



Monday, October 25
9:00am-10:30am

105 - What You Need to Know About Settlement Agreements

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General Counsel
WTC Captive Insurance Co. Inc.

Mark Jacobson
Partner
Lindquist & Vennum

William Jue
Associate General Counsel
Harley-Davidson Financial Services, Inc.

Fred Stein
General Counsel
Redbox Automated Retail

Faculty Biographies

David Biester

David Biester is the general counsel at the WTC Captive Ins. Co., Inc. The WTC Captive is a not-for-profit insurance company formed to provide insurance coverage to The City of New York and certain contractors in relation to the rescue, recovery, and debris removal operations in New York post-9/11. The WTC Captive recently agreed to settle the approximately 10,000 claims pending against its insureds and is currently working with plaintiffs' counsel to obtain the necessary opt-ins. A small professional staff manages the WTC Captive with significant support from outside vendors. Mr. Biester is the only attorney directly employed by the WTC Captive, and is responsible for all legal aspects of its operations as well as overseeing the defense of its insureds.

Before coming to the WTC Captive, Mr. Biester was litigation counsel at Hughes Hubbard & Reed LLP. His work at Hughes Hubbard included mass tort, insurance coverage for mass tort, and professional liability litigation. Mr. Biester started his career as a law clerk to Judge Ludwig in the US District Court for the Eastern District of Pennsylvania.

Mr. Biester received a BA from Wesleyan University and is a graduate of Columbia University School of Law.

Mark Jacobson

Mark Jacobson is a partner and chair of the Antitrust and Trade Regulation Practice Group at Lindquist & Vennum P.L.L.P. in Minneapolis, MN. He specializes in litigating complex commercial, antitrust, franchise and distribution, and intellectual property disputes in state and federal courts (including class actions) and in arbitration. He also counsels clients on issues of antitrust law, franchise and dealer law, sales representative statutes, and litigation avoidance. He is a trained mediator with significant experience in alternative dispute resolution.

Prior to joining Lindquist & Vennum, Mr. Jacobson was a law clerk for the Honorable Robert Coyle in the US District Court for the Eastern District of California and an associate at Arnold & Porter in Washington, DC.

He currently serves on the Federal Practice Committee for the US District Court for the District of Minnesota, the General Policy Committee and General Assembly for the Minnesota State Bar Association, the Section Council of the Minnesota State Bar Association's Antitrust Section, and Lindquist & Vennum's Public Service Committee. Mr. Jacobson consistently maintains a varied pro bono practice. He is listed in The Best Lawyers in America(R) and has been repeatedly named a Minnesota Super Lawyer.

Mr. Jacobson received his BA from the University of North Carolina, where he was a Morehead Scholar, and is a magna cum laude graduate of the University of Minnesota Law School.

William Jue

William Jue is associate general counsel with Harley-Davidson Financial Services, Inc. (HDFS), the financing subsidiary of Harley-Davidson, Inc., and is located in Chicago, IL. Among other things, Mr. Jue supports the retail/consumer lending operations of HDFS, manages the litigation portfolio of HDFS, and also provides guidance to the securitization and capital markets groups at HDFS.

Prior to joining HDFS, Mr. Jue was a commercial litigator in northern. During this time, he represented banks, insurance companies and other business entities in a wide range of actions.

Mr. Jue received his BS from California State University-Fresno and his JD from the University of the Pacific, McGeorge School of Law.

Fred Stein

Fred Stein is a member of the executive management team at Redbox Automated Retail, LLC, which rents DVDs through its network of more than 22,000 self-service kiosks. As the company's general counsel, he helps hone the company's strategy and oversees the company's legal affairs, including studio and other deals, IP and antitrust issues, litigation, and outside counsel relationships.

Before joining redbox, Mr. Stein served as general counsel and risk manager of Pendum, the nation's largest independent ATM sales, maintenance, and armored service organization. Prior to that, he was engaged in private practice in the Chicago area, beginning his career at the Chicago litigation firm of Pope & John.

Mr. Stein received his BS in government from St. John's University, and earned his JD from Chicago-Kent College of Law, where he served as editor in chief of the law review.

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105- What You Need to Know About Settlement Agreements

David Biester General Counsel, WTC Captive Insurance Co.
 Mark Jacobson Partner, Linquist & Vennum, PLLP
 William S. Jue Associate General Counsel, Harley-Davidson Financial Services, Inc.
 Frederick Stein General Counsel, Redbox Automated Retail, LLC

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INTRODUCTION

- Scope of Session
- Four Areas
 - Setting the Stage
 - Common Issues and How to Deal With Them
 - Unique Issues
 - Highlighting Key Sections of Form Agreements (attached).

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INTRODUCTION

- The Panel
 - Dave
 - Mark
 - Bill
 - Fred
- Disclaimer re: opinions and views

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SETTING THE STAGE

- How to get what you want
- Pre-mediation/pre-settlement conference prep
 - Game plan
 - Know your must-haves
 - Stock/form agreement
 - Assess opponent's motivations

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SETTING THE STAGE

- Remember that a settlement agreement is a contract and contract principles apply
 - *Curry v. New York City Police Dept.*, 2010 WL 2720804; *The Cuneo Law Group, P.C. v. Joseph*, 669 F.Supp.2d 99
 - Intent of the parties
 - *Wells Fargo Funding v. Draper & Kramer Mortg. Corp.*, 608 F.Supp.2d 981
 - Unconscionability
 - *OMP v. Security Pacific Business Finance, Inc.*, 716 F.Supp. 239

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COMMON ISSUES AND HOW TO DEAL WITH THEM

- Scope of release
 - Parties
 - *Howmedica Osteonics v. Wright Medical*, 540 F.3d 1337
 - Robert J. Stumpf, Jr., *Drafting Settlement Agreements: Ask Yourself These Questions*, *The Federal Lawyer* at 32 (February 1999).
 - *Gron-quist v. Olson*, 242 Minn. 109, 64 N.W. 2d 159 (1954) (release of one joint tortfeasor releases all joint tortfeasors); Compare *Frey v. Snelgrove*, 269 N.W.2d 918 (Minn. 1978); Simonett, *Release of Joint Tortfeasors: Use of the Perringer Release in Minnesota*, 3 Wm. Mitchell L. Rev. 1 (1977).
 - Claims
 - CA Civil Code Section 1542
 - *San Diego Hospice v. County of San Diego*, 31 Cal.App.4th 1048
 - Mutuality

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COMMON ISSUES AND HOW TO DEAL WITH THEM

- Efficacy of restriction on plaintiff's counsel
 - ABA Model Rule 5.6
 - ABA Formal Opinion 93-371
 - ABA Formal Opinion 00-417

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COMMON ISSUES AND HOW TO DEAL WITH THEM

- Timing of Activities
 - *Davis v. Blige*, 505 F.3d 90 (2d Cir. 2007) (retroactive copyright arrangements afforded greater deference in context of settlement); *Resnick v. Uccello Immobilien GmbH*, 227 F.3d 1347 (11th Cir. 2000) (daily liquidated damages for failure to comply not enforced).
- Contingent Releases
 - *Stockman Bank of Montana v. Potts*, 52 P.3d 920 (disputed funding contingency prevented MSJ to enforce agreement); *Potential Guide of Texas v. Thomson, Inc.*, 446 F.3d 1265 (Fed.Cir.2006) (contingency not satisfied).

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COMMON ISSUES AND HOW TO DEAL WITH THEM

- Cooperation/Non-Cooperation
- Return of Documents/Information
 - Protective order

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COMMON ISSUES AND HOW TO DEAL WITH THEM

- Confessions of Judgment
 - MN Stat. Sections 541.09 and 548.22
- Employment Sidebar

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COMMON ISSUES AND HOW TO DEAL WITH THEM

- Antitrust Sidebar
 - *U.S. v. Singer Manufacturing Co.*, 374 U.S. 174, 199 (1963); U. S. Dept. of Justice, Statement of Interest of the United States of America Regarding Proposed Amended Settlement Agreement, *The Authors Guild, Inc. v. Google Inc.*, No. 05 Civ. 8136 (DC) (S.D.N.Y. 2010); <http://www.justice.gov/atr/cases/f255000/255012.pdf>; U.S. Federal Trade Comm'n Press Release, July 27, 2010, FTC Testimony: Stopping "Pay-for-Delay" Drug Settlement Agreements is a Top Competition Priority, <http://www.ftc.gov/opa/2010/07/antitrust.shtml>
- Settlement Agreements as the Start of a Business Relationship
 - Redbox

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COMMON ISSUES AND HOW TO DEAL WITH THEM

- Court Approval
 - *Caplan v. Fellheimer Eichen*, 68 F.3d 828 (3d Cir. 1995) (certain settlements require court approval, such as consent decrees, class actions, shareholder derivative suits, compromise of BK claims); *McBean v. City of New York*, 233 F.R.D. 377 (S.D.N.Y. 2006).
- Class Action Settlements
 - CAFA v. non-CAFA

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COMMON ISSUES AND HOW TO DEAL WITH THEM

- Covenants re: Ongoing Conduct
- Enforcement Language in Your Agreement
 - CA Civil Code 664.6
 - *Loppert v. WindsorTech*, 865 A.2d 1282 (attorney fees to prevailing party)
 - *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 378 (1994). See also *Baella-Silva v. Hulsey*, 454 F.3d 5, 10 (1st Cir. 2006) (ancillary jurisdiction exists to enforce a settlement agreement either by including a provision explicitly retaining enforcement jurisdiction or by incorporating the terms of the settlement agreement in the court's order).

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UNIQUE ISSUES

- WTC
- 3 Year Litigation Arising from Settlement Agreement

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BRIEF WALK THROUGH FORMS

- Short Letter Agreement
- Comprehensive Agreement

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QUESTIONS?

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THANK YOU

David Blester General Counsel WTC Captive Insurance Co. New York, NY	Mark A. Jacobson Partner Lindquist & Vennum PLLP Minneapolis, Minnesota
William S. Jue Associate General Counsel Harley-Davidson Financial Services, Inc. Chicago, IL	Frederick Stein Vice President, General Counsel and Secretary Redbox Automated Retail, LLC Oakbrook Terrace, IL

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APPENDIX

- Short Letter Agreement
- Longer more inclusive Agreement

Court File No. _____

Plaintiff(s),

vs.

Defendant(s).

SETTLEMENT AGREEMENT

RECITALS:

1. The date of this Settlement Agreement is _____.
2. The parties to the Settlement Agreement are plaintiff [P1] (“[P2]”) and defendant [D1] (“[D2]”).
3. The parties through negotiations, desire to settle the claims and disputes between them and related to the transaction in question.

Based upon the above recitals, the mutual exchange of promises in this Settlement Agreement and other valuable consideration, the parties agree as follows:

4. [D2] shall pay to [P2] the sum of \$_____.
5. [P1], as well as its directors, officers, employees, shareholders, successors, predecessors and agents, release [D2], as well as its directors, officers, employees, shareholders, successors, predecessors, and agents, of absolutely any and all claims it has or may have against it up to the date of this Release. This Release includes the release of claims, known or unknown, contingent or non-contingent, matured or unmatured, including but not limited to the claims in the complaint in the action referenced in this Settlement Agreement. This Release does not extend to the rights and obligations of the parties arising from this Settlement Agreement.

6. The parties shall execute a Stipulation of Dismissal with Prejudice in the form attached as Exhibit A.

7. This agreement constitutes the entire agreement between the parties and binds the parties hereto, their successors and assigns. The terms of this agreement shall not be modified except by a writing executed by the parties.

8. The parties have signed this agreement freely. No promises were made to obtain this agreement except those promises in the agreement.

With the intention of being bound by this Settlement Agreement, the parties have signed it as of the date set forth in paragraph 1.

[Plaintiff]

By _____
Its _____

[Defendant]

By _____
Its _____

EXHIBIT A

Court File No. _____

Plaintiff(s),

vs.

STIPULATION OF DISMISSAL

Defendant(s).

Pursuant to Rule 41 of the [Federal, state] Rules of Civil Procedure, [P] dismisses the above-captioned matter with prejudice. The parties will bear their own costs and fees.

<_LAW FIRM NAME_>

Dated: _____.

By _____

<_Attorney Full Name_>
Attorney License No. <_License #_>
<_Street Address_>
<_Street Address_>
<_City, State, Zip_>
<_Telephone _>
<_e-mail if federal _>

ATTORNEYS FOR <_PARTIES
REPRESENTED_>

<_LAW FIRM NAME_>

Dated: _____.

By _____

<_Attorney Full Name_>
Attorney License No. <_License #_>
<_Street Address_>
<_Street Address_>
<_City, State, Zip_>

<_Telephone _>
<_e-mail if federal _>

ATTORNEYS FOR <_PARTIES
REPRESENTED _>

SETTLEMENT AGREEMENT

RECITALS:

1. The date of this Settlement Agreement is _____, ____.
2. The parties to this Settlement Agreement are [P] (“[P2]”) and [D] (“[D2]”).
3. [P2] is a _____ corporation with its principal place of business at _____.
4. [D2] is an individual who resides at _____.
5. In _____, _____, [P2] commenced an action (“the action”) in _____ District Court (District Court No. _____) against [D2] alleging _____ . [P2] demanded damages, equitable relief and payment of attorneys’ fees and costs.
6. [D2] denied the allegations and vigorously defended against them alleging: _____ and that [P2] had no valid claims against it.
7. The parties to the action engaged in extensive discovery, including the taking of depositions, and examination and copying of documents and records.
8. The parties and/or their attorneys have consulted with various experts of their own choosing.
9. After consulting with their attorneys, the parties decided to compromise and settle all of their differences, including the action.

Based upon the above recitals, the mutual exchange of promises in this Settlement Agreement and valuable consideration, the parties agree as follows:

10. The action is being settled to avoid the expense, inconvenience and uncertainty of further litigation. The parties do not admit, but in fact deny, the allegations, claims and defenses made by the other party in the action.

11. [D2] shall pay [P2] and [P2]'s attorneys of record the total sum of U.S. \$_____ as follows:

- a. \$_____ at the time of signing this agreement.
- b. \$_____ according to the terms and conditions of a Promissory Note, identical to Exhibit A, attached, to be executed by [D2] at the time this agreement is signed.

12. The total payment of \$_____ referred to in paragraph 2 above, is allocated as follows:

13. [D2] shall deliver to [P2] or the attorneys of record a Security Agreement signed by [D2] identical to Exhibit B, attached.

14. [P2] and [D2] release each other as well as the directors, officers, employees, shareholders, successors, predecessors and agents of the other from absolutely all claims against each other they have, or may have, up to the date of this release. This release includes release of claims, known or unknown, contingent or non-contingent, matured or unmatured, including, but not limited to, the claims in the complaint and counterclaim in the action referenced in this Settlement Agreement. This release does not extend to the rights and obligations of the parties arising from this Settlement Agreement and related instruments.

15. The parties have authorized and directed their attorneys of record to advise the Court that the action has been settled and to execute and file with the Court a Stipulation of

16. The parties and their attorneys shall hold the terms and conditions of this Settlement Agreement confidential and shall not disclose them to any person, except as follows. The parties may disclose the terms and conditions to the extent necessary, to their own tax advisors and accountants, board of directors and officers of any corporate party, bankers and tax authorities. They may also disclose terms and conditions if required by the order of a court of competent jurisdiction. Prior to disclosing the terms and conditions, the party making the disclosure shall inform the person to whom the disclosure will be made that terms and conditions of the settlement are to be kept confidential.

17. All protective orders issued or entered in the action shall survive the dismissal of the action and shall continue in force and effect. Within thirty (30) days from the date of this agreement, the parties and their attorneys shall deliver to the other party or their attorney all documents produced by the other party in this action, including all copies and summaries.

18. Notices, payments or other documents or things required or permitted to be delivered shall be considered delivered when deposited in the United States Mail, first class postage prepaid, with an appropriate return address, and addressed as follows:

AS TO [P2] : _____
 Attorneys for _____

AS TO [D2] : _____
 Attorneys for _____

19. This Settlement Agreement and referenced executed instruments (“the instruments”) shall be binding upon and benefit the parties, and their heirs, executors, assigns and successors.

20. This Settlement Agreement, together with the instruments, constitute the entire agreement between the parties. The parties rely upon no other verbal or written representations, assurances, or statements.

21. This Settlement Agreement and the instruments shall be governed by the laws of the State of _____. The parties submit themselves to the jurisdiction of the courts of the State of _____ for their enforcement, interpretation, or construction, and all other matters regarding or relating to them.

22. Each party represents to the other party that they have been fully advised by their attorney about the effect and significance of entering into this Settlement Agreement and the instruments. Each party further represents to the other that they have read, understood and agreed to the terms and conditions stated and have received a copy. Any parties who are individuals also represent they are of legal age. Any person(s) signing on behalf of a corporation represents to the other party that (s)he is authorized by the board of directors of said corporation to enter into and execute this Settlement Agreement and the instruments.

INSTRUMENT FORMS ATTACHED AS EXHIBITS

EXHIBIT A - Promissory Note

EXHIBIT B - Security Agreement

EXHIBIT C - Stipulation of Dismissal

PROMISSORY NOTE

EXHIBIT A

_____[Date]_____ U. S. \$_____

FOR VALUE RECEIVED, the undersigned promises to pay to the order of _____ at _____, the sum of [insert written amount], (\$_____) with no interest thereon, payable in the following manner and at the following times: U. S. \$_____ on or before _____, 19____, a like amount on or before _____, 19____, _____, 19____, and _____, 19____.

The holder hereof may, at [its, his, her] option, accelerate maturity, and the unpaid balance shall then immediately become due and payable without demand or notice whenever the undersigned defaults in payment. A DEFAULT IN PAYMENT exists when: 1) any installment payment is not made when due; and 2) written notice of failure to make the payment is given to the undersigned or its attorneys of record, _____, Attention: _____, [insert address]; and 3) the required amount of the installment payment is not made within fifteen (15) days after giving of the notice.

The undersigned agrees to pay this Promissory Note and guarantees payment hereof and waives demand, presentment, protest and notice of dishonor and agrees in case of DEFAULT IN PAYMENT to pay all costs of collection, including reasonable attorneys' fees and legal expenses.

This note and all obligations relating to it or the underlying debt shall be construed under the laws of the State of _____.

[In the Promissory Note, it is important to consider whether the following should be included: right to make prepayment; the interest rate even if it is zero; an acceleration clause accelerating payments of all amounts due in the event of a default on an installment payment or even for other reasons, e.g., default on another indebtedness; a provision requiring written notice of default and a specified time to cure it before action can be taken; a clause allowing attorneys' fees and collection expenses in the event of a default; a term specifying where and to whom payment should be made (that is, attorney and client or one or the other); and a waiver of demand, presentment, protest and notice of dishonor which may be required, unless waived, before collection proceedings can commence.]

EXHIBIT B

SECURITY AGREEMENT

See Miller-Davis Form UCC-1206
Security Agreement - Inventory, Accounts & Contract Rights.

EXHIBIT C

[P],

Plaintiff(s),

Court File No. _____

vs.

STIPULATION OF DISMISSAL

[D],

Defendant(s).

Pursuant to Rule 41 of the _____ Rules of Civil Procedure, [P] dismisses this action with prejudice on the merits and [D] dismisses his counterclaim with prejudice on the merits. The parties shall bear their own costs.

<_Law Firm Name_>

Dated: _____.

By _____

<_Attorney's Full Name_>

<_Street Address_>

<_Street Address_>

<_City, State, Zip_>

Telephone: <_Telephone Number_>

ATTORNEYS FOR [P]

<_Law Firm Name_>

Dated: _____.

By _____

<_Attorney's Full Name_>

<_Street Address_>

<_Street Address_>

<_City, State, Zip_>

Telephone: <_Telephone Number_>

ATTORNEYS FOR [D]

**WORLD TRADE CENTER LITIGATION
SETTLEMENT PROCESS AGREEMENT, AS AMENDED**

The WTC Captive Insurance Company, Inc. (“WTC Captive”) and all of its insureds identified on the attached Exhibit A (“Insureds”), on the one hand, and all Primary Plaintiffs (as defined below) and Derivative Plaintiffs (as defined below) (collectively, “Plaintiffs” and singularly, “Plaintiff”) with Debris Removal Claims (as defined below) against the Insureds or any of them, on the other hand, hereby agree to the process set forth in this binding and enforceable World Trade Center Litigation Settlement Process Agreement, As Amended (“Agreement”) for settling Debris Removal Claims against the Insureds or any of them. For purposes of this Agreement, the WTC Captive, the Insureds, and Plaintiffs shall be referred to collectively as “Parties” and singularly as “Party.” This Agreement shall take effect on the day upon which the last counsel to a Party executes this Agreement (“Effective Date”). On the Effective Date, this Agreement will supersede the World Trade Center Litigation Settlement Process Agreement executed by the Parties on March 11, 2010.

TABLE OF CONTENTS

I. DEFINITIONS 2

II. SETTLEMENT AMOUNT 11

III. SETTLEMENT AMOUNT ADMINISTRATION 16

IV. CONTINGENT PAYMENTS 17

V. RECIPROCAL RELEASES, PLAINTIFFS’ COVENANTS NOT TO SUE AND
PLAINTIFFS’ WAIVER OF PUTATIVE “SECOND INJURY” CLAIMS 23

VI. OPT-IN THRESHOLD 26

VII. ELIGIBILITY FOR PAYMENTS AND ELIGIBILITY TO ENROLL IN THE CANCER
INSURANCE POLICY 30

VIII. ALLOCATION AND PAYMENT TIERS 32

IX. PRELIMINARY PAYMENTS 36

X. FINAL DISTRIBUTIONS TO TIER 4 PLAINTIFFS..... 39

XI. THE CLAIMS APPEAL NEUTRAL, THE ALLOCATION NEUTRAL, THE
MEDICAL PANEL AND THE ALLOCATION PROCESS GENERALLY 40

XII. MEDICAL PROOF CRITERIA..... 53

XIII. TIER 4 POINT SYSTEM..... 66

XIV. RECONSIDERATION REQUESTS AND APPEALS 73

XV.	FINAL DISTRIBUTION CALCULATIONS AND PROCEDURES FOR TIER 4	77
XVI.	PERMANENT DISABILITY FUND	79
XVII.	CANCER INSURANCE POLICY.....	87
XVIII.	QUALIFYING SURGERY AND MIXED ORTHOPEDIC INJURY PAYMENTS	87
XIX.	LIENS, ASSIGNMENT RIGHTS AND OTHER THIRD-PARTY PAYOR CLAIMS .	89
XX.	INTERIM STAY	92
XXI.	MISCELLANEOUS PROVISIONS	94
XXII.	FINAL SETTLEMENT AGREEMENT PROVISIONS	100

I. DEFINITIONS

- A.** “**Accelerated Final Payment**” shall mean the payments made to Plaintiffs who opt into the Final Settlement Agreement and who the Allocation Neutral determines satisfy the Tier 2 or Tier 3 proof requirements set forth in Section VIII.C and VIII.D of this Agreement, respectively.
- B.** “**Adjudicatory Body**” shall mean those pension, disability or workers’ compensation boards authorized by statute or otherwise to render binding permanent disability determinations not subject to further administrative review or other process before their disability determination becomes final and disability benefits become due as identified on Exhibit G to this Agreement.
- C.** “**Adjustment Factors**” shall mean those factors that, pursuant to Section XIII.B of this Agreement, the Allocation Neutral must consider in adjusting the Base Points awarded to each Verified Tier 4 Primary Plaintiff.
- D.** “**Allocation Costs**” shall mean the reasonable fees, costs and expenses of the Allocation Neutral, the Lien Resolution Administrator, the Medical Panel and Feinberg Rozen, LLP as set forth in Section XI.D of this Agreement.
- E.** “**Allocation Neutral**” shall mean Matthew L. Garretson, Esquire and the Garretson Firm Resolution Group, Inc. (collectively, “Garretson”), as identified in Section XI.A of this Agreement, who together with the Claims Appeal Neutral and the Medical Panel shall perform actions reasonably necessary for the efficient and timely administration of the Allocation Process as set forth in this Agreement.
- F.** “**Allocation Neutral Agreement**” shall mean a contract between the Parties and the Allocation Neutral setting forth, *inter alia*, the Allocation Neutral’s duties consistent in all material respects with this Agreement.

- G.** “**Allocation Pool**” shall mean the Point System applicable to the portion of Settlement Amount principal, together with any interest earned thereupon, allocated in Section II.B.i.a through Section II.B.i.c of this Agreement to each Master Docket.
- H.** “**Allocation Process**” shall mean the process required by this Agreement to determine each Plaintiff’s Preliminary Payment(s), Final Distribution, Permanent Disability Fund award, Qualifying Surgery payment(s), and Mixed Orthopedic Injury payment, if any.
- I.** “**Appeal**” shall mean the process set forth in Section XIV.C of this Agreement whereby a Primary Plaintiff can seek review by the Claims Appeal Neutral of the Allocation Neutral’s determination(s) regarding his or her timely Reconsideration Request.
- J.** “**Base Points**” shall mean the points assigned to each Qualifying Injury for purposes of the Tier 4 Allocation Process as set forth on the Settlement Grid attached as Exhibit C to this Agreement.
- K.** “**Cancer Insurance Policy**” shall mean the insurance product issued by the Metropolitan Life Insurance Company (“MetLife”) and described in Section XVII of this Agreement. The draft MetLife policy and certificate forms, which remain subject to regulatory approval, are appended to this Agreement as Exhibit E.
- L.** “**Claim Form**” shall mean the form that each Primary Plaintiff who claims eligibility for any payment under the Final Settlement Agreement must submit to the Allocation Neutral, signed under penalty of perjury and submitted together with any Qualifying Medical Records and other documents, if any, regarding the Primary Plaintiff’s asserted compliance with the Work Verification Procedure, setting forth, among other matters, the predicate information to establish the eligibility of the Primary Plaintiff and any corresponding Derivative Plaintiff to participate in the settlement pursuant to Section VII of this Agreement and the Primary Plaintiff’s contentions that he or she satisfies the proof requirements of his or her allocation and payment tier as set forth in Section VIII of this Agreement. The Claim Form is appended hereto as Exhibit L.
- M.** “**Claims Appeal Neutral**” shall mean Kenneth R. Feinberg, Esquire, as identified in Section XI.A of this Agreement, who, together with staff from Feinberg Rozen, LLP or otherwise, shall decide Appeals submitted pursuant to Section XIV.C of this Agreement.
- N.** “**Contingent Payment**” shall mean the payment, if any, in addition to the Settlement Amount, made to Verified Tier 4 Primary Plaintiffs upon the satisfaction of specified conditions precedent set forth in Section IV of this Agreement.
- O.** “**Debris Removal Claims**” shall mean all claims, causes of action, notices of claims, notices of suits, suits, and actions relating in any way to or arising out of

the rescue, recovery, and/or debris removal operations, activities and/or other alleged or actual conduct or omissions on and/or after September 11, 2001, pending or received on or before April 12, 2010, including without limitation all Plaintiffs' claims against the Insureds or any of them in any Master Docket.

- P.** **“Defendant Insureds’ Counsel”** shall mean James E. Tyrrell, Jr., Esquire and Patton Boggs LLP.
- Q.** **“Deficiency Notice”** shall mean written notice provided by the Allocation Neutral to counsel for a Primary Plaintiff whose Claim Form and/or supporting documentation, including Qualifying Medical Records and/or other records submitted, if necessary, regarding the Work Verification Process, are deemed by the Allocation Neutral to be deficient in any respect.
- R.** **“Derivative Plaintiff”** shall mean the lawfully married spouse or former spouse of a Primary Plaintiff as verified according to the procedures provided in Section VII.B of this Agreement.
- S.** **“Eligible Plaintiff List”** shall mean the list of all Plaintiffs eligible to opt in to the Final Settlement Agreement, as set forth in Section VI.A of this Agreement and in the form provided as Exhibit U to this Agreement.
- T.** **“Final Distribution”** shall mean the amount, if any, determined by the Allocation Neutral to be payable in accordance with Section XV.A of this Agreement to each Verified Tier 4 Primary Plaintiff and any corresponding Derivative Plaintiff.
- U.** **“Final Distribution Calculation Notice”** shall mean the Allocation Neutral's written communication to Plaintiffs' Liaison Counsel, Defendant Insureds' Counsel and the WTC Captive or its designee of Final Total Scores for each Verified Tier 4 Primary Plaintiff and corresponding Derivative Plaintiffs and each such Plaintiff's Final Distribution, if any, pursuant to Section XV.B of this Agreement.
- V.** **“Final Settlement Agreement”** shall mean this Agreement upon satisfaction of the conditions set forth in Section XXII.A of this Agreement and the Parties' execution of the Affirmation of Final Settlement Agreement described in Section XXII.A of this Agreement and appended to this Agreement as Exhibit R.
- W.** **“Final Settlement Agreement Effective Date”** shall mean the date on which the Affirmation of Final Settlement Agreement described in Section XXII.A of this Agreement and attached hereto as Exhibit R is executed.
- X.** **“Final Total Score”** shall mean the final and binding Total Score calculated pursuant to Section XIII.C of this Agreement of each Verified Tier 4 Primary Plaintiff and any corresponding Derivative Plaintiff that is not subject to a Reconsideration Request or Appeal pursuant to Section XIV of this Agreement or that has been adjusted, if at all, pursuant to a timely Reconsideration Request

and/or timely Appeal for purposes of calculating a Plaintiff's Final Distribution, if any, as set forth in Sections X and XV.A of this Agreement.

- Y.** “**Ineligible Records**” shall mean medical records that are not Qualifying Medical Records and, therefore, are ineligible for consideration for any purpose by the Allocation Neutral or the Claims Appeal Neutral.
- Z.** “**Initial Payment**” shall mean the amount paid to each Plaintiff who opts in to the Final Settlement Agreement, as provided by Section IX.A of this Agreement, and who the Allocation Neutral determines meets the payment eligibility requirements set forth in Section VII of this Agreement.
- AA.** “**Interim Payment**” shall mean the partial distribution made pursuant to Section IX.C of this Agreement to each Verified Tier 4 Primary Plaintiff and any corresponding Derivative Plaintiff following the Allocation Neutral's calculation of the Primary Plaintiff's Final Total Score but prior to the Allocation Neutral's calculation of the Final Point Value for the Allocation Pool for the Primary Plaintiff's Master Docket.
- BB.** “**Interim Stay**” shall mean a court-ordered stay applicable to all actions and all parties in all Master Dockets, as described more fully in Sections XX.A through XX.D of this Agreement.
- CC.** “**London Marine Insurers**” shall mean those underwriters subscribing to the London Marine Policies.
- DD.** “**London Marine Policies**” shall mean marine liability insurance policy numbers HF0728A00, HF9604A00, 02-0923-01 and 02-0918-01, as identified on Schedule 2 to the WTC Captive's Policy.
- EE.** “**Master Docket**” shall mean all Debris Removal Claims against the Insureds or any of them in one of the following consolidated dockets in the United States District Court for the Southern District of New York: 21 MC 100; 21 MC 102; or 21 MC 103; provided, however, that for purposes of this Agreement and the Final Settlement Agreement only, the 21 MC 100 Master Docket shall include, without limitation, all Debris Removal Claims against the Insureds or any of them in any other court and unfiled Debris Removal Claims which have been submitted as notices of claims to the City of New York, unless the Plaintiff has a separate Debris Removal Claim against Other Defendants in Master Docket 21 MC 102 or Master Docket 21 MC 103, in which case they will be part of that Master Docket.
- FF.** “**Medical Panel**” shall mean a panel of at least three (3) physicians selected jointly by Plaintiffs' Liaison Counsel, Defendant Insureds' Counsel, and the WTC Captive to assist the Allocation Neutral and Claims Appeal Neutral in the Allocation Process in the manner set forth in Section XI.A of this Agreement.
- GG.** “**Medical Proof Criteria**” shall mean the applicable diagnostic and impairment criteria that the Allocation Neutral must apply to verify the existence of each

Primary Plaintiff's Primary Qualifying Injury, if any, and each Verified Tier 4 Primary Plaintiff's Secondary Qualifying Injury, if any, as set forth in Sections XII and XIII.B.i of this Agreement, respectively.

