THE WORLD TRADE CENTER TOWERS COLLAPSE AS AN ENORMOUS INSURANCE SCAM.

On the 23rd July, 2001, just seven weeks previous to the World Trade Center demolitions, the Port Authority of New York and New Jersey signed a deal with a consortium (Larry Silverstein, Westfield America Inc and Lloyd Goldman) led by Larry Silverstein for a 99 year lease of the World Trade Center complex. The leased buildings included WTCs One, Two, Four, Five and 400,000 square feet of retail space. The Marriott Hotel (WTC 3), U.S. Customs building (WTC 6) and Silverstein's own 47-story office building (WTC 7) were already under lease. Silverstein is seeking $7.2 billion from insurers for the destruction of the center. One would estimate that the chances of the insurers paying out, are close to zero, but the court case drags on. Here are few articles concerning the World Trade Center deal and consequent legal wrangle.

Insurers Debate: One Accident or Two?

Bloomberg News

NEW YORK - Larry Silverstein, who acquired the lease to operate the World Trade Center in July, is seeking $7.2 billion from insurers for the destruction of the center - twice the amount insurers say he can claim.

The two hijacked airliners that struck the 110-story twin towers Sept. 11 were separate "occurrences" for insurance purposes, entitling him to collect twice on $3.6 billion of policies, a spokesman for Mr. Silverstein said.

Companies that insured the building, including Chubb Corp., Swiss Reinsurance Co., Allianz AG, Ace Ltd. and XL Capital Ltd., said that because the attack was coordinated it counts as only a single occurrence.

"This is something that's going to be debated for a very long time," said Julie Rochman of the American Insurance Association, a trade group representing Chubb and the other insurers.

Mr. Silverstein, who has vowed to rebuild the complex, is liable for more than $100 million a year in lease payments to the Port Authority of New York and New Jersey, which owns the 16-acre (6.5-hectare) site, the spokesman for the property company said.

About 13.4 million squre feet (1.2 million square meters) of office space was destroyed in the attacks and an additional 15 million square feet in nearby buildings was damaged, according to Insignia/ESG, the largest New York real-estate brokerage firm. The collapse of the towers caused the destruction of buildings 3, 4, 5, 6 and 7 at the World Trade Center. The office complex was the largest in the United States.

As an industry, insurers have decided to treat the attacks as a single occurrence, said Keith Buckley of ratings group Fitch Inc., an organization that grades the financial health of insurers.

Nicholas Jones, a spokesman for Willis Group Holdings, which brokered the insurance on the trade center, said, "We are of course aware of Silverstein Properties' position in this matter, and we are working with Silverstein and the insurers and underwriters to bring this matter to an amicable solution as quickly as possible."

Executives of the insurance market Lloyd's of London, Swiss Re and other insurers of the buildings either declined to comment or were not available. "We don't talk about individual situations," said Glenn Montgomery, a spokesman for Chubb, based in Warren, New Jersey.

This article appeared in the International Herald Tribune, 2001-10-10, page 16.

Link to article.

Twin Tower Insurers Win Discovery Fight Mark Hamblett New York Law Journal 06-20-2002

The attorney-client privilege does not shield conversations between the insurance broker for World Trade Center leaseholder Larry Silverstein and Silverstein's lawyers, a federal judge in the Southern District of New York has ruled.

In a victory for insurance companies in their multibillion-dollar fight against Silverstein's claim that the Sept. 11 attacks amounted to two occurrences for insurance purposes, U.S. District Judge John S. Martin ordered brokers from Willis of New York Inc. to answer questions in a deposition about their understanding of the scope of coverage following the terrorist assault.

The conversations were between the brokers and Silverstein attorneys Wachtell, Lipton, Rosen & Katz. Insurance company attorneys claim the conversations will include evidence that Willis employees considered the destruction of the twin towers a single event. Silverstein has argued from the outset that the attacks were two occurrences, a claim that, if successful, would double the amount of insurance payments he receives, to $7.1 billion.

The ruling in *SR International Business Insurance Co. Ltd. v. World Trade Center Properties* and *World Trade Center Properties v. Allianze Insurance Co.*, 01 Civ. 929, also marks the second setback to the Silverstein team this month. On June 3, Martin refused to grant Silverstein summary judgment on whether the attacks amounted to two occurrences, ruling that extrinsic evidence must be considered before deciding how much Silverstein should be compensated for the destruction.

