

TESTIMONY

Before

The United States House of Representatives

House Judiciary Committee

Subcommittee on the Constitution, Civil Rights, and Civil Liberties

Subcommittee on Immigration, Citizenship, Refugees, Border Security, and

International Law

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

Washington, DC

March 31, 2009

Presented by

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Honorable Chairmen Nadler and Lofgren and other members of the Committee. I greatly appreciate the opportunity to appear before you this morning.

I am James Melius, an occupational health physician and epidemiologist, who currently works as Administrator for the New York State Laborers' Health and Safety Trust Fund, a labor-management organization focusing on health and safety issues for union construction laborers in New York State. During my career, I spent over seven years working for the National Institute for Occupational Safety and Health (NIOSH) where I directed groups conducting epidemiological and medical studies. After that, I worked for several years for the New York State Department of Health where, among other duties, I directed the development of a network of occupational health clinics around the state. I currently serve on the federal Advisory Board on Radiation and Worker Health which oversees part of the federal compensation program for former Department of Energy nuclear weapons production workers.

I have been involved in health issues for World Trade Center responders since shortly after September 11th. Over 3,000 of our union members were involved in response and clean-up activities at the site. One of my staff spent nearly every day at the site for the first few months helping to coordinate health and safety issues for our members who were working there. When the initial concerns were raised about potential health problems among responders at the site, I became involved in ensuring that our members participated in the various medical and mental health services that were being offered. For the past four years, I have served as the chair of the Steering Committee for the World Trade Center Medical Monitoring and Treatment Program. This committee includes representatives of responder groups and the participating medical programs (including the NYC Fire Department) who meet monthly to oversee the program and to ensure that the program is providing the necessary services to the many people in need of medical follow-up and treatment. I also serve as co-chair of the Labor Advisory Committee for the WTC Registry operated by the New York City Department of Health and as a member of the Community Advisory Committee for the WTC Environmental

Health Center at Bellevue Hospital. These activities provide me with a good overview of the benefits of the current programs and the difficulties encountered by responders seeking to address their medical problems and other needs.

HEALTH CONSEQUENCES OF SEPTEMBER 11

In the period after September 11, over 50,000 emergency responders and recovery workers were exposed during the initial rescue work at the site and in the subsequent clean-up and recovery activities. Tens of thousands of people living, working, and going to school in the areas around the WTC were exposed immediately after the WTC buildings collapsed or in subsequent weeks or months in their apartments, work places, or schools. These responders, recovery workers, and other people were exposed to a myriad of toxic materials including pulverized concrete, asbestos, lead, and many highly toxic chemicals. As we know, the failure of the government to properly inform and protect these people from these exposures added substantially to their health risks.

Due to the incomplete monitoring of these exposures at the time, we still do not know the full extent of their exposures. While we know much about the adverse health effects being experienced by this population, we remain very concerned about latent illnesses that may only become apparent many years after exposure, especially cancers. We do know that these exposures and the accompanying psychological trauma have caused adverse health effects in thousands of those exposed. These adverse health effects include lower respiratory disease (including asthma or asthma like conditions, pulmonary fibrosis, and significant loss of lung function); upper respiratory conditions including chronic sinusitis; gastrointestinal problems most commonly reflux disorder or GERD; and mental health problems including Post Traumatic Stress Disorder and depression. These medical problems have been documented in peer reviewed scientific publications based on research done by several independent research groups. Similar health problems have been documented among fire fighters, other responders and recovery workers, and WTC community residents, students, and workers.

There is no doubt that these disorders and others not listed above are occurring at a much higher rate than would be expected in this population and that these health problems are due to the toxic exposures and psychological trauma related to 9/11. These WTC related medical conditions are being diagnosed using standardized medical protocols by physicians at some of the leading medical institutions in the New York City metropolitan area.

These are not rare isolated medical conditions found in a small number of those exposed. The proportion of those exposed who have become ill is quite alarming. In a recent Mount Sinai Medical Center study of responders and recovery workers, lower respiratory disease was found in 46% of those evaluated; upper respiratory health problems in 64%; and mental health problems in 32%. Similar results have been found in other studies of the exposed populations. New patients are continuing to come to the monitoring and treatment programs with these illnesses that were not evident before this time. Although many of these conditions do improve with medical treatment, the full scope and the ultimate medical outcome for the people currently being treated or who will become ill in the future is uncertain. Thousands are no longer able to work, and thousands more require lifelong medical monitoring and treatment.