- HH.** **“Mixed Orthopedic Injury”** shall mean, in addition to the Mixed Orthopedic Plaintiff's Qualifying Injury, an orthopedic injury occurring during a Mixed Orthopedic Plaintiff's work or volunteer service at the WTC Site or other locations at which he or she alleges exposure giving rise to his or her Debris Removal Claims against the Insureds or any of them, as set forth in Section XVIII.A of this Agreement.
- II.** **“Mixed Orthopedic Plaintiff”** shall mean a Primary Plaintiff who (i) demonstrates in the Allocation Neutral's judgment a Mixed Orthopedic Injury and one or more Qualifying Injuries and (ii) whose name appears on Exhibit I to this Agreement; provided, however, that additional Primary Plaintiffs who satisfy the requirements of clause (i), but not clause (ii), of this definition may qualify as Mixed Orthopedic Plaintiffs if the Primary Plaintiff submits to the Allocation Neutral proof that before March 11, 2010, he or she alleged a Mixed Orthopedic Injury in a court filing or notice of claim as the basis for a claim against the Insureds or any of them.
- JJ.** **“New Debris Removal Claims”** shall mean all Debris Removal Claims filed, or asserted for the first time against the Insureds or any of them in a complaint, an amended complaint, a summons with notice, or a notice of claim served on or after April 13, 2010, as set forth in Section VI.A of this Agreement; provided, however, that for purposes of this definition only the requirement that Debris Removal Claims be “pending or received on or before April 12, 2010” as set forth in Section I.O of this Agreement shall not apply. For purposes of counting New Debris Removal Claims, (i) all Debris Removal Claims filed or asserted against the Insureds or any of them by one Primary Plaintiff and any corresponding Derivative Plaintiff shall count as a single New Debris Removal Claim; (ii) each Primary Plaintiff identified as a party in an action against the Insureds or any of them in which Debris Removal Claims are alleged shall constitute one New Debris Removal Claim, regardless of whether the caption of such action identifies all parties thereto; (iii) in the event that a putative class action including Debris Removal Claims is filed against the Insureds or any of them, the number of putative class representatives named in that action and who plead Debris Removal Claims shall constitute the number of New Debris Removal Claims relating to that putative class action; (iv) in the event that any class including Debris Removal Claims is certified against the Insureds or any of them, such certified class shall be deemed to constitute seven hundred (700) New Debris Removal Claims for purposes of this Agreement, unless such certified class is limited by court order to fewer than seven hundred (700) class members and class representatives asserting Debris Removal Claims against the Insureds or any of them, in which case the court order shall be used to determine the number of New Debris Removal Claims; and (v) all Debris Removal Claims filed or otherwise asserted against the City of New York at any time before September 15, 2009, but

re-filed or otherwise asserted again pursuant to New York General Municipal Law § 50-i, subsection (4) (also known as “Jimmy Nolan’s Law”) during the period beginning September 16, 2009, and ending September 16, 2010 shall not count as New Debris Removal Claims if the Primary Plaintiff and any corresponding Derivative Plaintiff were included on the Eligible Plaintiff List.

- KK.** “**Notice of Ineligible Records**” shall mean written notice by the WTC Captive, its counsel or its non-attorney designee to the Allocation Neutral and the affected Primary Plaintiff’s counsel that medical records submitted by a Plaintiff to the Allocation Neutral are Ineligible Records. All Notices of Ineligible Records shall be accessible by counsel for the Plaintiff(s) to whom they relate.
- LL.** “**Opt-In Period**” shall mean the period of time following the Effective Date for Plaintiffs to elect to participate in the Final Settlement Agreement by executing a Release and Covenant Not to Sue as provided in Section VI.B of this Agreement.
- MM.** “**Opt-In Threshold**” shall mean the percentages of Plaintiffs on the Eligible Plaintiff List as specified in Section VI.D.i of this Agreement and in the sub-categories specified in Sections VI.D.ii through VI.D.iv of this Agreement who must opt into the Final Settlement Agreement in order for the Final Settlement Agreement to take effect as set forth in Sections VI.E and XXII of this Agreement.
- NN.** “**Other Defendants**” shall mean persons or entities not identified on Exhibit A that are defendants in any action in which Debris Removal Claims against the Insureds or any of them are asserted, including without limitation in any Master Docket.
- OO.** “**Permanent Disability Fund**” shall mean that portion of the Settlement Amount paid exclusively to those Primary Plaintiffs who (i) as of the date that the Allocation Neutral directs the distribution of the Permanent Disability Fund, have received a final determination of permanent disability from an Adjudicatory Body, or a preliminary determination of permanent disability pending final action from an Adjudicatory Body, that finds the Primary Plaintiff’s disabling injury(ies) to be related in whole or in part to his or her alleged exposure giving rise to his or her Debris Removal Claims against the Insureds or any of them, as set forth in Section XVI of this Agreement; or (ii) who are deceased and who satisfy the requirements of Section XVI.B.ii.e of this Agreement.
- PP.** “**Physician Diagnosis**” shall mean an affirmative statement by a licensed physician that a Primary Plaintiff has a Qualifying Injury, including DSM-IV codes, physician assessments, and physician generated problem lists; provided, however, that a Physician Diagnosis shall not include: (i) a written statement memorializing oral or other self reports by a patient to his or her physician; (ii) physician impressions that in the Allocation Neutral’s judgment do not constitute an affirmative diagnostic statement; (iii) indications for an examination or procedure which, if rendered, may or may not confirm the presence of a disease;

(iv) differential diagnoses that in the Allocation Neutral's judgment do not constitute an affirmative diagnostic statement; (v) except with respect to Qualifying Injury "H1," any statement describing a medical condition as "possible," "suggestive" of a Qualifying Injury, or "questionable;" or (vi) any other qualified statement that in the Allocation Neutral's judgment is ambiguous as to whether an actual diagnosis was made by a licensed physician.

- QQ.** **"Plaintiffs' Liaison Counsel"** shall mean Paul J. Napoli, Esquire and William H. Groner, Esquire of Worby Groner Edelman & Napoli Bern LLP, and Nicholas Papain, Esquire and Andrew J. Carboy, Esquire of Sullivan Papain Block McGrath & Cannavo P.C., together with their respective firms.
- RR.** **"Point System"** shall mean the metric to be utilized by the Allocation Neutral in each Master Docket to determine, pursuant to Section XIII of this Agreement, the relative recoveries for Verified Tier 4 Primary Plaintiffs and their corresponding Derivative Plaintiffs.
- SS.** **"Pre-Existing Injury"** shall mean a Qualifying Injury first diagnosed by a licensed physician (i) prior to the Primary Plaintiff's first date of alleged exposure giving rise to his or her Debris Removal Claims against the Insureds or any of them; (ii) pursuant to the Diagnostic Criteria component of the Medical Proof Criteria; and (iii) in the same Disease Group as a Qualifying Injury claimed by the Primary Plaintiff in his or her Claim Form.
- TT.** **"Preliminary Payments"** shall mean all Initial Payments, Accelerated Final Payments, and Interim Payments made to Plaintiffs before Final Distributions, if any, as provided in Section IX of this Agreement.
- UU.** **"Primary Plaintiff"** shall mean a Plaintiff whose Debris Removal Claims relate to his or her rescue, recovery, or debris removal work or volunteer service.
- VV.** **"Primary Qualifying Injury"** shall mean each Primary Plaintiff's Qualifying Injury, if any, with the highest Tier placement, as set forth in Section VIII of this Agreement, or highest Base Point value on the Settlement Grid attached as Exhibit C to this Agreement, relative to the same Primary Plaintiff's other Qualifying Injuries, if any, after application of all Adjustment Factors for Verified Tier 4 Primary Plaintiffs.
- WW.** **"Qualifying Injuries"** shall mean those injuries (i) verified by the Allocation Neutral based upon a Primary Plaintiff's Claim Form and Qualifying Medical Records and (ii) listed in the chart in Section XII of this Agreement.
- XX.** **"Qualifying Surgeries"** shall mean those actual or recommended surgical procedures listed on Exhibit D to this Agreement, subject to the limitations and requirements specified therein, and which warrant the payments specified in Exhibit D to those Primary Plaintiffs who satisfy the requirements of Section XVIII.B of this Agreement.

- YY. “Qualifying Medical Records”** shall mean medical records generated by March 11, 2010 and (i) produced by Plaintiffs to Defendant Insureds’ Counsel by the Final Settlement Agreement Effective Date; (ii) produced by Defendant Insureds’ Counsel to Plaintiffs at any time, including records in the possession, custody or control of the City of New York (including without limitation Express Scripts, Inc. pharmaceutical records for Primary Plaintiffs who received medical care directly from the City of New York) produced pursuant to Section XI.H of this Agreement; or (iii) required to be produced under Section XI.H of this Agreement; provided, however, that records reflecting the fact of the death of a Primary Plaintiff, medical records reflecting that a Primary Plaintiff underwent (or, in the case of a recommended single or double lung transplant, the recommendation that the Primary Plaintiff undergo) any Qualifying Surgery(ies), and disability determinations by an Adjudicatory Body shall be deemed Qualifying Medical Records even if generated after March 11, 2010. In addition, Pulmonary Function Tests and spirometries that satisfy the forgoing requirements of this definition shall not constitute Qualifying Medical Records if they contain statements to the effect that the test results (i) are not reproducible, reliable, acceptable, valid, or satisfactory; (ii) represent poor effort or lack of cooperation on the part of the Primary Plaintiff, or include any indication that he or she is unable to perform acceptable maneuvers; and/or (iii) are compromised by the Primary Plaintiff’s acute respiratory condition or illness other than a Qualifying Injury at the time of the test (*e.g.*, a upper respiratory infection, pneumonia or acute bronchitis).
- ZZ. “Reconsideration Request”** shall mean a Primary Plaintiff’s request that the Allocation Neutral reconsider (i) the Primary Plaintiff’s placement by the Allocation Neutral in Tier 1, Tier 2 or Tier 3 pursuant to Section XIV.A of this Agreement; (ii) its denial of, or the amount of its award of, a Mixed Orthopedic Injury payment made allegedly without regard to the requirements of Section XVIII.A of this Agreement; (iii) its denial of a Qualifying Surgery payment made allegedly without regard to the requirements of Section XVIII.B of this Agreement; (iv) its application of the Work Verification Procedure in Exhibit B to this Agreement to the Primary Plaintiff’s claims; (v) its application of the Permanent Disability Fund provisions in Section XVI of this Agreement to the Primary Plaintiff’s claims; or (vi) its determination for purposes of the Tier 4 Point System of the Primary Plaintiff’s Total Score pursuant to Section XIII.C of this Agreement.
- AAA. “Release and Covenant Not to Sue”** shall mean the document in the form attached as Exhibit P to this Agreement which all Plaintiffs must execute in order to opt-in to the Final Settlement Agreement as provided in Section V.A of this Agreement.
- BBB. “Secondary Qualifying Injury”** shall mean, for those Verified Tier 4 Primary Plaintiffs who the Allocation Neutral determines have more than one Qualifying Injury, such Primary Plaintiff’s Qualifying Injury with the second highest Base Point value on the Settlement Grid relative to the same Primary Plaintiff’s

Primary Qualifying Injury and his or her other Qualifying Injuries, if any, after application of all Adjustment Factors.

- CCC. “Settlement Amount”** shall mean the aggregate amount set forth in Section II.A of this Agreement that the WTC Captive shall pay, in addition to any Contingent Payment(s) due as provided in Section IV of this Agreement, any further payment required under Section VI.E of this Agreement and Allocation Costs as paid pursuant to Section XI.D of this Agreement, on behalf of all of the Insureds, to settle all Debris Removal Claims against the Insureds or any of them by those Plaintiffs who opt-in to the Final Settlement Agreement as provided in Section VI.B of this Agreement. The Settlement Amount does not include interest earned thereupon.
- DDD. “Settlement Grid”** shall mean the document appended hereto as Exhibit C which specifies the Base Points for each Qualifying Injury for purposes of the Tier 4 Point System set forth in Section XIII of this Agreement.
- EEE. “Total Score”** shall mean the product of the Allocation Neutral’s adjustments pursuant to Section XIII.C of this Agreement to Base Points awarded by the Allocation Neutral to each Verified Tier 4 Primary Plaintiff in any Master Docket.
- FFF. “Verified Tier 4 Primary Plaintiff”** shall mean a Primary Plaintiff who submits a Claim Form alleging a Tier 4 Qualifying Injury and who the Allocation Neutral determines meets the Tier 4 proof requirements set forth in Section VIII.E of this Agreement, including without limitation the Medical Proof Criteria for one or more Tier 4 Qualifying Injuries set forth in Section XII of this Agreement.
- GGG. “Work Verification Procedure”** shall mean the process described in Exhibit B to this Agreement and which is required to verify a Primary Plaintiff’s employment or volunteer status at the WTC Site or other locations at which the Primary Plaintiff alleges exposure giving rise to his or her Debris Removal Claims against the Insureds or any of them.
- HHH. “WTC Site”** shall mean: (a) the secured area in New York City bounded by Broadway on the east, Albany Street and Thames Street on the south, Chambers Street on the north and the Hudson River on the west; (b) the loading areas in New York City at the West Side Highway and Chambers Street, as well as Pier 92 and the Heliport at 59th Street and Hamilton Avenue; (c) the Brooklyn Marine Transfer Stations where trucks dropped off debris and debris was loaded onto barges; (d) barges in transit on the Hudson River and other waterways, together with adjacent piers, on which such barges operated; (e) trucks in transit between the World Trade Center and any location involved in the transportation of debris including such locations in Brooklyn and Staten Island/Fresh Kills; (f) debris loading and unloading areas, including those in Brooklyn and Staten Island/Fresh Kills; and (g) debris sorting/sifting areas at Staten Island/Fresh Kills.

II. SETTLEMENT AMOUNT

A. The Settlement Amount and Other Payments Potentially Due Under This Agreement

Within ninety (90) days after the Effective Date, the WTC Captive shall place in a separate account Six Hundred and Twenty-Five Million Dollars and No Cents (\$625,000,000.00) as the Settlement Amount.

In addition to the Settlement Amount, the WTC Captive will pay Three Million Five Hundred Thousand Dollars and No Cents (\$3,500,000.00) toward Allocation Costs pursuant to Section XI.D of this Agreement and is potentially obligated under this Agreement (i) to pay Contingent Payments of up to Twenty-Five Million Dollars and No Cents (\$25,000,000.00) subject to the terms and conditions of Section IV of this Agreement and (ii) to pay two percent (2%) of the Settlement Amount for each one percent (1%) of all Primary Plaintiffs across all Master Dockets who opt into the Final Settlement Agreement in excess of the Section VI.D.i Opt-In Threshold, as set forth in Section VI.E of this Agreement. Collectively, these payments may total up to Seven Hundred Sixteen Million Dollars and No Cents (\$716,000,000.00) subject to the terms, conditions and limitations of Sections IV, VI.E and XI.D of this Agreement.

B. Exclusive Components of the Settlement Amount

The Settlement Amount shall consist of:

- i. All Preliminary Payments and Final Distributions to all Plaintiffs who opt into the Final Settlement Agreement by signing Releases and Covenants Not to Sue as described in Section V of this Agreement, respectively, as follows:
 - a. Five Hundred Fourteen Million Eight Hundred Thousand Dollars and No Cents (\$514,800,000.00) for all Preliminary Payments, Final Distributions, Mixed Orthopedic Injury payments, and Qualifying Surgery payments to all Plaintiffs who opt into the Final Settlement Agreement and whose Debris Removal Claims against the Insureds or any of them are pending as of the Final Settlement Agreement Effective Date in Master Docket 21 MC 100;
 - b. Six Million One Hundred Thousand Dollars and No Cents (\$6,100,000.00) for all Preliminary Payments, Final Distributions, Mixed Orthopedic Injury payments, and Qualifying Surgery payments to all Plaintiffs who opt into the Final Settlement Agreement and whose Debris Removal Claims against the Insureds or any of them are pending as of the Final Settlement Agreement Effective Date in Master Docket 21 MC 102; and

- c. Eighteen Million Two Hundred Thousand Dollars and No Cents (\$18,200,000.00) for all Preliminary Payments, Final Distributions, Mixed Orthopedic Injury payments, and Qualifying Surgery payments to all Plaintiffs who opt into the Final Settlement Agreement and whose Debris Removal Claims against the Insureds or any of them are pending as of the Final Settlement Agreement Effective Date in Master Docket 21 MC 103.
- ii. Payment of the premium for the Cancer Insurance Policy in the amount of Twenty Three Million Four Hundred Thousand Dollars and No Cents (\$23,400,000.00) as described in Section XVII of this Agreement; provided, however, that if the final premium for the Cancer Insurance Policy as negotiated by Plaintiffs' Liaison Counsel, the WTC Captive, and MetLife as issuer of the Cancer Insurance Policy differs from the amount specified in this Section II.B.ii, any such difference, whether in excess of or less than the amount specified here, shall be applied proportionately against or added to, as the case may be, the portions of the Settlement Amount allocated to each Master Docket as set forth in Sections II.B.i.a through II.B.i.c of this Agreement; and
- iii. Capitalization of the Permanent Disability Fund in the amount of Sixty-Two Million Five Hundred Thousand Dollars and No Cents (\$62,500,000.00) as described in Section XVI of this Agreement.

This Section II.B sets forth the exclusive permissible allocation of the Settlement Amount among the Master Dockets, to fund the Cancer Insurance Policy premium and to capitalize the Permanent Disability Fund.

C. The Settlement Amount Cannot Be Increased for Any Reason

The Settlement Amount shall not be increased for any reason.

D. The Settlement Amount Is a Reasonable Compromise

Each Party agrees to support the Settlement Amount, including without limitation the Cancer Insurance Policy funded thereby as referenced in Section XVII of this Agreement, together with the recovery from or assignment of rights against the London Marine Insurers as set forth in Section II.F of this Agreement, as a reasonable resolution of all Plaintiffs' Debris Removal Claims against the Insureds. In no circumstances shall the reasonableness and/or adequacy of the Settlement Amount be challenged by: (i) any Plaintiff who opts into the Final Settlement Agreement by executing the Release and Covenant Not to Sue; or (ii) any signatory to this Agreement.

E. Funding from Defendants Not Insured By the WTC Captive

The Settlement Amount, the Contingent Payment(s), if any, the payment due under Section VI.E of this Agreement, if any, and the WTC Captive's

contribution toward Allocation Costs pursuant to Section XI.D of this Agreement will be paid by the WTC Captive on behalf of the Insureds only. Accordingly, nothing in this Agreement shall terminate Plaintiffs' rights, if any, against Other Defendants.

The Final Settlement Agreement shall be subject to N.Y. GOL § 15-108. In addition, to the extent that Plaintiffs who opt in to the Final Settlement Agreement or any of them are awarded judgment(s) against the Other Defendants or any of them with respect to Debris Removal Claims, such Plaintiffs agree to reduce those judgment(s) to the full extent of any and all such Other Defendants' contribution and indemnity claims, if any, against the Insureds or any of them. In addition, such Plaintiffs and each of them agree that after the Effective Date they shall not settle any Debris Removal Claims with Other Defendant(s) without securing from all settling Other Defendants' their written agreement to release all actual or alleged indemnification claims, if any, that they have against the Insureds or any of them arising out of or relating to such Other Defendant's or Other Defendants' settlement with such Plaintiff(s).

F. Insurance Assets Other Than the Settlement Amount

Except with respect to the London Marine Insurers as described in this Section II.F and Plaintiffs' releases of the WTC Captive as set forth in executed Releases and Covenants Not to Sue, the Parties do not assign, modify, transfer, waive, release or relinquish their respective rights, if any, against any insurers or insurance policies, including without limitation those insurers and insurance policies identified on Schedule 2 to the WTC Captive's Policy ("Underlying Insurers"). All such rights are expressly reserved and preserved.

If at any time the London Marine Insurers agree to settle with and on behalf of their insureds, the City of New York and Weeks Marine, Inc., Debris Removal Claims alleging liabilities potentially covered by the London Marine Policies, and contribute to the settlement memorialized in this Agreement in an amount acceptable to Plaintiffs, then the WTC Captive shall release and waive any and all rights and claims of the WTC Captive against the London Marine Insurers for contribution, subrogation or other reimbursement for the Settlement Amount, the Contingent Payments, if any, and the WTC Captive's costs of defending the City of New York and Weeks Marine, Inc. to the extent that the Settlement Amount, the Contingent Payments, if any, and such costs of defense are covered by the London Marine Policies or either of them.

Alternatively, if the London Marine Insurers do not agree to settle with and on behalf of their insureds, the City of New York and Weeks Marine, Inc., Debris Removal Claims alleging liabilities potentially covered by the London Marine Policies, and do not contribute to the settlement memorialized in this Agreement in an amount acceptable to Plaintiffs, then the WTC Captive shall assign to the settling Plaintiffs any and all rights and claims of the WTC Captive against the London Marine Insurers for contribution, subrogation or other reimbursement

relating to the Settlement Amount, the Contingent Payments, if any, and the WTC Captive's costs of defending the City of New York and Weeks Marine, Inc. to the extent that the Settlement Amount, the Contingent Payments, if any, and such costs of defense are covered by the London Marine Policies or either of them.

The Parties agree that any funds recovered from the London Marine Insurers under the provisions of this Section II.F shall be apportioned among Primary Plaintiffs who opt into the Final Settlement Agreement by executing the Release and Covenant Not to Sue and whose Debris Removal Claims against the Insureds or any of them derive in whole or in part from alleged exposure on the barges and/or piers covered potentially by the London Marine Policies (hereinafter, "Marine Primary Plaintiffs"). In addition, all funds recovered from the London Marine Insurers shall be apportioned among the Marine Primary Plaintiffs in proportion to the sum of their respective Initial Payments, Accelerated Final Payments, Interim Payments and Final Distributions, if any, under the Final Settlement Agreement. Any expense incurred by the Allocation Neutral relating to the apportionment among the Marine Primary Plaintiffs of any recovery from the London Marine Insurers shall be paid exclusively by those Plaintiffs and/or their respective counsel.

Without limiting in any way the forgoing provisions of this Section II.F, Plaintiffs' Liaison Counsel shall consult with the WTC Captive and its counsel on a regular basis, but at least every thirty (30) days following the Effective Date, concerning the timing of this assignment. Throughout these consultations and in any related negotiations including Plaintiffs and/or the WTC Captive, on the one hand, and the London Marine Insurers, on the other hand, the WTC Captive and Plaintiffs shall cooperate and use their respective best efforts to obtain a mutually acceptable recovery from the London Marine Insurers. If no such recovery is obtained within one hundred and eighty (180) days after the Effective Date, however, Plaintiffs shall have the right to send the WTC Captive a written demand that it consummate the assignment described in this Section II.F. Within five (5) business days of its receipt of such a demand, the WTC Captive shall effectuate the assignment described in this Section II.F.

G. Attorneys' Fees, Costs and Expenses

The Settlement Amount, the Contingent Payment(s), if any, and any payment due pursuant to Section VI.E of this Agreement shall include all of Plaintiffs' Liaison Counsel's fees, costs and expenses and the fees, costs and expenses of all other counsel engaged by any Plaintiff or Plaintiffs, including without limitation the fees, costs and expenses of all Plaintiffs' counsel's vendors, consultants and experts, with respect to Debris Removal Claims against the Insureds or any of them or any matter relating thereto. Plaintiffs' attorneys' fees, costs and expenses, and all other costs or expenses paid or incurred by Plaintiffs or their counsel relating to Debris Removal Claims against the Insureds or any of them, including without limitation the fees, costs and expenses of all Plaintiffs' counsel's vendors, consultants and experts, shall not increase the Settlement

Amount, the Contingent Payment(s), if any, or any payment due pursuant to Section VI.E of this Agreement for any reason.

Without affecting in any way the limitations on the Settlement Amount, the Contingent Payment(s), if any, and any payment due pursuant to Section VI.E of this Agreement as stated in the preceding paragraph of this Agreement, the Parties acknowledge as follows:

- i. Plaintiffs' Liaison Counsel has expended time, effort and resources litigating numerous and complex issues of law and fact, managing and advancing Debris Removal Claims against the Insureds, and structuring a comprehensive settlement of Debris Removal Claims against the Insureds, including without limitation the negotiation, preparation and implementation of this Agreement;
- ii. The Settlement Amount and the Contingent Payment, if any, represent an extraordinary recovery for Plaintiffs given their alleged injuries and the anticipated difficulty of establishing the Insureds' liability, if any, at trial; and
- iii. Plaintiffs' Liaison Counsel, including their respective law firms and the individual attorneys within those firms involved in the litigation and settlement of Debris Removal Claims against the Insureds, have the professional experience and reputation and are possessed of sufficient skills and ability to perform the services required by the scope of and issues in this litigation and arising under this Agreement.

Each Plaintiff is solely responsible for payment of his or her respective attorneys' fees, costs and expenses relating in any way to Debris Removal Claims against the Insureds or any of them under the existing terms of the Plaintiff's contract with his or her respective counsel.

Furthermore, except with respect to premium paid for and benefits later received from the Cancer Insurance Policy, Plaintiffs' attorneys' voluntarily agree to reduce their fees to twenty-five percent (25%) of all payments to Plaintiffs or claimants whose Debris Removal Claims against the Insureds or any of them are settled by this Agreement net of Plaintiffs' counsel's reimbursable expenses, including without limitation any and all Contingent Payments which become due pursuant to Section IV of the Agreement and any and all payments which become due pursuant to Section VI.E of the Agreement. Plaintiffs' counsel voluntarily agree to take no attorneys' fees on any part of the premium paid for the Cancer Insurance Policy as set forth in Section II.B.ii of this Agreement or on any Cancer Insurance Policy benefits Plaintiffs or any of them receive in the future.

Neither the WTC Captive, the Insureds nor any of them shall have any decisional authority relating in any way to the allocation of attorneys' fees and/or expenses among Plaintiffs and/or their respective counsel. To the extent that the Allocation

Neutral oversees Plaintiffs' counsel's disbursements to individual Plaintiffs and audits the application by Plaintiffs' counsel of attorneys' fees and general and case-specific expenses to calculate disbursements to Plaintiffs net of those fees and expenses, the first One Hundred Thousand Dollars and No Cents (\$100,000.00) of such Allocation Neutral expense shall be included within Allocation Costs and paid in accordance with Section XI.D of this Agreement. Any such Allocation Neutral expense in excess of this first One Hundred Thousand Dollars and No Cents (\$100,000.00) shall not be treated as Allocation Costs.

III. SETTLEMENT AMOUNT ADMINISTRATION

A. Placement of the Settlement Amount in the Separate Account

Within ninety (90) days after the Effective Date, the WTC Captive shall place the Settlement Amount in a separate account to be held in the WTC Captive's name at the Bank of New York pursuant to an account control agreement between the WTC Captive and the Bank of New York (the "Separate Account"). The WTC Captive shall remain the tax owner of the Settlement Amount until such funds are disbursed from the Separate Account pursuant to this Agreement. The WTC Captive shall provide to Plaintiffs' Liaison Counsel a copy of this account control agreement once it is executed.

Interest on the Settlement Account shall begin to accrue upon the Effective Date and shall be used in accordance with Section XI.D of this Agreement.

B. Investment of the Settlement Amount Prior to Its Distribution

While the Settlement Amount remains in the Separate Account, the WTC Captive shall direct investment of the Settlement Amount through its independent financial advisors according to reasonable, prudent and conservative criteria to be established by the WTC Captive and its independent financial advisors. Furthermore, beginning thirty (30) days after the Settlement Amount is placed in the Separate Account, the Bank of New York shall send monthly written statements to Plaintiffs' Liaison Counsel regarding the Settlement Amount balance, the investment allocation and performance of the Settlement Amount, any and all payments to Plaintiffs, and all Allocation Costs charged against the Settlement Amount in accordance with Section XI.D of this Agreement.

C. Permissible Uses of Any Income Earned On the Settlement Amount

Although the WTC Captive shall remain the owner of the Separate Account for income tax purposes, any income (*e.g.*, interest) earned on the Settlement Amount before it is fully disbursed as set forth in this Agreement shall be used to satisfy Allocation Costs as set forth in Section XI.D of this Agreement. The WTC Captive shall release funds from the Separate Account for this purpose. Any income on the Settlement Amount remaining after satisfaction of Allocation Costs

shall be apportioned among the Master Dockets and to the Permanent Disability Fund in as set forth in Section XI.D of this Agreement.

D. Disbursement of the Settlement Amount

Pursuant to instructions from the Allocation Neutral and subject to all of the terms and conditions of this Agreement, the WTC Captive or its designee shall disburse funds from the Separate Account to satisfy each of the WTC Captive's Preliminary Payment, Final Distribution, Qualifying Surgery, Mixed Orthopedic Injury and Permanent Disability Fund award obligations hereunder. Each such disbursement shall occur at the time authorized by this Agreement and shall be made by check payable to each Plaintiff or Plaintiffs who are the subject of the Allocation Neutral's payment instruction and their respective counsel or, if the instruction so provides, by wire, including without limitation aggregated amounts for multiple plaintiffs, to Plaintiffs' counsel for disbursement consistent with the Allocation Neutral's payment instruction and all of the provisions of this Agreement. In addition, if instructed to do so pursuant to Section VII.D of this Agreement, the WTC Captive or its designee will issue from the Separate Account Interim Payments and Final Distributions to structured settlement providers on behalf of Verified Tier 4 Primary Plaintiffs upon completion of the necessary documentation. The WTC Captive's payment of premium for the Cancer Insurance Policy in the amount set forth in Section II.B.ii of this Agreement shall be paid directly to MetLife from the Separate Account.

E. Limited Circumstances Under Which the WTC Captive Shall Retain the Settlement Amount and Any Income Earned Thereon

If this Agreement is voided pursuant to Section VI.E or XX.E of this Agreement, the WTC Captive shall retain the entire Settlement Amount and any income earned thereon after satisfaction of any Allocation Costs incurred, if any, prior to the exercise of any such right to void this Agreement. Thereafter, the Settlement Amount and all such remaining income thereupon shall be remitted from the Separate Account to any account designated by the WTC Captive.

IV. CONTINGENT PAYMENTS

A. Nature of Contingent Payments

In addition to the Settlement Amount, the WTC Captive may in the future make additional payments to Plaintiffs on behalf of the Insureds ("Contingent Payments"). These Contingent Payments shall become due only if certain contingencies are satisfied, and it is possible under the terms herein that no Contingent Payments will ever become due. As set forth specifically in Sections IV.B and IV.C below, whether Contingent Payments become due, and the amount(s) of such Contingent Payments, if any, shall be dependent upon:

- i. The number of New Debris Removal Claims;

- ii. The amount of money, if any, paid by the WTC Captive on behalf of the Insureds or any of them to satisfy judgments or fund the settlement(s) of Debris Removal Claims by Plaintiffs who do not opt into the Final Settlement Agreement (“Opt-Out Costs”); and
- iii. The amount of money, if any, paid by the WTC Captive on behalf of the Insureds or any of them to satisfy judgments or fund the settlements of suits or claims against the Insureds or any of them by Other Defendants for indemnification of judgments, settlements, costs and/or expenses against or incurred by Other Defendants arising out of Debris Removal Claims settled as part of the Final Settlement Agreement (“Indemnification Costs”).

The amount due under Section VI.E of this Agreement, if any, shall not constitute Opt-Out Costs or Indemnifications Costs for purposes of this Section IV.

B. Contingent Payment Determinations—Timing

The Contingent Payments, should they become due, shall be paid in five (5) annual installments. Each date on which Contingent Payment is determined to be due, and if so, in what amount, shall be a “Contingent Payment Determination Date.”

The First Contingent Payment Determination Date shall be the Final Settlement Agreement Effective Date plus one year. The First Contingent Payment, if any, shall be paid fifteen (15) days thereafter.

The Second Contingent Payment Determination Date shall be the Final Settlement Agreement Effective Date plus two years. The Second Contingent Payment, if any, shall be paid fifteen (15) days thereafter.

The Third Contingent Payment Determination Date shall be the Final Settlement Agreement Effective Date plus three years. The Third Contingent Payment, if any, shall be paid fifteen (15) days thereafter.

The Fourth Contingent Payment Determination Date shall be the Final Settlement Agreement Effective Date plus four years. The Fourth Contingent Payment, if any, shall be paid fifteen (15) days thereafter.

The Fifth Contingent Payment Determination Date shall be the Final Settlement Agreement Effective Date plus five years. The Fifth Contingent Payment, if any, shall be paid fifteen (15) days thereafter.

C. Contingent Payment Determinations—Criteria

Each annual installment of Contingent Payment, if any, shall be determined solely upon the following conditions as of the relevant Contingent Payment Determination Date:

i. First Contingent Payment

The First Contingent Payment, if any, shall be calculated based upon the number of New Debris Removal Claims, as follows:

<u>Number of New Debris Removal Claims Filed or Submitted to the City of New York as of First Contingent Payment Determination Date</u>	<u>First Contingent Payment</u> (subject to the Opt-Out Costs and Indemnification Costs provisions below)
120 or less	\$5,000,000.00
121 to 219	\$5,000,000.00 minus \$50,000.00 for each New Debris Removal Claim in excess of the 120th New Debris Removal Claim filed as of the First Contingent Payment Determination Date
220 or more	\$0.00

The First Contingent Payment due, if any, as reflected in the table immediately above shall be reduced if, from the Effective Date to the First Contingent Payment Determination Date, cumulative Opt-Out Costs and Indemnification Costs exceed Seven Million Dollars and No Cents (\$7,000,000.00). If this occurs, the First Contingent Payment shall be reduced by one dollar for every one dollar of cumulative Opt-Out Costs and Indemnification Costs that exceed Seven Million Dollars and No Cents (\$7,000,000.00), up to the entire amount of Contingent Payment that otherwise would be due. The First Contingent Payment cannot be less than Zero Dollars and No Cents (\$0.00).

