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Silverstein's Army

By Ben Hallman | September 01, 2007
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Rebuilding was the developer's dream-and his right, according to his lawyers from Wachtell, Lipton, Rosen & Katz. But after the towers fell, New York city and state authorities seemed to have done everything possible to elbow him out of the way, even as Silverstein ponied up \$100 million a year to rent a hole in the ground. Now, at almost midnight, he was huddled in a conference room in the Park Avenue offices of the Port Authority of New York and New Jersey, the quasi-governmental agency that had leased the Twin Towers to Silverstein in July 2001. Executives from his development company and his financial backers were there with him, as were Wachtell partners Martin Lipton and Robin Panovka. Silverstein ordered two cups of coffee. He was ready to stay up all night. "Let's get this thing done," he told the group.

Silverstein had missed his bedtime, but it was Port Authority and other government officials who were tired-of Silverstein, of his lawyers, and of what they would describe the next day as "bad faith" negotiating. When the Silverstein side returned to the table that night-either three or four hours late, depending on which side is telling the story-"everything that we thought we had settled was back on the table," says Kenneth Ringle, Jr., the Port Authority's executive director at the time. After several tense sidebar conversations, Ringle lost his cool. He stormed into the conference room occupied by the Silverstein team. "It's over," he said. "Send us your fucking rent check." Lipton followed Ringle out of the room, then returned a few moments later. "They're enraged," he said to the Silverstein team. "There's nothing we can do tonight." The men filed out. No one said much on the elevator ride down to the street. It had been a bad night, and with no deal in place, tomorrow would be worse.

Representing Larry Silverstein in his quest to rebuild at Ground Zero has been the most demanding project that Wachtell, Lipton has ever undertaken. Since 2001, 71 lawyers have worked 100 hours or more on World Trade Center matters, including a handful of partners who worked nearly full-time on the project-this at a firm with fewer than 200 lawyers and just 77 partners. It has also been Wachtell's most emotionally taxing representation. "I am not given to exhortatory messages," Herbert Wachtell wrote in a memo to his partners on the first anniversary of the terrorist attacks. "This is an exception." He continued: "Out of this horror, we have been given a tremendous privilege-to take a central role in bringing about the rebuilding of our city, to make it better than it was." As the late-night meeting at the Port Authority demonstrates, the dealmaking was never easy and an equitable outcome never certain. Negotiations with the Port Authority over who would rebuild at Ground Zero, and with the insurance companies that held billions of dollars needed to finance that construction, were contentious, at times bitter, and for all involved, exhausting. Those who worked on the land and insurance deals that will finally permit the rebuilding to begin-Silverstein executives, government officials, and scores of lawyers-say the agreements they signed in the past year were, hands down, the most complicated they have ever seen. They also say that Wachtell partners-Lipton, Panovka, and Adam Emmerich on the real estate side; Herb Wachtell, Marc Wolinsky, Bernard Nussbaum, Peter Hein, and Eric Roth on the insurance litigation front-played a vital part, not just in providing the legal expertise expected of a top firm, but as hard-nosed negotiators whose clout bolstered Silverstein's position. "They were advisers, strategists, and negotiators," says John "Janno" Lieber, Silverstein's director of development for the 16-acre World Trade Center site. "They played every role." Wachtell is the world's pre- eminent M&A firm, home to the richest lawyers in The Am Law 100-profits per partner were nearly \$4 million in 2006-and some of the most secretive. This firm does not typically disclose much about itself or its work for clients. But at the behest of Silverstein, who sees the World Trade Center redevelopment as a historic moment, several Wachtell partners agreed to talk about all but the most confidential aspects of the deals. For Silverstein, they were willing to bend their rules. The developer, after all, is more than a client. He is also Herb Wachtell's best friend.

They met in September 1944 as freshmen at New York's High School of Music & Art, where Silverstein played drums and Wachtell played clarinet. They went to New York University together, double-dated together, and remained friends as they pursued separate careers: Wachtell as a renowned litigator and cofounder of the law firm that bears his name; Silverstein as a real estate developer best known for building 7 World Trade Center, across the street from the Twin Towers. By New York standards, Silverstein's portfolio of properties was modest; his deals typically pooled money from outside investors to buy properties he flipped quickly.

