September 11
Worker Protection Task Force
Annual Report
June 1, 2013

September 11th Worker Protection Task Force

Introduction

> Many public employees, including police, fire, correction, sanitation and civilians rendered rescue, recovery and cleanup at the former World Trade Center site and other designated locations…. [T]he State must recognize the services that these individuals provided not only to the victims and their families, but to all citizens of the City and State of New York and the United States of America. As a result, it is only fitting that they be protected when a disability ensues as a consequence of their selfless acts of bravery working at the World Trade Center site and other sites.

Sponsors' Memorandum in Support of Legislation (A6281A, enacted as Laws of 2005, Chapter 104, amended by Laws of 2005, Chapter 93, Laws of 2008, Chapter 489, Laws of 2010, Chapter 361, hereinafter referred to as the "World Trade Center disability law").

The World Trade Center disability law amended the New York State Retirement and Social Security Law and the New York City Administrative Code to provide that any public employee who suffered an injury or illness directly related to the terrorist attacks on September 11, 2001, be presumptively eligible for an accidental disability.

Charter

The September 11th Worker Protection Task Force ("Task Force") was created as part of the World Trade Center disability law, in legislation designated as the September 11th Worker Protection Task Force Act.

There are 20 members of the Task Force who are appointed as follows:

- Six members by the Governor;
- Three members by the Temporary President of the Senate, two of whom shall be representatives from the organizations representing workers at the World Trade Center site and one of whom shall be a representative of a recognized health organization with appropriate expertise;
- Three members by the Speaker of the Assembly, two of whom shall be representatives from the organizations representing workers at the World Trade Center site and one of whom shall be a

representative of a recognized health organization with appropriate expertise;
- The State Comptroller or his or her representative;
- The Comptroller of the City of New York or his or her representative;
- The Mayor of the City of New York or his or her representative;
- The Commissioner of the State Department of Health or his or her representative;
- The Commissioner of the State Department of Labor or his or her representative;
- The Director of the State Division of the Budget or his or her representative; and
- The Commissioner of the State Department of Civil Service or his or her representative; and
- The Medical Director of the Mount Sinai Irving J. Selikoff Center for Occupational and Environmental Medicine, or his or her designee.

Task Force Members

The members of the Task Force during the period of June 1, 2012, to May 31, 2013, were:

- Dr. Thomas K. **Aldrich**, Pulmonary Medicine Division, Montefiore Medical Center and Albert Einstein College of Medicine, **Chair**
- Lou **Matarazzo**, Executive Director, Detectives Endowment Association, **Vice Chair**
- Suzy S. **Ballantyne**, Assistant to the President, New York State AFL-CIO
- Michael **Bloomberg**, Mayor, New York City
- Jerry **Boone**, Commissioner, New York State Department of Civil Service
- Stephen J. **Cassidy**, President, Uniformed Firefighters Association
- Dr. Laura **Crowley**, Mt. Sinai-Irving J. Selikoff Center for Occupational and Environmental Medicine
- Thomas **DiNapoli**, New York State Comptroller
- Gregory **Floyd**, President, International Brotherhood of Teamsters, Local 237
- Alexander **Hagan**, President, Uniformed Fire Officers Association, Local 854, IAFF
- John C. **Liu**, New York City Comptroller
- Patrick J. **Lynch**, President, New York City Patrolmen's Benevolent Association
- Robert L. **Megna**, Director, New York State Division of the Budget

- Dr. James M. **Melius**, Administrator & Research Director, New York State Laborers' Health & Safety Trust Fund
- Peter D. **Meringolo**, Chairman, New York State Public Employees Conference
- Dr. David **Prezant**, Chief Medical Officer, New York City Fire Department
- Peter M. **Rivera**, Commissioner, New York State Department of Labor
- Lillian **Roberts**, Executive Director, District Council 37, AFSCME, AFL-CIO
- David J. **Rosenzwieg**, Retired President, Uniform Fire Dispatch Benevolent Association
- Nirav R. **Shah**, M.D., Commissioner, New York State Department of Health

Individuals who regularly participated in the Task Force as representatives for certain members during the period of June 1, 2012, to May 31, 2013, included:

- Sandra **Abeles**, Esq. and Pico **Ben-Amotz**, Esq. for the Commissioner of the New York State Department of Labor
- Bob **Brondi** for the Director of the New York State Division of the Budget
- Lee **Clarke** and Guille **Mejia** for Lillian Roberts, Executive Director, District Council 37, AFSCME, AFL-CIO
- Robert **Coughlin**, Esq. for Thomas DiNapoli, New York State Comptroller
- Dr. Richard **Ciulla** for the Commissioner of the New York State Department of Civil Service
- Brian **Geller**, Esq. for Michael Bloomberg, Mayor, New York City
- Dr. Matthew P. **Mauer** for the Commissioner of the New York State Department of Health
- Christopher J. **McGrath**, Esq. for Patrick J. Lynch, President, New York City Patrolmen's Benevolent Association
- William **Romaka** and Richard **Alles** for Stephen J. Cassidy, President, Uniformed Firefighters Association
- Richard **Simon**, for John C. Liu, New York City Comptroller
- Frank **Tramontano** for Patrick J. Lynch, President, New York City Patrolmen's Benevolent Association

