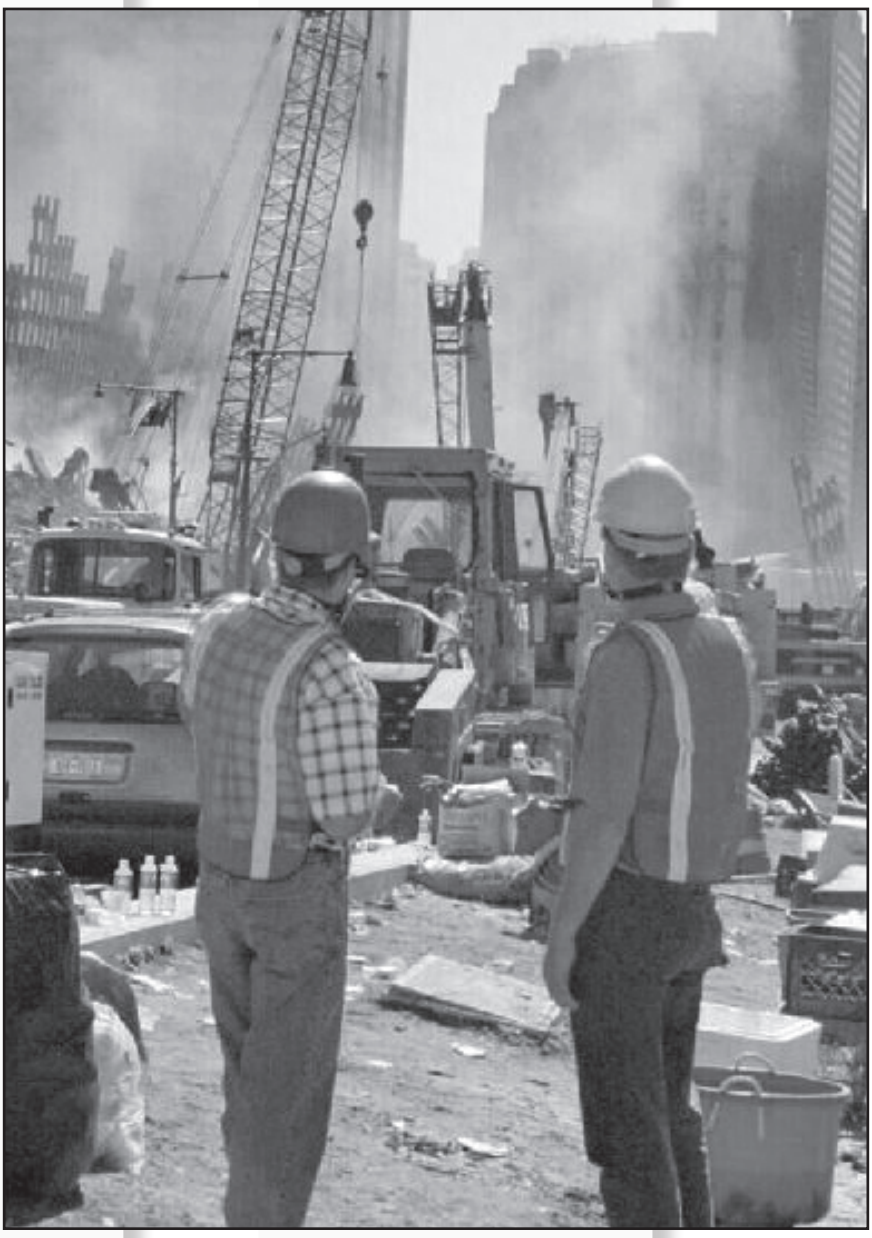
September 11
Worker Protection Task Force
Annual Report

June 1, 2010



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, hereinafter referred to as the "World Trade Center disability law").

