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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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**OPINION DISCUSSING
METHODOLOGY FOR
DISCOVERY AND TRIALS OF
SAMPLE CASES**

21 MC 100 (AKH)

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

In the months following September 11, 2001, thousands of workers participated in New York City’s effort to clean up the vast destruction caused by terrorists. The airplane crashes and explosions at the World Trade Center left acres of twisted metal and crumbled concrete. Noxious dust blanketed the rubble and hung in the air for weeks, producing an acrid smell throughout downtown Manhattan. Those who helped in the search and rescue operations, and in the effort to clear the mountains of debris, had to breathe this air as they worked. According to the allegations, protective masks, when worn, filtered this air in varying degrees.

Overlapping government agencies managed the workers, as did private contractors engaged by the City’s Department of Design and Construction. Nine thousand and ninety of these workers have filed suits in this court claiming various respiratory injuries and cancers resulting from their exposures to worksite contaminants.¹ They claim inadequate safety procedures and supervision.

¹ The number, 9,090, reflects the current count, eliminating duplication and transfers to other dockets. The larger number previously represented was approximately 10,500.

I. Procedural History

Most of the cases were initiated in the New York Supreme Court and then removed to this court. They were assigned to me as related to docket 21 MC 97, which contained September 11th wrongful death actions that I had grouped into one coordinated proceeding. I denied class status because of the variety of illnesses alleged by the plaintiffs, the varying severity of their illnesses, the transient nature of the worksites, the varying levels of supervision governing plaintiffs' work, the variety of defendants, and the complexity of determining and evaluating pre-existing medical conditions. See Transcript of Status Conference at 31-34 (Oct. 28, 2004).

I organized the cases into their own master docket, 21 MC 100, and considered the issue of jurisdiction. The aggregate demands of the lawsuits – those already filed and the hundreds more that were expected – promised far to exceed the maximum liability set by the Air Transportation Safety and System Stabilization Act (“ATSSSA”), 49 U.S.C. § 40101. ATSSSA capped liability at \$350 million or the City’s insurance protection, whichever was larger. The latter, at the time, seemed not to exist.

I ruled, in an extensive opinion, that claims arising from the search and rescue operations, extending for two weeks after September 11th, arose from the terrorist-related aircraft crashes and were subject to the district court’s exclusive jurisdiction. However, claims arising from work and exposures thereafter were much more akin to the activities and risks of construction worksites and to issues addressed by the New York Labor Law, on which the New York Supreme Court had developed a century of expertise. Accordingly, I remanded these later claims to that court. Hickey v. City of

New York, 270 F. Supp. 2d 357 (S.D.N.Y. 2003).² An appeal followed and, after lengthy consideration, the Court of Appeals ruled that all the cases were to be considered subject to the district court's exclusive jurisdiction. McNally v. Port Auth., 414 F.3d 352 (2d Cir. 2005). See Robin J. Effron, Event Jurisdiction and Protective Coordination: Lessons from the September 11th Litigation, 81 S. Cal. L. Rev. 199 (2008).

Following remand of the cases to me, I turned to their organization. I appointed Liaison Counsel for plaintiffs and for defendants. Case Management Order No. 2 (Feb. 7, 2005). At plaintiffs' request, I ordered master pleadings to be filed that alleged the issues common to all plaintiffs. Case Management Order No. 4 (May 12, 2005); see Master Complaint (Sept. 16, 2005). And, I ordered the parties to file short form complaints. Case Management Order No. 4 (May 12, 2005). These complaints were intended to set out where, when, and for which contractors plaintiffs worked, as well as the causes of their injuries and the defendants' alleged faults.

At the same time, defendants sought to advance their defense that the City and the contractors enjoyed immunity arising from federal and New York State laws. Both sides considered that the prospective substantial litigation expense made it important to clarify the reach and efficacy of this defense at an early time. I ordered discovery on limited issues relevant to the defense. The same discovery also would be relevant to defining the relationships between plaintiffs and the scores of defendant contractors, between defendant contractors and the City, and among the City, the State, and federal agencies that were active at the World Trade Center worksite.

² I had held previously that traditional workplace injuries similarly were to be remanded. Graybill v. City of New York, 247 F. Supp. 2d 345 (S.D.N.Y. 2002); Spagnuolo v. City of New York, 245 F. Supp. 2d 518 (S.D.N.Y. 2002).

The parties pursued discovery to satisfy both objectives with mixed success. The pleadings were conclusory in their allegations and impossible to understand in relation to essential facts and issues. Remonstrations at conferences and rulings on motions did not seem to advance matters. See, e.g., Transcript of Status Conference at 31-32 (May 13, 2005); Order Regulating Limited Discovery (June 15, 2005). As happens with discovery confined to limited issues, it proved difficult to define boundaries. Finally, however, defendants made their motions, and I denied the motions in a lengthy opinion, ruling that the issue of immunity hinged on controverted facts. Opinion Denying and Granting Motions for Judgment on the Pleadings and for Summary Judgment (Oct. 17, 2006). I denied defendants' motion that my order was eligible for immediate review or, alternatively, for certification for interlocutory review, Opinion and Order Denying Motion for Interlocutory Appeal and Asserting Continuing Jurisdiction (Jan. 8, 2007), but the Court of Appeals ruled that the appeal could nevertheless be pursued because rulings on immunity sufficiently satisfied an exception for final decisions on severable issues. 469 F. Supp. 2d 134 (S.D.N.Y. 2007), rev'd, McCue v. City of New York, 503 F.3d 167 (2d Cir. 2007). The Court of Appeals also granted a stay of all proceedings on March 9, 2007, causing a complete stand-still until March 26, 2008, when the stay was dissolved. The Court of Appeals then affirmed my decision. McCue v. City of New York, 521 F.3d 169 (2d Cir. 2008).

II. The Litigation's Complexities

During the lengthy stay, I considered how these cases should progress were they to be remanded. There were few precedents, perhaps none. These are not typical mass tort claims in which a single product or event injures the victims in a

relatively similar way. Here, the victims were injured over a protracted period of time — days, weeks, and months, varying with the hours and dates particular plaintiffs worked in the widespread area (sixteen acres) constituting the World Trade Center site. Case Management Order No. 3 (Feb. 7, 2005) (defining World Trade Center site). The exposure to the environment had different medical effects on different individuals. The environment itself varied from one worksite area to another depending on which toxic materials prevailed at which place and time. In aggregate, plaintiffs allege hundreds of different diseases from working among the debris, each of different severity and effects.

The complexity in sorting the plaintiffs' claims is matched by the complex interplay of defendants. Many governmental agencies and scores of contractors were responsible for the World Trade Center work, in varying degrees and with varying overlap. The contractor defendants were engaged in different ways, by different prime contractors, and were supervised and guided by different layers of government agencies. Nor is responsibility clear, for some defendants may be covered by various immunities under federal or state laws and, if found liable, may enjoy a congressional liability cap. Because of such a cap, I would have to carefully administer all settlements and judgments since each plaintiff's recovery would diminish the next plaintiff's potential recovery.

The insurance coverage issues provide additional complexities. Related proceedings clarified the City's insurance coverage and were beginning to disclose the coverage of private contractors. My early concern, that ATSSSA's \$350 million liability cap would mean partial and inadequate satisfaction for vast numbers of claimants, had become academic. § 408(a)(3), 49 U.S.C. § 40101. New York City, in fact, is covered by several layers of private coverage, amounting to approximately \$75 million, in excess

of the costs of defense, and one billion dollars of coverage through a captive insurance company funded by the Federal Emergency Management Agency. See WTC Captive Ins., Inc. v. Liberty Mutual Fire Ins. Co., 549 F. Supp. 2d 555, 557-58 (S.D.N.Y. 2008), appeal docketed, No. 08-2787 (2d Cir. June 5, 2008). And, beyond that, the private contractors have their own insurance to an extent not yet known.

It would be difficult, perhaps impossible, to obtain and sort all this insurance information in conventional discovery proceedings relating to more than 9,000 cases. While all might have a claim, of possible and varying merit, against the City, it would be necessary to match specific claims of plaintiffs against specific contractors, and to evaluate such claims in relation to different and varying layers of primary, excess, and reinsurance agreements and exclusions.

Finally, all that I and the parties do must be done with an eye towards public accountability. The September 11th litigation stems from an unprecedented national tragedy that impacted New York City, the State, and the Nation in long-lasting ways. The resolutions of these cases must depend on careful and individual evaluations of personal injury and merits in a manner that allows the public to view and understand the results.

III. Court-Ordered Discovery and Special Masters

The inability of counsel to style useful pleadings, or to proceed with discovery relevant to the immunity defenses without excessive and wasteful disputes, made it necessary to develop an alternative manner of proceeding. See, e.g., Transcript of Status Conference at 23-26 (Nov. 3, 2006). Normal discovery to advance 9,090 cases against more than 200 defendants is not possible. But neither is it tolerable to neglect

these cases, nor to postpone recoveries for years, nor to allow attorneys motivated in part by their own economics to dictate which cases advance and how. There must be criteria developed to select cases meriting early treatment and capable of serving as models for the rest. Case Management Order No. 8, as amended, sets out a protocol that reflects such criteria. It provides a procedure for selecting appropriate cases for intensive pre-trial discovery, motions, and trials on specific dates. I now set out the efforts leading to this order.

I believed that the parties and I needed core discovery to provide the fundamental facts of the cases, the varying responsibilities of government agencies and contractors, and the complex layers of insurance coverage. I required Special Masters, skilled and impartial, to help me devise such discovery, and to develop computer systems to collect the information and make it accessible.

