

# NEW MEXICO INJURY ATTORNEY BLOG

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ATTORNEYS AT LAW

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## **Ground Zero Settlement: Is it Fair?**

It was announced last week that there has been a \$657.5 million settlement to compensate around 10,000 workers harmed during the cleanup of Ground Zero in the 911 Terrorist Attack. Two obvious questions arise: Is it a fair settlement for the injured workers? Why the delay in settlement when the workers were obviously harmed during the cleanup?

The injured workers individual compensation will vary greatly depending on their injuries. Some will receive thousands while others may receive in excess of \$1 million. Many of the injured workers have suffered severe and permanent physical injuries. Most of the injuries are respiratory in nature, the most common being asthma. Others have suffered from a variety of cancers, some of which have proven fatal.

There has never any doubt that these workers were injured as a result of the Ground Zero cleanup activities. In fact, the federal government set up a \$1.1 billion dollar fund which was and remains available to handle these claims. So why did it take so long to settle these claims?

Plaintiff's trial lawyers get knocked around a lot in the media. They are an easy and popular target for politicians of every stripe. But what about the defense trial attorneys? It takes 2 to tango as they say.

The New York Times reported that the insurance company for the City of New York handling these claims, the WTC Captive Insurance Company, paid attorneys \$200 million in legal fees to defend against these claims. The plaintiff's trial attorneys are already taking heat for their fees and the judge is looking at knocking them down by 50% or more. No such movement is afoot to reduce the \$200 million paid to the insurance defense firm.

The plaintiff's firm was working purely on contingency, taking huge risks, with huge financial investment, and huge commitments of time with the possibility that they get nothing in case of a loss at trial. By contrast, the defense firm was able to accumulate \$200 million in legal fees defending the indefensible knowing full well that the case would settle prior to trial. All this, while there was a \$1.1 billion fund available to settle these claims.

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So, again, why the delay in settlement of these obviously meritorious claims? Perhaps, as they say, the case was not ripe for settlement. It takes a long time to run up \$200 million in defense attorney fees.

Is the settlement fair? Let's see. There were 10,000 injured workers. This would allow for about \$65,700 per worker assuming the settlement is spread evenly among the workers which it is not. However, the settlement may be reduced to \$575 million if more than 95% of the workers do not consent to the settlement. That knocks it down to \$57,500 per worker. The defense attorneys will take \$200 million for successfully dragging out the litigation for years. The \$1.1 billion insurance fund is left with \$442.5 million. The workers will continue to suffer from their injuries for the remainder of their lives.

In the coming weeks and months as the debate rages over the fairness of the suit, rest assured the focus of the debate for many will not be on the unjust denial and delay of the workers rightful claims, or the under-compensation of many of the more seriously injured workers, it will be on the fees earned by the plaintiffs' trial attorneys. When the debate arises, and it will, I hope some thoughtful commentators in their attack on plaintiff trial attorneys, will also consider the fact that the defense of the indefensible claim is often at the root of litigation. And most importantly, the question will be asked whether these workers can rest in knowing that they and their families will be justly compensated and their future medical needs will be met.

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