

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE WORLD TRADE CENTER DISASTER SITE
LITIGATION

CASE MANAGEMENT
ORDER

21 MC 100 (AKH)

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WHEREAS, on January 24, 2003 a conference was held in the above matters,
IT IS NOW, THEREFORE, ORDERED THAT:

MASTER DOCKET

1. Cases brought by plaintiffs arising out of or related to the September 11, 2001 attack on the World Trade Center were consolidated before this Court for pre-trial purposes pursuant to this Court's Order of November 1, 2002.
2. These cases are divided hereby into two groups. Cases alleging wrongful death, personal injury, and property damage primarily based on circumstances and conduct up to and including the attacks of September 11, 2001 constitute the first group and share the master docket number 21 MC 97, established by the order of November 1, 2002.
3. Cases brought by plaintiffs – such as recovery and clean-up personnel – alleging wrongful death or personal injury primarily based on circumstances and conduct in the period after the September 11, 2001 attacks, and whose actions are listed in Exhibit A hereto or are commenced after the date of this Order, constitute the second group. A master docket for this second group is hereby established: “In re World Trade Center Disaster Site Litigation,” 21 MC 100 (AKH).

4. The Clerk of the Court is hereby ordered to list the cases named on Exhibit A of this order as related to 21 MC 100 (AKH).
5. Counsel shall file originals of papers that relate to all of the cases under the applicable master docket; however, if papers deal with a specific case or cases, they shall be filed only under the individual docket numbers. Papers filed under the master docket shall be considered part of the individual case record where relevant.

LIAISON COUNSEL AND COMMITTEES

6. Michael Barasch, Esq. of Barasch, McGarry, Salzman, Penson & Lim shall serve as Liaison Counsel on behalf of plaintiffs, primarily recovery and clean-up personnel, bringing wrongful death or personal injury actions based on claims of injury based on conduct and circumstances in the period after the September 11, 2001 terrorist attacks. Mr. Barasch shall meet and confer with counsel representing the aforementioned plaintiffs and establish a Respiratory Subcommittee of the Plaintiffs' Executive Committee. Mr. Barasch will sit on the Plaintiffs' Executive Committee established pursuant to the Plaintiffs' and Defendants' Joint Status Report Regarding Formation of Committees and Subcommittees, dated October 7, 2002. Gary Shaffer, Esq. of the Law Department of the City of New York, shall serve as Liaison Counsel on behalf of all entities named as defendants in the group of actions under 21 MC 100 and shall be a member of the Defendants' Executive Committee.

REMAND MOTIONS AND PLEADINGS IN REMOVED ACTIONS

7. Oral argument in Hickey v. City of New York, 02 Civ. 8434, on plaintiff's motion to remand shall be heard on March 31, 2003 at 2:00 p.m.

8. All plaintiffs in any actions consolidated under 21 MC 100 against the City of New York or other defendants, seeking to remand their actions to State Court, shall serve motions to remand no later than February 24, 2003. Opposition papers shall be served by March 17, 2003 and reply papers, if any shall served by March 21, 2003. Oral argument shall be heard on March 31, 2003 at 2:00 p.m. It has been represented by counsel for those plaintiffs who commenced their actions in State Court through a summons with notice, as indicated in Exhibit A, that all such plaintiffs allege wrongful death or personal injury at the World Trade Center site on September 11, 2001 or thereafter. Counsel for plaintiffs in these actions have also represented that plaintiffs wish their cases to be suspended pursuant to paragraph 10, below. Plaintiffs in these actions need not serve a complaint until such cases are activated pursuant to paragraph 10, below.
9. The last date to answer or move with respect to the actions listed in Exhibit A is extended without date pending further order of this Court.

SUSPENSION OF VARIOUS ACTIONS

10. Those plaintiffs in cases consolidated under 21 MC 100 who wish to file claims with the Victim Compensation Fund established pursuant to the Air Transportation Safety and System Stabilization Act (“the Act”) shall so notify the Court and defendants’ counsel in writing no later than April 10, 2003. Thereafter, with regard to those plaintiffs, the lawsuit shall be suspended and shall remain dormant until the earlier of the following:
 - (a) December 23, 2003 or
 - (b) the service of a notice by or on behalf of the named plaintiff, and filed with the Court, that he or she intends to activate the lawsuit and proceed with the litigation.