Following the return of the case to my jurisdiction, after the Court of Appeals dissolved its stay, and after vetting the issue with the lawyers, I appointed Professors James A. Henderson, Jr. of Cornell Law School and Aaron D. Twerski of Brooklyn Law School as Special Masters. Memorandum and Order Appointing Special Masters (Dec. 12, 2006). Professors Henderson and Twerski are distinguished scholars, neutral in relation to the issues of the litigation.³ Given the assistance of computer experts engaged through competitive bidding, they have the experience and capability to

³ Professors Henderson and Twerski are the co-authors of the leading treatise Products Liability: Problems and Process (4th ed. 2000) and co-reporters for the RESTATEMENT OF THE LAW (THIRD) TORTS: PRODUCTS LIABILITY. Professor Henderson, Cornell Law School's Frank B. Ingersoll Professor of Law, and Professor Twerski, Brooklyn Law School's Irwin and Jill Cohen Professor of Law, have also together and individually published articles in the nations leading law journals, including the Yale Law Journal and Columbia Law Review.

structure and oversee the required exchange of information between the parties and the collection of that information in an efficient and accessible database.

Working with the lawyers, the Special Masters have developed the structure for creating a large database for the litigation. The parties will be required to answer under oath approximately 360 narrowly-tailored questions seeking case-crucial data for each plaintiff: pedigree information, medical history, tobacco use, alleged injuries, medical tests, diagnoses, symptoms, treatments, and any worker's compensation filings and recoveries. Each plaintiff and each defendant will have to detail the hours plaintiffs worked and for which employers, in addition to the safety warnings given, the safety training provided, and the safety precautions taken. Each defendant will disclose his insurance and indemnity protection.⁴ The database should promote success because it requires greater detail and specificity than prior efforts at core discovery, operates in a more sophisticated medium, and limits the responses to certain key questions to a list of permissible answers (called a "pick list").⁵ See Transcript of Status Conference at 5 (Sept. 16, 2008).

A. Traditional Discovery and Trials as Enforcement Mechanisms

The database should provide an enormous amount of relevant discovery information in a functional format. But the information, to be provided by each party, could be self-serving, and needs to be tested for integrity and reliability. While conventional discovery and trials are a court's traditional tools in this regard, there were

⁴ A previous effort did not succeed. I had ordered each plaintiff to provide details of when and where the plaintiff worked, the injuries the plaintiff claimed, and other basic information. Each defendant was required to supply particulars of its insurance coverage, describe the work it performed, and name subcontractors and employees it engaged. See Case Management Order No. 4 (May 12, 2005). However, conclusory answers and numerous objections frustrated the effort.

⁵ I have attached a print-out of the database (Attachment 1).

too many cases to proceed in a traditional manner. Select cases would have to be chosen for discovery and trial.

Deciding which cases adequately represent the field would be difficult. How could information from hundreds of doctors' reports and thousands of examinations be studied for prior conditions and severity of current illnesses? How could one sort the conditions of scores of workplaces and intersecting levels of supervision? Solving such problems – indeed, even enumerating all possible issues – threatened to overwhelm progress. It was critical to establish a set of priorities, and allow those priorities to determine how to proceed.

The first priority was to tend to the most severely injured plaintiffs. Their cases deserved to be tried first, for if they were to prevail, they had the greatest need for a monetary recovery. The second priority was to create a methodology for sampling in relation to the general run of cases, severe, mild, and everything between, in order that rulings on liability, damages, and responsibility might be extended from the particular case in which rulings are made to the rest of the cases. Every case had to be considered as important, for each plaintiff and each defendant deserved rulings on particular merits.

B. Determining the Most Severely Injured

Determining who are the most severely injured is not a straightforward task. The 9,090 plaintiffs, in the aggregate, claim approximately 387 diseases ranging from the most life-threatening to the merely irritating. Some plaintiffs have very mild cases of serious diseases while others have very severe cases of less serious diseases. Even permitting trials of only the most severe cases of each disease could mean hundreds of trials, still too many to administer in a reasonable period of time.

To proceed, the Special Masters, in cooperation with Liason Counsel, looked to a diagnostic system established by the American Medical Association and the American Thoracic Society. The system ranks the severity of an individual's illness among the population suffering from that illness by grading that person's condition from 0 (least severe) through 4 (most severe). The rank corresponds to recorded outcomes of standard medical tests taken by the plaintiff, typically measuring the degree of dysfunction associated with the disease. In consultation with Liason Counsel, the Special Masters selected six major disease categories that subsumed the generality of illnesses.⁶ Although the rankings are specific to each disease category, and severity cannot easily be evaluated across the different categories, the medical criteria do allow a neutral observer to identify a set of the most severely ill in each of the six disease categories.⁷ Final selections from this set can be made after considering additional limited criteria considered relevant, for example, plaintiff's length of exposure to hazardous worksite conditions or plaintiff's pre-existing medical conditions.

IV. The Resulting Order

The court proposed and approved Case Management Order No. 8 with modifications suggested by the parties. The amended Order, issued today and attached herein, implements these criteria.

⁶ The AMA uses additional criteria when determining diagnoses, but these tests compose much of the objective component used in diagnosing. For two diseases the parties agreed on objective criteria partially derived from AMA ratings and other sources. See Attachment 5 (Severity Chart for Interstitial Lung Disease and Upper Digestive Tract Diseases, e.g., Gastroesophageal reflux disease, Barrett's Esophagus, Gastritis, Esophagitis, and GI stricture).

⁷ The database allows for those who have not yet taken the required test, but those plaintiffs will not be eligible to be selected as one of the 200 cases ranked most severe.

1. The 9,090 cases are to be divided into five groups of 2,000 cases, according to their filing sequence.⁸ Every forty days, one such group of plaintiffs is to populate a subset of the data fields, specifically fields eliciting each plaintiff's disease rankings, the duration of exposure at the World Trade Center, and any pre-existing disorders.
2. The Special Masters, within ten days following, will identify 200 cases categorized as severe. From these 200, plaintiffs and defendants will each choose two cases.
3. The Special Masters also will select twenty-five additional cases for diseases not necessarily included in the severity chart.
4. From this pool of 225 cases, I (with the assistance of the Special Masters) will select two cases, additional to the four selected by plaintiffs and defendants.
5. The six cases thus identified, from the field of 2,000, will proceed through full pre-trial discovery, to be completed within a set period of time (ranging from 270 days for some of the cases in the first field of 2,000 to 190 days for cases in the fifth field), followed by motions, followed by trial (if dismissal motions are not successful).
6. Thirty cases will be set for trial, six from each field of 2,000. Despite the sequential process in which these cases will be selected, all trials will begin on a fixed date – May 17, 2010. If one case is resolved, later-filed cases will be

⁸ The fifth group will contain the remainder of the cases, beyond 8,000, including any after-filed cases. Plaintiffs may file cases within three years of the time plaintiff discovers, or reasonably should have discovered, the injury, whichever is earlier, even though their cause of action accrues upon ingestion or aspiration of the polluting substance. N.Y. C.P.L.R. § 214-c(2) (McKinney 2000).

tried instead. If more than one case for trial remains, other judges may be asked to preside over them, or they may be reached in sequence.

7. Thus, a resolution is in sight for the most severe cases and for representative cases. And one can expect that many of these cases, and many others, will settle either in anticipation of firm trial dates or aided by values gleaned from trials or settlements.⁹

The procedures outlined above were intended swiftly to identify a representative few cases for discovery of all issues and early trials. But the entire field of 2,000 could not be neglected. It was necessary to develop information relevant to all the cases, for otherwise the parties could not share key knowledge about the field of cases, or intelligently discuss the degree to which the cases identified for discovery and trial were representative. Two additional procedures provided for the full field:

8. The parties are required to populate the entire database for each of the 2,000 cases in the group, according to a fixed schedule. Forty days after the Special Masters choose the 225 cases, the parties are to populate the entire database for these cases. On the same day they select the 225 cases, the Special Masters will identify 400 additional cases (chosen at random) from that group of 2,000. The parties must fully populate the database for these 400 cases 120 days later. Every forty days, this process is repeated for the next group of 2,000 cases. By November 27, 2009, the parties will have fully populated the

⁹ This was the experience in the wrongful death actions brought by passengers and crew in the four hijacked airplanes. Setting fixed trial dates for issues of damages and reserving liability issues for a later time resulted in a large number of settlements, without the need of any trials. At present, ninety-three of the original ninety-six claimants have settled, leaving but three for completion of discovery and trial. I ordered the master docket, 21 MC 97, closed and transferred the remaining cases to 21 MC 101, the collection of property damage cases against the aviation defendants. See In re September 11 Litig., 567 F. Supp. 2d 611, 616-17 (S.D.N.Y. 2008).

entire database for 3,125 cases, taken from all five groups (5 multiplied by 625). Finally, the parties will populate the database for each of the 1,375 cases in every group that were not selected as part of the 225-case subgroup or the 400-case subgroup. By January 1, 2011, the entire database for each filed case will be populated.

9. From each group of 400 randomly selected cases, each party will choose two cases, and I (with the Special Masters' assistance) will select an additional two. These cases will proceed with pre-trial discovery along with the selected "severe" cases. However, trial dates will not be set for these cases, at least not until we know the outcome of the schedule for the "severe" cases.