Mission

The purpose of the World Trade Center disability law was to establish presumptive eligibility for accidental disability for the "public employees, including police, fire, correction, sanitation and civilians" who "rendered rescue, recovery

and clean up at the former world trade center site and other designated locations" so that they can "be protected when a disability ensues." Sponsor's Memo in support of A6281A.

The Task Force was created in recognition of "health issues and concerns of the workers who participated in the rescue, recovery and clean up of the World Trade Center and related areas". September 11th Worker Protection Task Force Act at section 2 (Laws of 2005, Chapter 104, Part B, section 2).

The Task Force is required to submit annual reports on or before June 1 to the governor, the temporary president of the senate and the speaker of the assembly that address (a) the progress being made in fulfilling the duties of the Task Force and in developing recommendations; and (b) recommend strategies or actions for ongoing monitoring and treatment of individuals.

The Task Force has the following duties relating to workers who participated in the World Trade Center rescue, recovery and cleanup:

> a) to obtain from the Department of Health and the New York City Department of Health, such Departments' review of statistical and qualitative data on the prevalence and incidence of sickness, illness and disability of such workers;
>
> (b) to obtain from other sources reviews of statistical and qualitative data on the prevalence and incidence of sickness, illness and disability of such workers;
>
> (c) assess based upon evidence presented, the nature, scope and magnitude of the health impacts caused by exposure to air and elements;
>
> (d) measure the adverse health effects of exposure on such workers;
>
> (e) to consult with any organization, health institution, governmental agency or person including, but not limited to, the Department of Health, the Department of Environmental Conservation, the federal Environmental Protection Agency, the New York Committee for Occupational Safety and Health and the Occupational Safety and Health Administration;
>
> (f) to identify and examine the limitations of any existing laws, regulations, programs, and services with regard to coverage, extent of disability, process for determination, adequacy of coverage and treatment of specific types of disabilities and to undertake any recommendations;
>
> (g) to receive and to consider reports and testimony from individuals, the health department, community-based organizations, voluntary health organizations, and other public and private organizations statewide to

learn more about the diagnosis, care, and treatment of such workers at these designated sites; and

(h) to identify federal funding sources to assist state and local governments in paying costs associated with disability benefits under [the World Trade Center disability law].

The chair of the Task Force is empowered to establish committees for the purpose of making special studies pursuant to the above-referenced duties and may appoint non-Task Force members to serve on each committee as resource persons, who shall be voting members of the committees to which they are appointed.

2012-13

During the past year, the Task Force met five times to discuss issues and areas of inquiry that included the following:

- Legislation to implement prior task force recommendations regarding members who separated from service with vested benefits and members of tiers I and II of the New York City Teachers' Retirement System and the New York City Board of Education Retirement System, and the definition of qualifying condition in Article 8-A of the Workers' Compensation Law.
- Recommendations to re-open the registration period, which closed on September 11, 2010. The Task Force prepared a statement reiterating its support of extending the filing deadline (see attached Appendix A). The statement was accepted by a majority of the Task Force.
- Workers' Compensation data, updates, and recommendations on issues previously reported on by the task force and its Workers' Compensation Subcommittee. The findings of the Workers' Compensation Subcommittee are documented in the December 2012 Update to the Report and Recommendations on 9/11 Workers' Compensation Claims (see attached Appendix B).

APPENDIX A

STATEMENT REGARDING EXPANSION OF FILING DEADLINES FOR WTC-RELATED NEW YORK STATE PENSION AND WORKERS' COMPENSATION CLAIMS

THE NEW YORK STATE SEPTEMBER 11th
WORKERS' PROTECTION TASKFORCE

May 15, 2013

Attached is a statement issued by the New York State September 11th Workers' Protection Taskforce one year ago. This statement was approved by a majority of the taskforce, which continues to support the 2012 recommendations. The Taskforce believes that persons with qualifying WTC exposure should be given an opportunity to register with pension and Workers' Compensation Boards and that the registration deadlines should be extended to permit such filing.

