



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE WORLD TRADE CENTER DISASTER :
SITE LITIGATION :
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**ORDER APPOINTING
SPECIAL COUNSEL**
21 MC 100 (AKH)

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

By Order dated June 9, 2015 the Court, pursuant to its continuing supervisory authority over the Settlement Process Agreement, as Amended (the “SPA”), provided an initial schedule for discovery towards resolving the proper interpretation of the SPA relating to the calculation of the Bonus Payments payable to the Tier IV Plaintiffs. *See* Order Regulating Issues on Remand, No. 21 MC 100, ECF No. 3231 (S.D.N.Y. June 9, 2015); *see also In re World Trade Ctr. Disaster Site Litig.*, 754 F.3d 114 (2d Cir. 2014). Following a status conference to be held July 8, 2015, the parties will proceed with depositions of potential witnesses.

Because Paul Napoli of Worby Groner Edelman & Napoli Bern LLP (“WGENB”), attorney for plaintiffs, was the principal negotiator for plaintiffs, he is likely to be a principal witness. To avoid potential impropriety, *see* N.Y. Rules of Prof’l Conduct R. 3.7 (2013), the Court finds it prudent to appoint Special Counsel to represent the plaintiffs in the litigation of the proper interpretation of the SPA and the calculation of the Bonus Payment amount. Special Counsel shall perform these services, effective immediately, in WGENB’s place regarding this issue from now until the distribution of the Bonus Payment to the Tier IV Plaintiffs. His services shall then end.

Having full faith and confidence in Evan R. Chesler, Esq. of Cravath, Swaine & Moore LLP, I appoint him, his law firm, and such attorneys and paralegals in his law firm as he

shall wish to assist him. Mr. Chesler has previously performed work in connection with this litigation and is familiar with the SPA and the 21 MC 100 litigation generally. Mr. Chesler can be reached by email at echesler@cravath.com, and by phone at (212) 474-1243. Cravath, Swaine & Moore's mailing address is 825 Eighth Avenue, New York, NY 10019.

WGENB shall provide such assistance, and access to their records, as Special Counsel shall require, and Special Counsel and WGENB shall have joint entitlement to attorney-client and work product privileges. Special Counsel shall bill, according to the time devoted to the matter, at a discounted rate subject to approval of the Court, plus reasonable expenses. Special Counsel's fees shall be paid out of the final Bonus Payment amount distributed to the Tier IV Plaintiffs either after settlement or trial.

By Order dated January 16, 2015, the Court approved a fee for WGENB for work performed in connection with the resolution of the Bonus Payment issue. *See* Order Regulating Distributions to Tier IV Plaintiffs and Fixing Attorneys' Fees, No. 21 MC 100, ECF No. 3196, at * 9 (S.D.N.Y. Jan. 16, 2015). That fee schedule authorized a flat fee of \$100,000 for any recovery up to \$7.5 million followed by incremental increases in the fee percentages as the recovery increased. Because WGENB is hereby replaced by Special Counsel with respect to the resolution of the Bonus Payment issue, that fee schedule is hereby revoked. Nonetheless, WGENB is entitled to a flat fee of \$100,000 for work performed to date and future assistance provided to Special Counsel.

SO ORDERED.

Dated: New York, New York
June 16, 2015



ALVIN K. HELLERSTEIN
United States District Judge