

0835wtcH hearing

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 In Re WTC Disaster Site Litigation 21 MC 100
4 Public Meeting

6 -----x

7 Queens, N.Y.
7 August 3, 2010
8 7:00 p.m.

9 Before:

10 HON. ALVIN K. HELLERSTEIN,

11 District Judge

12 APPEARANCES

13 NAPOLI BERN RIPKA LLP
13 Attorneys for Plaintiffs
14 BY: PAUL J. NAPOLI, ESQ.
14 MARC JAY BERN, ESQ.

15 WORBY GRONER EDELMAN LLP
16 Attorneys for Plaintiffs
16 BY: WILLIAM H. GRONER, ESQ.

17 SULLIVAN PAPAIN BLOCK McGRATH & CANNAVO P.C.
18 Attorneys for Plaintiffs
18 BY: NICHOLAS PAPAIN, ESQ.
19 MICHAEL N. BLOCK
19 ANDREW CARBOY

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1 APPEARANCES
1 (Continued)
2
2 McDERMOTT WILL & EMERY
3 Attorneys for Defendant WTC Captive Insurance Company
3 BY: MARGARET H. WARNER, ESQ.
4
4 PATTON BOGGS LLP
5 Attorneys for Defendants City of New York and contractors
5 BY: JAMES E. JOSEPH E. HOPKINS
6
6
7 AARON TWERSKI, Special Master
7 JAMES HENDERSON, Special Master
8 KENNETH FEINBERG, Special Master
9 MATTHEW L. GARRETSON, Allocation Neutral

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1 THE COURT: Good evening, everyone. Shall we begin?
2 Can you hear me in the back? I'm Alvin Hellerstein.

3 I'm the presiding Judge in the 911 litigation. I'm privileged
4 to be here and I thank all our hosts in the Eastern District
of
5 New York, Judge Dearie, Presiding Judge, the folks here at
6 Queensboro Hall, Queens Supreme Court, and all of you for
7 attending.
8 This is the second evening of bringing this
settlement
9 to all of you claimants who by your presence here show your
10 interest in more details to help you make up your mind. I'm
11 not here to persuade you one way or another. I'm here to make
12 sure that you have an accurate blend of facts so you can make
13 an informed decision for yourselves and for your families.
14 It is not an easy room to speak, we have a column
that
15 is staring us in the face as we face you, but I hope all of
you
16 can hear; and if you can't, raise your hands or stand up and
17 let us know that and we will make sure that you do hear.
18 The format will be very simple. You are going to
have
19 the plaintiff's lawyers, Mr. Napoli and his colleagues and
20 members of the Papain firm address you. They're your lawyers,
21 they're either your lawyers directly or they've been chosen by
22 your lawyers. They've been acting as liaison counsel in the
23 seven or eight years of litigation in this case. We met them
24 many, many times, they're very fine lawyers and they worked
25 very hard to bring about this settlement. They'll be followed
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1 by Matthew Garrettson who, under the settlement, is the
2 allocation neutral. The allocation neutral is a person
3 appointed by me with experience in administering settlements.
4 This settlement, as you will see in the evening and
5 I'm sure you'll understand, is a complex settlement. There
are
6 four tiers -- categories of plaintiffs -- ranging in
accordance
7 to the severity of the injuries they claim from 911 starting
8 from the least severe to the most severe. And the range of
9 recoveries is quite wide. For a plaintiff without any
10 objective sign of injury the recovery is at \$3,250. But more

11 than that, because many of these people fear that they will
12 contract some terrible disease, the settlement has with it a
13 paid up insurance policy, insurance ensuring against the forms
14 of cancer that have been associated with 911. And then they
15 range upwards with Tiers 2 and 3. Tier 4 is the tier with the
16 people who have been injured severely or relatively severely.
17 And there are various complexities and grades within that. In
18 a very real way the maximum settlement approaches \$3 million

if

19 I have my facts correct but there is a wide range even within
20 that group.

21 So, it is a complicated determination to know just
22 where you fit. There is going to be presentations this

evening

23 that will help you find out, but this is work that you have to
24 do with your lawyers.

25 Settlement letters have gone out explaining the
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all

and

you

you

1 settlement and explaining the various categories of recovery
2 and explaining how all of this is computed but in a general
3 way. And these, too, are documents that are many pages, so

4 of you need to have time to work this through in your minds

5 make sure that your applications come in asking for the most
6 that you may be entitled to.

7 After that, Matthew Garretson will tell you how he
8 will be computing this and calculating this and working with
9 you so you understand the recovery. If you don't like what

10 have, if you feel that you have not been given your rights,

11 have an opportunity for re-hearing and there is an opportunity
12 for an appeal built into the process, the appeal neutral being
13 Ken Feinberg. I'm hoping that Ken will be here a little later
14 in the evening. I think there have been flight delays coming
15 in from Washington.

16 That, roughly, is the settlement. All of this has to
17 be processed and the deadline for making your claims is
18 September 8. It is now August 3. There is about five weeks
19 that remain. Some of you habitually will wait until the last

20 minute. I urge you not to. I urge you to make your decision
21 one way or the other as early in the process as you can.
There
22 is an important reason for that. As soon as your claim comes
23 in, Matthew Garretson's people will be processing it. If
there
24 is some question or something wrong or something to discuss,
25 that will be brought to your attention promptly. That gives
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1 you an opportunity to correct what you've applied for and make
2 sure that you are in the best possible situation for
3 yourselves.
4 Checks will be going out, as Matthew will tell you,
5 almost immediately after this process ends. I think it will
be
6 in all of your interest to put yourself in position of
7 receiving these checks as early as possible. The earlier you
8 make the claim, the earlier you put yourself in that position.
9 As you know, I think, 95 percent of the plaintiffs
10 have to approve the settlement for this to become effective.
11 I will just say one more word and then we will hear
12 from the plaintiffs' lawyers.
13 As complex as this settlement is, it reflects the
14 intensity and difficulties of the case. Those of you who have
15 been following know that in the last year it began with an
16 extensive production of information that allowed the special
17 masters in this case, Professors Aaron Twerski and James
18 Henderson, to analyze the case and analyze the severity of
19 injuries raging from the slightest or the non-existent, to the
20 most severe and creating charts and graphs and rankings that
21 helped us understand the case.
22 That was followed by a discovery process of
23 depositions and other discovery practices that were occupying
24 the lawyers on various tiers. These were going on
25 simultaneously five and six days a week. They were leaning
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1 towards a making of motions that I would have to decide and
2 these motions were of largely unprecedented nature. I had to
3 decide whether the City was immune and its contractors were
4 immune because they were involved in a defense emergency. I
5 had to decide if the labor laws applied and to what degree
they
6 applied because this had to do with the burdens of proof.
7 I had to decide cases where the nature of the experts
8 and the identity of the experts had to be vetted before me.
9 Under Supreme Court decisions of Daubert and Kumho Tires and
10 others it is the job of the district judge to be gatekeepers
of
11 the evidence, to allow in only expert evidence that qualifies
12 the high standards that the Federal Courts set up in this area
13 and it would have been a very difficult question to know how
to
14 qualify the various experts that were needed to relate the
15 injuries to 911.
16 You know, it is not just before and after. That's
not
17 what causes proof. It has to be scientific and medical proof
18 that the disease which people complain of was contributed to
by
19 911. Everyone who worked on 911 feels that in a very
important
20 and dramatic way his or her health was affected by 911.
21 Whether the medical and scientific proofs will support that is
22 an open question and a very difficult question and one I had
to
23 decide.
24 Meanwhile, while all of this was going on, the
lawyers
25 were starting to work up the settlement and they produced this
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1 massive document which is in this loose-leaf book that is the
2 agreement of settlement. It was a great deal of work, arm's
3 length bargaining of a very intense nature while the
4 settlement -- while discovery procedures were going on and
5 making it unnecessary for me to deal with the motions.
6 Now, you have a decision to make: Will I go into the
7 settlement or will I not go into the settlement? Not an easy

8 decision and requires a mastery of a lot of difficult
9 information. Those who don't go into the settlement and if
the
10 settlement fails, all of you will next go into this motion
11 practice. How it will turn out I don't know. As a Judge, I
12 must preserve my independence so I can deal with questions and
13 with as free and open a mind as I can. I don't know how these
14 motions would be resolved and how they would be resolved would
15 affect the abilities of people to make recoveries at all. If
16 the City and its contractors win the cases over, they've won.
17 There are no recoveries. If the plaintiffs win, it is a
18 question of how much and to what degree. And then there is
19 appeals.

20 There have been two appeals already in this case, one
21 challenging jurisdiction and one involving the City's
questions
22 of immunity. Each appeal took approximately two years from
the
23 Second Circuit Court of Appeals and while those appeals were
24 going on nothing happened in these cases. So, out of the
seven
25 to eight years of litigation over four were taken up waiting

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1 for the appellate Court to act. When I decide, that will be
2 the beginning of the next appellate process. And, indeed,
3 except for the fact that the modified settlement came in,

there
4 are already appeals challenging my ability to review and
5 express approval of the revised settlement.

6 So, you have to consider that if these abstract
7 questions that went up took two years, how much will be taken
8 up by the resolutions of these cases, wins. And from that is
9 the question of the United States Supreme Court. There is no
10 question in my mind that anything having to do with 911 and

the
11 law issues that come out of 911 will be of intense interest to
12 the United States Supreme Court and that means another two
13 years at least for an appeal.

14 So, what we would be doing is considering a five-year
15 appellate process if this case comes to a legal resolution,
16 apart from the uncertainty of what that resolution is.

17 And then if there is no resolution in the case, there
18 are the jury verdicts and I don't know how we will structure
19 all of these cases. Presumably they'll be bellwether trials
20 leading to some results and maybe some discussions or renewed
21 settlements after that at lower numbers, higher numbers;

nobody

22 knows, nobody can predict, nobody knows the shape of what
23 juries will do.

24 So, that's what we face. I don't know if the lawyers
25 will be talking about that or not, but every one of you has to

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1 make up his or her mind: Is what I am presented with fair,
2 fair to me, fair to others, shall I go into it, shall I hang
3 back, shall I wait to see what others do, shall I say no.
4 These are questions that I hope we will help you answer in the
5 course of the evening.

will

6 I have all the lawyers here on the case. Not all
7 speak. We will try to move this along as fast as possible
8 because the most interesting part of the evening will be when
9 people in the audience will speak. That was the whole purpose
10 of coming here. We want to present our views and our mix of
11 information so that you can make as good and as fair a

decision

12 as you can. Some of you will have questions, some will have
13 complaints, some will have criticisms, maybe one or two might
14 think we did a good job. I don't know. But, we will hear

you.

15 The first speaker will be Mr. Napoli, plaintiff's
16 lawyer.

17 MR. NAPOLI: Thank you, your Honor.

is

18 Thank you, your Honor, for coming here tonight. It

in

19 not on every case or any case at least that I have been on
20 where you get the honor of having the Federal District Judge

21 charge of the litigation coming to such meetings and having
22 town halls to speak with the plaintiffs in the case.

23 I see out in the crowd many people that I know and I
24 have met with or have spoken to on the phone, but for those of
25 you who don't know me, my name is Paul Napoli and I'm the

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and

1 plaintiff's liaison counsel in the litigation and I helped
2 litigate the case on your behalf with my partners Marc Bern

police

3 Bill Groner and Andy Carboy and Michael Block, co-liaison
4 counsel.

when

5 And so, I'm here not only as liaison counsel but also
6 representing almost 9,000 individuals, fire fighters and
7 officers, who came to our office to help them on this case

has

8 no other firms would help prosecute this very difficult case.
9 And there should be no mistake about it that this case, unlike
10 any toxic tort case which in themselves are very difficult,

what

11 layers of complexity on it that's already resulted in three
12 appeals and two appellate decisions and in the end very well,
13 as his honor suggested, may have made its way to the U.S.
14 Supreme Court.

15 And without coming to the result, ultimate result
16 could happen when we get that far, I can tell you that process
17 is very long, very time consuming and very costly. Having
18 brought cases to that point to the U.S. Supreme Court I can
19 tell you it doesn't happen overnight. It first has the trial
20 court you deal with, then the intermediate appellate court
21 which is a number of years just on immunity motions for two
22 years, and then it can be easily another two years at the U.S.
23 Supreme Court if even certification is granted and that would
24 depend upon what those Justices decide.

who

25 So, I'm here representing you. Anyone who is here

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1 didn't -- doesn't get a chance to talk who wants to speak to
2 myself privately you can call me, you can e-mail me, you can
3 come to the office to meet me or myself or one of my partners

the

4 or colleagues will come to your house to meet you. We want to
5 answer all of your questions. What we are finding now that

6 process has begun is that people who are concerned about
7 certain issues or fears are taken care of once they've had the
8 time to speak with someone in our office and had it explained
9 to them.

10 Now, since the settlement was enacted and as you can
11 see and as you all know, I mean as reported widely in all the
12 newspapers, originally we brought to this Court to Honorable
13 Judge Hellerstein a settlement that we believe was a very good
14 settlement and Judge Hellerstein said to us, hey, it may be a
15 very good settlement but I think you could do better. And I
16 want to thank Judge Hellerstein because if it wasn't for Judge
17 Hellerstein we wouldn't have been able to get more money for
18 you on your behalf, get better benefits on your behalf. And
19 so, he put our feet to the fires, the plaintiff's lawyers and
20 he put the defendants' feet to the fire to get an amended
21 settlement agreement.