In the past year, additional information has come to light and new scientific studies have appeared. These new developments lend further support to the 2012 recommendations of the Taskforce. The relevant information includes:

Late emerging disease, especially cancer: Following the study of new post-9/11 cancers in WTC-exposed FDNY firefighters referred to in last years' statement (Zeig-Owens et al, Lancet 2011 378:898-905), two additional reports have been published:

- A study of new post-9/11 cancers among 55,778 WTC-exposed persons in the World Trade Center Health Registry, administered by New York City's Department of Health and Mental Hygiene (Li et al, JAMA 2012 308:2479-88). Among the ~21,000 rescue and recovery workers in this cohort, overall cancer risk as of the end of 2008 was estimated to be increased by about 14% over that expected—just missing statistical significance (with 95% confidence interval ranging from a decrease of 1% to an increase of 30%). There were statistically significant increases in three specific cancers: prostate, thyroid, and multiple myeloma.

- A study of 20,984 rescue and recovery workers in Mount Sinai's WTC Health Program (Solan et al, In press in Environmental Health Perspectives), also including data up to the end of 2008, demonstrated an estimated 15% increase in overall cancer risk, with 95% confidence interval ranging from 6% to 25% (statistically-significant). There were significant increases in soft tissue cancers, prostate, thyroid, and hematologic cancers.

Both of these new reports show findings consistent with those of the earlier FDNY report (which estimated overall cancer incidence 10% higher than expected for NY residents, with confidence interval ranging from -2% to +25%). The FDNY report pointed out that the healthy-worker effect would artificially inflate the expected cancer rate among workers, and estimated that correcting for the healthy worker effect would increase WTC-related cancer estimates to +32% (with confidence interval ranging from +7 % to +62%).

All three of the major studies to date were carefully performed, with guidance from the best minds in cancer epidemiology. By their nature, they suffer from uncertainties, especially a concern that increased awareness of the possible cancer risk may have led to surveillance bias---the increased medical contacts of the workers may have led to earlier and perhaps even more diagnoses of cancer than would otherwise have been the case. Nonetheless, a central theme of all scientific investigations is that when all studies find similar results then the weight of the evidence strongly suggests that cancer risk was increased by WTC exposure.

Of necessity, none of the studies published to date has assessed data after the end of 2008, so any observed increase in cancers reflects increases that have occurred less than 7 years after exposure.

The Federal WTC Health Program Administrator, based on these findings and the findings of his scientific and technical advisory committee, has now included most cancers as covered conditions in the World Trade Center Health program. https://www.federalregister.gov/articles/2012/09/12/2012-22304/world-trade-center-health-program-addition-of-certain-types-of-cancer-to-the-list-of-wtc-related

Other late-emerging diseases: Although definitive determination must await results of a recently-NIOSH-funded study (Webber, FDNY), preliminary information suggests that the incidence of autoimmune diseases, such as rheumatoid arthritis, may be higher in WTC-exposed FDNY personnel than expected from age- and gender-adjusted rates in the general population. Musculoskeletal injuries and Myositis are already covered under the bill, but a number of autoimmune rheumatological disorders typically develop later, and evidence that they are occurring at higher-than-expected rates would underscore the need to extend the filing deadline.

Thus, late-emerging diseases, especially but not only cancers, are likely to appear or have appeared in many WTC-exposed workers, too late for such workers to have reasonably foreseen them and therefore to have registered with the pension and Workers' Compensation Boards.

Persistence of PTSD symptoms in workers. A large longitudinal study recently demonstrated that substantial percentages of WTC workers had persistent PTSD symptoms and some had delayed onset PTSD 8 years after 9/11 (Pietrzak et al "Trajectories of PTSD risk and resilience…", Psychological Medicine, In press 2013). As the taskforce argued in its 2012 statement, the social withdrawal and avoidance of thinking about the events of 9/11 exposure are important features of PTSD, so affected persons may be have been reluctant to register for WTC-related benefits.

ATTACHMENT TO APPENDIX A

STATEMENT REGARDING POTENTIAL EXTENSION OF FILING DEADLINES FOR WTC-RELATED NEW YORK STATE PENSION AND WORKERS' COMPENSATION CLAIMS.

The New York State September 11th Workers' Protection Task Force

Adopted May 3, 2012

The September 11, 2001 terrorist attack on the World Trade Center (WTC) and the collapse of the two towers and the nearby #7 WTC Tower later that afternoon killed nearly 3000 persons immediately and exposed thousands to an unprecedented density of toxic dust and fumes. The subsequent 10 month recovery effort at the site led to continued exposure of many thousands of recovery workers at the site, and, to a lesser but still substantial extent, local residents, students, workers, and passers-by. The results, in many cases, included acute or sub-acute upper and lower respiratory, gastrointestinal, psychiatric, musculoskeletal and other conditions, some of which have persisted, while others improved or resolved. Concern persists regarding the potential development of late-emerging WTC-related diseases, including cancers. A recent exhaustive study of incident cancers in FDNY firefighters has concluded that even within the first 7 years after 9/11/2001, there has been a small, but significant, increase in cancer incidence caused by WTC exposure (Zeig-Owens et al, Lancet. 2011 378:898-905). In general, cancer latency is long enough that the full effects of exposure cannot be anticipated before 15 years---and, in the case of mesothelioma after asbestos exposure, for example, may be as long as several decades.

