

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE WORLD TRADE CENTER DISASTER : 21 MC 100 (AKH)
SITE LITIGATION : (All Cases)
:
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IN RE WORLD TRADE CENTER LOWER : 21 MC 102 (AKH)
MANHATTAN DISASTER SITE LITIGATION : (All Cases)
:
-----X
IN RE COMBINED WORLD TRADE CENTER : 21 MC 103 (AKH)
AND LOWER MANHATTAN DISASTER SITE : (All Cases)
LITIGATION (straddler plaintiffs) :
:
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**OBJECTIONS TO SULLIVAN PAPAIN BLOCK McGRATH
& CANNAVO, P.C.'S SUBMISSION FOR COMMON
BENEFIT EXPENSES**

Paul J. Napoli, an attorney duly licensed to practice before the Courts of the State of New York and admitted to the bar of this Honorable Court, hereby affirms the following to be true, or, if stated upon information and belief, that I believe it to be true, under penalty of perjury:

1. I am a member of the law firm Worby Groner Edelman & Napoli Bern, LLP and Co-Liaison Counsel for the plaintiffs in the above referenced matters. In addition to having been appointed by this Court as Plaintiffs' Co-liaison counsel, our office represents the majority of the plaintiffs, *including most of the firefighters*, who are eligible to participate in the World Trade Center Settlement Process Agreement, As Amended.

2. Pursuant to this Court's Order of June 25, 2010 Order (Protocol For Allowing Attorneys' Fees and Allowance of Expenses) Worby Groner hereby responds to the application of Sullivan Papain Block McCrath & Cannavo P.C. (the "Papain Firm") for treatment of certain of its costs as Common Benefit Expenses.

3. Attached to this Affirmation as Exhibit “1” is an Excel formatted summary of our objections to the Papain Firm’s alleged Common Benefit Expenses. As detailed below, these objections generally fall within three categories:

- a. The Papain firm improperly charges \$55,284.29 in “Case Specific Expenses” as defined by the Allocation Neutral Protocol No. 4 as appended to this Court’s Order of June 25, 2010, as Common Benefit (General Expenses);
- b. The Papain firm improperly charges of \$13,122.00 as Common Benefit costs for Depositions they did not conduct and, in some cases, failed to even attend; and
- c. The Papain firm fails to supply supporting documentation and invoices for over \$222,063.63 it claims as costs.

**THE PAPAIN FIRM IMPROPERLY CHARGES ALL
PLAINTIFFS FOR THE WORK IT PERFORMED ON ITS
INDIVIDUAL CASES**

4. This Court’s June 25, 2010 Order and the attached Allocation Neutral Protocol (ANP-4) define “Case-specific Expenses”:

Case-specific Expenses include but are not limited to court filing fees for an individual case; obtaining a client’s medical and employment records; past expert review of a client’s medical records; and other expenditures specific to the that individual case.

In direct contravention of that Order, the Papain firm has submitted Case-specific Expenses as Common Benefit expenses.

5. The Papain Firm has disguised \$55,284.29 as *common benefit* expenses. These expenses benefited no plaintiff other than the individual case to which those costs were incurred. Non-Papain plaintiffs or other firms’ plaintiffs should not be obliged to pay these expenses that Papain shockingly submits as having been incurred for a “common” benefit.

6. Specifically, the Papain firm charged all of the plaintiffs \$18,909.17 for the case specific depositions of individual plaintiffs’ and their witnesses; including case specific

physicians and non-party witnesses. Those *case-specific* costs include: \$548.00 for the deposition transcript of *Papain client* Erin Malone; \$118.25 for the deposition video-DVD of *Papain client* Erin Malone; \$1,163.50 for the deposition transcript *Frank Malone's treating physician* Carl Friedman, M.D.; \$287.50 for the deposition transcript of *John Quinn's treating physician* Andrew Baik, M.D.; \$255.50 for the deposition transcript of Angelo De Sanno, a *non-party witness* in John Quinn's case; \$302.00 for the deposition transcript of Barbara Davey, a *non-party witness in Raymond Hauber's case*; \$631.58 for the deposition transcript of *Frank Malone's physician* David Lichtenstein, M.D.; \$274.30 for the deposition transcript of Fabio Valencia, a *non-party witness* in Harold Valencia's case; \$665.50 for the deposition transcript of *John Quinn's treating physician* Lawrence Mancino, M.D.; \$220.75 for the deposition transcript of Lynn Cranstoun, a *non-party witness* in Raymond Hauber's case; \$622.65 for the deposition transcript of Nader Attia, a *non-party witness* in Raymond Hauber's case; \$322.00 for the deposition transcript of Patricia Birdsall, a *non-party witness in Raymond Hauber's case*; \$837.00 for the deposition transcript of *Frank Malone's treating physician* Rajesh Kakani, M.D.; \$291.00 for the deposition transcript of *John Quinn's treating physician* Richard Lazzaro, M.D.; \$389.75 for the deposition transcript of *Raymond Hauber's treating physician* David Ilson, M.D.; \$1,236.25 for the deposition transcript of *Frank Malone's treating physician* David Lichtenstein, M.D.; \$572.17 for the deposition transcript of *Frank Malone's treating physician* Gary Warren Freeburg, M.D.; \$460.00 for the deposition transcript of *Raymond Hauber's treating physician* Kanwardeep Aiden, M.D.; \$227.25 for the deposition transcript of Tricia McGee, a *non-party in Frank Malone's case*; \$455.74 for the deposition transcript of *Raymond Hauber's physician* Yuri Volk, M.D.; \$268.25 for the deposition video of *Papain client* Frank Malone; \$168.25 for a duplicate copy of a deposition video of *Papain client*