On September 7, 2001, the two friends and their wives had dinner at Wachtell's home in Sag Harbor, on Long Island. It had been a momentous year for Silverstein, and he was in the mood to celebrate. In January he had been hit by a drunk driver while crossing Madison Avenue. In the hospital, recovering from a broken pelvis, he asked his doctors to dial down the morphine long enough for him to make a dark-horse \$3.2 billion bid on the World Trade Center, which the Port Authority was looking to unload. In July he signed a 99-year lease on the property, putting up just \$14 million of his own money in the highly leveraged deal. (Silverstein's foes would later argue that his relatively small investment meant that he had little stake in the rebuilding.) Silverstein had dreamed of controlling the Twin Towers for years-he saw the buildings every day from his office-and told Wachtell that night at dinner

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that he had finally accomplished his biggest goal. "I felt like I had achieved the brass ring," he says.

Four days later, Al Qaeda hijackers crashed passenger planes into the towers, reducing them to a smoking ruin. Silverstein lost four employees in the attacks, which also destroyed 7 World Trade Center. On September 12 he called Lipton, and on the next day he met with Lipton and Wachtell in their midtown office. "I knew I needed superior counsel," Silverstein says. "I had always found Herb an exceptional intellect, and I knew Marty Lipton from our years serving together on the board of NYU's law school." Wachtell wanted to help, but knew it would mean a big commitment. In a 2002 article about the first stages of Silverstein's litigation with the insurers ["Double Indemnity," September 2002], Wachtell told *The American Lawyer* that after the September 13 emergency counseling session, he rounded up all the partners he could find for an impromptu firm meeting: "It was a firm issue—could we afford to take this on?" Ultimately, they decided to do it for two reasons. "Larry is my closest and oldest friend," Wachtell said. "And this was a civic thing—we felt an obligation to be involved in the rebuilding of the city." It was not a decision made lightly. Wachtell predicted "a mammoth drain on firm resources." He was right. The actual burdens "were greater than we ever anticipated," Wachtell says today.

What started as one case—a fight with insurers over how much coverage they owed Silverstein when the World Trade Center was destroyed—quickly turned into a two-front campaign. Silverstein wanted to rebuild 10 million square feet of office space, the entirety of what he lost when the Twin Towers fell. This was a tough sell. Companies were fleeing Lower Manhattan, and there seemed to be little enthusiasm for an office project on par with the former World Trade Center. There was also opposition from victims' families, who felt the space should be dedicated as a memorial. But over the next few years, with the political backing of New York governor George Pataki, who also favored rebuilding, Silverstein and Wachtell won enough support for commercial redevelopment that most parties surrendered to the reality that some sort of office building, or buildings, would go up at Ground Zero. In 2003 the Lower Manhattan Development Corporation, created by Pataki and former mayor Rudolph Giuliani to coordinate rebuilding in Lower Manhattan, selected architect Daniel Libeskind's design for a new World Trade Center. Though his plan went through many permutations and redesigns after battles among different architects assigned to work on the project, the basics remained the same: There would be a new transportation hub and five new towers—four on the old World Trade Center property and a fifth on Liberty Street, on the site of the condemned Deutsche Bank Building. The gleaming centerpiece of the complex would be the 1,776-foot Freedom Tower, a 69-story office building capped by a spire resembling the massive TV tower atop the original 1 World Trade Center.

Yet even as the design work slowly progressed, the debate over who would build the structures remained stuck in the mud. From the beginning, officials at the Port Authority made it clear to Silverstein that they wanted him out of the reconstruction. They worried that he couldn't afford the job, that he would lose interest, that he would pocket the insurance money and go home, that he would prove a hindrance in the planning of the site. Silverstein's position, as articulated by his Wachtell lawyers—in meetings, publicly, whenever they had a chance—was that as leaseholder, Silverstein had the "right and obligation" to rebuild. It was a stalemate. Silverstein had the lease, the Port Authority owned the land, and when 2006 dawned, the two sides were still miles apart on a deal that would resolve the differences.