Several monitoring and treatment programs were established specifically for WTC-related illnesses and are now merged into NIOSH's WTC Health Program. In general, the conditions treated in such programs are limited to specified aerodigestive disorders, mental health conditions, and musculoskeletal disorders. Other conditions, including cancer or specific types of cancer, may be added to the list in the future, depending on results of periodic reviews of medical evidence by the administrator of the Health Program. One such review is currently being conducted, but, as of now, cancers and other late-emerging conditions are not identified as covered conditions.

As regards WTC-related pensions and Workers' compensation claims, only certain conditions identified as potentially WTC-caused, qualify workers for WTC-presumption or for consideration for Workers' Compensation benefits.. The qualifying conditions include the following:

upper respiratory tract (conjunctivitis, rhinitis, sinusitis, pharyngitis, laryngitis, vocal cord disease, upper airway hyper-reactivity and tracheo-bronchitis, or a combination of such conditions); lower respiratory tract (bronchitis, asthma, reactive airway dysfunction syndrome and various forms of pneumonitis - hypersensitivity, granulomatous, or eosinophilic); gastroesophageal tract (esophagitis and reflux disease); psychological (post-traumatic stress disorder, anxiety, depression, or any combination of these conditions); skin (contact dermatitis or burns, infectious, irritant, allergic, idiopathic or non-specific in nature, caused by exposure or aggravated by exposure); and new onset diseases (resulting from exposure as such diseases

may occur in the future including cancer, chronic obstructive pulmonary disease, asbestos-related diseases, heavy metal poisoning, musculoskeletal disease and chronic psychological diseases).

While the evaluation of acute or subacute illnesses included in the list of qualifying conditions is usually not difficult for the application of this presumption, the evaluation of "new onset diseases" is often more difficult as the medical follow-up of WTC workers is still underway. We do not yet know with full certainty what "new onset diseases" due to WTC exposures will become evident in this population. This uncertainty leaves it to each pension board to make their own decisions about how to apply the presumption which, in turn, can be challenged in court.

To be eligible for the presumption of WTC-causation of disability or for opening or reopening of a Workers' Compensation claim for a WTC-related condition, despite filing beyond the usual 'timely" period after exposure, workers must have registered with the relevant pension board or Workers' Compensation Board prior to 9/11/2010.

Currently, the NYS 9/11 Workers' protection Taskforce is considering whether to recommend extension of the registration deadline.

Published literature reflects a far greater number of WTC rescue, recovery and clean-up participants than are currently registered for pension and/or workers' compensation benefits. The Task Force has learned that many of these responders did not register previously for a variety of reasons.

The multitude of programs for which registration was required was a cause of confusion among the responder population. In many instances responders were under the erroneous impression that they had completed and filed all of the required documents when in fact they had registered for only one program (such as a health program). A significant number of these responders did not discover that they were not fully registered for all of the relevant programs until the existing registration time frames had expired. In some instances responders did not register because they thought they lacked sufficient documentation, and other responders erroneously thought that they would not be covered.

Many responders did not register because they were not currently disabled and did not have substantial medical costs or lost wages due to WTC-related conditions. These responders thus failed to appreciate the necessity to register. Other responders who suffered from active medical problems found themselves too disabled to attend to the necessary paperwork.

In addition, the current recognition of cancers and other late-emerging conditions by the medical and governmental community as potentially related to WTC exposure, with possible future inclusion in legislation or regulation as covered conditions, has created a need to reopen the registration period to provide protection to responders who are only now learning that their conditions may be related to their WTC exposure.

And finally, for PTSD and depression, two recognized WTC-related conditions, social withdrawal and avoidance of thinking about the exposure are important features, so affected persons may be reluctant to register for WTC-related benefits.

It is important to note that extending the deadline for filing an application does not in any way guarantee that benefits will be awarded. It only means that the injured and the ill will have an opportunity to have their case heard.

For all of these reasons, the Task Force believes that persons with qualifying WTC exposure should be given an opportunity to register with pension and Workers' Compensation boards and that the registration deadlines should be extended to permit such filing.