22 So, he made a good deal even better and I want to
23 thank him for that.

24 Most of you in our office would have received letters
25 by now. We sent out Tier 1 letters first, then Tier 2, Tier 3

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even

you

1 and then Tier 4. I would say about 85 percent of them are out
2 already, the rest will be out by the end of this week and you
3 will be receiving them. We've had on our website the letters
4 that you will be getting, the settlement agreement, all of the
5 exhibits so that you can look at that, see that, read that

6 before you got your letter and now when you get your letter

7 will see the range of values we believe you will get and the
8 money we believe you will get.

9 I want to touch on something before I get into the
10 Power Point for a couple of minutes about litigation versus
11 Congress versus settlement.

12 I have been litigating cases since I got out of law
13 school; that's where I met my partner, that's where I met my
14 wife -- in the court house trying cases. And I will tell you,
15 trying cases is fun, trying cases is great for the lawyer but

16 it is not something a client wants to go through if you can
17 avoid. Settlement is always the best option and most cases --
18 most cases -- settle on the court house steps or before you
19 even get to the court. It is those difficult cases that go to
20 trial and some are won and some are lost. So, if you can get
a
21 good settlement and avoid years and years of litigation and
get
22 the time value of money now, that's a good thing. That's not
a
23 bad thing.

24 And you will read in the newspapers, oh, there is a
25 settlement. That's terrible. Well, it is not terrible. A
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1 settlement is preferable than litigation. There is no doubt
2 about that. And you are hearing it from a guy who grew up in
3 the court house, second generation, trying cases. If you can
4 get a good settlement, that's better any day of the week than
5 sitting in a court and sitting in a witness stand and having a
6 jury decide what your fate is.

7 And what is great about this settlement process is
8 that you'll know it is not the jury in the box -- and it is
9 ironic because we are in the jury room -- it is not the jury

in

10 the box who decides how much money you get or if you get a
11 little, none or too much. It is going to be a process run by

a

12 neutral person who is going to assure that if you are part of
13 the settlement process, you're going to get the same amount of
14 money as the guy next to you if he has the same injuries and
15 meets the same criteria.

same

16 So similarly situated people are going to get the
17 amount of money.

18 So, between litigation and settlement, hands down it
19 is settlement and a settlement process which I don't get in
20 every case, you rarely get it in cases but we are lucky to

have

21 it in this case, a process that treats people the same.

22 So, let's talk -- there has been a lot of talk
23 about -- a lot of talk about Congress.

24 Now, my partner Marc Bern, he has been involved for
as 25 long as I know with talking to Congressmen, meeting senators
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1 not only on this case but other cases we have been involved
in. 2 We've had -- I hate to say the unfortunate opportunity to have
3 legislation on many cases we've been involved in. The Energy
4 Bill, other things.
5 And Mr. Bern goes down and lobbies and speaks and we
6 have done everything we can to help the Zadroga Bill along.
We 7 have helped write sections of it. We have asked Congress to
8 make changes to it. We have asked other people to ask
Congress 9 to make changes to it. And most recently we were able to get
10 Congress to amend the bill to say that if you participate in
11 this settlement, if you want to take money now and not wait to
12 see what Congress does, you can do that and if Zadroga ever
13 comes about, you can have the benefit of both the settlement
14 and the Zadroga.
15 Now, we hope and we are going to do everything we can
16 to try to push the bill again in September. And for those of
17 you who don't know, it failed last week on suspension vote.
18 So, right now there is no choice. There is no other choice.
19 And there is nothing worse than litigation than trying to get
a 20 bill through Congress. And the number of bills that
ultimately 21 get through Congress are very small.
22 So, you have no choice at this point.
23 Here, if you participate, you will most likely begin
24 to get payment depending upon what tier you are in in 60 days
25 if we meet that 95 percent threshold. And I will tell you, my
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1 partner and I have had cases with more than 5,000 people

before

2 and we always meet the threshold. We have never once not met
3 the threshold. And you hear negative stories sometimes in the
4 newspaper. It is one or two guys -- it is the same one or two
5 guys. Those are the people for what, who knows what reason,
6 they don't like wanting to settle, they want to litigate or
7 they want to wait to see what Congress is doing.

8 But here, now, you have a choice and the choice is
9 this settlement.

10 So, let me start and tell you a little bit about the
11 settlement. The settlement has substantial cash benefits.
12 Substantial cash -- there is \$712 million settlement. That's
13 substantial.

14 I now remember what I wanted to say.

15 We have gotten back already positive response. The
16 first packets went out about three weeks ago and it usually
17 takes about two weeks, but the time our return mail comes back
18 from the post office in return envelopes, we already have over
19 1,500 responses yes and we've gotten dozens and dozens more
20 calls on packages we have not received yet on people who said
21 they've sent them in. We've had very few to no, I'm not going
22 to take the settlement. And each of those people that say
23 that, they're welcome to come in and meet with us and talk to
24 us. There have been a few people who have said it, who have
25 spoken to our office and when they understand what the

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1 settlement is about, they're happy and they sign it. And
2 that's what we are trying to accomplish. We are trying to
3 educate you here so you understand what it is that you get out
4 of the settlement.

5 What do you get? Substantial cash, depending upon
6 where you are in the tier. You get other benefits, you get
7 this MetLife policy that takes care of you if you end up

having

8 one of the enumerated cancers. You get an efficient
9 administration. The whole process could be over within six
10 months to a year.

11 The litigation, we have already gone on seven years
12 already. We will be lucky if we have trials in all the cases,
13 if there is no settlement, 10 years from now.

14 So, you are going to have an efficient administration

15 which treats people the same and so providing guarantees
16 benefits now.

17 The compensation, some people say: Well, the
18 compensation for me isn't the right compensation. Well, the
19 compensation is based upon the severity of your injury and it
20 uses objective criteria from the American Medical Association
21 and American Thoracic Society and we use that criteria to see
22 where you fall. It is objective, it is not subject to
23 subjectivity. Not everybody fits in it. And if you don't fit
24 in it, you will talk to us and we will talk to you about it.

25 At the fairness hearing there was a gentleman who
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1 stood up and said it didn't fit him. And he was right, it
2 didn't fit him, he was an orthopedic case and these are for
3 respiratory injuries. So, we are able to deal with those
4 circumstances.

5 The cap that is paying certain costs and fees on the
6 administration of the settlement, they're helping to get it
7 done. We got them and with the Judge's help we got them to

pay

8 the cost of Mr. Garretson.

9 All Workers' Compensation liens from the City of New
10 York and Liberty Mutual for those of you who have workers'
11 compensation are waived, so any money you would owe them under
12 the law does not have to be paid back. That never happens in
13 an ordinary personal injury case but we were able to get one
14 better with his Honor's help. We were able to get them to
15 continue to pay benefits and that never happens.

16 So, instead of taking a portion of the money, paying
17 back the lien and stopping payments, we were able to get the
18 lien extinguished and allowed to keep the benefits flowing.

So

19 you will still get your Workers' Compensation and you'll get
20 your personal injury settlement and you won't have to pay back
21 the lien. I can tell you I have never seen that happen in any
22 other litigation.

23 Those people on disability, fire fighters and police
24 officers, it will not be affected in any way. You will
25 continue to get those benefits. If you aren't disabled at

this

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1 point and in the future you are afraid of being disabled, you
2 can still apply for disability in the future. This settlement
3 will not affect your ability to apply for disability three
4 quarters in the future. These things don't happen.

the

5 If you are receiving medical benefits under the WTC
6 monitoring and screening and treatment program or at any of

7 centers of excellence, you will continue to get those
8 medicines, those treatments. This will not affect that in any
9 way. That's a benefit you don't see in any other type of
10 personal injury settlement.

11 Now, I could go on and on and I'm sure if any of you
12 take advantage of my offer to come meet with me or to call me
13 on the phone or for me to come to your house, I will do that.

allocation

14 I can tell you more and more, but I really want to
15 pass off to Mr. Block and then to Mr. Garretson, the

16 neutral, and he will tell you a little bit about the process.

17 MR. BLOCK: Thank you, Paul.

18 For those of you who don't know me, I'm Michael Block
19 from Sullivan, Papain, Block, McGrath & Cannavo and we
20 represent about 700 plaintiffs in this case, most of whom are
21 fire fighters and fire officers although we have some police
22 officers and the construction workers as well. We have been
23 counsel for the fire fighters union for about 30 years so that
24 explains our connection with them.

25 I am here just to speak briefly about a point that
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1 Paul made but I think it deserves repeating.

2 Many of our clients during this whole process have
3 expressed concern that, gee, if the Zadroga Bill is passed,
4 will I be able to both settle the case and go to the different
5 compensation fund that may be reconstituted under the Bill.
6 And up until very recently, unfortunately we were only able to
7 say we doubted it. There was nothing in the settlement that
8 prevents it but it was quite likely under the unamended

9 provisions of the Bill that you would be precluded from going
10 to the fund if you took the settlement here.
11 Of course, the Bill is not law and last week we all
12 know it did not pass, but we were able to have an amendment to
13 the proposed Bill that specifically said that it is related to
14 this lawsuit, that as long as you get your settlement papers
in
15 before the Bill is enacted into law and if you settle the
case,
16 you can still go to the victim compensation fund, whatever
17 money you got in this case would be deducted from the fund
18 award but the concern that you would be somehow losing money
by
19 taking the settlement -- that you would be losing money from
20 the fund no longer is a valid concern. You will still be able
21 to do both and that worrisome issue has been eliminated.
22 We don't know if the Bill is going to pass. We don't
23 know what will happen in Congress in September. Hopefully
they
24 will pass the Bill. It is shameful that the health benefit
25 portion of the Bill is being held hostage, that the victim
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1 compensation portion of the Bill is being held hostage, and
2 that you are being deprived of benefits you deserve, but
that's
3 a political issue that we don't have any control over.
4 But, certainly, if the Bill passes you will not be
5 prejudiced by settling this case. You will only be helped.
6 So, I strongly recommend that you don't consider that
7 issue any longer, that it is a benefit to you and that you can
8 go to both places and you no longer have the worry that you
9 will be precluded in any way.
10 Thank you.
11 THE COURT: Thank you, Mr. Block.
12 The next speaker will be Matthew Garretson. Matthew
13 Garretson is the CEO of the firm that is involved in
14 administering settlements, administering multi-party
15 settlements. He has developed a national reputation for this
16 work and we are very pleased that he will be doing this work
17 for us in this case.
18 MR. GARRETSON: Thank you, your Honor.

19 I'm Matthew Garretson, as Judge Hellerstein
20 introduced, and I will speak very briefly tonight. I know now
21 that most of the people in this room have received their
22 packages and so some of this could be repetitive, and so I'm
23 going to condense it and then be of course available for
24 questions as we go.

25 A little bit about our firm. We have been doing this
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1 for over a decade, we have done it across dozens of cases. We
2 have processed well over 100,000 cases and seen them through
to
3 payment. We have worked on large complex cases involving tens
4 of thousands of people and we have worked on very sensitive
and
5 emotional matters like the clergy abuse cases throughout the
6 country or civil rights settlements.

7 And so, my point in sharing that with you is in this
8 process you are more than just a number and I think you will
9 see that here, is it is a very personalized process that
10 incorporates the exact harm and injury that you've uniquely
11 experienced.

12 Also, a little bit about the compliance. Our role,
as
13 you have heard repeated probably several times now, is to be
14 the objective, to be the neutral facilitators of the
settlement
15 process agreement. What that means is we're going to be --
16 this isn't a program where you have to worry about advocating
17 for yourself every step of the way. We're going to be pulling
18 in objective data from your medical records, from your
19 employment history and work verification.

20 And so, we will utilize that objective data and apply
21 it to the predetermined settlement process agreement. It is
22 going to be very systems driven. There is a lot of technology
23 behind that. It is not my intent today to show you all this
24 technology, only to the extent, though, that it shows you how
25 we are going to be able to do this quickly because getting
this

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1 done quick and fair is our number one priority.

2 One thing I will share with you is having done dozens
3 of these programs, sometimes people make them far too
4 complicated in order to move money.

5 Now, the document that you have seen, the settlement
6 process document is a large document and it has got a lot of
7 complex math in there. But, if I boil it all down to you I

can

8 tell you throughout the country dozens of settlement programs,
9 this one is very unique and there are certain attributes about
10 it that I think are important for you to understand.

11 Number one is that it moves money very quickly. I
12 will show you how that occurs but I can tell you from
13 experience that some settlement programs have taken years to
14 get money to the hands of the deserving claimants. This is

not

15 one of those settlement programs.

16 This program provides a unique cancer insurance
17 policy. There has not been another settlement program of this
18 scope that has involved a product like that and I think it is
19 very well considered. And from the people I have spoken to

and

20 the comments I have heard, it addresses some very critical
21 concerns.

22 I also think this is a unique program because if at
23 any moment in the process you feel we've made a mistake, that
24 we have not said -- or we've not done what we said we would

do,

25 we have not considered the records that we have been called to
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1 consider, you can ask us to reconsider, which of course we
2 will, and if you are still not satisfied that we have done our
3 job correctly, you may appeal our findings to Ken Feinberg,

the

4 claims appeal neutral.

5 This process is also unique in that every piece of
6 correspondence produced by your attorneys or by us is blessed
7 by a leading ethics professor. I can tell you that that's

8 another unique quality and why I like that is it ensures that
9 what you are being told by us is boiled down in the simplest
10 most direct, most easy to understand manner.

11 And I know if you have seen the dialogue or the
12 documents on this it is, again, it is a lot of information to
13 comprehend.

14 The other thing that is unique about this is we are
15 going to show you a tier system, a point system. Why that's
16 unique is before you sign a release, before you opt into the
17 settlement program, you will know how you will emerge on the
18 other side if all the information that's provided to us is
19 correct.

20 What's unique about that is you are not being asked
to
21 submit to a process where you have no idea what findings we
22 will make. Your lawyers are in a position now to tell you
what
23 your settlement should look like if you choose to participate.