In mid-December 2005 Pataki, who was weighing a presidential bid and wanted a World Trade Center deal on his resume, gave Silverstein and the Port Authority 90 days—until March 14—to come to an agreement. The Wachtell lawyers say they welcomed the deadline. "Sometimes it takes an outside force to break a deadlock," says real estate partner Panovka. The weeks that followed Pataki's ultimatum were grueling for Panovka and the rest of the Wachtell lawyers, who were in near-constant negotiations with Port Authority executives. At various times, practically every conceivable compromise was on the table, including a plan for Silverstein and the Port Authority to jointly build and operate the new World Trade Center. The five proposed towers were traded back and forth like baseball cards. Each side struggled over the innumerable details of a project that could ultimately cost \$20 billion (Silverstein's estimate) or more. What percentage of the insurance proceeds would the Port Authority get? How much would Silverstein pay toward "common infrastructure" costs, such as the underpinning of the No. 1 subway line?

Even as the two sides narrowed their differences, the Freedom Tower remained an enormous obstacle. Silverstein didn't want to let it go. He had contributed to its planning and design—rescuing the tower, in his opinion, from designer Libeskind by bringing in his architect, David Childs. Silverstein's lawyers realized, however, that to get a deal made, he would have to give up the Freedom Tower. "It was like a child to him," Lieber says. "But economically it would be the most expensive building ever built, and there were questions about whether it could be leased." Lieber says it fell on him and Lipton to convince Silverstein to let go of the Freedom Tower. It was the right decision, they told him: If he surrendered the Freedom Tower, he could build three other towers, those that were planned for a reconstituted Greenwich Street. They would be closer to the new transportation hub, wouldn't carry the psychological burden of the Freedom Tower, and, as such, would be easier to lease. Silverstein finally relented.

With most of the pieces of a deal in place, the Wachtell lawyers were confident they would meet Pataki's deadline. At 8:30 on the morning of March 14, the Silverstein team sat down with Port Authority officials and John Cahill, Pataki's chief of staff, in the Port Authority's Park Avenue headquarters. They haggled over terms all day. When they broke for dinner, the Wachtell lawyers thought they were about to make a deal; only \$50 million and a few issues, such as how to split revenue from the retail space, stood between Silverstein and the Port Authority. They went to Silverstein's Fifth Avenue office to discuss strategy and to meet with his financial backers. Silverstein, Lieber recalls, was in such a good mood that he ordered dinner for everyone from DB Bistro Moderne on Forty-fourth Street—a departure for the 76-year-old, who typically favors meals prepared by his long-serving company chef.

Panovka and Lipton, along with Silverstein, Lieber, and the financiers, returned to the Park Avenue office at, as they recall, around 9:30 or 10 p.m. They settled into a fifteenth-floor

conference room. Silverstein ordered his coffee. They knew it was several hours after the Port Authority team expected them, Lieber says, but that was because they were working out critical details with Silverstein's backers. Whatever the explanation, the delay infuriated the Port Authority. Ringler, who says Silverstein's team actually didn't show up until 11 p.m., contends that Silverstein proceeded to backtrack on several already-agreed-upon points. The Silverstein side, not surprisingly, says the Port Authority was to blame for the breakdown in communications: The agency, they say, had never handled a real estate deal of this size or complexity, and its bureaucracy was cumbersome; in addition to Ringler, the governors of New York and New Jersey and a board of directors all have a say in agency matters. When Ringler marched into the Port Authority's conference room, cursing and insisting that negotiations were over, the Silverstein team knew they had exhausted their welcome.

As the developer and his Wachtell lawyers left the building, Port Authority officials were hitting the phones, calling reporters. The next day, Silverstein held a press conference to explain his position, but it was clear who had won the public relations battle. Silverstein received a thrashing from all quarters. Pataki issued a statement saying that Silverstein had "betrayed the public trust and that of all New Yorkers." The New York Times also weighed in: "The terms were overly generous to Mr. Silverstein, and he was very lucky to get them," said a March 17 editorial. "But at the last minute, Mr. Silverstein and his team made a new set of demands that seem to have been intended to scuttle the bargaining."