If cumulative Opt-Out Costs and Indemnification Costs do not exceed Seven Million Dollars and No Cents (\$7,000,000.00) as of the First Contingent Payment Determination Date, then the First Contingent Payment due, if any, shall be determined pursuant to the table immediately above.

ii. Second Contingent Payment

The Second Contingent Payment, if any, shall be calculated based upon the number of New Debris Removal Claims, as follows:

<u>Number of New Debris Removal Claims Filed or Submitted to the City of New York as of Second Contingent Payment Determination Date</u>	<u>Second Contingent Payment Due</u> (subject to the Opt-Out Costs and Indemnification Costs provisions below)
240 or less	\$5,000,000.00
241 to 339	\$5,000,000.00 minus \$50,000.00 for each New Debris Removal Claim in excess of the 240th New Debris Removal Claim filed as of the Second Contingent Payment Determination Date
340 or more	\$0.00

The Second Contingent Payment due, if any, as reflected in the table immediately above shall be reduced if, from the Effective Date to the Second Contingent Payment Determination Date, cumulative Opt-Out Costs and Indemnification Costs exceed Fourteen Million Dollars and No Cents (\$14,000,000.00). If this occurs, the Second Contingent Payment shall be reduced by one dollar for every one dollar of cumulative Opt-Out Costs and Indemnification Costs that exceed Fourteen Million Dollars and No Cents (\$14,000,000.00), up to the entire amount of Contingent Payment that otherwise would be due. The Second Contingent Payment cannot be less than Zero Dollars and No Cents (\$0.00).

If cumulative Opt-Out Costs and Indemnification Costs do not exceed Fourteen Million Dollars and No Cents (\$14,000,000.00) as of the Second Contingent Payment Determination Date, then the Second Contingent Payment due, if any, shall be determined pursuant to the table immediately above.

iii. Third Contingent Payment

The Third Contingent Payment, if any, shall be calculated based upon the number of New Debris Removal Claims, as follows:

<u>Number of New Debris Removal Claims Filed or Submitted to the City of New York as of Third Contingent Payment Determination Date</u>	<u>Third Contingent Payment Due</u> (subject to the Opt-Out Costs and Indemnification Costs provisions below)
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360 or less	\$5,000,000.00
361 to 459	\$5,000,000.00 minus \$50,000.00 for each New Debris Removal Claim in excess of the 360th New Debris Removal Claim filed as of the Third Contingent Payment Determination Date
460 or more	\$0.00

The Third Contingent Payment due, if any, as reflected in the table immediately above shall be reduced if, from the Effective Date to the Third Contingent Payment Determination Date, cumulative Opt-Out Costs and Indemnification Costs exceed Twenty-One Million Dollars and No Cents (\$21,000,000). If this occurs, the Third Contingent Payment shall be reduced by one dollar for every one dollar of cumulative Opt-Out Costs and Indemnification Costs that exceed Twenty-One Million Dollars and No Cents (\$21,000,000), up to the entire amount of Contingent Payment that otherwise would be due. The Third Contingent Payment cannot be less than Zero Dollars and No Cents (\$0.00).

If cumulative Opt-Out Costs and Indemnification Costs do not exceed Twenty-One Million Dollars and No Cents (\$21,000,000) as of the Third Contingent Payment Determination Date, then the Third Contingent Payment due, if any, shall be determined pursuant to the table immediately above.

iv. Fourth Contingent Payment

The Fourth Contingent Payment, if any, shall be calculated based upon the number of New Debris Removal Claims, as follows:

<u>Number of New Debris Removal Claims Filed or Submitted to the City of New York as of Fourth Contingent Payment Determination Date</u>	<u>Fourth Contingent Payment Due</u> (subject to the Opt-Out Costs and Indemnification Costs provisions below)
480 or less	\$5,000,000.00

481 to 579	\$5,000,000.00 minus \$50,000.00 for each New Debris Removal Claim in excess of the 480th New Debris Removal Claim filed as of the Fourth Contingent Payment Determination Date
580 or more	\$0.00

The Fourth Contingent Payment, if any, due as reflected in the table immediately above shall be reduced if, from the Effective Date to the Fourth Contingent Payment Determination Date, cumulative Opt-Out Costs and Indemnification Costs exceed Twenty-Eight Million Dollars and No Cents (\$28,000,000.00). If this occurs, the Fourth Contingent Payment shall be reduced by one dollar for every one dollar of cumulative Opt-Out Costs and Indemnification Costs that exceed Twenty-Eight Million Dollars and No Cents (\$28,000,000.00), up to the entire amount of Contingent Payment that otherwise would be due. The Fourth Contingent Payment cannot be less than Zero Dollars and No Cents (\$0.00).

If cumulative Opt-Out Costs and Indemnification Costs do not exceed Twenty-Eight Million Dollars and No Cents (\$28,000,000.00) as of the Fourth Contingent Payment Determination Date, then the Fourth Contingent Payment due, if any, shall be determined pursuant to the table immediately above.

v. Fifth Contingent Payment

The Fifth Contingent Payment, if any, shall be calculated based upon the number of New Debris Removal Claims, as follows:

<u>Number of New Debris Removal Claims Filed or Submitted to the City of New York as of Fifth Contingent Payment Determination Date</u>	<u>Fifth Contingent Payment Due</u> (subject to the Opt-Out Costs and Indemnification Costs provisions below)
600 or less	\$5,000,000.00
601 to 699	\$5,000,000.00 minus \$50,000.00 for each New Debris Removal Claim in excess of the 600th New Debris Removal Claim filed as of the Fifth Contingent Payment Determination Date

700 or more	\$0.00
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The Fifth Contingent Payment due, if any, as reflected in the table immediately above shall be reduced if, from the Effective Date to the Fifth Contingent Payment Determination Date, cumulative Opt-Out Costs and Indemnification Costs exceed Thirty-Five Million Dollars and No Cents (\$35,000,000.00). If this occurs, the Fifth Contingent Payment shall be reduced by one dollar for every one dollar of cumulative Opt-Out Costs and Indemnification Costs that exceed Thirty-Five Million Dollars and No Cents (\$35,000,000.00), up to the entire amount of Contingent Payment that otherwise would be due. The Fifth Contingent Payment cannot be less than Zero Dollars and No Cents (\$0.00).

If cumulative Opt-Out Costs and Indemnification Costs do not exceed Thirty-Five Million Dollars and No Cents (\$35,000,000.00) as of the Fifth Contingent Payment Determination Date, then the Fifth Contingent Payment due, if any, shall be determined pursuant to the table immediately above.

D. Plaintiffs Entitled to Pro Rata Share of Contingent Payments

Verified Tier 4 Primary Plaintiffs shall be entitled to *pro rata* shares of each Contingent Payment, if any, in proportion to their respective payments under the Final Settlement Agreement.

V. RECIPROCAL RELEASES, PLAINTIFFS' COVENANTS NOT TO SUE AND PLAINTIFFS' WAIVER OF PUTATIVE "SECOND INJURY" CLAIMS

A. Plaintiffs' Releases and Covenants Not to Sue

Plaintiffs who opt into the Final Settlement Agreement will do so by executing Releases and Covenants Not to Sue in the form attached hereto as Exhibit P. In the Releases and Covenants Not to Sue, Plaintiffs and their successors, assigns, heirs and beneficiaries, if any, and, for deceased Plaintiffs, the executor, administrator or personal representative of the Plaintiff's estate, will release, each and all of their known or unknown, filed or un-filed, matured or un-matured, manifested or latent, and past, present or future Debris Removal Claims and/or New Debris Removal Claims against the WTC Captive, the Insureds, and their respective affiliates, subsidiaries, parents, predecessors, successors, assigns, officers, directors, employees, consultants, attorneys and other agents. In addition, in the Releases and Covenants Not to Sue, Plaintiffs and their successors, assigns, heirs and beneficiaries, if any, and, for deceased Plaintiffs, the executor, administrator or personal representative of the Plaintiff's estate, will covenant not to sue the WTC Captive, the Insureds, and their respective affiliates, subsidiaries, parents, predecessors, successors, assigns, officers, directors, employees, consultants, attorneys and other agents with respect to each and all of

Plaintiffs' known or unknown, filed or un-filed, matured or un-matured, and past, present or future Debris Removal Claims and/or New Debris Removal Claims. The Releases and Covenants Not to Sue shall apply to all of the Insureds identified on Exhibit A, but shall not apply to defendants that are neither identified on Exhibit A nor parties to the Final Settlement Agreement.

B. The Insureds' and the WTC Captive's Releases of Settling Plaintiffs

Upon Affirmation of the Final Settlement Agreement as provided in Section XXII.A of this Agreement, the WTC Captive, the Insureds, and their respective affiliates, subsidiaries, parents, predecessors, successors, assigns, officers, directors, employees, consultants, attorneys and other agents will release each and all of their known or unknown, filed or un-filed, matured or un-matured, manifested or latent, and past, present or future claims against Plaintiffs and their successors and assigns, if any, and, for deceased Primary Plaintiffs, the Primary Plaintiff's estate arising out of or relating to those Debris Removal Claims settled by the Final Settlement Agreement. In the event that any Plaintiff's Release and Covenant Not to Sue is rescinded, limited, nullified and/or rendered void or unenforceable for any reason, (i) the Insureds' and the WTC Captive's releases of that Plaintiff shall be similarly rescinded, limited, nullified, void and/or unenforceable and (ii) that Plaintiff shall return to the WTC Captive all amounts awarded to him or her pursuant to the Final Settlement Agreement.

C. Plaintiffs Have Not Assigned Any of Their Claims

Plaintiffs represent and warrant that, unless otherwise disclosed to the WTC Captive in writing prior to the Effective Date, they have not assigned or otherwise transferred any of the claims to be released pursuant to this Agreement. To the extent that any Plaintiff has assigned or otherwise transferred any of the claims to be released pursuant to this Agreement, all assignees must consent in writing to the Plaintiff's decision to opt into the Final Settlement Agreement in order for the Plaintiff to participate in this settlement.

D. Plaintiffs Agree to Release and Covenant Not to Sue the Insureds With Respect to Plaintiffs' Putative "Second Injury" Claims

Plaintiffs understand and have consulted with their respective counsel regarding the putative effect of New York's "second injury" rule. In addition, Plaintiffs understand that in this Section V they are agreeing to release and have covenanted not to sue the Insureds with respect to future, unknown, latent and/or un-matured injuries relating in any way to or arising out of 9/11-related work or volunteer service, including without limitation claims based upon future, unknown, latent and/or un-matured injuries related or unrelated in whole or in part to Plaintiffs' current actual or alleged injuries, if any. Furthermore, as of the Effective Date, Plaintiffs acknowledge that they may not know the full extent of any or all of their injuries, if any, relating in any way to the Insureds' or any Insured's rescue, recovery and debris removal operations or other alleged conduct, misconduct,

errors, omissions or negligence at the WTC Site or at other locations at which Plaintiffs allege exposure giving rise to their respective Debris Removal Claims. Nonetheless, Plaintiffs who opt into the Final Settlement Agreement agree to release knowingly and voluntarily, and to covenant not to sue the Insureds or any of them with respect to, all such future, unknown, latent and/or un-matured injuries, if any.

E. Plaintiffs' Waiver of Their Right to Contest Their Releases and Covenants Not to Sue

Without limiting in any way any of the other provisions in this Section V, Plaintiffs who opt into the Final Settlement Agreement do so voluntarily and knowingly relinquish any right to contest any aspect of their Releases and Covenants Not to Sue.

F. Second Injury Letter to All Plaintiffs

Notwithstanding and without limiting in any way Plaintiffs' understandings and acknowledgements as set forth elsewhere in this Section V, Plaintiffs' counsel shall send on their letterhead to each of their respective clients except deceased Primary Plaintiffs the letter attached as Exhibit H hereto. This letter explains to individual Plaintiffs the effect of the Release and Covenant Not to Sue and states, as plainly as reasonably possible, that the Release and Covenant Not to Sue and, if applicable in a particular Primary Plaintiff's circumstances, the Cancer Insurance Policy are intended to extinguish Plaintiffs' claims against the Insureds and the WTC Captive with respect to all future, unknown, latent and/or un-matured injuries arising out of Debris Removal Claims, regardless of whether any particular Plaintiff is eligible to participate in the Cancer Insurance Policy. In order to participate in the Final Settlement Agreement, each living Primary Plaintiff must countersign this letter, have his or her signature attested by a licensed notary public, and return it to his or her counsel, who shall provide a true and correct copy of the countersigned, notarized letter to the WTC Captive and the Defendant Insureds' Counsel together with Plaintiff's Release and Covenant Not to Sue.

G. Limitations on Putative "Second Injury" Claims

Without limiting in any way the forgoing provisions of this Section V, if any Plaintiff who executes a Release and Covenant Not to Sue brings future action(s), claim(s) or suit(s) against any of the Insureds and/or the WTC Captive in which Plaintiff contends that the Release and Covenant Not to Sue is ineffective with respect to any alleged future, unknown, latent and/or un-manifested injury(ies) arising out of or relating in any way to Debris Removal Claims and/or New Debris Removal Claims, such Plaintiff(s) agree:

- i. That the exclusive forum for all such future action(s), claim(s) or suit(s) against the Insureds and/or the WTC Captive shall be the United States District Court for the Southern District of New York;
- ii. That the Final Settlement Agreement, the executed Release and Covenant Not to Sue, and the executed letter described in Section V.F of this Agreement constitute the sole expression of their respective intent regardless of any alleged change in circumstances or claimed misunderstanding by Plaintiffs or any of them with respect to those documents or any of their terms; and
- iii. To pay the Insureds' and WTC Captive's reasonable costs and expenses, including without limitation their reasonable attorneys' fees, in any action(s), claim(s) or suit(s) in which the Insureds, the WTC Captive and/or any of them prevail on any basis relating to the enforcement of the Release and Covenant Not to Sue and/or the Final Settlement Agreement.

H. Parties' Right to Enforce This Agreement

Nothing in this Section V shall affect any Party's or Parties' right to sue another Party or Parties to enforce this Agreement.

VI. OPT-IN THRESHOLD

A. List of Plaintiffs Eligible to Opt Into Final Settlement Agreement

On April 12, 2010, Plaintiffs' counsel provided to Defendant Insureds' Counsel and the WTC Captive a list of Plaintiffs asserting Debris Removal Claims against the Insureds or any of them ("Eligible Plaintiff List"). Before Defendant Insureds' Counsel certifies the Eligible Plaintiff List as set forth below in this Section VI.A, Plaintiffs' counsel shall update the Eligible Plaintiff List to include all known Debris Removal Claims pending against or submitted to the Insureds or any of them on or before April 12, 2010, and otherwise to conform it to the requirements of this Agreement.

Only Plaintiffs with Debris Removal Claims filed against the Insureds or any of them, including in any Master Docket, on or before April 12, 2010 or who have instituted Debris Removal Claims against the Insureds or any of them through other legal process recognized by New York law (*e.g.*, a notice of claim submitted to the City of New York) on or before April 12, 2010 shall be eligible for inclusion on the Eligible Plaintiff List; provided, however, that such Plaintiffs who dismiss with prejudice, and without exception, their Debris Removal Claims against the Insureds by executing the Stipulation of Dismissal With Prejudice attached as Exhibit S to this Agreement need not be included on the Eligible Plaintiff List; provided, further, however, that any Primary Plaintiff who is named in Appendix A to Case Management Order No. 1 in Master Docket 21 MC 100 need not be included on the Eligible Plaintiff List unless he or she has amended his or her complaint to allege any Qualifying Injury(ies). As set forth more fully

in Section VII of this Agreement, no person omitted from the Eligible Plaintiff List shall be entitled to any payment under this Agreement.

For each Primary Plaintiff, the Eligible Plaintiff List shall identify in the form attached hereto as Exhibit U each of the following items:

- i. The full name of the Primary Plaintiff and any corresponding Derivative Plaintiff;
- ii. The case number(s) of any and all actions including Debris Removal Claims against the Insureds or any of them brought by or on behalf of Primary Plaintiff(s) and any corresponding Derivative Plaintiff(s);
- iii. The consolidated Master Docket Number in which each Plaintiff's Debris Removal Claims are pending (21 MC 100; 21 MC 102; 21 MC 103; or Not Applicable);
- iv. The law firm(s) representing each Plaintiff;
- v. The alleged Primary Qualifying Injury of each Primary Plaintiff;
- vi. Whether the Primary Plaintiff claims eligibility to recover from the Permanent Disability Fund;
- vii. Whether the Primary Plaintiff has undergone a Qualifying Surgery; and
- viii. Whether the Primary Plaintiff claims eligibility to recover for a Mixed Orthopedic Injury.

Thereafter, Defendant Insureds' Counsel will certify that the Eligible Plaintiff List is accurate and complete with respect to Sections VI.A.i, VI.A.ii, and VI.A.iii of this Agreement, including without limitation by adding to the Eligible Plaintiff List the information required by Sections VI.A.i, VI.A.ii, and VI.A.iii of this Agreement with respect to any Plaintiff with Debris Removal Claims against the Insureds or any of them who are absent from the Eligible Plaintiff List. Following this certification by Defendant Insureds' Counsel, an attorney with each law firm representing any Plaintiff or Plaintiffs on the Eligible Plaintiff List shall (i) supply the information required by Sections VI.A.iv through VI.A.viii of this Agreement with respect to any Plaintiffs added to the Eligible Plaintiff List as part of Defendant Insureds' Counsel's certification, as set forth immediately above, and (ii) attest in writing that the Eligible Plaintiff List is accurate and complete as to all of the law firm's clients to the best of the attorney's information and belief. In addition, each law firm representing any Plaintiff(s) shall provide to Plaintiffs' Liaison Counsel, the WTC Captive and Defendant Insureds' Counsel under separate cover the name of the attorney(s) to contact regarding all Plaintiff(s) represented by his or her law firm, as well as each such attorney's business address, telephone and facsimile numbers, and e-mail address. After this

certification and attestation are complete, the Eligible Plaintiff List shall be used to determine compliance with the Opt-In Threshold.

Plaintiffs who dismiss all of their Debris Removal Claims against the Insureds with prejudice by filing the Stipulation of Dismissal with Prejudice attached as Exhibit S to this Agreement at any time before the Final Settlement Agreement Effective Date shall not be counted for purposes of determining compliance with the Opt-In Threshold. In addition, Primary Plaintiffs identified on Exhibit I may be excluded from the Eligible Plaintiff List, or shall be excluded from the Opt-In Threshold calculations in this Section VI of this Agreement even if listed on the Eligible Plaintiff List, only if they dismiss with prejudice all of the claims relating to Qualifying Injuries such that the Primary Plaintiff's only remaining Debris Removal Claims against the Insureds are orthopedic in nature.

For those Plaintiffs who do not opt into the Final Settlement Agreement, the identification of alleged Primary Qualifying Injury required by Section VI.A.v of this Agreement shall be deemed an answer to an interrogatory and pursuant to Federal Rule of Civil Procedure 33(c) may be used to the extent allowed by the Federal Rules of Evidence.

B. Opting Into the Final Settlement Agreement

Plaintiffs desiring to opt into the Final Settlement Agreement shall do so by signing the Release and Covenant Not to Sue in the form attached to this Agreement as Exhibit P. Until the Final Settlement Agreement Effective Date, the Parties agree that this Agreement is binding and enforceable. Accordingly, without limiting in any way the forgoing provisions of this Section VI.B or the provisions of Section VI.C of this Agreement, the Parties agree that any and all Release(s) and Covenant(s) Not to Sue executed prior to the Affirmation of the Final Settlement Agreement described in Section XXII.A of this Agreement shall have no force or effect and shall not bind any Plaintiff until the Final Settlement Agreement Effective Date.

Plaintiffs shall have ninety (90) days from the Effective Date to opt into the Final Settlement Agreement (the "Opt-In Period"); provided, however, that the WTC Captive shall have, at its sole discretion, the right to extend the Opt-In Period. If the WTC Captive exercises this right, the WTC Captive shall provide written notice to Plaintiffs' Liaison Counsel.

C. Return of Releases

If this Agreement is voided pursuant to Section VI.E or XX.E of this Agreement, any and all executed Releases and Covenants Not to Sue shall have no force or effect and shall be returned to Plaintiffs' Liaison Counsel.

D. Opt-In Threshold

The Opt-In Threshold is as follows:

- i. At least ninety-five percent (95%) of all Primary Plaintiffs on the Eligible Plaintiff List execute Releases and Covenants Not to Sue;
- ii. At least ninety-five percent (95%) of all Primary Plaintiffs who claim on the Eligible Plaintiff List eligibility for the Permanent Disability Fund execute Releases and Covenants Not to Sue;
- iii. At least ninety-five percent (95%) of all Primary Plaintiffs who claim on the Eligible Plaintiff List any of the following Primary Qualifying Injuries execute Releases and Covenants Not to Sue: A3, A4, B1, B2, B3, B4, C1, C2, C3, C4, H1, H2, I2 and I3 (“High Threshold Primary Qualifying Injury Categories”); provided further, for clarity, that this Section VI.D.iii requires that at least ninety-five percent (95%) of all Primary Plaintiffs in *each* of the High Threshold Primary Qualifying Injury Categories execute Releases and Covenants Not to Sue; provided, however, that if the percentage of Primary Plaintiffs in any particular High Threshold Primary Qualifying Injury Category that executes Releases and Covenants Not to Sue is less than ninety-five percent (95%) as a result of three (3) or fewer such Primary Plaintiffs not executing Releases and Covenants Not to Sue, then the WTC Captive shall have, at its sole discretion, the right to execute the Affirmation of Final Settlement Agreement referenced in Section XXII.A of this Agreement, and in the event that such right is exercised, this Agreement shall remain binding and enforceable;
- iv. At least ninety percent (90%) of each of the following categories of Primary Plaintiffs on the Eligible Plaintiff List execute Releases and Covenants Not to Sue:
 - a. All Primary Plaintiffs in each Primary Qualifying Injury category according to the Eligible Plaintiff List not set forth in Section VI.D.iii of this Agreement; provided, however, that if the percentage of Primary Plaintiffs in any single Primary Qualifying Injury category on the Eligible Plaintiff List who execute Releases and Covenants Not to Sue is less than ninety percent (90%) as a result of ten (10) or fewer such Primary Plaintiffs not executing Releases and Covenants Not to Sue, then the WTC Captive shall have, at its sole discretion, the right to execute the Affirmation of Final Settlement Agreement referenced in Section XXII.A of this Agreement and, in the event that such right is exercised, this Agreement shall remain binding and enforceable; and
 - b. All Primary Plaintiffs in each consolidated Master Docket (21 MC 100; 21 MC 102; and 21 MC 103); and
 - c. All Primary Plaintiffs who are clients of each law firm representing one hundred and fifty (150) or more Primary Plaintiffs identified on the Eligible Plaintiff List.

For purposes of the Opt-In Threshold as set forth above, Primary Plaintiffs with corresponding Derivative Plaintiffs on the Eligible Plaintiff List will not be deemed to have opted in unless the Derivative Plaintiff also opts in by executing the Release and Convent Not to Sue.

E. Actions Upon Satisfaction of the Opt-In Threshold

If the Opt-In Threshold is satisfied during the Opt-In Period or any extension by the WTC Captive thereof, the Final Settlement Agreement shall become effective in accordance with and subject to the other requirements of Section XXII.A of this Agreement; provided, however, that even if the Opt-In Threshold is satisfied, the WTC Captive shall retain the exclusive right to void this Agreement at any time prior to the Final Settlement Agreement Effective Date if more than one hundred and twenty (120) New Debris Removal Claims are first asserted against the Insureds or any of them by the filing or service of complaints, receipt of notices of claim, or other legal process before the Final Settlement Agreement Effective Date.

In addition, if during the Opt-In Period or any extension thereof by the WTC Captive, actual opt-in experience for purposes of Section VI.D.i of this Agreement exceeds ninety-five percent (95%), the WTC Captive shall pay two percent (2%) of the Settlement Amount set forth in Section II.A of this Agreement for every one percent (1%) in excess of the ninety-five percent (95%) requirement in Section VI.D.i of this Agreement; provided, however, that if actual opt-in experience for purposes of Section VI.D.i of this Agreement exceeds ninety-eight percent (98%), the WTC Captive shall pay one-fifth of one percent (0.20%) of the Settlement Amount set forth in Section II.A of this Agreement for every tenth of one percent (0.10%) above the ninety-five percent (95%) requirement set forth in Section VI.D.i of this Agreement. Any such payment in addition to the Settlement Amount pursuant to this Section VI.E shall be applied to each Master Docket and to the Permanent Disability Fund in proportion to the allocation of the Settlement Amount among each of the Master Dockets and the Permanent Disability Fund set forth in Sections II.B.i and II.B.iii of this Agreement. Furthermore, the WTC Captive shall deposit in the Separate Account referenced in Section III.A of this Agreement any additional payment due pursuant to this Section VI.E within ten (10) days following execution of the Affirmation of the Final Settlement Agreement referenced in Section XXII.A of this Agreement and attached hereto as Exhibit R.

VII. ELIGIBILITY FOR PAYMENTS AND ELIGIBILITY TO ENROLL IN THE CANCER INSURANCE POLICY

A. Primary Plaintiff Eligibility for Payments and Eligibility to Enroll in the Cancer Insurance Policy

A Primary Plaintiff must be listed on the Eligible Plaintiff List to be eligible for any payment and to enroll in the Cancer Insurance Policy, subject to its terms,

conditions and exclusions, pursuant to the Final Settlement Agreement. In addition, no Primary Plaintiff shall be eligible to receive any payment or to enroll in the Cancer Insurance Policy, subject to its terms, conditions and exclusions, pursuant to the Final Settlement Agreement until after (i) he or she opts into the Final Settlement Agreement pursuant to Section V.A of this Agreement by signing a Release and Covenant Not to Sue; (ii) the Final Settlement Agreement Effective Date; (iii) his or her work or volunteer service at the WTC Site, and/or at other locations where his or her work or volunteer service gave rise to his or her Debris Removal Claims against the Insureds or any of them, is verified by the Allocation Neutral pursuant to the Work Verification Procedure set forth in Exhibit B to this Agreement, including, without limitation, by verifying that his or her name appears on the "pre-approved" list referenced in that Exhibit B; (iv) he or she returns to Defendant Insureds' Counsel and the WTC Captive a countersigned and notarized letter in the form of Exhibit H hereto; and (v) the Allocation Neutral confirms that there are no liens or reimbursement claims against the Primary Plaintiff's payments under this Agreement or that all such liens or reimbursement claims have been resolved. Furthermore, any Plaintiff who received an award from the September 11th Victim Compensation Fund is ineligible to receive any payment referenced in this Agreement and ineligible to enroll in the Cancer Insurance Policy.

B. Derivative Plaintiff Eligibility for Payments

Derivative Plaintiffs must be listed on the Eligible Plaintiff List to be eligible for any payment pursuant to the Final Settlement Agreement. In addition, Derivative Plaintiffs will only be eligible for payments under the Final Settlement Agreement if (i) the related Primary Plaintiff's Claim Form references the Derivative Plaintiff; (ii) that Claim Form includes sworn attestations that (a) the Primary and Derivative Plaintiffs lawfully married before September 11, 2001 and (b) the Primary and Derivative Plaintiffs remained lawfully married and co-habiting as of the date after September 11, 2001 on which the Primary Plaintiff was first diagnosed with a Qualifying Injury or, if the Primary Plaintiff alleges no Qualifying Injury, the last day of the Primary Plaintiff's work or volunteer service at the WTC Site or other locations at which the Primary Plaintiff alleges exposure giving rise to his or her Debris Removal Claims against the Insureds or any of them; (iii) the Derivative Plaintiff opts into the Final Settlement Agreement pursuant to Section V.A of this Agreement by executing the Release and Covenant Not to Sue; and (iv) the Allocation Neutral determines that the corresponding Primary Plaintiff is eligible pursuant to the requirements of Section VII.A of this Agreement.

Derivative Plaintiffs will be eligible to receive a Final Distribution, subject to the other requirements of this Agreement, only if the Allocation Neutral finds that an eligible Primary Plaintiff lawfully married the Derivative Plaintiff before September 11, 2001, based upon that Primary Plaintiff's Claim Form. All payments to Derivative Plaintiffs shall be within the Settlement Amount.

C. Personal Representatives Entitled to Receive Payments on Behalf of Deceased Plaintiffs

In the event that a deceased Plaintiff is entitled to receive any payment pursuant to the Final Settlement Agreement, the WTC Captive or its designee shall make such payment(s) jointly to the decedent's counsel and to the personal representative(s) of the deceased Plaintiff's estate consistent with a court order or other comparable record designating the personal representative(s) of the estate. Plaintiffs' counsel shall be responsible for, and shall bear the expense of, providing such documents to the Allocation Neutral as attachments to the Claim Form and the information shall thereby be provided to the WTC Captive or its designee. All payments to Personal Representatives of deceased Plaintiffs shall be within the Settlement Amount.

All rights, duties, obligations and other provisions of this Agreement applicable to a Plaintiff also shall be applicable to the Personal Representative of a deceased Plaintiff's estate, subject to the preceding requirements of this Section VII.C with respect to confirmation of the identity and designation of the Personal Representative.

D. Structured Settlement Payments to Verified Tier 4 Primary Plaintiffs

Any Verified Tier 4 Primary Plaintiff eligible to receive an Interim Payment and Final Distribution under this Agreement may elect to receive either or both of those payments in the form of structured settlement(s), rather than as lump sum payment(s). Verified Tier 4 Primary Plaintiffs who elect such structured settlement payments and/or their respective counsel shall bear the burden and expense of providing the Allocation Neutral with structured settlement payment instructions. Upon receipt of such written instructions, the Allocation Neutral shall direct the WTC Captive or its designee to make the payments at issue to a structured settlement provider on the Verified Tier 4 Primary Plaintiff's behalf. The WTC Captive agrees to comply with all such requests provided that they are received from the Allocation Neutral at least ten (10) days before the payment is due under this Agreement.

VIII. ALLOCATION AND PAYMENT TIERS

A. Tier Participation by Each Eligible Primary Plaintiff

Each Primary Plaintiff who meets the eligibility requirements of Section VII.A of this Agreement shall participate in one of four allocation process and payment tiers described in Sections VIII.B through VIII.E below (hereinafter, "Tier" or "Tiers" or, respectively, "Tier 1," "Tier 2," "Tier 3," and "Tier 4"). In addition, each Derivative Plaintiff who meets the eligibility requirements of Section VII.B of this Agreement shall be treated as though in the same Tier in which his or her corresponding Primary Plaintiff participates. In each Tier, the amounts of payments to eligible Derivative Plaintiffs shall be determined in accordance with

Sections IX and X of this Agreement only after the Allocation Neutral determines that the Primary Plaintiff satisfies the proof requirements set forth in this Section VIII for a given Tier.

Except with respect to a Primary Plaintiff's election to participate in Tier 1, no Primary Plaintiff's claimed participation in any Tier (whether as part of the Eligible Plaintiff List, his or her Claim Form or otherwise) shall be binding upon the Allocation Neutral. Instead, the Allocation Neutral shall retain full authority consistent with this Agreement to place a Primary Plaintiff in the appropriate Tier based upon the requirements for that Tier, the Primary Plaintiff's Claim Form, Qualifying Medical Records submitted to the Allocation Neutral, if any, and the other provisions of this Agreement. In addition, within Tier 4, the Allocation Neutral shall retain full authority to determine a Verified Tier 4 Primary Plaintiff's Primary Qualifying Injury and Secondary Qualifying Injury, including his or her impairment level within a Disease Group for purposes of assigning Base Points, based upon the requirements of the Medical Proof Criteria in Section XII of this Agreement, the information in Verified Tier 4 Primary Plaintiff's Claim Form, his or her Qualifying Medical Records submitted to the Allocation Neutral and the other provisions of this Agreement.

B. Tier 1

Tier 1 shall consist of Primary Plaintiffs who claim no Qualifying Injury. Any Primary Plaintiff may elect to participate in Tier 1, including without limitation Primary Plaintiffs whose only alleged injury is fear that they may become sick in the future as a result of their work or volunteer service at the WTC Site or other location at which they allege exposure giving rise to their respective Debris Removal Claims. Because Qualifying Medical Records are required to establish all Qualifying Injuries, all Primary Plaintiffs with no Qualifying Medical Records must participate in Tier 1.

Primary Plaintiffs who elect or must participate in Tier 1 shall be (1) entitled to the Initial Payment set forth in Section IX.A of this Agreement and (2) required to apply for the Cancer Insurance Policy, subject to its terms, conditions and exclusions, as set forth more fully in Section XVII of this Agreement and Exhibit E.

C. Tier 2

The Tier 2 Qualifying Injuries are: D0; E0; F0; G0; H0; I0; J0-J2; and K0.

Primary Plaintiffs who claim one of the Tier 2 Qualifying Injuries as their Primary Qualifying Injury shall submit a Claim Form together with the Qualifying Medical Record(s) necessary to satisfy the Medical Proof Criteria delineated in Section XII of this Agreement for their respective Tier 2 Qualifying Injury(ies).

If the Allocation Neutral determines that a Primary Plaintiff submitting a Claim Form alleging a Tier 2 Qualifying Injury as his or her Primary Qualify Injury meets the eligibility requirements of Section VII of this Agreement, that Primary Plaintiff shall be (1) entitled to the Initial Payment set forth in Section IX.A of this Agreement and (2) required to apply for the Cancer Insurance Policy, subject to its terms, conditions and exclusions, as set forth more fully in Section XVII of this Agreement and Exhibit E.

Then, the Allocation Neutral must determine if the Primary Plaintiff's Claim Form and one or more Qualifying Medical Records demonstrate that he or she has satisfied the Medical Proof Criteria for his or her Tier 2 Qualifying Injury and was diagnosed with that Tier 2 Qualifying Injury on or after September 11, 2001.