APPENDIX B

Report and Recommendations on 9/11 Workers' Compensation Claims

December 2012 Update

Introduction

More than a decade after September 11, 2001, the New York Workers' Compensation Board (Board) continues to handle a significant number of claims for work-related illnesses developed as a result of toxic exposure resulting from World Trade Center (WTC) rescue, recovery and clean-up activities (RRCU). The extended timeframe for filing such claims, found in Article 8-A of the NYS Workers' Compensation Law (WCL), enables workers involved in the WTC-related RRCU activities to register their involvement and to file claims within two years of becoming disabled, even if that occurs many years after the original 9/11 accident. The Board received more than 47,700 registrations before the deadline of 9/13/2010. As of July 18, 2011, 5,773 of those registrations had generated actual workers' compensation claims.[i] (Table 1.)

Table 1. Assembled RRCU Claims

Assembly Date Range	RRCU Claims	
	#	%
9/11/2001 - 9/10/2003	1,779	30.8%
9/11/2003 - 9/10/2005	1,775	30.7%
9/11/2005 - 9/10/2007	1,087	18.8%
9/11/2007 - 9/10/2009	674	11.7%
9/11/2009 - 7/18/2011	458	7.9%
Total	5,773	100.0%

The New York Legislature established the 9/11 Workers' Protection Task Force in 2005. In 2008, the Task Force formed a Workers' Compensation Subcommittee (WCS) to review data and make recommendations regarding claims for compensation that are processed through the New York workers' compensation system. The subcommittee issued its first report and recommendation in 2009 and an update report in 2011.

The December 2012 Update is the third report of the Subcommittee. It examines the most recent WTC-related claims (assembled between April 9, 2010 and July 18, 2011) to determine whether there has been progress in the administration and resolution of such claims. It also looks in detail at a sample of controverted claims analyzed in the Subcommittee's September 2011 report (those assembled between May 1, 2008 to April 9, 2010) to better understand the delays associated with controverted claims.

The major findings of the December 2012 Update are:

- Payers controvert 55% of new RRCU claims, a rate more than seven times as high as non-WTC related claims.[ii]
- More than one third of the most recent group of controverted claims has been established, while 12.3% have been denied.
- The time to establish controverted claims is significantly shorter than claims assembled in 2008, but is still three and a half times greater than the average controverted claim.
- Review of a sample of thirty recent controverted claims that took more than 9 months to establish reveals the following characteristics:
    - All of the claimants had legal representation.
    - More than two-thirds spoke a language other than English as their primary language – Spanish (57%), Polish (10%), Russian (3%).
    - Forty percent were union members.
    - Seventy percent involved litigation regarding who was the responsible insurance carrier.
    - Payers obtained an independent medical exam (IME) on the issue of causal relationship in two-thirds of the claims.
    - The claims had an average of nearly 7 hearings.
    - All but six were exempt from the Rocket Docket.
    - Fewer than half of the injured workers received care from the federally funded 9/11 medical programs.

I. Most Recent Claims (April 9, 2010 – July 18, 2011)

A. Inventory

During the most recent fifteen months for which data were available, the WCB identified 519 new WTC-related claims, including 436 RRCU claims. This represents a 4% increase in all WTC claims, but an 8% increase in RRCU claims, compared to April 2010. During the same period, however, the WCB received additional information and removed the WTC and/or RRCU designation from a significant number of previously assembled claims (185 all WTC, 135 RRCU), leaving a smaller net increase in WTC and RRCU claims.

Table 2. Inventory of New WTC Claims (April 9, 2010 – July 18, 2011)

Claim Type	All Claims	RRCU Claims
WTC Claims 4/9/2010	12,931	5,472
Dropped Out	-185	-135
New Claims added after 4/9/2010	519	436
WTC Claims 7/18/2011	13,265	5,773

This report focuses on a group of 482 9/11 related claims. Five claims were excluded because they were processed through the Alternate Dispute Resolution (ADR) program for which the WCB does not have extensive process data. Thirty-two were excluded because they were actually indexed before May 2008.

Table 3. New Claims For Analysis

Category	Total
"New Claims" since April 9, 2010	519
ADR Claims	-5
Indexed Prior to 5/1/08	-32
Total Claims for this "Follow Up"	482

B. Rate of Controversy

Insurance companies and self-insured employers continued to dispute the eligibility in the newly filed claims at unprecedented levels. More than 55% of the new claims (n=482) were controverted (or disputed). This rate is up substantially over the claims assembled from May 1, 2008 to April 9, 2010, in which 44% were controverted (44.8% of RRCU claims). (Table 4.) This stands in stark contrast to the overall system controversion rate, which was 7.4% in 2011.[iii]

Table 4. Rate of Controversy (April 9, 2010 – July 18, 2011)

Activity Type	RRCU		Not RRCU		Total	
	#	Percent	#	Percent	#	Percent
Controverted	214	56.6%	53	51.0%	267	55.4%
Not Controverted	164	43.4%	51	49.0%	215	44.6%
Total	378	100.0%	104	100.0%	482	100.0%

The controversion rate was lower among claims in which New York City was the employer. Private employers and other public agencies[iv] controverted nearly 60% of new claims. (Table 5.) The issue of multiple carriers is rarely if ever implicated in claims involving New York City, which is self-insured.

