

The 9/11 lawyers deserve praise: Don't arbitrarily slash their fees

BY [Charles Silver](#)

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In light of Judge Alvin Hellerstein's stunning Friday ruling rejecting the legal settlement of 10,000 workers injured in the post-9/11 search, rescue and cleanup efforts, it is time to reassess the agreement - including the legal fees paid to the plaintiffs' attorneys.

The judge said he feared that too much of the deal would be consumed by legal fees - and worried that Ground Zero responders might be pressured into signing on before understanding just how much money they were due to receive.

Fair enough. But one thing that should not happen is for the plaintiffs' lawyers to have their fees arbitrarily slashed. Instead, it makes far more sense for the City of New York to pick up the heroes' legal bills.

Simply cutting the fees on the theory that the lawyers are being "too greedy" would be unfair and shortsighted in the extreme.

Lost in the impassioned rhetoric against the settlement - much of it directed at the plaintiffs' lawyers - is the simple fact that they have stood with the heroes for the past six years. The same cannot be said for the city's government or its contractors. They opposed the workers, even though the federal government gave the city \$1 billion to cover the workers' losses.

If there are good characters and bad characters in this drama, the workers' lawyers are wearing white hats.

True, the lawyers did not agree to represent the workers for free. Their retainer agreements entitle them to contingent fees equal to one-third of the recovery plus expenses, about \$200 million. New York law expressly deems fees of this level "fair and reasonable," except in medical malpractice cases, where a lower cap applies.

The workers were smart to hire lawyers at the prevailing rate. To understand why, consider one fact: The city paid a high-priced D.C. law firm more than \$200 million to defeat the workers' claims.

In the civil justice system, money counts. Rich litigants defeat poor litigants most of the time. The workers needed to offset the city's enormous spending advantage. A person armed with a pea-shooter has little chance against a tank.

The workers countered the city's gambit by offering their lawyers contingent fees. In fact, they beat the city at its own game. The city took its \$200 million in attorneys' fees from the insurance fund the federal government created. The workers did the same thing. By promising lawyers a fraction of their recoveries, they used the insurance fund to prevent the other side from defeating them by outspending them.

Few people know much about the risks and costs contingent fee lawyers incur. Talking with the workers' attorneys, I learned that they spent more than \$3.15 million on filing fees alone. That was literally the price of opening the door to the U.S. District Court. If they lost the case, they would never have gotten that money back.

All told, the lawyers spent about \$30 million of their own money with no guarantee of repayment. Why so much? Because for six years the city and its co-defendants fought the workers tooth and nail. For example, I'm told that in the 12 cases scheduled for trial in May, the defendants filed more than 200 motions to dismiss. Scorched earth tactics make lawsuits expensive. They also force plaintiffs' attorneys to expend enormous amounts of time.

The workers' lawyers devoted hundreds of thousands of hours to their clients' cause without receiving a nickel in payment. The defense lawyers, by contrast, bore no such risks. Their expenses were reimbursed as incurred and they were paid by the hour for their time each month.

Congress could have spared the workers the costs they incurred by reopening the 9/11 victims' compensation fund. It did not. The city could have saved them money by renouncing litigation and creating an administrative review process. It did not.

Litigation was the only avenue left, and as everyone knows, litigation is expensive. In fact, compared with many victims, the workers were lucky. The tort system regularly sends deserving plaintiffs home with nothing.

Nothing prevents the city from using the insurance fund or other monies to defray the workers' legal fees. By doing so, the city would enable them to keep their recoveries and would spread their legal costs across everyone who benefited from their public service. That seems right to me.

If, however, the court were to cut the lawyers' fees, attorneys would be discouraged from taking the next big case on contingency. Claimants who cannot afford to pay lawyers by the hour would then find themselves without counsel. And in our civil justice system, a victim without an attorney is unlikely to beat an opponent who has lawyered up.

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