24 And I will also tell you that the waiver of liens,
25 that comment you heard Mr. Napoli make, is unheard of.

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1 What a lien is, and they can consume sometimes the
2 entire settlement for claimants. Under the law when somebody
3 receives a settlement, the person who has been paying for

their

4 health care, the entity that's been paying for their health
5 care from the date they're injured to the date they receive
6 payment, that entity, whether it is Medicare or Medicaid or
7 your private insurer or workers' compensation, has a right to
8 be paid back. And I can tell you from experience they never
9 back down.

10 They backed down here and agreed to waive their

liens.

11 That is critically important.

12 In the Vioxx settlement program alone there was

37,000

13 claimants, plaintiffs like you, who received payment. We
14 resolved nearly 60,000 liens against those 37,000 individuals'
15 settlement payments. So, this is a very real benefit.

16 You can't see that I'm sure from where you are at and
17 even if you are up close you would say it is far too much

18 detail for one slide, but here is what is important about it:
19 People often ask when they see a settlement program, they say,
20 how long will this take and how are you going to get it done?
21 And I can assure you that this is going to be done in a step

by

22 step way.

23 And you will see, if you can see the colors on here,
24 again all this information as well is available on the Court's
25 website from the fairness hearing as well as your attorney's

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is

1 website, but what you see there are a bunch of arrows. What

2 important to see is that the horizontal line -- or I'm sorry
3 the vertical line going up shows a final settlement agreement
4 effective date of September 30th.

5 This line here shows that within 20 days within that
6 settlement agreement effective date everybody will receive an
7 initial payment. We will begin to process checks within 20
8 days of the settlement agreement effective date. That date
9 cannot occur, at the earliest, until September 30th.

of

10 Then, for people in Tier 1, 2 and 3, within 70 days

final

11 the settlement agreement effective date, the accelerating

12 payment will begin to occur. So, that means for the people in
13 the first three tiers -- and I will drill down just a little
14 bit more on that in a moment -- they will completely begin --
15 they will begin to receive final payments. They will have

been

16 completely processed through this settlement program beginning
17 70 days after the final settlement agreement effective date.
18 So, that's Tiers 1, 2 and 3.

19 Tier 4 involves a point system and I'm going to just
20 show you one example of that. I'm going to show you how we
21 apply it. But, for the people who are in Tier 4, they also
22 receive that initial payment within 20 days and then within

180

23 days they will receive an estimated 40 percent of their total
24 award. And the reason it is 40 percent is we use this point
25 system, we've got to assign all the points to all the Tier 4

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1 claimants and then convert those points into dollars and so we
2 have to make an estimate. But what we are not going to do is
3 wait until we are completely done. Once we get through enough
4 of the cases, about 40 percent of the cases, we will be in a
5 position to make in term payments that represent about 40
6 percent of an individual's final award.

bottom

this

that

7 And then the other important green arrow at the
8 says that final distributions can occur within one year of
9 settlement program beginning. And I know that sounds like a
10 long time, but I assure you there are no programs -- if you
11 look across settlement programs, it is few and far between
12 payments can be made to everybody in the program within one
13 year.

14 A real quick point on how we will review your medical
15 records.

lawyers

16 We have 130 employees, 65 additional nurses and 14
17 medical practitioners from Harvard University serving on the
18 medical panel that will be working to process your claims.
19 Those individuals who will be reviewing are people with
20 experience in finding the proof, if you will, that your
21 submit to us. If we have questions, if something is not
22 crystal clear, we are going to escalate it up to a panel of
23 Harvard medical professionals, medical doctors, who will help
24 us to interpret the medical records.

25 And, as I said, this is a very objective process. We
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find

participate.

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1 are not just looking through the medical records to try to
2 what we can find. There are only certain categories of
3 injuries, as you know by now, that are eligible to
4 They're listed up here. I won't go through them all but as

you

5 know, chronic obstructive pulmonary disease, interstitial lung
6 disease, asthma or RADS; cancer, upper digestive. There is a
7 list of qualifying injuries.

point

8 We will then look through the information provided to
9 us in your claims form or in your medical records and we will
10 make adjustment factors to those. These, again, I should
11 out, are the adjustment factors for the Tier 4 people. I will
12 show you that again in a moment but we are going to adjust

them

13 for pre-existing injury. We will make adjustments based on
14 age, secondary qualifying injuries, location of the exposure,
15 smoking history, if any.

or

16 We will also make additional payments to individuals
17 who have had a qualifying surgery, a mixed orthopedic injury

18 who have been declared permanently disabled.

19 So our job is to -- again, and Mr. Napoli said this
20 term and it is the golden rule when it comes to settlement
21 programs of this size and scope -- and that is to make sure
22 that similarly situated people are going to receive similar
23 wards.

three

24 And so, the way this is being accomplished, with the
25 risk of being repetitive, there is four tiers. The first

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within

1 are going to receive those fast, fixed payments and will begin
2 to be completely processed out of the settlement program

3 70 days. Tier 4 are those injuries that are the same
4 categories but many of them are at the most severe end of the
5 spectrum. Those individuals are the ones who will receive the
6 initial payment, they'll then receive an in-term payment that
7 will represent about 40 percent of their estimated award,
8 within approximately 180 days.

9 Already your lawyers are providing information to us.
10 We have all the information they have available for their
11 claims forms. We are beginning to gather medical records. We
12 are reporting to your attorneys today if there is any missing
13 information. Sounds like an obvious point. I wanted to bring

14 it up to you because it is quite unique in that we will be --
15 we are not going to wait six months from now and then come
back
16 to you and say: Mr. Jones, we need your work verification
17 document or we need a pulmonary function test document. We
are
18 already communicating that to your lawyers if there is any
19 deficiency.
20 Why that is important to you is we are going to
21 process all claims on a first-in and first-out basis. So,
what
22 we are working hard to do now is to let your attorneys know if
23 we have everything we need to begin. And once we do, we will
24 go tier by tier, meaning we will begin each tier at the same
25 time but within each tier the people that are in first with
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1 complete files will be processed first.
2 A little bit about the payments and then I will give
3 one example and then I will conclude.
4 The claims review and evaluation process, it
basically
5 goes as follows: We are, as I mentioned, telling your
6 attorneys if we have everything we need to begin. That
process
7 has already started. We will begin work as soon as we have a
8 complete file. We will be looking at work verification, we
are
9 going to review the records submitted by your attorneys. We
10 are going to be reviewing the claims form submitted by your
11 attorneys and you will have the opportunity to review that in
12 advance, to ensure that we're reviewing the same information
13 you believe we should be reviewing.
14 We will apply adjustment factors which I will
15 demonstrate. We will look to see if there is permanent
16 disability. We will also look for qualifying surgeries and
17 mixed orthopedic injuries, and we will also look for
derivative
18 claims, claims of spouses that are also signing releases.
19 The payment program is as follows:
20 Tier 1 receives an initial payment of \$3,250 within

20

21 days of the settlement agreement effective date, and if you
22 recall that's September 30th -- the earliest it can be is
23 September 30th of this year.

24 THE COURT: Which means by mid-October they receive
25 checks.

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1 MR. GARRETSON: Yes.

2 Tier 2 will also receive the \$3,250 payment in the
3 same time frame and then the accelerated final payments that

we

4 estimate to begin within 70 days.

5 The accelerated final payments, I know this is a lot
6 of small print, but for Tier 2 they receive, if you are in the
7 MC 100 docket, an additional \$4,250. For Tier 3 an additional
8 \$7,750.

9 So, those are the first three tiers and all of those
10 also have a cancer policy they receive in addition to those
11 payments.

12 Tier 4, again, the initial payment of \$3,250, the
13 interim payment of 40 percent within approximately 180 days

and

14 we will look to have the final distribution for all those Tier
15 4 claimants -- plaintiffs -- complete within one year of the
16 September 30th start date.

17 Now, that is all dependent on how many
18 reconsiderations we receive and how many people of course
19 appeal to the claims appeal neutral Mr. Kenneth Feinberg,
20 because we can't finalize payments until we process all those
21 appeals. But, we believe it can be done within one year.

22 How the point system will work for the Tier 4
23 plaintiffs:

24 So, I think I have explained it -- at the risk of
25 beating the horse too much Tier 1, 2 and 3, fixed payments.

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1 Tier 4 is on a point system because those injuries are more
2 complex to evaluate under the settlement program.

3 We will first look to identify your most highly
valued 4 qualifying injury and severity level, that's highest value
5 under the predetermined factors in this settlement program.
We 6 will then assign base points to that.
7 So, every injury in this settlement program for Tier
4 8 plaintiff has a point value assigned to it and that's already
9 been done and those are available for you to review. They're
10 in the exhibits to the settlement process agreement, your
11 attorneys have them, they're on the Court's website, they're
on 12 your attorney's website.
13 We will then make additions and subtractions to that
14 and we will -- which I will show you an example, and then we
15 will publish that back to you. We will also estimate for you
16 what that means because people don't want points, they want
17 dollars, so I'm going to estimate for you what that award
value 18 will be. You will then have the opportunity to accept it,
19 submit a reconsideration to us or, as I said, appeal it to
20 Mr. Feinberg.
21 So, let me give you one example and then I will be
22 available for questions.
23 This is an example of interstitial lung disease
24 impairment level 2.
25 THE COURT: People are not going to be able to see
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1 past the middle.
2 MR. GARRETSON: I will describe it in very general
3 terms.
4 The interstitial lung disease impairment level 2 just
5 happens to receive 60,000 points. Again, every injury has a
6 predetermined base point value.
7 We then look to see how soon after 911 the injury was
8 first diagnosed. Here, this disease was diagnosed within
seven 9 months so there is no adjustment done to that 60,000 points.
10 Next we adjust for age. This individual on this
11 sample case is 55 years old and we make a decrease of 10

12 percent to the base points. And let me just pause to say
every 13 settlement program that I'm aware of makes an adjustment for
14 age. It is not to imply that people who are older are somehow
15 less valuable. The point is, when you are dealing with
16 debilitating diseases and injuries, it is recognized under our
17 civil justice system and the way in which awards are made that
18 the longer you have to live with that injury, that triggers
19 most of the time more compensation because you are living with
20 the injury for a greater period of time.

21 Here, if you are within age 35 to 45 as of 9/11,
2001, 22 there is no adjustment for age. If you are under age 35 on
23 9/11, 2001, there is a one percent increase for every year you
24 are under age 35. And there is a one percent decrease for
25 every year you are over age 55. And then, as this example

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1 shows, there is non-smoker no effect. And then, based off the
2 duration of the exposure and the last day of exposure, there
is 3 no effect to the points.

4 So, on this example there is 54,000 points as the
5 final point score. We already can project that a point will

be

6 worth between \$7.52 and \$9.19, and because of that that gives
7 us a total value award for this interstitial lung disease
8 impairment level II, we take the 54,000 points, multiply them
9 by those two numbers to get a range, and we can already
10 estimate that this injury would receive between \$406,000 and
11 roughly \$500,000.

12 And then, as I mentioned, after we go through this
13 adjustment process for every Tier 4 award, we also look for
14 whether they had a qualifying surgery. In this example the
15 plaintiff had a single lung transplant and so there is an
16 additional \$100,000 awarded. They also received additional
17 compensation because they had been granted a permanent
18 disability by a review board.

19 And so, on account of that, with those ranges, this
20 example will receive between \$531,000 and \$627,000.

21 Let me just go back to another point I began with and
22 then I won't go through other examples.

23 What I hope you will see in this, and you should be
24 receiving this information in your packages already from your
25 attorneys, is we are able to tell you where you will come out.

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1 What that depends on, what the range depends on, how many
2 points are ultimately awarded and it depends on us getting the
3 information in-house that demonstrates you had the injuries
4 that your attorneys have told us that you qualify for. But
5 what is unique about it, as I said in the beginning, is you
6 will know all this information prior to your signing a release
7 and willing to participate in the settlement program.

8 So, that's one example. I have many others. I don't
9 think I need to go into them because by now I think you are
10 getting a hang of this from what your attorneys have provided
11 to you.

12 I will end with one more statement which is I think

it
13 is important for everybody to understand if you believe we

have
14 made a mistake, we will reconsider it. This isn't going to be
15 something we just tell you here is our findings, take them or
16 leave them. Once we go through that redetermination process,
17 Mr. Feinberg has agreed that he will hear anybody's appeal

that
18 believes we have made a mistake in our process.

19 So, with that, I thank you. I know it is a lot of
20 information. I will be here for the entire program and if
21 somebody has questions, I would be happy to answer them at

that
22 time.

23 THE COURT: There is a question here.

24 Yes, sir. Yes, sir.

25 MEMBER OF PUBLIC: What means the 40 percent of the
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1 pool?

2 THE COURT: Can you stand up please and let me hear?

3 Say it again.
4 MEMBER OF PUBLIC: What means 40 percent of the pool?
5 THE COURT: Yes.
6 MR. NAPOLI: I have a couple things. I might be able
7 to address his question. I understand his question.
8 THE COURT: Go ahead.
9 MR. NAPOLI: And I had a couple of things but I will
10 start with this one.

11 What Matt was talking about, FIFO -- first in first
12 out -- that when on an actuarial basis or accounting basis or
13 in determining the value of a point, statistically they can
14 figure out the value of the point after they review 40 percent
15 of the claims, they have enough confidence that they can
16 predict what the value of the other 60 percent will be.

17 So, when Matt talked about first in first out, he is
18 talking about -- and that it is important to get your claim
19 form in first -- is that those people who have their claim
20 in first up to that 40 percent is when they'll be able to
21 distributing and know who to distribute to 40 percent of the
22 value.

