

Subject: The Zadroga Bill Excludes Cancer Claims

I am writing this email to respond to several clients who have raised questions regarding the recently-announced decision to exclude cancer claims from coverage under the new Zadroga VCF.

As many of you are already aware from media coverage, on July 26, 2011, the National Institute of Occupational Safety and Health (“NIOSH”) published a “First Periodic Review of Scientific and Medical Evidence Related to Cancer for the World Trade Center (WTC) Health Program.” This report is the first peer-reviewed article on medical evidence relating to cancer and toxic smoke, particulate and dust exposures in and around the World Trade Center site. A copy of the report is annexed to this e-mail for your information. Among other things, the Report states that there is presently insufficient evidence upon which to propose a rule that would add cancer to the list of WTC-related health injuries.

Based on that report, it was subsequently announced this week that claims of cancer alleged to arise from toxic exposures related to the World Trade Center disaster site will not be eligible for compensation under the James Zadroga 9/11 Health and Compensation Act of 2010 (“Zadroga”) at this time. If you are a cancer victim who has settled your claim in the WTC Captive Settlement Process Agreement “SPA” this will not affect your rights to compensation under the SPA and/or other settlement agreements with non-city settling defendants. You will still receive all your payments and awards from the settlement(s).

For those who have not settled under the SPA, this is particularly disturbing since the reopened VCF should have provided an easier way to obtain compensation for cancer not harder than the litigation. It is also troubling that one of the reasons why they are not providing coverage is because of the lack of exposure evidence. As we all remember there was a lack of exposure evidence because the Federal government (EPA, for example) and others lied about the quality of the air at Ground Zero. This fact alone needs to be taken into consideration as another reason to broaden the criteria upon which the Zadroga administrators will pay cancer victims. At this point and until there is a change in the Zadroga regulations to address cancer claims, the only way a cancer victim can receive compensation is through the SPA or litigation. Needless to say, we will do all in our power to continue to lobby for and work towards obtaining Zadroga coverage for cancer claims.

I trust that as scientific evidence catches up to the anecdotal evidence we have already seen in the population of men and women involved in the World Trade Center litigations, which clearly seems to indicate increased levels of many types of cancers as compared with the general population, Zadroga Special Master Birnbaum and the Zadroga program will act swiftly and appropriately to see that these deserving individuals are able to obtain the compensation they deserve. In light of the NIOSH report and Dr. Howard’s decision, our office is extremely gratified that so many of our clients and other plaintiffs in the Federal Court litigation had chosen to settle their law suits in a series of settlement agreements with various defendants that all provided coverage and compensation for cancers.