WORBY GRONER EDELMAN & NAPOLI BERN LLP

A Partnership of Limited Liability Partnerships
350 Fifth Avenue, Suite 7413
New York, New York 10118
(212) 267-3700

PAUL J. NAPOLI
SENIOR PARTNER
PNAPOLI@NAPOLIBERN.COM

May 27, 2010

Via Electronic Mail

The Hon. Alvin K. Hellerstein
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 1050
New York, New York 10007-1312

Re: In re: World Trade Center Disaster Site Litigation
21 MC 100 (AKH)

Dear Judge Hellerstein:

Yesterday morning, we, along with every other attorney who receives e-mail notification of filings on the Court's ECF system, received a letter from Kevin Russell, Esq. of the firm Howe & Russell, P.C. Mr. Russell is an attorney who worked with us in opposing the defendants' immunity motions in 2006 and on the subsequent appeal of this Court's decision to the Second Circuit. To say the least, we were very dismayed that Mr. Russell felt the need to voice his concerns about the allocation of the plaintiffs' attorneys' fees and his individual attorneys' fee agreement with our firm in so public a fashion rather than writing to this Court and simply copying our office. Nonetheless, given the public outreach to this Court by Mr. Russell and the result he obviously intended, *i.e.*, that his complaint will be joined by every other plaintiff's attorney who was copied on his communication to this Court, we are compelled to respond in an equally public manner.

We initially retained Mr. Russell's firm in its prior incarnation, then known as Goldstein & Howe, P.C., because we were familiar with his former partner Thomas Goldstein, Esq. Mr. Goldstein had worked with us on matters unrelated to *In re: WTC* in the past, but shortly after we began working with him on this matter, Mr. Goldstein accepted a position with Akin Gump, where he was prevented from continuing our association due to certain business obligations of his new firm that created a conflict of interest with our work on plaintiffs' behalf. In any case, the former Goldstein & Howe, P.C. became Howe & Russell, P.C. and Mr. Russell stepped into Mr. Goldstein's place. While this Court is well familiar with the talents of our in-house appellate counsel, both Mr. Goldstein and Mr. Russell were former clerks to Federal Appellate Judges and

both were experienced advocates with regular appearances before the United States Supreme Court. Anticipating that the immunity matters would certainly go to the Second Circuit, if not the Supreme Court, we believed it necessary to consult with outside appellate counsel whose primary area of practice was in the Federal Appellate Courts.

After Ms. Rubin of our office prepared the Opposition papers on the immunity motion(s), Mr. Russell assisted in the editing and finalization of those papers prior to filing. As Your Honor will likely recall, he also appeared before this Court for oral argument of the motion in June 2006. When the matter proceeded on defendants' appeal to the Second Circuit, Mr. Russell took a somewhat larger role in preparation of the Appellate Brief with Ms. Rubin's assistance. As was the case before Your Honor, Mr. Russell argued the matter before the Second Circuit. Plainly, given the outcome of the matter before this Court and the Second Circuit, we have no quarrel with the quality of Mr. Russell's work.

Nonetheless, this Court is certainly aware of the pressures that have been brought to bear on our office since this Court initially noted the issue of Attorneys' fees on a proposed Conference Agenda dated October 7, 2009. Those pressures have increased exponentially since this Court's on-the-record commentary in Court on March 19, 2010. It was on that date that this Court opined in a courtroom full of plaintiffs and journalists that despite our admirable work on these matters, we were not entitled to obtain our *contractual* contingency fees from the plaintiffs upon settlement of their claims, despite the fact that we had wholly appropriate *and duly executed retainer agreements* with each and every one of those clients.

In the ensuing two months, we have been engaged in daily continuing negotiations and conversations with the Captive's counsel, the Special Masters and this Court, attempting to re-negotiate those aspects of the Settlement Process Agreement ("SPA") that this Court found objectionable. For the record, although this Court is likely already aware of the facts, we anticipate voluntarily reducing our attorneys' fees at the Court's insistence on a number of matters where we are unquestionably entitled to charge the clients for our time and efforts under New York law. In truth, so should the fees of defense counsel and every other consultant and vendor involved. Thus far, we expect that we will voluntarily forego some *$85 million* in attorneys' fees if an amended SPA is ultimately consummated:

a. Plaintiffs' Liaison Counsel ("PLC") will voluntarily reduce our contracted fees from 33.33 percent to 25 percent of the plaintiffs' net recovery, resulting in an additional **$59,351,250.00**[1] going to the plaintiffs;

b. PLC will voluntarily agree to forego our rights to take a fee of **$7.8 million** on the Met Life Cancer policy that settling plaintiffs will receive as part of the benefits paid them under SPA, as well as forego potentially[2] a further **$8 million** that we would have been entitled to obtain when the Met Life policy starts to pay benefits to settling plaintiffs at some future date;

---

[1] Net of expenses, this number becomes $54,714,478.