A Primary Plaintiff who alleges in his or her Claim Form a Tier 2 Qualifying Injury as his or her Primary Qualifying Injury and who the Allocation Neutral determines satisfies the Tier 2 proof requirements set forth in this Section VIII.C shall be further entitled to the Tier 2 Accelerated Final Payment for the Primary Plaintiff's Master Docket, as set forth in Section IX.B of this Agreement. If the Allocation Neutral determines that a Primary Plaintiff who alleges in his or her Claim Form a Tier 2 Qualifying Injury as his or her Primary Qualifying Injury does not satisfy the Tier 2 proof requirements set forth in this Section VIII.C, however, the Primary Plaintiff and any corresponding Derivative Plaintiff shall receive no additional payments under this Agreement, but shall be entitled to retain their Initial Payments and the Primary Plaintiff shall still be required to enroll in the Cancer Insurance Policy, subject to its terms, conditions and exclusions, as set forth more fully in Section XVII of this Agreement and Exhibit E.

D. Tier 3

The Tier 3 Qualifying Injuries are: A0; D1; E1; F1; G1; and K1.

Primary Plaintiffs who claim one of the Tier 3 Qualifying Injuries as their Primary Qualifying Injury shall submit a Claim Form together with the Qualifying Medical Record(s) necessary to satisfy the Medical Proof Criteria for their respective Tier 3 Qualifying Injury(ies) set forth in Section XII of this Agreement, as well as a HIPAA-compliant release as required by Section XI.L of this Agreement.

If the Allocation Neutral determines that a Primary Plaintiff submitting a Claim Form alleging a Tier 3 Qualifying Injury as his or her Primary Qualifying Injury meets the eligibility requirements of Section VII of this Agreement, that Primary Plaintiff shall still be (1) entitled to the Initial Payment set forth in Section IX.A of this Agreement and (2) required to apply for the Cancer Insurance Policy, subject to its terms, conditions and exclusions, as set forth more fully in Section XVII of this Agreement and Exhibit E.

Then, the Allocation Neutral must determine if the Primary Plaintiff's Claim Form and Qualifying Medical Record(s) demonstrate that he or she satisfied the Medical Proof Criteria for his or her Tier 3 Qualifying Injury and was diagnosed with that Tier 3 Qualifying Injury on or after September 11, 2001.

A Primary Plaintiff who alleges in his or her Claim Form a Tier 3 Qualifying Injury as his or her Primary Qualifying Injury and who the Allocation Neutral determines satisfies the Tier 3 proof requirements set forth in this Section VIII.D shall be further entitled to the Tier 3 Accelerated Final Payment for the Primary Plaintiff's Master Docket, as set forth in Section IX.B of this Agreement. If the Allocation Neutral determines that a Primary Plaintiff who alleges in his or her Claim Form a Tier 3 Qualifying Injury as his or her Primary Qualifying Injury does not satisfy the Tier 3 proof requirements set forth in this Section VIII.D, however, the Primary Plaintiff and any corresponding Derivative Plaintiff shall receive no additional payments under this Agreement but shall be entitled to retain their Initial Payments and the Primary Plaintiff shall still be required to enroll in the Cancer Insurance Policy, subject to its terms, conditions and exclusions, as set forth more fully in Section XVII of this Agreement and Exhibit E, provided, however, that if the Allocation Neutral determines, for reasons other than material misrepresentation(s), material omission(s) or material concealment detected through an audit pursuant to Section XI.M or XI.N of this Agreement, that the Primary Plaintiff qualifies for Tier 2, Section VIII.C of this Agreement will govern the Plaintiffs' entitlement to Preliminary Payments.

E. Tier 4

The Tier 4 Qualifying Injuries are: A1-A4; B0-B4; C0-C4; D2-D3; E2-E3; F2; G2; H1-H2; I1-I3; and K2-K3.

Primary Plaintiffs who claim one of the Tier 4 Qualifying Injuries shall submit a Claim Form together with the Qualifying Medical Record(s) necessary to satisfy the Medical Proof Criteria delineated in Section XII of this Agreement, and otherwise establish eligibility to recover under Tier 4, as provided below. In addition, Primary Plaintiffs who claim one of the Tier 4 Qualifying Injuries shall submit a HIPAA-compliant release as required by Section XI.L of this Agreement

If the Allocation Neutral determines that a Primary Plaintiff submitting a Claim Form alleging a Tier 4 Qualifying Injury as his or her Primary Qualifying Injury meets the eligibility requirements of Section VII of this Agreement, that Primary Plaintiff shall be (1) entitled to the Initial Payment set forth in Section IX.A of this Agreement and (2) required to apply for the Cancer Insurance Policy, subject to its terms, conditions and exclusions, as set forth more fully in Section XVII of this Agreement and Exhibit E.

Then, the Allocation Neutral must determine if the Primary Plaintiff's Claim Form and Qualifying Medical Records demonstrate that he or she can satisfy the Medical Proof Criteria as set forth in Section XII of this Agreement with respect

to a claimed Tier 4 Qualifying Injury, including a diagnosis of such Qualifying Injury on or after the Primary Plaintiff's first date of alleged exposure giving rise to his or her Debris Removal Claims against the Insureds or any of them (referred to herein as "Verified Tier 4 Primary Plaintiffs"). If so, the Allocation Neutral shall determine the Verified Tier 4 Primary Plaintiff's Total Score by applying the Adjustment Factors set forth in Section XIII.B of this Agreement to the Base Points set forth on Exhibit C for the Primary Plaintiff's Tier 4 Primary Qualifying Injury.

If the Allocation Neutral determines that a Primary Plaintiff who submits a Claim Form alleging a Tier 4 Qualifying Injury does not satisfy the Tier 4 proof requirements set forth in this Section VIII.E, that Primary Plaintiff and any corresponding Derivative Plaintiff shall receive no additional payments under this Agreement but shall be entitled to retain their Initial Payments and the Primary Plaintiff shall still be required to enroll in the Cancer Insurance Policy, subject to its terms, conditions and exclusions, as set forth more fully in Section XVII of this Agreement and Exhibit E, unless the Allocation Neutral determines, for reasons other than material misrepresentation(s), material omission(s) or material concealment detected through an audit pursuant to Section XI.M or XI.N of this Agreement, that the Primary Plaintiff qualifies for Tier 2 or Tier 3. If so, Section VIII.C or VIII.D of this Agreement for Tier 2 and Tier 3, respectively, will govern the amount of any Preliminary Payments due to the Primary Plaintiff and any corresponding Derivative Plaintiff under the Final Settlement Agreement, except that such Primary Plaintiffs will have their respective Accelerated Final Payments reduced by Two Hundred and Fifty Dollars and No Cents (\$250.00) to reflect the increased Allocation Costs occasioned by their rejected Tier 4 claims.

A Verified Tier 4 Primary Plaintiff shall be entitled to an Interim Payment and a Final Distribution, if any, as set forth in Sections IX.C and XV.B of this Agreement, respectively. All Verified Tier 4 Primary Plaintiffs whose Primary Qualifying Injury is not a Pre-Existing Injury shall receive a Final Distribution that brings their respective combined Interim Payment and Final Distribution to at least One Thousand Dollars and No Cents (\$1,000.00) more than the Accelerated Final Payment for Primary Plaintiffs in Tier 3 of their Master Docket; provided, however, that as set forth in Section XIII.C of this Agreement, the Allocation Neutral retains the discretion to award any Verified Tier 4 Primary Plaintiff no Final Distribution if the Allocation Neutral concludes that the Verified Tier 4 Primary Plaintiff has materially misrepresented, materially omitted or materially concealed facts in his or her Claim Form and/or in the Qualifying Medical Records submitted therewith.

IX. PRELIMINARY PAYMENTS

A. Initial Payments

All Primary Plaintiffs and personal representatives of deceased Primary Plaintiffs' estates who meet the requirements of Sections VII.A or VII.C of this Agreement

shall receive an Initial Payment in the amount of Three Thousand Two Hundred and Fifty Dollars and No Cents (\$3,250.00) within twenty (20) days after the later of the Final Settlement Agreement Effective Date or the date upon which the Allocation Neutral determines that they meet those requirements.

Likewise, each corresponding Derivative Plaintiff who satisfies the eligibility requirements of Section VII.B of this Agreement shall receive an Initial Payment equal to three and one-half percent (3.5%) of the Initial Payment to the corresponding Primary Plaintiff twenty (20) days after the latest of (i) the Final Settlement Agreement Effective Date; (ii) the date upon which the Allocation Neutral determines that the corresponding Primary Plaintiff meets the requirements of Section VII.A of this Agreement; or (iii) the date upon which the Allocation Neutral determines that the Derivative Plaintiff meets the requirements of Section VII.B of this Agreement.

B. Accelerated Final Payments

Primary Plaintiffs and personal representatives of deceased Primary Plaintiffs' estates who meet the requirements of Sections VII.A or VII.C of this Agreement, respectively, and who satisfy the Tier 2 or Tier 3 proof requirements set forth in Sections VIII.C and VIII.D of this Agreement, respectively, shall be entitled, in addition to their respective Initial Payments, to the following Accelerated Final Payments within twenty-five (25) days of the later of the Final Settlement Agreement Effective Date or the Allocation Neutral's expedited determination that those proof requirements are met and the Primary Plaintiff is eligible for an Accelerated Final Payment, unless the Primary Plaintiff waives in a signed writing his or her right to submit a Reconsideration Request pursuant to Section XIV of this Agreement, in which case the following Accelerated Final Payments shall be paid within ten (10) days of the later of the Final Settlement Agreement Effective Date, the Allocation Neutral's expedited determination that the proof requirements are met, or the Allocation Neutral's receipt of such written waiver:

	Accelerated Final Payment for Master Docket 21 MC 100	Accelerated Final Payment for Master Docket 21 MC 102	Accelerated Final Payment for Master Docket 21 MC 103
Tier 1	Not applicable	Not applicable	Not applicable
Tier 2	\$4,250.00	\$1,085.00	\$1625.00
Tier 3	\$7,750.00	\$2,170.00	\$3,250.00
Tier 4	Not applicable	Not applicable	Not applicable

Verified Tier 4 Primary Plaintiffs and corresponding Derivative Plaintiffs shall not be entitled to any Accelerated Final Payment.

Each Derivative Plaintiff who satisfies the eligibility requirements of Section VII.B of this Agreement shall receive an Accelerated Final Payment equal to three and one-half percent (3.5%) of the Accelerated Final Payment to the corresponding Primary Plaintiff on the date of the Accelerated Final Payment to the corresponding Primary Plaintiff.

C. Interim Payments for Plaintiffs with Final Total Scores

All Verified Tier 4 Primary Plaintiffs and personal representatives of deceased Verified Tier 4 Primary Plaintiffs' estates who meet the requirements of Sections VII.A or VII.C of this Agreement, respectively, are eligible for Interim Payments as described in this Section IX.C. Consistent with the procedure provided in Section XIII of this Agreement, the Allocation Neutral will determine a Total Score for each Verified Tier 4 Primary Plaintiff, which will become a Final Total Score once the Allocation Neutral determines that the provisions pertaining to audits, Reconsideration Requests and Appeals in Sections IX.D and IX.E of this Agreement, respectively, do not apply to that Verified Tier 4 Primary Plaintiff. The Allocation Neutral will notify all Parties when it has established Final Total Scores for forty percent (40%) of all Primary Plaintiffs who claim Tier 4 Qualifying Injuries in a given Allocation Pool. Thereafter, if, in the Allocation Neutral's judgment, a sufficient number of those Primary Plaintiffs claiming Tier 4 Qualifying Injuries have been evaluated by the Allocation Neutral and, where applicable, the Claims Appeal Neutral to permit a reasonably accurate prediction of the monetary value of a Base Point for that Allocation Pool, the Allocation Neutral shall direct the WTC Captive to make Interim Payments to the Verified Tier 4 Primary Plaintiffs with Final Total Scores in that Allocation Pool and to corresponding Derivative Plaintiffs in the amount of forty percent (40%) of the projected value of each such Verified Tier 4 Primary Plaintiff's Final Distribution and corresponding Derivative Plaintiff's Final Distribution. Thereafter, the WTC Captive or its designee will have twenty (20) days from the date it receives this notification from the Allocation Neutral to make an Interim Payment equal to forty percent (40%) of the projected value of the Verified Tier 4 Primary Plaintiff's Final Distribution and the corresponding Derivative Plaintiff's Final Distribution.

During the Allocation Process, the Allocation Neutral will continuously reassess the projected value of a Base Point for each Allocation Pool, and will notify Plaintiffs' Liaison Counsel, Defendant Insureds' Counsel and the WTC Captive every two weeks of the revised projections. All Interim Payments will be based upon the Allocation Neutral's projection of the value of a Base Point for a given Verified Tier 4 Primary Plaintiff's Allocation Pool at the time an Interim Payment is made and, once made, Interim Payments shall not be subject to adjustment other than through the Final Distribution, if any.

D. Audit Limitation to Receipt of Accelerated Final Payments and Interim Payments

Notwithstanding any of the forgoing provisions of this Section IX, any Primary Plaintiff whose claims are selected by the Allocation Neutral for an audit pursuant to Section XI.M or XI.N of this Agreement shall not be entitled to an Accelerated Final Payment or an Interim Payment, if any, until completion of the audit as it pertains to that Primary Plaintiff.

E. Reconsideration Request and Appeal Limitation on Receipt of Accelerated Final Payments and Interim Payments

Notwithstanding any of the forgoing provisions of this Section IX, any Primary Plaintiff who submits a Reconsideration Request, or a Reconsideration Request and subsequent Appeal, pursuant to Section XIV of this Agreement shall not be entitled to receive an Accelerated Final Payment or an Interim Payment, if any is otherwise due hereunder, until the Allocation Process is final and binding as respects that Primary Plaintiff as set forth in Section XIV of this Agreement. Nothing in this Section IX.E shall prevent any Plaintiff from providing to the Allocation Neutral a signed waiver of his or her right to submit a Reconsideration Request in order to expedite his or her receipt of an Accelerated Final Payment or Interim Payment otherwise due under this Agreement.

F. Preliminary Payment Logistics

The WTC Captive or its designee shall pay jointly to Plaintiffs and to their respective counsel all Preliminary Payments required by this Section IX. Each Preliminary Payment shall be applied against that portion of the Settlement Amount allocated to the Master Docket to which the Preliminary Payment relates.

X. FINAL DISTRIBUTIONS TO TIER 4 PLAINTIFFS

A. Eligibility for Final Distributions

Only Verified Tier 4 Primary Plaintiffs together with any corresponding Derivative Plaintiffs shall be eligible for Final Distributions.

B. Amount of Final Distributions

Final Distributions to Verified Tier 4 Primary Plaintiffs entitled to receive Final Distributions as set forth in Section X.A of this Agreement shall be calculated according to the Point System and Final Distribution formula set forth in Sections XIII and XV.A of this Agreement, respectively.

With respect to Tier 4, a Derivative Plaintiff's Final Distribution, if any, shall be three and one-half percent (3.5%) of the Final Distribution, if any, to the corresponding Primary Plaintiff.

XI. THE CLAIMS APPEAL NEUTRAL, THE ALLOCATION NEUTRAL, THE MEDICAL PANEL AND THE ALLOCATION PROCESS GENERALLY

A. Appointment of the Claims Appeal Neutral, the Allocation Neutral and the Medical Panel

The Parties appoint Kenneth R. Feinberg, Esquire as the Claims Appeal Neutral. Mr. Feinberg shall serve as the Claims Appeal Neutral on a *pro bono* basis. The Claims Appeal Neutral will retain the services of temporary employees or an outside service provider to assist with Appeals on an as needed basis. The costs incurred for these services will be paid as Allocation Costs in accordance with Section XI.D of this Agreement. Parties also appoint Feinberg Rozen, LLP to assist the Claims Appeal Neutral with respect to Appeals submitted pursuant to Section XIV.C of this Agreement.

The Parties appoint Matthew L. Garretson, Esquire and the Garretson Firm Resolution Group, Inc. (“Garretson”) as the Allocation Neutral.

After consultation with the Claims Appeal Neutral, the Allocation Neutral shall retain within thirty (30) days of the Effective Date a panel of at least three (3) licensed physicians selected jointly by Plaintiffs’ Liaison Counsel, Defendant Insureds’ Counsel, and the WTC Captive (“Medical Panel”). The Medical Panel shall (i) establish with the Allocation Neutral a protocol to apply as part of the Allocation Process the Medical Proof Criteria set forth in Section XII of this Agreement and the Adjustment Factors set forth in Section XIII.B of this Agreement; (ii) assist the Allocation Neutral when physician expertise is required to apply the Medical Proof Criteria set forth in Section XII of this Agreement and/or the Adjustment Factors set forth in Section XIII.B of this Agreement in the context of particular Primary Plaintiffs’ submissions to the Allocation Neutral; and (iii) assist the Claims Appeal Neutral with medical issues arising in the context of a Primary Plaintiff’s Appeal pursuant to Section XIV.C of this Agreement if the Claims Appeal Neutral requests such assistance from the Medical Panel.

B. The Allocation Neutral’s and Claims Appeal Neutral’s Duties

The Allocation Neutral shall have the authority to perform all actions deemed by the Parties to be reasonably necessary for the efficient and timely administration of the Allocation Process. The Allocation Neutral shall carry out the Allocation Process in accordance with the timeline attached hereto as Exhibit J. The Parties shall enter into an Allocation Neutral Agreement. The Allocation Neutral Agreement shall authorize the Allocation Neutral to carry out the following tasks, in accordance with this Agreement:

- i. **Claim Review and Evaluation:** Establish evidentiary review procedures to detect and prevent the submission of fraudulent evidence; verify and evaluate Claim Forms and Qualifying Medical Records; apply Medical

Proof Criteria, apply Adjustment Factors where warranted as set forth in this Agreement, and implement the Point System; and determine each Plaintiff's Preliminary Payment(s), Final Distribution, Permanent Disability Fund award, Mixed Orthopedic Injury payment, and Qualifying Surgery payment(s), if any;

- ii. **Data Management:** Create and maintain a database to maintain all relevant data regarding each Plaintiff, including but not limited to Claim Forms; Qualifying Medical Records; Total Score calculation and rationale; any Preliminary Payments, Final Distribution, Permanent Disability Fund award, Mixed Orthopedic Injury payment, and Qualifying Surgery payment(s); communications to/from Plaintiffs (including but not limited to Notices of Ineligible Records, Deficiency Notices, Reconsideration Requests, Appeals, and notices of Total Score and Final Distribution); and any other data deemed relevant by the Parties, the Allocation Neutral, the Medical Panel and/or the Claims Appeal Neutral;
- iii. **Communication:** Coordinate and communicate as necessary with the Parties, their counsel, and others as directed by the Parties; design and maintain an official settlement website that provides the Parties and their respective counsel secure access to Allocation Process data; and coordinate with the Parties in drafting form letters for use in conveying Deficiency Notices, Preliminary Payments, Permanent Disability Fund awards, Qualifying Surgery payments, Mixed Orthopedic Injury payments, notices of Total Score, and Final Distributions, if any, to Plaintiffs;
- iv. **Periodic Status Reports:** Provide via its secure website regular reports to Plaintiffs' Liaison Counsel, Defendant Insureds' Counsel, the WTC Captive and its counsel, and the Claims Appeal Neutral regarding all tasks performed by the Allocation Neutral in accordance with the Agreement, including (i) the status of the Allocation Neutral's claims review and determinations; (ii) the number of Deficiency Notices issued and the status of Plaintiffs' responses thereto; (iii) the status of Preliminary Payments, Final Distributions, Permanent Disability Fund awards, Qualifying Surgery payments, and Mixed Orthopedic Injury payments; (iv) the number and status of Reconsideration Requests; (v) the number and status of Appeals; (vi) the status of lien resolution by the Lien Resolution Administrator; (vii) the projected Final Point Value in each Master Docket; and (viii) the timing of the Allocation Process in compliance with Exhibit J to this Agreement.
- v. **Calculation of Interim Payments and Final Distributions:** Calculate Interim Payments and Final Distributions based upon the Medical Proof Criteria, Adjustment Factors, and application of the Point System; and

- vi. **Administration of Settlement Proceeds:** Coordinate with the WTC Captive and Plaintiffs' Liaison Counsel to render Preliminary Payments, Permanent Disability Fund awards, Qualifying Surgery payments, Mixed Orthopedic Injury payments, and Final Distributions, if any, to Plaintiffs; manage disbursement data; obtain information from Plaintiffs identifying lien holders and government payors that have paid for and/or reimbursed Plaintiffs for expenses or losses related to Debris Removal Claims, and confirm that all such liens or other claims have been satisfied by the Plaintiff; remit payment of service provider fees and costs as approved by the Parties; perform necessary tax accounting; and respond to the Parties' requests for financial data.

This list of tasks is not exhaustive, and the Allocation Neutral may develop a final, exhaustive list of procedures required to carry out the efficient and timely administration of the Allocation Process consistent with this Agreement, including but not limited to the Allocation Process Timeline attached hereto as Exhibit J.

The Claims Appeal Neutral's duties are specified in Section XIV.C of this Agreement.

C. Limitations on the Allocation Neutral's and Claims Appeal Neutral's Duties

Neither the Allocation Neutral nor the Claims Appeal Neutral shall provide any legal advice to any Party or Parties, including with respect to:

- i. The merits and/or terms of this Agreement and/or the Final Settlement Agreement; or
- ii. The nature, value and/or sufficiency of the Settlement Amount, the Cancer Insurance Policy, the Permanent Disability Fund, any Contingent Payments and/or any other payments described in this Agreement and/or in the Final Settlement Agreement.

Nothing in this Agreement shall relieve any counsel of his or her sole responsibility, or otherwise alter or transfer that responsibility, to advise his or her respective client or clients concerning all matters set forth in Agreement, including without limitation all notices from and determinations by the Allocation Neutral and the Claims Appeal Neutral with respect to Plaintiffs or to any Plaintiff.

D. Payment of Allocation Costs

In addition to the Settlement Amount and its other payments potentially due hereunder, the WTC Captive shall pay the reasonable fees, costs and expenses of the Allocation Neutral, the Lien Resolution Administrator, the Medical Panel and Feinberg Rozen, LLP (collectively, "Allocation Costs") up to and including Three Million Five Hundred Thousand Dollars and No Cents (\$3,500,000.00).

Thereafter, if Other Defendants become parties to the Final Settlement Agreement pursuant to Section XXI.P of this Agreement or if Other Defendants or the London Marine Insurers otherwise participate in the Allocation Process or any aspect thereof pursuant to separate settlements with Plaintiffs in any Master Docket(s), as evidenced by a settlement agreement, memorandum of understanding, or other binding contract evidencing a commitment to so participate, executed on or before September 1, 2010, those Other Defendants and the London Marine Insurers shall pay to the Allocation Neutral a contribution towards Allocation Costs totaling (i) five percent (5%) of the first One Million Dollars and No Cents (\$1,000,000.00) of their respective settlements with Plaintiffs plus (ii) one percent (1%) of the amount of their respective settlements with Plaintiffs exceeding the first One Million Dollars and No Cents (\$1,000,000.00) thereof. Thereafter, if Other Defendants become parties to the Final Settlement Agreement pursuant to Section XXI.P of this Agreement or if Other Defendants or the London Marine Insurers otherwise participate in the Allocation Process or any aspect thereof pursuant to separate settlements with Plaintiffs in any Master Docket(s), those Other Defendants and the London Marine Insurers shall pay to the Allocation Neutral a contribution towards Allocation Costs totaling (i) ten percent (10%) of the first One Million Dollars and No Cents (\$1,000,000.00) of their respective settlements with Plaintiffs plus (ii) five percent (5%) of the amount of their respective settlements with Plaintiffs exceeding the first One Million Dollars and No Cents (\$1,000,000.00). These monies shall be in addition to the monies paid to Plaintiffs and not reduce their award in any way. The Allocation Neutral shall credit these funds against Allocation Costs solely as provided in this Section XI.D and, after the Effective Date, no Plaintiff shall settle with any Other Defendant or the London Marine Insurers without their respective written agreement to contribute to Allocation Costs in the manner specified in this Section XI.D. In addition to its contributions to Allocation Costs as set forth above, settling Other Defendants and London Marine Insurers shall pay all fees, costs and expenses relating to the allocation of their respective settlements that exceed the scope of the Allocation Process described herein, including without limitation fees, costs and expenses relating to adding litigants or claimants other than the Parties to the Allocation Process.

If the WTC Captive's payments and settling Other Defendants' and London Marine Insurers' contributions to Allocation Costs required by this Section XI.D exceed total Allocation Costs, at the end of the Allocation Process all such excess monies shall be apportioned by the Allocation Neutral among and paid to all Verified Tier 4 Primary Plaintiffs and corresponding Derivative Plaintiffs in proportion to their respective Final Distributions.

Alternatively, if any Allocation Costs remain after all payments by the WTC Captive and settling Other Defendants' and London Marine Insurers' contributions to Allocation Costs required by this Section XI.D, such remaining Allocation Costs shall be paid (i) with interest earned on the Settlement Amount from the Effective Date through the date that the Separate Account referenced in Section III.A is funded fully by the WTC Captive and, thereafter, (ii) with interest

earned on the balance held in that Separate Account through the end of the Allocation Process. Any interest described in this Section XI.D that remains after payment of all Allocation Costs shall be apportioned among the Master Dockets and the Permanent Disability Fund in proportion to the allocation of the Settlement Amount among the Master Dockets and the Permanent Disability Fund specified in Sections II.B.i and II.B.iii of this Agreement, respectively.

Allocation Costs also shall be fixed by separate retainer agreements with the Allocation Neutral (including the Lien Resolution Administrator), the Medical Panel and Feinberg Rozen, LLP, respectively. Under no circumstances shall the WTC Captive or the Insureds pay, nor shall any interest described in this Section XI.D be used to satisfy, any Allocation Costs exceeding these fixed amounts.

In addition, if the Parties retain the Allocation Neutral, the Lien Resolution Administrator, Feinberg Rozen, LLP and/or the Medical Panel before the Final Settlement Agreement Effective Date, the WTC Captive shall pay in full their respective retainer fee(s) due before that date; provided, however, that any such payment(s) by the WTC Captive prior to the Final Settlement Agreement Effective Date shall be credited against its obligation to pay Allocation Costs as set forth in this Section XI.D.

The Parties also acknowledge that Plaintiffs' counsel will retain an experienced legal ethics consultant to assist them develop appropriate written communications to Plaintiffs explaining this Agreement. The fees, costs and expenses of this consultant are not included within Allocation Costs and shall not otherwise be paid by the WTC Captive, the Insureds or any of them.

E. Allocation Neutral and Claims Appeal Neutral Retainer Agreements

The Parties shall enter into separate retainer agreements with the Allocation Neutral ("Allocation Neutral Agreement"), on the one hand, and with the Claims Appeal Neutral ("Claims Appeal Neutral Agreement"), on the other hand.

The Allocation Neutral Agreement and Claims Appeal Neutral Agreement shall require the Parties to hold harmless the Allocation Neutral and his or her staff and the Claims Appeal Neutral and his or her staff, respectively, with respect to any and all determinations of Plaintiffs' respective payments, if any, under the Final Settlement Agreement and shall require the Parties to defend and indemnify the Allocation Neutral and his or her staff and the Claims Appeal Neutral and his or her staff in the event of any claims against them or any of them relating in any way to this Agreement, the Final Settlement Agreement and/or to the Allocation Neutral Agreement or to the Claims Appeal Neutral Agreement.

F. Allocation Neutral Website

The Allocation Neutral shall establish a secure website to facilitate the transmission of and access to in electronic form all submissions to and communications from the Allocation Neutral and/or the Claims Appeal Neutral

authorized or required by this Agreement. This website shall be hosted in a secure environment. The Parties and their respective counsel shall make all submissions to the Allocation Neutral and to the Claims Appeal Neutral, and the Allocation Neutral and the Claims Appeal Neutral shall communicate with the Parties and their respective counsel, by uploading or transferring electronically documents to the secure website.

The Hon. Alvin K. Hellerstein of the United States District Court for the Southern District of New York (hereinafter, "Court") and the Court's judicial officers and staff, the Claims Appeal Neutral, the Medical Panel, Plaintiffs' Liaison Counsel, Defendant Insureds' Counsel and the WTC Captive and its counsel shall have access to all postings to the Allocation Neutral's website; provided, however, that if a Plaintiff objects to such access by the Court and its judicial officers and staff on the basis of the Plaintiff's medical confidentiality or privacy rights, the Plaintiff's counsel shall submit a letter to the Allocation Neutral interposing the objection and the Allocation Neutral shall restrict the Court's and its judicial officers' and staff's access, in its sole discretion, to the least extent possible consistent with the Plaintiff's objection.

G. Electronic Communications with the Allocation Neutral and the Claims Appeal Neutral

All submissions to the Allocation Neutral or the Claims Appeal Neutral and all notices and other communications from the Allocation Neutral or Claims Appeal Neutral to the Parties and/or their respective counsel shall be transmitted electronically for sake of efficiency and to reduce costs, and shall be deemed confidential. The Claims Appeal Neutral, the Allocation Neutral, Plaintiffs' Liaison Counsel, Defendant Insureds' Counsel and the WTC Captive shall have reasonable access to all such submissions, notices and communications.

H. City of New York Production of Additional Medical, Pharmaceutical and Accidental Disability Records and Confirmation of Date(s) of WTC Service

With respect to Primary Plaintiffs (i) who allege employment by the City of New York giving rise to their respective Debris Removal Claims, (ii) who allege on the Eligible Plaintiff List a Tier 4 Qualifying Injury, (iii) whose names, social security numbers and alleged employing City agency(ies) or department(s) information is listed in a letter sent by Plaintiffs' Liaison Counsel to Defendant Insureds' Counsel within ten (10) days after the Effective Date, (iv) who execute Releases and Covenants Not to Sue in the form attached as Exhibit P to this Agreement, and (v) for whom the City of New York has not provided through its discovery responses in any Master Docket the information necessary for the Primary Plaintiff to affirm in his or her respective Claim Form his or her first and last date and duration of alleged exposure, the City of New York shall within sixty (60) days of the Effective Date or thirty (30) days after the Primary Plaintiff provides an executed Release and Covenant Not to Sue, whichever is later, (a) provide such information to Plaintiffs' Liaison Counsel or (b) state that despite a diligent search

it failed to locate any record of the Primary Plaintiff's alleged employment. If a Primary Plaintiff claims that the City of New York failed to comply with the requirements of this paragraph, notwithstanding the Interim Stay that Primary Plaintiff shall have the right to subpoena, by service on Defendant Insureds' Counsel, the referenced information. In addition, the City of New York's confirmation of a Primary Plaintiff's dates of 9/11-related employment pursuant to this paragraph shall satisfy the Work Verification Procedure set forth in Exhibit B to this Agreement with respect to that Primary Plaintiff. Furthermore, with respect to Primary Plaintiffs who satisfy the requirements of only clauses (i) and (iii)-(v) of this paragraph, the City of New York shall confirm its employment, if any, of the Primary Plaintiff with respect to his or her alleged work giving rise to his or her Debris Removal Claims. Such confirmation, if any, shall constitute a primary source for purposes of the Work Verification Procedure set forth in Exhibit B to this Agreement.

With respect to Primary Plaintiffs (i) who received medical care directly from the City of New York relating to their alleged Qualifying Injury(ies), (ii) whose names, social security numbers and alleged employing City agency(ies) or City department(s) information is listed in a letter sent by Plaintiffs' Liaison Counsel to Defendant Insureds' Counsel with fifteen (15) days of the Effective Date, (iii) who within fifteen (15) days of the Effective Date provide HIPAA-compliant releases to Defendant Insureds' Counsel authorizing the City of New York to release all of the Primary Plaintiff's medical records in its possession, custody or control, (iv) who execute Releases and Covenants Not to Sue in the form attached as Exhibit P to this Agreement, and (v) for whom the City of New York has not produced in any Master Docket any medical records concerning the Primary Plaintiff, the City of New York shall within seventy-five (75) days of the Effective Date or thirty (30) days after the Primary Plaintiff provides an executed Release and Covenant Not to Sue, whichever is later, (a) produce all medical and pharmaceutical records in its possession, custody or control to the Plaintiffs' Liaison Counsel or (b) state that despite a diligent search it failed to locate any such records in its possession, custody or control. If a Primary Plaintiff claims that the City of New York failed to comply with the requirements of this paragraph, notwithstanding the Interim Stay that Primary Plaintiff shall have the right to subpoena, by service on Defendant Insureds' Counsel, the referenced records. In addition, for Primary Plaintiffs who satisfy all of the requirements of this paragraph except clause (v), the City of New York shall seek to cause Express Scripts, Inc. to produce all pharmaceutical records in its possession relating to the Primary Plaintiff and, if Express Scripts, Inc. fails to do so, notwithstanding the Interim Stay such Primary Plaintiff may subpoena Express Scripts, Inc. directly.