Frank Malone; \$1,186.53 for the deposition transcript of *Papain client* Frank Malone; \$1,004.25 for another copy of a deposition transcript of *Papain client* Frank Malone; \$805.75 for the deposition transcript of *Papain client* Harold Valencia; \$682.00 for another copy of the deposition transcript of *Papain's client* Harold Valencia; \$1,078.75 for the deposition transcript of *Papain client* James Albach; \$997.50 for a duplicate copy of the deposition transcript of *Papain client* James Albach; \$415.75 for the deposition transcript of *Papain client* John Quinn; \$1,221.75 for a duplicate copy of the deposition transcript of *Papain client* John Quinn; \$411.75 for the deposition transcript of *Papain client* Paul Hauber; \$163.65 for the deposition transcript of Captain Richard Sauntner; \$355.00 for the deposition transcript of Chief Robert Ingram; \$645.40 for the deposition transcript of Chief Robert Kilkenny; and, \$521.90 for the deposition transcript of Lei Tian;

7. In contrast, the Napoli Firm conducted many more depositions, in the same category that the Papain firm cloaks as “bellwether” depositions amounting to an outlay of *significantly* more money than the Papain Firm. We have not, however, requested that the plaintiffs who are represented by other firms pay for the expenses associated with depositions that are *case specific* to Napoli clients. The reason is clear: no single Papain case or cases benefited the group as a whole. Since no trials were ever conducted, the effect of any cases set for trial was minimal at best for other plaintiffs’ attorneys’ firms. If the Papain firm is allowed this tenuous claim for these expenses, we reserve our right to supplement and include these expenses as common benefit expenses.

8. In addition, the Papain Firm has mislabeled \$35,550.00 for Papain plaintiff case-specific experts as a common benefit to all. For example, the Papain Firm wants all plaintiffs to pay:

- a. \$12,000.00 for Dr. David Kamelhar's "*Retainer Fee*" on the *Frank Malone and Harold Valencia* case;
- b. \$2,550.00 for Jonas & Welsh, P.C. to issue reports;
- c. \$2,000.00 for Jonas & Welsh P.C.'s "*Retainer Fee*" on the *Frank Malone* case;
- d. \$2000.00 for Jonas & Welsh P.C.'s "*Retainer Fee*" on the *Harold Valencia* case;
- e. \$5000.00 for Dr. Milan Amin's "*Retainer Fee*" on the *Frank Malone* case; and,
- f. \$12,000.00 for Dr. David Kamelhar's "*Retainer Fee*" on the *Frank Malone Case*.¹

9. Each of the expenses listed in paragraph "8" are case-specific expenses for Papain's clients and should not be considered common-benefit expenses; any claim to the contrary is specious at best. These costs are clearly "expenditure[s] specific to the individual case". None of these reports were ever exchanged with other plaintiffs' counsel. These plaintiffs' medical condition is a matter exclusive to their case and has no impact on, nor benefit to, other plaintiffs' cases.

10. The Papain Firm has also improperly submitted \$655.16 as a common benefit expense for a case-specific photocopying charge for Papain's own individual client Frank Malone. The Papain Firm wants all plaintiffs to pay a portion of this \$655.16 for copies of photographs that were marked as exhibits during Frank Malone's deposition. The Napoli Firm is not asking all plaintiffs to pay them for the copying of exhibits at their own individual plaintiffs' depositions.

