



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, *Corporation Counsel*

Press Release

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For Immediate Release

JUDGE DISMISSES CLAIMS AGAINST NEW YORK CITY IN 7 WORLD TRADE CENTER CASE

RULING ALLOWS NEW YORK CITY TO BETTER PLAN FOR EVENTS LIKE SEPT. 11TH WITHOUT BEING SUBJECT TO LIABILITY BASED ON HINDSIGHT; SUIT WAS ALSO THE LAST REMAINING PROPERTY DAMAGE CLAIM AGAINST THE CITY ARISING FROM THE SEPT. 11TH ATTACKS

Contact: Kate O'Brien Ahlers, Communications Director, (212) 788-0400, kahlers@law.nyc.gov

New York, Jan. 12, 2006 – Judge Alvin K. Hellerstein, U.S. District Judge for the Southern District of New York, today dismissed -- on the City's motion for summary judgment – a lawsuit brought by Consolidated Edison (Con Edison) and its insurers claiming that the City had improperly designed and installed a fuel system for a backup electrical system to support its Office of Emergency Management (OEM) Command Center on the 23rd floor of 7 World Trade Center. That building was destroyed, along with the Twin Towers, in the terrorist attacks on Sept. 11, 2001.

Judge Hellerstein found that the City was immune from liability under New York State's Defense Emergency Act for its good-faith actions in planning and constructing its command center for civil defense preparedness. "Although the design and construction of the backup generator system did not occur in the rush of an actual occurring catastrophe, the very point of having a carefully designed OEM and command center was to ensure that these emergency facilities would be in place and operating before a disaster occurred," the Court wrote in its decision. "And when that is done, the municipality is immune from liability for negligence in relation to the maintenance and operation of such facilities."

Corporation Counsel Michael A. Cardozo of the New York City Law Department hailed the decision as an important victory. "Dismissal of the suit, alleging damages in the amount of approximately a quarter of a billion dollars, eliminates the last remaining property damage claim against the City arising out of the terrorist attacks. Most importantly," he said, "the City is now able to better plan for events like the Sept. 11th attack without being subject to liability based on hindsight. In light of the different catastrophic emergencies we have seen -- both here and in New Orleans -- the flexibility required to prepare and respond in innovative ways is critical, and this ruling reaffirms the legislative precedent allowing the planners to do their jobs without being second guessed."

The City has consistently denied that its design and construction actions were improper, but it was not necessary to litigate that issue in light of the Court's ruling. The plaintiffs had claimed that the City was subject to ordinary negligence liability standards, pointing specifically to the allegedly negligent installation of a diesel fuel tank and fuel lines needed to supply the backup generator required to insure uninterrupted power for the Command Center during catastrophic emergencies. However, the Court found that the design and construction of the Command Center were executed in good faith within the scope of the City's civil defense functions under the Defense Emergency Act. Therefore, the City was entitled to immunity under the statute.

The City was represented by outside counsel, Eugene R. Scheiman, James A. Frankel and Mark A.

Bloom of McCarter & English, with assistance from Kenneth Becker, Jesse Levine and Faye Lubinof of the New York City Law Department's World Trade Center Unit.

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 the top three largest public law offices in the country. Tracing its roots back to the 1600's, the Department's 650-plus lawyers handle more than 90,000 cases and transactions each year in 17 separate 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 attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. Its web site can be accessed through the City government home page at www.nyc.gov or via direct link at www.nyc.gov/html/law/home.htmlT.

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