

**STATEMENT OF JUDGE ALVIN K. HELLERSTEIN
ABOUT THE *IN RE: WORLD TRADE CENTER
DISASTER SITE LITIGATION AMENDED
SETTLEMENT PROCESS AGREEMENT*¹**

I have before me an order which makes various appointments and sets this down to the public for hearing and comment. The hearing will be held on the 23rd at 10:00. But there is a major difference between what came to me on the 19th of March and what comes to me today. This is a very good deal.

I am very excited about this deal. And I want to put four reasons before you that causes me to have this excitement and to express myself in the way that I did.

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

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

And then on the elimination of the liens, you know that when a settlement occurs, those who advance money previously to cover disabilities or time off that could not be worked and lost compensation because of it, that money is paid by the compensation carriers, and the disability insurance companies gets repaid out of the settlements. We call it subrogation, and a lien is asserted against the workman's right to recover or the policeman's or the fireman's right to recover. Well, these liens are being waived by the city, and that is worth another \$25 million. So there is more than \$125 million of additional benefits that are flowing to each and every member of the plaintiffs' class who wish to settle. That's more than a 20 percent improvement over the settlement that had been put to me before.

In addition, there is a great improvement of process which will ensure fairness. That costs money, and the Captive Insurance Company is putting up \$3 1/2 million to pay for that. It may cost more, in which case we will deal with that subject as it comes up. But that is another element, and that's a second point I want to talk about, a better and fairer process: Mr. Matthew Garretson, who has more experience with mass tort settlements than anybody in America, has told me this protocol for this settlement is the fairest and fastest and the best he has seen. That was another goal I had, not only that there should be fairness, there should be the appearance of

¹ Excerpted from Transcript of June 10, 2010 Conference, In re: World Trade Center Disaster Site Litigation, Master Dockets 21 MC 100 (AKH), 21 MC 102 (AKH) and 21 MC 102 (AKH).

fairness. So Mr. Garretson and his company will be working to deal with these plaintiffs and to assure the fairness of each of these settlements, and there will be a process to come to him and to have him reconsider anything that people are concerned about.

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

We will have a process that is second to none. There are 10,000 people out there, and I hope 100 percent of them will come and come into this settlement, because it is worth it. But part of that reason for them to come in is that they are assured a fair deal. This is not going to be a run-around. This is going to be a process that puts money in their hands fast.

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

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

Now, when a lawyer's fee is involved as well in a settlement, and he has to make full and fair disclosure to each of his clients, and where when there are not other lawyers around, that is a very tough job, because it is very hard to be fair, and you can say things thinking it is fair, which in hindsight you wish you would have said a little more or in a different way. So I have reached out to Professor Simon to get him to be involved, to be the neutral guide to make sure that it is not only fair to the group, but fair to each individual. So each individual, as Mr. Napoli pointed out, will have the ability clearly to understand what's good for him and to make an informed decision whether to opt in or not. This has to be fair. And we may want settlements -- courts love to clear their dockets, plaintiffs love -- the lawyers love to finish cases, most of them anyhow, but the touchstone is what is fair to the individual, and that's why I am so heartened by this process, because the combination of Garretson, Feinberg and Simon will make sure that this process is thoroughly fair and will appear to be fair.

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

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

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

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

Everything will be spread on the court dockets. Mr. Napoli mentioned that he has it already on his docket, but we will have it on the court docket and, I will read out to you what it is. It is a long, what they call a URL, but you can get it from the transcript or from a call. So it's <http://www.nysd.uscourts.gov/cases/show.php?db=911&id=540>. This is the 9/11 court Web site, and you can get it -- you will have this entire agreement of over 100 pages and Exhibits A through T. Most important of these pages will be beginning on page 54, which describe all of the various illnesses, and then there is an Exhibit C that creates a settlement grid of which Ms. Warner spoke and has A through K in the disease groups and different impairment levels and the points of which she spoke. It is a hard document to understand. The attorneys will be available to describe it in greater detail.