23 So, it is important that you get it in sooner rather
24 than later so you can be in that first interim payment and not
25 have to wait longer for the final payment.

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pick 1 But, there are four quick things I just wanted to
2 up on that Matt said that I think it is very important for
3 everybody to understand.

4 First, not only did workmens' compensation waive but
5 Matt was able to negotiate with Medicare and Medicaid with us
6 and we got Medicaid and Medicare to waive completely any
claim.

7 So, if you are on Medicaid or on medicare, those benefits will
8 continue, they are not affected, they will be uninterrupted,
9 and in the future this settlement won't affect your
10 eligibility.

11 Second, that sometimes goes without saying but it is
12 important to understand, there is a specific IRS regulation
13 that exempts personal injury awards from taxation. So, the

14 money you receive is tax free. There is no taxation except in
15 some circumstances where there is an estate or a death
16 involved. But if it is not a situation with an estate or a
17 death, the benefit is tax free so it is tax free money. You
18 don't get that benefit too often unfortunately in the United
19 States but this is one of those circumstances.

20 Also, the MetLife policy is not only given to those
21 people who have no cancer but also to people that don't have
22 any of the enumerated cancers. So, if you have one cancer but
23 not one of the listed, you are still eligible for the MetLife
24 policy.

25 You can't get health insurance sometimes when you
have

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1 a prior injury but here you are able to get the benefit of the
2 disability policy, the cancer policy even if you have cancer.

3 So, I thought it was important to say those things.

4 One last thing is that for many of you this is a
5 partial settlement. There are other defendants that are out
6 there, office workers who worked offsite in 102 and 103, there
7 are other defendants that we're actively pursuing and we
8 believe ultimately we will get a recovery. If you were on

site

9 and the Port Authority were sued or you worked on the piers

and

10 the barges or at Fresh Kills there were additional defendants.
11 So, those monies will be in addition to this whether it is by
12 litigation or hopefully by settlement. And we are actively
13 working on closing those defendants and trying to get
14 recoveries from them.

15 So, I'm sorry to interrupt, but I thought it was
16 important to make those points.

17 THE COURT: Thank you.

and

18 Any other questions? First we will take questions

19 then we will have comments.

20 Sir, you're next.

21 MEMBER OF PUBLIC: You mentioned something about the
22 MetLife insurance. According to this thing it says you get a
23 hundred thousand dollars if you get certain kind of cancer but
24 it turns around in the policy, right here it says for first

six

25 policy years that it can drop to anything that MetLife wants.

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1 THE COURT: Not exactly, but Mr. Bern will answer --
2 Mr. Groner will answer that question. Mr. Groner is a partner
3 with Paul Napoli.

4 MR. GRONER: Hi.

5 The deal that we structured with MetLife is
6 essentially is that they promised, and it is contractual, to
7 take X percent of the premium and I believe it is something
8 around 84, 85 percent and they're going to continue the term

of

9 the policy until all of those monies are paid out.

10 So, but for a small profit charge and their
11 administration costs, they're going to keep extending the
12 benefits. So after the first six years they will look and see
13 what their experience is, how many claims they've paid. They
14 will then determine whether or not the next term will be

either

15 \$50,000 or \$100,000 and then every several years thereafter
16 they'll keep looking at how much money they have left and they
17 will determine for the next policy term how much the benefit
18 will be, but the benefit will be continuing until all of those
19 funds are extended and paid out.

20 THE COURT: Let me go over this again.

21 If you, God forbid, come down with one of the listed
22 cancers within six years from the policy date you get how

much?

23 MR. GRONER: You get \$100,000. The only exception
24 would be that if you were a smoker there would be no coverage
25 for respiratory cancers. You would get it for leukemia or the

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1 lymphomas.

2 THE COURT: If you become sick after the six years,
3 MetLife can void the policy only if a certain return from its
4 premiums is not obtained.

5 So, explain that again.
6 MR. GRONER: So, at the six year juncture they will
7 look and I believe they are contractually obligated to
continue
8 for the next term and the most they can reduce the next payout
9 would be to \$50,000.
10 So, the range on that second term would be between
11 \$50,000 and \$100,000 guaranteed. And the succeeding terms
12 after that --
13 THE COURT: So, in other words, if the claims in the
14 first six years were great, the recovery after that is less.
15 If the payouts are less or the investment income makes up for
16 it, MetLife is guaranteed a certain return as a condition of
17 keeping up with the policy. But, in no event, can that basic
18 policy be reduced to below \$50,000.
19 MR. GRONER: During the first and second term. At
20 some point --
21 THE COURT: Which goes how long?
22 MR. GRONER: It would go until all the funds are paid
23 out. They will continue to provide policy benefits until
their
24 funds are paid out minus their administration and profit
25 charge.

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1 THE COURT: In practical effect this extends the face
2 value of the policy for a substantial period of time and will
3 cover, I think, most of the risk that most of you might
4 possibly come down with.
5 This is an improvement over the first set of policy
6 terms. Again, as everything else in the policy everything
else
7 in the case, there are limits. It is not a perfect solution.
8 It is a substantially good solution.
9 There is a question here.
10 Sir?
11 MEMBER OF PUBLIC: Patrick J. Arsees, construction
12 worker, World Trade Center, approximately six months.
13 I came down with cancer 2003, I almost died. Went
14 down from 240 all the way down to 128 pounds, radical surgery.
15 Now they think it is going into my kidney.
16 Great Judge. Great Judge, everybody. I met him on

17 the 25th of June at the Federal Court.
18 It says right here all liens, all right? If you
19 receive Worker's Compensation, Medicaid and/or Medicare, the
20 World Trade Center has the right to retrieve any medical bills
21 that you -- in other words, all the medical bills put
together,
22 they're going to take it right out of the settlement.
23 THE COURT: That's normal case --
24 MEMBER OF PUBLIC: I got the package, Judge, and I
25 signed off on it after speaking with you.

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1 A great judge. I commend you for what you did. All
2 right?
3 THE COURT: I will tell my wife.
4 MEMBER OF PUBLIC: All right? Buy her a nice car.
5 THE COURT: What is the situation with the World

Trade

6 Center -- we haven't had a settlement yet with the --
7 MEMBER OF PUBLIC: I signed off on it on the 27th. I
8 met with you on the 25th.
9 THE COURT: Mr. Napoli, do you want to respond to
10 this.
11 MEMBER OF PUBLIC: Thank you.
12 THE COURT: Who is your lawyer, sir?
13 MEMBER OF PUBLIC: Ryan S. Goldstein.
14 THE COURT: Is he here?
15 MEMBER OF PUBLIC: I believe he was in Staten Island.
16 There was a meeting in Staten Island?
17 THE COURT: Is he here?
18 MEMBER OF PUBLIC: He might have went to a ball game
19 tonight.
20 THE COURT: The first person to talk to about this is
21 with Mr. Goldstein, your lawyer. And if we can answer that --
22 I don't know, do any of you want to respond to the question?
23 Yes.
24 Mr. Groner?
25 MR. GRONER: Who has the lien?

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1 MEMBER OF PUBLIC: Do you want the papers, sir?

2 MR. GRONER: No, I understand. I believe that's what
3 it says. Who has the lien?

4 MEMBER OF PUBLIC: It says if -- I didn't get
5 workmens' comp. I didn't apply. I was too sick and in the
6 hospital, okay? I didn't have enough energy to fight. I

wound

7 up getting Social Security Disability.

8 Radical surgery, the whole nine yards. The cancer
9 doctors saved my life, great doctors. Okay? Kept me alive
10 this long. I went right back in the hospital after I was in
11 court. Catheterization, I had it taken out yesterday. Okay?
12 I'm urinating blood. I had it removed from my body to come
13 here. After I'm done, I'm going to go back.

14 THE COURT: So who is asserting the lien against you?

15 MEMBER OF PUBLIC: There is no lien. It says if you
16 received --

17 MR. GRONER: If I can, let me answer that question.

18 MEMBER OF PUBLIC: Right here. If you receive
19 workmens comp, Medicare.

20 MR. GRONER: My sense is your lawyer was just writing
21 a letter to protect what the possibilities are not knowing yet
22 the status of the negotiations with different entities that
23 hold liens, so let me share that with you because that is an
24 excellent question that everyone will want to know.

25 As of today, certain entities who have liens, whether
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1 they're workers' comp or otherwise, have waived them.

2 MEMBER OF PUBLIC: I don't know if I have liens,
3 but -- I mean I have liens but medical, for those bills.

4 MR. GRONER: If those entities are claiming that you
5 owe them back, thus far the City of New York, Liberty Mutual,
6 Medicare, Medicaid we believe, has agreed to waive those

liens.

7 We're in active negotiations with all other lien holders to

get

8 them to waive their liens or to dramatically reduce their
9 liens.

10 MEMBER OF PUBLIC: Okay.

11 MR. GRONER: So that the funds from this settlement
12 will go to you and not --
13 THE COURT: I don't think we can get into a detailed
14 question and answer with respect to a particular claim.
15 MEMBER OF PUBLIC: All right.
16 THE COURT: We will be around afterwards and will try
17 to respond to you.
18 MEMBER OF PUBLIC: I'm a little nervous if I get
19 \$600,000 I got another \$800,000 worth of bills.
20 THE COURT: Let me explain what a lien is and how it
21 works.
22 If someone advances medical expenses for you, that
23 person has the right to get it back if you recover money that
24 takes into consideration the medical expense that you
incurred.
25 If I get sick and I have a medical claim for
\$100,000,

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1 that's part of the recovery that I get. Under the law if
2 someone else, some insurance company, for example, has
advanced
3 payment of those medical claims or has made payment to those
4 medical claims, it has the right to get that money back when I
5 recover money.
6 If I were in an automobile accident and I sued and
7 meanwhile someone has paid my medical bills of \$50,000 and I
8 recover \$100,000, that's someone who has advanced my medical
9 expense of \$50,000 and you get it back. And you get a lien on
10 future work as well and future payments as well.
11 So, we're concerned about this, every dollar that
12 every person has to pay out, that's less of a net recovery.
13 What we have to do is to negotiate with the people who hold
the
14 liens. There are a lot of companies that hold liens, among
15 them the City of New York, Liberty Mutual, New York State
16 Insurance Fund, New York Liquidation Bureau -- failed
insurance
17 companies -- Charters Insurance of AIG, Zurich American
18 Insurance Company, Consolidated Edison of New York, New York
19 City Transit Authority, American Building Maintenance and many
20 others. It is a very complicated business.

21 I can tell you that the City of New York and Liberty
22 have agreed not to assert their liens. That means if -- it is
23 those two entities that advanced you money or agreed to pay
you
24 more money, you will not have to pay that money back. Other
25 companies are negotiating and those negotiations continue.
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1 They're very difficult negotiations because the law protects
2 those insurance companies. We will do our best.
3 Mr. Napoli, Mr. Groner, Mr. Papain, Special Masters
4 Twerski and Henderson, this is an ongoing negotiating process.
5 I can't give you any more information than that. If
6 you have more questions afterwards we will be glad to say.
7 MEMBER OF PUBLIC: I agreed. I signed off it. And I
8 hope everybody else signs off on it because this will go on
9 until we're all dead. And if you die you won't see a dime.
10 You're done. I promise you that.
11 THE COURT: A question there.
12 MEMBER OF PUBLIC: Your Honor, similar to the
13 gentleman here I have a document I would like to go over
14 quickly.
15 My name is Kevin Nagle, I'm a retired lieutenant and
16 currently an attorney at law in New York State -- not by
choice
17 but because the City didn't protect me after 9/11 I got lung
18 disease. Okay, Judge?
19 I just want to go over my 50(h) hearing which was
held
20 on April 9th, 2007. An attorney thought it was appropriate to
21 tell my attorney that: You really are a silly, petty little
22 man. To which the response was: I hope that's on the record.
23 Can you read back the last question? And it was read back to
24 make sure that they got it right in the transcript, Judge.
25 My concern when I look at the transcript, it is 210
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1 pages, it seems a bit possibly on the excessive side but it

was

2 a big event.

3 I know we looked at the plaintiff's side extensively
4 in the course of this negotiation, it went from a larger
5 number, they changed their fee, whatever, somehow or another
6 they're taking a little bit less of a percentage on basically

a

7 bigger piece of money, I think they actually are cutting what
8 they're making, but have we looked at things like this in

terms

9 of the defense costs? How much the City took from the Federal
10 government to defend this. And now I know the horse is out of
11 the barn, these private law firms are paid but, Judge, I call
12 on you to take a look at how we were treated in this process

by

13 the City. Okay? And the other defendants who used these
14 contract attorneys and ask, is that appropriate and is there
15 some way that those defendants who weren't monitoring what was
16 going on or knew what was going on and allowed that to happen,
17 should be made to pay a little bit more? And I'm not saying

to

18 put it in my pocket, your Honor.

19 The people that really hurt me the most are the
20 deceased members.

21 THE COURT: I think I have got your point.

22 The gentleman complains about the treatment in
23 depositions.

24 This is not an issue that we have to deal with now

but

25 let me comment just a bit on this.

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1 The discovery process, depositions, is an adversary
2 process. One side presents the witness, the other side
3 examines the witness. Sometimes examinations get into
4 cross-examination and sometimes the cross-examination

questions

5 are not the most delicate questions in the world.

6 I wish I could get back all the misstatements I have
7 made and the excessive statements I have made in the course of
8 the many depositions I took as a lawyer.

9 There is not a single lawyer who, when examining the

10 transcript of what he argues or says, does not wince. It is
11 the nature of speech. We are not perfect and sometimes we say
12 things that we wish we didn't. But I want to tell you this:
13 That is a preliminary process that goes into the decision
14 whether to file a claim or not. The City and the Port
15 Authority had this right to preliminary examination, the law
16 gives them that right and then they make the case.