The motion to compel discovery of the conversations between Willis and Wachtell Lipton lawyers was sought by Travelers Insurance Co., one of several defendant counterclaimant's in the Allianze case. Travelers' assertion that it is obligated to pay Silverstein only $210 million, instead of double that amount, has been used as the test case for pretrial motions and discovery in more than 20 suits concerning World Trade Center insurance coverage.

Herbert M. Wachtell's grounds for resisting the motion were that Willis was acting as an agent for the Silverstein parties and was therefore protected by the privilege, that Willis and the

Silverstein parties shared a "common interest privilege," and that the conversations were protected by the attorney work product privilege.

Harvey Kurzweil and Saul Morgenstern of New York's Dewey Ballantine, who represent Travelers, are the lawyers seeking to question the Willis employees. Kurzweil and Morgenstern go into depositions armed with already-discovered documents: notes taken by a Willis employee in London during a conversation with another Willis employee who was stranded in Nashville, Tenn., following Sept. 11. The employee in Nashville allegedly implied that the understanding of the parties to the still-unsigned insurance agreement was that the attacks were one occurrence.

AGENCY ISSUE

As to agency, Judge Martin said: "a limited number of cases have held that the corporate attorney-client privilege can extend to communications between the corporation's attorney and outside agents or consultants to the corporation whose role is the functional equivalent to that of a corporate employee."

But Martin said the facts in this case are substantially different because the conversations were "between Willis, a multi-national corporation with its own retained counsel, and the lawyers for one of its many clients."

While competent lawyers need to be fully informed of all the facts of a case for a client, Martin said, "that interest does not extend the attorney-client privilege to all those who may have relevant information. The privilege is much more limited."

Addressing the common interest privilege, Martin said it is a "limited exception to the general rule that the attorney-client privilege is waived when a protected communication is disclosed to a third party." He said the 2nd U.S. Circuit Court of Appeals has warned that courts should be cautious about extending the attorney-client privilege through the exception.

But Martin said further that "Sharing a desire to succeed in an action does not create a 'common interest.'"

"There has been no showing that Willis and the Silverstein Parties have an identical legal interest, as required by the cases," he said. "Willis is not a party to this litigation, and its legal position will be unaffected by the outcome of this case."

Finally, Martin found that the conversations were not protected by the attorney work-product privilege.

"It must be remembered that, at least as codified in the Federal Rules of Civil Procedure, the work product doctrine applies only to tangible things -- not testimony," he said. "Clearly, much more can be learned about a lawyer's strategy and tactics from documents that the lawyer prepares than can be gained from general questioning concerning a witness's recollection of conversations with an attorney concerning the events about which the witness is expected to testify."

The judge said that the work product privilege would apply only to the extent that questions are "specifically designed" to discover Wachtell Lipton's work product.

So the judge allowed insurance company attorneys to question Willis witnesses about conversations that occurred before the sessions at which the witnesses were being prepared for depositions, and during the preparation sessions.

Stuart Green of Epstein, Becker & Green in New York represented Willis.

Link to article.

World Trade Center's Mortgage Holder Loses Discovery Fight Tom Perrott a New York Law Journal 07-08-2002

Insurance companies Wednesday won another battle in a multibillion-dollar dispute over the World Trade Center, as a federal judge in the Southern District of New York said he would compel the building's mortgage holder to testify and disclose an array of documents.

U.S. District Judge John S. Martin ruled that employees of GMAC Commercial Mortgage Corp., which holds the mortgage on the World Trade Center, and its insurance advisors, Harbor Group Ltd., could not use the attorney-client privilege to shield communications made after the Sept. 11 attacks.

SR International Business Insurance Co. Ltd. (Swiss Re) is seeking the communications and testimony from agents in an attempt to bolster their claim that the destruction of the World Trade Center was the result of one terrorist attack rather than two.

Larry Silverstein, the leaseholder of the towers, has argued that the attacks were two separate events, meaning insurance companies would have to reimburse him a total of $7.1 billion rather than half of that amount.