For all the blustery press conferences on both sides, the situation behind the scenes wasn't quite so bleak. Within a few weeks of the March 14 debacle, Lipton and Panovka restarted the dialogue with Ringler and with Darrell Buchbinder, the general counsel of the Port Authority. In a typical negotiation, principals meet with principals, and lawyers meet with lawyers, but the acrimony between Silverstein and the Port Authority hadn't faded. Agency officials talked to the developer, or to anyone at Silverstein Properties, Inc. Though Silverstein considered the cold shoulder unprofessional, he told the Wachtell team to proceed: "I said, 'Guys, let's close the damn deal.' "

Fortunately, they didn't have to start from scratch. With the basics of who would build what decided, the two sides progressed with a protocol of negotiation that the lawyers had developed before the talks abruptly ended. The key, Panovka says, was a rule they called "no finger on the scale": Each problem had to be handled in turn, without influencing all the other outstanding issues. The parties couldn't write an agreement on one issue in a way that gave them an advantage on another issue. Take, for example, design. The two sides agreed that the buildings would be "substantially similar" to the Twin Towers in terms of space-10 million square feet of office space in five office towers in the locations plotted by Libeskind in his master plan for the site. But all the design specifics, including such important details as the allocation of street-level retail space, were put off until later. Similarly, critically important cost allocations involving hundreds of millions of dollars were put off until the design was complete. "In a normal real estate deal, this would be insanity," Panovka says. But "agreeing to agree," he says, was the only way the lawyers could avoid getting buried under a mountain of details.

On the evening of April 25, Panovka, who had been at his older daughter's school play, turned on his BlackBerry. He had messages marked "urgent" from Buchbinder and Ringler. The Port Authority wanted to finalize a deal that night: Buchbinder was nearly finished with a draft of an agreement to show the Wachtell partner. Panovka rushed to his office and began negotiating by phone. Early the next morning, six weeks after the blowup, the two sides signed a conceptual real estate framework. In just seven pages, by agreeing to agree later on thousands of details, Wachtell and the Port Authority lawyers laid out the terms of the deal. Silverstein would indeed give up the Freedom Tower, though he would remain a consultant on the project. He would surrender 43.5 percent of the proceeds he recovered from his insurers to the Port Authority, and would contribute \$140 million in common infrastructure costs for the rebuilding of the site. In return, Silverstein received the right to build three towers on Greenwich Street, each nearly as tall as the Empire State Building-in all, 6.2 million square feet of office space, of which the Port Authority and the City of New York agreed to lease a total of 1.2 million square feet. He also won access to \$2.6 billion in tax-free bonds allocated by the federal government to encourage rebuilding in Lower Manhattan. To allay the fears of officials who questioned Silverstein's ability to pay for his part of the rebuilding, he committed to begin work on two new towers as soon as the Port Authority finished digging out and fortifying a "bathtub" to prevent flooding on the east side of the property. He also agreed to pay steep penalties if he didn't meet certain construction deadlines.

Port Authority general counsel Buchbinder declined to comment on the negotiations, but others had high praise for the work the lawyers did. "Marty never lost his touch and never lost his cool," says former Pataki chief of staff Cahill, who was at the Port Authority the night of the fireworks. Of Panovka, he says that "he came with the reputation of being honest and direct" and that he was "instrumental in fashioning a deal." Even Ringler, the former Port Authority executive director, has kind words for the Wachtell lawyers, with whom he continued to talk through a long summer, finalizing the more than 200 agreements-seven double binders' worth-that eventually documented the deal. "Wachtell knows how to negotiate," he says. "And Lipton is one of the few people Silverstein will listen to on occasion."

With a land deal in his pocket, Silverstein was ready to rebuild, but he was short \$2 billion in insurance money-and his lawyers at Wachtell were having a hard time collecting. Silverstein is magnanimous, for the most part, about his former adversaries. But he doesn't conceal his contempt for the insurance companies. "We tried to settle," he says. "We didn't want to litigate. We said, 'Please help us get this done.' "

When Silverstein leased the World Trade Center, he took out \$3.5 billion in insurance, the most ever purchased for a single office complex, from 25 different companies. After September 11, Herb Wachtell came up with a theory that would potentially double Silverstein's recovery from those insurers. Because the attack on the World Trade Center involved two planes and two towers, Wachtell argued that two discrete, insurable events

had occurred. Silverstein, in Wachtell's theory, was due twice his policy limits-\$7 billion-from his insurers.