I recognize that the methodology of Case Management Order No. 8 is extraordinarily complex. It needed to be so because of the number and variety of cases, and to create a consensual agreement for going forward. I recognize also that complexity creates an artificial rigidity that needs adjustment. As further orders may be necessary, they will be made. But the trial and motion schedules will remain firm.¹⁰

V. Rationale of Case Management Order No. 8

The plan involves three stratagems to bring the thousands of cases before me to resolution. First, since the claims of those most gravely injured commend themselves to highest priority, the plan provides a procedure to identify these cases, a methodology to select a representative sample for full discovery and early trial, and a firm and intensive schedule to begin trials. Full discovery on all issues will assure the

¹⁰ I have attached to this decision the amended Case Management Order No. 8 (Attachment 2), its accompanying schedule (Attachment 3), the Severity Chart which parties must complete prior to responding to certain database fields (Attachment 4), and the Severity Chart's introductory language which was agreed upon by the parties (Attachment 5).

integrity of each side's disclosures in the database and a thorough testing of all claims and defenses. A basis for settlement, or valuation by trial, should promote prompt resolution of all such severe cases.

Second, the full population of the database of all remaining cases, first by sample and then in full, enables values to be negotiated for all cases.

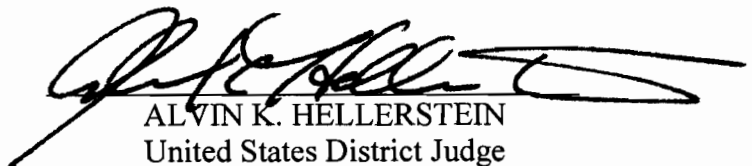
Third, the combination of court-established interrogatories for the database and traditional, broad discovery in selected cases will allow the parties vigorously to test their opponents' claims, assuring the integrity and reliability of the parties' disclosures and establishing a procedure that can promote broad resolutions of cases in a fair, efficient, and just manner.

VI. Conclusion

No general plan for over 9,000 cases can be so wise as to be immutable, or so clever as to foresee all possibilities. However, Case Management Order No. 8 was forged with the experience of earlier failures and frustrations, and with full and intensive cooperation of Special Masters and plaintiffs' and defendants' counsel. It establishes a flexible, fair, and efficient plan to move these cases through discovery and to trial in reasonable time. It remains for the parties to act consistently with its provisions to bring about just such results.

SO ORDERED.

Dated: February 18, 2009
New York, New York


ALVIN K. HELLERSTEIN
United States District Judge

ATTACHMENT 1

Field #	Data Element	Data Type	Who Populates
1	CASE PROFILE DATA		
2	Plaintiff-Employee (PE) last name	Text	Plaintiff
3	PE first name	Text	Plaintiff
4	PE docket number	Text	Plaintiff
5	PE social security number	Numeric	Both
6	Identify all defendants against whom PE has brought WTC actions.	Pick List	Plaintiff
7	Defendant (DF) focused on in this record (same as #235)	Pick List	Plaintiff
8	WTC WORK BACKGROUND DATA		
9	Did DF hire/engage PE as an employee to work at WTC?	Yes/No	Both
10	On which dates did PE work as DF's employee?	Date(s)	Both
11	If DF did not hire/engage PE as an employee, which of the following statements best describes the basis on which DF is allegedly responsible for PE's safety in connection with PE's WTC work?	Pick List	Plaintiff
12	Was PE hired/engaged on a full-time basis?	Yes/No	Both
13	For what type(s) of work was PE hired/engaged to perform?	Pick List	Both
14	Did DF train PE for work at WTC?	Yes/No	Both
15	On what dates did DF train PE for Work at WTC?	Date(s)	Both
16	Did DF instruct/direct PE to work at WTC?	Yes/No	Both
17	On which date(s) did DF instruct/direct PE to work at WTC?	Date(s)	Both
18	Which of DF's agents instructed/directed PE to work at WTC? (Identify by status.)	Pick List (by status)	Both
19	For what type(s) of work was PE instructed/directed to perform?	Pick List	Both
20	What type(s) of work did PE actually perform at WTC?	Pick List	Both
21	At which WTC location(s) did PE work?	Pick List	Both
22	On what date(s) did PE work at each WTC location?	Date(s)	Both
23	Was PE terminated from WTC employment prior to the end of DF's work on the WTC project? (separate entry for each DF)	Yes/No	Both
24	On what date(s) was PE terminated?	Date(s)	Both
25	What was stated reason(s) for termination?	Pick List	Both
26	At which WTC location(s) did DF work?	Pick List	Defendants
27	On what date(s) did DF work at each WTC location?	Date(s)	Defendants
28	Which entity(s) hired/engaged DF to work at WTC?	Pick List	Defendants

Field #	Data Element	Data Type	Who Populates
29	On what date(s) was DF hired/engaged by this entity(s)?	Date(s)	Defendants
30	For what specific task(s) was DF hired/engaged?	Pick List	Defendants
31	Which entity(s) instructed/directed DF to perform work at WTC?	Pick List	Defendants
32	Did DF enter agreement(s) with other entity(s) regarding DF's WTC work?	Yes/No	Defendants
33	What type of agreement(s)? (Oral, written, other.)	Pick List	Defendants
34	With which entity(s) did DF enter agreement(s) regarding DF's WTC work?	Pick List	Defendants
35	On what date(s) was this agreement(s) entered into?	Date(s)	Defendants
36	Did DF provide PPE to its WTC employees generally?	Yes/No	Defendants
37	By what means did DF provide PPE to its WTC employees?	Pick List	Defendants
38	On what date(s) did DF provide PPE to its WTC employees?	Date(s)	Defendants
39	What type(s) of PPE did DF provide to its WTC employees?	Pick List	Defendants
40	Did DF provide instructions, directions, or training regarding PPE to its WTC employees?	Yes/No	Defendants
41	What type(s) of instructions, directions, or training did DF provide?	Pick List	Defendants
42	DEMOGRAPHIC DATA		
43	What is PE's date of birth?	Date	Plaintiff
44	Is PE deceased?	Yes/No	Plaintiff
45	What is date of death, if deceased?	Date	Plaintiff
46	What was stated cause of death?	Text	Plaintiff
47	Was death certificate issued?	Yes/No	Plaintiff
48	Was autopsy performed?	Yes/No	Plaintiff
49	CURRENT EMPLOYMENT HISTORY		
50	Who is PE's current employer(s)?	Text	Plaintiff
51	What is PE's current employer's address?	Text	Plaintiff
52	What is PE's current occupation(s)?	Pick list	Plaintiff
53	What was PE's first date of employment with current employer?	Date	Plaintiff
54	What is PE's current gross annual income from current employment?	Currency	Plaintiff
55	PREVIOUS EMPLOYER(S) (FROM 1995 TO 9/11/01)		
56	Did PE have a previous employer(s), other than DF, from 1995 to 9/11/01?	Yes/No	Plaintiff
57	Who was PE's previous employer(s) from 1995 to 9/11/01?	Text	Plaintiff
58	What is each previous employer's address?	Text	Plaintiff

Field #	Data Element	Data Type	Who Populates
59	What was PE's occupation(s) in each previous employment?	Pick List	Plaintiff
60	What were PE's dates of employment for each previous employer?	Date(s)	Plaintiff
61	What was PE's gross annual income from each previous employment?	Currency	Plaintiff
62	TOBACCO USE		
63	Did PE ever use tobacco product(s)?	Yes/No	Plaintiff
64	Does PE currently use tobacco product(s)?	Yes/No	Plaintiff
65	What type(s) of tobacco product(s) have been used by PE?	Pick list	Plaintiff
66	At what age did PE begin to use tobacco product(s)?	Numeric	Plaintiff
67	How frequently did PE use tobacco product(s)?	Pick list	Plaintiff
68	Has PE finally stopped all tobacco product use?	Yes/No	Plaintiff
69	At what age did PE finally stop all tobacco product use?	Numeric	Plaintiff
70	DURATION OF PE'S WTC WORK		
71			
72	What was first date that PE was present at WTC site?	Date	Plaintiff
73	What was last date that PE was present at WTC Site?	Date	Plaintiff
74	How many hours did PE work at WTC site on 9/11/01?	Numeric	Plaintiff
75	How many hours did PE work at WTC site on 9/12/01?	Numeric	Plaintiff
76	How many hours did PE work at WTC site on 9/13/01?	Numeric	Plaintiff
77	How many hours did PE work at WTC site from 9/14/01-9/30/01?	Numeric	Plaintiff
78	How many hours did PE work at WTC site from 10/1/01-10/31/01?	Numeric	Plaintiff
79	How many hours did PE work at WTC site from 11/1/01-11/30/01?	Numeric	Plaintiff
80	How many hours did PE work at WTC site from 12/1/01-12/30/01?	Numeric	Plaintiff
81	How many total WTC hours did PE work at WTC site after 12/30/01?	Numeric	Plaintiff
82	RESPIRATOR(S) AVAILABLE TO/RECEIVED BY PE AT WTC SITE		
83	Were respirator(s) available to PE from any on site source in connection with WTC work?	Yes/No	Plaintiff
84	What type(s) of respirator(s) was available to PE from any source on site in connection with WTC work?	Pick list	Plaintiff
85	Did PE obtain respirator(s) from any source in connection with WTC work?	Yes/No	Plaintiff
86	What type(s) of respirator(s) did PE obtain from any source in connection with WTC work?	Pick list	Plaintiff
87	On what dates did PE obtain respirator(s) in connection with WTC work?	Date	Plaintiff