Charter

The September 11th Worker Protection Task Force ("Task Force") was created by the September 11th Worker Protection Task Force Act, which was enacted as part of the World Trade Center disability law. Laws of 2005, Chapter 104, Part B, as amended, Laws of 2005, Chapter 93, section 14.

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. There are 19 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.

Task Force Members

The members of the Task Force during the period of June 1, 2009, to May 31, 2010, were:

- Dr. Thomas K. **Aldrich**, Pulmonary Medical Division, Montefiore Medical Center and Albert Einstein College of Medicine, **Chair**
- Lou **Matarazzo**, Executive Director, Detectives Endowment Association, **Vice Chair**

- Laura L. **Anglin**, Director, New York State Division of the Budget (succeeded in office by Robert L. Megna)
- Suzy S. **Ballantyne**, Assistant to the President, New York State AFL-CIO
- Michael **Bloomberg**, Mayor, New York City
- Stephen J. **Cassidy**, President, Uniformed Firefighters Association
- Dr. Richard F. **Daines**, Commissioner, New York State Department of Health
- Thomas **DiNapoli**, New York State Comptroller
- Colleen C. **Gardner**, Commissioner, New York State Department of Labor (successor in office to M. Patricia Smith)
- Gregory **Floyd**, President, International Brotherhood of Teamsters, Local 237 (appointed by Senate to succeed Stephen Levin)
- Nancy G. **Groenwegen**, Commissioner, New York State Department of Civil Service
- Alexander **Hagan**, President, Uniformed Fire Officers Association, Local 854, IAFF (appointed by Senate to succeed John McDonnell)
- Dr. Stephen **Levin**, Mt. Sinai-Irving J. Selikoff Center for Occupational and Environmental Medicine (replaced by Senate appointment of Gregory Floyd, but continuing to serve on the task force's committee of doctors)

- John C. **Liu**, New York City Comptroller (successor in office to William C. Thompson)
- Patrick J. **Lynch**, President, New York City PBA
- John J. **McDonnell**, President, Uniformed Fire Officers Association, Local 854, IAFF (replaced through appointment of successor president Alexander Hagan)
- Robert L. **Megna**, Director, New York State Division of the Budget (successor in office to Laura L. Anglin)
- 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, Office of Medical Affairs, New York City Fire Department
- Lillian **Roberts**, Executive Director, District Council 37, AFSCME, AFL-CIO
- David J. **Rosenzwieg**, President, Uniform Fire Dispatch Benevolent Association
- M. Patricia **Smith**, Commissioner, New York State Department of Labor (succeeded in office by Colleen C. Gardner)
- William **C**. **Thompson, Jr.**, New York City Comptroller (succeeded in office by John C. Liu)

Individuals who regularly participated in the Task Force as representatives for certain members, or as members of committees, included:

- Pico **Ben-Amotz**, Esq. for M. Patricia Smith, Commissioner, New York State Department of Labor
- Bob **Brondi** for Laura L. Anglin, Director, New York State Division of the Budget
- John **Burke** for Laura L. Anglin, Director, New York State Division of the Budget
- Lee **Clarke** for Lillian Roberts, Executive Director, District Council 37, AFSCME, AFL-CIO
- Robert **Coughlin**, Esq. for Thomas DiNapoli, New York State Comptroller
- Anthony **Crowell**, Esq. for Michael Bloomberg, Mayor, New York City
- Dr. Richard **Ciulla** for Nancy G. Groenwegen, Commissioner, New York State Department of Civil Service
- Lewis **Finkelman**, Esq. for William C. Thompson, Jr., New York City Comptroller
- Brian **Geller**, Esq. for Michael Bloomberg, Mayor, New York City
- Mark **Humowiecki**, as a member of the Task Force's Workers' Compensation Committee