But the insurance companies have said that conversations between Silverstein's lawyers and insurance brokers would reveal that initially there was an understanding that the attacks constituted one event, not two.

The ruling from Martin comes a few weeks after he came to a similar conclusion on a motion brought by Travelers Insurance Co., one of the defendant counterclaimants in *SR International Business Insurance Co. Ltd. v. World Trade Center Properties* and *World Trade Center Properties v. Allianz Insurance Company*, 01 Civ. 9291.

In that ruling, the judge said conversations between Silverstein's attorneys at Wachtell, Lipton, Rosen & Katz and insurance brokers at Willis of New York Inc. were not subject to the attorney-client privilege.

On Wednesday, the judge applied similar reasoning to a request by Swiss Re to examine documents drafted by employees at GMAC and Harbor Group after Sept. 11 as they attempted to address investor concerns.

Martin ruled that the actions of the employees, supervised by GMAC's in-house counsel, constituted information gathering in the normal course of business, not in anticipation of litigation.

"No privilege attaches to an attorney's communications when the attorney is hired to give business or personal advice, or to do the work of a nonlawyer," Martin wrote.

GMAC had argued that all post Sept. 11 communications were protected by the attorney-client or the work product privilege because of the in-house counsel's supervision.

Martin did say, however, that any communications involving the in-house counsel that contained or sought legal advice would be privileged.

The judge said that the parties could submit documents to the court for in camera inspection to determine whether they were privileged.

Barry R. Ostrager of Simpson Thacher & Bartlett, who represented Swiss Re, said an important aspect of the ruling involves a Sept. 14 meeting at Silverstein's office between Silverstein, his lawyers, Willis of New York, GMAC, Harbor and other investors.

Martin ruled that documents related to the meeting were not privileged and said employees of GMAC and Harbor can be questioned about what was said.

He also said Swiss Re could review notes taken by Beth Ann Herrmann, a vice president at GMAC, and Peter Lefkowitz, of Harbor, at the meeting. The two had taken notes at the request of GMAC's in-house counsel, but Martin ruled the notes were not privileged because they "merely set forth the facts that were reported to the attorney."

Ostrager said the deadline for discovery in the case is Sept. 30.

John C. Ulin of Heller Ehrman White & McAuliffe in Los Angeles, who represented GMAC, was not available for comment.

Marc Wolinsky of Wachtell Lipton who was not involved with this motion, said the ruling was "of no real consequence."

Chet A. Kronenberg of Simpson Thacher's Los Angeles office also represented Swiss Re.

Link to article.

WTC Insurer Has Right to Appraisal, Federal Judge Rules Mark Hamblett New York Law Journal 08-21-2002

One of many insurance companies locked in a dispute with World Trade Center leaseholder Larry Silverstein has the right to an independent appraisal of the loss incurred in the Sept. 11 attacks, Southern District of New York Judge John S. Martin has ruled.

Pursuant to its contract with Silverstein, Allianz Insurance Co. had sought to have disinterested appraisers selected by both sides, with any discrepancy to be resolved by an umpire.

Silverstein has opposed the motion, arguing that the appraisal mechanism in the insurance agreements was pre-empted by the Air Transportation and System Stabilization Act, which granted exclusive jurisdiction to the Southern District of New York for claims flowing from the

Sept. 11 jet crashes.

But Judge Martin agreed with Allianz, saying that "at the outset it should be noted that to construe the grant of jurisdiction to deny Allianz a contractual right that it has under New York law would raise serious constitutional issues."

"But even if there were no constitutional issue presented, there is no basis for finding that when Congress conferred jurisdiction on this Court for all actions relating to the events of Sept. 11, it meant to deprive parties of their contractual right to appraisal or arbitration," he said. "Indeed, there is a serious question whether the grant of jurisdiction in the Act applies to this case."

Meanwhile, at a court hearing Tuesday, Martin expressed skepticism about keeping an upcoming Nov. 4 trial date in the case, because discovery is far from complete. (No decision was made on whether to push back the trial date, but another hearing will be held today.)

In his ruling on the appraisal, Martin said the original purpose of the Air Transportation and System Stabilization Act, passed in the wake of the tragedy last September, was to "limit the liability of the airlines ... and to provide an alternative method of compensating the victims of the attacks."

