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**February 5, 2026**

**Copy of 911 Health Watch Submission with Harding Memo**

Attached, please find a copy of the February 3, 2026 submission of 911 Health Watch to the Supreme Court of New York County, filed by our law firms. Exhibit 1, the Harding memo, is included. If you would like additional information about the submission, including the other exhibits, or have any questions, please contact either of our offices.

Our email addresses are [acarboy@carboylaw.com](mailto:acarboy@carboylaw.com) and [mmccauley@thmllp.com](mailto:mmccauley@thmllp.com).

You may also visit 911 Health Watch, online, for a full history of this issue, at 911healthwatch.org. <https://www.911healthwatch.org/effort-to-get-new-york-city-to-release-9-11-documents/>

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X

In the Matter of the Application of  
BENJAMIN CHEVAT,

Index No. 155678/2024

Petitioner,

For a Judgment Pursuant to Article 78 of the Civil  
Practice Law and Rules

-against-

NEW YORK CITY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION,

Respondent.

-----X

**February 3, 2026 SUPPLEMENTAL AFFIRMATION OF  
PETITIONER'S ATTORNEY IN SUPPORT OF APPLICATION TO TAKE  
PRE-HEARING DISCOVERY**

ANDREW J. CARBOY, duly licensed to practice law before the Courts of the State of New York, affirms the assertions in this filing are true, under penalties of perjury including fines or imprisonment.

1. I am a member of the Law Offices of Andrew J. Carboy LLC.

2. My firm and Turken Heath & McCauley LLP represent Petitioner Benjamin Chevat, Director of 911 Health Watch, Inc. ("911 Health Watch"), in this Article 78 proceeding. 911 Health Watch is a non-profit organization, advocating for patients afflicted by toxic exposures from the September 11<sup>th</sup> World Trade Center collapse. Respondent is the New York City ("City") Department of Environmental Protection ("DEP").

3. I submit this affirmation in further support of the motion to take discovery concerning DEP's response to Petitioner's Freedom of Information Law request ("FOIL request"). Pursuant to CPLR Sec. 408, Petitioner seeks an Order permitting service of: a deposition notice pursuant to

NYCRR 202.20-d, concerning DEP's search for documents and its earlier positions as to their existence; a deposition notice directed to DEP FOIL Appeal Officer Pecunies; and a Notice of Discovery and Inspection. The Court is respectfully referred to NYSCEF docket entries # 45-53 and 60, as well as DEP's opposition, for the complete motion.

4. As set forth previously, after denying the existence of responsive records (See, e.g., **NYSCEF #23, 29 and 50**: "*requested records do not exist*"), fighting Petitioner at the administrative level and before this Court for over two years, DEP now concedes possession of 68 boxes worth, some 340,000 pages of documents.

5. As detailed in our moving papers (**NYSCEF #45-53**), on November 17, 2025, we reviewed the first twenty-four (24) boxes at DEP headquarters. Uniform in construction and labeling, the boxes contained approximately 5,000 pages of records, each, concerning DEP's response to the September 11<sup>th</sup> attacks. We returned on December 15, 2025 to review additional records, and will soon examine even more. Although DEP discloses air and dust testing records, as the agency emphasizes in opposition (**NYSCEF #58-59**), producing bulk test information differs from making full disclosure.

6. What is significant about the test records, now surfacing, is that DEP previously denied even this lab data existed. At the same time, what is *particularly* responsive to Petitioner's FOIL request is not yet disclosed. Specifically, DEP provides no risk assessments for the reopening of lower Manhattan.