- Joey Kara **Koch**, Esq. for Michael Bloomberg, Mayor, New York City
- Dr. Stephen **Levin**, as a member of the Task Force's Doctor's Committee
- Dr. Steven **Markowitz**, as a member of the Task Force's Workers' Compensation Committee
- Dr. Matthew P. **Mauer** for Dr. Richard F. Daines, Commissioner, New York State Department of Health
- Christopher J. **McGrath**, Esq. for Patrick J. Lynch
- Guille **Mejia**, for Lilian Roberts, Executive Director, District Council 37, AFSCME, AFL-CIO
- Ricardo Elias **Morales**, for John C. Liu, New York City Comptroller
- Patrick **Reynolds**, for John J. McDonnell, President, New York City Uniformed Firefighters
- William **Romaka** for Stephen J. Cassidy, President, Uniformed Firefighters Association
- Robert **Sammons**, as a member of the Task Force's Workers' Compensation Committee
- Richard **Simon**, Esq. for William C. Thompson, Jr., New York City Comptroller
- Dom **Tuminaro**, as a member of the Task Force's Workers' Compensation Committee

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.

Summary

The task force scheduled six meetings during the twelve-month period following the Task Force's 2009 annual report, three of which were cancelled due to last minute scheduling issues, to follow up on issues raised in that report and on additional matters.

Legislation to implement the task force's first two recommendations from the 2009 annual report – extension of presumptions to tiers I and II, and the elimination of "latent" from the definition of qualifying condition in the Article 8-A, section 161(3) or the Workers' Compensation Law – has been drafted by the Governor's office and is expected to be introduced in the current legislative session.

The remaining recommendations from last year's report concerned Workers' Compensation system issues that are being examined and addressed by the Task Force's Workers' Compensation Subcommittee. The Subcommittee's report is set forth as an Appendix to this 2010 annual report.

The task force heard from an advocate seeking assistance for two FDNY Emergency Medical Technicians ("EMT") that the NYCERS medical board did not find to be disabled due to rescue and recovery activities at World Trade Center. The task force informed the advocate that it does not handle individual claims and cannot direct medical boards to find that particular individuals were disabled due to covered activities at the World Trade Center.

The Task Force also heard from practitioners on mental health issues including post traumatic stress disorder ("PTSD") and other coexisting (comorbid) conditions that concern workers who participated in the rescue, recovery and clean up of the World Trade Center and related areas. The presentations, from Dr. Malachy Corrigan, Director of the Counseling Services Unit of FDNY Bureau of Health Services, and Dr. Faith Ozbay, Associate Medical Director of the WTC Medical Monitoring and Treatment Program, generated significant discussion and raised issues that warrant further discussion before the Task Force can make specific recommendations for changes. In general, the presentations and discussions highlighted some of the challenges that can confront and confound clinical and compensation environments in addressing PTSD, which was cited as the most common WTC-related health condition, and which is generally recognized to have a high co-morbility with alcohol abuse/dependence (52%), major depression (48%), and drug abuse/dependence (35%). The clinical challenge is to address these co-morbid conditions within the WTC monitoring and treatment program. The confounding issue in compensation, and employment, is that these medically recognized co-morbidites are, themselves, are the subject of social stigmatism and, in the case of alcohol and substance abuse, employment discipline and zero-tolerance policies. These issues are not about recognizing and establishing new WTC conditions, presumptions, or treatment and compensation systems, but about accounting for the co-morbidities that co-exist with established WTC conditions and the challenges, they present in our treatment and compensation systems.

APPENDIX

9/11 Worker Protection Task Force
Workers' Compensation Subcommittee
May 2010 Update

Executive Summary

This report provides an update on World Trade Center related claims in the New York Workers' Compensation system. It is a follow up to the May 2009 report of the Workers' Compensation Subcommittee of the 9/11 Worker Protection Task Force. The data are provided by the New York Workers' Compensation Board ("Board").