But there is nothing in the legislative history of the act, nor in the provision vesting exclusive jurisdiction in the Southern District, he said, that indicates Congress intended to affect parties with a property interest in the World Trade Center and their insurance companies.

The decision in *Allianz Insurance Co. v. World Trade Center Properties*, 02 Civ. 0017, was the latest in a series of rulings in the multibillion-dollar fight over insurance payments for the World Trade Center attacks.

Travelers Indemnity Co. and a host of other insurers contend that New York law requires the two terror attacks on the World Trade Center be considered a single occurrence for insurance purposes. Silverstein argues the attacks were two occurrences, and he is entitled to double the insurance proceeds: roughly $7.1 billion for reconstruction and lost revenues.

Last month, Martin urged the parties to consider settling the case, and asked fellow Southern District Judge Lewis A. Kaplan to oversee settlement talks.

JURY PREFERRED BY SOME

In his opinion on the Allianz motion, Martin noted that some other insurers have indicated they might seek an appraisal, but others have told the court they preferred to have a jury decide the issue.

Silverstein had argued that Allianz was both too late in asserting its appraisal rights, because it had already engaged in litigation, and too early, because both parties are required to first hire experts and evaluate the loss and then engage in good-faith negotiations before invoking the appraisal process.

On the claim that Allianz was too late, Judge Martin said Allianz specifically "reserved its right to demand appraisal in its reply to the Silverstein Parties' counterclaim" and spent a lot of time trying to negotiate an agreement on the appraisal process before it filed the motion.

On Silverstein's claim that Allianz sought appraisal too early, Martin said, "It makes no sense to suggest that the parties must bear the expense of hiring experts to evaluate a loss before they retain the services of an 'impartial appraiser.'"

The judge did express one concern he said "might militate against the full enforcement of the appraisal provision." With only some insurers seeking appraisal, he said, enforcement of those rights "may unfairly multiply the proceedings in which the Silverstein Parties are forced to litigate the valuation issue."

One remedy, he said, might be to substitute himself for the neutral umpire if the appraisers cannot agree. But for the time being, the judge said he was reserving decision on whether the parties would choose the umpire.

Silverstein was represented by Herbert M. Wachtell of New York-based Wachtell, Lipton, Rosen & Katz. Allianz was represented by John B. Massopust of Zelle, Hofmann, Voelbel, Mason & Gette.

Link to article.

Trial Date Set for WTC Insurance Issue Mark Hamblett New York Law Journal 08-23-2002

Jury selection in the trial to decide the multibillion-dollar question of whether the attacks on the World Trade Center were one or two occurrences for insurance purposes will begin on Nov. 4.

Southern District of New York Judge John S. Martin late Thursday rebuffed an attempt by insurance companies that claimed massive amounts of pretrial discovery and trial preparation made it impossible to conduct the trial efficiently.

But Martin also said the trial would be split into two phases, with the first dealing with issues of contract formation -- the parties had only signed insurance binders and not final agreements in the weeks leading up to Sept. 11 -- and the occurrence question.

The second phase will concern the amount of damages.

Although most of the 22 insurance companies or syndicates had asked for trial to begin next year (three companies were willing to go to trial sooner if their cases were severed from rest), World Trade Center leaseholder Larry Silverstein, the Port Authority, and the Lower Manhattan Development Corp. had all pressed for an earlier date, arguing that the future of the Trade Center depended on a quick resolution of the insurance conflict.

Silverstein claims that the separate crashing of two planes into the North and South towers on Sept. 11 amounted to two occurrences, and that he is entitled to more than $7 billion in insurance proceeds. Should a jury disagree, the insurance companies would be obligated to pay only half that amount.

From the outset of the case, Silverstein's lawyer Herbert Wachtell of Wachtell, Lipton, Rosen & Katz, has insisted that time is of the essence, and the future of downtown Manhattan and the economic health of the city require an immediate answer to this question.

"We definitely need to know how much money is going to be needed for rebuilding at the very earliest time," Wachtell told Judge Martin at a hearing Tuesday. "This is not some phantom, this is the harsh reality of getting New York City rebuilt."

But Harvey Kurzweil of Dewey Ballantine, the attorney for Travelers Indemnity Co., said Tuesday there was no need to "hustle" to trial in the belief that "more money for Mr. Silverstein means more money for New York".