17 It has nothing to do with the settlement. In terms

of

18 the question of fees paid by defense counsel, that's not my
19 jurisdiction. As a federal judge I have limited jurisdiction,
20 I have jurisdiction over the cases and controversies that come
21 to me. I cannot comment, I cannot evaluate, I cannot examine
22 what defendants paid their lawyers.

23 You should also know that who pays them is a

different

24 kind of decision, it is not necessarily FEMA. There is other
25 insurance that the City took out but that all is a separate

and

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1 different issue and we should not really be involved with that
2 issue in evaluating the very difficult decision what to do

with

3 this settlement process.

4 Thank you very much, sir.

5 Question here?

6 MEMBER OF PUBLIC: My name is Jim Patner, retired

from

7 the fire department.

8 THE COURT: Mr. Patner retired from the fire
9 department.

10 MEMBER OF PUBLIC: In regards to the MetLife

question,

11 I saw one of the brothers back there who was asking. I had
12 been -- with the fire department once you retire you're

allowed

13 to get half your life insurance policy that goes with you once
14 you retire. Since then I have tried to apply in numerous
15 places before I left New York State to the state that I
16 currently live in, and I have been denied the availability to
17 purchase any type of a life insurance. MetLife happened to be

18 one of them back in '05 or '06.
19 It seems to be upon review of all my medical
20 documentation when I turn it over, they come take your blood
or
21 whatever they do, they want all your medical documentation. I
22 have gotten the same, pretty much the same letter from
multiple
23 companies that unfortunately due to the unknowns of your
24 medical diagnosis, we are not going to extend coverage to you.
25 Is this like a part of the settlement or is this
going

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1 to backfire on us again? I don't know if anybody else in the
2 room has had the same problem.
3 THE COURT: Your other insurance issues are not part
4 of this settlement. Everyone has to confront his own issues
of
5 life insurance separately. What is part of the settlement is
6 this Met Life policy.
7 The difficulty Mr. Patner had in obtaining life
8 insurance is an indication of how valuable a right the
9 plaintiffs lawyers have obtained for you in the context of
this
10 settlement because obtaining a policy for MetLife was not easy
11 and it is not a simple thing but it was a significant
12 achievement by them and by the attorneys for the captive
13 insurance company, Ms. Warner in providing it.
14 MEMBER OF PUBLIC: So we don't have to qualify, sir?
15 I'm sorry to interrupt you.
16 Do we have to qualify anything with Met Life or this
17 is included with the settlement as an automatic?
18 THE COURT: Mr. Napoli?
19 MR. NAPOLI: All you have to do is fill out the
20 enrollment form and then you will be included. As long as you
21 don't --
22 MEMBER OF PUBLIC: My previous application to them
23 before --
24 MR. NAPOLI: That won't affect this in any way. It
is
25 completely different.

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1 THE COURT: Sir.
2 MEMBER OF PUBLIC: Bernard Hardy, retired detective.
3 Can you refer me to the amendment that states that if
4 we do opt into this settlement that it won't preclude us from
5 the Detectives Z settlement?
6 THE COURT: From what?
7 MEMBER OF PUBLIC: Detective Zadroga's case.
8 THE COURT: There is nothing in this settlement,
9 that's a feature of the law that Congress has been debating

and

10 has rejected.

11 Mr. Block?

12 MR. BLOCK: Your Honor, I have the statute with me at
13 this meeting and after I will be happy to sit down and show

you

14 the language.

15 MEMBER OF PUBLIC: It is in writing saying if we do
16 opt in it is not going to preclude us?

17 THE COURT: This settlement has nothing to do with

the

18 Bill. The Bill had one provision that said if you go into the
19 settlement you can't get benefits if that Bill ever passed

law.

20 MEMBER OF PUBLIC: I'm aware of that.

21 THE COURT: Now that feature has been taken out of

the

22 Bill.

23 MS. WARNER: Is it taken out? Because I have been
24 updating myself on the case and I haven't seen it on their

part

25 where they took it out.

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1 MR. NAPOLI: There is a copy also, Mr. Block will
show
2 you after the meeting but there is also a copy on our website
3 of the revised Bill that was on the floor last, I believe it

4 was last Thursday, for suspension vote and it has been
revised.

5 MEMBER OF PUBLIC: That's good. Thank you.

6 THE COURT: Anybody in the back? Sir.

7 MEMBER OF PUBLIC: Your Honor, regarding the Zadroga
8 Bill, can Congress override the amendment to the Bill when it
9 is voted on again in September even though it has just been
10 said it was amended?

11 THE COURT: What Congress will do is anyone's guess.
12 At the present moment the Bill is nowhere because Congress
13 refused to take it up. The suspense bill, the suspension
14 action that was requested by the speaker was not adopted, it
15 had to be adopted by a two thirds vote. It failed. What will
16 happen after that, we don't know.

17 Now, Mr. Block spoke about the plan of his firm to
get
18 the Bill reintroduced in September. What happens in September
19 on the eve of an election we don't know. I think if it is --
20 the view here we need to talk about is should I consider in
21 deciding whether or not to enter into this settlement what may
22 happen to me if Congress ever passes the bill. And I think

the
23 answer you receive from Mr. Block and the answers that you
24 receive that those of you who were in Staten Island received
25 from Mr. Feinberg, is no. Decide on the merits of this

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1 settlement whether to go in or not. Do not consider the
2 Zadroga Bill. If it ever passes it now has a feature which
3 says that you won't be precluded but no one can tell you what
4 that feature will be or if there will be ever be a law. Most
5 of the people who are asked say the chances of it being a law
6 are low.

7 Mr. Block, did you want to add something?

8 MR. BLOCK: Thank you, your Honor. I agree
completely

9 with Judge Hellerstein had to say.

10 I will tell you that the New York Senate delegation
11 has agreed to amend the Senate version of the Bill if it ever
12 passes the house to include the same provision that would not
13 preclude you, would allow you to do both, settle and go to the
14 fund.

15 And I will also say that whatever opposition was
16 stated in the House to the Bill had nothing to do with that
17 provision. It was totally unrelated. The provision didn't

get

18 much attention, nobody seemed too upset by that because it is
19 the fair and right thing to do.

20 So that if one were a betting man, one would say that
21 the chances of it being included in the bill are excellent but
22 I can't tell you any more than anybody else can whether the
23 Bill will pass and Judge Hellerstein is correct that you

should

24 make your decision based on whether this settlement is fair

and

25 good for you.

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1 MR. NAPOLI: Your Honor, I want to address one more
2 thing about the VCF because it seems that the way it is
3 portrayed in some respects where there is an impression by

some

a

4 people is it is some sort of a panacea that it is going to be

5 cure-all for all your ills. And I think it is important to
6 understand first of all, the VCF is dismantled, there is no
7 building, there is no employees, there is nothing in place.

8 At the fairness hearing Mr. Feinberg, who was the
9 special master in charge of it, said it took him 33 months to
10 administer. We all know he has taken the time to participate
11 at the Judge's request and only because of the Judge's request
12 in this case and to assist in this case, but we all know he

has

13 been called upon by republican presidents and now a democratic
14 president to oversee the \$20 billion fund for BP. That's

going

15 to take up a lot of his time.

16 So, I can't imagine he would be that person.

17 But, even if he was, we know from the past experience
18 that people were turned away before. There were many clients
19 that I know of who are here because they weren't entitled to
20 any money under the VCF either because of time or because of
21 their injury. Not every injury was compensated. And in many
22 ways this settlement offers more money for certain injuries

23 than the VCF did. No cancers whatsoever were paid in the VCF
24 before. Here there is money being paid in a litigation which
25 is very difficult under the laws and the cases that the Judge

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1 talked about earlier. So, here it is harder to get it. There
2 it was easier and it wasn't provided for.

3 So, there is no guarantee if it does re-open and you
4 do forestall signing on here that you will then receive any
5 money in the VCF. You can end up with a big goose egg there
6 too after waiting all this time.

7 The benefit of the amendment now as it was written is
8 that you can now take the money here and if you're a firm
9 believer that Congress is going to pass Zadroga -- which
10 hopefully it does, only 4 percent of Bills of pass and become
11 law -- that if it does, you have a downpayment on what you
12 ultimately think you are going to get in Zadroga. There is no
13 reason whatsoever not to take that downpayment, that time-

value

14 money now, that cash now if you believe Zadroga is going to
15 come into effect.

16 THE COURT: I think that point is clear.

17 Ma'am?

18 MEMBER OF PUBLIC: My name is Diane Bergman. My
19 husband is a Port Authority police sergeant and we have been
20 trying to opt out of this and not be clients of the Worby,
21 Groner and Napoli and we were told that we were not allowed

to;

22 that if we leave the lawsuit that we would have to leave with
23 prejudice giving up all our rights to ever have any kind of
24 lawsuit. Not that we want to ever have a lawsuit. Thank God
25 my husband is still healthy and -- but, we do want to opt out.

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1 However, if we cannot opt out and we are forced to take the
2 settlement --

3 THE COURT: No one is forcing you to take anything.

4 Tell me your name again.

5 MEMBER OF PUBLIC: Dianne Bergman.
6 THE COURT: Ms. Bergman, I will tell you and your
7 husband. A client has a right to hire a lawyer or discharge a
8 lawyer. If you owe a fee, that of course has to be resolved.
9 So, what the terms are in relationship to staying with Worby
10 Groner or leaving Worby Groner, that's not a case that is
11 before me.
12 What you want to do with a settlement is your
13 decision. You are not forced to accept the settlement. You
14 are not forced to continue with the lawsuit. If you want to
15 withdraw from the lawsuit, that's your business. If you
remain
16 in the case, that is if you reject the settlement -- you don't
17 have to continue standing, this is not a courtroom, you can
sit
18 down --
19 If you want to reject the settlement and stay in the
20 case, there are things that are going to happen. I need to
21 move these cases, they're now quite old. It is not required
of
22 me but it is the practice in the courts that cases have begun
23 and ended within a three-year span. Most of my cases end in a
24 year and a half span. It is the very difficult and
complicated
25 ones that last longer.

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1 So, if you remain in the case, you are going to be
2 asked to do things. Maybe you have to try the case --
3 MEMBER OF PUBLIC: We don't want to remain in the
4 case. We don't --
5 THE COURT: You can quit the case at any time.
6 MEMBER OF PUBLIC: Yes, we were told we could not,
and
7 the letter that we received told me that I had to sign this
8 saying that I would be leaving with prejudice.
9 THE COURT: I will see you afterwards and we will
talk
10 about it. I doubt very much that have you to remain in the
11 case.
12 MEMBER OF PUBLIC: Mike Kennedy, vice president of
13 Local 375.

14 THE COURT: Yes, Mr. Kennedy.
15 MEMBER OF PUBLIC: I have a lot of members that
16 already were diagnosed with cancer, lost kidneys, lost
17 testicles, lost organs, body parts. According to the way I'm
18 reading this they have to be diagnosed with cancer after they
19 sign on for MetLife to pay the \$100,000. So, that cancer that
20 they got beforehand, it doesn't count for anything in this
21 settlement?
22 THE COURT: Who is your lawyer, sir?
23 MEMBER OF PUBLIC: Right up there, Napoli Bern.
24 THE COURT: Mr. Napoli, do you want to answer that,
25 please? Mr. Groner.
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1 MR. GRONER: Are you asking about the Met Life
policy?
2 MEMBER OF PUBLIC: The Met Life policy.
3 MR. GRONER: Okay, Met Life policy covers blood
4 cancers and hard tumor respiratory cancers.
5 Anyone except those who have those two types of
cancer
6 is eligible for the MetLife policy. So, if you have another
7 type of cancer such as kidney cancer, you are entitled to the
8 MetLife policy benefits. If you develop a respiratory cancer
9 or a blood cancer --
10 MEMBER OF PUBLIC: But not for the kidney cancer that
11 you had before because it is not --
12 MR. GRONER: Regardless of any cancer you had before
13 as long as you have not had a blood cancer or a hard tumor
14 respiratory cancer such as lung cancer, then you are entitled
15 to the MetLife policy if, God forbid, you ultimately some day
16 get one of those two cancers.
17 THE COURT: So the MetLife policy covers specific
18 limited cancers which are?
19 MR. GRONER: Which are blood cancer, multiple
myeloma,
20 lymphoma and leukemia and hard tumor respiratory cancers;
21 essentially bronchial tract, trachea and lung.
22 THE COURT: And if you contract one of those you
23 receive within the first six years:
24 MR. GRONER: A \$100,000 benefit unless you were a
25 smoker, then that benefit would only be if it were blood

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now
for

1 cancer, not for respiratory cancer.

2 THE COURT: If you have a different kind of cancer

3 and you are in Tier 1 or Tier 2 or Tier 3, are you eligible

4 this policy?

5 MR. GRONER: Yes, you are eligible for the MetLife
6 policy even though you have another type of cancer now.

7 THE COURT: So, if someone has testicular cancer for
8 example, that person is not precluded, not prevented from
9 obtaining the MetLife policy.

10 Is that clear to everybody? Okay?

11 MEMBER OF PUBLIC: One more question.

12 THE COURT: Yes.

13 MEMBER OF PUBLIC: There is qualifying injuries.

14 There is a lot of my members that are coming up with skin
15 rashes and getting workers' comp benefits for the skin rashes
16 and stuff but it is not part of the lawsuit. What happens to
17 these new diseases as they link it back to World Trade Center?
18 What are they going to do in the future when they see the
19 population of the people that were down there are coming out
20 with this stuff? Are they going to open something up for the
21 future?

answer

22 THE COURT: Let me generalize this question and

you

23 it. There is such a thing as -- you don't have to stand up,
24 sir, you can sit down. You can stand up if you want to but

25 don't have to.

