

Committee on the Judiciary

**Subcommittee on the Constitution, Civil Rights, and
Civil Liberties**

and

**Subcommittee on Immigration, Citizenship, Refugees,
Border Security, and International Law**

**Testimony of Christine LaSala
President and CEO, the WTC Captive Insurance Company, Inc.**

Tuesday, March 31, 2009

Joint Hearing on:

**H.R. 847, the James Zadroga 9/11 Health
and Compensation Act of 2009**

Chairman Nadler, Chairwoman Lofgren, Ranking Members Sensenbrenner and King, and Committee Members. My name is Christine LaSala, and I am the President and CEO of the WTC Captive Insurance Company. Thank you for inviting me to testify. I welcome the opportunity to tell you more about the WTC Captive, our congressionally mandated mission, and how we have worked to fulfill our obligations to our insureds and the American taxpayers.

First, let me thank the Members of this Congress who have authored, sponsored, or supported H.R. 847, the James Zadroga 9/11 Health and Compensation Act. I fully support your effort to re-open the Victim Compensation Fund and to limit the liability of the City of New York and its 9/11 contractors.

As a New Yorker who lived through the terrorist attack of September 11th, I share your commitment to and concern for the heroic Ground Zero workers. I also share your concern for the other heroes here today: the City of New York and the private contractors who took on the dangerous rescue, recovery, and debris removal operation.

These private contractors ranged in size from one-man shops, to small family-run businesses, to larger companies. But, no matter the size of the company, the response was always the same. Within hours of the attack, many responded with equipment and manpower to rescue survivors. Within days, many aided a full-scale operation to continue the search for survivors, recover the remains of the victims, and remove twelve stories of debris, weighing more than 1.5 million tons. And for months thereafter, many helped bring lower Manhattan back to life—restoring electrical power, telecommunications, and transportation to the area. Throughout it all, these private contractors worked around the clock, often without contracts and without an adequate amount of insurance to cover their potential liabilities. The WTC Captive is the third-party liability insurance company—enabled by Congress—for these private contractors

and the City of New York. Like the Ground Zero workers, to me, the City and its contractors are heroes as well.

Unfortunately, these heroes are now pitted against each other in litigation. More than 10,800 workers have sued the City and its 9/11 contractors, claiming that they suffer respiratory and other ailments due to their work at Ground Zero. The City and its contractors have appropriately denied wrongdoing, not believing they were negligent. For years, these lawsuits have proceeded—as they must—through the tort system.

The tort system, however, is a costly, contentious, and time-consuming way to resolve disputes of such national significance—disputes in which both sides are heroes and only the terrorists are to blame. If Congress wants to compensate the Ground Zero workers who are injured, while protecting the City and its contractors from the threat of significant financial hardship, then an alternative approach is needed: re-opening the Victim Compensation Fund and limiting the liability of the City and its contractors as the legislation being considered today proposes.

The History of the WTC Captive

The WTC Captive was formed to address a specific problem: in the aftermath of 9/11, the insurance markets were frozen, and the City and its contractors could not purchase a sufficient amount of liability insurance for the massive debris removal operation. Fortunately, the Federal government stepped in to fill this insurance gap. On February 20, 2003, the President signed Public Law 108-7, which instructed the Federal Emergency Management Agency (“FEMA”) to provide up to \$1 billion to establish a captive insurance company for claims arising from debris removal at the World Trade Center site. The WTC Captive was incorporated in July 2004. In December of that year, it received almost \$1 billion authorized and

appropriated by Congress, and issued an insurance policy under which it was obligated to defend the City and its 9/11 contractors against lawsuits arising out of the debris removal at Ground Zero. For the City and its contractors, the WTC Captive's insurance policy is essential to protect against the thousands of lawsuits that have been filed. Without it, the City would face significant financial hardship, and many of the contractors would simply go out of business.

The WTC Captive is *not* a victim compensation fund. It is a liability insurance company. The differences between the two mechanisms are significant. A victim compensation fund provides for the payment of claims to those with legitimate injuries, *without regard to fault and without resort to the tort system*. A liability insurance company, in contrast, generally works within the tort system to determine which claims are legitimate. Unlike a victim compensation fund, the WTC Captive is legally bound to take sides: it has a duty under the FEMA grant and its insurance policy to defend lawsuits brought against the City and its 9/11 contractors. The WTC Captive has performed this role and has done so in a way that complies faithfully with the terms and conditions of the FEMA grant and its insurance policy.

In doing so, we have established strong working relationships with the Federal and State governments. FEMA, the New York State Department of Insurance, and the New York State Emergency Management Office have oversight of our activities. Each is invited to every meeting of the WTC Captive's Board of Directors. We communicate regularly with these agencies to ensure compliance with our congressional mandate, the FEMA grant, our requirements under New York State insurance law, and our duties under the insurance policy that we issued. We welcome this oversight. As part of this oversight, the Department of Homeland Security's Office of Inspector General ("OIG") recently completed a comprehensive review of the WTC Captive's operations. This OIG Report concluded, unambiguously, that the

WTC Captive is operating in full compliance with its congressional mandate and the terms of its insurance policy.