Although it has been more than eight years since the terrorist attacks of 9/11, there continue to be new developments in 9/11-related workers' compensation claims. Workers who participated in rescue, recovery and clean up ("RRCU") operations continue to register their participation with the Board in significant numbers. This qualifies them for extended filing timeframes in the event that they become disabled at a later point in time. Specifically,

- Workers involved in the rescue, recovery, and clean-up operations continued to register with the Workers' Compensation Board at the rate of about 250 per month between May 2008 and March 2010.
- As of March 7, 2010, 35,648 individuals have registered with the Board. Of those, 4,555 are associated with an active workers' compensation claim.

Workers, primarily RRCU workers, also continue to file new 9/11-related claims with the Board. The following statistics apply to claims filed in the last two years (between May 1, 2008 and April 9, 2010):

- 746 new claims were indexed between May 1, 2008 and April 9, 2010
- 516 new RRCU claims were indexed in the same time period
- Payers have disputed (controverted) 41.6% of new claims.
- Approximately 25% of new claims have been established while only 1.2% have been disallowed.
- 32% of new claims are currently pending.
- 6.6% of new claims have been appealed.

The Board continues to hear and decide older claims. The following statistics apply to claims that were filed before May 1, 2008 (and were included in the May 2009 report).

- The number of older claims classified as 9/11-related fell by 49; those classified as RRCU fell by 28.
- 350 existing 9/11-related claims were established as compensable, of which 310 were RRCU claims.
- In the same period, 25 existing 9/11-related claims were disallowed, of which only 12 were RRCU claims.

Article 8-A: Registration

Article 8-A of the Workers' Compensation Law was enacted to enable those who participated in RRCU operations after the terrorist attacks of September 11, 2001 to file workers' compensation claims for non-traumatic injuries more than two years after their initial exposure. To qualify for the extended timeframes, which run from the workers' date of disablement, one must have participated in RRCU operations between September 11, 2001 and September 12, 2002 and must register as a RRCU worker by filing a WTC-12 form (Registration of Participation in World Trade Center Rescue, Recovery, and/or Clean Up Operations) with the Workers' Compensation Board. The deadline for registration, which previously has been extended, is currently September 11, 2010.

The registration process has been in existence since August 2006. As of March 7, 2010, 37,648 individuals have registered their participation in RRCU operations with the Board. Of those, 4,555 are associated with an active workers' compensation claim.

While the registration process has existed for more than three and a half years, new individuals register with the Board for the first time every day. In June 2008, the Board began an aggressive outreach campaign to encourage RRCU workers to register with the Board. Between May 3, 2008 and March 7, 2010, 5,593 new

individuals registered (an average of 254 per month). The registration rate has continued at more than 200 per month in the six months ending March 7, 2010, which suggests a steady registration process.

Registration, by itself, does not initiate a claim. It merely preserves one's ability to file a claim at a later date if the individual becomes disabled. Since May 2008, an additional 877 filed claims contained an associated a WTC-12 form. This represents an increase of nearly 25%.

Table 1. Cumulative Number of RRCU Registrations (WTC-12)

	May 3, 2008	September 7, 2009	March 7, 2010
Unique WTC-12 forms	30,055	34,372	35,648
Unique WTC-12 forms not associated with a claim	26,377	30,353	31,143
Unique WTC-12 forms associated with a claim	3,678	4,335	4,555

New Workers' Compensation Claims (Indexed May 1, 2008 – April 9, 2010)

The original subcommitee report was based on claim data as of May 1, 2008.[1] Therefore, the report contained only claims that had been indexed by the Board on or before May 1, 2008. This section includes information about claims that were filed with the Board between May 1, 2008 and April 9, 2010.

In the nearly two year period, 746 new claims were filed with the Board that have been designated as possibly 9/11 related.[2] Of those, 516 (69.2%) are RRCU

[1] The initial report contained extensive data about claims, including significant data that required manual review. In order to use data that had been thoroughly cleaned and subject to appropriate manual reviews, the subcommittee chose a cut-off date of May 1, 2008.