Table 5. Controversy Rate by Employer Type (April 9, 2010 – July 18, 2011)

Employer Group	Controverted claims	Total claims	Rate
Police, Fire, and Sanitation	25	61	41.0%
NYC Agencies	18	39	46.2%
Other Public Agencies	13	22	59.1%
Private Sector	211	360	58.6%
Total	267	482	55.4%

C. Outcomes of Controverted Claims

There was a significant change in the outcomes of controverted claims compared to prior reports. As of September 10, 2012, only 35% of controverted new claims were established, while 12% were denied by a law judge. This represents a significant increase in denied claims. As a result, the ratio of established to denied claims dropped dramatically from 11.3:1 in the last update to less than 3:1. (Table 6.)

Because these claims are recently filed, many may not yet have a final outcome. More than ten percent are in appeals or pending. In addition, more than 42% have not been pursued or lack prima facie medical evidence. (Table 6.) While some of the FTP or PFME claims will ultimately be decided on the merits—either established or denied—others are likely to remain unresolved

(and therefore unestablished) because the claimant will never produce either medical evidence or proof of registration or participation in the RRCU efforts.

Table 6. Outcomes of New Controverted Claims (as of September 10, 2012)

Outcome	Controverted	
	#	%
1. Established	93	34.8%
2. In Appeals*	11	4.1%
3. Pending	17	6.4%
4. Denied by Law Judge	32	12.0%
5. NPFME & FTP	1	0.4%
6. NPFME (and not FTP)	10	3.7%
7. FTP (and not NPFME)	99	37.1%
8. Unknown	4	1.5%
Total	267	100.0%

*5 of the 11 in appeals were originally established.

The increase in denied claims prompted a manual review to determine the grounds for each denial. More than three quarters (23/32) were denied because the claim was not timely filed. Many of these injured workers either did not have a timely registration or were not covered by Article 8A because they did not participate in RRCU efforts. Nearly nineteen percent (6/32) were denied because the worker was not covered by New York workers' compensation law, either because the worker was a federal employee or covered by the NYS disability law (e.g. NYC uniformed fire and police officers). The remaining nine percent (3/32) were denied because of inadequate medical evidence linking their RRCU efforts to any ongoing disability.

The majority of the workers whose claims were denied had legal representation (20/32 or 63%). Slightly less than half of them (15/32 or 48%) had been treated by one of the federal World Trade Center health programs.

D. Time to Resolve Controverted Claims

The Subcommittee's original report found that, on average, it took 458 days to establish a controverted RRCU claim. There has been significant improvement in this metric over the last several years. For claims assembled between May 2008 and July 2010, the average time to establish was reduced by more than a month to 422 days. (Table 7.) Among the most recent claims, the average resolution time was 378 days (17% less than pre-2008 claims). (Table 8.)

The improvement, however, may be somewhat overstated because fewer new claims have been established as of the time of review and claims established in the future will likely increase the average time to establish.

Table 7. Time to Resolve Controverted Claims (from the date of case assembly)

Time period	Total Controverted	Established			Not Established			Pending	
		#	Percent	Avg Days to Establish *	#	Percent	Avg Days to NFA*	#	Percent
5/1/08 – 4/9/10	305	161	52.8%	422	129	42.3%	321	15	4.9%
4/9/10 – 7/19/11	267	98	36.7%	378	153	57.3%	256	16	6.0%

Note: Established includes five (5) claims that were originally established but are currently on appeal. Not established includes claims that have been denied or closed No Further Action without liability being established, but does not include pending claims.

In 2008, the Board established new streamlined procedures for resolving controverted claims ("Rocket Docket"). The Rocket Docket provides for resolution within 90 days of becoming eligible for the process. Eligibility runs from the date that the claim is complete with a qualifying medical report and a notice of controversy, which can occur weeks or months after the assembly. The regulations exempt from the Rocket Docket certain claims, including those in which the claimant is unrepresented or that involve occupational disease, death or other complex claims.

The time to establish controverted RRCU remains substantially greater than the "regular" controverted claim and the 90 day timeframe established by the Rocket Docket. In 2011, the average time to resolve a controverted claim was 75 days from date of eligibility.[v] For RRCU claims, the average was 350% higher – 276 days. (Table 8.) Only 11% were resolved within the 90 day timeframe, while more than a quarter required a year or longer to resolve. (Table 8.)