Field #	Data Element	Data Type	Who Populates
88	Which individual(s) or entity(s) provided respirator(s) to PE in connection with WTC work?	Pick list	Plaintiff
89	On what dates did PE wear respirator(s) in connection with WTC work?	Date	Plaintiff
90	Did PE receive respirator training from any source in connection with WTC work?	Yes/No	Plaintiff
91	On what dates did PE receive respirator training at WTC site?	Text	Plaintiff
92	Which individual(s) or entity(s) provided PE with respirator training at WTC site?	Pick list	Plaintiff
93	PPE (OTHER THAN RESPIRATORS) AVAILABLE TO/RECEIVED BY PE AT WTC		
94	Did PE receive PPE (other than respirators) in connection with WTC work?	Yes/No	Plaintiff
95	What type(s) of PPE (other than respirators) did PE receive in connection with WTC work?	Pick list	Plaintiff
96	On what date(s) did PE receive PPE (other than respirators) at WTC site?	Date(s)	Plaintiff
97	On what date(s) did PE wear PPE (other than respirators) in connection with WTC work?	Date(s)	Plaintiff
98	Did PE receive PPE (other than respirator) training at WTC site?	Yes/No	Plaintiff
99	On what dates did PE receive PPE (other than respirator) training at WTC site?	Date(s)	Plaintiff
100	Which individual(s) or entity(s) provided PE with PPE (other than respiratory) training at WTC site?	Pick List	Plaintiff
101	PRIOR RESPIRATOR EXPERIENCE		
102	Did PE ever use a respirator prior to 9/11?	Yes/No	Plaintiff
103	Did PE ever receive respirator training from any source prior to 9/11?	Yes/No	Plaintiff
104	ENVIRONMENTAL HEALTH AND SAFETY TRAINING		
105	Did PE receive environmental health and safety training regarding PPE in connection with WTC work?	Yes/No	Plaintiff
106	On what date(s) did PE receive environmental health and safety training in connection with WTC work?	Date(s)	Plaintiff
107	What individual(s) or entity(s) provided environmental health and safety training to PE?	Pick list	Plaintiff
108	Did PE receive training certificate(s)/certification(s) for environmental health and safety training received while working at WTC site?	Yes/No	Plaintiff
109	On what date(s) did PE receive certificate(s)/certification(s) in connection with WTC work?	Date(s)	Plaintiff

Field #	Data Element	Data Type	Who Populates
110	PRE-EXISTING (1995 - 9/11/01) DISORDERS, DISEASES AND ANATOMICAL ABNORMALITIES		
111	Does or did PE suffer from one or more pre-existing (1995 to 9/11/01) disorder(s), disease(s), or anatomical abnormality(s)?	Yes/No	Plaintiff
112	If so, from what type(s) of pre-existing (1995 to 9/11/01) disorder(s), disease(s), or anatomical abnormality(s) does or did PE suffer?	Pick list	Plaintiff
113	On what date(s) did PE's pre-existing (1995 to 9/11/01) disorder(s), disease(s), or anatomical abnormality(s) begin?	Date	Plaintiff
114	Has PE's pre-existing disorder(s), diseases(s), or anatomical abnormality(s) ended?	Yes/No	Plaintiff
115	If so, on what date(s) did PE's pre-existing (1995 to 9/11/01) disorder(s), disease(s), or anatomical abnormality(s) end?	Date(s)	Plaintiff
116	Was PE's pre-existing (1995-9/11/01) disorder(s), disease(s), or anatomical abnormality diagnosed?	Yes/No	Plaintiff
117	On what date was PE's pre-existing (1995 to 9/11/01) disorder(s), disease(s), or anatomical abnormality(s) diagnosed?	Date	Plaintiff
118	Were medications prescribed to treat PE's pre-existing (1995 to 9/11/01) disorder(s), disease(s), or anatomical abnormality(s)?	Yes/No	Plaintiff
119	If so, what medications were prescribed for PE's pre-existing condition(s)?	Pick List	Plaintiff
120	What type of treatment(s), modality(s) or surgery(s) was used to treat PE's pre-existing (1995 to 9/11/01) disorder(s), disease(s), or anatomical abnormality(s)?	Pick List	Plaintiff
121	DISABILITY CLAIMS		
122	Did PE file any disability claim(s) from 1995 to date? (Only if related to a disorder, disease or anatomical abnormality, of a sort the same as, or similar to, the disorder, disease or anatomical abnormality for which recovery is sought in this litigation.)	Yes/No	Plaintiff
123	Did PE file any disability claim(s) in connection with WTC work?	Yes/No	Plaintiff
124	If so, on what date(s) did PE file disability claim(s)?	Date(s)	Plaintiff
125	What was medical basis(s) for disability claim(s)?	Pick List	Plaintiff
126	What was disposition of disability claim(s)?	Pick List	Plaintiff
127	WORKERS' COMPENSATION CLAIMS FILED BY PE		

Field #	Data Element	Data Type	Who Populates
128	Did PE file any workers' compensation claim(s) from 1995 to 9/11/01? (Only if related to injury of type for which recovery is sought in this litigation and present at time of 9/11.)	Yes/No	Plaintiff
129	Did PE file any workers' compensation claim(s) in relation to WTC work?	Yes/No	Plaintiff
130	If so, on what date(s) did PE file workers' compensation claim(s)?	Date(s)	Plaintiff
131	What was medical basis for pre-9/11/01 workers' compensation claim(s)?	Pick List	Plaintiff
132	What was disposition(s) of pre-9/11/01 workers' compensation claim(s)?	Pick List	Plaintiff
133	DIAGNOSED CONDITIONS, INJURIES, AND DISEASES FOR WHICH PE SEEKS RECOVERY IN THIS LITIGATION		
134	For which diagnosed condition(s)/injury(s)/disease(s) does PE seek recovery?	Pick list	Plaintiff
135	On what date(s) was PE's condition(s)/injury(s)/disease(s) diagnosed?	Date	Plaintiff
136	Which professional(s)/entity(s) made the diagnosis?	Text	Plaintiff
137	What was the profession/specialty of diagnosing professional(s)/entity(s)?	Pick list	Plaintiff
138	Was a physical exam conducted as part of diagnostic process?	Yes/No	Plaintiff
139	Was a medical, social, and occupational history taken as part of diagnostic test?	Yes/No	Plaintiff
140	Did PE experience an emergency room visit(s) and/or hospitalization(s) related to diagnosed condition?	Yes/No	Plaintiff
141	If so, on what date(s) did such emergency-room visit(s) and/or hospitalization(s) occur?	Date(s)	Plaintiff
142	Was drug therapy(s) prescribed to treat PE's diagnosed condition(s)?	Yes/No	Plaintiff
143	What course(s) of drug therapy (including dosage(s)) was prescribed to treat PE's diagnosed condition(s)?	Pick list	Plaintiff
144	Who was treating physician(s) for PE's diagnosed condition(s)?	Text	Plaintiff
145	Was there a primary treating physician for PE's diagnosed condition?	Yes/No	Plaintiff
146	What type of physician(s) treated PE's diagnosed condition(s)?	Pick list	Plaintiff
147	What is treating physician's address?	Text	Plaintiff
148	Did PE's treating physician(s) treat PE prior to 9/11/01?	Yes/No	Plaintiff
149	Has plaintiff undergone surgery(s) related to diagnosed condition, injury and/or disease?	Yes/No	Plaintiff

Field #	Data Element	Data Type	Who Populates
150	What surgery(s) did PE undergo?	Pick list	Plaintiff
151	On what date(s) did each surgery occur?	Date(s)	Plaintiff
152	What medical provider(s)/entity(s) performed such surgery(s)?	Text	Plaintiff
153	What was outcome(s) of the surgery(s)?	Text	Plaintiff
154	Has PE's diagnosed condition(s)/injury(s)/disease(s) been resolved?	Yes/No	Plaintiff
155	DIAGNOSTIC TESTS UNDERGONE BY PE (9/11 to PRESENT)		
156	Have diagnostic tests been undergone by PE (1995 to 9/11/01) in connection with any condition of the sort for which PE seeks to recover in this litigation? Respiratory, MRI, Blood, Urine, Sleep Studies, X-Rays, etc.) (Separate response for each test). (For those diagnostic tests with voluminous and significant test values (i.e. PFTs), there will be separate data fields. See below.)	Yes/No	Plaintiff
157	What type(s) of diagnostic test(s) did PE undergo?	Pick list	Plaintiff
158	What were the date(s) of these diagnostic test(s)?	Date(s)	Plaintiff
159	Which medical entity/individual conducted PE's diagnostic test(s)?	Text	Plaintiff
160	RESULT(S) OF DIAGNOSTIC TEST(S)		
161	What were the results of (CT Sinus Scan)?	Pick list	Plaintiff
162	Re sleep apnea tests, what were the number of obstructive events per hour (Polysomnogram)?	Numeric	Plaintiff
163	What was PE's VHI score (Voice Handicap Index Test)?	Pick list	Plaintiff
164	What were the results for PE's Stroboscopy-laryngoscopy?	Pick list	Plaintiff
165	What were the results for PE's Objective Voice and Speech Measures Test(s)?	Pick list	Plaintiff
166	Did PE undergo an inspiratory view (High Resolution Computed Tomography)?	Yes/No	Plaintiff
167	What were the results of PE's Endoscopy-Gastroenterological Test(s)?	Pick list	Plaintiff
168	Was PE graded on Los Angeles ("L.A.") Classification (Endoscopy - Gastroenterological)?	Yes/No	Plaintiff
169	Results of PE graded on Los Angeles ("L.A.") Classification (Endoscopy - Gastroenterological)?	Pick List	Plaintiff
170	Impression / Results of Diagnostic Tests	Text	Plaintiff
171	PULMONARY FUNCTION TEST (1995 to PRESENT)		
172	Did PE undergo a Pulmonary Function Test (PFT) (1995 to Present)?	Yes/No	Plaintiff
173	What was the date of PFT (1995 to Present)?	Date	Plaintiff