The insurers, predictably, didn't see it that way. The dispute quickly became rancorous and in 2004 wound up in a courtroom. Two federal juries essentially divided Silverstein's insurers into two categories: Underwriters that used a boilerplate contract provided by Silverstein's insurance broker were liable for just one occurrence; those that did not use the broker's form owed Silverstein coverage for two occurrences. The verdicts limited Silverstein's potential payout to about \$4.68 billion.

Of that total, Silverstein had been able to collect only \$2.55 billion, enough to pay his rent and pay his lawyers, but not enough to secure the type of financing needed to build three buildings that could cost \$7 billion or more, plus infrastructure costs. Eight carriers-a group that included Allianz SE, Swiss Reinsurance Company, and The Travelers Companies, Inc.- were still liable for up to \$2.1 billion. And that money remained out of Silverstein's reach. The insurers insisted after the 2004 trials that Silverstein hadn't proved the replacement value of the Twin Towers: the cost in today's dollars to build two brand-new towers exactly like the ones that had been brought down. The appraisal process to determine that amount had begun in September 2004. Three arbitrators were to decide the hypothetical question of how much it would have cost to build the World Trade Center, as it was originally constructed, on September 11, 2001. Wachtell partner Peter Hein led a team through 100 days of hearings to determine that cost, down to the last screw. It was an arduous process. John Gross, a partner at Proskauer Rose, which served as cocounsel with Wachtell on the appraisal, describes it as a "litigation within a litigation" and as "an extraordinarily intense, detailed proceeding." The insurers' lawyers even disputed how much hypothetical depreciation to subtract from the value of the hypothetical structure. But until the appraisal process was complete, the insurance companies argued, there could be no reckoning of what they owed.

Silverstein, meanwhile, refused to give up a claim for prejudgment interest that could have added \$500 million to his insurance recovery. Discussions between counsel for the insurers and Wachtell litigation partner Marc Wolinsky, who'd taken the lead for Silverstein after the two trials, were going nowhere; insurers felt that in Wolinsky, the intractable Silverstein had an equally stubborn advocate. A resolution seemed years away.

Then, in late January 2007, Wolinsky met with Eric Dinallo, the acting New York State insurance commissioner (he was confirmed to the office a few months later). The meeting was about a related issue: The U.S. branch of one of the World Trade Center insurers, Royal Indemnity Company, which owed up to \$250 million, was involved in a liquidation proceeding in Delaware, and Wolinsky had been fighting to make sure the Delaware agency overseeing the matter enforced the terms of the carrier's settlement with Silverstein. At the end of the meeting with Dinallo, Wolinsky says, he gave the commissioner an update on the World Trade Center litigation. He told him that five years after the attacks, Silverstein was still waiting for more than \$2 billion from his insurers. Wolinsky was hoping that Dinallo would jump into the dispute, and Dinallo obliged.

"He took the bait," Wolinsky says.

Dinallo, a former general counsel of Willis Group Holdings Limited, the insurance broker, had worked for Governor Eliot Spitzer when Spitzer was attorney general, and had been in office for only a few weeks [see "The Man They Call 'The Hammer,'" page 88]. "I didn't know the magnitude of the amounts to be paid," Dinallo says. Wolinsky says he was eager to bring the commissioner up to speed: "I had to convince Dinallo that we really were due the money we were claiming, so I had to educate him and his staff of the substance of five-and-a-half years of litigation."

On March 22, two months after his meeting with Wolinsky, Dinallo summoned representatives from the insurance companies and from Silverstein Properties to his office on Beaver Street in Lower Manhattan. He felt the lawyers were stuck in a "litigation posture," so he directed his remarks to the executives. James Corcoran, a former New York insurance commissioner who represented Zurich American Insurance Company at the meeting, says Dinallo made the right decision. "There were too many chefs, too many people" in the negotiations, he says. "If you put trial lawyers in a room, they do what trial lawyers do. Management has to manage the company, not the lawyers."

