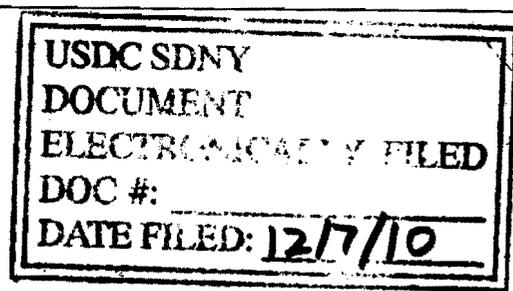


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



----- X  
: **ORDER REGULATING STATUS OF**  
: **FUTURE PROCEEDINGS IN NON-**  
IN RE LOWER MANHATTAN DISASTER SITE : **CITY, NON-WORLD TRADE**  
LITIGATION : **CENTER DISASTER SITE CASES**  
:   
:   
: 21 MC 102 (AKH)  
:   
:   
----- X

ALVIN K. HELLERSTEIN, U.S.D.J.:

On December 3, 2010, the parties appeared before me for a status conference to discuss their progress towards settlements. I had understood that Plaintiffs' counsel were preparing documentation in line with the criteria provided by the Settlement Process Agreement, As Amended ("SPA"), and that Defendants' liaison counsel were organizing their clients to fund these settlements along those same criteria. Since the cases against the City of New York ("City") appear to have settled in this docket as well as in 21 MC 100 and 21 MC 103, and to have established a paradigm for comprehensive settlements of all cases, I expected that the parties in these non-City cases, approximately 1,500 in number, had made substantial progress towards settlement.

The conference made clear that this was not so. I learned for the first time that Plaintiffs' liaison counsel in the 21 MC 102 docket, Gregory J. Cannata and Associates, representing approximately 80-100 of these Plaintiffs' lawsuits, were unwilling to accept basic criteria of the settlements provided in the SPA, concerning the medical injuries and diagnostic tests that define each of the four injury Tiers, and propose to relitigate or renegotiate these criteria. Worby Groner Edelman and Napoli Bern, having negotiated these criteria, continue to be willing to apply these criteria to their cases in 21 MC 102, approximately 1,370 in number. Other Plaintiffs' firms appear similarly willing to accept those criteria.

The 21 MC 102 docket comprises scores of separate cases: different Plaintiffs have sued different owners and contractors in scores of different buildings. I ruled in In re World Trade Center Disaster Site Litigation, 270 F. Supp. 2d 357 (S.D.N.Y. 2003), in connection with the cases against the City and various of the contractors it engaged for the World Trade Center site, that subject-matter jurisdiction under the Air Transportation Safety and System Stabilization Act (“ATSSSA”), 49 U.S.C. § 40101 et seq., extended only to the eighteen-day period marked by intensive searches for survivors or their remains, and that the lengthy clean-up period thereafter should be governed by the rules and jurisdiction normally governing workplace injuries. The Court of Appeals reversed, holding that the limits of liability provided by the ATSSSA, limiting the liability of the City of New York to the greater of \$350 million or its insurance coverage limit, justified subject-matter jurisdiction for the entire clean-up period. In re WTC Disaster Site, 414 F.3d 352 (2d Cir. 2005).

Because the parties have long appeared to be proceeding toward a settlement, I have not needed to examine the basis of subject-matter jurisdiction in 21 MC 102. As long as I was presiding over the World Trade Center cases, and as long as the parties in this docket were willing to follow the proceedings established in 21 MC 100, the efficiencies of coordinate regulation by the same federal judge in the same federal court presented a convincing argument for retaining jurisdiction. After all, the injuries alleged to have been sustained by workers outside the World Trade Center area would appear to arise out of the terrorist-related aircraft crashes of September 11, 2001. See ATSSSA § 408(b)(3). But, if the parties intend to proceed in separate ways – settling the cases in the 21 MC 100 docket and litigating the cases in the 21 MC 102 docket – it is appropriate to examine the question lurking from the outset, whether I possess jurisdiction to preside over their cases.

It is not altogether clear if the ATSSSA confers subject-matter jurisdiction over cases relating to buildings outside the World Trade Center site. Also, it is unclear how many cases will be left in the 21 MC 100 docket after the settlements with the City, the Port Authority, and all, or mostly all, other Defendants. The settlement of more than 95 percent of the cases collected in the 21 MC 100 docket, and the questionable status of most of the non-settling cases, see, e.g., General Order Sua Sponte Dismissing Complaints, Doc. No. 2214, 21 MC 100 (S.D.N.Y. Oct. 14, 2010), suggest that few will remain. Nor is it clear how they will proceed. The status conference called for February 2, 2011 should clarify these questions. These issues may bear upon whether I possess jurisdiction in 21 MC 102, either under the ATSSSA or under 28 U.S.C. § 1367.

Notwithstanding these concerns, several of the Plaintiffs' firms, most notably the Napoli Bern firm, have expressed a desire to continue their settlement talks with Defendants' liaison counsel. These parties should proceed along the tight schedule they have adopted. The Special Masters and I will continue to remain available to assist the parties.

Plaintiffs' liaison counsel propose, however, to pursue an independent course, which has raised the issues relating to the jurisdiction of this Court. Thus, at the conference of December 3, 2010, I raised the question whether subject-matter jurisdiction over these cases continues to be appropriate, and I directed the parties to brief the issue. Plaintiffs shall file briefs by January 3, 2011. Defendants' response briefs are due February 10, 2011. Plaintiffs' replies are due February 18, 2011. The parties shall appear for oral argument on this issue on March 15, 2011, at 2:30pm.

SO ORDERED.

Dated: December 6, 2010  
New York, New York

  
ALVIN K. HELLERSTEIN  
United States District Judge