Field #	Data Element	Data Type	Who Populates
174	Who was the medical provider/entity who conducted PFT?	Text	Plaintiff
175	What was PE's Forced Vital Capacity ("FVC")?	Numeric	Plaintiff
176	What was PE's FVC% predicted?	Numeric	Plaintiff
177	What was PE's Forced Expiratory Volume ("FEV1")	Numeric	Plaintiff
178	What was PE's FEV1% predicted?	Numeric	Plaintiff
179	What was PE's FEV1/FVC ratio?	Numeric	Plaintiff
180	Was PE's FEV1/FVC Ratio below 70%?	Yes/No	Plaintiff
181	What was PE's FEV1 after bronchodilator?	Numeric	Plaintiff
182	What was PE's numeric change in FEV1 after bronchodilator?	Numeric	Plaintiff
183	What was PE's percentage change in FEV1 after bronchodilator?	Numeric	Plaintiff
184	Was percentage change in FEV1 after bronchodilator greater than 12%?	Yes/No	Plaintiff
185	What was PE's Total Lung Capacity (TLC)?	Numeric	Plaintiff
186	What was PE's TLC% predicted?	Numeric	Plaintiff
187	What was PE's Forced Expiratory Flow 25-75?	Numeric	Plaintiff
188	What was PE's Residual Volume (RV)?	Numeric	Plaintiff
189	What was PE's RV% predicted?	Numeric	Plaintiff
190	What was PE's RV/TLC Ratio?	Numeric	Plaintiff
191	What was PE's Diffusion Capacity for Carbon Monoxide ("DLCO")?	Numeric	Plaintiff
192	What was PE's DLCO% predicted?	Numeric	Plaintiff
193	VO2 Max (Exercise Test) (ML per Kg per minute)	Numeric	Plaintiff
194	Did PE Smoke on day of PFT?	Yes/No	Plaintiff
195	Did PE ingest respiratory medication(s) on day of PFT?	Yes/No	Plaintiff
196	If so, what medications, in what dosages?	Pick List	Plaintiff
197	What were the results of PE's PFT test?	Pick List	Plaintiff
198	METHACHOLINE CHALLENGE TESTS (1995 to PRESENT)		
199	Did PE undergo a Methacholine Challenge Test (1995 to Present)?	Yes/No	Plaintiff
200	On what date(s) did PE undergo a Methacholine Test?	Date(s)	Plaintiff
201	What were the test results for PE's Methacholine Test?	Pick list	Plaintiff
202	What dose of methacholine caused 20% reduction in PE's FEV1?	Numeric (mg/ml)	Plaintiff
203	How many days prior to Methacholine Challenge did PE use bronchodilator?	Numeric	Plaintiff
204	What medical entity/individual conducted PE's Methacholine Challenge Test?	Text	Plaintiff
205	SEVERITY CHARTS RANKING DATA		
206	Does PE seek to recover for an impairment that qualifies for a ranking on Chart One of the Severity Charts?	Yes/No	Plaintiff

Field #	Data Element	Data Type	Who Populates
207	If so, for which impairment(s) identified in Chart One does PE claim to recover?	Pick List	Plaintiff
208	What is the ranking level(s) for such impairment(s)?	Numeric	Plaintiff
209	Does PE seek to recover for a previous, completely-resolved impairment under Part I of Chart Two of the Severity Charts?	Yes/No	Plaintiff
210	If so, for which previous impairment(s) identified in Chart One does PE seek to recover?	Pick List	Plaintiff
211	What is the ranking level for such previous, completely-resolved impairment(s)?	Numeric	Plaintiff
212	Does PE seek to recover for a partially-resolved impairment under Part II of Chart Two of the Severity Charts?	Yes/No	Plaintiff
213	If so, for what partially-resolved impairment(s) identified in Chart One does PE seek to recover?	Pick List	Plaintiff
214	What is the ranking level for the previous impairment before partial resolution? (See subpart(a) of Part II of Chart Two.)	Numeric	Plaintiff
215	What is the ranking level for the residual impairment after partial resolution of the previous impairment? (See subpart (b) of Part II of Chart Two.)	Numeric	Plaintiff
216	Does PE seek to recover for an impairment referred to in Chart Three of the Severity Charts?	Yes/No	Plaintiff
217	If so, for which such impairment(s)?	Pick List	Plaintiff
218	PRESCRIPTION MEDICATION(S)		
219	What medication(s) was prescribed for PE from 1995 to date?	Pick list	Plaintiff
220	On what date(s) was medication(s) first prescribed?	Date(s)	Plaintiff
221	Who is/was the prescribing healthcare provider(s)?	Text	Plaintiff
222	For what medical conditions or illnesses were medications prescribed for PE from 1995 to present?	Text	Plaintiff
223	Did PE actually take the medication(s) as prescribed from 1995 to date?	Yes/No	Plaintiff
224	What was the dosage/frequency with which prescribed medication(s) was actually taken from 1995 to date?	Pick list	Plaintiff
225	COLLATERAL SOURCES		
226	Did PE receive any collateral payment(s) related to WTC work and/or alleged injury(s) (including insurance, government, VCF, Medicare, Medicaid, Social Security)?	Yes/No	Plaintiff
227	What type(s) of collateral payment(s) has PE received related to WTC work and/or alleged injury?	Pick list	Plaintiff
228	On what date(s) did payment(s) to PE related to WTC work and/or alleged injury begin?	Date(s)	Plaintiff

Field #	Data Element	Data Type	Who Populates
229	What insurance carrier(s) or other entity(s) has provided PE with payment(s) related to WTC work and/or alleged injury?	Text	Plaintiff
230	What has been the disposition of PE's claim(s) related to WTC work and/or alleged injuries?	Pick list	Plaintiff
231	What is the reason(s) for PE receiving benefit(s) related to WTC work and/or alleged injury(s)?	Pick list	Plaintiff
232	What is the yearly amount(s) that PE has received from all collateral sources related to WTC work or alleged injuries?	Currency	Plaintiff
233	What is the total amount of payment(s) that PE has received to date from all collateral sources related to WTC work or alleged injuries?	Currency	Plaintiff
234	DEFENDANT IDENTIFYING INFORMATION		
235	Name of the defendant (DF) upon whom this record focuses. [cf. field #7.]	Pick list	Plaintiff
236	Where is DF's principal executive office?	Open Text	Defendants
237	What is the name of DF's Registered Agent?	Open Text	Defendants
238	What is DF's registered agent's address?	Open Text	Defendants
239	By what other name(s) is DF known?	Open Text	Defendants
240	What is the address of the DF's headquarters?	Open Text	Defendants
241	Is DF still engaged in business?	Yes/No	Defendants
242	DFS HEALTH INSURANCE/WORKERS COMPENSATION INSURANCE		
243	Who is and/or was PE's health insurance carrier(s) during the time PE worked at the WTC site?	Pick list	Plaintiff
244	Did PE receive medical service(s) related to PE's work at the WTC site that was paid for by health insurance?	Yes/No	Plaintiff
245	What was the total amount paid for such services by PE's health insurance carrier?	Currency	Plaintiff
246	Did PE file workers compensation claim(s) related to the collapse of the WTC?	Yes/No	Plaintiff
247	On what date(s) did PE file the workers compensation claim(s) related to the collapse of the WTC?	Date	Plaintiff
248	What was the disposition(s) of PE's WTC-related workers compensation claim(s)?	Pick list	Plaintiff
249	How much, in total, did PE receive under the workers compensation claim(s)?	Currency	Plaintiff
250	During what period(s)/on what date(s) did Plaintiff receive compensation under the workers compensation claim(s)?	Date(s)	Plaintiff
251	DFS WTC SITE SAFETY		
252	Did DF ever stop any work related to the collapse of the WTC for safety and/or health concerns of any workers?	Yes/No	Defendants

Field #	Data Element	Data Type	Who Populates
253	How many times did DF stop any work related to the collapse of the WTC for safety and/or health concerns of any workers?	Numeric	Defendants
254	Was any of DF's work related to the collapse of the WTC stopped by someone other than DF for health or safety concerns?	Yes/No	Defendants
255	On what date(s) was DF's work related to the collapse of the WTC stopped for health or safety concerns?	Date(s)	Defendants
256	Why was DF's work related to the collapse of the WTC stopped for health or safety reasons?	Text	Defendants
257	Were DF's employees told to wear respirators for work related to the WTC site?	Yes/No	Defendants
258	On what dates were DF's employees told to wear respirators for work related to the WTC site?	Date(s)	Defendants
259	Did any of DF's employees attend health and safety meeting(s) for work related to the collapse of the WTC?	Yes/No	Defendants
260	On what date(s) did DF's employees attend health and safety meeting(s) for work related to the collapse of the WTC?	Pick List	Defendants
261	Who conducted the health and safety meeting(s) that DF's employees attended for work related to the collapse of the WTC?	Pick List	Defendants
262	Did any of DF's employees complete an environmental exposure incident report for work related to the collapse of the WTC?	Yes/No	Defendants
263	DEFENDANT'S EMPLOYMENT PRACTICES		
264	Does DF maintain employee files?	Yes/No	Defendants
265	Do DF's employee files contain results of employees' medical evaluations?	Yes/No	Defendants
266	Do DF's employee files contain any medical records?	Yes/No	Defendants
267	DF'S MEDICAL SURVEILLANCE PROGRAM		
268	Does DF require its employees to undergo "entry medical" examinations prior to employment?	Yes/No	Defendants
269	Who is the medical provider performing such "entry medical" examinations?	Pick list	Defendants
270	Did PE undergo an "entry medical" examination prior to employment?	Yes/No	Both
271	What were the results of the PE's "entry medical" examination?	Pick list	Defendants
272	Did PE undergo an "entry medical" exam prior to working at WTC site?	Yes/No	Both
273	What was the result of PE's "entry medical" exam prior to working at the WTC site?	Pick List	Defendants
274	On what date(s) was the "entry medical" examination(s) performed on PE?	Date(s)	Both
275	Did the PE undergo an "exit medical" exam?	Yes/No	Both
276	On what date(s) did PE undergo an "exit medical" examination?	Date	Both
277	Who was the medical provider who performed such "exit medical" examination(s)?	Pick list	Defendants
278	What were the results of PE's "exit medical" examination(s)?	Pick List	Defendants