Without question, acting as the insurance company for the City and more than 100 defendant contractors has cost a significant amount of money. To date, we have spent nearly \$200 million on administrative and defense costs. But these costs are a product of the size and complexity of these lawsuits. More than 10,800 individual plaintiffs have sued, raising more than 566,000 individual claims against our insureds. Tens of millions of pages of documents already have been identified as potentially discoverable in this matter, a number that does not even include the medical records for the 10,800 plaintiffs who have sued. Not only are these lawsuits massive in scale, but they also raise complicated issues of governmental immunity, proof, causation, and fault. As the OIG Report correctly found, the WTC Captive has a duty to defend these lawsuits.

But in defending this massive litigation, the WTC Captive has consistently sought to preserve taxpayer funds. One way that the WTC Captive has managed its costs is through the use of a unified defense. For example, throughout this litigation, the WTC Captive has insisted that the City and its 9/11 contractors primarily work through one lead law firm, instead of 100 or more—one for each contractor sued.

The WTC Captive also has aggressively sought to expand the amount of insurance coverage available to the City and its 9/11 contractors. By seeking contribution from the commercial insurance companies that provided some insurance for the World Trade Center debris removal project, the WTC Captive has obtained more than \$100 million by way of a federal court judgment that is now on appeal. These funds will reduce the amount of costs borne by the WTC Captive and add to the amount of insurance coverage available. Along with a

prudent investment strategy, this effort to seek out additional funds has left the WTC Captive on sound financial footing. Although the WTC Captive has funded almost five years of litigation, when its recent victory is added to its current assets, the total is more than the initial \$1 billion.

The Limitations of the Tort System

But the tort system has significant drawbacks in lawsuits like the ones that the WTC Captive is obligated to defend. The discovery and trial of thousands of individual lawsuits will take years and could cost hundreds of millions of dollars. In addition, any resolution could result in hundreds of millions of dollars going to plaintiffs' lawyers, instead of those who may have suffered injury. Sound financial management and aggressive efforts to seek more insurance funds cannot prevent the inevitable: like any mass tort—such as asbestos litigation—the costs of managing these lawsuits will increase if these cases remain in the tort system.

That is why the WTC Captive fully supports the prompt and reasonable resolution of legitimate and meritorious claims by those injured. At present, we are conducting a thorough analysis of the limited information currently available to us in order to do just that. But any resolution must take account of the reason that the WTC Captive was created: to protect the City and its contractors from uninsured liability. That means that any resolution cannot exceed the current assets of the WTC Captive and also must ensure that the City and its contractors are protected from future lawsuits.

The tort system, however, does not offer any way to resolve future lawsuits. There were 8,600 lawsuits in this matter in June 2007; 9,400 in June 2008; and there are more than 10,800 today. If the parties resolve every case pending today, more lawsuits could follow tomorrow. Required to provide long-term insurance coverage to the City and its contractors, the WTC Captive would act contrary to its mandate if it distributed a disproportionate amount of its assets

to the current 10,800 plaintiffs and left the City and its contractors to fend for themselves against the next 10,800 lawsuits. In addition, among the current 10,800 plaintiffs, there are many who have not yet shown signs of injury. Because many serious illnesses, including most cancers, take years to develop, the WTC Captive cannot pay out all of its taxpayer funds only to those who have shown signs of injury and leave those with potentially latent injuries without any form of recovery. The allegations here are of a mass tort, and this mass tort requires a mass solution.

The Need for a Victim Compensation Fund

When Congress created the WTC Captive, it did so to deal with a specific problem: the fact that the City and its 9/11 contractors could not obtain an adequate amount of liability insurance. The WTC Captive has filled this insurance gap. What nearly five years has shown, however, is that the tort system is a time-consuming and costly way to handle an issue of such national significance. If Congress wants to protect the City and its contractors *and* ensure that injured workers receive compensation, then H.R. 847 provides a better way: it re-opens the Victim Compensation Fund and expressly limits the liability of the City and its contractors.

How we act today will determine how Americans respond if we are the victims of another terrorist attack. Those who rushed to Ground Zero on September 11th did not ask questions about legal liability or insurance coverage before responding to the tragedy. But will they respond in the same way again? Will private companies respond if they will face thousands of lawsuits and the threat of financial ruin for doing their patriotic duty? By re-opening the Victim Compensation Fund and limiting liability for the City and its 9/11 contractors, this Congress will ensure that the next time, all of America's heroes will again respond, without fear or hesitation, knowing that their nation stands behind them as they rush into harm's way.

I would like to thank the Members of this Committee and particularly the Members of the New York delegation for their leadership on this issue. As always, the WTC Captive remains committed to providing Congress with the information it needs to understand our operations, ensure compliance with our congressional mandate, and determine how best to protect and provide for all the heroes of 9/11.

I thank you for your time and welcome your questions.