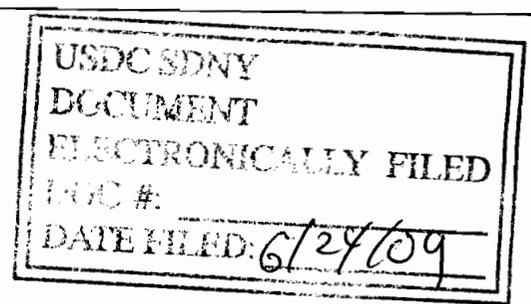


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



-----X  
IN RE: WORLD TRADE CENTER  
DISASTER SITE LITIGATION  
-----X  
BODILY INJURY, NON-RESPIRATORY,  
NON-INGESTION CASES  
-----X

21 -MC-100 (AKH)

**CASE MANAGEMENT ORDER NO. 1**

**I. Applicability of this Order**

This Order applies to cases in which the Plaintiffs allege only non-respiratory, bodily injuries resulting from work performed on the World Trade Center site after the terrorist-related attacks of September 11, 2001 (hereafter to be designated as the “Non-Respiratory Cases”). A list of those cases is attached hereto as Appendix “A”.

**II. Docketing**

By my January 3, 2008 Order Regulating Proceedings, I asked Liaison Counsel for Plaintiffs and Defendants to prepare a joint writing identifying the parties and docket numbers of each case in this group. The individual party and docket number information is set forth in Appendix “A” of this Order.

A. The Clerk of the Court is hereby directed to post this Order (hereinafter “CMO No. 1”) on the Court website, and file this Order under each docket number individually identified in Appendix “A.”

B. Every document filed that relates to all Non-Respiratory Cases shall bear the following caption:

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

IN RE: WORLD TRADE CENTER  
DISASTER SITE LITIGATION

21 -MC-100 (AKH)

-----X

BODILY INJURY, NON-RESPIRATORY,  
NON-INGESTION CASES

-----X

Where a document instead relates to one or more individual Non-Respiratory Cases, the caption shall read as follows:

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

IN RE: WORLD TRADE CENTER  
DISASTER SITE LITIGATION

21 -MC-100 (AKH)

-----X

BODILY INJURY, NON-RESPIRATORY,  
NON-INGESTION CASES

-----X

Plaintiff(s),

Docket Number (AKH)

- against -

Defendant(s).

-----X

C. There shall be only one docket number for each Plaintiff in this litigation. Regardless of the nature of the claims, or number of counsel respectively representing any individual named Plaintiff, no Plaintiff may recover damages in this litigation under more than one docket number.

Plaintiffs wishing to bring both respiratory and non-respiratory claims must do so under one docket number. Such cases shall be part of the primary 21 MC 100 litigation and not part of the group of Non-Respiratory Cases.

Any Plaintiff having more than one docket number in these proceedings is directed to move the Court for consolidation, enter into stipulation of discontinuance, or take similar action

to eliminate such duplicative filings by July 17, 2009. All cases of any Plaintiff having not so acted by July 17, 2009 shall be dismissed.

### **III. Pleadings**

Plaintiffs and Defendants have completed service of all pleadings in these cases prior to their removal from state court. Notwithstanding prior Orders of this Court, Plaintiffs need not file individual check-off complaints.

### **IV. Liaison Counsel**

The Court officially designates Marion S. Mishkin, Esq., of the Marion S. Mishkin Law Firm, 155 East 77th Street, New York, New York 10075, and Joel M. Lutwin, Esq., of the Law office of Joel M. Lutwin, Esq., 401 Broadway, New York, New York 10013 as Plaintiffs' Co-Liaison Counsel for the Non-Respiratory Cases. James E. Tyrrell, Jr., Esq. of Patton Boggs, LLP., One Riverfront Plaza, Newark, New Jersey 07102, and Beth D. Jacob, Esq. of Schiff Hardin, LLP., 900 Third Avenue New York, New York 10022, are designated as Defendants' Co-Liaison Counsel

A. The parties shall coordinate and communicate with Co-Liaison Counsel as they establish. The responsibility, authority, and duties with which the Court vests in Liaison Counsel include:

- i. receive orders, notices, correspondences, and telephone calls from the Court and Clerk of the Court on matters of general applicability on behalf of all Plaintiffs or Defendants, as the case may be, and to notify such other Plaintiffs' or Defendants' counsel as circumstances advise of communications from the Court;
- ii. receive, and as appropriate distribute to co-counsel, orders from the Court, and documents from opposing parties and counsel;
- iii. coordinate with the Court and opposing Liaison Counsel on scheduling issues;

- iv. be responsible for the service and filing of joint pleadings and communications with the Court to the extent practicable.
- v. maintain an official service list of Plaintiffs' and Defendants' counsel in cases subject to this Order, including the persons or entities they represent;
- vi. perform such other administrative tasks as may be necessitated by this or future CMOs, by agreement of the parties, or Order of the Court.
- vii. consider and propose future case management orders or other case management procedures and issues;
- viii. confer with individual counsel for Plaintiffs and Defendants, respectively, including but not limited to responding to questions and suggestions from the Court or adversaries regarding orders, schedules or other matters; and
- ix. perform such other administrative tasks as may be necessitated.