Field #	Data Element	Data Type	Who Populates
DF'S HEALTH AND SAFETY PRACTICES			
279	DF'S HEALTH AND SAFETY PRACTICES		
280	Did DF provide any type of Safety and Health training to employees generally after 9/11/01?	Yes/No	Defendants
281	What type of Safety and Health training did DF provide employees generally after 9/11/01?	Pick List	Defendants
282	Did DF have a respiratory protection compliance program after 9/11/01?	Yes/No	Defendants
283	Did DF inform its employees after 9/11/01 about environmental hazards by any form of material data safety sheets and/or employee training?	Yes/No	Defendants
284	Did DF have a PPE compliance program after 9/11/01?	Yes/No	Defendants
285	INDEMNIFICATION AGREEMENTS (Defendants understand that to the extent that responses to fields 285-311 go beyond reporting factual events, circumstances or other data they should not be construed as binding admissions as to any legal position and/or conclusion. Further, Defendants preserve all of their rights and arguments with respect to any disputes concerning erroneous denials of coverage, or with respect to any other litigation, and shall not be limited in argument by responses to fields 285-311 that go beyond reporting factual events, circumstances or other data.)		
286	Was there a contract (written or oral) purporting to require DF to indemnify the City of New York?	Yes/No	Defendants
287	Was there a contract (written or oral) purporting to require DF to indemnify the Port Authority of New York and New Jersey?	Yes/No	Defendants
288	Was there a contract (written or oral) purporting to require DF to indemnify Bovis Lend Lease?	Yes/No	Defendants
289	Was there a contract (written or oral) purporting to require DF to indemnify Tully Construction?	Yes/No	Defendants
290	Was there a contract (written or oral) purporting to require DF to indemnify Turner/Plaza?	Yes/No	Defendants
291	Was there a contract (written or oral) purporting to require DF to indemnify AMEC Construction?	Yes/No	Defendants
292	Was there a contract (written or oral) purporting to require DF to defend the City of New York?	Yes/No	Defendants

Field #	Data Element	Data Type	Who Populates
293	Was there a contract (written or oral) purporting to require DF to defend the Port Authority of New York and New Jersey?	Yes/No	Defendants
294	Was there a contract (written or oral) purporting to require DF to defend Bovis Lend Lease?	Yes/No	Defendants
295	Was there a contract (written or oral) purporting to require DF to defend Tully Construction?	Yes/No	Defendants
296	Was there a contract (written or oral) purporting to require DF to defend Turner/Plaza?	Yes/No	Defendants
297	Was there a contract (written or oral) purporting to require DF to defend AMEC Construction?	Yes/No	Defendants
298	Was there a contract (written or oral) purporting to require DF to name the City of New York as an additional insured?	Yes/No	Defendants
299	Was there a contract (written or oral) purporting to require DF to name the Port Authority of New York and New Jersey as an additional insured?	Yes/No	Defendants
300	Was there a contract (written or oral) purporting to require DF to name Bovis Lend Lease as an additional insured?	Yes/No	Defendants
301	Was there a contract (written or oral) purporting to require DF to name Tully Construction as an additional insured?	Yes/No	Defendants
302	Was there a contract (written or oral) purporting to require DF to name Turner/Plaza as an additional insured?	Yes/No	Defendants
303	Was there a contract (written or oral) purporting to require DF to name AMEC Construction as an additional insured?	Yes/No	Defendants
304	Was there a contract (written or oral) purporting to require an entity to indemnify DF?	Yes/No	Defendants
305	Was there a contract (written or oral) purporting to require an entity to defend DF?	Yes/No	Defendants
306	Was there a contract (written or oral) purporting to require an entity to name DF as an additional insured?	Yes/No	Defendants
307	What were the terms of any oral agreement for indemnification where defendant agreed to perform work that related to worker and site health and safety?	Open Text	Defendants
308	What were the terms of/parties to any oral agreements regarding indemnification?	Open Text	Defendants

Field #	Data Element	Data Type	Who Populates
309	What were the terms of/parties to any oral agreements to defend?	Open Text	Defendants
310	What were the terms of/parties to any oral agreements to name one of the above listed entities as an additional insured?	Open Text	Defendants
311	On what date(s) was (were) such agreements entered into?	Date(s)	Defendants
312	INSURANCE INFORMATION (Defendants understand that to the extent that responses to fields 312-328 go beyond reporting factual events, circumstances or other data they should not be construed as binding admissions as to any legal position and/or conclusion. Further, Defendants preserve all of their rights and arguments with respect to any disputes concerning erroneous denials of coverage, or with respect to any other litigation, and shall not be limited in argument by responses to fields 312-328 that go beyond reporting factual events, circumstances or other data.)		
313	Is there any insurance that may be available or claimed to be available, other than the WTC Captive or OCIP, to cover any liabilities that DF may incur in this litigation?	Yes/No	Defendants
314	What type of insurance, other than the WTC Captive or OCIP, may be available or claimed to be available to cover any liabilities DF may incur in this litigation?	Pick list	Defendants
315	For each type of insurance identified above, identify the potentially applicable policy periods.	Date - Date	Defendants
316	Who is/are the Insurance Carrier(s) who wrote the policy?	Pick list	Defendants
317	What are the Insurance Policy Number(s)?	Open Text	Defendants
318	What are the initial policy limits set out in the policy?	Numeric	Defendants
319	What are the remaining policy limits?	Numeric	Defendants
320	Are the policies claims-made or occurrence based?	Pick list	Defendants
321	If policy is claims-made, what is the prior acts date and/or retroactive date?	Date - Date	Defendants
322	Was/were there claims made against this policy with respect to plaintiffs in this litigation?	Yes/No	Defendants

Field #	Data Element	Data Type	Who Populates
323	Was there a communication from the insurer that purported to disclaim with respect to any plaintiffs in this litigation?	Yes/No/Unkn own	Defendants
324	What was the date(s) of the communication from the insurer purporting to disclaim with respect to any plaintiffs in this litigation?	Date(s)	Defendants
325	Was there a communication from the insurer that purported to reserve rights with respect to plaintiffs in this litigation?	Yes/No/Unkn own	Defendants
326	What was the date(s) of the communication from the insurer that purported to reserve rights with respect to plaintiffs in this litigation?	Date(s)	Defendants
327	What is/was the stated basis of the communication from the insurer that purported to disclaim or purported to reserve rights with respect to plaintiffs in this litigation?	Pick list	Defendants
328	Was a declaratory judgment action filed against the carrier with respect to this litigation?	Yes/No	Defendants
329	DID DF PROVIDE PPE (OTHER THAN RESPIRATORY PPE) TO ITS EMPLOYEES?		
330	Did DF provide PPE (other than respiratory) to its employees?	Yes/No	Defendants
331	If so, what type(s) of nonrespiratory PPE?	Pick list	Defendants
332	At what locations did DF distribute PPE (other than respiratory) to its employees?	Pick list	Defendants
333	Was instruction given on proper use of PPE (other than respiratory) (donning on/off, etc.)?	Yes/No	Defendants
334	On what date(s) was instruction on proper use of PPE (other than respiratory) given?	Date(s)	Defendants
335	DID DF PROVIDE RESPIRATORY PPE TO ITS EMPLOYEES?		
336	Did DF provide respiratory PPE to its WTC employees?	Yes/No	Defendants
337	What type(s) of respiratory PPE did DF distribute to its employees who worked at WTC?	Pick list	Defendants
338	At what location(s) at WTC site did DF distribute respiratory PPE?	Pick list	Defendants
339	Did DF give instruction(s) on proper use and maintenance of respiratory equipment?	Yes/No	Defendants
340	Which of DF's agents gave such instruction(s)?	Pick list	Defendants
341	At what location(s) was the instruction(s) given?	Pick List	Defendants
342	On what date(s) was the instruction(s) given?	Date(s)	Defendants
343	Did DF provide cartridges for respiratory PPE to its WTC employees?	Yes/No	Defendants