As you may know, the federally funded medical programs for responders and recovery workers started some time after September 11 have provided excellent medical care for thousands of these workers. Initially, only medical monitoring was available. However, three years ago, Congress also provided funding for medical treatment programs for those with WTC-related medical conditions. In December 2007, Congress also provided funding for medical monitoring and treatment for community residents, workers, and students exposed after 9/11. These programs have been an immense help to those who have become ill from their exposures. Although it is difficult to document, I believe that without these programs thousands more of these people would have developed much more serious health problems, and many more would have become permanently disabled.

WHY MEDICAL PROGRAMS ARE NOT SUFFICIENT

However, the continuation of these medical programs alone is not sufficient to address all of the harm being suffered by these rescue and recovery workers and others exposed after 9/11. Many of these rescue and recovery workers are no longer able to work because of the progressive disability caused by their health conditions. We do not have an exact count of those who have become disabled, but I can provide some estimates. In the fire department, over 900 fire fighters have received disability pensions because of health problems related to their 9/11 exposures. This is 100 more than when testified here a year ago. These are fire fighters whose illness is so severe that they are no longer capable of working as fire fighters. Among patients currently being treated at Mount Sinai Medical Center, over 1000 are currently out of work. Among those, less than half were receiving financial assistance from Workers' Compensation, Disability Retirement, or Social Security Disability. In other words, these ill police officers, construction workers, utility repair workers, and others are now without any personal income and having to rely on their spouses, families, or other financial resources. Most have lost all health insurance coverage for their families, and many can no longer afford their mortgage payments and have lost their homes. These are, for the most part, blue collar workers without significant financial resources to fall back on.

You have already heard from Ms. Burnette. Let me mention a few other individuals. Daniel Arrigo is a 51 year old construction laborer who worked at Ground Zero from September 13, 2001 until January 2002. At one point, he became trapped in an elevator in one of the buildings adjacent to the site and was overcome by smoke and fumes. Over the next few years, he gradually developed severe pulmonary health problems requiring repeated hospitalizations. In early 2008, he had to stop working because of his breathing difficulties. Once he stopped working, he could no longer afford his mortgage and is currently living with his wife and three children in a basement apartment in his brother's home. A few weeks ago, he thought that his workers compensation claim would finally be approved only to have the insurance company delay payments by filing yet another appeal.

Leon Hayward was an inspector in the NYC Department of Consumer Affairs near the WTC towers. On September 11, he helped to evacuate co-workers from Ground Zero to their homes. This involved numerous trips during the time when exposures to the dust cloud were at their highest levels. About one year later, he developed respiratory symptoms that were eventually diagnosed as pulmonary sarcoidosis, an often progressive fibrotic disease of the lungs that has been found to be significantly increased in WTC rescue workers especially in the first year after 9/11. His disease progressed, and he had to stop working in 2005. His workers compensation claim was contested by the NYC Department of Law and denied. He struggled to get by and had to move to a smaller apartment. His sarcoidosis was complicated by the development of a cancer, lymphoma (which could very well also be caused by his WTC exposures), and he died last year at the age of 45. At the request of Mr. Hayward's family, the NYC medical examiner conducted an autopsy and reported the death as a homicide related to the terrorist attack on 9/11 based on the autopsy findings of sarcoidosis caused by WTC dust exposures. While the NYC Medical Examiner recognized Mr. Hayward's illness as related to 9/11, the NYC Law Department had previously denied his worker's compensation claim. As a result, Mr. Hayward struggled to get by with little income and facing severe medical problems. Mr. Hayward's sister, who assisted him through his struggles, has come from New York City today to attend this hearing.

These are just two of the many hundreds of WTC workers and community residents whose health has been seriously damaged by their WTC exposures, who have become disabled, and who now have to struggle to support themselves and their families. Many are not receiving any compensation from workers' compensation or other workplace disability programs. Based on what we have experienced to date in the medical programs, I expect this number to continue to gradually increase over the next several years.

WORKERS' COMPENSATION

One source of assistance for people with WTC-related conditions is workers' compensation insurance. Workers' compensation is supposed to be a no fault insurance system to provide workers who are injured or become ill due to job-related factors with compensation for their wage loss as well as full coverage for the medical costs associated with the monitoring and treatment of their medical condition.