Table 8. Distribution of Time to Resolve Controverted Claims (from eligibility) (Assembled April 9, 2010 to July 19, 2011)

Interval (in days)*	Established		Not Established	
	#	%	#	%
<= 90 Days	11	11.2%	91	59.5%
91 - 180 Days	26	26.5%	25	16.3%
181 - 270 Days	17	17.3%	15	9.8%
271 - 365 Days	19	19.4%	7	4.6%
Over 365 Days	25	25.5%	15	9.8%
Total	98	100.0%	153	100.0%
Avg. Days to Resolve	276		129	

Note: Established includes five (5) claims that were originally established but are currently on appeal. Not established includes claims that have been denied or closed No Further Action without liability being established, but does not include pending claims.

Table 9. Distribution of Time to Resolve Controverted Claims (from assembly) (Assembled April 9, 2010 to July 19, 2011)

Interval (in days)	Established		Not Established	
	#	%	#	%
<= 90 Days	3	3.1%	28	18.3%
91 - 180 Days	14	14.3%	50	32.7%
181 - 270 Days	11	11.2%	19	12.4%
271 - 365 Days	23	23.5%	17	11.1%
Over 365 Days	47	48.0%	39	25.5%
Total	98	100.0%	153	100.0%

II. Detailed Review of Controverted Claims Sample (Assembled May 1, 2008 to April 9, 2010)

The Subcommittee sought to closely examine controverted claims to understand the reasons for controversion and why controverted WTC claims take so much longer to resolve than regular controverted claims. As noted in prior reports, the Board does not capture data regarding the specific reasons that a claim is controverted. Though payers are required to complete a Notice of

Controversy (Form C-7) and a pre-hearing conference statement that identifies the basis of the controversy, the information on these forms is not captured as data and many payers provide a litany of reasons, not all of which will be litigated. Determining the true nature of the dispute in a controverted claim requires careful manual review of the claim file.

The subcommittee was most interested in the controverted claims that took longest to resolve. I identified a random sample of 30 controverted claims, each of which took more than 270 days from assembly to resolve. The subcommittee chose claims had been assembled between May 1, 2008 and April 9, 2010 because a greater percentage of those claims had completed the litigation process and been established, compared to the claims assembled after April 9, 2010. The Subcommittee enlisted the assistance of Lori Baetzhold, a very experienced claims examiner from Rochester, to manually review claims.

The Subcommittee looked at a variety of factors to understand the nature of the individual workers, their employment, and their claims. The following are some of the findings. A chart showing all thirty claims with the corresponding information for each category is attached as Appendix 1.

Representation: All of the claimants had legal representation.

Language: Seventy percent (21/30) of the claimants spoke a primary language other than English:

57% (17/30) speak Spanish
10% (3/30) speak Polish
3% (1/30) speak Russian

Union: Forty percent (12/30) of the injured workers were members of unions. Seven of them were members of Local 78 of the Laborers' Union, which specializes in asbestos abatement.

Issues for Litigation

Multiple carriers: In 70% (21/30) of the claims, the issue of multiple carriers was litigated. Multiple carriers can be on notice for a claim if the worker had multiple employers during his work on the RRCU operations, if one employer had different carriers for different policy periods within the relevant time period, or if there is an issue of joint employment between a contractor and a subcontractor.

The issue of multiple carriers can delay the resolution of a claim because it may require adjournments to add parties and/or the development of the record with respect to particular aspects of the employment relationship and the employer(s)' insurance history. In 71% (15/21)

of the claims, the issue of multiple employers was identified at the first hearing. The issue arose in the second hearing in 19%, and the third hearing in the remaining 10% of claims.

Causal relationship: In two-thirds (20/30) of the claims, the payer obtained an IME to challenge the injured worker's claim that his/her illness was caused by the exposure associated with the RRCU activities.

Rocket docket: The judge in all but six claims declared the claim exempt from the Rocket Docket due to the complexity of the issues. As a result, the claims were not required to be resolved within 90 days of eligibility.

Number of hearings: The sample of controverted claims had an average of nearly seven hearings. One claim had 13 hearings, while one claim had only 3.

Table 11. Number of hearings in sample of controverted claims

# of hearings	# of claims	Percent of hearings
3-5	9	30%
6-8	12	40%
9-11	8	27%
12-14	1	3%

Medical care from the World Trade Center Health Program:
Fewer than half (14/30) of the injured workers in the sample are receiving services from the federally funded World Trade Center Health Program. This is significant because the complexity of the workers' compensation system and the proof associated with 9/11 RRCU claims can be challenging for physicians. The World Trade Center Health Program has the expertise with respect to workers' compensation claims that enable them to provide the appropriate medical evidence in support of controverted claims.