Field #	Data Element	Data Type	Who Populates
344	How frequently did DF provide cartridges for respiratory PPE?	Pick List	Defendants
345	Did PE receive a qualitative respirator fit test?	Yes/No	Plaintiff
346	On what date(s) was/were the qualitative respirator fit test(s) given to plaintiff?	Date(s)	Plaintiff
347	Did PE receive information about the need for and/or consequences of not wearing respirators for work related to the collapse of the WTC?	Yes/No	Plaintiff
348	Who gave PE information regarding the need for and/or consequences of not wearing respirators for work related to the collapse of the WTC?	Pick list	Plaintiff
349	On what date(s) was information regarding the need for and/or consequences of not wearing respirators given to PE for work related to the collapse of the WTC?	Date(s)	Plaintiff
350	Did DF require its employees to use respiratory protection for work related to the collapse of the WTC site?	Yes/No	Defendants
351	What type of respiratory protection did DF generally require for work related to the collapse of the WTC?	Pick List	Defendants
352	On what date(s) did DF require the use of respiratory protection for work related to the collapse of the WTC?	Date(s)	Defendants
353	Who required the use of respiratory protection for work related to the collapse of the WTC?	Pick List	Defendants
354	Did DF discipline its employees at any time, in any manner for failing to wear respiratory protection for work related to the collapse of the WTC?	Yes/No	Defendants
355	Which employee(s) did DF discipline for failing to wear respiratory protection for work related to the collapse of the WTC?	Text	Defendants
356	How did DF discipline its employees for failing to wear respiratory protection for work related to the collapse of the WTC?	Pick List	Defendants
357	On what date(s) were employees disciplined for failing to wear respiratory protection for work related to the collapse of the WTC?	Date(s)	Defendants
358	Did DF document employee discipline in any manner for failing to wear respiratory protection or work related to the collapse of the WTC?	Yes/No	Defendants
359	Did anyone ever inform DF of the environmental conditions at the WTC site on or following September 11, 2001?	Yes/No	Defendants
360	How was DF informed of the environmental conditions at the WTC site?	Pick List	Defendants
361	Who informed DF of the environmental conditions at the WTC site?	Pick List	Defendants
362	On what date(s) was DF informed of the environmental conditions at the WTC site?	Date(s)	Defendants

Field #	Data Element	Data Type	Who Populates
363	What information did DF receive about the environmental conditions at the WTC site following September 11, 2001?	Pick List	Defendants
364	Did DF receive any instructions from any source concerning PPE use for work related to the collapse of the WTC?	Yes/No	Defendants
365	How were instructions on PPE given to the DF?	Pick List	Defendants
366	What was the source of the instructions DF received concerning PPE use for work related to the collapse of the WTC?	Pick List	Defendants
367	On what date(s) did DF receive instructions concerning PPE use for work related to the collapse of the WTC?	Date(s)	Defendants
368	What instructions concerning PPE use for work related to the collapse of the WTC did DF receive?	Pick List	Defendants

ATTACHMENT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
:
IN RE WORLD TRADE CENTER DISASTER : **ORDER AMENDING CASE**
SITE LITIGATION : **MANAGEMENT ORDER NO. 8**
:
: 21 MC 100 (AKH)
:
----- X
ALVIN K. HELLERSTEIN, U.S.D.J.:

Negotiations have concluded between the parties and Special Masters regarding the form and substance of the Discovery Database, and I approve the resulting final version. I issue this order amending Case Management Order No. 8 to reflect certain modifications and to order into effect this most recent version of the Database.*

I have heard and considered recommendations, including those presented at the December 10, 2008 Status Conference, from the parties and the Special Masters regarding the case management plan in this matter. I order that the protocol outlined below, and illustrated in the attached schedule (Attachment 1), shall regulate the onward progression of these cases towards final resolution.

1. Divide the aggregate number of plaintiffs into five groups.
 - A. Group A: Cases with case index numbers 1 – 2000
 - B. Group B: Cases with case index numbers 2001 – 4000
 - C. Group C: Cases with case index numbers 4001 – 6000
 - D. Group D: Cases with case index numbers 6001 – 8000
 - E. Group E: Cases with case index numbers 8001 – (highest index #)
2. Forty days after the onset of this process which began on January 1, 2009, the parties must deliver to the Special Masters responses, under oaths of plaintiffs and

* I have attached a print-out of the Database (Attachment 2), along with the “pick lists” that appear within certain response fields of the Database, reflecting all acceptable responses to the relevant query (Attachment 3). For the sake of efficiency, I have not included the very lengthy “pick list” used for Database questions 137, 174, 204, and 221 which lists all plaintiffs’ doctors. I have also included the Severity Chart (Attachment 4) which parties must complete prior to responding to particular Database fields, as well as the Severity Chart’s introductory language (Attachment 5).

defendants, for Group A, in index number sequence, fully and truthfully answering the following set of 35 data entry points (“Severity and Other Fields” or “SOF”) from the attached Discovery Database (“Database”).

- A. Case profile information (data entry points 2 – 6)
 - B. Duration of exposure at World Trade Center site (data entry points 72 – 81)
 - C. Plaintiff’s pre-existing disorders (data entry points 111 – 117)
 - D. Severity of claimed illnesses (data entry points 206 – 217)
 - E. Conditions, injuries, and diseases for which plaintiff seeks recovery (data entry point 134)
3. Ten days later (the 50th day), the Special Masters shall identify:
- A. Group A1: 200 cases selected as most severe from Group A
 - B. Group A2: 25 cases selected[†] from the remainder of Group A
 - C. Group A3: 400 additional cases selected randomly[‡] from the remainder of Group A
 - D. Group A4: All remaining cases within Group A
4. Forty days later (the 90th day), the parties shall populate the entire Database for Groups A1 and A2, fully and truthfully answering all data entry points, under oaths of plaintiffs and responding defendants.
5. Five days later (the 95th day), plaintiffs’ Liason Counsel and defendants’ Liason Counsel shall each have identified two Group A1 cases for discovery and trial.
- A. The parties may make their selection(s) any time after Group A1 is designated.
 - B. Once a case has been selected, discovery will commence promptly and will be permitted on all issues relevant for discovery and trial, including information disclosed in response to database queries.
 - C. The discovery completion date, the final date for filing motions, the date upon which parties will argue motions, and the trial date are fixed in the attached schedule.
6. Five days later (the 100th day), the Court will select two additional Group A1 or Group A2 cases for discovery and trial. These two cases will also proceed through discovery and trial as set out in “Step 5 A-E.”
7. Eighty days after database completion is required for Groups A1 and A2 (the 170th day), entire Database completion is due for Group A3.

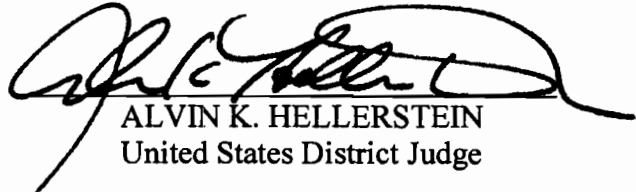
[†] There are no specific criteria for this selection. The rationale is to enable various types of cases to be chosen for discovery and trial.

[‡] A computer program will perform the random selection.

8. Five days later (the 175th day), plaintiffs' Liason Counsel and defendants' Liason Counsel shall each have identified two Group A3 cases for discovery only.
9. Five days later (the 180th day), the Court will select two additional A3 cases for discovery only.
10. The protocol in Steps 2 through 9 shall be repeated for Groups B through E. Each Group will begin this process 40 days after the previous Group begins.
11. The entire Database will be completed for Groups A4, B4, C4, D4, and E4 on or before January 1, 2011.
12. The onset date ("Day 1" for purposes of the attached schedule) is January 1, 2009. Weekends and legal holidays are included even when set time periods are brief.
13. If a case chosen for discovery settles significantly prior to the date upon which discovery must conclude, plaintiffs or defendants may ask the Court to substitute another case from the same subgroup.
14. Database Fields 313 – 328 (relating to insurance information) will be populated by defendants' Liaison Counsel, fully and truthfully, under oaths by February 27, 2009.

SO ORDERED.

Date: February 18, 2009
New York, New York


ALVIN K. HELLERSTEIN
United States District Judge

ATTACHMENT 3

Group E (Index #: 8001-end)				Group D (Index #: 6001-8000)				Group C (Index #: 4001-600)									
E4	E3	E2	E1	D4	D3	D2	D1	C4	C3	C2							
remaining cases	400 randomly selected cases	25 selected cases	200 cases ranked most severe	remaining cases	400 randomly selected cases	25 selected cases	200 cases ranked most severe	remaining cases	400 randomly selected cases	25 selected cases							
												Severity and Other Fields Finished for Group C	severe (C1); selected a set of 25 additional cases (C2); and selected a set of 400 additional cases at random (C3). Remaining cases are in Group C4.				Completed Database on C2
												Severity and Other Fields Finished for Group D	Special Masters have determined 200 cases ranked most severe (D1); selected a set of 25 additional cases (D2); and selected a set of 400 additional cases at random (D3). Remaining cases are in Group D4.				