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We have compared the numbers. ... We have compared the numbers with other settlements. These are very good. People will do what's, I think, very good for them, but they will have to make that decision.

These are not ordinary cases. That's why we are involved. There are many reasons why judicial supervision is important. It is clear that there are no sound precedents either to guide the judge or not to guide the judge. Normally speaking, parties are free to make their own

settlements and the judge has no role in the ending of a case. But when you come to a case of 10,000 people and just a few lawyers representing them, and in a case where the judge has had to deal with the case on a comprehensive basis, very much like a class action, there are precedents for judicial supervision of the settlement. And in a basic way, what we are about in a settlement of all these cases, investing so much time of the court, and involving so many people and invested with all the public involvement of public money and public activity, it just begs for judicial supervision, and I have exercised it and I will continue to exercise it because we are all interested in producing something that is fair, and in my judgment we have it here.

It is not a perfect settlement. Settlement by its very terms means compromise, and compromise means that you are dealing with imperfection. This settlement can't restore people to who they were and what they were the day before September 11. This settlement, however good, cannot restore health to those who lost health and it can't restore life to those who lost life. And it reflects the entire complexity of the litigation system, the enormous expense, the difficulty, the complexity and the risk involved in these cases. The entire question whether a plaintiff, although clearly injured, can trace those injuries back to 9/11, is a cancer something that just grows out of life or has it been related in a proved way to the activities of 9/11? It's a very difficult question. There is very little science or good science on it, very little medical answers on this question. Would the plaintiffs have been able to have proved their cases before how many juries and what kind of consistency or inconsistency? Would the city have been able to prevail on its defense of immunity, a defense that I held was fact intensive, but it goes back to a statute involved in New York State law and a comparable statute in federal law going back to the 1950s, I think, in the aftermath of our society's fear of an atomic bombing by the Soviet Union and various statutory measures that gave government the right to do that which is in the public good on an emergency basis.

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

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

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

I want to thank Mr. Napoli, Mr. Papain, all their colleagues, Mr. Tyrrell, Mr. Hopkins and all their colleagues, Ms. Warner, Mr. Biester, Ms. LaSalle, all their colleagues, for this

impressive piece of work that comes into this agreement, the settlement. It was a long, hard road, but we have it here.

It is not perfect, but it is very, very good. So what should people be thinking about as they prepare for the June 23 hearing and beyond? The first question everyone should ask is this a good deal for me? Will I be getting a fair amount of money for this? Is it worth it for me to keep going in this lawsuit, because everyone has that choice, and to risk going to trial and being subjected to all these motions and countless additional expenses and time and effort through the appeals process, the trial process and beyond? And if the person thinks it is good, when should I sign up, you might ask? Should I wait to see what everyone else does? Shall I wait to see what Congress does? Should I wait to see if maybe Judge Hellerstein can do some magic and get me a better deal? There is no better deal. There is no better deal than this deal. This is the deal on the table. This is the deal that people have to consider. This is the deal that people have to decide whether to accept or reject, and there is no deal unless 95 percent of the people say yes. That's a tough number. It's almost unanimous. And it's very hard to get unanimity. We did it once when we elected George Washington as our first president, and with much difficulty in a second election because then the federalists and the then democrats were at each other's throats. But we never did it again. And a few times we were tied in the Congress and we had it very recently to be tied. But we need 95 percent.

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

And one last point, Ms. Warner mentioned it, there are a large number of defendants who are not part of this deal. I hope that they will also want to settle, and I am going to see if that's possible. Because it is time that this lawsuit ended, and settlements are a good way to end it. Not perfect. People won't get their day in court. Defendants won't have their chance of being vindicated. But it's an opportunity in a fair and compromising way to end this lawsuit and mend this terrible tear in the social fabric of this country. So I am going to try to get people to think about this. Whether I succeed or not, I don't know. But that's in the future also. What's at the table is this deal.