



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, *Corporation Counsel*

Press Release

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NEW YORK CITY AWARDED AN ADDITIONAL \$1.5 MILLION IN CELOTEX ASBESTOS BANKRUPTCY

TOTAL ASBESTOS RECOVERIES BY THE CITY WILL TOP \$135 MILLION

Contact: Kate O'Brien Ahlers / Connie Pankratz (212) 788-0400, media@law.nyc.gov

New York, June 5, 2009 – An arbitration panel awarded the City of New York \$1.5 million for its final four claims against the Celotex Asbestos Settlement Trust for asbestos damage to City schools and other buildings. This latest award brings the City's total recovery against Celotex to \$60 million, or more than 23 percent of the total amount that the Celotex Trust paid for property damage. Previously, the Eleventh Circuit had upheld all of the City's claims except for these four which were based on a Celotex patent.

New York City is the largest single claimant in the 19-year-old Celotex bankruptcy proceeding. The City's total asbestos recoveries are expected to exceed \$135 million by FY 2010. The City, through the Law Department, has recovered more money in the asbestos bankruptcies than any other entity in the nation.

The Law Department's efforts to recover monies for the City to pay part of the large amounts the City has spent – and continues to spend – to abate asbestos hazards in its schools and other buildings goes back to 1984, when it commenced litigation against asbestos companies in New York Supreme Court. In addition, the City also filed claims in the Celotex bankruptcy proceeding, which began in 1990 when the Celotex Corp., a large manufacturer of building supplies, filed for bankruptcy protection because of claims arising from its manufacture and sale of asbestos fiber and building products.

New York City alone filed over 740 claims with the Celotex Trust. Almost 500 claims were allowed, but opposition to the payment of many of the claims by the Celotex trustees forced the City to litigate to secure the money owed it. That litigation culminated in an appeal to the Eleventh Circuit where the City prevailed on nearly all of the claims. The sole issue remaining was the validity of four of the City's claims based on a patent, where the Eleventh Circuit ruled that the City must show that that Celotex's predecessor was capable of exercising control over the patented asbestos product that ended up in City buildings, imposing a higher standard than that employed when the claims were initially decided.

Nothing in the large litigation record or in published sources resolved the question posed by the Eleventh Circuit. Undaunted, City attorneys uncovered evidence not previously presented in the long history of asbestos litigation, delving into the National Archives. Records of an FBI/Justice Department antitrust investigation in the 1930s showed that Celotex's predecessor indeed had the power to exercise control over the patented asbestos product and in a decision dated May 29, 2009, the arbitrator ruled in favor of the City's patent claims.

"This victory illustrates the enormous variety of legal challenges faced daily by the City's Law Department, and is a testament to the resourcefulness of its attorneys and their commitment to go the extra mile to advocate on behalf of the City," said Corporation Counsel Michael A. Cardozo.

"The Eleventh Circuit forced us to research the historical record to succeed on the City's claims. What we uncovered was fascinating: a highly skilled anti-trust investigation lead by leading New Deal Justice

Department lawyers Thurman Arnold and Robert Jackson. We are pleased that the arbitrator agreed that the Law Department's research revealed a record that fully supported the City's claims," said Alan H. Kleinman, senior counsel and lead attorney on this case.

Morton J. Marshack, another senior counsel in the Law Department's Affirmative Litigation Division, who also worked on the Celotex case since its inception, was the principal researcher. In addition, Kerry Sanoff and Eli Jacobson provided extensive support assistance.

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top three largest law offices in New York City and one of the largest public law offices in the country. Tracing its roots back to the 1600's, the Department has an active caseload of 90,000 matters and transactions in 17 legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department's 650 attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. For more information, please visit nyc.gov/law.

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