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1 MEMBER OF PUBLIC: I listen to the Judge.

2 THE COURT: It is not a courtroom. It is sort of an
3 extension of a courtroom but not a courtroom. I'm not wearing
4 robes.

5 In the law there is something we call second injury

6 doctrine. If you sue and win or lose, you can't sue again for
7 the same injury. What happens if you sue and let's say win

and

8 then you come down with a second injury? Under certain kinds
9 of conditions it is complicated and difficult and I won't give
10 you advice because I don't give advice any more. I used to
11 when I was a lawyer but now I just make mistaken rulings, no
12 more advice.

13 If you qualify as a second injury, you can sue again
14 and recover again.

15 In this case you have to have a special concern about
16 second injuries. Things are not so clear, particularly if
17 there is a settlement. So, as a condition of obtaining a
18 recovery you have to give a release that prevents you from
19 suing for a second injury. If, for example, you have a
20 respiratory injury, let's say COPS which restricts your lung
21 capacity to breathe and you recover and then you get pimples

on

22 your skin or a rash or something else, you have given up the
23 right to sue.

24 Now, if you don't settle because of that, your case
25 will advance and there will be a ruling. You may win. You

may

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1 lose.

the

2 If you then have another injury and you sue again,
3 first issue that you will have to face is whether you truly
4 have a second injury or whether there is a relationship of

that

5 injury to the first injury. Is it, for example, another
6 manifestation of the original injury. It is a difficult
7 medical and scientific question which I can't answer now.

8 But, when you look at the settlement you have to
9 realize that you will be giving up whatever additional right
10 you have if, indeed, there is some practical additional right.

11 Is that clear Mr. Napoli?

12 MR. NAPOLI: I think so.

13 I think what we try to do in the settlement is
14 anticipate what are the potential future injuries that may
15 develop and try to settle them, get money for them now so you

16 don't have to later on go through the whole litigation
process.
17 So, what arises ordinarily from this type of
exposure,
18 occupational exposure to dust which we've seen mimicked in
coal
19 mines with black lung and other injuries, is asthma or
20 respiratory injuries. Those things that could be of a concern
21 but, as the Judge has said earlier, are very difficult to
prove
22 are cancers and those respiratory-type cancers.
23 So, what this policy does is pays those respiratory
24 cancers so you don't have to sue or bring a lawsuit later on
25 and prove those cases, pays those cases now. So, you have a
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1 ticket or what you call a green card if, God forbid, you come
2 up with those cancers to get a payment later. And that was
the
3 purpose of the MetLife policy.
4 THE COURT: There is one other aspect to this.
5 The settlement has a factor where if you have a
second
6 injury you get an additional payment under that injury.
7 There is another question. Ma'am?
8 MEMBER OF PUBLIC: My name is Eileen Dimitri. I'm a
9 retired police lieutenant.
10 I have two injuries already. I have lung disease and
11 I have RADS. Yesterday I was at my doctors --
12 THE COURT: Stand up while you put the question.
13 MEMBER OF PUBLIC: I have a lung disease and I have
14 RADS. Yesterday I was at the doctors -- my attorneys don't
15 even know this -- I was at the doctors yesterday, now I'm told
16 I have GERD.
17 What happens when I'm not even finished with -- I
18 haven't even gotten a package yet to know what I'm getting and
19 I'm getting sicker as we go along. I know I wasn't sick with
20 this prior to the April whatever date but I'm sick before I
21 sign off on something. And I had a lung biopsy back in 2002.
22 I got sick, I was very -- you know, early I got sick. I was a
23 marathon runner, I ran five marathons in my life. I can't

walk

24 up a flight of stairs. I'm getting sicker and sicker and I
25 have to sign off on something that just yesterday -- and GERDS
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1 is listed on there.
2 THE COURT: Mr. Garretson? Mr. Napoli?
3 MR. NAPOLI: This is something we face all the time
in
4 the litigation. What if I get sicker? What if I get better?
5 And it is something we have to weigh in deciding whether or
not
6 to settle.
7 When you get your package and you see the numbers and
8 we talk about it, we can determine together -- I'm not sure
who
9 your lawyer is but they're certainly competent -- they'll
weigh
10 with you the factor of whether that makes a difference in the
11 value of your claim, if it is something to wait and see or
not.
12 But, at some point if the case goes to a jury, you
are
13 going to have to make that decision.
14 MEMBER OF PUBLIC: I understand that, but what I'm
15 trying to say to people out there is you've got two injuries
16 that you're allowed to have. I mean, what happens if you have
17 the three or four injuries?
18 THE COURT: Let me try to respond to this.
19 First of all, there is a cutoff date where you have
to
20 have all your medicals. As of when?
21 MR. GARRETSON: The cutoff date for qualifying
22 injuries is March 11th of 2010.
23 THE COURT: So someone will ask what happens if I get
24 worse? It could be the same disease, it could be a different
25 disease. It is a fair question. It has been put to me.
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1 Let me answer it this way. The settlement is of an
2 agreed amount of money. That agreed amount of money has to be
3 divided. Every one of the claimants who get a division have a
4 risk of getting worse so we have to make a judgment how to
5 divide that money. That's a very difficult decision and
that's
6 why I caused Professor Roy Simon to be engaged who is an
expert
7 on professional responsibility, one of the leading experts in
8 New York State, because in dealing with so many people each of
9 whom has a different kind of a claim, we need to be very
10 careful that we are acting properly.

11 It seems to me that everyone is similarly situated.
12 Everyone can get worse, the sickest and the least sick. And
13 so, the division has to be fair to all. In a particular case
14 one person may get sicker and in another case you may not get
15 sick but we have to make a judgment as of a certain date and
16 that's what happens in trials as well. You have a case and
you
17 go along in your case and it comes time to go to the jury.
And
18 you put your best case before the jury and the jury makes an
19 award. Sometimes your best case will contemplate that you
will
20 get worse. Not always. Some of the medicals that you may
have
21 may contemplate that your diseases get worse, but there has to
22 be a judgment made at a certain time and then people can get
23 worse and they get better.

24 MEMBER OF PUBLIC: I understand that.
25 What I'm saying is if I go to trial, which is
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1 something I don't really want to do, but if I do they're not
2 going to use that March 11 cutoff date.
3 THE COURT: No, a later date.
4 MEMBER OF PUBLIC: When I go into trial.
5 THE COURT: There will be a later date.
6 MEMBER OF PUBLIC: For people who are getting sicker
7 or weren't diagnosed -- when I read the article or the
8 judgment, I started spitting up blood in April of 2002. I
9 didn't go to a doctor until July because I have children, I

10 have a husband, I didn't want anybody to know that I was
11 spiting up blood.
12 Now, technically they say if I had been diagnosed
13 within seven months or six months I would have gotten more
14 money. If I had known what it was going to be 10 years, I
mean
15 if I could fast forward 10 years that's a significant amount
of
16 money but it is my own stupidity. You know. I had my lung
17 surgery in September. I'm just telling you.
18 It is all individual but the bottom line is a lot of
19 us are getting sicker and it is a hard decision to make
because
20 if you go in front of a jury which I know the risks of it, if
21 I'm getting sicker, it might be worth to be able to include
the
22 extra illnesses in there.
23 THE COURT: Two comments.
24 First, don't blame yourself. No one is perfect with
25 one's own life.

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1 MEMBER OF PUBLIC: I blame myself for not going to
the
2 doctor earlier.
3 THE COURT: All right. You know, in retrospect we
all
4 could be wiser but we are who we are and we each have
different
5 obligations and different activities and different thoughts
and
6 you cannot blame yourself. So, that's first.
7 The second is the complicated decision on the part of
8 someone who is in a dynamic setting, the person who feels or
9 knows who or has been told that his or her disease is getting
10 worse; should that person enter the settlement process.
That's
11 a difficult and personal decision and there may be numbers of
12 people so I want to generalize this.
13 The choices are difficult in many ways because if you
14 decide to enter the settlement and you feel you are getting
15 worse, you may resent yourself or be annoyed with yourself

that

are

is

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and

experience

decision.

of

16 I didn't do what is best for me and my family. Usually you
17 concerned not with yourself but you are concerned about
18 children and spouse and so you always wonder, am I doing the
19 right thing for them?

20 On the other hand, if because of those concerns you
21 choose not to enter the settlement, you go into a different
22 world. You are not guaranteed a jury trial. The first step

23 to go through those motions that I talked about. And nobody
24 knows how those motions will be decided. I set a very
25 ambitious pace for myself when I required all decisions to be

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1 made and decided within a 60-day period. We can all try our
2 best but we don't know. So, there is a delay factor.

3 Second, the uncertainty. Are you going to get an
4 expert who will qualify under the restrictive federal rules

5 have the ability to link the disease and the worsening of the
6 disease to 9/11?

7 The problems with this case is that the diseases that
8 people are coming down with are the diseases that we

9 in life. People have lung cancer who never smoked. I lost a
10 friend who never smoked and died of lung cancer. People are
11 getting esophagus cancers and throat cancers and thyroid
12 cancers and we think -- and more repeatedly in greater
13 sequences than ever before.

14 I don't know that's true or not but we think that.

15 So, the question is will I be able to get an expert
16 witness who will qualify under the restrictive federal rules
17 and be able to testify. You may know that but it needs to be
18 explored very thoroughly. And you have to get across defense
19 lawyers who are being paid to resist those claims.

20 So, this makes you risk the other way as well. How
21 you decide this is a very personal and very difficult

22 Mr. Napoli said before and I will tell you now, no
23 settlement is perfect. And you have to decide is the amount

24 money I am entitled to get worth it so I can stop fighting and
25 litigating or is it substantially not enough and worth going
on

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1 taking all the risks? I can't answer that for you. It is a
2 very difficult question.

3 Anybody? Anybody else?

4 Sir?

5 MEMBER OF PUBLIC: Just a quick question to that
6 cutoff date of March.

7 I had been diagnosed with growths in my throat,
larynx

8 as well as my lungs. Two years ago -- I don't remember what
9 year it was but approximately two years ago it had been
10 suggested to have them removed. Like this lady here I have
11 children. I didn't want to involve my wife, kids, kind of put
12 it off and one of those hopeful that it would go away kind of
13 things and not progress any worse. Under the care of fire
14 department Dr. Pazan two weeks ago strongly urged to go under
15 the knife to have all of this -- it has gotten larger, from
16 what I am being told. I am having that stuff done this week

or

17 having it rescoped to see the origins of it.

18 Does that qualify under this March 11th thing for
time

19 frames of surgeries or --

20 MR. GARRETSON: I have to look afterwards. I can go
21 through the settlement process agreement with you

specifically,

22 but in general the diagnosis and the records have to be prior
23 to March 11th, 2010. And so, but each injury category,

they're

24 slightly different as you may well have seen, slightly
25 different dates and criteria for different diagnostic testing

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1 that must have been completed by that day and I would have to

2 go through it with you individually.
3 THE COURT: You know, this is a question you have to
4 take up with your lawyers privately. This is not a question
5 for a public meeting. Every lawyer knows of various ways and
6 opportunities to maximize a claim. This is not for here, this
7 is what you have to do privately.
8 MR. CARBOY: Your Honor, if I may for one moment?
9 THE COURT: Mr. Carboy.
10 MR. CARBOY: In view of this fact that as the Judge
11 has said and as some of you have pointed out, this is a
dynamic
12 situation and people's conditions do change, there are three
13 categories of development that are addressed by the settlement
14 if they happen after March 2010. The first is if you receive
a
15 disabled determination after that date. That will be
16 considered by the allocation neutral through well into the
17 allocation process itself.
18 So, for those of you who are awaiting a final
19 disability determination from workers' comp, from the
20 retirement board from Social Security, that's all right. We
21 can get that to the allocation neutral so it is considered.
22 Secondly, surgeries. Surgeries that are listed as a
23 qualifying surgery under the settlement agreement, even if
they
24 happen now, next month, October, as long as we have those
25 records and get them to the neutral, they too can be
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1 considered.
2 Finally, unfortunately, and this is a reality of the
3 situation, members are passing away. In the event that
someone
4 passes away and that death is covered under the terms of the
5 settlement, that too will be recognized and dealt with by the
6 allocation neutral.
7 THE COURT: That's not a recommended solution.
8 MR. CARBOY: No, it is not. Thank you.
9 THE COURT: Sir?
10 MEMBER OF PUBLIC: Sir.
11 THE COURT: Sir, does that answer your question?

This

12 is something for private discussion.
13 Thank you.
14 MEMBER OF PUBLIC: Andy Specter, New York City Fire
15 Department.
16 Can either you or Paul update those in the audience
17 about negotiations with the Port Authority, where we stand
with
18 those negotiations?
19 THE COURT: There are active negotiations going on
20 with three categories of defendants in the 9/11 cases; the
Port
21 Authority, with the contractors and insurers who worked on
22 Fresh Kills, and with the London insurers who covered the City
23 and the barges. We are trying to move those as fast as
24 possible but each one has complications and difficulties.
25 Special Masters Twerski and Henderson are tending to
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1 those details and pushing the lawyers. I hope that there will
2 be resolution. They will not be resolved, I believe, within
3 the time frame of this settlement, but they are part of this
4 case and this case is either going to go on to trial or those
5 will also be resolved.
6 MEMBER OF PUBLIC: I just have a second question.
7 Upon settlement --
8 THE COURT: And similarly in the other cases, 102 and
9 103 related to the nearby buildings, there are negotiations
10 going on there as well.
11 MEMBER OF PUBLIC: Can we comment on the captive
12 insurance fund? It is my understanding that if this
settlement
13 does indeed close that the captive insurance fund will remain
14 open with a considerable amount of money still being held by
15 the fund. If that is indeed a fact, my question is why does
16 the captive insurance fund remain open and why do they hold on
17 to a considerable amount of money?
18 THE COURT: Margaret Warner --
19 MEMBER OF PUBLIC: I personally would like to see the
20 captive insurance fund resolved upon completion of this. I
21 think it would be a great discredit to the people who did
God's
22 work on 9/11. I would like to see it resolved and like to see

23 it closed. And I think a lot of other people would like to
see 24 them closed also. And if they are indeed going to stay open
--

25 (Applause)
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1 MEMBER OF PUBLIC: -- and if they are indeed going to
2 stay open, I think that we would like to know how much money
3 the captive insurance fund is going to keep and what is the
4 reason for them keeping that money.

