



9/11 Workers Refute City's Allegation of Discovery Abuse and Malingering

NEW YORK, July 3 /PRNewswire/ -- Attorneys representing more than ten thousand ground zero workers including Police, Firefighters and other rescue, recovery and debris clean-up personnel who became ill after working in the "toxic soup" at the World Trade Center site following the collapse of the World Trade Center Towers One and Two on 9/11 have informed the federal judge responsible for the litigation of those cases that the great majority of their clients are getting sicker as time goes by.

According to an in-depth analysis of the medical records reviewed thus far by the Plaintiffs' attorneys, the ground zero workers suffer from numerous ailments. A typical rescue and recovery worker, on average, suffers from three different diseases. The analysis demonstrates that 38.8% of the workers suffer from asthma; 67% and 57.21% have upper and/or lower respiratory ailments, respectively; 19.88% suffer from sleep apnea; 45.89% have GERD; 5.9% experience interstitial lung disease; and 37.5% have cardiac conditions.

Responding to the defendants' claim that production of the plaintiffs' medical records has been wanting, Plaintiffs' Co-Liaison Counsel, WORBY GRONER EDELMAN & NAPOLI BERN, LLP reported that since discovery of medical records commenced, the plaintiffs have delivered to Defendants' Liaison Counsel 26,331 medical records, cumulatively amounting to more than 821,564 pages of records. At the May 29, 2008 Court conference, the City claimed that most plaintiffs had not produced all of their medical records, notwithstanding the fact that they had already received more than 800,000 pages at that time. Since that conference, the plaintiffs have exchanged an additional 58,451 pages comprising 1,548 individual records. As a result, the Plaintiffs' counsel wrote, "[a]t this writing we have now provided defendants' counsel with nearly a million pages of documents pursuant to this Court's orders."

The plaintiffs' attorneys further demonstrated the fallacy of the City's argument by indicating that the defendants themselves were at all times in possession and control of thousands of the plaintiffs' own records because:

"About half of the plaintiff population are from uniformed services (New York City Police Officers, Firefighters and Port Authority Police) ... firefighters and police officers are required to pass physical exams and to be found physically fit before being allowed to join the Police or Fire departments. For this reason, most of the plaintiffs had very little if any treatment for any disorder before 9/11. These were New York's "finest" and "bravest" and accordingly, the fittest. The extent of many of these workers' pre 9/11 medical records are the physicals conducted by the FDNY and NYPD which records are in the possession of the defendants. In fact, as we have previously informed this Court in numerous writings and on-the-record discussions during conferences, plaintiffs and plaintiffs' counsel have no access to these medical records until defendants' counsel complies with this Court's order to exchange this information."

The plaintiffs also noted that in making their allegations of incomplete medical records disclosure in open court on May 29, 2008, the City's attorneys were in direct violation of the Court's Case Management Order ("CMO") no. 7. That order required the defendants to first serve a

letter advising the plaintiffs' attorneys of the claimed shortcomings in their production before taking their concerns to the Court, which the defendants failed to do. The first such deficiency letter sent by the defendants' counsel came almost three weeks after the May 29, 2008 conference.

"CMO 7 and its prohibition of allegations of discovery abuse without service of the deficiency letter and an opportunity for producing counsel to refute or cure the deficiency, was negotiated and agreed to by the parties. Despite this fact, and despite the fact that Mr. Tyrrell had provided no writing to any plaintiffs' counsel prior to May 29, his accusations and complaints of insufficient discovery compliance on the record on May 29, 2008 violated this Court's order in an apparent attempt to harass and embarrass plaintiffs and their counsel when no violation of any order had occurred. These repeated outbursts in open court by defendants' liaison counsel have not gone unheard by the media or the public," the plaintiffs' attorneys told the Court, referring specifically to a recent NEW YORK TIMES article that reported, without foundation, that the plaintiffs were largely uninjured and had few, if any, medical records to support their claims in the litigation.

Asked about the recent Times article and the medical records analyzed in their report to Judge Alvin K. Hellerstein, attorney Marc Jay Bern said "as if it was not enough that these brave men and women have put their health and their families' financial well being on the line to answer their city's call to duty in the weeks following September 11, 2001, they are now asked to bear the indignity of being labeled malingerers in open court and in the press by the City and its attorneys."

For further information, call Marc Jay Bern at (516) 361-4909 or David Worby at (914) 220-2083.

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