[2] The Board designates claims to be 9/11-related if the claim involves an injury or illness alleged to result from the terrorist attacks and ensuing building collapses on 9/11 or the subsequent RRCU operations. Those who were injured in the attacks on 9/11 are designated as victims whereas those who were injured or exposed to hazardous materials as part of the RRCU operations are designated RRCU claims. The Board believes that its designations of 9/11-related, victim and RRCU claims are accurate, though there are some claims that are difficult to classify due to lack of information.

claims and 43 (5.8%) are victim claims. The remaining 187 are classified as other 9/11 or lack adequate information to classify. (Table 2.)

Table 2. New Claims Group Type (Indexed Between May 1, 2008 and April 9, 2

Group Type	Claims	Percentage
1. Victim	43	5.8%
2. RRCU at WTC Plaza	504	67.6%
3. RRCU Off Site	12	1.6%
4. Other - Not Victim / Not Rescue	28	3.8%
5. Not Classifiable	87	11.7%
6. Not WTC Related?	72	9.7%
Total	746	100.0%

The number of new RRCU claims is significant. It represents more than a 10% increase in RRCU claims (Table 3).

Table 3. Inventory of WTC Claims Summary (All Clair

Claim Type	All Claims	RRCU Claims
WTC Claims 5/1/08	12,234	4,984
Dropped Out	-49	-28
New Claims	746	516
WTC Claims 4/9/10	12,931	5,472

Status of New Claims

One of the key findings in the original report was that 9/11-related claims, and RRCU claims in particular, were often disputed ("controverted") by payers. In the original report, more than half of all RRCU claims were controverted, and nearly 46% of the most recent claims (those indexed between August 14, 2007 and May 1, 2008) were controverted.

This trend continues. Of the new claims indexed since May 1, 2008, 41.6% of 9/11-related claims and 44.6% of RRCU claims were controverted. (Table 4 and 5.) While this rate is slightly lower than the controversion rates in the original report, it remains more than two and a half times as high as the controversion rate for non-9/11-related claims.[3]

Because these claims were filed in the last two years, many are still in active litigation. Approximately one-quarter have been established as compensable claims. More than 32% of the new claims are still pending. Approximately 7% of the new claims had an appeal. Only 1.2% have been disallowed by the Board (which is consistent with the low rates of disallowance found in the original report). (Tables 4 and 5.)

Table 4. New Claims (Filed Between May 1, 2008 and April 9, 2010)

Activities in New Claims	# of Claims	Total New Claims	Percentage of New Claims
Controverted	310	746	41.6%
Disallowed	9	746	1.2%
Appealed	49	746	6.6%
Pending	242	746	32.4%
Established	193	746	25.9%

Note: These activities are not mutually exclusive. The percentages do not add up to 100%

Table 5. Status of New RRCU Claims (Filed Between May 1, 2008 and April 9, 2010)

Activities in New RRCU Claims	# of Claims	Total New Claims	Percentage of New RRCU Claims
Controverted	230	516	44.6%
Disallowed	6	516	1.2%
Appealed	30	516	5.8%
Pending	182	516	35.3%

[3] The rate of controversion in non-9/11 claims is approximately 16%. See Workers' Compensation Committee Report and Recommendations to September 11th Worker Protection Task Force, May 2009 ("May Report"), 18 n.32.

Established	120	516	23.3%

Note: These activities are not mutually exclusive. The percentages do not add up to 100%

Status of Old Claims (Indexed Before May 1, 2008)

This section tracks what has happened to the claims that were part of the original report since May 1, 2008. The receipt of additional information has led to a small reduction in the number of claims that are still designated as 9/11-related and a similar decrease in the RRCU subset. (Table 6.)

