

May 26, 2010

BY EMAIL

Hon. Alvin K. Hellerstein, U.S.D.J.
US District Court, S.D.N.Y.
500 Pearl Street, Room 1050
New York, NY 10007

Re: *In re: World Trade Center Disaster Site Litigation*, No. 21 MC 101 (AKH)

Dear Judge Hellerstein,

We are writing to request clarification regarding the scope of the Court's intended proceedings relating to abrogation of the fee agreements between plaintiffs and their counsel.

As your honor may know, our firm was hired by co-liaison counsel, WORBY, GRONER, EDELMAN & NAPOLI BERN, to perform certain services on behalf of the plaintiffs in connection with the defendants' immunity-related motions. We assisted in drafting plaintiffs' response to those motions, appeared before your honor to argue the motions in June 2006, and assisted in responding to the Court's orders for supplemental briefing following the argument. We also took principal responsibility for handling the appeal, responding to defendants' petition for mandamus, filing our own motion to dismiss the appeal, arguing those motions before a motions panel of the Second Circuit, and then successfully briefing and arguing the appeal on the merits.

For these services, our contract (attached) calls for a set fee contingent upon, and loosely calibrated to, the plaintiffs' recovery. However, it is not dependant on the size of the contingency fee co-liaison themselves receive from their clients.¹ Under the present settlement proposal, our fee would amount to approximately one-half of one percent of the plaintiffs' recovery,

We are aware that your honor has expressed dissatisfaction with the contingency fee agreement co-liaison counsel negotiated with the plaintiffs, and is considering abrogating those contracts in order to ensure a greater recovery for the plaintiffs and to preserve adequate funds for future claimants. Those concerns are not implicated by our contract, which requires co-liaison counsel to pay our fees out of whatever funds they may recover. As a result, the enforcement of our contract will affect only the distribution of fees among plaintiffs' attorneys, and will have no effect on the plaintiffs, defendants, or future claimants. *Cf. In re September 11 Litigation*, 567 F. Supp. 2d 611, 620-21 (S.D.N.Y. 2008).

¹ Our contract does not, for example, entitle our firm to a higher-than-expected payment in the event co-liaison counsel were able to recover an unusually high contingency fee from their clients. Nor does it call for a smaller fee to our firm in the event a court deems the fee arrangement between co-liaison counsel and the plaintiffs excessive or otherwise unenforceable.

We had not understood your honor to be contemplating abrogating the fee agreements *among* plaintiffs' counsel. For example, we have had no reason to believe that the Court was considering altering the division of fees among the lawyers and law firms comprising WORBY, GRONER, EDELMAN & NAPOLI BERN, or abrogating the hourly fee agreements co-liaison counsel may have entered into with other outside lawyers to provide discrete advice or services to them.

However, we have recently been advised that our understanding may be mistaken. If that is so, and if the Court is contemplating abrogating our contract with co-liaison counsel, we respectfully request notice of that intention so that we may be heard on the matter and take any procedural steps (such as intervention in the case) necessary to preserve our ability to appeal any such order.

Respectfully submitted,



Kevin K. Russell

Attachment

cc: All counsel on the covering email