Dinallo told the executives that their failure to resolve the insurance dispute was "a black eye" and "a disgrace" to the entire industry. And he wasn't afraid, he said, to use the power of his office. If the insurers didn't settle with Silverstein within the next four weeks, Dinallo warned, he might investigate all of their insurance claims-handling practices. Nor did he spare the Silverstein representatives at the meeting, Wolinsky and Lieber. If there were an investigation, Dinallo said, his office would also look at whether Silverstein had made inflated claims. Says Robert Easton, Dinallo's general counsel: "We wanted to make it clear that the agency wasn't in anyone's pocket, that we were not put up to it by influential persons, but that this was something that the agency would look at because it was bad for New York, bad for the industry."

Still, Wachtell welcomed Dinallo's involvement-with a real estate agreement in place, Silverstein needed money sooner rather than later to secure the financing for the three towers on Greenwich Street. The insurance companies, at least some of them, were less pleased. Accounts differ, but one observer at the March 22 meeting says the insurance executives were "stunned" by what the commissioner had to say. (Harvey Kurzweil, a partner at Dewey Ballantine who represented Travelers, downplays the impact of Dinallo's speech. Travelers had done nothing wrong and had nothing to fear from a threatened investigation, he says.)

After the meeting with Dinallo, executives from Zurich American, which owed Silverstein about \$53 million, approached Wolinsky. They wanted to settle right away (citing a confidentiality agreement, the parties declined to specify the settlement amount). Over the next several weeks, other insurers followed. Dinallo would bring insurance representatives into his office and park them in separate conference rooms from the Wachtell lawyers. Then

he'd engage in what he calls "shuttle diplomacy," racing from one conference room to another. Gradually, the parties whittled away their differences on dollar amounts.

Negotiations with one insurer, Allianz SE of Germany, were particularly thorny, so when Wolinsky got a call from a reinsurer associated with Allianz, asking him to come to Switzerland for a meeting, he readily complied. It was an unusual situation. SCOR, the Paris-based reinsurer, wasn't licensed to do business in New York State, and so had paid Allianz to serve as its proxy in selling insurance to Silverstein in 2001. Allianz's own share was relatively small: It owed Silverstein only about \$155 million, of which half had been paid. This put Allianz in the awkward position of negotiating on behalf of an entity with a far greater exposure than its own—SCOR was on the hook for \$709 million, and still owed up to \$475 million—and contributed to Allianz's reluctance to make a deal. (Allianz was afraid SCOR would sue if it made a deal without that approval, which, in fact, is exactly what happened several months later.)

Wolinsky's meeting in Switzerland proved bizarre. (Wolinsky declined to discuss the meeting, citing a confidentiality agreement. This account comes from sources involved in the negotiations who either heard about what was happening at the time, or learned about it later.) After a red-eye flight, he and Michael Levy, Silverstein's chief financial officer, along with Albert Rosenblatt, a retired New York State Court of Appeals judge appointed to mediate the dispute, met three SCOR executives, including Denis Kessler, the carrier's chief executive, over lunch in a nearly empty dining room at Baur au Lac, a five-star hotel on Lake Zurich. The two sides had a cordial discussion and then, after about an hour and a half, the SCOR executives excused themselves. They said they just needed some time to confer and would be back soon. An hour passed. Then two. It was a beautiful spring day, so Wolinsky, Levy, and Rosenblatt took a walk around the hotel. Wolinsky called and e-mailed the SCOR people. No response. Rosenblatt, described as typically mild-mannered, grew increasingly agitated. He had reserved conference rooms for the day and had come to the meeting expecting to referee a deal. Around midnight, Wolinsky sent a final e-mail. If you don't come back, we're getting on a plane tomorrow morning for New York, he wrote. But the SCOR negotiators had beaten the Wachtell partner to the punch. After leaving the lunch, they went to the airport and flew home to Paris. It was a technique unique in the annals of business history: the pretending-to-go-to-the-next-room-but-really-flying-home-to-France dodge. (Allianz declined to comment, and SCOR didn't respond to a request to comment.)

Wolinsky called to tell Dinallo what had happened. "It was the low point," Dinallo says. But as with the breakdown at the Port Authority a year earlier in the real estate negotiations, the impasse didn't last long. Dinallo's shuttle diplomacy resumed. Wolinsky, accustomed to holding his cards close to his chest, slowly revealed them to the mediators in Dinallo's office.