All pleadings, motions papers, discovery responses, and other papers and documents shall be served on Plaintiffs' and Defendants' Counsel for all the parties in these cases to which such papers apply. **Service on Liaison Counsel shall not suffice as service on any other party.**

Notwithstanding the appointment of Liaison Counsel, each counsel shall have the right to participate in all proceedings before the Court as fully as such counsel deems necessary. Liaison Counsel shall not have the right to bind any party except Liaison Counsel's own clients. Further, Liaison Counsel shall remain free to represent the interests and positions of their clients free of any claim (including, without limitation, any claim of conflict) arising from service as Liaison Counsel.

B. Liaison Counsel shall be paid for their work performed as Liaison Counsel and reimbursed for related expenses incurred, inclusive of work performed and expenses incurred as a Liaison Counsel notwithstanding within official designation as such. A reasonable fee for the services as Liaison Counsel and related expenses shall be deemed a litigation expense, payable by counsel for each plaintiff identified in Appendix "A" of this Order. The scope and sum of

such payment shall be payable subject to the Court's approval, and on a later date that will be determined by the Court.

C. Defendants' Co-Liaison counsel shall seek reimbursement periodically from counsel for Defendants (or Defendants' insurers as appropriate) for necessary and reasonable costs actually incurred in performing their tasks pursuant to this Order, including costs incurred to date. Defendants' Co-Liaison Counsel shall keep records of such expenses in reasonable detail for examination by counsel from whom reimbursement is sought. Reimbursements to Defendants' Co-Liaison Counsel shall be paid on an equitable basis to be agreed upon by the parties or fixed by the Court, with each Defendant (or Defendants' insurers as appropriate) having to pay a proportionate share of the expenses incurred by Defendants' Co-Liaison Counsel.

D. The appointment of Liaison Counsel shall not relieve any counsel from the duty to maintain, and transmit where required, accurate, current and complete information concerning their individual cases. Each counsel is individually responsible to promptly inform Liaison Counsel of any changes to their contact information and for the completeness, accuracy, and current status of all information conveyed to Liaison Counsel, or, as the case may be, through Liaison Counsel to the Court.

## **V. Discovery**

Parties are directed to tailor all discovery responses to the specific claims alleged. Interrogatories may be served pursuant to Rule 33 of the Federal Rules of Civil Procedure. All discovery responses addressed in this section shall be exchanged in electronic (Adobe .pdf) format or any other format to which the parties agree.

A. Plaintiffs indicate they have provided their initial Core Discovery Responses pursuant to the Court's Core Discovery Order. Plaintiffs' Counsel are directed to resubmit to Plaintiffs' Liaison Counsel each of these responses, signed by their respective clients, by July 17, 2009. Plaintiffs also are directed to provide to all Defendants all medical records, along with "HIPAA" compliant authorizations, by July 17, 2009 in accordance with the requirements set forth in Case Management Order No. 7 ("CMO 7"), dated January 28, 2008.

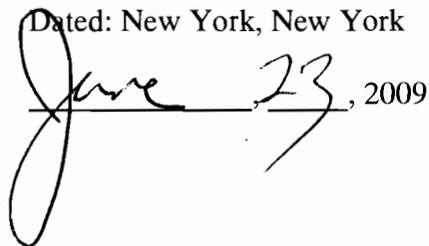
B. Plaintiffs shall re-produce all discovery already produced in the Non-Respiratory Cases (whether such discovery was produced before or after such cases may have been removed to this Court).

C. Liaison Counsel are to confer regarding any other discovery that may be necessary and appropriate in the Non-Respiratory Cases and shall provide the Court a proposed "Order Regulating Discovery in the Non-Respiratory Cases" no later than August 14, 2009.