III. Recommendations

The complexity of WTC rescue, recovery and clean up claims, including the issue of multiple employers/carriers and causality of disease, largely explains the high rate of controversion and long duration to resolve those claims. These factors are further complicated by the fact that many of the workers are not proficient in English. As long as workers' compensation payers are entitled to challenge eligibility and workers required to establish that their illness was the result of WTC-related exposure and not unrelated risks, these claims will experience litigation and the accompanying delays and costs. Nevertheless, it is not acceptable that so many workers who responded to the national tragedy of 9/11 and are now sick as a result must wait up to a year to have their dispute resolved.

Several recommendations may help reduce the level of dispute and speed the resolution of RRCU claims.

1. **Extend the WTC registration period.**

The last two years has seen a marked increase in RRCU claims denied because they were not timely filed. Extending the registration period would allow those injured workers who did not previously register their RRCU efforts with the WCB. There will continue to be individuals whose claims are denied because they did not perform RRCU work, but this represents a minority (7/23) of the claims denied as untimely filed.

2. **The WCB should make all efforts to expedite resolution of controverted RRCU claims.**

While the Rocket Docket specifically exempts occupational disease and other complex claims from the 90 day expedited hearing requirement, nonetheless, the WCB should prioritize controverted RRCU claims for speedy resolution. There is considerable variation in the number of hearings and time required to resolve these claims, suggesting room for further improvement.

The majority of controverted claims involved issues of multiple carriers and causal relationship. WCB law judges should seek to expedite the determination of liable carrier at the outset, requiring carriers to raise the issue at the first opportunity or waive it. Though the standard for which carrier is liable under 8A is different than under a normal accident or occupational disease claim, it is no more complex and can be resolved quickly. Once that issue is resolved, iudges can hold the parties to standard Rocked Docket deadlines for obtaining IME and deposition testimony. Such efforts, applied consistently, may help speed up the resolution of controverted RRCU claims.

3. **The WCB and other stakeholders should promote the use of the World Trade Center Health Programs.**

Insufficient medical evidence linking the worker's RRCU efforts and exposure to claims of illness account for significant delay and result in many claims that have not been fully pursued (NPFME and/or FTP). The World Trade Center Health Programs, which have recently been extended by the federal Zadroga Act, have an expertise in these claims and are well trained in providing appropriate medical documentation for adjudication by the WCB. The WCB, including law judges, should promote these programs among claimants, particularly those who have been unable to provide adequate medical documentation in support of their claim. The WCB should also include information about the WTC Health Programs on its website.

Conclusion

The experience of rescue, recovery and cleanup workers seeking compensation remains difficult. Payers controvert claims at an extraordinarily high rate and those claims spend many months in litigation and often require many hearings. Though the time to resolve controverted claims has fallen nearly 20% since the first subcommittee report, it still takes three-and-a-half times as long as a non-WTC controverted claim on average.

New RRCU claims are less likely to be established. There has been a significant increase in denied claims, most of which are due to issues of timely filing and eligibility for Article 8-A. A large proportion of claims remain unpursued, often because there is insufficient medical evidence or because the claimant has not established that he or she participated in RRCU efforts.

Manual review of a sample of controverted claims that took longest to establish reveals some interesting patterns. All claimants had legal representatives; 40% were union members. More than two-thirds speak a language other than English as their primary language. Litigation often focused on causal relationship (67% had IME on causal relationship) and liability among multiple carriers (70%). Eighty percent were declared exempt from the Rocket Docket and the sample required an average of nearly seven hearings.

Given the complexity of the claims and the high level of litigation, these claims may continue to take significant time to resolve. However, the WCB has had considerable success in speeding the resolution of non-WTC controverted claims and should apply those tools to actively manage the claims and further improve the timely resolution of controverted RRCU claims. . Furthermore, greater use of the World Trade Center Health Programs can improve the presentation of medical evidence and reduce delays caused by inadequate medical evidence presented by those who have far less experience with the requirements of the workers' compensation system.

Endnotes

[i] The Workers' Compensation Board's Data Acquisition Unit manually reviews and codes claims as involving WTC RRCU activities based on information contained in claim and medical forms in the electronic case file. Where there is some question as to whether the claim should be considered WTC RRCU related, the Board errs towards inclusion. When the claim is ultimately established and the underlying facts becomes clearer, the claim may be reclassified if it is not based on WTC RRCU activities.

[iiii] Prior reports have noted that RRCU claims are generally more akin to occupational disease (OD), rather than accident, claims because of complicated issues of disease etiology. While the WCB does not maintain statistics on the controversy rate for OD claims, it is well recognized to be significantly higher than for accident claims.

[iii] New York Workers' Compensation Board, 2011 Annual Report, A-8, available electronically at http://www.wcb.ny.gov/content/main/TheBoard/2011AnnualReport.pdf.

[iv] The NYC Transit Authority and the NYC Housing Authority accounted for all new controverted claims among Other Public Agenciese.

[v] *Id.* at A-10.