Table 6. Inventory of 9/11-Related Claims (Indexed Before May 1, 2008)

Claim Type	All Claims	RRCU Claims
WTC Claims 5/1/08	12,234	4,984
Dropped Out	-49	-28
WTC Claims 4/9/10	12,185	4,956

Table 7. Activity in All Claims (Indexed Before May 1, 2008)

Activities	As In Original Report of 5/1/08	As of 4/9/2010	% Change
Controverted	4,415	4,504	2.0%
Disallowed	314	339	8.0%
Appealed	856	1,174	37.1%
Pending	793	375	-52.7%
Established	5,635	5,985	6.2%

Note: These activities are not mutually exclusive. The percentages do not add up to 100%

Table 8. Activity in RRCU* Claims (Filed Before May 1, 2008)

Activities	As In Original Report of 5/1/08	As of 4/9/2010	% Change
Controverted	2,600	2,680	3.1%
Disallowed	90	102	13.3%
Appealed	337	572	69.7%
Pending	633	247	-61.0%
Established	1,288	1,598	24.1%

Note: These activities are not mutually exclusive. The percentages do not add up to 100%

There was a slight uptick in the number of claims that were controverted, almost all of which occurred in RRCU claims. During the last two years, 350 claims

were established, of which 310 were RRCU claims. In the same period, only 12 RRCU claims and an additional 13 other 9/11-related claims were disallowed. More claims were under appeal while fewer claims were in a pending status. (Tables 7 & 8).

Unpursued Claims: No Prima Facie Medical Evidence and Failure to Prosecute

The Subcommittee Report noted that a significant number of people who had filed claims that were designated as 9/11-related did not pursue their claims to the point of decision. More than 4,000 claims had been closed by the Board because the claimant failed to attend one or more hearings (known as "failure to prosecute" or "FTP") and/or the claimant did not submit any medical evidence that documented a workplace injury or exposure (known as "no prima facie medical evidence" or "NPFME"). At the time the claims were closed, the Board notified the claimant that he or she could submit additional evidence to pursue the claim.

The report recommended that the Board contact those individuals whose claims were closed as FTP or NPFME to find out why they did not pursue their claim and to notify them that they may submit evidence to reopen their claim. In response to this recommendation, the Board began by reviewing many of the claims to determine whether they could be established or reopened. In addition, the Board identified a subset of 400 such claimants who were most likely to have a viable claim. The Board attempted to contact these claimants by phone to further inquire about their claim and survey them regarding their failure to pursue the claim. These phone contacts did not yield significant results; very few answered the phone or returned the Board's call. The Board subsequently sent a letter and survey to 381 of the 400 claimants (excluding those whose claim had been re-opened or who had withdrawn their claims because they were clearly ineligible for benefits). The Board received written responses from approximately 20% of the claimants, some of whom reported that they were in need of medical

care related to their claim. The Board is attempting to assist them with their claims and is evaluating the expansion of the survey to the full population of FTP and/or NPFME claimants who have not withdrawn their claim due to clear ineligibility.

The re-opening of these claims, however, is complicated by Workers' Compensation Law § 123. Section 123 limits the Board's jurisdiction to re-open a claim after a lapse of seven years from the date of accident if the claim "has been … disposed of without an award after the parties in interest have been given due notice of hearing or hearings and opportunity to be heard and for which no determination was made on the merits." Since many of the claimants who are NPFME or FTP had notice of hearings and more than seven years has passed since September 11, 2001, section 123 may bar the Board from reopening.[4] The Subcommittee intends to meet in June 2010 to examine this issue and make further recommendations regarding the Board reaching out to NPFME and FTP claimants.

Conclusion

The Workers' Compensation Board continues to handle and decide a significant volume of 9/11-related claims. As time goes on, the bulk of new claims are from those who were involved in RRCU operations. New claims continue to be challenged at disproportionately high rates. The subcommittee intends to reconvene and review additional data as well as the legal barriers to reopening early claims that were closed as FTP or NPFME for claimants who are currently ill.

[4] This provision likely does not present the same challenge to RRCU workers whose claims fall within Article 8-A because they could timely file a new claim more than seven years after the date of accident, as long as it was timely under 8-A.