5 Thank you.

6 MS. WARNER: Thank you very much for your question.

7 First of all, with regard to the length of time that
8 the WTC captive insurance company is required to be in
9 existence, under the federal law that was passed to set up the
10 company, it was required to stay in business for a minimum of
11 25 years; that's 25 years from 2004 when it came into
12 existence. That was statutorily required when Congress and
13 then FEMA allowed it to be set up.

14 So, there is no discretion. But let me try to
address

15 for you the reason for that because there is a real reason, an
16 important reason for each of you who are current claimants to
17 understand why it has to stay in existence.

18 It has to stay in existence because there may well be
19 other people down the road who, unfortunately, will experience
20 health symptoms that they believe are associated with 9/11 and
21 therefore Congress required that this company stay in

existence 22 so that if those later manifested cases come about, there

would 23 be a source of insurance to defend the City and the

contractors 24 and to pay claims for those later plaintiffs.

25 As part of the negotiations with the plaintiffs'

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the

1 lawyers this issue was discussed a lot and the position that
2 the WTC captive insurance company has taken is that it is
3 incredibly equitable for us to make sure that there is money
4 down the road for other people who may later develop illnesses
5 that they believe are related to 9/11 and that is the reason
6 why the company will have continuing money within it and will
7 be able to continue to do the job of defending the City and

8 contractors and paying claims for the period that was required
9 by Congress.

10 MEMBER OF PUBLIC: How much money? How much? We are
11 not in court right now so we can just yell out. How much?

12 MS. WARNER: Well, I don't have that number with me.

13 MEMBER OF PUBLIC: Can you find out?

14 MS. WARNER: Sir, let me please answer your question.

15 MEMBER OF PUBLIC: You are avoiding the question.

16 THE COURT: No, she hasn't finished answering.

17 MS. WARNER: The WTC captive insurance company
18 received an initial grant of about a billion dollars and has
19 invested that money and made money on it in the subsequent
20 years. Right now, after this settlement goes through, there
21 will be somewhere in the neighborhood of \$300 million or \$400
22 million to continue so that in the future if there are
23 additional claimants there will be money to pay valid claims

in

24 the future.

25 MEMBER OF PUBLIC: Does this sound fair, your Honor?

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1 MEMBER OF PUBLIC: Ma'am, I just want to go on record
2 and state that the captive insurance fund remaining open is
3 nothing short of a crime. I will fight very, very, very hard
4 to see that it closes and that the \$400 million goes to the
5 people that deserve it.

6 The captive insurance fund paid out six claims
7 totaling \$330,000 since their existence. For you to stand up
8 there and say that it is imperative to keep \$400 in existence
9 to pay further claims is a lie. This fund staying open is a
10 crime. I will work to see that it closes. I will notify the
11 members of Congress. It needs to be dissolved. It is nothing
12 more than somebody's -- somebody's golden egg.

13 It is unacceptable. Unacceptable.

14 THE COURT: There was a question put to me is the
15 settlement fair and reasonable and it was in relationship to
16 the amount left over in the settlement.
17 Those of you who are in court or read about court
know
18 that I had the opinion when the first settlement was put to me
19 that there was too much in reserve. The settlement was
20 thereafter improved, another \$50 million was put in by the
21 captive insurance company. The most that could be paid out in
22 this settlement by the captive insurance company is, I think,
23 \$712.5 million. Assuming the \$1.1 billion is in the fund, the
24 difference, less continuing legal expenses, is what is there.
25 Ask an insurance person is the reserve enough? The
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1 answer will be no. Ask somebody who is in the potential of
2 receiving money if the reserve is too much, and that person
3 will answer yes. What the correct answer is I don't really
4 know. When I expressed the view that the revised settlement
5 was fair and reasonable, I had in mind that the amount
reserved
6 was more than I thought necessary. But, nevertheless, I felt
7 then and I feel now and am going to rule that the settlement
is
8 fair and reasonable.
9 I felt then and feel now that it is fair and
10 reasonable because although I think the amount of money that
is
11 reserved is too much, there are others who feel differently
and
12 I would have to consider how somebody will decide how much is
13 fair and reasonable if it is not the number that I approved in
14 the course of this settlement. And were I to deny the
15 settlement and consider it unfair and unreasonable, there
would
16 be appeals. Those appeals would take at a minimum, in my
17 judgment, two years for the Court of Appeals to decide, and
18 since the issue of whether a district judge has the
19 jurisdiction and competence to rule on fair and reasonableness
20 is a new question and something that is at the very heart of
21 federal jurisdiction, my feeling was that the Supreme Court
22 would take that question as well costing everyone here five

23 years of waiting -- the outcome of which would be uncertain.
24 And then there would be the question could I put the
settlement
25 together at that point in time and at what level and what
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1 amount of money would there be left over. There is a question
2 also of obtaining settlement amounts from the private
3 contractors which is another open and difficult question.
4 So, I ask myself: Is the amount of settlement here,
5 \$625 million with incentives that make it up to \$712.5 million
6 and the distribution of that settlement and the people
claiming
7 injury, fair?
8 I thought it was.
9 Is it perfect? No.
10 Like you, I would like to see more distributed but we
11 don't live in a perfect world. It is my job as a district
12 judge and I feel it is my job as a district judge to rule on
13 fairness and reasonableness of this settlement, and I did; to
14 make a decision based on the facts before me and the
15 considerations before me.
16 If everyone here had to wait for five more years
17 before they had a chance to get money, well, think of it. How
18 many more lives would be lost? How much more intensification
19 would there be of injuries? How many difficulties would there
20 be with families and children and marriages and so many other
21 questions. So, what is a fair result? What is a reasonable
22 result?
23 I think the amounts of money compare -- I have looked
24 into this, compare favorably to other settlements in other
tort
25 actions. We have retained experts on this, the Court has, and
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1 we have had opinions and I talked to lots of different people
2 and I have my own experiences.
3 So, I can't say that the recoveries are out of line,

4 they're in line. They're there and the distributions are
5 there. We have people who are getting money, the newspapers
6 have commented on this, \$3,250 plus an insurance policy and
7 they have no objective indication of illness. So, it is the
8 newspaper that claims these are made-up claims. I don't think
9 they're made-up claims, I think they're real claims.

10 But, nevertheless, I considered that the way to
11 approach this settlement was according to severity. The more
12 severe the illness the greater the person has a claim. If I
13 were to try these cases I would have tried the severest cases
14 first because those are the claims that I think that are most
15 compelling. But I can't say that people who have no objective
16 indication from a doctor of injury are not injured or won't
17 become injured and so those settlements I believe were fair

and
18 reasonable also.

19 So, I approved the range I talked about, \$3,250 on
the
20 bottom, \$2 million at the top. That's a big range. I thought
21 it was fair. I still do. And I think it is reasonable. And
I
22 still do. It is not perfect.

23 I will never for a moment, ever, tell anyone here
that
24 this is a perfect settlement. There is no such thing as
25 perfection. In fact there is a very good proverb: Chasing
the

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1 better is the largest enemy of the good. Therefore, I approve
2 the settlement. And I believe it is fair and reasonable and
3 merits a favorable response from everyone here barring the
4 particular case there has to be a very tough personal
decision.

5 And even then I think there is a very good argument to taking
6 what you can get and going on as best you can with your life.
7 (Applause)

8 THE COURT: I don't think it is worth applause.
9 Sir?

10 MEMBER OF PUBLIC: How you doin', your Honor. Iron
11 worker. We spoke before. Listen, I'm sitting here and

getting

12 text messaged by a couple of other iron workers.
13 THE COURT: I hope they're only iron workers that you
14 are getting text messages from.
15 MEMBER OF PUBLIC: Huh?
16 THE COURT: I hope they're only iron workers that
17 you're getting text messages from.
18 MEMBER OF PUBLIC: That's all it is. That and JP
19 Morgan want to offer me a new credit line that I'm not going
to
20 take. I ain't got no income to pay it back.
21 But, as I stated before, this is not for me. I'm
22 still interested in what other people are going to get because
23 it does affect me. It affects how I feel. I don't see many
24 other iron workers here but I do see trades which I haven't
25 seen before and at the fairness hearing I didn't see any other
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1 tradesmen.
2 Most of what I have heard spoke about is police
3 officers and firemen. Granted, I love what they do. The fact
4 of the matter is I want to know where we are in negotiations
5 with people like NYSIF.
6 THE COURT: Like who?
7 MEMBER OF PUBLIC: NYSIF, who pay for my -- New York
8 State Insurance Fund who paid for our operations.
9 THE COURT: We are --
10 MEMBER OF PUBLIC: The World Trade Center Health
Fund,
11 they're telling people --
12 THE COURT: I wish you were more advanced with the
New
13 York State Insurance Fund.
14 MEMBER OF PUBLIC: I think we ought to push them to
15 get more advanced because you are offering this to policemen
16 and firemen but you are not offering it to that the regular
Joe
17 Schmo. Let me tell you something. That's totally ludicrous
18 because no fireman and no policeman was going to pick up a 40
19 ton beam. So get real. All right?
20 The laborers, operating engineers and me, and those
21 that I represent by standing here, we're there not in the
22 couple hundred, you are talking about a few thousand. We came

23 as far as way as California, Chicago, Canada. All right? All
24 do. We were there from day one. We dropped -- we ran from
the
25 bridges, we ran from jobs all over the City to be there
because

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1 the Mayor even asked us to be there. We were invited to this
2 party and I'm tired of hearing about the shindig with the
3 policemen and the firemen. Great that they get what they do
4 but, you know, listen. We have got some real serious
injuries.

5 You have guys running around with half a foot, you have got
6 guys that lost whole halves of their calves because of
7 ridiculous accidents.

8 Half of this problem is caused because the City
9 allowed people to just get there and volunteer that had no
10 business to be there because they didn't know what they were
11 doing.

12 And about the captive insurance fund? I think a lot
13 of people are around because they know what the interest rate
14 was. But, like I'm saying, the guys that are texting me want
15 me to ask you a question: Now that they're getting sick, when
16 can they start filing and going to lawyers because they're cut
17 out of this.

18 THE COURT: Why are they cut off out of this?

19 MEMBER OF PUBLIC: Because they can't fill in that
20 date of March. This kid just got diagnosed with spots on his
21 lungs this month. He doesn't have a case. All right?

22 You have to understand something. As an iron worker
23 we got big payouts for accidents because you get in an
accident

24 we ain't going back to work. There is not much left for us to
25 do. You know, it is like a sailor, you get drowned once you

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1 don't come back. You know?
2 The fact of the matter is I don't see my union

3 president here and nothing and I should have called him to
tell
4 him about this but the fact is that these guys are going to
get
5 sick down the line because they didn't go forward and they
6 didn't go and get treated because they're chasing their dollar
7 because they want to keep their families, they want to keep
8 their livelihood going.
9 We get paid \$3,000, \$4,000 a week. They give that up
10 because I can't breathe? Listen, I will go and be a bolter up
11 instead of being a connector. That's the philosophy. You
12 know? I know guys that cut after their finger off, they don't
13 go to the doctor during the day, they wait until after they
get
14 off the shift. Wrap it up, don't bleed, go to work. It is
the
15 old way of being iron worker. And the kids that are coming
16 along now are suffering through this. Instead, oh, I'm a
tough
17 guy because I'm an iron worker. That's what some of these
guys
18 have to deal with. This kid is 14 years younger than me and
he
19 has spots on his lungs and he is worrying about it.
20 When can these guys file? I know the captive
21 insurance fund is still going to be around, we spoke about
that
22 the first time we went around with these hearings. These guys
23 were in a lot of danger. And about the rashes that the guys
24 have, they don't even want to treat us for them -- treat us
for
25 those. They gave me some Lamisil, Lamisil was fine, and it
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1 went away.