7. In his original 2023 FOIL request to DEP, Petitioner sought risk assessments in DEP's possession, including the so-called "Harding memo":

- i. October 2001 memorandum from Deputy Mayor Robert M. Harding referenced in May 14, 2017 New York Times article entitled, "*Ground Zero Illnesses Clouding Giuliani's Legacy.*" ("Harding memo")
- ii. Underlying documents, studies, reports, assessments, memoranda, factual bases and other written information that informed the

Harding memo's estimate or projection of anticipated future claims from WTC toxic exposure. **iii.** All documents setting forth the names and titles of recipients of the Harding memo in 2001 and 2002. **iv.** All documents setting forth the manner in which the Harding memo was communicated and the reasons for its communication in 2001 and 2002 (e.g., litigation; lobbying; inter government communication; intra-government communication; Freedom of Information request). (NYSCEF #3)

8. To date, DEP has failed to produce the Harding memo or *any* memorandum, report or study reasonably described as a risk assessment of reopening lower Manhattan. DEP discloses no communications between DEP and the Mayor's Office, notwithstanding the known disagreement between Commissioner Miele and City Hall as to persistent environmental hazards. (NYSCEF #13: October 6, 2001 City Department of Health Memorandum) DEP has not provided any recommendations it made concerning air quality.

9. This affirmation is necessitated by our recent acquisition of the October 2001 communication to Deputy Mayor Robert Harding. (**Exhibit 1:** Deputy Mayor Harding memo) We did not obtain the Harding memo from the DEP, but from the University of Texas at Austin, as explained below. The Harding memo confirms that City agencies performed risk assessments in 2001, projecting thousands of toxic exposure claims. The Harding memo summarizes the conclusions of other City officials. Both Deputy Mayor Harding and the memo's author appear to be recipients of information, performing no evaluation themselves. As a lead agency for the City's September 11<sup>th</sup> response (NYSCEF #2 at pars. 22-23; NYSCEF #9 and 13, documenting DEP's lead role), it is nearly certain that DEP made relevant analyses, including those informing the Harding memo. DEP must produce such risk assessments, at once.

10. Although referenced by the New York Times in May 2007, as explained above, and in a 2007 book (**Exhibit 3**), the Harding memo remained undisclosed for a quarter of a century. The Harding memo attracted widespread attention after the City refused to release it to the New York

Congressional delegation. (**Exhibit 2:** 2021-2024 requests of Reps. Maloney, Nadler and Goldman to Mayors de Blasio and Adams for Harding memo and other information)

11. Written in October 2001, the Harding memo confirms City government anticipated tens of thousands of lawsuits for toxic exposures from the World Trade Center site. (**Exhibit 1**) In those early days, the City “flagged” its air quality advisories as a liability concern.

*“Potential lawsuits against the City include health advisories causing individuals to return to the area too soon (causing toxic exposure)”* (**Exhibit 1**)

12. City Hall sought to limit liability for its air safety messaging. City officials pursued “*Legislative alternatives to limit the City’s liability relating to 9/11/01,*” the title of the Harding memo. (**Exhibit 1**) Securing this protection involved lobbying Washington, D.C.

13. And yet, after identifying this liability concern, the City’s public proclamations of air safety continued. From September 12, 2001 to February 2002, the City assured New Yorkers with a single message: the air in lower Manhattan was “*safe and acceptable.*” (**Exhibit 4:** compilation of City assurances, September 2001 through February 2002)

For example:

September 12, 2001:

Mayor’s Office Conference

*“The air is safe as far as we can tell of chemical and biological agents.”*

*“Air quality as far as we can tell ... is not dangerous”*

*“Asbestos is in the air as long as you are not in the epicenter, it is not at dangerous levels.”*

*“We’re monitoring air pollutants. . .” “So far it is safe”*

September 16, 2001:New York City Department of Health

*“Based on the asbestos test results received thus far, the general public's risk for any short or long term adverse health effects are very low.”*

September 28, 2001:Mayor's Office

*“Although they occasionally will have an isolated reading with an unacceptable level of asbestos ... it's very occasional and very isolated.*