With respect to Primary Plaintiffs (i) who were employed by the City of New York at the time of their alleged exposure giving rise to their respective Debris Removal Claims, (ii) who have applied for accidental disability or accident disability benefits (hereinafter "accidental disability") or line of duty death benefits or who receive (or, in the case of death benefits, whose heirs or assigns receive) such benefits that the Primary Plaintiff claims relate, in whole or in part,

to his or her Debris Removal Claims, (iii) whose names, social security numbers and alleged employing City agency(ies) or City department(s) information is listed in a letter sent by Plaintiffs' Liaison Counsel to Defendant Insureds' Counsel on or before April 12, 2010, (iv) who within fifteen (15) days of the Effective Date provide a HIPAA-compliant release authorizing the release all of the Primary Plaintiff's accidental disability or line of duty death benefits documentation, (v) who execute Releases and Covenants Not to Sue attached as Exhibit P to this Agreement, and (vi) who claim eligibility for the Permanent Disability Fund on the Eligible Plaintiff List, the City of New York shall cooperate with the Primary Plaintiffs' reasonable efforts to secure the production by the New York City Fire Department Pension Fund or the Police Pension Fund of the Police Department of the City of New York of all of their respective files concerning the Primary Plaintiffs' accidental disability or line of duty death benefits or the application for those benefits, including with respect to subpoenas issued by such Primary Plaintiffs' respective counsel to the New York City Fire Department Pension Fund or to the Police Pension Fund of the Police Department of the City of New York pursuant to Section XX.B of this Agreement. Plaintiffs who have endeavored in good faith to satisfy the conditions in clauses (i) through (vi) of this paragraph also shall have the right to subpoena their respective New York City Fire Department Pension Fund or Police Pension Fund of the Police Department of the City of New York records notwithstanding the Interim Stay by service of such subpoena(s) on the New York City Fire Department Pension Fund or the Police Pension Fund of the Police Department of the City of New York.

In addition, for purposes of the Work Verification Procedure set forth in Exhibit B to this Agreement, the City of New York shall search Fire Department of New York records for copies of letters awarding ribbons commemorating the service of active and retired Fire Department of New York personnel during World Trade Center recovery operations (hereinafter, "FDNY WTC Ribbon Letters"). With respect to Primary Plaintiffs who are active or retired Fire Department of New York personnel but whose names are not listed on the "pre-approved list" referenced in Exhibit B to this Agreement, the City of New York shall produce to Plaintiffs' Liaison Counsel within seventy-five (75) days after the Effective Date copies of all FDNY WTC Ribbon Letters located as a result of this search, provided that Plaintiffs' Liaison Counsel sends a list of all such Plaintiffs to Defendant Insureds' Counsel within fifteen (15) days after the Effective Date.

I. Claim Form and Qualifying Medical Records

Counsel for each Primary Plaintiff who claims eligibility for any Tier shall submit to the Allocation Neutral a Claim Form on behalf of the Primary Plaintiff and any corresponding Derivative Plaintiff. Plaintiffs (including Derivative Plaintiffs and Personal Representatives of deceased Plaintiffs' estates, where applicable) shall sign their respective Claim Forms under penalty of perjury before a notary public.

The purpose of the Claim Form is to simplify and streamline the Allocation Neutral's work to the extent reasonably possible and, together with the Medical

Proof Criteria, to ensure consistency of awards among individual Plaintiffs. Claim Forms will be submitted in the form of Exhibit L to this Agreement. In addition to claimed Qualifying Injury(ies), the Claim Forms shall address the requirements for a Permanent Disability Fund award, for a Mixed Orthopedic Injury payment, and/or for a Qualifying Surgery payment.

Each Claim Form shall list any Qualifying Injuries claimed by the Primary Plaintiff and attach Qualifying Medical Records to enable the Allocation Neutral to verify each such Qualifying Injury. Claim Forms shall only attach, and the Allocation Neutral shall only consider, Qualifying Medical Records. In addition, Primary Plaintiffs who seek recovery for a Qualifying Surgery or Mixed Orthopedic Injury shall address those claims in their respective Claim Forms and attach Qualifying Medical Records, together with any other records necessary to establish that the alleged Mixed Orthopedic Injury occurred in the course of the Primary Plaintiff's work or other volunteer service at the WTC Site or at another location at which he or she alleges exposure giving rise to his or her Debris Removal Claims. Separately, Primary Plaintiffs who submit Claim Forms alleging a Tier 4 Qualifying Injury must provide all reasonably available information relevant to the Allocation Neutral's evaluation and application of the Adjustment Factors identified in Section XIII.B of this Agreement.

All Claim Forms shall identify all known lien holders and other claims by third party payors as required by Section XVIII of this Agreement. Plaintiffs shall represent and warrant by submitting their Claim Form that any such liens or other claims have been or will be satisfied, compromised or otherwise resolved by the Plaintiff prior to receipt of any payments pursuant to this Agreement.

Primary Plaintiffs who claim eligibility for the Permanent Disability Fund shall address all eligibility criteria for the Permanent Disability Fund as set forth in Section XVII of this Agreement in their respective Claim Forms.

Each Claim Form shall state whether the Primary Plaintiff ever received a monetary award from the September 11th Victim Compensation Fund for purposes of determining the Primary Plaintiff's eligibility, if any, for payments pursuant to Section VII.A.

A Plaintiff's Claim Form, including the Qualifying Medical Records submitted with the Claim Form, shall constitute a Plaintiff's entire submission to the Allocation Neutral. For sake of efficiency and to ensure fairness and objectivity, no Plaintiff shall be entitled to a live hearing with the Allocation Neutral or the Claims Appeal Neutral, nor shall any Plaintiff communicate with the Allocation Neutral or Claims Appeal Neutral in any manner not set forth in this Agreement.

A Plaintiff's Claim Form may be submitted to the Allocation Neutral together with the Plaintiff's submission of an executed Release and Covenant Not to Sue, but shall be submitted to the Allocation Neutral on or before forty-five (45) days after the Final Settlement Agreement Effective Date.

J. Notice of Ineligible Records

Fifteen (15) days after receiving any Claim Form, the WTC Captive, its counsel or its non-attorney designee shall provide a Notice of Ineligible Records, if applicable, to the Allocation Neutral and counsel for the Plaintiff(s) affected by such Notice of Ineligible Records. Notices of Ineligible Records shall identify all medical record(s) submitted with any Claim Form that do not constitute Qualifying Medical Records; however, no Notice of Ineligible Records shall be used for any other purpose or contain any other information. The affected Plaintiff's counsel shall then have an opportunity to respond to such a Notice of Ineligible Records, but only by providing additional Qualifying Medical Records and/or by demonstrating to the Allocation Neutral's satisfaction that the records previously produced meet the definition of Qualifying Medical Records. The Allocation Neutral shall decide the outcome of any such dispute concerning a Notice of Ineligible Records; provided, however, that the Allocation Neutral shall do so consistent with the principle that Plaintiffs have agreed that records that do not meet the definition of Qualifying Medical Records shall not be considered by the Allocation Neutral when evaluating any Primary Plaintiff's Qualifying Injury(ies), if any, or his or her eligibility, if any, for Qualifying Surgery payments, or Mixed Orthopedic Injury payments.

K. Deficiency Notices

If the Allocation Neutral considers any Claim Form, including some or all of the Qualifying Medical Records submitted therewith, to be deficient in any respect, the Allocation Neutral shall provide a Deficiency Notice to the Primary Plaintiff's counsel, with copies to the WTC Captive and Defendant Insureds' Counsel, regardless of whether the deficiency pertains to the Primary Plaintiff and/or any corresponding Derivative Plaintiff. Following receipt of a Deficiency Notice, the Plaintiff's counsel shall have fifteen (15) days to respond to the Allocation Neutral. This response shall be limited to a revised Claim Form, if appropriate in the Plaintiff's counsel's judgment, additional Qualifying Medical Records, if available, and/or additional records pertaining to the Work Verification Procedure. A Plaintiff who fails to timely respond to a Deficiency Notice and/or who timely responds but who, in the Allocation Neutral's judgment, fails to address some or all of the deficiencies identified in the Deficiency Notice shall not be entitled to any payment under this Agreement to which the deficiency relates, in whole or in part, other than his or her respective Initial Payment if that Initial Payment was issued prior to issuance of the Deficiency Notice.

L. HIPAA-Compliant Release Forms

Together with their respective Claim Forms, all Primary Plaintiffs electing to participate in the Allocation Process for Tier 3 or Tier 4 shall provide a HIPAA-compliant release authorizing the Allocation Neutral to collect any and all medical records pertaining to the Primary Plaintiff. This HIPAA-compliant release shall not be limited to specific medical providers or by the date that the

Primary Plaintiff's medical records were generated. Such HIPAA-compliant releases shall only be used in conjunction with audit(s) conducted pursuant to Sections XI.M and XI.N of this Agreement, and shall be destroyed at the conclusion of the Allocation Process. A Primary Plaintiff who claims a Tier 3 Qualifying Injury or Tier 4 Qualifying Injury, but who fails to submit to the Allocation Neutral this HIPAA-compliant release by the deadlines for submission of Claim Forms as set forth in Exhibit J, shall not be eligible for any Accelerated Final Payment, Interim Payment or Final Distribution until he or she submits the required HIPAA-compliant release. The Allocation Neutral shall provide written notice to Primary Plaintiffs who fail to comply with this Section XI.L and thereafter shall afford such Primary Plaintiffs a reasonable opportunity to cure such non-compliance. Failure to so cure shall result in the Primary Plaintiff's waiver of any payments otherwise due under the Final Settlement Agreement, but shall not affect in any way the validity of such Primary Plaintiff's Release and Covenant Not to Sue.

M. Tier 3 and Tier 4 Random Audits

No audits shall be conducted with respect to Tier 1 or Tier 2 claims.

Primary Plaintiffs claiming a Tier 3 Primary Qualifying Injury or a Tier 4 Primary Qualifying Injury are subject to audit, as set forth in this Section XI.M. To select Tier 3 and Tier 4 Primary Plaintiffs for audit, the Allocation Neutral shall draw a random sample of (i) five percent (5%) of all Primary Plaintiffs who submit Claim Forms alleging a Tier 3 Primary Qualifying Injury and (ii) five percent (5%) of all Primary Plaintiffs who submit Claim Forms alleging a Tier 4 Primary Qualifying Injury. Upon selecting a Primary Plaintiff for audit in this fashion, the Allocation Neutral shall:

- i. Notify Plaintiffs' Liaison Counsel of the audit and direct that, within twenty (20) days, the affected Primary Plaintiff submit to the Allocation Neutral all of the Primary Plaintiff's medical records in his or her and in his or her counsel's possession;
- ii. Direct that Primary Plaintiff's counsel provide a list of all medical providers seen by the Primary Plaintiff since 1995; and
- iii. Exercise to the extent reasonably necessary in the Allocation Neutral's judgment the rights provided in the HIPAA-compliant release to obtain the audited Primary Plaintiff's medical records from health care providers.

The Allocation Neutral shall upload or transfer to the secure website, as provided in Section XI.F of this Agreement, any medical records received in conjunction with an audit. All records received in connection with the audit process shall be considered Qualifying Medical Records for purposes of calculating the audited Primary Plaintiffs' respective Total Scores and evaluating their Qualifying Injuries, if any.

Tier 3 audits shall be limited to assessing whether the statements in the Primary Plaintiff's Claim Form and Qualifying Medical Records materially misrepresent, materially omit or materially conceal facts that affect the Primary Plaintiff's ability to meet the Tier 3 proof requirements set forth in Section VIII.D of this Agreement. Tier 3 audits shall be conducted by the Allocation Neutral as quickly as reasonably possible, consistent with the expedited nature of Tier 3 review, as set forth in Exhibit J.

Tier 4 audits shall be limited to assessing whether the statements in the Primary Plaintiff's Claim Form and Qualifying Medical Records materially misrepresent, materially omit or materially conceal facts that affect the Primary Plaintiff's Total Score. Tier 4 audits shall be conducted within the timeframe for completion of the Tier 4 Allocation Process as set forth in Exhibit J.

Subject to the limitations of two preceding paragraphs with respect to Tier 3 and Tier 4 audits, if as a result of any Tier 3 or Tier 4 audit the Allocation Neutral determines that material misrepresentation, material omission or material concealment has occurred that is not attributable to any clerical error or other inadvertent act or omission, the Allocation Neutral shall (a) direct that no further payment otherwise due hereunder be made to the affected Primary Plaintiff and corresponding Derivative Plaintiff, if any; (b) notify the Insureds and the WTC Captive, which shall have the right, if any, to bring a claim against the affected Primary Plaintiff and corresponding Derivative Plaintiff, if any, for damages, including return of any payments already made to him or her; and (c) report the Primary Plaintiff to the authorities responsible for bringing perjury charges and send those authorities all documents that the Allocation Neutral considers evidence of perjury. Plaintiffs agree that the consequences of any audit shall in no way affect the validity of their Releases and Covenants Not to Sue.

All of the Allocation Neutral's reasonable costs, fees and expenses pertaining to Tier 3 and Tier 4 random audits shall be paid in accordance with Section XI.D of this Agreement.

N. Tier 3 and Tier 4 Targeted Audits

If more than ten percent (10%) of Tier 3 and/or Tier 4 claims selected for random audits as provided in Section XI.M of this Agreement result in findings by the Allocation Neutral of material misrepresentation, material omission or material concealment of the type delineated in Section XI.M of this Agreement, the Allocation Neutral shall conduct a further audit of another five percent (5%) of the affected Tier or Tiers. To select Primary Plaintiffs for these further audit(s), if any, the Allocation Neutral shall target Primary Plaintiffs for whom the Allocation Neutral determines, based upon his or her experience with the Allocation Process, the Claim Forms, the Medical Proof Criteria, and the application of Adjustment Factors, that additional medical records are likely to disclose material misrepresentations, material omissions or material concealment affecting Tier 4 Plaintiffs' Total Scores or satisfaction of Tier 3's proof

requirements. These non-random, targeted audits, if any, will be conducted in the same manner and with the same consequences as the random audits conducted pursuant to Section XI.M of this Agreement; provided, however, that if either of these targeted audit(s) results in the findings of material misrepresentations, material omissions or material concealment affecting greater than 10% of the targeted Primary Plaintiffs' claims, all of the Allocation Costs resulting from the targeted audit(s) shall be applied against Settlement Amount principal.

O. Timing of the Allocation Process

The Allocation Neutral and Claims Appeal Neutral shall use best efforts to complete the Allocation Process, all random audits required by Section XI.M of this Agreement, and the targeted audit(s), if any, authorized pursuant to Section XI.N of this Agreement on the schedule set forth in Exhibit J to this Agreement. The Parties will cooperate with the Allocation Neutral and the Claims Appeal Neutral in all respects to complete the Allocation Process and all audits within the time for doing so proscribed in Exhibit J hereto.

Consistent with Exhibit J, the Allocation Neutral's Tier 1, Tier 2, and Tier 3 determinations and all Initial Payments and Accelerated Final Payments, except payments to Plaintiffs selected for any audit, shall proceed on an expedited basis, subject to the requirements of Section IX of this Agreement.

P. Confidentiality of the Allocation Process

All communications with the Allocation Neutral, including without limitation all Primary Plaintiffs' submissions to the Allocation Neutral of Claim Forms and Qualifying Medical Records, and all submissions to and determinations by the Claims Appeal Neutral shall remain confidential and are subject to Federal Rule of Evidence 408 and all similar state evidentiary rules governing the admissibility of settlement communications; provided, however, that all communications with the Allocation Neutral or the Claims Appeal Neutral shall be available to the WTC Captive and the Insureds and their respective counsel and can be used for any purpose in connection with the Allocation Process and/or in any litigation resulting from or arising out of a material misrepresentation, material omission or material concealment by a Plaintiff and/or his or her counsel that is detected by the Allocation Neutral and/or in any litigation to enforce this Agreement or a Plaintiff's Release and Covenant Not to Sue; provided further, however, that this Section XI.P shall not limit in any way the WTC Captive's, the Insureds', Other Defendants' and/or any of their use of any Primary Plaintiff's responses to the Federal Rule of Civil Procedure 33 interrogatories referenced in Sections VI.A and XIII.B.viii of this Agreement.

In addition, and without limiting any of the provisions of the preceding paragraph of this Section XI.P or the website access provisions in Section XI.F of this Agreement, neither the Allocation Neutral, the Claims Appeal Neutral, the Medical Panel, the WTC Captive, the Insureds or any of them, the Court or its

judicial officers or staff, nor any other person may disclose any individual Primary Plaintiff's name, Social Security Number, civil action number, Qualifying Medical Records, Qualifying Injury(ies) as determined by the Allocation Neutral and/or the Claims Appeal Neutral, or other information concerning a Primary Plaintiff to the extent that such disclosure would reveal to any other Plaintiff, other Plaintiff's counsel (other than Plaintiffs' Liaison Counsel), or to any other third parties a particular Primary Plaintiff's Qualifying Medical Records and/or Qualifying Injuries as determined by the Allocation Neutral or the Claims Appeal Neutral due to privacy issues, including the protections afforded to Primary Plaintiffs under the Health Insurance Portability and Accountability Act of 1996 (hereinafter, "HIPAA"); provided, however, that the Allocation Neutral, the WTC Captive and the Insureds shall be under no such obligations with respect to (i) any claim(s) or requests for medical records arising out of an audit referenced in Sections XI.M and XI.N of this Agreement; (ii) any action to enforce this Agreement; and/or (iii) any action to enforce a Primary Plaintiff's executed Release and Covenant Not to Sue.

XII. MEDICAL PROOF CRITERIA

The Allocation Neutral shall apply the Medical Proof Criteria set forth in the tables below to verify Tier 2 Qualifying Injuries as set forth in Section VIII.C of this Agreement, Tier 3 Qualifying Injuries as set forth in Section VIII.D of this Agreement, and Tier 4 Qualifying Injuries as set forth in Section VIII.E of this Agreement. For organizational purposes, the tables below group all Qualifying Injuries into disease groups ("Disease Groups").

With the exception of Mixed Orthopedic Injuries and Qualifying Surgeries, the evaluation of which are governed by Sections XVIII.A and XVIII.B of this Agreement, respectively, when the Allocation Neutral is evaluating a Primary Plaintiff's Claim Form and Qualifying Medical Records in connection with the Allocation Process, the Allocation Neutral shall credit only those injuries and impairment allegations alleged in the Claim Form and verified according to the Medical Proof Criteria through an evaluation of Qualifying Medical Records provided by the Primary Plaintiff, as required under Section XI.I of this Agreement.

To constitute a Qualifying Injury, an alleged injury must satisfy all three of the following components of the Medical Proof Criteria: (i) it must be one of the "Qualifying Injuries" listed expressly in the tables below; (ii) it must meet the "Diagnostic Criteria" applicable to the Disease Group in which the Qualifying Injury is listed in the tables below; and (iii) it must satisfy the "Impairment Criteria" for the Disease Group in which the Qualifying Injury is listed in the tables below.

The Medical Proof Criteria tables are set forth below:

<h1>Chronic Obstructive Pulmonary Disease</h1>	
1. Qualifying Injuries	
<p>The Qualifying Injuries in this disease group are COPD, Chronic Bronchitis, Emphysema, Bullous Lung Disease, Small Airway(s) Disease and Obstructive Airway(s) Disease.</p> <p>Obstructive Lung Defect, Small Obstructive Lung Defect, Ground Glass Syndrome, Peripheral Airway(s) Dysfunction, WTC Cough and Chronic Cough are examples of medical conditions, findings or observations that, in the absence of a Qualifying Injury, shall not be credited by the Allocation Neutral.</p>	
2. Diagnostic Criteria	
Severity Level	Medical Verification Requirements
A0 & A1	Physician Diagnosis of Qualifying Injury in the COPD disease group.
A2 to A4	<p>Spirometry tests: Post-bronchodilator FEV₁/FVC ≤0.7 (≤70%) (use post-BD when possible; otherwise, use pre-BD value) <i>Source: European Respiratory Society/American Thoracic Society COPD Guidelines – 2005</i></p> <p>OR</p> <p>For Emphysema only, a CT Scan that states as a conclusion any or all of the following: Emphysema (panlobular, panacinar or paraseptal), Bullous disease, or giant bullae; provided, however, that conclusions on a CT Scan reflecting mild or minor emphysematous changes, air-trapping, pneumatoceles, cysts or cystic disease, and/or bronchiectasis shall not qualify.</p>
3. Impairment Criteria	
Severity Level	Criteria
A0	No further requirements.
A1	<p>Pulmonary Function Test results showing: FVC ≤79% of predicted OR FEV₁ of ≤79% of predicted; OR</p> <p>Carbon Monoxide Diffusion Capacity Test results showing: DLCO of ≤74% of predicted; OR</p> <p>Cardio-Pulmonary Stress Test results showing: VO₂ max of ≤25ml/(kg·min) OR VO₂ max of ≤7.1 METs.</p>
<p>To prove impairment for Severity Levels exceeding A1:</p> <p>A Primary Plaintiff must submit the results from any two Pulmonary Function Test(s) (“PFTs”), Carbon Monoxide Diffusion Capacity Test(s), and/or Cardio-Pulmonary Stress Test(s). The Primary Plaintiff’s most recent test must be included among those two tests and must meet the Impairment Criteria for Severity Level A2, A3 or A4. The other test must be at least three months prior to the most recent test, and must satisfy, at a minimum, the Impairment Criteria for Severity Level A1. To determine the Base Points for such a Primary Plaintiff’s Qualifying Injury, the Allocation Neutral shall average the Base Points specified on Exhibit C to this Agreement for these two tests.</p> <p>The preceding paragraph shall not apply to deceased Primary Plaintiffs, however. Deceased Primary Plaintiffs may satisfy the Impairment Criteria for Severity Level A2, A3 or A4, respectively, by submitting the results of any one (1) test that complies with the requirements for the claimed Severity Level as set forth below.</p>	

A2	<p>Pulmonary Function Test results showing: FVC 60% to 69% of predicted <i>or</i> FEV₁ 55% to 64% of predicted; OR Carbon Monoxide Diffusion Capacity Test results showing: DLCO of 55% to 64% of predicted; OR Cardio-Pulmonary Stress Test results showing: VO₂ max of 18 to 21ml/(kg·min) <i>or</i> VO₂ max of 5.1 to 6.0 METs.</p>
A3	<p>Pulmonary Function Test results showing: FVC 50% to 59% of predicted <i>or</i> FEV₁ 45% to 54% of predicted; OR Carbon Monoxide Diffusion Capacity Test results showing: DLCO of 45% to 54% of predicted; OR Cardio-Pulmonary Stress Test results showing: VO₂ max of 15 to 17ml/(kg·min) <i>or</i> VO₂ max of 4.3 to 5.0 METs.</p>
A4	<p>Pulmonary Function Test results showing: FVC less than 50% of predicted <i>or</i> FEV₁ less than 45% of predicted; OR Carbon Monoxide Diffusion Capacity Test results showing: DLCO of less than 45% of predicted; OR Cardio-Pulmonary Stress Test results showing: VO₂ max of <15ml/(kg·min) <i>or</i> VO₂ max of <4.3 METs.</p>

<h2>Interstitial Lung Disease</h2>	
1. Qualifying Injuries	
<p>The Qualifying Injuries in this disease group include Chemical Pneumonitis, BOOP, Eosinophilic or other Granulomatosis, Hypersensitivity Pneumonitis, Sarcoidosis, Silicosis, Asbestosis, Pulmonary or Interstitial Fibrosis, Interstitial Lung Disease, Pneumoconiosis and Wegener’s Granulomatosis.</p> <p>Restrictive Lung Defect is an example of a medical condition, finding or observation that, in the absence of a Qualifying Injury, shall not be credited by the Allocation Neutral.</p>	
2. Diagnostic Criteria	
Severity Level	Medical Verification Requirements
B0 to B4	<p>Chest CT or X-ray finding supporting such diagnosis, such as bibasilar reticular abnormalities (<i>e.g.</i>, increased interstitial markings, honey-combing, hazy opacifications that are worse in the subpleural and inferior regions) with or without ground glass opacities or a lung biopsy that supports said diagnosis.</p> <p style="text-align: center;"><i>Source: ATS/ERS Criteria for Diagnosis of Idiopathic Pulmonary Disease in Absence of Surgical Lung Biopsy</i></p>
3. Impairment Criteria	
Severity Level	Required Testing and Results
B0	No further requirements.
B1	<p>Full Pulmonary Function Test showing: TLC less than or equal to 79% predicted; <i>and</i> FVC less than or equal to 79% predicted; <i>and</i> FEV₁/FVC (%)>70% predicted.</p>

To prove impairment for Severity Levels exceeding B1:

Except with respect to the separate Impairment Criteria for Sarcoidosis at the B3 and B4 Severity Levels, a Primary Plaintiff must submit the results from two full PFTs. The Primary Plaintiff's most recent full PFT, or any other full PFT within one year prior to March 12, 2010, must be included among those two tests and must meet the Impairment Criteria for Severity Level B2, B3 or B4. The other PFT must be at least three months prior to the PFT referenced above and must satisfy, at a minimum, the Impairment Criteria for Severity Level B1. To determine the Base Points for such a Primary Plaintiff's Qualifying Injury, the Allocation Neutral shall average the Base Points specified on Exhibit C to this Agreement for these two tests.

The preceding paragraph shall not apply to deceased Primary Plaintiffs, however. Deceased Primary Plaintiffs may satisfy the Impairment Criteria for Severity Level B2, B3 or B4, respectively, by submitting the results of any one (1) test that complies with the requirements for the claimed Severity Level as set forth below. In addition, the preceding paragraph shall not apply to Primary Plaintiffs who submit the results of one (1) full PFT satisfying the Impairment Criteria for B2, B3 or B4 and the results of one (1) high resolution CT Scan that the Allocation Neutral determines confirms impairment at the B2, B3 or B4 Severity Levels.

<p>B2</p>	<p>Full Pulmonary Function Test showing: TLC less than or equal to 69% predicted; <i>and</i> FVC less than or equal to 69% predicted; <i>and</i> FEV₁/FVC (%)>70% predicted</p>
<p>B3</p>	<p>Full Pulmonary Function Test showing: TLC less than or equal to 59% predicted; <i>and</i> FVC less than or equal to 59% predicted; <i>and</i> FEV₁/FVC (%)>70% predicted.</p> <p><i>OR</i>, for Sarcoidosis only, a CT Scan and/or X-ray showing diffuse interstitial infiltrates without hilar adenopathy (this is the equivalent of Stage III radiographic Sarcoidosis staging).</p>
<p>B4</p>	<p>Full Pulmonary Function Test showing: TLC lower than 50% predicted; <i>and</i> FVC lower than 50% predicted; <i>and</i> FEV₁/FVC (%)>70% predicted.</p> <p><i>OR</i>, for Sarcoidosis only, a CT Scan and/or X-ray showing diffuse fibrosis, often associated with fibrotic-appearing conglomerate masses, traction bronchiectasis, and traction cysts (this is the equivalent of Stage IV radiographic Sarcoidosis staging).</p>

Asthma/RADS

1. Qualifying Injuries

The Qualifying Injuries in this disease group are Asthma, Reactive Airway(s) Disease (“RADS”), Chronic Asthmatic Bronchitis, Asthma Exacerbation, Airway(s) Hyperreactivity, and Hyperreactive Airway(s).

Hyperresponsiveness, Bronchospasm, and WTC Syndrome are examples of medical conditions, findings or observations that, in the absence of a Qualifying Injury, shall not be credited by the Allocation Neutral.

2. Diagnostic Criteria

Severity Level	Medical Verification Requirements
C0 & C1	Physician Diagnosis of Qualifying Injury in the Asthma/RADS disease group.
C2 to C4	<p>Pulmonary Function Test (PFT): Pre-bronchodilator FEV₁ of <80% predicted, <i>and</i> Post-bronchodilator FEV₁ improvement of 12% or 250 cc;</p> <p>OR</p> <p>Positive Methacholine Challenge Test (MCT): ≥20% decrease in FEV₁ at or below 8 mg/ml</p> <p><i>Sources: Global Initiative for Asthma/World Health Organization; American College of Chest Physicians Consensus Statement</i></p>

3. Impairment Criteria

Severity Level	Criteria
C0	No further requirements.
C1	MCT response (<i>i.e.</i> , ≥20% decrease in FEV ₁) at between 3 and 5 mg/ml; OR PFT with Post-BD FEV ₁ of ≤80% of predicted; OR Pharmacy records or physician notes of any steroid or bronchodilator use; OR Plaintiff can satisfy the scoring criteria set forth in Exhibit Q through a combination of MCT, Post-BD FEV ₁ and medication use to achieve a score of 1-6.
C2	MCT response (<i>i.e.</i> , ≥20% decrease in FEV ₁) at greater than 0.5 and up to and including 3 mg/ml; OR Plaintiff can satisfy the scoring criteria set forth in Exhibit Q through a combination of MCT, Post-BD FEV ₁ and medication use to achieve a score of 7-9.
C3	MCT response (<i>i.e.</i> , ≥20% decrease in FEV ₁) at 0.25 or greater and up to and including 0.5 mg/ml; OR Plaintiff can satisfy the scoring criteria set forth in Exhibit Q through a combination of MCT, Post-BD FEV ₁ and medication use to achieve a score of 10-11.

C4	<p>MCT response (<i>i.e.</i>, $\geq 20\%$ decrease in FEV₁) at up to 0.25 mg/ml; OR Physician statement that Asthma is not controlled despite the Primary Plaintiff's ingestion of either:</p> <ul style="list-style-type: none"> (1) ≥ 20 mg prednisone per day, >16 mg methylprednisolone per day or >3 mg dexamethasone per day and Qualifying Medical Records, including without limitation prescription records, demonstrating such daily oral steroid use by the Primary Plaintiff for at least six (6) months; or (2) at least four (4) courses of any of ≥ 20 mg prednisone per day, >16 mg methylprednisolone per day or >3 mg dexamethasone per day within one year AND a physician statement that the Primary Plaintiff cannot tolerate such long-term daily oral steroid use; <p>provided, however, that in the Allocation Neutral's judgment such physician statement(s) were issued in the course and in furtherance of the Primary Plaintiff's medical care and not upon the Primary Plaintiff's or his or her counsel's request.</p>
<p>Alternative Base Points for Primary Plaintiffs who qualify for C1:</p> <p>For Primary Plaintiffs who (i) satisfy the Impairment Criteria for C1 and (ii) who submit a PFT that satisfies the requirements of the PFT Impairment Table (as defined below) in the PFT Only Criteria (as defined below) at PFT Impairment Level 2, Level 3 or Level 4 as specified in the PFT Impairment Table (collectively, "the Additive PFT"), the Allocation Neutral shall add to Base Points for Qualifying Injury C1 as set forth in Exhibit C to this Agreement 1250 Base Points for an Additive PFT that satisfies the requirements of Level 2 in the PFT Impairment Table, 2500 Base Points for an Additive PFT that satisfies the requirements of Level 3 in the PFT Impairment Table, or 3750 Base Points for an Additive PFT that satisfies the requirements of Level 4 in the PFT Impairment Table (collectively, "Additive PFT Base Points"). Notwithstanding any other provision of this Agreement, the sum of Base Points for Qualifying Injury C1 and any Additive PFT Base Points shall be deemed the Primary Plaintiff's Base Points.</p>	

Alternative proof of impairment for Severity Levels exceeding C1 (hereinafter, “PFT Only Criteria”):

In addition to satisfying the Impairment Criteria set forth above, a Primary Plaintiff may demonstrate impairment exceeding Severity Level C1 by submitting the results from three PFTs. For Primary Plaintiffs who rely upon three PFTs to establish such impairment, the Allocation Neutral shall calculate Base Points according to the following table:

PFT Impairment Table

<u>PFT Impairment Level</u>	<u>Requirements</u>	<u>Base Points</u>
Level 1	PFT with Post-BD FEV ₁ of 70% to 80% of predicted	Base Points 7,500
Level 2	PFT with Post-BD FEV ₁ of 60% to 69% of predicted	Base Points 25,000
Level 3	PFT with Post-BD FEV ₁ of 50% to 59% of predicted	Base Points 60,000
Level 4	PFT with Post-BD FEV ₁ below 50% of predicted	Base Points 85,000

Two of the three PFTs submitted must satisfy the requirements of PFT Impairment Level 2, PFT Impairment Level 3 or PFT Impairment Level 4 in the PFT Impairment Table. The three PFTs must be at least three months apart from one another. To determine how many Base Points to award, the Allocation Neutral shall average the Base Points set forth in the PFT Impairment Table for each PFT.

Notwithstanding the forgoing requirements of this PFT Only Criteria, a Primary Plaintiff with two (2) PFTs one of which is at PFT Impairment Level 2, PFT Impairment Level 3 or PFT Impairment Level 4, the Primary Plaintiff’s Base Points shall be calculated by summing the Base Points associated with each PFT set forth in the PFT Impairment Table and dividing the total by three (3).

Alternative proof of impairment for Severity Levels exceeding C0:

Any Primary Plaintiff also may satisfy the Impairment Criteria for Severity Levels C1, C2, C3 or C4, respectively, through a single positive MCT response that produces a $\geq 20\%$ decrease in FEV₁ within the methacholine dosage specified above in mg/ml. Where the dosage that produces a 20% decrease in FEV₁ is not apparent from the face of a Primary Plaintiff's Qualifying Medical Record(s) submitted to the Allocation Neutral, however, the Allocation Neutral may determine whether the Primary Plaintiff satisfies the Impairment Criteria in C1, C2, C3 or C4, respectively, by interpolating according to the following formula the actual methacholine dosage in mg/ml that would have produced the requisite 20% decrease:

$$PC_{20} = \text{anti log} \left[\log C_1 + \frac{(\log C_2 - \log C_1)(20 - R_1)}{R_2 - R_1} \right]$$

For purposes of applying this formula:

C₁ = second-to-last methacholine concentration (prior to $\geq 20\%$ decrease in FEV₁)

C₂ = final methacholine concentration (resulting in $\geq 20\%$ decrease in FEV₁)

R₁ = percent decrease in FEV₁ (from baseline or post-diluent if a diluent step is used, whichever is higher) after C₁

R₂ = percent decrease in FEV₁ (from baseline or post-diluent if a diluent step is used, whichever is higher) after C₂

PC₂₀ = the methacholine dose (in mg/ml) required to produce 20% decrease in FEV₁ for purposes of placing the Primary Plaintiff into Severity Level C1, C2, C3 or C4, if applicable

In order for the Allocation Neutral to interpolate, the Primary Plaintiff must submit all data necessary to calculate PC₂₀ from a single Qualifying Medical Record. The Allocation Neutral shall not interpret based upon data from different Qualifying Medical Records.

