

March 27, 2008

Appeal Allows Lawsuits by Ground Zero Workers

By ANTHONY DePALMA

A federal appeals court's ruling appears to have cleared the way for thousands of lawsuits filed against New York City and its contractors by ground zero workers to move closer to trial or settlement.

The United States Court of Appeals for the Second Circuit upheld on Wednesday a lower court decision limiting the city's immunity against such lawsuits. The appellate court determined that many of the immunity claims raised by the city in the cases of nearly 10,000 workers who said they were injured by exposure to the dust at ground zero during the cleanup operation were so complex that they could only be resolved by further litigation.

The court concluded that even though the possibility of 10,000 lawsuits by police officers, firefighters and construction workers moving forward against the city and its contractors might be daunting, it was important to strike a "delicate balance" between the needs of the city and those of the plaintiffs who were "the very individuals who, without thought of self, rushed to the aid of the city and their fallen comrades."

The city argued that because it was responding to an attack, federal and state laws provided immunity from lawsuits, and therefore the workers' claims should be dismissed. In 2006, the United States District Court in Manhattan ruled that the city might only have partial immunity, a decision that the city appealed. The workers' lawyers called the appellate court's decision "a tremendous victory."

"We argued all along that immunity statutes that the defendants argue they are under does not give them immunity from lawsuits," said David E. Worby, who, with Paul J. Napoli, is representing most of those suing the city. Mr. Worby said that if the cases go to trial, workers would be able to show that the city did not take proper precautions to protect them from hazardous dust.

The city's lawyers said that they were disappointed with the court's decision, but they were not ready to surrender the city's claim to immunity.

"What this means is that victory is going to take longer to achieve, and we're going to have to get into the underlying facts of the case," said Scot C. Gleason, senior counsel in the city's Law Department. He also noted that "a settlement is always a possibility until the jury comes back in with a verdict."

Mr. Gleason said no decision had yet been made about whether to appeal the ruling to the [United States Supreme Court](#).

Mayor [Michael R. Bloomberg](#) and the ground zero contractors who worked for the city have asked Congress to reopen the Sept. 11 Victims Compensation Fund to compensate injured workers in lieu of the litigation.

In the meantime, both sides will continue collecting health documents and other records as directed by

Judge [Alvin K. Hellerstein](#) of the District Court. The appellate court, in upholding his 2006 ruling, found that the city's immunity does not constitute a blanket right "not to be sued." In effect, that means that the workers' lawsuits should be allowed to move forward to trial, where the facts of each case can be heard and decided.

The decision did not directly address the city's immunity under state laws because the court said it lacked jurisdiction to decide that question.

Mr. Gleason said that left open the question of the level of immunity the city might have under state law, an issue that he said the city intended to pursue.

The appellate court also did not attempt to determine whether the city's immunity under state or federal laws extended through the long cleanup period or whether it ended sometime earlier. It left those questions to the District Court.

[Copyright 2008 The New York Times Company](#)

[Privacy Policy](#) | [Search](#) | [Corrections](#) | [RSS](#) | [First Look](#) | [Help](#) | [Contact Us](#) | [Work for Us](#) | [Site Map](#)