11. With respect to those plaintiffs whose actions are suspended or remain dormant, the defendants shall not answer or demand service of a complaint, and shall not be obligated to serve or file any motions to dismiss or otherwise, in response to any complaint filed as herein provided, and, with the exception of the obligation of the plaintiffs in actions against the City to appear for hearings pursuant to General Municipal Law § 50-h, all other proceedings shall be stayed until the lawsuit is activated as specified in paragraph 10, above. A plaintiff in a suspended action who has not filed and served a complaint must do so prior to activating the action. If required to answer or move following activation, each defendant shall be entitled to raise any and all defenses available to it under the law as if it had just been served with the summons and complaint.
12. As long as any lawsuit remains dormant and in suspense, the named plaintiff may file a claim for compensation from the Victim Compensation Fund (“Fund”), and the plaintiff shall not be deemed ineligible to receive an award from the Victim Compensation Fund by reason of the pending lawsuit. However, the issuance by the Fund of a writing in any form, including, but not limited to, a letter by the Fund substantially in the form of Exhibit B hereto, indicating that the plaintiff’s claim was deemed submitted for purposes of the Act, shall preclude such person from proceeding with any lawsuit pursuant to § 405(c)(3)(B)(i) of the Act. Within 20 days of the issuance of the aforementioned writing, the plaintiff shall discontinue its suspended action against the City, or suffer dismissal by order of the Court.
13. Any plaintiff who elects to have an action treated as dormant pursuant to the provisions hereof, shall be deemed to have agreed to any proceedings and discovery

in any other civil actions against the City or any other defendant for personal or property damage, injury or death as a result of the terrorist-related aircraft crashes of September 11, 2001.

14. Nothing herein shall, except insofar as it is inconsistent with stipulations entered into in State Court in these actions, affect the obligations of the parties pursuant to such stipulations.

FUTURE ACTIONS AGAINST THE CITY OF NEW YORK

15. Should any individual hereafter commence an action in State Court by filing a summons or summons with notice against the City for injuries arising out of or relating to the terrorist-related air crashes of September 11, 2001, which the City intends to remove to this Court, the City shall demand a complaint pursuant to and in accordance with the time periods established by the New York State CPLR § 3012(b). Removal of such actions shall be done in accordance with 28 U.S.C. 1441, et seq. Any motions to remand such actions shall be made within 30 days of service of a notice of removal upon the plaintiff. The City shall serve a copy of this Order upon any such plaintiff with its notice of removal.

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This Order is the result of efforts to deal with extraordinary circumstances and nothing contained herein is to be deemed to be a waiver of any of the provisions of statute governing suits against the City and cannot be used as any type of precedent by any individual. Nothing contained herein should be read as applicable to any other potential defendant for personal or

EXHIBIT A

| <u>Docket #</u> | <u>Plaintiff</u> | <u>Attorney</u> | <u># of Plaintiffs</u> | <u>Summons w Notice</u> |
|-----------------|------------------|-----------------------------------|------------------------|-------------------------|
| 02cv5288 | Taha | Rosenberg, Minc, Falkoff, & Wolf | 1 | Complaint |
| 02cv8092 | Bel | Kuharski, Levitz, LLP | 7 | Complaint |
| 02cv8434 | Hickey | Sacks & Sacks | 2 | Complaint |
| 02cv8569 | Jacks | Pro Se | 2 | Yes |
| 02cv8688 | Donnelly | Kreindler & Kreindler | 2 | Yes |
| 02cv8938 | Beyer | Sullivan, Papain | 4 | Yes |
| 02cv9126 | McNally | Sullivan, Papain | 4 | Yes |
| 02cv9127 | Ariola | Sullivan, Papain | 24 | Yes |
| 02cv9128 | Blake | Sullivan, Papain | 3 | Yes |
| 02cv10270 | Adams | Sullivan, Papain | 471 | Yes |
| 02cv10271 | Arsenault | Watters & Svetky, LLP | 21 | Yes |
| 02cv10272 | Greenwood | Sullivan, Papain | 3 | Yes |
| 02cv10273 | Miller | Willard R. Pratt III | 1 | Complaint |
| 02cv10274 | Rowe | Jeffrey Neiman | 1 | Complaint |
| 02cv10275 | Rementeria | Altier & Vogt | 2 | Yes |
| 02cv10304 | Davi | Joseph Giaramita | 1 | Yes |
| 03cv006 | Dalton | Sacks & Sacks | 1 | Complaint |
| 03cv007 | Johnson | Sacks & Sacks | 2 | Complaint |
| 03cv008 | Flechaus | Oshman, Helfenstein | 1 | Complaint |
| 03cv0033 | Annerino | Barasch | 33 | Yes |
| 03cv0034 | Albrecht | Godosky | 252 | Yes |
| 03cv0035 | Arocho | Barasch | 3 | Yes |
| 03cv0036 | Agugliaro | Barasch | 19 | Yes |
| 03cv0037 | Stephenson | Talkin, Muccigrosso, Roberts, LLP | 45 | Yes |
| 03cv0038 | Accardo | Barasch | 739 | Yes |
| 03cv0193 | Baiano | Wertheimer Associates | 45 | Complaint |
| 03cv0194 | Wilkinson | Purcell & Ingraio | 1 | Yes |
| 03cv0195 | O'Callaghan | Purcell & Ingraio | 1 | Yes |