Laryngitis/Pharyngitis

1. Qualifying Injuries

The Qualifying Injuries in this disease group are Chronic Laryngitis and Chronic Pharyngitis. In addition, the Qualifying Injuries in this disease group shall include Laryngitis or Pharyngitis occurring with such frequency that it amounts to a chronic disease in the Allocation Neutral's judgment based upon the Primary Plaintiff's submission to the Allocation Neutral of Qualifying Medical Records.

Acute Laryngitis, Acute Pharyngitis, and Upper Respiratory Infections ("URI") are examples of medical conditions, findings or observations that, in the absence of a Qualifying Injury, shall not be credited by the Allocation Neutral.

2. Diagnostic Criteria

Severity Level	Medical Verification Requirements
D0 & D1	Physician Diagnosis of Qualifying Injury in the Laryngitis/Pharyngitis disease group.

D2 & D3	Physical examination or endoscopy, including Laryngoscopy or Pharyngoscopy finding redness, inflammation and/or swelling of pharyngeal or laryngeal mucosal membranes.
3. Impairment Criteria	
Severity Level	Required Testing and Results
D0	No further requirements.
D1	Physician evaluation of audibility, intelligibility, and functional efficiency meet many needs of everyday speech; OR Stroboscoped laryngoscopy (“SVL”), objective voice and speech measures, and Voice Handicap Index (“VHI”) are mildly to moderately abnormal.
D2	SVL, objective voice and speech measures, and VHI are moderately to severely abnormal.
D3	SVL, objective voice and speech measures, and VHI are severely abnormal.

Chronic Rhinosinusitis

1. Qualifying Injuries

The Qualifying Injuries in this disease group are Chronic Rhinosinusitis, Chronic Rhinitis, Chronic Sinusitis and Vocal Cord Dysfunction. In addition, the Qualifying Injuries in this disease group shall include Rhinosinusitis, Rhinitis, or Sinusitis occurring with such frequency that it amounts to a chronic disease in the Allocation Neutral’s judgment based upon the Primary Plaintiff’s submission to the Allocation Neutral of Qualifying Medical Records.

Allergic Rhinitis, Acute Sinusitis, and Acute Rhinitis are examples of medical conditions, findings or observations that, in the absence of a Qualifying Injury, shall not be credited by the Allocation Neutral.

2. Diagnostic Criteria

Severity Level	Medical Verification Requirements
E0 & E1	Physician Diagnosis of a Qualifying Injury in the Chronic Rhinosinusitis disease group.
E2 & E3	Evidence of sinus mucosal disease on CT or MRI; OR Evidence of sinus mucosal disease from nasal endoscopy. <i>Source: British Society for Allergy and Clinical Immunology guidelines for the management of rhinosinusitis and nasal polyposis. Scadding GK; Durham SR; Mirakian R; Jones NS; Drake-Lee AB; Ryan D; Dixon TA; Huber PA; Nasser SM - Clin Exp Allergy. 2008 Feb; 38(2):260-75. Epub 2007 Dec 20.</i>

3. Impairment Criteria

Severity Level	Required Testing and Results
E0	No further requirements.
E1	Endoscopy, Sinus CT or MRI shows mild to moderate mucosal thickening, mild to moderate obstruction of nasopharynx or oropharynx; OR Laryngoscopy shows mild to moderate alteration in vocal fold (cord) function.
E2	Sinus CT or MRI shows moderately severe mucosal thickening or moderately severe turbinate swelling, moderately severe obstruction of nasopharynx or oropharynx; OR Laryngoscopy shows moderately severe alteration in vocal fold (cord) function
E3	Sinus CT or MRI shows diffuse severe mucosal thickening or severe turbinate swelling, severe obstruction of nasopharynx or oropharynx; OR Laryngoscopy shows severe alteration in vocal fold (cord) function such as bilateral paralysis.

Upper Digestive

1. Qualifying Injuries

The Qualifying Injuries in this disease group are Gastroesophageal Reflux Disease (GERD), Barrett's Esophagus, Esophagitis, Esophageal Reflux, Esophageal Ulcer and Esophageal Stricture, and GI Stricture. In addition, the Qualifying Injuries in this disease group shall include Acid Reflux occurring with such frequency that it amounts to a chronic disease in the Allocation Neutral's judgment based upon the Primary Plaintiff's submission to the Allocation Neutral of Qualifying Medical Records.

Heartburn, Chronic Heartburn, Laryngeal Reflux, Gastric Ulcer, Gastric Regurgitation and Gastritis are examples of medical conditions, findings or observations that, in the absence of a Qualifying Injury, shall not be credited by the Allocation Neutral.

2. Diagnostic Criteria

Severity Level	Criteria
F0 to F2	Physician Diagnosis of a Qualifying Injury in the Upper Digestive disease group.

3. Impairment Criteria

Severity Level	Criteria
F0	No further requirements.
F1	Endoscopy reveals mild or moderate findings in the esophagus such as inflammation, esophagitis, erosions, and mucosal breaks.
F2	Endoscopy reveals severe findings in the esophagus such as Barrett's esophagus, benign peptic esophageal stricture, ulcers, hemorrhage, or severe esophagitis.

Sleep Disorders

1. Qualifying Injuries

The Qualifying Injuries in this disease group include Obstructive Sleep Apnea, Sleep Apnea or other Sleep Disordered Breathing.

Symptoms of sleep disorders (*e.g.*, snoring or insomnia) are examples of findings or observations that, in the absence of a Qualifying Injury, shall not be credited by the Allocation Neutral.

2. Diagnostic Criteria

Severity Level	Criteria
G0 to G2	Records documenting Physician Diagnosis of Qualifying Injury in the Sleep Disorders disease group.

3. Impairment Criteria

Severity Level	Criteria
G0	No further requirements.
G1	Polysomnography demonstrating obstructive sleep apnea.
G2	Polysomnography demonstrating obstructive sleep apnea AND medical records of treatment with CPAP/BiPAP or need to have CPAP/BiPAP titration.

<h1>Death</h1>	
1. Qualifying Criteria	
Death of the Primary Plaintiff on or before the Final Settlement Agreement Effective Date.	
2. Diagnostic Criteria	
Level	Criteria
H0 to H2	Death of the Primary Plaintiff established by a certificate, hospital notes, or other authoritative document (<i>e.g.</i> , physician letter) confirming death.
3. Impairment Criteria	
Level	Criteria
H0	<i>Death Unrelated to WTC Exposure</i> – No further requirements.
H1	<p><i>Death Potentially Related to WTC Exposure</i> – Based upon the Claim Form and Qualifying Medical Records, the Allocation Neutral:</p> <p style="margin-left: 40px;">(i) determines that the Primary Plaintiff:</p> <ul style="list-style-type: none"> a. satisfies the Medical Proof Criteria for Qualifying Injuries B2-B4 in the Interstitial Lung Disease Disease Group; <i>or</i> b. satisfies the Medical Proof Criteria for Qualifying Injuries C2-C4 in the Asthma/RADS Disease Group; <i>or</i> c. satisfies the Medical Proof Criteria for Qualifying Injury I3 (Blood Cancer) in the Cancer Disease Group; <i>or</i> d. is the subject of a writing by the Chief Medical Examiner of the City of New York concluding that the Primary Plaintiff died as the result of an injury caused by his or her work or volunteer service at the WTC Site or other location(s) at which the Primary Plaintiff's alleged exposure gave rise to his or her Debris Removal Claims against the Insureds or any of them; <i>AND</i> <p style="margin-left: 40px;">(ii) determines that the Qualifying Injury referenced in the preceding clause (i).a, (i).b or (i).c or the cause of death referenced by the Chief Medical Examiner of the City of New York as set forth in (i).d did not pre-exist the Primary Plaintiff's alleged exposure giving rise to his or her Debris Removal Claims; <i>AND</i></p> <p style="margin-left: 40px;">(iii) cannot rule out a causal relationship between the Primary Plaintiff's death and the Qualifying Injury referenced in the preceding clause (i).a, (i).b, (i).c or (i).d.</p>

H2	<p>Death Related to WTC Exposure – Based upon the Claim Form and Qualifying Medical Records, the Allocation Neutral</p> <p>(i) determines that Primary Plaintiff:</p> <ul style="list-style-type: none"> a. satisfies the Diagnostic Criteria and the Impairment Criteria for Qualifying Injuries B2-B4 in the Interstitial Lung Disease Disease Group; or b. satisfies the Diagnostic Criteria and the Impairment Criteria for Qualifying Injuries C2-C4 in the Asthma/RADS Disease Group; AND <p>(ii) determines that the Qualifying Injury referenced in the proceeding clause (i).a or (i).b did not pre-exist the Primary Plaintiff's alleged exposure giving rise to his or her Debris Removal Claims; AND</p> <p>(iii) concludes, in the Allocation Neutral's judgment, that the Primary Plaintiff's death is causally related to the Qualifying Injury referenced in the proceeding clause (i).a or (i).b. In making this determination regarding causation, the Allocation Neutral shall consider, but shall not be bound by, argumentative, conclusory and/or unverified findings by a physician or other medical professional in Qualifying Medical Record(s) with respect to cause of death.</p>
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Cancer

1. Qualifying Injury	
<p>Diagnosis of cancer or pre-cancerous condition by a qualified physician.</p> <p>For purposes of IO, "Pre-cancerous conditions" shall consist of dysplasia, pre-malignant, preneoplasia, intraepithelial neoplasia, adenomatous colon polyps or actinic keratosis condition, but shall not include benign tumors, brain lesions, enlarged lymph nodes, lung nodules, polyps (e.g., nasal, laryngeal, throat, sinus or vocal cord), cysts or benign skin lesions (e.g., seborrheic keratosis, lipoma, dermatofibroma, pyogenic granuloma, epidermoid cyst or papilloma).</p>	
2. Diagnostic Criteria	
Level	Criteria
I0 to I3	Histopathology report documenting pre-cancerous or cancerous condition; OR Physician documentation of diagnosis of or treatment for pre-cancerous or cancerous condition.
3. Impairment Criteria	
Level	Criteria
I0	Pre-Cancerous Condition & Skin Cancers Except Melanoma – No requirements other than physician documentation of diagnosis of or treatment for (i) a pre-cancerous condition or (ii) any skin cancer other than melanoma, including without limitation basal cell carcinoma and squamous cell carcinoma.
I1	Solid Tumor Cancer (Non-Respiratory) and Melanoma – Physician documentation of diagnosis of or treatment for a (i) solid tumor cancer that does not satisfy the Impairment Criteria for Qualifying Injury I2 or (ii) melanoma.

I2	Solid Tumor Cancer (Respiratory) – Physician documentation of diagnosis of or treatment for a solid tumor cancer originating (i) in the larynx (including cancers of the supraglottis, glottis and subglottis); (ii) in the airways or tissues of the lung(s) (including in the trachea, bronchi, or tracheobronchial tree); or (iii) in the mesothelium, including pleural mesothelioma, peritoneal mesothelioma and pericardial mesothelioma.
I3	Blood Cancer – Physician documentation of diagnosis of or treatment for a blood cancer.

Cardiac

1. Qualifying Injury

Diagnosis of a cardiac condition by a qualified physician.

Miscellaneous cardiac conditions (J0), shall not include: congenital heart defects (*e.g.*, septal defects, valve defects, or other malformations); heart conditions caused by infectious diseases (*e.g.*, bacterial, viral, fungal or parasitic conditions); and heart conditions caused by autoimmune diseases (*e.g.*, lupus).

2. Diagnostic Criteria

Level	Criteria
J0 to J2	Physician documentation of diagnosis of or treatment for hypertension, heart attack, or miscellaneous cardiac condition.

3. Impairment Criteria

Level	Criteria
J0	No further requirements.
J1	Physician documentation of diagnosis of or treatment for hypertension.
J2	Physician documentation of diagnosis of or treatment for a heart attack.

Restrictive Lung Disease

1. Qualifying Injury

The only Qualifying Injury in this disease group is Restrictive Lung Disease.

2. Diagnostic Criteria

Level	Criteria
K0 & K1	Physician Diagnosis of Restrictive Lung Disease, to the extent that such Physician Diagnosis is not attributable to obesity in the Allocation Neutral’s judgment (<i>i.e.</i> , the Primary Plaintiff’s Body Mass Index is below 30)
K2 & K3	Physician Diagnosis of Restrictive Lung Disease, based upon Restrictive Pulmonary Function Tests, to the extent that such Physician Diagnosis is not attributable to obesity in the Allocation Neutral’s judgment (<i>i.e.</i> , the Primary Plaintiff’s Body Mass Index is below 30); no or normal imaging studies.

3. Impairment Criteria

Severity Level	Required Testing and Results
K0	No further requirements
K1	Full Pulmonary Function Test showing: TLC less than or equal to 79% predicted; <i>and</i> FVC less than or equal to 79% predicted; <i>and</i> FEV ₁ /FVC (%)>70% predicted.

K2	Full Pulmonary Function Test showing: TLC less than or equal to 59% predicted; <i>and</i> FVC less than or equal to 59% predicted; <i>and</i> FEV ₁ /FVC (%)>70% predicted.
K3	Full Pulmonary Function Test showing: TLC lower than 50% predicted; <i>and</i> FVC lower than 50% predicted; <i>and</i> FEV ₁ /FVC (%)>70% predicted.

XIII. TIER 4 POINT SYSTEM

A. Point System for Each Master Docket

Although the Allocation Neutral will use the same Base Points as provided on Exhibit C to this Agreement in each Master Docket and the same series of Adjustment Factors to modify those Base Points for all Verified Tier 4 Primary Plaintiffs in each Master Docket, the Allocation Neutral will calculate the Final Total Score for Primary Plaintiffs with Tier 4 Qualifying Injuries based upon the portions of the Settlement Amount allocated to the Primary Plaintiffs' respective Master Docket as set forth in Section II.B.i of this Agreement.

For Plaintiffs in all Master Dockets, the Point System shall consist of two parts:

- i. Base Points assigned to each Primary Plaintiff's most highly-valued Tier 4 Qualifying Injury, as reflected in the "Base Points" column on the Settlement Grid attached hereto as Exhibit C; and
- ii. Adjustments to Base Points, up and/or down, as set forth in Section XIII.B of this Agreement ("Adjustment Factors") and applied in the manner set forth in Section XIII.C of this Agreement.

The point value assigned on the Settlement Grid to a Primary Plaintiff's Tier 4 Primary Qualifying Injury shall constitute the Base Point component of the Plaintiff's Total Score.

If the Allocation Neutral determines that a Primary Plaintiff has more than one Qualifying Injury, the Allocation Neutral shall identify the ranking of those Qualifying Injuries that would result in the most favorable treatment under the Point System as Primary and Secondary Qualifying Injuries, after consideration of the effects of the injury-specific Adjustment Factors, namely, the adjustments for Pre-Existing Injuries, and Timing of Diagnosis, as set forth in Sections XIII.B.ii and XIII.B.iii of this Agreement, respectively. A Verified Tier 4 Primary Plaintiff's Total Score as determined by the Allocation Neutral based upon his or her Primary Qualifying Injury and Secondary Qualifying Injury, if any, and any adjustments thereto by the Allocation Neutral pursuant to Section XIII.C of this Agreement shall, once final, be used by the Allocation Neutral to determine each Primary Plaintiff's Final Distribution, if any.

B. Adjustment Factors

With respect to Verified Tier 4 Primary Plaintiffs, the Allocation Neutral shall adjust each Primary Plaintiff's Base Points by taking into consideration the following Adjustment Factors. A Primary Plaintiff's Base Points, after application of the Adjustment Factors, shall constitute that Primary Plaintiff's Total Score.

The Allocation Neutral shall consider each of the Adjustment Factors to the full extent applicable to a Primary Plaintiff's case. To permit this assessment, each Primary Plaintiff who seeks eligibility for Tier 4 shall submit a Claim Form that addresses each Adjustment Factor, to the extent applicable, and each Primary Plaintiff shall attach any needed Qualifying Medical Records containing true, correct and complete information regarding each applicable Adjustment Factor.

The Adjustment Factors shall not apply in Tier 1, Tier 2 or Tier 3 as set forth in Section VIII of this Agreement.

The Adjustment Factors are as follows:

i. Secondary Qualifying Injuries

Except with respect to Primary Plaintiffs who satisfy the Medical Proof Criteria for Qualifying Injury "H2," the Allocation Neutral shall credit a Primary Plaintiff's Secondary Qualifying Injury, if any, as an upward adjustment to the Primary Plaintiff's Base Points in the amount of Base Points provided for the Secondary Qualifying Injury; provided, however, that no Primary Plaintiff shall receive credit for both a Primary and Secondary Qualifying Injury in the same Disease Group, or for both (a) "A" Disease Group (Chronic Obstructive Pulmonary Disease) and "C" Disease Group (Asthma/RADS) Qualifying Injuries or (b) "B" Disease Group (Interstitial Lung Disease) and "K" Disease Group (Restrictive Lung Disease) Qualifying Injuries.

Each Primary Plaintiff's Base Points attributable solely to the Primary Qualifying Injury will remain the basis for calculating the permissible range for adjustment, as provided in Section XIII.C of this Agreement.

ii. Pre-Existing Injuries

Except with respect to Primary Qualifying Injuries I1, I2 and I3, if the Allocation Neutral determines that a Primary Plaintiff's Primary Qualifying Injury is also a Pre-Existing Injury, the Allocation Neutral shall discount the Primary Plaintiff's Base Points for that Primary Qualifying Injury by multiplying the Base Points by 0.25, effectively reducing Base Points for that Qualifying Injury by seventy-five percent (75%). If the Allocation Neutral determines that a Primary Plaintiff's Primary Qualifying Injury is I1, I2 or I3 and also is a Pre-Existing Injury,

however, the Allocation Neutral shall not award the Primary Plaintiff any Base Points for that Primary Qualifying Injury.

This adjustment multiplier for Primary Qualifying Injuries other than Primary Qualifying Injuries I1, I2 and I3 shall be increased to 0.65, effectively reducing Base Points for that Primary Qualifying Injury by thirty-five percent (35%), if the Primary Plaintiff (i) states in his or her Claim Form that his or her work or volunteer service at the WTC Site or other location at which the Primary Plaintiff alleged exposure giving rise to his or her Debris Removal Claims exacerbated his or her Pre-Existing Injury resulting in a Qualifying Injury that is more severe than, but otherwise is the same Qualifying Injury in the same Disease Group as the Primary Plaintiff's Pre-Existing Injury, and (ii) provides the Allocation Neutral with Qualifying Medical Records that the Allocation Neutral determines demonstrate exacerbation of the Primary Plaintiff's Pre-Existing Injury after the Primary Plaintiff's alleged exposure giving rise to his or her Debris Removal Claims.

Primary Plaintiffs who the Allocation Neutral determines materially misrepresented, materially omitted or materially concealed the existence or extent of a Pre-Existing Injury on their Claim Form despite claiming a Qualifying Injury in the same Disease Group shall not be entitled to any payments under this Agreement.

Furthermore, except with respect to Secondary Qualifying Injuries I1, I2 and I3, if the Allocation Neutral determines that a Primary Plaintiff has a Secondary Qualifying Injury that is a Pre-Existing Injury, that pre-existing Secondary Qualifying Injury shall not be a basis for upward adjustment of the Primary Plaintiff's Base Points under Section XIII.B.i of this Agreement unless the Primary Plaintiff demonstrates that his or her pre-existing Secondary Qualifying Injury worsened after he or she began work or volunteer service at the WTC Site or other location at which he or she alleges exposure giving rise to his or her Debris Removal Claims, as provided in the forgoing paragraph, in which case the Base Points for the Second Qualifying Injury shall be multiplied by 0.25, effectively reducing Base Points for the Secondary Qualifying Injury by seventy-five percent (75%). If the Allocation Neutral determines that a Primary Plaintiff's Secondary Qualifying Injury is I1, I2 or I3 and also is a Pre-Existing Injury, such Secondary Qualifying Injury shall not entitle the Primary Plaintiff to any upward adjustment to Base Points.

iii. Timing of Diagnosis of Qualifying Injuries

The Allocation Neutral shall consider the date of earliest diagnosis (i) of a Primary Plaintiff's Primary Qualifying Injury as an adjustment to the Base Points for that Primary Qualifying Injury and (ii) of a Primary Plaintiff's Secondary Qualifying Injury, if any, when determining to what extent, if

any, to increase the Base Points for the Secondary Qualifying Injury. These dates of earliest diagnosis shall be determined by the Allocation Neutral based upon evidence of any diagnosis that satisfies the Diagnostic Criteria component of the Medical Proof Criteria and which appears in the Primary Plaintiff's Qualifying Medical Records accompanying his or her Claim Form. The Allocation Neutral shall apply these adjustments as follows:

- a. Base Points awarded for Qualifying Injuries in the Asthma/RADS, Upper Digestive, Laryngitis/Pharyngitis, and Chronic Rhinosinusitis Disease Groups, shall be multiplied by 1.30 (increased by thirty percent (30%)) if the Primary Plaintiff's Qualifying Medical Records and/or any documents generated by an Adjudicatory Body establish that the Diagnostic Criteria for the Qualifying Injury in any of these Disease Groups were satisfied within seven (7) months of the last day of the Primary Plaintiff's debris removal work or volunteer service forming the basis of his or her Debris Removal Claims.
- b. Base Points awarded for Qualifying Injuries in the Chronic Obstructive Pulmonary Disease and Interstitial Lung Disease Groups, shall be multiplied by 1.30 (increased by thirty percent (30%)) if the Primary Plaintiff's Qualifying Medical Records or any documents generated by an Adjudicatory Body establish that the Diagnostic Criteria for the Qualifying Injury in either of those Disease Groups were first satisfied two and one-half (2.5) years or more after the Primary Plaintiff's last day of debris removal work or volunteer service forming the basis of his or her Debris Removal Claims.
- c. Base Points awarded for Qualifying Injuries I1 and I2 shall be multiplied by 0.50 (decreased by fifty percent (50%)) if the Primary Plaintiff's Qualifying Medical Records or any documents generated by an Adjudicatory Body establish that the Impairment Criteria for Qualifying Injury I1 or I2 were first satisfied before January 1, 2007.

iv. Age

To take into account the Primary Plaintiffs' respective ages on September 11, 2001, the Allocation Neutral shall derive each Primary Plaintiff's age from his or her birth date as provided in the Claim Form and apply the appropriate multiplier provided in the Age Adjustment Factor Table appended as Exhibit F to this Agreement in accordance with Section XIII.C of this Agreement. This factor shall operate generally to increase the scores of younger Primary Plaintiffs and decrease the scores of older Primary Plaintiffs.

v. Last Day of Alleged Exposure

To take into account the Primary Plaintiff’s last date of alleged exposure at the WTC Site or other location giving rise to his or her Debris Removal Claims, as attested by the Primary Plaintiff in his or her Claim Form, the Allocation Neutral shall apply the appropriate multiplier set forth in the table below in accordance with Section XIII.C of this Agreement:

Last Day of Alleged Exposure Multipliers

Last date of alleged exposure	Multiplier
September 11, 2001	0.50
September 12-14, 2001	0.75
September 15, 2001 or later	1.00

vi. Duration of Alleged Exposure

To take into account the Primary Plaintiff’s duration of alleged exposure during work or volunteer service at the WTC Site and/or other locations at which Primary Plaintiff alleged exposure giving rise to his or her Debris Removal Claims against the Insureds or any of them, as attested by the Primary Plaintiff in his or her Claim Form, the Allocation Neutral shall apply the appropriate multiplier from the table below in accordance with Section XIII.C of this Agreement.

Duration of Alleged Exposure Multipliers

Total days of alleged exposure	Multiplier
Up to and including 56 hours (or the equivalent of seven (7) eight-hour days or less)	0.75
More than 56 hours (or the equivalent of more than seven (7) eight-hour days)	1.00

vii. Smoking History

To account for a Primary Plaintiff’s smoking history, the Allocation Neutral shall review his or her Claim Form and apply the appropriate multiplier from the table below in accordance with Section XIII.C of this Agreement.

Smoking History Multipliers

Category	Description	Multiplier
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<i>Heavy smoker</i>	Any Primary Plaintiff who has a cigarette smoking history of twenty (20) pack years (<i>i.e.</i> , the product of years smoked times average pack(s) of cigarettes smoked per day during that period) or more	0.65
<i>Current smoker</i>	Any Primary Plaintiff who is not a Heavy smoker, but who has smoked cigarettes within one (1) year of the date he or she completes his or her Claim Form	0.80
<i>Former smoker</i>	Any Primary Plaintiff who is not a Current smoker or a Heavy smoker, but who smoked cigarettes within five (5) years of the date he or she completes his or her Claim Form	0.90
<i>Non-smoker</i>	Any Primary Plaintiff who does not fall into the above categories.	1.00

viii. Location of Alleged Exposure

For Primary Plaintiffs in the Allocation Pool for Master Docket No. 21 MC 102, the Allocation Neutral shall credit only the percentage of time that he or she performed the work or volunteer service which is the basis for his or her Debris Removal Claims against the Insureds or any of them, as opposed to the time spent working at other locations which forms the basis for his or her Debris Removal Claims against Other Defendants, for the period from September 11, 2001, to the present, as explained in Section XIII.C.iv of this Agreement.

For Primary Plaintiffs in the Allocation Pool for Master Docket No. 21 MC 103, the Allocation Neutral shall credit only the percentage of time that he or she performed rescue, recovery and/or debris removal work or volunteer service which is the basis for his or her Debris Removal Claims against the Insureds or any of them, as opposed to time spent working at other locations which forms the basis for his or her Debris Removal Claims against Other Defendants, for the period between September 11, 2001, to the present, as explained in Section XIII.C.iv of this Agreement.

In the Allocation Pool for Master Docket No. 21 MC 100, the Allocation Neutral shall not make any adjustment to reflect any Primary Plaintiff's location(s) of alleged exposure.

Each Primary Plaintiff with Debris Removal Claims in Master Docket 21 MC 102 and Master Docket 21 MC 103 shall set forth in his or her Claim Form the information necessary for the Allocation Neutral to apply this Location of Alleged Exposure Adjustment Factor. To ensure that this information is accurately represented in such Primary Plaintiffs' respective Claims Forms, this information shall be deemed an answer to an

interrogatory and pursuant to Federal Rule of Civil Procedure 33(c) may be used, including without limitation by Other Defendants in Master Docket 21 MC 102 and Master Docket 21 MC 103, to the extent allowed by the Federal Rules of Evidence.

C. Adjustment Factor Application and Total Score Calculation

For all Verified Tier 4 Primary Plaintiffs, the Allocation Neutral shall calculate a Total Score through the application of the Adjustment Factors as follows:

First, the Allocation Neutral shall take the Base Points for the Verified Tier 4 Primary Plaintiff's Primary Qualifying Injury and apply, if applicable, either the Pre-Existing Qualifying Injury Adjustment Factor or the Timing of Diagnosis Adjustment Factor set forth in Sections XIII.B.ii and XIII.B.iii of this Agreement, respectively;

Second, the Allocation Neutral shall take the Base Points for the Verified Tier 4 Primary Plaintiff's Secondary Qualifying Injury, and pursuant to Section XIII.B.i of this Agreement, apply, if applicable, either the Pre-Existing Qualifying Injury Adjustment Factor or the Timing of Diagnosis Adjustment Factor set forth in Sections XIII.B.ii and XIII.B.iii of this Agreement, respectively;

Third, the Allocation Neutral shall combine the points determined by the first two steps to establish the Verified Tier 4 Primary Plaintiff's Preliminary Total Score; however, the Base Points for the Verified Tier 4 Primary Plaintiffs' Primary Qualifying Injury shall remain the baseline for the application of the percentage limitations described in this Section XIII.C;

Fourth, the Allocation Neutral shall adjust the Verified Tier 4 Primary Plaintiff's Preliminary Total Score through the multiplicative application of the following Adjustment Factors:

- i. The Verified Tier 4 Primary Plaintiff's Age, as set forth in Section XIII.B.iv of this Agreement;
- ii. The Verified Tier 4 Primary Plaintiff's Smoking History, as set forth in Section XIII.B.vii of this Agreement;
- iii. The Verified Tier 4 Primary Plaintiff's Last Day of Alleged Exposure, as set forth in Section XIII.B.v of this Agreement; and
- iv. The Verified Tier 4 Primary Plaintiff's Duration of Alleged Exposure, as set forth in Section XIII.B.vi of this Agreement;

Fifth, if the net effect of the calculations in the first four steps is a product more than fifty percent (50%) larger than the Primary Plaintiff's Base Points, the Allocation Neutral shall reduce the product to one hundred and fifty percent (150%) of Base Points. If the net effect of the calculations in the first four steps is

a product equal to or less than one hundred and fifty percent (150%) but greater than or equal to fifty percent (50%) of the Verified Tier 4 Primary Plaintiff's Base Points, the Allocation Neutral shall not adjust the figure. Furthermore, if the net effect of the calculations in the first four steps is a product that is less than fifty percent (50%) of the Verified Tier 4 Primary Plaintiff's Base Points, the Allocation Neutral shall increase the product to fifty percent (50%) of Base Points unless the Pre-Existing Condition Adjustment Factor applies to the Verified Tier 4 Primary Plaintiff's Primary Qualifying Injury, in which case the Allocation Neutral shall ensure only that that the product not be less than twenty-five percent (25%) of Base Points. The result of this fifth step shall be referred to as the Verified Tier 4 Primary Plaintiff's "Docket-Neutral Base Points."

Sixth, having made appropriate adjustments for the minima and maximum in accordance with the fifth step, the Allocation Neutral shall take the Verified Tier 4 Primary Plaintiff's Docket-Neutral Base Points and apply the Location of Alleged Exposure Adjustment Factor set forth in Section XIII.B.viii of this Agreement for Verified Tier 4 Primary Plaintiffs in Master Docket 21 MC 102 and Master Docket 21 MC 103 only. The Location of Alleged Exposure Adjustment Factor shall reduce the Verified Tier 4 Primary Plaintiff's Docket-Neutral Base Points by one percent (1%) for each percentage of non-qualifying time, unless the Verified Tier 4 Primary Plaintiff's calculated reduction would exceed seventy-five percent (75%) of the Verified Tier 4 Primary Plaintiff's Docket-Neutral Base Points, in which case the Allocation Neutral shall award the Verified Tier 4 Primary Plaintiff twenty-five percent (25%) of his or her Docket-Neutral Base Points.

The result of the foregoing calculations shall be the Verified Tier 4 Primary Plaintiff's Total Score; provided, however, that the Allocation Neutral retains the discretion to award any Verified Tier 4 Primary Plaintiff no Final Distribution if the Allocation Neutral concludes that the Verified Tier 4 Primary Plaintiff has materially misrepresented, materially omitted or materially concealed facts in his or her Claim Form and/or in the Qualifying Medical Records submitted therewith.

XIV. RECONSIDERATION REQUESTS AND APPEALS

A. Tier 1, Tier 2 and Tier 3 Reconsideration Requests

Any Primary Plaintiff who submits a Claim Form alleging eligibility for Tier 1, Tier 2 or Tier 3 may request that the Allocation Neutral reconsider its determination(s) with respect to him or her (collectively, "Tier 1-3 Reconsideration Requests").

The substance of all Tier 1-3 Reconsideration Requests shall be limited to the Primary Plaintiff's contention that the Allocation Neutral (i) misapplied the proof requirements for the pertinent Tier with respect to the Primary Plaintiff's claims as set forth in his or her Claim Form and his or her Qualifying Medical Records; (ii) failed to award a Mixed Orthopedic Plaintiff a Mixed Orthopedic payment

pursuant to the requirements of Section XVIII.A of this Agreement; (iii) failed to award the Primary Plaintiff a Qualifying Surgery payment pursuant to the requirements of Section XVIII.B of this Agreement; (iv) misapplied the Work Verification Procedure to the Primary Plaintiff's case; and/or (v) misapplied the Permanent Disability Fund provisions in Section XVI of this Agreement to the Primary Plaintiff's case.

Tier 1-3 Reconsideration Requests shall consist of a letter to the Allocation Neutral of no more than two (2) pages setting forth the Primary Plaintiff's alleged grounds for reconsideration, together with any Qualifying Medical Records supporting those contentions. Tier 1-3 Reconsideration Requests must be submitted no later than fifteen (15) days after the date that the Allocation Neutral issues the determination forming the basis of the Reconsideration Request. All Tier 1-3 Reconsideration Requests shall be signed by Primary Plaintiff's counsel and are subject to the Primary Plaintiff's attestations in his or her Claim Form.