*The air quality is safe and acceptable.”*

October 5, 2001:New York City Department of Health

*“As work continues at the disaster site, the presence of dust and smoke odor in the downtown area has been of understandable concern to residents. However... levels of particulate matter being detected are below the level of public health concern and do not pose long-term health risks to the general public.”*

February 11, 2002:New York City Department of Health

*The Health Department reviews the numerous air quality, debris sample results and personal air monitoring tests being conducted by various agencies. The data from air quality tests thus far have been, in general, reassuring. None of the test results done to date would indicate long-term health impacts.” (Exhibit 4)*

14. The Harding memo (**Exhibit 1**) reveals other liabilities identified inside City Hall.

Excerpts are reprinted, below:

**Legislative Alternatives to Limit the  
City's Liability Relating to 9/11/01**

*According to the Law Department, there are approximately 35,000 potential plaintiffs as a result of the events of September 11 and it is estimate (sic) that 10,000 would file a claim.*

*A major concern is that if these cases make it to court, the judges and juries will be biased in favor of plaintiffs (even though the City seems to have a strong defense) and therefore award substantial damages to compensate individuals for their loss.*

*The following is a list of some of the types of potential lawsuits against the City.*

#### Aftermath

- **Health advisories caused individuals either to return to the area too soon (causing toxic exposure or emotional harm) or too late (causing economic hardship)**
- **Rescue workers were provided with faulty equipment or no equipment (i.e., respirators)**
- **Unsafe workplace (OSHA, FEMA, Labor Law)**
- **Inadequate clean up**

#### Creation of a Congressional Fund for the Victims

One way to limit the City's liability is for Congress to create a congressional fund that mirrors the fund created for the airline industry. Congress, in the Airline bailout, created the September 11<sup>th</sup> Victim Compensation Fund of 2001 "that will provide compensation to any individual (or relatives of a deceased individual) who was physically injured or killed as a result of the terrorist-related aircraft crashes of September 11, 2001.

#### Federal Indemnification

... the City could request indemnification by the Federal government for all liability claims arising from the events of 9/11/01. This form of relief could also assist the City in the long-term as well by including toxic tort cases that might arise in the next few decades.

15. As the City continued its campaign of air safety messaging, behind the scenes it lobbied the White House and Congress, seeking the protection outlined in the Harding memo for, among other things, its air quality proclamations. Ironically, the City fretted such advocacy, with potential explication of its liability concerns, would worsen matters. *“By advocating...we may be inviting litigation.”* (**Exhibit 1**) In response to quiet lobbying, the federal government conferred limitations of liability to the City on November 19, 2001. (**Exhibit 5**: Amendment to the Air Transportation Safety Systems and Stabilization Act of 2001)

16. The filed copy of the Harding memo (**Exhibit 1**) bears multiple indicia of reliability and authenticity. First, its contents track the references made by Wayne Barrett in his 2007 book, Grand Illusion (**Exhibit 3**: excerpts) and in The New York Times article. (“*Ground Zero Illnesses Clouding Giuliani’s Legacy,*” May 14, 2007)

17. Second, the Harding memo marks a first recognition of the City’s liability for respiratory protection shortages for first responders. Publicly, however, the City would contest this issue for years. 2010 legal filings demonstrated that the Fire Department of New York had only 600 air purifying respirators for its 11,000 members on the morning of September 11.<sup>th</sup> (Case 1:21-mc-00100-AKH, United States District Court for the Southern District of New York, Document #1766-Filed 02/16/2010)

18. As the 2001 Harding memo anticipates, too, tens of thousands would be sickened by World Trade Center toxic exposure. This early internal prediction conflicts with public statements from City Hall, made years later, downplaying any connection between exposure and illness. Five years after September 11<sup>th</sup>, the Mayor dismissed a “*health study of the thousands of workers at Ground Zero*” showing “*many with chronic respiratory ailment,*” explaining:

the health study does not prove a direct link to conditions at the site:

