



NEW YORK CITY LAW DEPARTMENT  
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, Corporation Counsel

Press Release

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For Immediate Release

**NYC LAW DEPARTMENT COMMENCES SUIT AGAINST FEDERAL GOVERNMENT  
SEEKING FICA TAX REFUNDS IN EXCESS OF \$100 MILLION FOR THE CITY &  
FOR POLICE, FIRE, CORRECTION & SANITATION EMPLOYEES**

***BROUGHT WITH ASSISTANCE FROM CRAVATH, SWAINE & MOORE LLP,  
LAWSUIT HIGHLIGHTS FAILURE BY IRS TO GRANT TIMELY FICA TAX REFUNDS FOR PAYMENTS  
MADE TO CITY WORKERS TEMPORARILY INJURED IN THE LINE OF DUTY***

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New York, July 10, 2003 – Corporation Counsel Michael A. Cardozo announced today that the New York City Law Department, along with Cravath, Swaine & Moore LLP, has filed a \$100 million lawsuit in Federal District Court in Manhattan against the Federal government. The lawsuit seeks a judgment awarding a refund of both the employer's and the employees' share of Federal Insurance Contribution Act (FICA) or Social Security taxes paid for the years 1989 through 1998 on payments made to members of the City's Fire, Police, Correction and Sanitation Departments who were injured in the line of duty and out of work for a period of six months or less. In bringing the suit, Cardozo cited the need for the U.S. government to take this "necessary step" and treat these City employees fairly. He also singled out Cravath for its "immensely generous assistance" aiding New York City during a budget crisis and "volunteering its services to aid City workers."

The total refund requested is estimated to be approximately \$85 million – but with interest, this amount will well exceed \$100 million. Half of any refund recovered will be returned to the affected employees of the Fire, Police, Sanitation and Correction Departments, as this is their apportioned share. The other half will be returned to the City.

Payments which are received under workers' compensation laws are exempt from FICA. The complaint alleges that payments made under New York City's Line-of-Duty Injury (LODI) statutes to employees out of work for six months or less should be exempt from FICA, because they are payments made under such workers' compensation laws. The Internal Revenue Service (IRS) has already held that payments made to employees injured in the line of duty who are out of work for more than six months are exempt under a separate statutory provision. The complaint alleges that workers' compensation laws are generally creatures of state legislation, and each state has discretion in creating its own law or laws to compensate individuals injured in the line of duty. The complaint further alleges that since New York City's LODI statutes are narrowly tailored to provide compensatory benefits for line-of-duty injuries sustained by employees of the City's Fire, Police, Sanitation and Correction Departments -- who, by the nature of their employment, are engaged in high-risk occupations -- then these payments are being made pursuant to workers' compensation law and therefore should be exempt from FICA.

Cardozo stressed, "This lawsuit is a necessary step in ensuring that those City employees who risk their lives providing critical services to the visitors and residents of the City of New York are treated the same for tax purposes as any other private or public sector employee who is injured in the line of duty. Certainly

they should not be treated worse than employees who are not engaged in life-threatening occupations, which would be the case if these Lodi payments are held to be subject to FICA.”

The case is being handled by Karen M. Griffin, a Senior Counsel in the Tax & Bankruptcy Division of the New York City Law Department. It is also being handled by Partner John E. Beerbower and Associates David A. Hoffman and David W. Ware of Cravath, Swaine & Moore LLP, who are co-counsel with the Law Department.

“We are pleased to have the opportunity to assist the Corporation Counsel in the recovery of substantial funds for the benefit of the City and its employees,” Beerbower noted. “We look forward to a swift and satisfactory result.” Griffin added, “We feel the suit will have important ramifications for the City and its employees – both now and in the future.”

Cravath is assisting the Law Department as part of the City’s Corporation Counsel Public Service Program, in which law firms and attorneys donate their time to help the City in a public service capacity. “It cannot be overstated how invaluable Cravath’s assistance has been in this case,” Cardozo said. “We appreciate the firm’s immensely generous assistance in coming to the aid of New York City during a budget crisis and volunteering its services to aid City workers.”

Founded by Cardozo in May 2002, the Public Service Program is a public/private initiative set up to ease the burgeoning caseload of the City’s Law Department while also offering an innovative solution to the budget situation. In turn, the program gives law firms the opportunity to gain valuable trial experience for their attorneys and donate volunteer time to a good cause. Based on the public services/corporate mindset embraced by Mayor Michael R. Bloomberg, the program has proven to be both highly successful and highly popular since its launch.

The Public Service program involves the following components:

- A total of 19 firms are taking part in one element of the program, the “Firm Volunteers” initiative. In these instances, New York City firms like Cravath have taken cases or matters in-house on a public service basis, giving their associates the chance to participate in court conferences, settlement negotiations, depositions and, ultimately, trials.
- A total of 10 firms are currently participating in another aspect of the program, called the “Tort Volunteers.” This initiative provides the Law Department with associates donated from City law firms to work in the Law Department’s Brooklyn and Manhattan Tort Divisions. It allows junior lawyers the opportunity to gain extensive trial experience by picking juries, arguing motions, examining witnesses, and presenting opening and closing statements.
- A total of eight firms are participating in a third element of the program, “Deposition Training.” The training involves teaching associates how to take depositions for use at trial.
- Finally, one firm will be assisting the Law Department with legal advice on privacy issues relating to the implementation of new federal health regulations.

(Editor’s Note: Some firms are participating in multiple aspects of the program; therefore, the total number of firms involved is 34.)

The New York City Law Department is among the nation’s oldest, largest and most dynamic law offices, 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 100,000 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](http://www.nyc.gov) or via direct link at [www.nyc.gov/html/law/home.html](http://www.nyc.gov/html/law/home.html).

Cravath, Swaine & Moore LLP is one of the most pre-eminent law firms in the world, with a long-established reputation for superior legal work. The Cravath firm, founded in 1819, has about 500 lawyers,

including 79 partners, and maintains offices in New York and London. One of Cravath's key tenets is its "emphasis on the quality of its legal work." Its goal is to be "the firm of choice for clients with the most demanding transactions and cases" and its practice has "been at the center of many of the most important business and financial transactions in the world." Its web site address is: [www.cravath.com](http://www.cravath.com).

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