Following the Allocation Neutral's evaluation of each Tier 1-3 Reconsideration Request, the Allocation Neutral shall issue a notice to the affected Primary Plaintiff's counsel, with a copy to the WTC Captive, informing the Primary Plaintiff of the Allocation Neutral's action, if any, based upon the Tier 1-3 Reconsideration Request, including, if warranted pursuant to the Allocation Neutral's application of the Tier proof requirements in this Agreement, placement of the Primary Plaintiff in a lower Tier than originally designated. Once the deadline to submit a Tier 1-3 Reconsideration Request has lapsed, or upon issuance of the Allocation Neutral's notice responding to a timely Tier 1-3 Reconsideration Request, the Allocation Neutral's determinations with respect to all Primary Plaintiffs who the Allocation Neutral concludes are properly in Tier 1, Tier 2 or Tier 3 shall be final and binding on all Parties, unless the Primary Plaintiff submits an Appeal to the Claims Appeal Neutral pursuant to Section XIV.C of this Agreement.

B. Tier 4 Reconsideration Requests

Any Primary Plaintiff who submits a Claim Form alleging eligibility for Tier 4 may request that the Allocation Neutral reconsider its determination(s) with respect to him or her ("Tier 4 Reconsideration Request").

Following the Allocation Neutral's evaluation of the claims by a Primary Plaintiff who submitted a Claim Form alleging a Tier 4 Qualifying Injury, the Allocation Neutral shall notify Plaintiffs' Liaison Counsel and the WTC Captive of its determinations regarding the Primary Plaintiff's claims. After receiving this notification, Primary Plaintiff shall have fifteen (15) days to submit a Tier 4 Reconsideration Request. Any Tier 4 Reconsideration Request shall be based solely upon the Claim Form (including any revised Claim Form responding to a Deficiency Notice), the Qualifying Medical Records submitted with the Claim Form (including any Qualifying Medical Records submitted in response to a Deficiency Notice) and/or any additional Qualifying Medical Records that a

Plaintiff elects to submit in support of his or her Tier 4 Reconsideration Request. Tier 4 Reconsideration Requests shall consist of a letter of no more than five (5) pages signed by the Primary Plaintiff's counsel and subject to the attestations in the Claim Form.

The substance of all Tier 4 Reconsideration Requests shall be limited to the Primary Plaintiff's contention that the Allocation Neutral (i) misapplied the Tier 4 proof requirements with respect to the Primary Plaintiff's claims as set forth in his or her Claim Form and Qualifying Medical Records; (ii) misapplied, or failed to apply, the Adjustment Factors or any of them; (iii) failed to award a Mixed Orthopedic Plaintiff a sufficient Mixed Orthopedic Injury payment pursuant to the requirements of Section XVIII.A of this Agreement; (iv) failed to award the Primary Plaintiff a Qualifying Surgery payment pursuant to the requirements of Section XVIII.B of this Agreement; (v) misapplied the Work Verification Procedure to the Primary Plaintiff's case; (vi) failed to calculate correctly the Primary Plaintiff's Total Score; and/or (vii) misapplied the Permanent Disability Fund provisions in Section XVI of this Agreement to the Primary Plaintiff's case.

Following the Allocation Neutral's receipt and evaluation of a Tier 4 Reconsideration Request, the Allocation Neutral shall notify Plaintiffs' Liaison Counsel and the WTC Captive of any change to a Verified Tier 4 Primary Plaintiff's Total Score, other change to a Primary Plaintiff's placement in Tier 1, Tier 2 or Tier 3, and/or the Allocation Neutral's determination(s) with respect to other aspects of the Tier 4 Reconsideration Request. The Allocation Neutral may adjust the Verified Tier 4 Primary Plaintiff's Total Score or a Primary Plaintiff's Tier placement up or down based upon his or her Tier 4 Reconsideration Request. After the Allocation Neutral rules upon a Tier 4 Reconsideration Request, however, no further Reconsideration Requests pertaining to that Plaintiff shall be permitted. Total Scores not subject to a Tier 4 Reconsideration Request or as adjusted, if appropriate, as the result of a timely Tier 4 Reconsideration Request shall be final and binding as the Final Total Score for purposes of calculating a Verified Tier 4 Primary Plaintiff's Final Distribution, if any, as set forth in Sections XIII and XV.A of this Agreement, unless the Verified Tier 4 Primary Plaintiff submits an Appeal to the Claims Appeal Neutral pursuant to Section XIV.C of this Agreement. Except as provided in Section XIV.C of this Agreement, this Tier 4 Reconsideration Request procedure shall be the only means of appeal of the Allocation Neutral's initial Total Score calculation for a Primary Plaintiff who claims eligibility for Tier 4, as well all such Primary Plaintiffs' means of appeal of all other payments, if any, awarded by the Allocation Neutral under this Agreement. All Primary Plaintiffs agree that their respective Final Total Scores and amount, if any, of their other payments under this Agreement, if any, are binding and not appealable by any means except as provided in Section XIV.C of this Agreement.

C. Appeals to the Claims Appeal Neutral

Any Primary Plaintiff who submits a timely Reconsideration Request pursuant to Section XIV.A or XIV.B of this Agreement may appeal to the Claims Appeal Neutral the Allocation Neutral's determination with respect to that Reconsideration Request (hereinafter, an "Appeal").

Each Appeal shall consist of a letter from Plaintiff's counsel to the Claims Appeal Neutral not exceeding two (2) pages in length and setting forth the basis of the Appeal and the Primary Plaintiff's requested remedy(ies). The letter constituting the Appeal shall be subject to the attestations in the Claim Form. When deciding an Appeal, the Claims Appeal Neutral shall consider whether this letter, the Primary Plaintiff's Claim Form and Qualifying Medical Records available to the Allocation Neutral on its website, and the Allocation Neutral's decisions regarding the Primary Plaintiff demonstrate an abuse of discretion by the Allocation Neutral with respect to the application of its duties under this Agreement to any of the Primary Plaintiff's claims in the Allocation Process. Unless the Claims Allocation Neutral determines that such an abuse of discretion has occurred, it shall affirm the Allocation Neutral's determination(s) with respect to the Primary Plaintiff.

In the course of evaluating an Appeal, the Claims Appeal Neutral may, in its sole discretion, consult with the Allocation Neutral and/or the Medical Panel concerning the basis of the Appeal and the Primary Plaintiff's requested remedy(ies). The Claims Appeal Neutral also may consult with any or all of the Parties' respective counsel, but only if the Claims Appeal Neutral initiates such communications. The Parties and/or their respective counsel shall not communicate with the Claims Appeal Neutral other than through the procedures for Appeals set forth herein.

All Appeals must be in the form of a letter submitted to the Allocation Neutral's website within fifteen (15) days after the Allocation Neutral issues its determination with respect to the Primary Plaintiff's Reconsideration Request. The Claims Appeal Neutral shall issue its determinations with respect to each Appeal within sixty (60) days of its receipt by the Claims Appeal Neutral.

The Claims Appeal Neutral shall decide each timely Appeal in a writing submitted to the Allocation Neutral for uploading to its secure website. The Claims Appeal Neutral's determination with respect to all Appeals shall be final, binding and non-appealable by any means. Once the Claims Appeal Neutral has decided an Appeal in writing, the Allocation Neutral shall abide by that decision in all respects concerning all payments, if any, to the Primary Plaintiff and any corresponding Derivative Plaintiff due under this Agreement.

XV. FINAL DISTRIBUTION CALCULATIONS AND PROCEDURES FOR TIER 4**A. Final Distribution Formula**

Separately within the Allocation Pool for each Master Docket as set forth in Section XIII.A of this Agreement and subject to the allocation among the Master Dockets of (i) the Settlement Amount as set forth in Sections II.B.i.a through II.B.i.c of this Agreement, (ii) any additional money allocated to the Master Docket pursuant to Section VI.E of this Agreement, and (iii) any income on these amounts remaining after satisfaction of Allocation Costs pursuant to Section XI.D of this Agreement, the Allocation Neutral shall calculate each Plaintiff's Final Distribution, if any, as follows:

First, the Allocation Neutral shall determine the Final Total Scores for all Verified Tier 4 Primary Plaintiffs in the Master Docket.

Second, the Allocation Neutral shall determine the Final Total Scores for all Derivative Plaintiffs in the Master Docket by multiplying the Final Total Scores of their respective corresponding Primary Plaintiffs by three and one-half percent (3.5%).

Third, having established Final Total Scores for all Plaintiffs qualified to participate in a given Allocation Pool, the Allocation Neutral will sum all of those Final Total Scores to determine the total points for that Allocation Pool ("Aggregate Final Score").

Fourth, the Allocation Neutral shall determine the aggregate amount of money in the Allocation Pool for all Verified Tier 4 Primary Plaintiffs and their corresponding Derivative Plaintiffs eligible for payments under Section VII.B of this Agreement as follows:

- i. Add the portion of the Settlement Amount allocated to the Master Docket, any money added to the Master Docket pursuant to Section VI.E of this Agreement, and all interest earned thereupon pursuant to Section III.B of this Agreement;
- ii. Subtract from the sum referenced in the preceding clause (i) all Preliminary Payments to Plaintiffs in Tiers 1-3 for that Master Docket;
- iii. Subtract further all Qualifying Surgery payments and Mixed Orthopedic Injury payments, if any, to Plaintiffs in that Master Docket; and
- iv. If applicable, subtract further all Initial Payments, Interim Payments and Final Distributions to Verified Tier 4 Primary Plaintiffs (and corresponding Derivative Plaintiffs) for that Master Docket whom the Allocation Neutral has already determined qualify for a minimum Final Distribution (together with the Interim Payment) of One Thousand Dollars

and No Cents (\$1,000.00) more than the Accelerated Final Distributions for Tier 3 Primary Plaintiffs in the Master Docket.

The result of the foregoing calculations shall be the “Net Allocation Pool Amount.”

Fifth, the Allocation Neutral will divide the Net Allocation Pool Amount for each Allocation Pool by the Aggregate Final Score for that Allocation Pool to determine the final value of each point within the Allocation Pool (“Final Point Value”).

Sixth, for each Plaintiff in the Allocation Pool with a Final Total Score, the Allocation Neutral shall multiply each such Plaintiff’s Final Total Score by the Final Point Value for that Plaintiff’s Allocation Pool (“Anticipated Total Payment”).

Seventh, the Allocation Neutral shall reduce each such Plaintiff’s Anticipated Total Payment by the sum of his or her Preliminary Payments to determine the amount of his or her Final Distribution; provided, however, that if the total of all such Plaintiffs’ Final Distributions in a particular Allocation Pool differs from the Net Allocation Pool Amount less the sum of (i) all Initial Payments and Interim Payments to all Verified Tier 4 Primary Plaintiffs in that Allocation Pool (except those who the Allocation Neutral previously awarded minimum Final Distributions pursuant to step eight (8) of this calculation) and (ii) all Initial Payments and Interim Payments to corresponding Derivative Plaintiffs, the difference shall be apportioned *pro rata*.

Eighth, the Allocation Neutral shall review the Final Distributions determined by the above calculation to determine if any Verified Tier 4 Primary Plaintiffs would receive less than One Thousand Dollars and No Cents (\$1,000.00) more than the Accelerated Final Payment for Plaintiffs in Tier 3 in their Master Docket. If any such Verified Tier 4 Primary Plaintiffs’ Primary Qualifying Injuries are not pre-existing, and if those Verified Tier 4 Primary Plaintiffs did not materially misrepresent, materially omit or materially conceal facts in their Claim Forms and/or in the Qualifying Medical Records, the Allocation Neutral shall proceed as follows: First, award such Primary Plaintiffs minimum Final Distributions (together with their Interim Payment) of One Thousand Dollars and No Cents (\$1,000.00) more than the Accelerated Final Payment for Tier 3 Primary Plaintiffs in their Master Docket. Second, award all corresponding Derivative Plaintiffs a Final Distribution equal to three and one half percent (3.5%) of that amount. Third, repeat this calculation starting from step two (2) for the remaining Verified Tier 4 Primary Plaintiffs and corresponding Derivative Plaintiffs in their Allocation Pool, excluding those who receive minimum Final Distributions from the accounting referenced in this eighth (8th) step.

B. Notice to Plaintiffs of Final Distribution

Once the Allocation Neutral has conducted the calculation set forth in Section XV.A of this Agreement for Plaintiffs in a given Allocation Pool, the Allocation Neutral shall send to Plaintiffs' Liaison Counsel, Defendant Insureds' Counsel and the WTC Captive a notice setting forth the Final Total Score for each Primary Plaintiff and Derivative Plaintiff participating in that Allocation Pool; the Aggregate Total Score for all Plaintiffs in a given Allocation Pool; and the amount of each such Primary Plaintiff's and Derivative Plaintiff's Final Distribution, if any (collectively, "Final Distribution Calculation Notice").

C. Final Distribution Logistics

Thirty (30) days after the WTC Captive receives the Final Distribution Calculation Notice for any Allocation Pool, the WTC Captive or its designee shall distribute jointly to each Plaintiff in that Allocation Pool and his or her counsel each such Plaintiff's Final Distribution, if any. All Final Distributions shall be applied against and within the Settlement Amount.

XVI. PERMANENT DISABILITY FUND

The WTC Captive shall capitalize fully from within the Settlement Amount a Permanent Disability Fund in the amount specified in Section II.B.iii of this Agreement. The Permanent Disability Fund shall be subject to the following terms and conditions:

A. Application Criteria for a Permanent Disability Fund Award

To apply for an award from the Permanent Disability Fund, a Primary Plaintiff must:

- i. Claim eligibility for the Permanent Disability Fund in the Eligible Plaintiff List, unless the Primary Plaintiff receives a disability award and/or a line of duty death benefit after the submission of the Eligible Plaintiff List, in which case the Primary Plaintiff is entitled to make a Permanent Disability Fund Award application to the Allocation Neutral consistent with the other requirements of this Section XVI;
- ii. Execute the Release and Covenant Not to Sue;
- iii. Have satisfied the requirements of the Work Verification Procedure (as evidenced by the Primary Plaintiff's inclusion on the "pre-approved list" or by the Allocation Neutral's determination pursuant to the requirements set forth in Exhibit B to this Agreement);
- iv. Submit a Claim Form alleging eligibility to participate in the Permanent Disability Fund;

- v. Submit with his or her Claim Form all documents pertaining to Permanent Disability Fund eligibility as set forth in Section XVI.B of this Agreement and to calculation of Permanent Disability Fund awards as set forth in Section XVI.D of this Agreement; and
- vi. With respect to all living Primary Plaintiffs who are or were employed by the Fire or Police Departments of the City of New York, the Primary Plaintiff must have received a determination of accidental disability in accordance with New York City Administrative Code §§ 13-252, 13-258, 13-353, 13-354, 13-364 or 13-366, Retirement and Social Security Law § 507 or General Municipal Law §§ 207-kk or 207-q regardless of whether any citation to any accidental disability code provision or statute appears on the face of the benefit determination (but not an ordinary disability determination in accordance with New York City Administrative Code §§ 13-251, 13-257, 13-352, 13-362 or 13-363 or Retirement and Social Security Law § 506 regardless of whether any citation to any ordinary disability benefit code provision or statute appears on the face of the benefit determination) or, subject to the other requirements of this Section XVI, the Primary Plaintiff has applied for such an accidental disability determination and has received a Police or Fire Department medical board determination that he or she is unfit for full duty; provided, however, that all such Primary Plaintiffs deemed “eligible for light duty” but who do not have a subsequent accidental disability determination by a pension board in accordance with New York City Administrative Code §§ 13-252, 13-258, 13-353, 13-354, 13-364 or 13-366 or Retirement and Social Security Law § 507 shall not be eligible to recover from the Permanent Disability Fund.

B. Eligibility to Recover an Award from the Permanent Disability Fund

Primary Plaintiffs who meet the application criteria provided in Section XVI.A of this Agreement shall be eligible for an award from the Permanent Disability Fund only if:

- i. The disability or line of duty death benefit documentation appended to the Primary Plaintiff’s Claim Form (including without limitation a report from the Fire Department of New York Bureau of Health Services Committee setting forth recommendations concerning the Primary Plaintiff’s disability or line of duty death benefit application) relates, by statutory presumption or otherwise, in whole or in part to his or her work or volunteer service at the WTC Site or other locations at which the Primary Plaintiff alleged exposure giving rise to his or her Debris Removal Claims against the Insureds or any of them as demonstrated either by:
 - a. Express reference(s) or citations in that documentation to the WTC Bill, also known as the World Trade Center Bill, the World Trade Center Disability Law, the WTC Disability Law, the World Trade

Center Presumption Law, the WTC Presumptive Bill, Chapter 93 of the Laws of 2005, World Trade Center Article 15 Disability, or Sections 63(g), 363(g) or 507(g) of New York's Retirement and Social Security Law (hereinafter collectively referred to as the "WTC Bill"), or to an asserted relationship between the Primary Plaintiff's disabling injury(ies) and/or death, on the one hand, and his or her work or volunteer service at the WTC Site and/or at other locations at which the Primary Plaintiff alleges exposure giving rise to his or her Debris Removal Claims against the Insureds or any of them, on the other hand. If a Primary Plaintiff claims that an "asserted relationship" as used in the preceding sentence satisfies the eligibility requirements of this Section XVI.B.i.a, the Allocation Neutral may consider, among other documents available to it that it considers relevant to such an "asserted relationship," if any, (1) a comparison in the Primary Plaintiff's disability or line of duty death benefit documentation to the lack of symptoms before and the presence of symptoms on or after September 11, 2001; (2) a comparison in the Primary Plaintiff's disability or line of duty death benefit documentation to symptoms existing before and after, or to symptoms worsening after, September 11, 2001, in which case the Primary Plaintiff's Baseline PDF Score shall be reduced by fifty percent (50%) pursuant to Section XVI.D.iii of this Agreement; (3) any statement in the Primary Plaintiff's disability documentation submitted to the Allocation Neutral which refers to the Primary Plaintiff's development of symptoms and/or illness during work or volunteer service at the WTC Site or other locations at which the Primary Plaintiff alleges exposure giving rise to his or her Debris Removal Claims against the Insureds or any of them; or (4) references in the Primary Plaintiff's disability or line of duty death benefit documentation to the Primary Plaintiff's presence at, and/or to his or her exposure to dust, toxins, contaminants, smoke and/or products of combustion at the WTC Site or other locations at which the Primary Plaintiff alleges exposure giving rise to his or her Debris Removal Claims against the Insureds or any of them, but only if the Allocation Neutral concludes based upon the totality of the information available to it that such reference(s) constitute an affirmative statement connecting the Primary Plaintiff's disabling injury(ies) or line of duty death benefit to his or her work or volunteer service at the WTC Site or at other locations at which the Primary Plaintiff alleges exposure giving rise to his or her Debris Removal Claims against the Insureds or any of them; or

- b. With respect to Social Security disability determinations only, by the Allocation Neutral's determination that the Primary Plaintiff was disabled based upon or died because of a Qualifying Injury presumed by virtue of the WTC Bill to be causally related to

exposures at the WTC Site or other locations at which the Primary Plaintiff alleges exposure giving rise to Debris Removal Claims against the Insureds or any of them;

provided, however, that any Primary Plaintiff disabled or who received a line of duty death benefit exclusively due to Post Traumatic Stress Disorder and/or other psychological condition shall be ineligible to participate in the Permanent Disability Fund regardless of any asserted and/or statutorily presumed relationship of such condition(s) to the Primary Plaintiff's alleged exposure giving rise to his or her Debris Removal Claims against the Insureds or any of them;

- ii. The Allocation Neutral determines that:
 - a. The Primary Plaintiff received a final permanent disability determination or a line of duty death benefit from an Adjudicatory Body on or before the date upon which the Allocation Neutral distributes the assets in the Permanent Disability Fund to the Primary Plaintiffs eligible to participate in that distribution as set forth in this Section XVI.B;
 - b. The Primary Plaintiff's employer, its workers' compensation carrier, or any licensed physician retained by such employer or workers' compensation carrier has supported in writing the Primary Plaintiff's application for permanent disability benefits, and (i) the aforementioned application is still pending as of the date the Allocation Neutral reviews the Primary Plaintiff's Claim Form or (ii) the Primary Plaintiff subsequently entered into a "Section 32" agreement with the workers' compensation carrier under which the Primary Plaintiff received a lump sum settlement of his or her claim for permanent disability benefits;
 - c. The Primary Plaintiff is or was employed by the Fire Department of the City of New York, and the 1-b medical board of the New York City Fire Department Pension Fund has found him or her unfit for duty; provided, however, that no Primary Plaintiff whose application for permanent disability or line of duty death benefit has been rejected by the Fire Department of the City of New York Pension Board as of the date of the Allocation Neutral's distribution of the Permanent Disability Fund awards shall be eligible;
 - d. The Primary Plaintiff is or was employed by the Police Department of the City of New York, and the Medical Board of the Police Pension Fund of the Police Department of the City of New York has approved his or her application for permanent accidental disability benefits or line of duty death benefits; provided,

however, that no Primary Plaintiff whose application for permanent accidental disability or line of duty death benefit has been rejected by the Police Department of the City of New York Pension Board as of the date of the Allocation Neutral's distribution of Permanent Disability Fund awards shall be eligible; or

- e. The Primary Plaintiff is deceased as of the Final Settlement Agreement Effective Date and:
- (i) The Allocation Neutral determines, based upon the Primary Plaintiff's Claim Form and Qualifying Medical Records, that the Primary Plaintiff's death was potentially related or related to his or her exposure at the WTC Site or other locations at which Primary Plaintiff alleged exposure giving rise to his or her Debris Removal Claims against the Insureds or any of them, such that the Primary Plaintiff satisfies the Medical Proof Criteria for "H1" or "H2" on the Settlement Grid; or
 - (ii) The Primary Plaintiff's heirs or assigns received WTC-related death benefits, established by documentation confirming such benefits submitted to the Allocation Neutral with the deceased Primary Plaintiff's Claim Form; or
 - (iii) For Primary Plaintiffs who were employed by the Fire or Police Departments of the City of New York, (a) the Primary Plaintiff was recommended by a Police or Fire Department medical board for accidental disability benefits pursuant to New York City Administrative Code §§ 13-252, 13-258, 13-353, 13-354, 13-364 or 13-366, Retirement and Social Security Law § 507, or General Municipal Law §§ 207-kk or 207-q regardless of whether any citation to any accidental disability code provision or statute appears on the face of the benefit determination, but not ordinary disability benefits pursuant to New York City Administrative Code §§ 13-251, 13-257, 13-352, 13-362 or 13-363 or Retirement and Social Security Law § 506 regardless of whether any citation to any ordinary disability code provision or statute appears on the face of the benefit determination; (b) the Primary Plaintiff's heirs or assigns receive or received a line of duty death benefit relating to the Primary Plaintiff's work giving rise to his or her Debris Removal Claims against the Insureds or any of them; or (c) a medical board of the Fire or Police Department of the City of New York recommended the Primary Plaintiff for

line of duty death benefits relating to his or her work giving rise to his or her Debris Removal Claims against the Insureds or any of them.

C. Preliminary Verification of Permanent Disability Fund Claims

To reduce Allocation Costs, the Parties shall implement the following preliminary verification process for Permanent Disability Fund claims to confirm, subject to the Allocation Neutral's review and independent judgment consistent with Sections XVI.A and XVI.B of this Agreement, which Primary Plaintiffs are entitled to a Permanent Disability Fund award.

Within thirty (30) days after its receipt from Plaintiffs' counsel of the updated Eligible Plaintiff List required pursuant to Section VI.A of this Agreement, the WTC Captive shall consult with Plaintiffs' Liaison Counsel concerning which Primary Plaintiffs appear entitled to a Permanent Disability Fund award. Within thirty (30) days thereafter, the WTC Captive shall provide the Allocation Neutral and Plaintiffs' Liaison Counsel with a list of all Primary Plaintiffs who the WTC Captive and Plaintiffs' Liaison Counsel agree are entitled to a Permanent Disability Fund award. All Primary Plaintiffs on the WTC Captive's list shall receive a Permanent Disability Fund award unless the Allocation Neutral determines otherwise. As an additional component of this Permanent Disability Fund preliminary verification process, within fifteen (15) days after the WTC Captive's submission, Plaintiffs' Liaison Counsel may provide the Allocation Neutral with a supplemental list of Primary Plaintiffs who Plaintiffs' Liaison Counsel contend satisfy the Permanent Disability Fund's requirements as set forth in this Agreement. Together with that supplemental list, Plaintiff's counsel shall submit to the Allocation Neutral true and correct copies of all final disability determinations from an Adjudicatory Body and any other documentation forming the bases of all Plaintiffs' Permanent Disability Fund claims. Should the Parties disagree at the completion of this preliminary verification process whether a particular Primary Plaintiff is entitled to a Permanent Disability Fund award, that Primary Plaintiff may submit documentation to the Allocation Neutral alleging that he or she satisfies the requirements of Sections XVI.A and XVI.B of this Agreement and is therefore entitled to such an award.

No Primary Plaintiff shall be precluded from seeking a Permanent Disability Fund recovery solely by virtue of the non-binding preliminary verification provisions of this Section XVI.C.

D. Calculation of Individual Permanent Disability Fund Awards

For purposes of calculating individual Permanent Disability Fund awards, all Primary Plaintiffs who apply for an award from the Permanent Disability Fund as set forth in Section XVI.A of this Agreement and who the Allocation Neutral determines pursuant to Section XVI.B of this Agreement are eligible for such an award will be awarded 100 Points (hereinafter, the "Baseline PDF Score")

irrespective of their Qualifying Injuries or Final Total Scores. The Allocation Neutral shall distribute the Permanent Disability Fund among eligible applicants after making the following adjustments to the Baseline PDF Score for each Primary Plaintiff to establish an "Adjusted PDF Score," as follows:

- i. Add five percent (5%) to the Baseline PDF Score for each year younger than 35 the Primary Plaintiff was as of September 11, 2001 (up by a maximum of fifty percent (50%)), such that, for example, a Primary Plaintiff who was 30 on September 11, 2001, would have an adjusted Baseline PDF Score of 125; or decrease the Baseline PDF Score by five percent (5%) for each year older than 45 the Primary Plaintiff was as of September 11, 2001 (down by a maximum of fifty percent (50%)), such that, for example, a Primary Plaintiff who was 50 on September 11, 2001, would have a PDF Score of 75;
- ii. Reduce the product of step i by sixty-six and two-thirds percent (66.67%) if the Primary Plaintiff is in Master Docket 21 MC 102, or reduce the product of step i by fifty percent (50%) if the Primary Plaintiff is in Master Docket 21 MC 103;
- iii. Reduce the product of step ii by one half (a fifty percent (50%) reduction) if the Allocation Neutral determines that an eligible Primary Plaintiff's final permanent disability award relates to or includes injuries pre-dating, and/or other injuries or conditions unrelated to, the Primary Plaintiff's work or volunteer service at the WTC Site or locations giving rise to his or her Debris Removal Claims against the Insureds or any of them. This fifty percent (50%) decrease also shall apply to any Primary Plaintiff who was first disabled due to injuries or conditions other than those specified in the Cancer Bill (Retirement and Social Security Law § 363-d and General Municipal Law § 207-kk) or the Lung Bill (Retirement and Social Security Law § 363-f, General Municipal Law § 207-q and N.Y.C. Admin. Code § 13-354) and which the Allocation Neutral determines are unrelated to the Primary Plaintiff's work or volunteer service at the WTC Site or other location giving rise to his or her Debris Removal Claims against the Insureds or any of them (*e.g.*, a disabling off-site orthopedic injury) or other work or volunteer service giving rise to his or her Debris Removal Claims against the Insureds or any of them, but who was subsequently granted disability under the WTC Bill;
- iv. Reduce the product of step iii by one-half (a fifty percent (50%) reduction) if the Primary Plaintiff qualifies for the Permanent Disability Fund under Sections XVI.B.ii.b, XVI.B.ii.c or XVI.B.ii.d of this Agreement; provided, however, that this fifty percent (50%) reduction shall not apply to Primary Plaintiffs who were employed by the City of New York Police Department and who are eligible for the Permanent Disability Fund by reason of Section XVI.B.ii.d of this Agreement if the Police Department of the City of New York Pension Board verifies that such Primary Plaintiffs receive

WTC-related accidental disability benefits (such verification by the Police Department of the City of New York Pension Board shall be provided in writing to counsel for Primary Plaintiffs who meet the requirements of clauses (i) through (vi) of the third paragraph of Section XI.H of this Agreement and, if such verification is not provided by forty-five (45) days after the Effective Date, affected Primary Plaintiffs shall have the right to subpoena the Police Department of the City of New York Pension Board by service of a subpoena on it notwithstanding the Interim Stay);

- v. Reduce the product of step iv by one-half (a fifty percent (50%) reduction) if the Primary Plaintiff qualifies for the Permanent Disability Fund only because the Allocation Neutral determines that his or her death was potentially related to alleged exposure during work or volunteer service at the WTC Site or other locations at which he or she alleges exposure giving rise to his or her Debris Removal Claims against the Insureds or any of them such that the Primary Plaintiff satisfies the Medical Proof Criteria for “H1” on the Settlement Grid; and
- vi. Increase the points after step v by one-fifth (a twenty percent (20%) increase) if the Allocation Neutral finds that the Primary Plaintiff meets the Medical Proof Criteria for Qualifying Injuries B3-B4, C3-C4 and/or I3.

If the net result of the above calculations reduces an eligible Primary Plaintiff's Adjusted PDF Score to less than twenty-five (25) points for those Primary Plaintiffs in Master Docket 21 MC 100, eight and one-third (8.33) points for those Primary Plaintiffs in Master Docket 21 MC 102, and twelve and one-half (12.5) points for those Primary Plaintiffs in Master Docket 21 MC 103 (collectively, Master Docket-Specific PDF Score Floor), the Allocation Neutral shall increase that Plaintiff's Adjusted PDF Score to his or her Master Docket-Specific PDF Score Floor.

After completing the above Adjusted PDF Score calculation for each Primary Plaintiff who applied and who is eligible to recover from the Permanent Disability Fund, the Allocation Neutral shall determine the sum of all eligible Primary Plaintiffs' Adjusted PDF Scores (hereinafter, the “Aggregate PDF Score”).

The Allocation Neutral shall then determine the amount of money available for allocation among Primary Plaintiffs eligible to recover from the Permanent Disability Fund as set forth in Section XVI.B by taking the amount allocated to the Permanent Disability Fund as set forth in Section II.B.iii of this Agreement, adding any additional money allocated to the Permanent Disability Fund pursuant to Section VI.E of this Agreement, and adding to that amount any income earned thereon after satisfying Allocation Costs as provided in Section XI.D of this Agreement (“Net PDF Aggregate Amount”). The Allocation Neutral shall then divide the Net PDF Aggregate Amount by the Aggregate PDF Score to determine the value of each point for purposes of the Permanent Disability Fund awards

(hereinafter, the “PDF Point Value”). By multiplying the PDF Point Value by each Primary Plaintiff’s Adjusted PDF Score, the Allocation Neutral shall determine the Permanent Disability Fund award for each such Primary Plaintiff.

The Allocation Neutral’s calculation of each eligible Primary Plaintiff’s award from the Permanent Disability Fund shall be final and binding upon all Parties, unless it is the subject of a timely Reconsideration Request or Appeal pursuant to Section XIV of this Agreement.

E. Expedited Disbursement of Permanent Disability Fund Awards

The Parties intend that the Allocation Neutral will expedite, to the extent practicable, awards from the Permanent Disability Fund. To this end, the Allocation Neutral may cause awards from the Permanent Disability Fund to be distributed before determining all Plaintiffs’ Final Distributions. Moreover, the Allocation Neutral may expedite review of Claim Forms for Primary Plaintiffs who claim eligibility for a Permanent Disability Fund award.

XVII. CANCER INSURANCE POLICY

Within thirty (30) days after the Final Settlement Agreement Effective Date, the WTC Captive shall fund the purchase of the Cancer Insurance Policy attached as Exhibit E to this Agreement. The WTC Captive shall fund the Cancer Insurance Policy premium from within the Settlement Amount at the amount specified in Section II.B.i of this Agreement. This Cancer Insurance Policy shall be available to all Primary Plaintiffs (i) who execute the Release and Covenant Not to Sue appended as Exhibit P to this Agreement; (ii) who have complied with the Work Verification Procedure (as evidenced by the Primary Plaintiff’s inclusion on the “pre-approved list” or by the Allocation Neutral’s determination, as set forth more fully in Exhibit B to this Agreement); and (iii) who are otherwise eligible for coverage according to the Cancer Insurance Policy’s insuring agreement and other terms, conditions and exclusions. The WTC Captive has no duties or obligations with respect to the Cancer Insurance Policy other than as set forth expressly in this Agreement.

XVIII. QUALIFYING SURGERY AND MIXED ORTHOPEDIC INJURY PAYMENTS

In addition to all other payments authorized under this Agreement, the Allocation Neutral shall pay those Primary Plaintiffs who demonstrate, in the Allocation Neutral’s judgment, a Mixed Orthopedic Injury and/or one or more Qualifying Surgeries as set forth in this Section XVIII.

