

Many Ground Zero Workers Gain Chance at Lawsuits

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A federal judge has rejected the city's claim that it is protected by law from being sued over the way it handled rescue and recovery operations at ground zero. The ruling opens the way for lawsuits by thousands of workers who say they were made sick by exposure to toxic substances during the 10-month cleanup.

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Judge Alvin K. Hellerstein of United States District Court in Manhattan rejected the city's motion to dismiss the lawsuits. In a 99-page decision released yesterday afternoon, he stated that state and federal statutes do provide some immunity for the city, its private contractors and the [Port Authority of New York and New Jersey](#) for actions undertaken in response to an enemy attack. However, the judge said that protection is not universal and varies by time and place, making it necessary to hear the details of individual cases.

"The fact-intensive nature of the issue makes its resolution unsuitable for resolution by motion," Judge Hellerstein concluded. "Discovery, additional proceedings and a more extensive factual record, and perhaps a trial, will be required."

Michael A. Cardozo, the corporation counsel for the city, said in a statement that although the judge ruled that the legal case can proceed, he made it clear that the issue of immunity would be determined on a case-by-case basis.

"We believe that as the facts fully emerge, the complex decisions that were carefully and thoughtfully made during the months after 9/11

will demonstrate the enormous good work done by the city and its contractors, and the absence of any legal liabilities,” Mr. Cardozo said.

David Worby, the lawyer who is leading the legal action on behalf of the workers, called the decision a clear victory for the firefighters, police officers and construction workers who say they became sick after responding to the Sept. 11 crisis.

“The bottom line of what the court is trying to say is that these are not the kind of decisions for these heroes that should be settled by summary judgments,” Mr. Worby said. “They should have their day in court.”

Mr. Worby said that when he spoke to some of his clients after the decision was released, they cried. “It all started with people telling them what they had was just a cough, and it’s taken three years to prove that that was not true,” he said.

In his decision, Judge Hellerstein outlined proceedings in which up to 3,000 ailing workers would have a chance to describe what happened to them; whom they were working for at the time they got sick; when they were at ground zero; and what protective gear was available to them while on the site.

In all, more than 8,000 workers have filed suit against the city and dozens of its contractors who worked on the cleanup of ground zero.

The other cases would be heard in subsequent proceedings.

While some of the cases could end up going to trial, the judge offered to appoint a special master, with the approval of the parties, who could engage in mediation and speed resolution of the claims.

“If even a minority of plaintiffs suffered serious injuries to their respiratory tracts arising from the acrid air of Sept. 11, their claims

deserve to be heard when a recovery could make a difference to their lives,” Judge Hellerstein wrote.

James E. Tyrrell Jr., a lawyer with the Washington firm Patton Boggs who is leading the city’s defense in this case, said the city was clearly disappointed that “the court is not in a position to conclude that either all or some substantial portion of actions taken can be treated as being covered by immunity at this time.” While partly rejecting the immunity claims by the city and the Port Authority, Judge Hellerstein dismissed the charges against Con Edison and Silverstein Properties, which had been named as defendants because they held leases on ground zero property.

The judge ordered a conference to be held on Nov. 3 to consider the appointment of a special master and other issues.

The city’s substantial legal costs are being covered by a special captive insurance company that was created when Congress established a \$1 billion insurance fund in 2003.