[2] Depending on the number of claims paid out.

c. PLC will also voluntarily forego **$10 million** dollars in attorneys' fees we would have been entitled to collect on the Workers Compensation matters;

d. All of the foregoing totaling ***$85,151,250*** in voluntary reductions to plaintiffs' counsel's fees;

e. Assuming conservatively the reimbursed expenses total $35,000,000, plaintiffs' counsel will share on a 75/25 basis with our clients and actually lose another $8,750,000 in addition to the $85,151,250 noted above.

At the same time, this Court has neither suggested nor indeed directed that any other entity involved in this massive litigation forego any part of their contracted-for remuneration in favor of the plaintiffs. The financial reports of the WTC Captive Insurance Co., Inc. reveal that as of the end of September 2009, the Captive had paid out some $165,149,165.00 in defense counsel fees, including $119,071,113 paid to Patton Boggs as lead defense counsel, $6,168,584.00 to coverage counsel and $39,909,468.00 to "other defense counsel." Our 50% share of the fees paid to the court's appointed computer consultants TCDI, Inc. and our 50% share of monies paid to the Special Masters for their hard work on these matters comes to over half a million dollars. Those are only three of the areas where other attorneys or consultants are making a living from the *In re: WTC* litigations, yet despite this Court's repeated references to the unique nature of the underlying facts and genesis of the plaintiff's claims herein, not a single person or entity other than the PLC and "plaintiffs' counsel" by extension has been "asked" by this Court to cut their fees or forego any part of the compensation they contracted for before undertaking the work done in these matters.

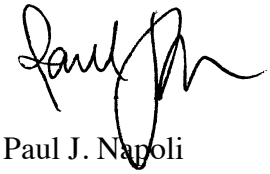
Mr. Russell's entreaty to this Court, stated simply, is that he bargained for a certain value to be paid him for his work and he should not have to involuntarily suffer a reduction in that fee without being heard by this Court. In principal, we agree with him. *Frankly, we feel the same way about our fees***.** It bears noting, moreover, that while Mr. Russell's work on the immunity motions was admirable, the work that PLC, particularly my firm and the individual attorneys of my firm have done in these matters since 2003, dwarfs the work of every other attorney (referral attorneys, consulting attorneys and individual plaintiffs' attorneys) beyond measure. Nonetheless and despite our single-minded dedication to the task of vindicating our clients' rights, *our* fees *will* be reduced under this Court's insistence that it would limit those fees to an even greater degree than we have voluntarily agreed to do. We have similarly been influenced by the truly disheartening pressures visited upon us by the media and our own clients, both of whom seem to believe that we should have simply donated our time for these past seven years without expectation of remuneration for our work.

The obligation of this Court to see that justice is done does not end when the plaintiffs have been paid. This Court owes the PLC and the individual plaintiffs' counsel the same protections, promises of equity and justice that it has provided and guarded for the plaintiffs, the defendants and the court-appointed consultants and vendors. If the PLC and plaintiffs' counsel are to be forced to forego any part of the income they bargained for at the inception of these cases, then at the very least, our obligation to pay referring attorneys and consulting attorneys should be reduced in equal proportion to our own fees. We will shortly submit a proposed order

which we ask this Court to consider. That order will require referral attorneys, contract lawyers (including Howe & Russell, P.C.) to bear the same burden we have been asked to bear for the benefit of these clients who deserve our gratitude for their sacrifices after 9/11. In relevant part, the language of the order will state: "The reduction of said attorneys' fees shall be borne equally among any law firms who share in said attorneys' fees (*e.g.*, referral attorneys, co-counsel or any other counsel legally entitled to a share of the said recovery)". Such a determination is only fair; if PLC and primary plaintiffs' attorneys are to have their fees reduced, the burden should be spread among *all* plaintiffs' attorneys, not only the attorneys who have carried the heaviest burden of the litigation for seven years.

Respectfully submitted,

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



Paul J. Napoli

cc:

Special Masters
Kevin Russell, Esq.
All counsel receiving notification via the ECF system