A. Mixed Orthopedic Injury Payments

For those Primary Plaintiffs:

- i. Who allege in their respective Claim Forms a Mixed Orthopedic Injury; and

ii. Who qualify as a Mixed Orthopedic Plaintiff,

the Allocation Neutral shall direct that the WTC Captive or its designee pay from within the portion of the Settlement Amount allocated to the Mixed Orthopedic Plaintiff's Master Docket as set forth in Section II.B.i of this Agreement up to Ten Thousand Dollars and No Cents (\$10,000.00), or any lesser amount that the Allocation Neutral determines is reasonable redress for the particular Mixed Orthopedic Injury at issue. In determining the amount of any such Mixed Orthopedic Injury payment, the Allocation Neutral shall take into account the nature, severity and temporary or permanent consequences, if any, of the Mixed Orthopedic Plaintiff's Mixed Orthopedic Injury.

Payments to Mixed Orthopedic Plaintiffs shall be in addition to their respective Preliminary Payments, Final Distributions, enrollment in the Cancer Insurance Policy, Qualifying Surgery payments and Permanent Disability Fund awards, if any. Payments to Mixed Orthopedic Plaintiffs also shall only apply if the Mixed Orthopedic Plaintiff alleges a Mixed Orthopedic Injury in his or her Claim Form and submitted with that Claim Form Qualifying Medical Records and/or employment records establishing, in the Allocation Neutral's judgment that:

- i. The Mixed Orthopedic Injury transpired while the Primary Plaintiff was present at the WTC Site or during other work or volunteer services giving rise to his or her Debris Removal Claims against the Insureds or any of them;
- ii. Conditions at the WTC Site or at other locations at which the Primary Plaintiff performed World Trade Center-related work or volunteer services caused the Primary Plaintiff's Mixed Orthopedic Injury;
- iii. The Mixed Orthopedic Injury was confirmed by objective medical tests and/or studies (*e.g.*, MRI, CT-Scan, X-Ray, etc.); and
- iv. The Primary Plaintiff filed suit against the Insureds or any of them, or provided written notice of claim to the City of New York, within three years of the date of the Primary Plaintiff's Mixed Orthopedic Injury and cited the injury as the basis for such suit or claim, unless the Primary Plaintiff filed a notice of claim against the City of New York on or after September 16, 2009, but on or before April 12, 2010.

Mixed Orthopedic Injury payments shall be issued upon completion of the Allocation Process with respect to all Mixed Orthopedic Plaintiffs but before any Plaintiff receives a Final Distribution. Mixed Orthopedic Injury payments to all Mixed Orthopedic Plaintiffs in all Master Dockets shall not exceed One Million Forty Thousand Dollars and No Cents (\$1,040,000.00) in the aggregate ("MOI Aggregate"). If the Allocation Neutral's preliminary assessments of the value of all Mixed Orthopedic Injury payments exceeds the MOI Aggregate, the Allocation Neutral shall reduce proportionally the amount of each Mixed

Orthopedic Injury payment so that the sum of all Mixed Orthopedic Injury payments equals the MOI Aggregate. Nothing in this paragraph shall require the Allocation Neutral to issue Mixed Orthopedic Injury payments totaling the MOI Aggregate if, in the Allocation Neutral's judgment, such payments are not warranted under the terms of this Section XVIII.A.

B. Qualifying Surgery Payments

For a Primary Plaintiff who:

- i. Alleges in his or her Claim Form that he or she underwent one or more of the surgical procedures listed on Exhibit D to this Agreement ("Qualifying Surgeries");
- ii. Demonstrates, in the Allocation Neutral's judgment, through Qualifying Medical Records submitted with his or her Claim Form the existence of one of the Qualifying Injury(ies) associated with a Qualifying Surgery as specified in Exhibit D;
- iii. Demonstrates, in the Allocation Neutral's judgment, that his or Qualifying Surgery is not most likely explained by a condition or incident separate and apart from his or her pertinent Qualifying Injury; and
- iv. Demonstrates, in the Allocation Neutral's judgment, that the Qualifying Injury that necessitated the Qualifying Surgery did not pre-date the Plaintiff's work or volunteer service at the WTC Site or any other location at which the Primary Plaintiff alleges exposure giving rise to his or her Debris Removal Claims against the Insureds or any of them,

the Allocation Neutral shall direct the WTC Captive or its designee to pay to the Primary Plaintiff from within the amount of the Settlement Amount allocated to the Primary Plaintiff's Master Docket as set forth in Section II.B.i of this Agreement the payment indicated for the Primary Plaintiff's Qualifying Surgery as listed on Exhibit D.

A Primary Plaintiff's Qualifying Surgery payments, if any, shall be in addition to his or her Mixed Orthopedic Injury Payment, Preliminary Payments, Final Distributions, enrollment in the Cancer Insurance Policy, and Permanent Disability Fund award, if any.

XIX. LIENS, ASSIGNMENT RIGHTS AND OTHER THIRD-PARTY PAYOR CLAIMS

Each Primary Plaintiff shall identify to the Allocation Neutral on his or her Claim Form all known lien holders with claims against any payment to be received by the Plaintiff under the Final Settlement Agreement, including without limitation all third-party public or private payors that have paid for and/or reimbursed him or her for medical expenses, pharmacy expenses, disability benefits, or any other costs and expenses incurred due to or

arising out of injuries alleged in any Master Docket. The Allocation Neutral shall develop procedures with respect to each Primary Plaintiff's duty to identify all such lien holders.

A. Federal Medicare (Parts A and B) and Medicaid

The Allocation Neutral's procedures shall include the appointment of Garretson as Lien Resolution Administrator to perform certain functions pursuant to this Section XIX.A in connection with claims that may be asserted by federal Medicare (Parts A and B) ("Medicare") and Medicaid. Each Plaintiff participating in the Allocation Process shall identify to the Lien Resolution Administrator on his or her Claim Form all Medicare and Medicaid obligations known to them with respect to all payments they receive by virtue of the Final Settlement Agreement, through procedures and protocols to be established by the Lien Resolution Administrator. Plaintiffs and their counsel must cooperate with the procedures and protocols established by the Lien Resolution Administrator.

The Lien Resolution Administrator shall exercise reasonable efforts to confirm the Medicare and Medicaid claim information provided by Plaintiffs, and to identify any additional Medicare and Medicaid claims not reported on Plaintiffs' Claim Forms. The Lien Resolution Administrator shall resolve all claims that have been or may be asserted by Medicare or Medicaid based upon the provision of medical care or treatment provided to the Plaintiff connected with or alleged to be connected with Debris Removal Claims settled pursuant to the Final Settlement Agreement; provided that nothing herein is intended to create a right of reimbursement where none would otherwise exist under applicable state or federal tort recovery statutes.

Within ten (10) days after the Final Settlement Agreement Effective Date, or within any reasonable extension of that ten (10) days agreed to in writing by Plaintiffs' Liaison Counsel and the WTC Captive, the Lien Resolution Administrator shall as to each Plaintiff certify whether any reimbursement claim is being asserted by Medicare or Medicaid as to such Plaintiff and, where any such claim is determined to exist, either: (1) the amount to resolve such claim as established by the agreement of the Lien Resolution Administrator and the Medicare/Medicaid agency ("Final Medicare Lien Amount"); or (2) the "holdback" amount or other mechanism agreed to by the Medicare/Medicaid agency under which said agency has agreed to finally resolve its claim for reimbursement of past and/or future Medicare/Medicaid payments ("Resolution Amount").

In addition to resolution of reimbursement claims defined in this Section XIX.A, the appointed Lien Resolution Administrator shall cooperate with the WTC Captive and its outside service providers and respond to their reasonable requests for information required to fulfill the settlement reporting duties associated with Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007.

The Allocation Neutral/Lien Resolution Administrator shall not be responsible for identifying or resolving any liens other than the Medicare and Medicaid reimbursement claims described herein, and all other liens shall remain Plaintiffs' sole responsibility. No Plaintiff or Plaintiffs' counsel shall have any rights or defenses based upon or arising out of any act or omission of WTC Captive and/or the Lien Resolution Administrator and/or the Allocation Neutral with respect to these provisions. Plaintiffs will satisfy, indemnify, repay, and hold the WTC Captive harmless from any and all such claims, liens, and rights to payment, including attorneys' fees.

B. Release of Insureds' Workers' Compensation Liens

As a result of the WTC Captive's best efforts to resolve September 11th service related workers' compensation liens arising out of the City of New York's WTC OCIP and held by an Insured against the payment(s), if any, to Primary Plaintiffs who opt into the Final Settlement Agreement, upon the Final Settlement Agreement Effective Date the City of New York and Liberty Mutual Fire Insurance Company, only in its capacity as the workers' compensation insurance carrier for the Insureds under the City of New York's WTC OCIP, (i) consent to the Final Settlement Agreement for purposes of all applicable workers' compensation laws and (ii) release their respective liens relating to all past, present and future workers' compensation benefits paid to Primary Plaintiffs who have filed workers' compensation claims and opt into the Final Settlement Agreement to the extent that those liens relate to workers' compensation benefits paid as a result of injuries alleged by such Primary Plaintiffs in their respective Debris Removal Claims. This release by Liberty Mutual Fire Insurance Company shall extend only to liens based upon benefits paid under policies it issued pursuant to the City of New York's WTC OCIP.

All Plaintiffs who receive the benefit of waivers of workers' compensation liens pursuant to this Section XIX.B shall be eligible to continue to receive their respective future workers' compensation benefits to which they are otherwise legally entitled to receive from the City of New York or Liberty Mutual Fire Insurance Company without interruption or reduction in amount for the credit.

Primary Plaintiffs shall bear the burden and expense of resolving any and all workers' compensation liens other than those held by the Insureds as set out above or any of them. By accepting any payment(s) due under the Final Settlement Agreement, each Primary Plaintiff represents and warrants that there are no unresolved workers' compensation liens against such payment(s). Any Primary Plaintiff who breaches this representation and warranty shall indemnify the WTC Captive and the Insureds and hold each of them harmless, including without limitation by paying their respective attorneys' fees, with respect to any claims against them or any of them arising from or relating to such unsatisfied workers' compensation lien(s).

C. All Other Liens, Assignment Rights and Other Third-Party Payor Claims

In addition to the foregoing provisions, all other liens, assignment rights and other third-party payor claims – including, without limitation, all liens by all other third-party payors, all subrogation claims, liens, or other rights to payment relating to medical treatment or lost wages, or any liens based on any legal expenses, bills, or costs that have been or may be asserted by any health care provider, insurer, employer, attorney or other person or entity – shall remain Plaintiffs' sole responsibility. Plaintiffs will satisfy, indemnify, repay, and hold the WTC Captive harmless from any and all such claims, liens, and rights to payment, including attorneys' fees.

D. Plaintiffs' Representations and Warranties Regarding All Liens, Assignment Rights and Other Third-Party Payor Claims

Prior to receiving any Preliminary Payment, Qualifying Surgery payment, Mixed Orthopedic Injury payment, Final Distribution, or Permanent Disability Fund award, each Plaintiff shall represent and warrant to the Allocation Neutral that any liens or other claims identified above have been or will be satisfied by the Plaintiff. The Allocation Neutral shall be under no obligation to cause any payment to be made to a Plaintiff who fails to provide satisfactory proof to the Allocation Neutral that all such liens have been or will be satisfied or compromised.

E. Information to Facilitate Reimbursement Claim and Lien Resolution

To facilitate the resolution of reimbursement claims and liens pursuant to this Section XIX, counsel for each Primary Plaintiff identified on the Eligible Plaintiff List shall provide to the Allocation Neutral within thirty (30) days after the Effective Date the Social Security Number, date of birth, and state of domicile for each such Primary Plaintiff who he or she represents.

XX. INTERIM STAY**A. Motion for an Interim Stay**

After the Effective Date, Plaintiffs and the Insureds shall apply jointly to extend the stay of Debris Removal Claims in all Master Dockets for one hundred and twenty (120) days ("Interim Stay"). The Parties agree to cooperate with respect to their joint applications for an Interim Stay, including without limitation by resisting jointly any opposition to those applications.

B. Scope and Length of Interim Stay

In their application for an extension of the Interim Stay, and except with respect to subpoenas authorized expressly pursuant to the Section XI.H of this Agreement and other subpoenas seeking and, if necessary, motions to compel the production of a Primary Plaintiff's medical records in the possession, custody or control of

any entity other than the Insureds, the Parties shall request jointly that the Court stay all actions in each Master Docket as to all parties in those actions, including without limitation Plaintiffs and the Insureds, for a period of one hundred and twenty (120) days. The Parties also agree that the Interim Stay shall apply to all Debris Removal Claims pending in any other court as of the Effective Date, and will seek to have comparable stays entered in those proceedings, except with respect to subpoenas for the production of documents authorized expressly pursuant to the Section XI.H of this Agreement. The City of New York also agrees (i) that all examinations of Primary Plaintiffs pursuant to N.Y. General Municipal Law § 50-h are stayed while the Interim Stay is in effect and (ii) that all deadlines relating to such stayed § 50-h examinations are tolled during the period of the Interim Stay.

In addition, notwithstanding the Interim Stay, Primary Plaintiffs who have applied for and/or who receive accidental disability benefits pursuant to New York City Administrative Code §§ 13-252, 13-258, 13-353, 13-354, 13-364 or 13-366 or Retirement and Social Security Law § 507 may subpoena the New York City Fire Department Pension Fund or the Police Pension Fund of the Police Department of the City of New York for any and all accidental disability records relating to them, provided that such Primary Plaintiffs include a HIPAA-compliant release together with their respective subpoenas.

The Plaintiffs intend to use this one hundred and twenty (120) day Interim Stay period to attempt to negotiate settlements with Other Defendants consistent with the terms of this Agreement other than the Settlement Amount. Following the expiration of this one hundred and twenty (120) day period, or at any other time agreed to by the Parties and the court, the Parties will request that the Interim Stay be lifted as to all Debris Removal Claims in all Master Dockets that remain unresolved by the Final Settlement Agreement.

C. Interim Stay Is Without Prejudice

The Parties agree that the Interim Stay shall be without prejudice to any Party's rights in the litigation: (i) should the Final Settlement Agreement not become effective due to the failure to satisfy all of the prerequisites set forth in Section XXII.A of this Agreement; or (ii) should the court lift the Interim Stay for any reason.

D. Limited Rights to Apply to Lift the Interim Stay

If this Agreement is voided pursuant to Section VI.E or XX.E of this Agreement, the Plaintiffs and the Insureds agree to apply jointly to the Court to lift the Interim Stay within fifteen (15) days thereafter.

E. Each Provision of This Agreement Is Essential and Non-Severable

Each of the terms, provisions, sections and sub-sections of this Agreement are material and essential to the Parties' meeting of the minds, and are non-severable.

If prior to the Final Settlement Agreement Effective Date any court of competent jurisdiction voids, refuses to enforce, or requires the modification or deletion of any provision or provisions hereof, the Parties shall:

- i. Cooperate in presenting argument and evidence to the court in support of a request for reconsideration of the court's order or other directive; and
- ii. If the request for reconsideration is denied, or the Parties agree that such a request would be futile, the Parties shall in good faith attempt to negotiate mutually agreeable provisions of this Agreement for the sole purpose of addressing the court's stated concerns.

If within sixty (60) days after the date of the court's order or other directive that voids, refuses to enforce, or requires the modification or deletion of any provision or provisions of this Agreement, the Parties are unable to obtain relief or otherwise agree to modify the Agreement pursuant to (ii) above, then any Party shall have the right to void this Agreement and in such circumstances no Party shall oppose the termination of the Interim Stay, if it is then in effect.

XXI. MISCELLANEOUS PROVISIONS

A. Entry of Case Management Orders

On or after the Effective Date, the Insureds will move the court in each Master Docket for entry of the Case Management Order for that Master Docket appended hereto as Exhibit K. Plaintiffs shall not oppose this application. Plaintiffs expressly agree to join this motion.

B. Authority to Enter Into This Agreement

Each counsel signing this Agreement on his or her client's or clients' behalf represents and warrants that he or she is authorized to enter into this Agreement. In addition, each counsel signing this Agreement represents and warrants that, in exercising his or her independent professional judgment, he or she will recommend to each of his or her clients that each participate in the Final Settlement Agreement.

C. No Effect on Parties' Rights Against Non-Parties

Except as provided in Section II.E of this Agreement, nothing in this Agreement shall affect any rights or claims any Party has or may later have against a non-party to this Agreement.

D. No Admissions

Except with respect to any action by a Party or Parties to compel another Party or Parties to enter into Final Settlement Agreement consistent with this Agreement in the event that the Opt-In Threshold as described in Section VI of this

Agreement is satisfied, no Party is admitting liability or conceding any position or fact, including causation of injury or lack thereof, in this Agreement. Furthermore, none of the Allocation Neutral's determinations shall be accorded collateral estoppel effect in any case in any Master Docket or in any other pending or future litigation.

E. Admissibility of this Agreement

This Agreement is subject to Federal Rule of Evidence 408 and analogous protections under all U.S. states' rules of evidence; provided, however, that this Agreement shall be admissible for any purpose in any action brought by any Party or Parties to enforce this Agreement and/or to compel any other Party or Parties to enter into a Final Settlement Agreement consistent with this Agreement in the event that the Opt-In Threshold as described in Section VI of this Agreement is satisfied.

Consistent with this understanding, no Party and no counsel to any Party to this Agreement shall seek to introduce or offer the terms of this Agreement, any statement, transaction or proceeding in connection with the negotiation, execution or implementation of this Agreement, or any statements in the documents delivered in connection with this Agreement, in any judicial proceeding, except as rendered admissible by the foregoing provisions.

F. Governing Law

This Agreement shall be governed in all respects by the laws of the State of New York without regard to choice of law principles.

In addition, the Parties object to any actions of the Court purporting to exercise authority over the Agreement. The Parties do not consent to any jurisdiction of the Court, or of any other court, to approve, supervise, amend, alter, and/or modify the terms of this Agreement.

G. Exclusive Venue in the Event of Any Disputes

The Parties agree that any dispute regarding this Agreement shall be venued in the United States District Court for the Southern District of New York.

H. Lobbying Restrictions

As of the Effective Date, the Parties and their respective counsel agree not to lobby any member of the United States Congress, any such member's staff, or the media in a manner that undermines or disparages, or could reasonably be construed to undermine or disparage, any pending or future legislation limiting the Insureds' potential liability with respect to Debris Removal Claims and/or New Debris Removal Claims. Nothing in this Section XXI.H shall restrict, or shall be construed to restrict, any Party's counsel's ability to practice law.

I. [This section was deleted intentionally.]

J. Merger Clause

This Agreement constitutes the Parties' entire agreement as respects its subject matter. All discussions and any and all oral or written agreements previously entered into or entertained by Parties or any of them concerning this Agreement or any of its subject matter are hereby merged into this Agreement.

K. Confidentiality

Once executed, this Agreement shall not be confidential and may be disclosed without limitation by any Party; provided, however, that nothing in this Section XXI.K shall void or otherwise affect the Parties' continuing obligations under the Confidentiality and Non-Disclosure Agreement ("Confidentiality Agreement") effective as of September 6, 2007, to maintain the confidentiality of Confidential Information as defined by the Confidentiality Agreement.

L. Statements to the Media

Following execution of this Agreement, any Party may issue press release(s) announcing this Agreement and may without limitation make public statements or comments to any member of the media regarding this Agreement; provided, however, that in making such public statements or comments no Party shall disparage another with respect to this Agreement, any aspect of the negotiation of this Agreement, or Debris Removal Claims generally. Nothing in this Section XXI.L shall affect in any way counsel's private consultations with their respective clients; provided, however, that counsel hereby covenant not to make any misrepresentations with respect to the Agreement in communications with their clients.

M. Sanctions for Breach of This Agreement's Confidentiality, Lobbying and/or Media Statement Provisions

The Parties and their counsel agree that any breach of Sections XXI.K (confidentiality), XXI.H (lobbying), and/or XXI.L (media) of this Agreement by any Party or Parties or by any of their respective counsel shall subject the offending Party(ies) and its or their counsel to liquidated damages in the amount of Fifty Thousand Dollars and No Cents (\$50,000.00), to be awarded in the Hon. Alvin K. Hellerstein's discretion upon application to him filed under seal by counsel for any non-breaching Party or Parties. In addition, any Party and/or its counsel found by the Hon. Alvin K. Hellerstein to have breached willfully Sections XXI.K (confidentiality), XXI.H (lobbying), and/or XXI.L (media) of this Agreement shall pay the non-breaching Party's or Parties' costs and expenses, including reasonable attorneys' fees, relating to the liquidated damages application described in this Section XXI.M.

N. Arm's Length Negotiations

This Agreement is the product of arm's length negotiations between and among the Parties. All of the Parties have been represented by, and have conferred with, their respective counsel regarding all aspects of this Agreement.

O. No Contingencies Except the Opt-In Threshold, Entry of the Case Management Order, and Non-Severability

Except as provided in (i) Section VI.E of this Agreement with respect to the WTC Captive's exclusive right to void this Agreement, (ii) Section XXI.A of this Agreement with respect to entry by the court of the Case Management Orders in each Master Docket, and (iii) Section XX.E of this Agreement regarding non-severability, each Party represents and warrants that there are no pending conditions, agreements, transactions or negotiations that would render this Agreement or any part thereof void, voidable or unenforceable.

P. Other Defendants that Become Parties to the Final Settlement Agreement

The Parties acknowledge that Plaintiffs have asserted Debris Removal Claims against Other Defendants. Other Defendants may become signatory(ies) to the Final Settlement Agreement, subject to negotiations with them concerning their respective reasonable financial contributions to the settlement and the other terms and conditions of their participation as parties to the Final Settlement Agreement. To the extent that Other Defendants join the Final Settlement Agreement as parties, the Parties will use their best efforts to incorporate those Other Defendants' respective financial contributions to the final settlement in a manner consistent with this Agreement.

Notwithstanding the forgoing provisions of this Section XXI.P, nothing in this Section XXI.P shall alter any Party's obligation with respect to Other Defendants' contributions to Allocation Costs as set forth in Section XI.D of this Agreement.

Q. WTC Captive as Party to This Agreement

Notwithstanding any other provision of this Agreement or any other provision of law, the Parties acknowledge that (i) the WTC Captive entered voluntarily into this Agreement as a Party for the sole purpose of resolving the Debris Removal Claims against its Insureds and (ii) by virtue of its status as a Party to this Agreement or otherwise, nothing in this Agreement waives, alters, or amends any of the terms or conditions of the WTC Captive's Policy, and all of the WTC Captive's rights and defenses under its Policy are reserved expressly.

Furthermore, without limiting the forgoing provisions of this Section XXI.Q and notwithstanding any other provision of this Agreement or any other provision of law, the WTC Captive's obligations under this Agreement are limited solely to (i) payment of the Settlement Amount; (ii) payment of Allocation Costs to the extent provided Section XI.D of this Agreement; (iii) payment of the Contingent

Payment(s), if any, in accordance with Section IV of this Agreement; and (iv) payment, if any, in addition to the Settlement Amount pursuant to Section VI.E of this Agreement. Plaintiffs and each of them shall have no other claims or rights of any kind against the WTC Captive by virtue of this Agreement. In addition, to the extent that Plaintiffs or any of them commence any proceeding(s) against the WTC Captive that is determined to violate the limitations of this Section XXI.Q, the WTC Captive shall be entitled to recover its costs of defending that proceeding, including without limitation its attorneys' fees, from the Plaintiff(s) that commenced such proceeding.

Nothing in this Section XXI.Q shall limit or otherwise affect in any way any of the Plaintiffs' duties and/or obligations set forth anywhere in this Agreement.

R. Joint Drafting of This Agreement

The Parties jointly prepared this Agreement and the language of all parts of this Agreement shall be construed as a whole according to its meaning and not strictly for or against any Party. Without limiting the forgoing provisions of this Section XXI.R, none of the provisions in this Agreement shall be construed strictly against the WTC Captive or any of the Insureds because of their status as insurance companies, if applicable.

S. Headings are for Convenience Only

Section and paragraph headings in this Agreement are for convenience only and shall not affect the meaning of any aspect of this Agreement.

T. Application of Deadlines

All deadlines and other time periods in this Agreement, including those set forth in Exhibit J, are measured in calendar days, but if any deadline or the expiration of any other time period falls on a non-business day, such deadline or other time period is extended by virtue of this Section XXI.T until the next business day. For purposes of this Agreement, business days are all days, other than Saturday, Sunday, or any other day on which commercial banks in the City of New York are required or authorized by law to be closed.

U. Notice

All notices required by this Agreement as between and among the Parties or any of their respective counsel shall be deemed provided when received, and shall be sent only in the following manner:

- i. Certified or registered mail, return receipt requested;
- ii. Overnight delivery; or
- iii. Hand delivery.

A copy of each such notice also shall be sent to the recipient by e-mail or facsimile.

All notices required by this Agreement shall be sent to the following:

On behalf of the WTC Captive:

Margaret H. Warner, Esquire
 McDermott Will & Emery LLP
 340 Madison Avenue
 New York, NY 10173
 Main: 212.547.5400
 Direct: 202.756.8228
 Facsimile: 202.591.2764
 E-mail: mwarner@mwe.com

On behalf of the Insureds:

James E. Tyrrell, Jr., Esquire
 Patton Boggs LLP
 One Riverfront Plaza, 6th Floor
 Newark, NJ 07102
 Main: 973.848.5600
 Direct: 973.848.5620
 Facsimile: 973.848.5601
 E-mail: jtyrrell@pattonboggs.com

On behalf of Plaintiffs or any of them:

Paul J. Napoli, Esquire
 Worby Groner Edelman & Napoli Bern, LLP
 350 5th Avenue, Suite 7413
 New York, NY 10118
 Main: 212.267.3700
 Facsimile: 212.587.0031
 E-mail: pnapoli@napolibern.com

V. Manner of Execution of This Agreement

This Agreement may be executed in counterpart originals with the same force and effect as if fully and simultaneously executed as a single document. Facsimile or e-mailed signatures shall have the same force and effect as original signatures.

W. Amendments

This Agreement may not be amended or modified, except in writing signed by the WTC Captive, Defendant Insureds' Counsel on behalf of the Insureds, Plaintiffs'

Liaison Counsel on behalf of all Plaintiffs, and by other parties, if any, to this Agreement or their respective counsel.

X. Non-Waiver

Except where a specific period for action or inaction is provided herein, no waiver of a right, power or privilege provided by this Agreement shall be implied or inferred from any Party's delay, failure to exercise, incomplete exercise or partial waiver of such right, power or privilege.

XXII. FINAL SETTLEMENT AGREEMENT PROVISIONS

A. Affirmation of Final Settlement Agreement

This Agreement shall be deemed the Final Settlement Agreement upon the later of September 30, 2010, or satisfaction of all of the following prerequisites:

- i. Satisfaction of the Opt-In Threshold as set forth in Section VI.D of this Agreement;
- ii. The WTC Captive's election not to exercise its exclusive right to void this Agreement pursuant to Section VI.E of this Agreement;
- iii. Entry of the Case Management Orders pursuant to Section XXI.A of this Agreement;
- iv. Entry in each Master Docket of a case management order or other order setting Plaintiffs' attorneys' fees at twenty-five percent (25%) consistent with the penultimate paragraph of Section II.G of this Agreement;
- v. No Party exercises its right to void this Agreement pursuant to Section XX.E of this Agreement; and
- vi. The Parties acknowledge that this Agreement shall be deemed the Final Settlement Agreement by executing the Affirmation of Final Settlement Agreement attached as Exhibit R to this Agreement. The Parties shall execute the Affirmation of Final Settlement Agreement within ten (10) days after satisfaction of subsections i-iv, above.

In addition to confirming satisfaction of the Opt-In Threshold set forth in Section VI.D, the Affirmation of Final Settlement Agreement shall specify the actual Section VI.D.i aggregate opt-in percentage achieved for purposes of calculating the amount of any additional payment due to Plaintiffs under Section VI.E of this Agreement.

Sections XXII.B to XXII.D shall be given effect immediately upon the Final Settlement Agreement Effective Date but shall have no effect until that time. In

addition, immediately upon the Final Settlement Agreement Effective Date, this Agreement shall be referred to thereafter as the Final Settlement Agreement.

B. Dismissal With Prejudice

Within fifteen (15) days after the Final Settlement Agreement Effective Date, Plaintiffs who opted into the settlement shall dismiss with prejudice, and without exception, all of their Debris Removal Claims against the Insureds using the form of Stipulated Order of Dismissal With Prejudice Pursuant to Final Settlement Agreement attached as Exhibit T to this Agreement.

C. Dismissal of *Walcott* Action

Within fifteen (15) days after the Final Settlement Agreement Effective Date, the plaintiffs in *Walcott, et al. v. WTC Captive Ins. Co., et al.*, No. 07 Civ. 7072 (S.D.N.Y. 2007), shall dismiss with prejudice their complaint as against all defendants in that action.

D. Enforceability

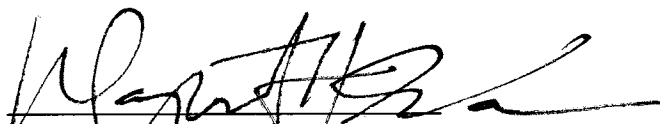
Section XX.E of this Agreement (“Each Provision of This Agreement Is Essential and Non-Severable”) is deleted from the Final Settlement Agreement and is replaced with the following:

Each of the provisions of this Final Settlement Agreement shall be deemed to be severable in the event any provision or provisions of this Final Settlement Agreement are deemed or become voided or unenforceable, in which event the remaining provision or provisions shall remain in full force and effect unless the provision(s) rendered void or unenforceable cause this Final Settlement Agreement to fail in any of its essential purposes.

[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK]

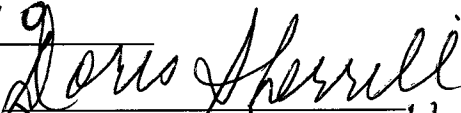
IN WITNESS WHEREOF, the Parties, through their respective counsel, have executed this Agreement on the date(s) indicated below.

On behalf of the WTC Captive Insurance Company, Inc.



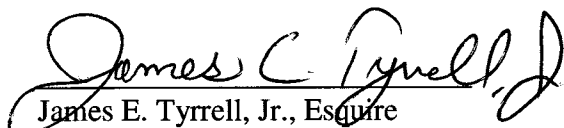
Margaret H. Warner, Esquire
McDermott Will & Emery LLP
Counsel to the WTC Captive Insurance Company, Inc.

Date: 6/10/19

Witness signature: 

Witness name: Doris Sherrill

On behalf of the Insureds as defined in this Agreement



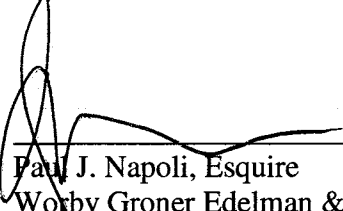
James E. Tyrrell, Jr., Esquire
Patton Boggs LLP
Counsel to the Insureds

Date: 6/10/19

Witness signature: 

Witness name: Doris Sherrill

On behalf of all Plaintiffs as defined in this Agreement

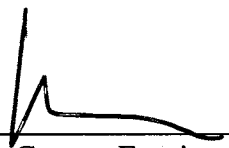


Paul J. Napoli, Esquire
Worby Groner Edelman & Napoli Bern, LLP
Plaintiffs' Liaison Counsel

Date: June 10, 2010

Witness signature: MARSA M BINTZ

Witness name: MARSA M BINTZ

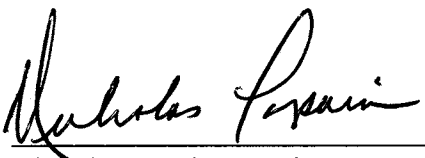


William H. Groner, Esquire
Worby Groner Edelman & Napoli Bern, LLP
Plaintiffs' Liaison Counsel

Date: June 10, 2010

Witness signature: DORIS SHERRILL

Witness name: DORIS SHERRILL



Nicholas Papain, Esquire
Andrew J. Carboy, Esquire
Sullivan Papain Block McGrath & Cannavo P.C.
Plaintiffs' Liaison Counsel

Date: 6/10/10

Witness signature: MARSA M BINTZ

Witness name: MARSA BINTZ

SCHEDULE OF EXHIBITS

- Exhibit A:** List of WTC Captive Insureds
- Exhibit B:** Work Verification Procedure
- Exhibit C:** Settlement Grid
- Exhibit D:** Qualifying Surgeries
- Exhibit E:** Cancer Insurance Policy
- Exhibit F:** Age Adjustment Factor Table
- Exhibit G:** List of Adjudicatory Bodies
- Exhibit H:** Second Injury Letter
- Exhibit I:** List of Mixed Orthopedic Plaintiffs
- Exhibit J:** Allocation Process Timeline
- Exhibit K:** Case Management Orders for each Master Docket
- Exhibit L:** Claim Form
- Exhibit M:** *Exhibit M has been deleted intentionally.*
- Exhibit N:** *Exhibit N has been deleted intentionally.*
- Exhibit O:** *Exhibit O has been deleted intentionally.*
- Exhibit P:** Release and Covenant Not to Sue
- Exhibit Q:** Asthma Impairment Criteria
- Exhibit R:** Affirmation of Final Settlement Agreement
- Exhibit S:** Stipulation of Dismissal With Prejudice
- Exhibit T:** Stipulated Order of Dismissal With Prejudice Pursuant to Final Settlement Agreement
- Exhibit U:** Eligible Plaintiff List Template



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