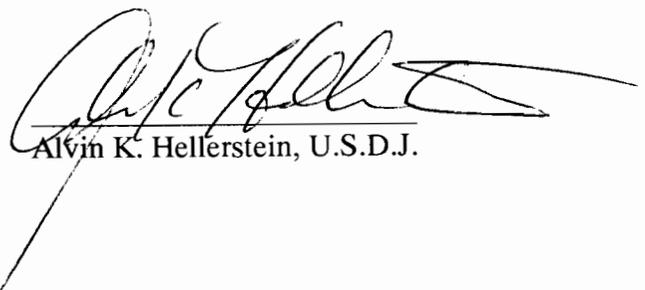
#### **VI. Privileges Preserved**

No communications between or among any Plaintiffs' counsel and any Plaintiff, or between or among any Defendants' counsel and any Defendant, shall be taken as a waiver of any privilege or protection to which they would otherwise be entitled.

Dated: New York, New York

 June 23, 2009

So Ordered

  
Alvin K. Hellerstein, U.S.D.J.

APPENDIX "A"

Non-Respiratory Injured Plaintiffs 21 MC 100 (AKH)  
21 MC 100 (AKH)

I. 2005 CV 7164 (AKH)

*Thomas Beattie v. The City of New York; Bovis Lend Lease, LMB, Inc.; Bay Crane; Inc.; New York Crane Service and Equipment*  
(Settled in Principle)

II. 2005 CV 7165 (AKH)

*Chester Botch v. The City of New York*  
(Settled in Principle)

III. 2005 CV 7165 (AKH) (Consolidated Docket No.)

*Anthony Buonamini v. The City of New York (formerly 05 CV 7162)*

*Anthony Buonamini v. AMEC Construction; AMEC Construction Management, Inc., Bovis Lend Lease LMB, Inc.; Tully Construction Company, Inc.; Breeze National, Inc. (formerly 05 CV 7163)*

*Anthony Buonamini v. The Port Authority of New York and New Jersey (formerly 05 CV 7986)*

IV. 2005 CV 7166 (AKH)

*Thomas Burke v. The City of New York*

V. 2005 CV 7191 (AKH)

*John Campo v. The City of New York; Tishman Construction Corporation; Verizon New York, Inc., s/h/a Verizon Communications, Inc.*

VI. 2005 CV 7212 (AKH)

*Kevin Daly and Lisa Daly v. The Port Authority of New York and New Jersey*

VII. 2005 CV 10195 (AKH)

*Frank DeFillipo and Diedre DeFillipo v. The City of New York; Philips & Jordan, Inc.; Yannuzzi & Sons, Inc.; Hugo New Schnitzer*

VIII. 2006 CV 00137 (AKH) (THK)

*Phillip DiGiacomo and Gail DiGiacomo v. The City of New York; Department of Sanitation of the City of New York; Philips & Jordan, Inc.; Big East Equipment Co.; Yanuzzi Group of Companies d/b/a Yanuzzi & Sons; Construction Equipment Co., Inc.*

IX. 2005 CV 7268 (AKH)

*John Feal v. Turner Construction Company*

X. 2005 CV 7167 (AKH)

*Christopher Graybill v. The City of New York; The Port Authority of New York and New Jersey*

XI. 2005 CV 7206 (AKH)

*Mieczyslaw Kosmaczewski and Ewa Kosmaczewski v. The City of New York; The Port Authority of New York and New Jersey*

XII. 2005 CV 7210 (AKH)

*Thomas Magee v. The Port Authority of New York and New Jersey, Silverstein Properties; The City of New York*

XIII. 2005 CV 7208 (AKH)

*John Montalvo and Darlene Montalvo v. The City of New York; The Port Authority of New York and New Jersey*

XIV. 2005 CV 7186 (AKH)

*Appukkuttan Narayanan v. The City of New York; New York City Fire Department*

XV. 2005 CV 7207

*John Nimmo v. The City of New York, Port Authority of New York and New Jersey, and Tully Construction Company*  
(Settled in Principle)

XVI. 2005 CV 7161 (AKH)

*Matthew Ostrander v. The City of New York; The Port Authority of New York and New Jersey*

XVII. 2005 CV 7205

*Francis Paul Pursely v. The City of New York; The Port Authority of New York and New Jersey*  
(Settled in Principle)

XVIII. 2005 CV 7213

*Francis Paul Pursley v. The Port authority of New York and New Jersey*  
(Settled in Principle)

XIX. 2005 CV 7150 (AKH)

*Kenneth Roche v. Bovis Lend Lease, LMB, Inc.;  
Bovis Lend Lease Interiors, Inc.; Season's Contracting, Corp.;  
F.G.P 90 West St. L.L.C.*

XX. 2005 CV 7154 (AKH)

*Salvatore Sferrazza v. The Port Authority of New York and New Jersey;  
AMEC Construction Management, Inc.*

XXI. 2005 CV 7187

*Kenneth Whelan v. City of New York*