The WTC program participants are covered by a variety of state, federal, and local programs with different eligibility requirements, benefits, and other provisions. Most private and city workers are covered under the New York State Workers' Compensation system. New York City is self insured while most of the private employers obtain coverage through an outside insurance company. Uniformed services workers are, for the most part, not covered by the New York State Workers' Compensation system but rather have a line of duty disability retirement system managed by New York City. A fire fighter, police officer, or other uniformed worker who can no longer perform their duties because of an injury or illness incurred while on duty can apply for a disability retirement which allows them to leave with significant retirement benefits. However, should a work-related illness first become apparent after retirement, no additional benefits (including medical care) are provided, and the medical benefits for even a recognized line of duty medical problem end when the person retires. Federal workers are covered under the compensation program for federal workers. Coverage for workers who came from out of state will depend on their employment arrangements with their private employer or agency. However, volunteers from New York or from out of state are all covered under a special program established by the New York Workers Compensation Board after 9/11 and supported by federal funding.

A major difficulty with these compensation systems is the long delays in obtaining coverage. For example, in the NYS Workers' Compensation system, the insurer may challenge every step of the compensation process including even diagnostic medical testing. This challenge usually requires a hearing before a Workers' Compensation

Board (WCB) administrative judge to evaluate the case, and this hearing may often be delayed for months. Even once the case is established, the insurer can still challenge treatments recommended for that individual even for a medication that the individual may have been taking for many months for a chronic work-related condition. Thus, it may be many years before the case of a person with a WTC-related condition is fully recognized and adjudicated by the compensation system. The average time for just having a claim established for a WTC –related condition at the Mount Sinai clinic is over three years, and it may be many more months before reimbursement for medical costs or lost income is allowed. Meanwhile, the claimant may not be receiving any medical or compensation benefits or may have had their benefits disrupted many times. These bureaucratic systems are designed to address acute injuries. They are not flexible enough to provide the comprehensive medical support and income replacement needed for a WTC responder who has developed several medical problems requiring frequent medical visits and continual modifications in their treatment.

There are many other difficulties in getting these claims accepted. Their medical circumstances are often quite complicated. Many are being treated for multiple WTC-related medical problems. Legal issues about causality, statutes of limitations for filing claims, and determination of disability are often raised in these cases and may take many months to adjudicate. Claimants are often confronted with a choice to accept lump sum payments or a limited weekly payment. The lump sum payment is often very appealing because of their backlog of unpaid bills and debt incurred while waiting for their claim to be processed. However, accepting the lump sum payment usually means giving up their options to reopen their claim to cover future medical costs should their condition worsen.

In order to alleviate some of the problems for WTC claimants, three years ago New York State implemented some new programs that were designed to improve coverage for WTC responders. These included an extension of the time to file a WTC-related claim. New York is also in the midst of implementing major reforms in the overall workers' compensation system that may also assist with WTC claims. Most of these changes are just now going into effect, and it will take time to assess their impact.

For the past year, I have served on a committee looking at some of the problems in handling of WTC claims. For various reasons, WTC claims are contested and appealed much more often than other claims. This leads to many claims being rejected and many more claims being significantly delayed. Although most claims that are pursued are ultimately approved, a disabled worker will often have spent many months or years without any income while waiting for their claim to be approved. Our committee has made a number of recommendations to alleviate these problems. Some of these recommendations will require legislative changes and will, therefore, take time to address.

In summary, the multiple workers' compensation systems covering WTC rescue and recovery workers are unable to provide timely and appropriate medical benefits and compensation for economic losses for the WTC providers. Although some steps are being taken to address some of the problems with these programs, it is unlikely that this can be accomplished in time to provide significant relief for most WTC rescue and recovery workers.