2 THE COURT: So, what is the question you are putting
3 to me?

4 MEMBER OF PUBLIC: When can they go to lawyers to
5 process new cases coming along?

6 THE COURT: You can file a case whenever you want to.

7 MEMBER OF PUBLIC: That's good.

8 THE COURT: Another question?

9 MEMBER OF PUBLIC: Judge?
10 THE COURT: Yes.
11 MEMBER OF PUBLIC: Patrick J. Arsees.
12 Like I said, I was reduced. I told my friend here, I
13 begged him to give me a ride here. I got out of the hospital,
14 I reduced myself yesterday because I get my social security
15 check today to panhandle for, to belittle myself for the co-
pay
16 for medication of antibiotics. Co-pay. \$10. I stooped so
17 low.
18 The last dollar -- you Google search my name,
Patrick
19 J. Arsees, Tampa Bay/St. Petersburg Times, they wrote an ad:
20 9/11 settlement eases 9/11 worker's pain reduced to eat out of
21 a dumpster. They lied. I got the food before it got to the
22 dumpster. I'm living off of \$8,000 a year.
23 Who's got the right to complain in here? Sign those
24 papers. You don't like it? Take it to trial.
25 THE COURT: I think --
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1 MEMBER OF PUBLIC: It is a fair -- take this money.
2 It is fair. We are all going to wind up with this gridlock in
3 court for eight years. We are all going to be dead. I can't
4 afford to die. They'll bury me in Potter's Field. I can't
5 afford my casket, I can't afford nothing.
6 I'm telling you now -- I'm telling you now, if this
7 goes on I'm going to panhandle in Manhattan and I'm going to
8 beg people for money for a casket. You people have got to
open
9 your eyes.
10 People got money from the Victim's Compensation Fund
11 and they're down in Florida driving brand new Corvettes and
12 laughing at us. They were there for an hour.
13 Sign these papers, man. You are out of your minds.
14 You are out of your minds. I'm telling you. This guy drove
15 me here.
16 THE COURT: Sir?
17 MEMBER OF PUBLIC: Judge, good evening. People in
the
18 room. Hi, name is Robert Gayer. We spoke when I was in the
19 City. I was really nervous at the time and I do apologize. I

20 sent you some letters and I also apologize. Like you said, we
21 are all not perfect in some of the things we say.

22 I have heard a lot of exceptions being made for
23 different things, a lot of money being spent on getting this
24 done, and I totally respect what you have done and what the
25 rest of the people in this room have done.

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1 I pretty much begged a couple of people, I have seen
2 them a few times. I was in the Victims Fund, I'm not driving
3 Corvettes in the City. I was put in the Victims fund at the
4 very end. I was not made aware of any other thing that was
5 going to be available. It was told to me at that time you

take

6 this or nothing else -- please, just hear me -- and there was
7 pretty much a lot of -- I was put under a lot of duress and a
8 lot of coercion to get this signed.

nothing

9 I was in the City, they were literally packing up
10 their boxes to go home at the time. They said there is

11 else left in this fund either take it or that's it. There is
12 nothing left.

13 THE COURT: Let me stop you. There is going to be an
14 issue or there may be an issue with the Victims Compensation
15 Fund and people who have made claims before then. You needn't
16 say things because they could be relevant in that and I will
17 have to decide. I can't decide that now. And you should not
18 ask me that because I don't think it will be helpful to you.

19 MEMBER OF PUBLIC: Okay.

20 One other question?

21 THE COURT: Yes.

or

22 MEMBER OF PUBLIC: These other settlements that may
23 come to be, are they going to be handled by the captive fund

24 is that going to be separate?

25 THE COURT: The captive fund will be out of this case
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1 once, if this case -- if the settlement goes through, the
2 captive is finished.
3 MEMBER OF PUBLIC: I do appreciate everybody's time.
4 I'm not looking to -- I wish everybody was going to opt in.
5 I'm going to opt in even though I may not get anything. And I
6 know there is only about 50 people that are in this from the
7 VCS, we didn't get a lot of money and you can take it off the
8 top.
9 I thank you, sir, for your time.
10 THE COURT: The captive is finished with those who
11 have settled but the cases that are around, they'll be there.
12 There is a question back there by the uniformed
13 officer.
14 MEMBER OF PUBLIC: Your Honor, I want to thank you.
15 THE COURT: Step forward, please.
16 MEMBER OF PUBLIC: Usually they say I have a big
17 mouth.
18 THE COURT: Make it bigger.
19 MEMBER OF PUBLIC: I was a volunteer fire fighter who
20 responded to the call on 9/11 and I guess, like all of you
21 guys, we did the right thing. We did what we were called to
22 do. My son also responded. After 9/11 he became a U.S.
Marine
23 and he has been serving now for the last seven years also
24 answering the call. And, you know, for me we have been
through
25 a lot, a lot of these guys. I hear this story, my heart goes
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1 out to them. I guess what I'm asking you, your Honor, to do,
2 is to have the compassion and to be as reasonable and
equitable
3 as you can in doing the right thing for us this time.
4 You know, we put everything on the line. The guys we
5 put or lives, our homes, our families, a lot of up ended up
6 divorced starting life again and basically scraping nickels
7 together to live. And we are doing our best. And many of us
8 or a small group I think, really, got swept up in the initial
9 Victims Compensation Settlement. And, remember, 9/11 was an
10 attack unlike anything we ever experienced in our life and
here
11 we get slammed with this settlement that was put in front of

us

12 with an offer that said you guys better take this settlement
13 because five years from now most of you guys will be dead
14 anyhow.

15 THE COURT: I really want to tell you this. If this
16 gets litigated what you folks are saying here may not be

useful

17 to you. I would not do it.

18 MEMBER OF PUBLIC: I just have to say it.

19 THE COURT: All right.

20 MEMBER OF PUBLIC: I'm sorry, but what I'm asking is
21 the guys who settled at the time for very minor settlements
22 based upon very minor illnesses shortly afterwards that now
23 have come up with very serious, very bad things --

24 THE COURT: I'm not going to express any judgment.
25 That issue may come before me and I'm not going to comment.

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0835wtcH hearing

1 MEMBER OF PUBLIC: All I'm asking -- I don't need a
2 comment. All I'm asking you is to please, when you make that
3 decision, remember that these guys who answered the call,

their

4 lives are in your hands in many ways and just have that
5 compassion and remember that basically we are putting it in
6 your hands to answer the call for us.

7 THE COURT: Not every legal question can be resolved
8 by compassion.

9 There is a question there?

the

10 MEMBER OF PUBLIC: Your Honor, this is not to you,

11 Court or my lawyer; to this gentleman here.

12 THE COURT: Let it go.

13 MEMBER OF PUBLIC: No, I have to say this, sir.

14 THE COURT: No. Let it go, please.

say

15 MEMBER OF PUBLIC: No, there is a reason I have to

16 this.

17 There is a lot of guys walking around saying you
18 collected from the Victim Compensation Fund. You collected?
19 You collected a little bit? Guess what? I was the youngest
20 fireman on 9/11, city fireman. You know what? I didn't know
21 anything about the Victim's Compensation Fund. Right? You

22 live in Connecticut, right? You walk around here in a
uniform.
23 Right? And you are still looking for a God damn piece of
24 fucking money and it pisses me off.
25 I'm sorry, your Honor, but that's making guys mad.
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1 THE COURT: Now look.
2 MEMBER OF PUBLIC: I'm sorry. You have already
talked
3 to me many times, sir.
4 THE COURT: Now, just a minute. Please. Please.
5 Please. Folks?
6 MEMBER OF PUBLIC: I'm not -- I'm done. I'm done.
7 THE COURT: Please, folks. I just need to say
8 something.
9 MEMBER OF PUBLIC: I have listened to it all day
long.
10 I'm done.
11 THE COURT: This process of the Court coming out to
12 the claimants is very unusual. It should not be a place where
13 people are arguing with each other. This is a place to get
14 information. Although not in a courtroom the decorum of a
15 courtroom has to come here, otherwise I cannot do this.
16 I wanted to bring this here because it is important
17 for people to get good information. I did not bring it here
to
18 have fighting amongst you. Everyone has got his own
situation.
19 This is not a forum to vent one against the other.
20 Sir, and this then this lady.
21 MEMBER OF PUBLIC: Your Honor, on that same issue, I
22 really didn't think that was going to come up today but
23 everybody talks about I got a little bit from VCF and I got
24 this -- Judge.
25 THE COURT: The VCF -- excuse me. The VCF is out.
We
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1 are not talking about VCF.
2 MEMBER OF PUBLIC: If a gentleman is still working
and
3 getting promoted on a public safety job eight years later and
4 they got a huge payout, you know what? Everybody in this room
5 should be concerned about that, Judge. Because it starts to
6 say how come their family and he's getting the benefit of three
7 promotions, he really didn't get the same. And my family has
8 to take a quarter of what he took.
9 THE COURT: Let's be clear. We are talking about a
10 settlement now is it a good one? Is it not a good one.
That's
11 your decision.
12 The VCF is finished and closed. Whatever the
goodness
13 or badness of it is not our concern.
14 Ma'am?
15 MEMBER OF PUBLIC: This is actually the first meeting
16 that I have ever attended. I was a nurse at Ground Zero for
17 nine and a half months.
18 THE COURT: I don't think people can hear you but I
19 will repeat.
20 The lady was a nurse at Ground Zero for --
21 MEMBER OF PUBLIC: Nine and a half months.
22 THE COURT: Nine and a half months.
23 MEMBER OF PUBLIC: Initially I developed the
24 respiratory distress syndrome and the GERD and rhinitis and
25 everything but it was all functional, and then I developed
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1 pulmonary sarcoidosis that affected my lungs and my bones and
2 everything else. I am presently on 11 medications. I have --
3 excuse me, I'm nervous -- I went to file my workmens' comp
4 claim but I still had to work because I'm a single mother and
I
5 needed insurance for my minor children. So, I did win my case
6 and they do cover my medications now, but prior to that I had
7 to pay \$900 in co-pays a year.
8 So, my question is, I didn't collect money from the
9 workmens' comp, will they still cover my medications?
10 THE COURT: I don't know the answer. Does anybody

11 know the answer? I think this is something you have to bring
12 up with your workmens' comp lawyer.
13 MR. GRONER: But we are negotiating with every single
14 workmen's compensation carrier so that they will waive or
15 reduce the lien and, more importantly, continue you on
workers'
16 comp benefits. We have been successful with some so far, we
17 are working with every single carrier so that you can continue
18 on your present benefits.
19 When we speak to your attorney we can give you the
20 status with respect to your particular carrier and give you a
21 sense of what is going to happen.
22 MEMBER OF PUBLIC: Liberty Mutual.
23 THE COURT: I'm sorry, who is it?
24 MEMBER OF PUBLIC: Liberty Mutual.
25 MR. GRONER: Liberty Mutual has waived lien
completely

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1 and waived credit which means that they will continue all
2 workers comp benefits uninterrupted no matter how much you
3 recover or if you recover in this particular case.
4 THE COURT: It is almost 9:30 and I would like to
5 bring this to a close. We will stay around a bit longer if
6 there are private questions.
7 I would like to say this: By a turn of the wheel,
8 lucky or unlucky, I became the Judge for the 9/11 litigation.
9 In the Federal Court we have a practice of, it is called a
10 wheel but it is a computer and it is random selection of
cases.
11 It turned out I got the first 9/11 case and because I got the
12 first, all similarly-related cases came to me. I had all the
13 wrongful death cases. I had all the property damage cases. I
14 have all these cancer cases and respiratory injury cases. All
15 in all, probably about 12,000, 13,000 cases. It is more than
16 probably any other Judge in the United States.
17 It has been a challenge, it has been an
18 extraordinarily difficult challenge but I'm glad I had that
19 luck or unluck to get that first case because it is the most
20 significant thing I have done in my life. It doesn't compare
21 to what you folks did on 9/11. Nothing does. But, as I
22 envisioned my job when the first cases came in, it was to

23 preside on those cases efficiently and fairly, to bring them
24 forward as quickly and as responsibly as I could and put them
25 in a stage where they could be resolved by trial or by

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1 settlement in as short a time as possible.

2 In 1993 when the World Trade Center case was -- when
3 the World Trade Center was first bombed, those cases took 12
4 years to resolve. 12 years. And that was probably a couple

of

5 hundred cases.

6 I have been able to resolve all the wrongful death
7 cases but two, 95 out of 97, well on our way to resolving all
8 the property damage cases, we have resolved a whole raft of
9 insurance cases. I have had cases where people had to find a
10 cemetery because of the approximately 3,000 deaths in the

World

11 Trade Center about half of the people died without a trace
12 consumed in the fires. And so, the people argued that the
13 ground itself was hallowed and deserved a cemetery at Fresh
14 Kills. And there are other cases as well.

15 This is the most significant grouping of cases and I
16 will stay with this until they're resolved. If 95 percent of
17 you decide that the settlement is fair, most of the cases will
18 be resolved because I do think that the settlements in the
19 other four categories of cases will follow and the cases in

the

20 other dockets would follow as well. But, whether they do or
21 not, that's your business.

in

22 In doing my job I felt it was not enough to preside
23 the courtroom and make rulings on whether the cases were
24 settled or not, on which to proceed or not, if it should

happen

25 or not. These are your cases. You are the people who are

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1 making the claims. You have to make the decisions. And so, I

2 assembled all the people on the cases and said we are going to
3 go out and do this twice where the people are, we went to
4 Staten Island and once in Eastern Queens so those of the
people
5 who are in Nassau or Suffolk or in Queens can come. It has
6 been interesting. It has been informative and challenging in
7 its own way.
8 I hope we have been able to bring this settlement to
9 you so that you understand it a little better now than you did
10 before. But, eventually, you have to reach your own decisions
11 and for some of you that decision may be a very difficult one.
12 I hope we have helped you understand the issues and
13 come to somewhat of a better understanding but what you do I
14 will respect and I will honor and I will continue to preside
15 over these cases until every one of them is finished -- I hope
16 finished well for you but there is no way to know that. One
of
17 the biggest advantages of the settlement is the certainty of
18 resolution. You don't have to wait. You don't have to wait
19 for appeals. You don't have to wait for juries. You don't
20 have to wait for motions. You have a certain amount, not as
21 good as winning, but a certain defined amount which if you
22 think it fair, you can take with honor and go on. It is not
23 winning, it is not getting everything you deserve or feel you
24 deserve, it is what you think is fair in a very rough,
25 approximate way. And each of you have to do this yourself.

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1 So, it has been a privilege to come here. I thank
all
2 the lawyers, the Special Masters, Mr. Garretson, my law clerk
3 for coming out and being part of this process.
4 Thank you for listening and thank you for
5 participating.

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