"Wolinsky is a great strategist," Easton says. "In dealing with the department he had an overall game plan that didn't always dovetail with the superintendent, and I would at times feel frustrated. He had a sense about what numbers were reasonable, but getting him to admit those numbers to us was no small feat."

Finally, Dinallo's office orchestrated a breakthrough: Silverstein agreed to retreat, mostly, from his demand for prejudgment interest. The carriers felt sufficiently assured that insurance money would pay for reconstruction that they agreed to give up litigating the issue of replacement costs. Travelers, which owed up to \$187 million, agreed to settle, followed by Swiss Re, which had potential liability of \$658 million. (Swiss Re's settlement was particularly important, Easton says, because the carrier had won a favorable district court ruling that said it didn't owe Silverstein a cash value replacement, but that it only had to pay replacement costs as they were incurred.) The other insurers slowly fell into line. The four-week deadline came and went, but Dinallo allowed an extension.

Allianz and the French reinsurer SCOR—they of the Swiss disappearing act—were the last holdouts. The sticking point, Wolinsky says, was Allianz's position on assignability. If Silverstein or the Port Authority were to sell one or more of their properties, would the insurance proceeds also transfer? Could Silverstein bring in an equity partner to share construction costs? Like the other insurers, Allianz wanted assurances that the insurance money would be spent on buildings, that it wouldn't simply go into Larry Silverstein's bank account.

The talks were stuck. It was time to call the governor.

On May 22 Dinallo briefed Eliot Spitzer on the impasse. Spitzer put on his lawyer hat and dived in. "It was fun to push [Dinallo] and make sure that we were right and challenge some of the thinking," Spitzer says. "It's different from negotiating in a more purely political context, which is what being governor is all about." If Dinallo held the stick, Spitzer offered the carrot. He told Allianz that he welcomed its business in New York. He also came up with a partial solution to the assignability deadlock, Wolinsky says. The Port Authority could freely assign insurance money to another party if it wanted to sell or lease the structures it controlled. Silverstein could assign insurance money only from one part of the project to another; if he sold one or two of his buildings, he could use the insurance proceeds only to build the remaining towers. Wolinsky negotiated for the final piece of the deal: Silverstein had no interest in selling, he says, but he might want to bring in an equity partner to help with costs. He argued, and won, the right to transfer insurance dollars to that partner. Allianz, in return, would be the only insurer that would pay its burden in installments.

That evening, Wolinsky called Silverstein as the developer was leaving a concert. "I explained where we were, and Larry said, 'Great, go for it.'" Wolinsky and Levy stayed awake all night working out the details. Wolinsky likes to use an old-fashioned calculator, the kind with the tape spooling out, and as the night progressed, he tallied up the dollar figures. When the Allianz agreement was final, he punched in a final number. The total: \$1,999,988,800. They were shooting for an even \$2 billion, but came up \$12,000 short. "Close enough," Wolinsky says. Everyone at Wachtell who worked on the deal would later get a copy of that tape, enclosed in a Lucite cube.

On May 23 Spitzer called a press conference to announce a deal. The Silverstein team, along with Allianz executives and lawyers from Zelle, Hofmann, Voelbel, Mason & Gette, were put together beforehand in a holding room. "Silverstein and the insurance guys were

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struggling to make small talk after years of the most hard-fought and sometimes personal disputes," says one of the lawyers in attendance. "It was a very human ending."

Larry Silverstein still doesn't like to stay up past 10 p.m., but for this, a July 24 celebratory dinner to mark the end of nearly six years of litigation and negotiations, he was willing to make another exception. First, though, a photo shoot. He was chauffeured past a gate and guards into the deep pit in Lower Manhattan that since September 11, 2001, has been known as Ground Zero. Now, littered with bulldozers and cranes, and with the skeleton of the Freedom Tower rising out of the ground, it looked more like a construction site than it did sacred ground. Waiting for him, making one last appearance on behalf of their client, were ten Wachtell partners grumping good-naturedly in the way that men do when they are made to stand still for too long. Silverstein hopped out of his car and started working the crowd, shaking hands. He had a big smile on his face-and why not? The brass ring wasn't out of reach after all.

Additional reporting was contributed by Tim Fernholz.

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