*"There is no way to tell for sure ... and you have to be very careful. If I say I've got something because of this, it's just not the way science works." (Exhibit 4 at pp. 32-33)*

19. After the DEP sought to dismiss Petitioner's Article 78 proceeding, asserting it had no responsive records, we took a second approach to secure September 11<sup>th</sup>-related documents. We began searching archives. We knew that Wayne Barrett, noted investigative journalist, passed away in 2017. Given his reporting of the Harding memo's existence, we inquired whether his personal papers were available for review. We learned that Barrett's estate gifted his papers to the Dolph Briscoe Center for American History at the University of Texas at Austin. The Briscoe Center is an internationally recognized research center and archive, with an outstanding reputation. I contacted the Briscoe Center in December 2025. (**Exhibit 6:** communications with University of Texas) Although the memo is not referenced in any index of the 300 boxes of Barrett's papers, Center staff extended full cooperation, searching and finding it in late January. The Harding memo appears as disclosed by the Briscoe Center, with cover sheets and watermarks. (**Exhibit 1**) We paid a total of \$20.00 (for photocopying) to obtain it.

20. Accordingly, we respectfully request that the Court consider the Harding memo when determining Petitioner's motion for discovery.

Wherefore, Petitioner respectfully requests an Order permitting pre-hearing discovery, with such discovery to include the service of two (2) deposition notices, including one pursuant to NYCRR 202.20-d, concerning the search for documents and the DEP's earlier positions, and a second directed to DEP FOIL Appeal Officer Pecunies, and the service of Notice of Discovery and Inspection.

Dated: February 3, 2026

Respectfully submitted,



Andrew J. Carboy  
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Attorneys for Petitioner  
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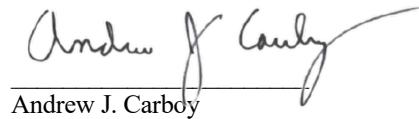
*Matthew McCauley*

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**Uniform Civil Rule 202.8-b word count: I, Andrew Carboy, certify that the word count of this affirmation is 2,267 inclusive of the caption, signature block and counsel addresses, a figure ascertained with Word.**

  
\_\_\_\_\_  
Andrew J. Carboy

# EXHIBIT 1

## ← Briscoe Center digitization request

Dear Andrew,

The materials you requested for digitization are available to download here:

<https://utexas.box.com/s/790mm0gxosxolfy5>

The download link is accessible for 30 days, so make sure to download your file by then.

Thank you for your order. Please let me know if you have any questions.

Best wishes,

Marisa

Marisa Jefferson

Duplication Services

The Dolph Briscoe Center for American History

2300 Red River St. Stop D1100

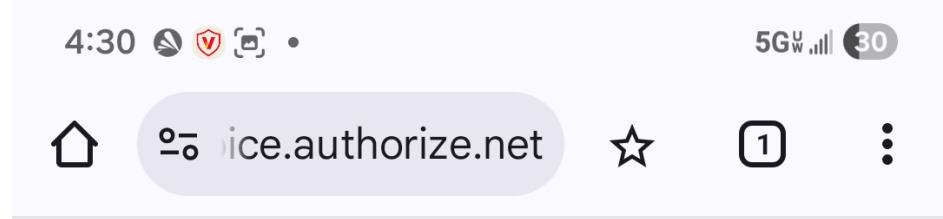
Austin, Texas 78712-1426

Reply



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Invoice Number: R000559

Invoice Date: Jan 22, 2026

Payment Due: Feb 21, 2026

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Service Fee 1 × 10.00 USD

RQS Scans 20 × 0.50 USD

Subtotal 20.00 USD

**TOTAL 20.00 USD****PAYMENTS:**

Date	Amount (USD)	Transaction ID
Jan 22, 2026	20.00	121443063867



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Texas at Austin

**To:** Robert Harding, Deputy Mayor

**From:** Michelle Goldstein

**Re:** Legislative Alternatives to Limit the City's Liability relating to 9/11/01

According to the Law Department, there are approximately 35,000 potential plaintiffs as a result of the events of September 11 and it is estimate that 10,000 would file a claim. Currently, the Tort division handles approximately 8,000 lawsuits per year. A major concern is that if these cases make it to court, the judges and juries will be biased in favor of plaintiffs (even though the City seems to have a strong defense) and therefore, award substantial damages to compensate individuals for their loss.