11. The Papain Firm is also trying to categorize as common benefit expenses \$169.96 in subpoena fees for case-specific witnesses. For example, the Papain firm wants all plaintiffs to

¹ This expense is listed twice on the Papain Firm's schedule (as items numbered 75 and 88). Even if the charge had been a proper one, such duplication must either be an error or, in any case, disallowed. *This is why it is necessary for the parties to receive all supporting documentation.*

pay them \$60.27 for the subpoena fee for Mayris P. Webber, Dr.Ph., M.P.H.; \$43.34 for the subpoena fee for Arthur Helfet, M.D. and \$66.35 for the subpoena fee for Charles R. Blaich. These three witnesses are case-specific witnesses for certain clients of the Papain Firm. The testimony of these witnesses would not have been useful to any plaintiff besides those specific Papain Firm plaintiffs

12. Clearly, expenses related to a specific client's case, where none of the work product was shared with the other plaintiffs' counsel, or in some cases not even exchanged with defense counsel, could not have meaningfully contributed to the common benefit for plaintiffs in the World Trade Center Litigation.

13. These costs should not be borne by non-Papain firm clients.

**PAPAIN WANTS ALL PLAINTIFFS TO PAY FOR THEIR
COPIES OF TRANSCRIPTS OF DEPOSITIONS THAT
WERE CONDUCTED AND LEAD BY THE NAPOLI FIRM**

14. The Papain Firm wants all plaintiffs to pay a portion of their \$13,122.00 charge for obtaining copies of transcripts of depositions that were conducted and lead by attorneys from my office. Our firm has already charged these costs to the individual clients and allowing this Papain charge to appear as "common benefit" would result in our clients being charged twice for the same expense. The Papain firm should not be entitled to double charge these plaintiffs.

15. Notably, in many of the depositions conducted by my office at the Papain offices, if the Papain firm even appeared, they were present at the beginning of the deposition and the Papain attorney would then leave the room to work on other cases only to return from time to time to see how the depositions were proceeding. In any case, it is unreasonable for the Papain Firm to want all plaintiffs to pay for their copy of this transcript when the costs are already properly chargeable by the firm that conducted the deposition.

16. For example, the Papain Firm requests all plaintiffs to pay a portion of the \$477.75 charged for the deposition transcript of John Fedeli. *This deposition was conducted by William Dubanevich, a Napoli Firm attorney.* The Papain did not participate in this deposition and did not ask any questions during the deposition. It is unreasonable for the Papain Firm to want to double charge all plaintiffs to pay for their copy of this transcript.

17. The Papain Firm also wants all plaintiffs to pay a portion of \$1,353.50 for the deposition transcript of Kelly McKinney. *I conducted this deposition myself.* The Papain firm did not participate in this deposition and did not ask any questions during this deposition. It is unreasonable for the Papain Firm to want to double charge all plaintiffs to pay for their copy of this transcript.

18. The Papain Firm also wants all plaintiffs to pay a portion of \$1,888.25 for their copy of the deposition transcript of Kenneth Holden. *I conducted this deposition myself.* The Papain Firm did not participate and did not ask any questions during the first day of Mr. Holden's deposition. It is unreasonable for the Papain Firm to want all plaintiffs to pay for their copy of this transcript.

19. The Papain Firm also wants all plaintiffs to pay a portion of \$851.50 for transcript of day two of Kenneth Holden's deposition. *Again, I took the lead for this deposition.* The Papain Firm only asked a few questions (during pages 528 through 617 of the transcript). It is unreasonable for the Papain Firm to want all plaintiffs to pay for their copy of this transcript.

20. The Papain Firm also wants all plaintiffs to pay a portion of \$510.75 for their copy of the deposition transcript of Michael Mucci. *This deposition was conducted by William Dubanevich, a Napoli attorney.* The Papain Firm did not ask a single question during this

deposition. It is unreasonable for the Papain Firm to want all plaintiffs to pay for their copy of this transcript.

21. The Papain Firm also wants all plaintiffs to pay a portion of \$536.75 for their copy of the deposition transcript of Robert Alvatroni. *This deposition was conducted by Christopher LoPalo, a Napoli attorney.* The Papain Firm did not ask a single question during this deposition. It is unreasonable for the Papain Firm to want all plaintiffs to pay for their copy of this transcript.

22. The Papain Firm also wants all plaintiffs to pay a portion of \$1,275.75 for their copy of the deposition of transcript of Walter Murray. *William Dubanevich of my office took the lead on this deposition* and the Papain Firm only asked a few follow-up questions. . It is unreasonable for the Papain Firm to want all plaintiffs to pay for their copy of this transcript.

23. The Papain Firm also wants all plaintiffs to pay a portion of \$2,099.25 for their copy of the deposition transcript of William Ryan. *William Dubanevich, an attorney at my office, took the lead on this deposition.* The Papain Firm only asked a few follow-up questions during this deposition. It is unreasonable for the Papain Firm to want all plaintiffs to pay for their copy of this transcript.

24. The Papain Firm also wants all plaintiffs to pay a portion of \$700.00 for their copy of the deposition of John Klein. *I took the lead on this deposition.* The Papain Firm only asked a few follow-up questions (*see* pages 210-218 of the transcript). It is unreasonable for the Papain Firm to want all plaintiffs to pay for their copy of this transcript.

