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Appeals court gives go-ahead for 9/11 lawsuits

Staff and wire reports

NEW YORK - Lawsuits can proceed on behalf of thousands of workers who say they were not properly protected as they cleaned up the toxic World Trade Center site after the 2001 terrorist attacks, a federal appeals court said yesterday.

Lawyers for the city and the Port Authority of New York and New Jersey, which owns the site, had asked the 2nd U.S. Circuit Court of Appeals to give them immunity from nearly 8,000 workers who said they suffered respiratory injuries from toxic fumes and other hazardous conditions. Plaintiffs' attorney David Worby estimates that it's actually about 10,000 rescue workers in the class action lawsuits.

Several hundreds of the rescue workers live in Westchester, Putnam and Rockland counties.

The 2nd Circuit Court of Appeals yesterday handed down a 57-page decision denying the city's claim that they had immunity, saying that it was too early to tell.

The ruling means the city and the Port Authority, which runs area transit hubs, must continue to defend the claims of respiratory and other personal injuries from emergency workers and contractors who rushed to clean up the lower Manhattan site.

"All of these people who risked their lives going down there will now get their day in court," Worby said. "This was the last legal hurdle to go through and sets the stage for a jury to sit in a courtroom and hear these workers."

About 175 workers have already died. About 500 more have various forms of cancers- including blood cell, leukemia, throat, thyroid, testicular, and lung, Worby said.

"Every day, another one of our people comes in wheezing, coughing, choking," Worby said. "They're getting sicker. All they want to know is when will we have our day in court, and the answer is soon."

The lawsuits are for an undisclosed amount of money to pay for current and future medical expenses likely "to be in the multi-billions," Worby said.

Lawyers have said the lawsuits would not be ready for trial for several years.

Some of the workers will testify before a congressional committee Tuesday, Worby said.

The appeals court said that if evidence produced for the case eventually allows the city and the Port Authority to succeed with immunity claims, contractors the city hired to work at the Trade Center site might benefit as well. The contractors would have to prove that the city and the Port Authority imposed strict control over how contractors operated to protect their workers.

In a statement, the city said it worked tirelessly after Sept. 11 with private contractors to protect workers' health and safety, including requiring respirators be worn. It said workers' safety meetings

were held daily and sometimes twice a day.

"Protecting the health and safety of workers was always the top priority for the city and the contractors, and any suggestion to the contrary is simply not supported by the facts," the city said.

John Walcott, 43, of Pomona, a former NYPD detective, was the first plaintiff on the lawsuit.

"People are getting sicker and sicker and my co-pays are going up. Fortunately, my wife works but I know many people who are losing their homes," Walcott said when he heard the news of the lawsuit. "It was something I expected. The truth is the truth. You can't dispute that there are 10,000 people sick. It's not just a coincidence that we were all down there in on general area."

About 18 months after 9/11 he felt fatigued, he said. A short time later, he was diagnosed with leukemia. Doctors told him he had one week to live if he went untreated, he said. His daughter was 9 months old at the time. That's when Walcott went to Worby and asked to bring the lawsuit.

He says that the lawsuit is very taxing on him and his family.

"It's unfortunate that it takes so long and such a battle to get to this point. ... I rushed down there to try to bring closure to other people's lives. ...I don't understand why it took this long," he said. "I don't know how they expect people to rush and help out ever again."

Though he's in remission, he still suffers side effects including joint pain and no feeling in his hands. He had a stem cell transplant in November 2003 and throat surgery. Now he's a stay-at-home dad.

"They made us feel like it was our own fault that we went down there," Walcott said. "I would love to see someone come out and say that, 'Look, we made a mistake, it wasn't intentional.'"