Tort claims against the City cost about \$308 million in FY 2000 (excluding \$152 million for medical malpractice).

The following is a list of some of the types of potential lawsuits against the City:

**Direct Effect**

- A direct contact by law enforcement and public safety officers directing individuals who relied (to their detriment) on the direction.
- People who ran from the crash and claim they fell on a roadway defect

**Aftermath**

- Police failed to secure evacuated premises from looters
- Health advisories caused individuals either to return to the area too soon (causing toxic exposure or emotional harm) or too late (causing economic hardship).
- Rescue workers were provided with faulty equipment or no equipment (i.e. respirators).
- Unsafe workplace (OSHA, FEMA, Labor Law)
- Business interruption claims for evacuation that poor communication and confusion delayed access to return.
- Inadequate clean up

Following are legislative options:

**Creation of a Congressional Fund for the Victims**

One way to limit the City's liability is for Congress to create a congressional fund that mirrors the fund created for the airline industry. Congress, in the Airline bailout, created the "September 11<sup>th</sup> Victim Compensation Fund of 2001" that will provide compensation to any individual (or relatives of a deceased individual) who was physically injured or killed as a result of the terrorist-related aircraft crashes of September 11, 2001. The

Attorney General, through a Special Master, is charged with administering the compensation program, with no budget limitations. In filing a claim the individual/family does not have to establish fault and waives the right to file a civil action. Individuals who do file a claim are capped in the possible judgment. This fund is quite broad and would allow all injured individuals, not just those in the airplanes, to apply for compensation and to obtain it in a timely manner.

#### **Federal Indemnification**

Since the number of lawsuits that will be filed is unknown, as is the actual liability amount the City will incur, the City could request indemnification by the Federal government for all liability claims arising from the events of 9/11/01. This form of relief could also assist the City in the long-term as well by including toxic tort cases that might arise in the next few decades. This proposal would require the City to devote resources to defending these claims and then seek Federal indemnification. This alternative would, therefore, still require the City to devote a tremendous amount of time and resources to these cases.

#### **Background**

The airlines succeeded in getting the bailout legislation by convincing Congress that they would "go under" within a matter of days without it. They claimed that the insurance companies would not continue to cover them, and that they would not be able to access the capital market without immediate protection. The Trial Lawyers Association cooperated in creating the fund for payments to victims who waive their rights to sue.

Silverstein and the Port Authority are lobbying for bailout legislation now. Silverstein is arguing that if Congress will bail him out, he will use his insurance money to rebuild. These efforts are meeting resistance.

According to Schumer's office, they are working on technical corrections to the airline bailout bill that will clarify that persons who opt to receive payment from the federal fund must waive all claims including claims against the City (but only the claims that arose on September 11). Apparently, this was the original intent of the bill and Senator Schumer made a statement on the record to this effect. (However, it will be difficult to amend the bailout law. Many members of Congress who voted for it are now having "buyers remorse.")

We have been advised that the City will need to convince Congress that it has a "compelling need" to be bailed out, something in the order of a likelihood of bankruptcy without federal protection. By advocating this we may be inviting litigation.

The City's potential liabilities are less immediate and much harder to quantify than the dangers articulated by the airlines, and may not persuade Congress of the need to provide us protection now. Of the various liability concerns, perhaps the one most worth pursuing in Washington is the demand of the contractors that the City indemnify them above the amounts that will be covered by insurance that we can purchase.

Correction

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University of

Texas at Austin