

WTC Captive Insurance Company Extends Opt-In Deadline for Settlement

- Deadline extended two months until November 8, 2010 from September 8 to allow plaintiffs more time to consider settlement after unexpected logistical delays.
- Over 50% of claimants have already opted-in to the settlement, with less than one-half of one percent opting-out.
- James Zadroga 9/11 Health and Compensation Act of 2010 amended to enable plaintiffs to accept settlement payments and still be eligible for re-opened Victim Compensation Fund, if Congress approves.
- WTC Captive will move \$625 million into a separate “settlement” account as scheduled on August 30, 2010, in anticipation of meeting the 95% opt-in threshold required for the settlement to become effective.
- Settlement talks are ongoing between plaintiffs’ counsel and non-settling defendants, which could add millions to settlement payments for plaintiffs.

(NEW YORK, NY, August 25, 2010) The WTC Captive Insurance Company announced it would extend the September 8, 2010 deadline for opting-in to its settlement for two calendar months, until Monday, November 8, 2010 to give plaintiffs more time to consider whether to accept. More than 5,000 plaintiffs have already opted in to the settlement, worth up to \$712.5 million, totaling more than 50% of the over 10,000 individuals who filed claims against the City and its contractors alleging injury from their work at the WTC rescue, recovery and debris removal operations. Less than one-half of one percent of all plaintiffs have decided not to accept the agreement.

The WTC Captive also announced it will move \$625 million into a separate “settlement” account on Monday, August 30, in anticipation of meeting the 95% opt-in threshold required to make the settlement effective.

“We are encouraged by the thousands of plaintiffs who have already opted-in , but we decided to extend the deadline to make sure every plaintiff has ample time and information to make an informed decision,” said Christine LaSala, President and CEO of the WTC Captive, “We have made every effort to ensure transparency in this process and wanted to allow more time, given some delays caused by the need for a court-appointed law professor to review correspondence from plaintiffs’ counsel to their clients and the difficulty in scheduling enough meetings for plaintiffs and their attorneys to discuss the settlement terms, which we believe are very favorable.”

Ms. LaSala noted another factor in the decision to extend the deadline were the proceedings scheduled by Judge Alvin K. Hellerstein of the U.S. Federal District Court for the Southern District of New York that could result in adjustments to settlement funds available to plaintiffs. While the WTC Captive is not involved in private agreements and arrangements between plaintiffs and their attorneys, it is committed to ensuring the fair and transparent process for determining claim amounts, as outlined in the settlement agreement.

Under the settlement, those claiming debilitating respiratory illnesses such as severe asthma, contracted by a non-smoker within seven months of exposure at the World Trade Center site and surrounding areas, could receive between \$800,000 and \$1,050,000. Approximately \$1.5 million could go to compensate claims of death determined to be caused by the post- 9/11 operations. Plaintiffs who have no qualifying injury, but have a legal claim for fear of becoming sick, will receive \$3,250. All qualifying plaintiffs will be enrolled in a special insurance policy through MetLife to

provide coverage for certain blood and respiratory cancers diagnosed during the coverage period, paying a benefit of up to \$100,000

Judge Hellerstein said in a hearing on June 23, 2010 that he found the settlement to be a “fair, adequate and reasonable settlement, reflecting hard bargaining and concern for fairness of varying parties. It is fair in amount, it is fair in procedure, it is fair in the continued procedures that will be used to hear and decide the various claims.” According to the settlement, the WTC Captive has “at its sole discretion, the right to extend the Opt-In Period,” and has notified Plaintiffs’ Liaison Counsel in writing of its decision.

“Our decision to extend was also based on our desire to be certain that plaintiffs were aware that the James Zadroga 9/11 Health and Compensation Act of 2010 was amended in July by the House of Representatives to enable those plaintiffs accepting the settlement to also be eligible for a reopened Victim Compensation Fund, should Congress approve the legislation,” said LaSala. “That amendment eliminates the need to choose between this settlement, which provides guaranteed payments now, and a reopened VCF. This is a significant factor for those deciding whether to accept the settlement.”

To ensure transparency and independence in determining payments for each plaintiff, an Allocation Neutral, a neutral third party, will oversee the valuation of each claim, assisted by a panel of independent physicians. The Garretson Firm Resolution Group, Inc., an experienced claims administration company, is serving as the Allocation Neutral. The firm and the physician panel will review the proof that each plaintiff is required to submit under the settlement, showing that he or she was present and participated in 9/11-related rescue, recovery and debris removal operations, as well as specific medical documentation. All of this information must be submitted by plaintiffs under oath and will be subject to audit. Plaintiffs can ask for the Allocation Neutral to reconsider its initial decision and, after that review, appeal to the Claims Appeal Neutral.

Kenneth R. Feinberg, former Special Master for the U.S. Government’s September 11th Victim Compensation Fund, is serving as the Claims Appeal Neutral. He will serve *pro bono*. Mr. Feinberg will determine appeals requested by plaintiffs seeking review of the Garretson Firm’s decisions. His determinations will be binding and may be used to adjust a plaintiff’s final payment.

Since the Settlement was announced, Judge Hellerstein has directed counsel for the non-settling defendants, such as the Port Authority of New York and New Jersey and over 300 other contractors and property owners, to try to resolve all remaining cases in the 21 MC 100, 102 and 103 dockets, potentially using the same process outlined in this settlement. That could reduce costs and add millions more to payments to plaintiffs.

In addition to the settlement amounts, while the law allows payments from workers’ compensation awards to be repaid from the tort settlement proceeds by exercising what is called a “lien” on the settlement money, the City of New York and its WTC workers’ compensation insurer, which hold some of those liens, have agreed to waive them. For many of the plaintiffs, this waiver means their settlement payments will be free and clear of liens and their workers’ compensation benefits will continue in the future with no deductions. Negotiations with other lien-holders are ongoing.

About the WTC Captive Insurance Company

In the absence of sufficient commercially available insurance, the WTC Captive Insurance Company was formed in July 2004 to insure the City of New York and nearly 140

contractors, subcontractors and others it engaged against claims arising out of the debris removal process that began immediately after the collapse of the twin towers of the World Trade Center on September 11, 2001. The mission of the WTC Captive is to insure and defend in court, and thereby to protect, the City and the contractor and subcontractor policyholders as claims are processed, adjudicated and resolved.

Organized as a not-for-profit corporation under the laws of the State of New York and licensed by the New York State Insurance Department, the WTC Captive is governed by a five-member Board of Directors composed of current and former City officials plus a representative of the City's lead contractors.

The WTC Captive was funded with just under \$1 billion in federal funds provided through a grant from the Federal Emergency Management Agency (FEMA)—part of the \$20 billion of such funds requested by the Administration and authorized by Congress to help New York City and its people recover and rebuild after 9/11.

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