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Ground Zero Workers Reach Deal Over Claims

By **MIREYA NAVARRO**

A settlement of up to \$657.5 million has been reached in the cases of thousands of rescue and cleanup workers at ground zero who sued the city over damage to their health, according to city officials and lawyers for the plaintiffs.

They said that the settlement would compensate about 10,000 plaintiffs according to the severity of their illnesses and the level of their exposure to contaminants at the World Trade Center site.

Lawyers from both sides met on Thursday to discuss the terms of the settlement with Judge [Alvin K. Hellerstein](#) of the United States District Court for the Southern District of New York.

Payouts to the plaintiffs would come out of a federally financed insurance company with funds of about \$1.1 billion that insures the city. At least 95 percent of the plaintiffs must accept its terms for it to take effect. If 100 percent of the plaintiffs agree to the terms, the total settlement would be \$657.5 million. But if only the required 95 percent agreed, the total would shrink to \$575 million.

Lawyers for the plaintiffs estimated that individual settlement amounts would vary from thousands of dollars to more than \$1 million for the most serious injuries.

The settlement, which took two years to negotiate, raises the prospect of an end to years of complex and politically charged litigation that has pitted angry victims against city officials, who questioned the validity of some claims and argued that the city should be immune from liability.

“This is a good settlement,” said Marc Bern, a lawyer with a firm that represents more than 9,000 plaintiffs, “and we are gratified that these heroic men and women who performed their duties without consideration of the health implications will finally receive just compensation for their pain and suffering, lost wages, medical and other expenses, as the U.S. Congress intended when it appropriated this money.”

In a statement, Mayor [Michael R. Bloomberg](#) called the settlement “a fair and reasonable resolution to a complex set of circumstances.”

Under the settlement, a claims administrator, who will be chosen by the lawyers in the case, would decide whether a given plaintiff had a valid claim, whether the plaintiff qualified for compensation and if so, for how much. The system is similar to the one used for payouts from the Sept. 11 Victim Compensation Fund to families of those killed in the terrorist attacks. The process is meant to screen out fraudulent claims.

Since 2003, thousands of firefighters, police officers, construction workers and emergency responders have filed lawsuits against 90 defendants — including the city and the private companies it hired to remove debris at ground zero — over illnesses they say developed after they spent days, weeks or months working at the World Trade Center site after the attacks.

The plaintiffs claimed that their conditions — most commonly asthma and other respiratory illnesses — resulted from the toxic brew of contaminants at ground zero and the defendants’ failure to adequately supervise and protect them with safety equipment, like respirators. Among the first cases chosen for trial was that of a firefighter, Raymond W. Hauber, 47, who died of esophageal cancer in 2007 before his case could be heard.

Some of the cases that fall under the settlement involve plaintiffs who are not ill now, but fear they will develop illnesses like cancer that can take years to manifest themselves. The settlement provides for a \$23.4 million insurance policy to cover future claims by such plaintiffs.

The first 12 cases were scheduled to come to trial on May 16 in Manhattan, and those trials will now not take place. But under the settlement, plaintiffs have 90 days to opt out of the settlement and pursue trials.

Lawyers for the plaintiffs would collect a third of the settlement amounts in legal fees. The insurance company, known as W.T.C. Captive Insurance and financed by the [Federal Emergency Management Agency](#), has already paid out more than \$200 million in legal fees to defend the city and its contractors and in administrative costs.

To determine individual settlement amounts, the administrator will use a point system to determine the severity of a plaintiff's illness, as documented by medical history. Other factors that will be considered include evidence of a link to ground zero and adjustments for age, pre-existing conditions, time of diagnosis and smoking history. The process could take up to a year.

Mindful of the intense public interest in the cases, Judge Hellerstein has told lawyers on both sides that he planned to review each settlement and hold "fairness" hearings to determine whether the settlements were reasonable, which legal experts said was unusual for litigation not involving a class action.

"Many of them are similar, but in fundamental aspects they have an individual plaintiff — they all revolve around one person," Judge Hellerstein told the lawyers at a Jan. 21 hearing. "I'll be looking carefully, if there is a settlement, at how individual members are treated."

The city argued that it was immune from damages in cases involving a national emergency or a civil defense disaster. It also questioned the connection between the illnesses and ground zero and cast doubt on many of the claims, for example, arguing in the case of a ConEd mechanic, which was also to be among the first trials, that the man's lung problems predated 9/11.

"If this settlement allows me to move on in my life, if it allows me to protect my family's future, I guess I don't have anything else to fight about," said one plaintiff, Kenny Specht, 41, a retired firefighter.

But Mr. Specht, who has thyroid cancer and founded a group to help fellow firefighters financially, said the outcome was hardly a victory.

"Why did families who had to bury somebody have to wait this long?" he said. "Why didn't they handle this in a timely manner?"

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