CAPTIVE INSURANCE

Another possible source of support for workers and community residents who have become ill as a result of their WTC-related exposures is the special captive insurance fund set up after the September 11. The World Trade Center Captive Insurance Company was formed in July of 2004 based on earlier Congressional legislation that allowed FEMA to provide up to \$1 billion in coverage for the City and its contractors for claims arising from debris removal after the collapse of the World Trade Center buildings. In March of 2003, Mayor Bloomberg and Governor Pataki announced the introduction of state legislation to allow the implementation of the captive insurance arrangement. Mayor Bloomberg stated in his press release, "This legislation is necessary for the City to expedite the payment of claims relating to this effort"

For many people including myself who were becoming increasingly concerned about the growing number of responders and recovery workers who were becoming ill from their work at the WTC, it appeared as if this insurance entity would become the financial mechanism to assist these ill workers. However, as subsequently became very clear, the WTC Captive Insurance Company had little interest in “expediting claims payment”. In fact, while spending millions of dollars in legal and consulting fees, the company has focused all of its efforts on attempting to fight the many thousands of WTC medical claims made against it. Almost five years after its formation, the fund has paid out less than ten actual claims, all reportedly for musculoskeletal injuries related to 9/11 work. Meanwhile, thousands of WTC rescue and recovery workers and community residents who have become ill as a result of their exposures after September 11 have had to struggle to pay the medical bills related to these illnesses until federal funding recently became available to defray these costs. Hundreds more who can no longer work because of their WTC-related illnesses have struggled to support their families while trying to obtain workers’ compensation or other disability benefits.

I am not an expert on insurance and cannot speak directly to the legal issues involved. However, it seems obvious to me that the \$1 billion could have been better used to help these thousands of men and women with medical bills and compensation for their inability to continue to work rather than invested in a long term legal battle in order to protect the City and its contractors. That was the intent of the federal government providing this funding as Mayor Bloomberg apparently understood in 2003. I believe that the current policy of the Captive to use all of its resources to challenge and fight claims is misguided and blatantly unfair to the many men and women who put their lives and health at risk to respond to the terrorist attack on our country on 9/11 and are now in need of assistance. While I understand that the City of New York and the construction contractors have legitimate concerns about their financial risks incurred in responding and recovering from a terrorist incident, denying (or at best delaying) medical benefits and compensation for the many rescue and recovery workers involved in this effort is a tragically misguided policy.

Moreover, the Captive as currently funded does not appear to be adequate to cover all of the medical and economic losses for the rescue and recovery workers and community residents with WTC-related illnesses. Medical monitoring and treatment costs for the rescue and recovery workers alone are estimated to cost over \$200 million per year. A more comprehensive solution is needed.

WHAT NEEDS TO BE DONE

I believe that we must develop a comprehensive solution to address the medical care and economic losses of the thousands of rescue and recovery workers, community residents, and students whose health has been harmed by exposures related to 9/11. HR 847 introduced by Representatives Maloney, Nadler, McMahon, and King provides a comprehensive legislative approach to accomplish that. In previous hearings, I have addressed the medical program outlined in that legislation. I will focus my recommendations on the aspects of the legislation related to compensation for economic losses. I would like to make several recommendations.

First, reopening and the Victims Compensation Fund (VCF) is the best mechanism for addressing economic losses. I believe that the VCF would provide the flexibility to properly and expeditiously handle claims from workers and community residents with varying circumstances and degrees of economic loss. Relying on the many other compensation systems for disabled workers and community residents for economic compensation would lead to continued long delays and gross inequities among the ill claimants due to the specific processes used for compensation in each of these systems. I also believe that the VCF should develop a common mechanism for ensuring that all of the claims were for legitimate WTC-related illnesses. For the most part, this could be based on the designations and mechanisms for designating World Trade Center-related conditions included in the medical program sections of the legislation. A number of the changes made in HR 847 will help to ensure that sound diagnostic criteria will be used in the medical portion of the program and that the program will be carefully monitored. At the same time as the medical program will provide comprehensive, expert medical care

for the responders and community residents, the VCF would provide an appropriate and equitable way of taking into account individual economic circumstances (including payments from other sources of compensation) similar to the approach taken when the VCF was administering the earlier 9/11 claims.

Secondly, the long term medical monitoring and treatment for World Trade Center related medical problems should be handled separately as outlined in the current legislation. I believe that medical care for these complex medical conditions would best be delivered in conjunction with the current Centers of Excellence. This approach would also reduce the problem of trying to take into account the potential costs of medical care for conditions that might develop in the future as part of the current economic compensation.

I strongly urge you to pass HR 847 this year. It is over seven years since the 9/11 terrorist attacks. The health of the rescue and recovery workers and community residents was damaged as a result of these attacks. We should not wait any longer to implement a comprehensive solution to address their medical and personal needs.

Thank you again for allowing me to testify. I would be glad to answer any questions.