335	340	365	370	400	405	410	435	440	445	465	475	485	501	730
			All Motions Filed	Motions Argued									<u>Trials to Begin</u>	
		Discovery is concluded				All Motions Filed		Motions Argued					<u>Trials to Begin</u>	
		Discovery is concluded												
														Completed Database on A4
		Discovery is concluded				All Motions Filed		Motions Argued					<u>Trials to Begin</u>	
					Discovery is concluded	All Motions Filed		Motions Argued					<u>Trials to Begin</u>	
					Discovery is concluded									
														Completed Database on B4
					Discovery is concluded		All Motions Filed			Motions Argued			<u>Trials to Begin</u>	
									Discovery		All	Motions	<u>Trials</u>	

									is concluded	Motions Filed	Motions Argued	<u>to</u> <u>Begin</u>	
									Discovery is concluded				
													Completed Database on C4
									Discovery is concluded	All Motions Filed	Motions Argued	<u>Trials</u> <u>to</u> <u>Begin</u>	
									Discovery is concluded	All Motions Filed	Motions Argued	<u>Trials</u> <u>to</u> <u>Begin</u>	
									Discovery is concluded				
													Completed Database on D4
									Discovery is concluded	All Motions Filed	Motions Argued	<u>Trials</u> <u>to</u> <u>Begin</u>	
									Discovery is concluded	All Motions Filed	Motions Argued	<u>Trials</u> <u>to</u> <u>Begin</u>	
Each Party has chosen 2 cases for discovery from E3.	Court to choose 2 cases for discovery from E3.								Discovery is concluded				
													Completed Database on E4

ATTACHMENT 4

**CHART ONE: SEVERITY CLASSIFICATIONS WITHIN DISEASE CATEGORIES FOR CLAIMS INVOLVING CURRENT IMPAIRMENT
LOWER RESPIRATORY DISEASES**

DISEASE	FOUR	THREE	TWO	ONE	ZERO
Chronic bronchitis/COPD Emphysema	Satisfies AMA Criteria for Rating Impairment Due to Pulmonary Dysfunction (Table 5-4), Class 4, *objective tests* row only	Satisfies AMA Criteria for Rating Impairment Due to Pulmonary Dysfunction (Table 5-4), Class 3, *objective tests* row only	Satisfies AMA Criteria for Rating Impairment Due to Pulmonary Dysfunction (Table 5-4), Class 2, *objective tests* row only	Satisfies AMA Criteria for Rating Impairment Due to Pulmonary Dysfunction (Table 5-4), Class 1, *objective tests* row only	Satisfies AMA Criteria for Rating Impairment Due to Pulmonary Dysfunction (Table 5-4), Class 0, *objective tests* row only

DISEASE	FOUR	THREE	TWO	ONE	ZERO
Interstitial Lung Disease	Pulmonary Function Testing demonstrating: TLC < 50%; FEV1/FVC > 70%; and FVC < 50%	Pulmonary Function Testing demonstrating: TLC 50–59%; FEV1/FVC > 70%; and FVC 50–59%	Pulmonary Function Testing demonstrating: TLC 60–69%; FEV1/FVC > 70%; and FVC 60–69%	Pulmonary Function Testing demonstrating: TLC 70–79%; FEV1/FVC > 70%; and FVC 70–79%	Pulmonary Function Testing demonstrating: TLC > 80%; FEV1/FVC > 70%; and FVC > 80%

DISEASE	FOUR	THREE	TWO	ONE	ZERO
Asthma Reactive Airways Dysfunction (RAADS) Syndrome (RAADS)	Satisfies American Thoracic Society Criteria for Impairment Rating in a Patient with Asthma, Class V (not controlled despite maximal treatment) or AMA Criteria for Rating Impairment Due to Asthma (Table 5-5), Class 4	Satisfies American Thoracic Society Criteria for Impairment Rating in a Patient with Asthma, Class IV (score of 10 or 11) or AMA Criteria for Rating Impairment Due to Asthma (Table 5-5), Class 3	Satisfies American Thoracic Society Criteria for Impairment Rating in a Patient with Asthma, Class III (score of 7 to 9) or AMA Criteria for Rating Impairment Due to Asthma (Table 5-5), Class 2	Satisfies American Thoracic Society Criteria for Impairment Rating in a Patient with Asthma, Class I or II (score of 1 to 6) or AMA Criteria for Rating Impairment Due to Asthma (Table 5-5), Class 1	Satisfies American Thoracic Society Criteria for Impairment Rating in a Patient with Asthma, Class 0 (score of zero) or AMA Criteria for Rating Impairment Due to Asthma (Table 5-5), Class 0

**CHART ONE: SEVERITY CLASSIFICATIONS WITHIN DISEASE CATEGORIES FOR CLAIMS INVOLVING CURRENT IMPAIRMENT
UPPER RESPIRATORY DISEASES**

DISEASE	FOUR	THREE	TWO	ONE	ZERO
Laryngitis or Pharyngitis	Satisfies AMA Criteria for Rating Impairment Due to Voice and Speech Impairment (Table 11-8), Class 4	Satisfies AMA Criteria Due to Voice and Speech Impairment (Table 11-8), Class 3	Satisfies AMA Criteria for Rating Impairment Due to Voice and Speech Impairment (Table 11-8), Class 2	Satisfies AMA Criteria for Rating Impairment Due to Voice and Speech Impairment (Table 11-8), Class 1	Satisfies AMA Criteria for Rating Impairment Due to Voice and Speech Impairment (Table 11-8), Class 0
DISEASE	FOUR	THREE	TWO	ONE	ZERO
Chronic Rhinosinusitis	Satisfies AMA Criteria for Rating Impairment Due to Air Passage Deficits (Table 11-6), Class 4: "diagnostic or other objective findings" row only.	Satisfies AMA Criteria for Rating Impairment Due to Air Passage Deficits (Table 11-6), Class 3: "diagnostic or other objective findings" row only.	Satisfies AMA Criteria for Rating Impairment Due to Air Passage Deficits (Table 11-6), Class 2: "diagnostic or other objective findings" row only.	Satisfies AMA Criteria for Rating Impairment Due to Air Passage Deficits (Table 11-6), Class 1: "diagnostic or other objective findings" row only.	Satisfies AMA Criteria for Rating Impairment Due to Air Passage Deficits (Table 11-6), Class 0: "diagnostic or other objective findings" row only.

**CHART ONE: SEVERITY CLASSIFICATIONS WITHIN DISEASE CATEGORIES FOR CLAIMS INVOLVING CURRENT IMPAIRMENT
UPPER DIGESTIVE TRACT DISEASES**

DISEASE	TWO	ONE	ZERO
Gastroesophageal reflux disease Barrett's Esophagus Gastritis Esophagitis and GI stricture	Endoscopy reveals severe findings: such as Barrett's Esophagus, benign peptic esophageal stricture, ulcers, hemorrhage, or severe esophagitis	Endoscopy reveals mild/moderate findings such as inflammation, esophagitis, erosions, mucosal breaks.	Daily medication taken

ATTACHMENT 5

Introduction to Severity Charts

Chart One ranks the relative severities of current physical impairments of WTC plaintiffs who claim to suffer from certain enumerated diseases. It ranks severities only within each enumerated disease category, and does not compare or rank severities across the disease categories for which rankings are provided. Thus, for example, while a rank-four emphysema impairment claim is more severe than a rank-three emphysema claim, it may or may not be more severe – measured by negative impacts on the plaintiff – than a rank-three asthma claim. Comparisons across disease categories are left to a later date. Chart One relies on clearly stated criteria that do not make cross-disease comparisons.

Chart One does not purport to test the factual accuracy of plaintiffs' assertions that they suffer from particular diseases or, for that matter, that those diseases were caused or aggravated by exposures to WTC conditions. For example, Chart One does not require, as do the relevant AMA guidelines, plaintiffs to show they have been examined and diagnosed by a qualified physician. This information will be included in the database. To succeed with a claim for which Chart One provides relative rankings of severity of current impairment, a plaintiff will be required to satisfy proof requirements on all elements of traditional tort claims.

Chart One does not purport, even within the enumerated disease categories, to measure the relative monetary values of claims. To be sure, relative severity of impairment is a relevant consideration to monetary value; but so also are other considerations not included in the chart. Indeed, claims that do not qualify for an impairment ranking in Chart One may have significant monetary value. It also follows that the "Zero" column on Chart One does not necessarily connote claims that have no value, but rather refers to claims that currently do not satisfy the

criteria for an impairment ranking of “One” or higher.

Chart Two deals with claims that do not currently satisfy the criteria applied in Chart One for ranking impairment. When impairments that satisfied Chart One criteria are alleged to have existed previously but have subsequently been completely resolved, the previous impairment will be ranked according to the criteria in Chart One even though such impairment is not current within the terms employed in Chart One. Thus, a plaintiff who previously suffered from a relatively severe impairment that has been completely resolved and thereby eliminated (by medication, or otherwise), may have a valuable tort claim even though the plaintiff’s claim does not belong on Chart One. For example, a patient suffering from GERD who underwent anatomy-altering surgery leaving no residual impairment may be entitled to damages reflecting that reality. In cases involving partial resolutions of previous, higher-level impairments, any residual, post-resolution impairment will be treated as a separate claim for impairment under Chart One.

Chart Three asserts that claims for impairments based on diseases enumerated in Chart One for which the tests referred to in Chart one have not been performed will not be ranked for severity.

CHART TWO: CLAIMS FOR IMPAIRMENTS
REFERRED TO IN CHART ONE THAT OCCURRED PREVIOUSLY,
BUT HAVE BEEN RESOLVED

- I. Previous impairments under Chart One that have been resolved completely will be ranked by impairment severity levels under Chart One reached before resolution.

- II. Regarding previous impairments under Chart One that have been resolved partially, leaving current residual impairments under Chart One:
 - A. Previous impairments will be ranked by impairment severity levels under Chart One reached before partial resolution.

 - B. Current residual impairments will be ranked by impairment severity levels under Chart One.

**CHART THREE: CLAIMS FOR IMPAIRMENTS REFERRED
TO IN CHART ONE THAT HAVE NOT YET BEEN DEMONSTRATED
BY TESTS DESCRIBED IN CHART ONE**

Claimed impairments referred to in Chart One for which the tests for impairment described in Chart One have not been performed, whether or not otherwise valid for recovery purposes, will not be ranked for severity.