25. The Papain Firm also wants all plaintiffs to pay a portion of \$2,103.75 for their copy of the transcript for the depositions of Mary Plaskon, Peter Rinaldi and John Ryan. Attorneys of my office asked the majority of the questions in this transcript. It is unreasonable for the Papain Firm to want all plaintiffs to pay for their copy of this transcript.

26. The Papain Firm wants to charge all plaintiffs to pay a portion of \$552.75 for a copy of the deposition transcript of Michael Burton. *I took the lead on this deposition* and the Papain firm had very little if any input on this deposition. In fact, this was one of the depositions described above, where if the Papain firm was even present, they were present for the beginning of the deposition and then left the room, to work on other cases only to return from time to time to see how the depositions were proceeding. The Papain Firm asked few questions (on pages 318 through 372) on the second day of Michael Burton's deposition. It is unreasonable for the Papain Firm to want all plaintiffs to pay for their copy of this transcript when the costs are already properly chargeable by the firm that conducted the deposition.

27. The Papain Firm also wants all plaintiffs to pay a portion of \$772.00 for the transcript of first day of Burton's deposition. I conducted this deposition by myself this day. The Papain Firm did not ask a single question during this deposition. It is unreasonable for the Papain Firm to want all plaintiffs to pay for their copy of this transcript.

28. All plaintiffs should not have to pay the Papain Firm \$13,122.00 for their obtaining copies of transcripts for depositions in which they did little or no work.

**THE PAPAIN FIRM IMPROPERLY CHARGES ALL
PLAINTIFFS FOR THE PRINTING OF DOCUMENTS**

29. The Papain Firm is charging all plaintiffs \$8,301.78 for their printing costs. For example, items numbered 103 to 105 on the Papain Firm's schedule of expenses indicate that the Papain Firm is charging all plaintiffs \$3,427.77, \$1,210.43 and \$3,663.58, respectively, for printing defendants' documents in order to prepare for unidentified defendant depositions.

30. The Napoli firm did not charge plaintiffs as a common benefit expense for printing defendants' documents in order to prepare for depositions. If this is a permissible common benefit expense, then the Napoli Firm reserves all of its rights to submit its expenses in printing

the defendants documents to prepare for depositions, which exponentially dwarf the Papain Firm's expenses as common benefit expenses.

31. It should also be noted that during the course of this litigation the Papain Firm repeatedly requested the Napoli Firm's services of to assist them in preparing for depositions because the Papain Firm did not have the technical capabilities to adequately conduct searches of the defendants' documents. *The Napoli Firm provided services to the Papain firm by performing the Papain Firm's searches free of charge.* The Napoli Firm reserves all of its rights to charge the Papain Firm for all of its assistance in preparing the Papain Firm for their depositions.

**THERE ARE EXPENSES ON THE PAPAIN FIRM'S
SCHEDULE THAT LACK AN INDICIA OF RELIABILITY**

32. The Papain Firm is asking all plaintiffs to pay them \$81,273.86 for twenty-four (24) expenses even though the Papain Firm has failed to provide any invoice numbers or supporting documentation for these expenses. The fact that the Papain Firm listed invoice numbers for one hundred six (106) out of their one hundred thirty (130) alleged common benefit charges is suspect. It is unreasonable for the plaintiffs to be required pay the Papain Firm for the 24 alleged common benefit expenses listed on the Papain Firm's schedule of expenses that do not have an invoice number or any supporting documentation.

33. The Papain Firms' submission failed to include a single page of supporting documentation for any of the alleged expenses they seeking to have paid by all of the plaintiffs in these matters. Since the Papain Firm failed to provide any documentation whatsoever for any of the alleged expenses they are seeking all plaintiffs to pay for, our office objects to all one hundred and thirty (130) expenses that total \$222,063.63.

34. Accordingly, the Court should deny the Papain Firm's request for \$222,063.63 in common benefit expenses in its entirety.

CONCLUSION

35. We object to all one hundred (130) of the Papain Firms' alleged Common Benefit Expenses and respectfully request that the Papain Firm's request for the approval of their Common Benefit expenses be denied.

Dated: New York, New York
August 25, 2010

Respectfully submitted,

WORBY GRONER EDELMAN & NAPOLI BERN, LLP



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SOUTHERN DISTRICT OF NEW YORK

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LITIGATION (straddler plaintiffs) :
:
-----X

DECLARATION OF SERVICE

Christopher R. LoPalo, an attorney duly licensed to practice before the Courts of the State of New York, hereby declares that on August 25, 2010, I served the within Objections to Sullivan Papain Block McGrath & Cannavo, P.C.'s Submission for Common Benefit Expenses upon all counsel of record through the Court's Electronic Filing system.

Dated: New York, New York
August 25, 2010



Christopher R. LoPalo (CL-6466)