who remain in default of this Court's May 20, 2009 Order, CMO 8 and more than 30 days in default of plaintiffs' duly-served demands for documents, shall be and hereby are precluded from offering any defense or testimony based supported by the outstanding documents pursuant to Fed. R. Civ. P. 37 (b)(2)(A)(ii); and
  - c. That the Answers of Defendants who remain in default of this Court's May 20, 2009 Order, CMO 8 and more than 30 days in default of plaintiffs' duly-served demands for documents, shall be and hereby are deemed stricken and

judgment entered thereupon in favor of the plaintiffs pursuant to Fed. R. Civ. P. 37 (b)(2)(A)(iii) *and* (vi); and

2. That the defendants found in default based on the within shall be monetarily sanctioned for their continuing defaults of this Court's orders and plaintiffs' duly-served demands pursuant to Fed. R. Civ. P. 37(a)(5) and 28 U.S.C. § 1927 in an amount equivalent to the reasonable value of the attorneys' fees for the preparation of the instant motion; and
3. Such other and additional relief as this Court deems just and proper.

Dated: New York, New York  
August 19, 2009

Respectfully submitted,

WORBY GRONER EDELMAN & NAPOLI BERN, LLP  
*Plaintiffs' Co-Liaison Counsel*

  
Denise A. Rubin (DR5591)

350 5<sup>th</sup> Avenue, Suite 7413  
New York, New York 10118  
(212) 267-3700

To:

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PLAINTIFFS' MOTION FOR DEFAULT AND PRECLUSION AGAINST DEFENDANTS  
FOR FAILING TO TIMELY AND COMPLETELY RESPOND TO PLAINTIFFS' FIRST SET  
OF DEMANDS FOR INFORMATION AND DOCUMENT PRODUCTION

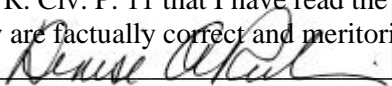
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**WORBY GRONER EDELMAN & NAPOLI BERN, LLP**

*Attorneys for* : Plaintiffs  
350 5<sup>th</sup> Avenue, Ste. 7413  
New York, New York 10118  
(212) 267-3700

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The undersigned attorney hereby certifies, pursuant to Fed. R. Civ. P. 11 that I have read the within  
papers and that to the best of my knowledge and belief they are factually correct and meritorious.

  
\_\_\_\_\_  
Attorney name: Denise A. Rubin (DR5591)

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Service of a copy of the within \_\_\_\_\_ is hereby admitted.  
Dated, \_\_\_\_\_

\_\_\_\_\_  
ATTORNEY(S) FOR

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PLEASE TAKE NOTICE:

NOTICE OF ENTRY

that the within is a (certified) true copy of an \_\_\_\_\_ duly entered in the  
office of the \_\_\_\_\_ clerk of the within named court on \_\_\_\_\_ 200\_\_.

NOTICE OF SETTLEMENT

that an order \_\_\_\_\_ of which the within is a true copy, will be  
presented for settlement to the HON. \_\_\_\_\_ one of the judges of the  
within named Court, at \_\_\_\_\_ on \_\_\_\_\_ 200\_\_ at \_\_\_\_\_ O'clock \_\_\_\_M.

Dated, \_\_\_\_\_

Yours, etc.

**WORBY GRONER EDELMAN & NAPOLI BERN LLP**