"The only result to be determined by this trial is who pays," he said, and he reiterated that argument Thursday to no avail.

Judge Martin, who has been hashing out discovery disputes with the lawyers, has become increasingly skeptical of the need to rush forward and try the case, largely because the planning and design process for the site is proceeding slower than expected.

At this point, submissions for a design competition for a memorial at the site are not due until June 2003. And the first wave of submissions for an overall rebuilding plan that would include a memorial and millions of square feet of retail and commercial space have been criticized by officials and the public as inadequate and uninspiring.

But in the end, Martin set aside his concerns over the uncertainty of the plans for the site and focused on what he said was "one of Parkinson's Laws -- that the work will expand to the time allotted it."

The Port Authority, which gave a 99-year lease to Silverstein last year -- so close to the attacks that some contract issues were still being negotiated when the planes hit the buildings -- also wants a quick answer from the court.

"You can't plan a building without knowing how much money you have to build in the first place," Port Authority lawyer Timothy Reynolds of Skadden, Arps, Slate, Meagher & Flom said Tuesday.

Thursday, Reynolds said the Port Authority and Silverstein "are facing a hole in the ground and the insurance companies are sitting on that money earning interest."

At a minimum, Reynolds argued, Silverstein should receive, as quickly as the amount can be determined, the actual cash value of property, even before the occurrence issue and the replacement cost of the property can be determined.

"That money is clearly due to us now," he said.

BIFURCATED TRIAL

During brief arguments Thursday, Wachtell said the insurance companies "had their tongues hanging out" for a bifurcated trial "because they were better off tactically not having a single jury deciding contract issues and valuation."

As the parties are now faced with racing to complete more than 130 depositions in advance of trial, Martin is scheduled to hear summary judgment motions, and also arguments on whether the binders signed by the parties constituted, in essence, a final agreement, or whether there were critical issues remaining to be negotiated when the attacks occurred.

Link to article.
http://www.law.com/jsp/article.jsp?id=1030343783307

Double Indemnity Alison Frankel The American Lawyer 09-03-2002

Barry Ostrager, the Simpson Thacher & Bartlett litigation chief, is a big admirer of Herbert Wachtell. Really, he is. Big, big fan.

Never mind the adjectives he uses to describe the co-founder of Wachtell, Lipton, Rosen & Katz -- "obstreperous, obstructive and unreasonable." Forget the nasty accusations of witness manipulation that Ostrager has tossed at Wachtell Lipton partners in the World Trade Center insurance coverage litigation. Disregard Ostrager's amusement at what he calls the "feigned indignation" with which Wachtell has greeted the Simpson Thacher lawyer's tactics.

Put all that aside, Ostrager says. Focus instead on his great compliment to Herb Wachtell and his partners: But for Wachtell's ingenuity and persuasiveness, Ostrager says, there would be no World Trade Center insurance litigation. There would be no $3.55 billion dispute over the money owed to Wachtell's client, New York real estate developer Larry Silverstein, who signed a 99-year lease on the World Trade Center just two months before the attack on the towers. As Ostrager tells it, only a mind as brilliant as Wachtell's could have crafted a plausible argument that Silverstein is owed $7.1 billion, twice his ostensible policy limit, because the World Trade Center catastrophe constituted two discrete, insurable events, not one.

Of course, Ostrager's salute to Wachtell is just a tiny bit mitigated by his own role in the litigation. He is counsel to the Swiss Reinsurance Co., the carrier that underwrote about 22 percent -- $780 million -- of the Trade Center's insurance coverage. Swiss Re, like the rest of the 21 insurance companies battling Silverstein, is determined to prove that the Trade Center collapse constituted one occurrence under Silverstein's insurance coverage, not the two Silverstein claims.

The story of the Silverstein insurance program, assembled in the summer of 2001, is so far-fetched that any law professor who dreamed it up as a hypothetical would be laughed out of the classroom. Silverstein hired a well-known broker, Willis Group Holdings Ltd., to find enough coverage to satisfy his lenders. Willis scrambled mightily to place $3.55 billion in insurance, ultimately dealing pieces to 25 carriers. Negotiations were frenetic -- so frenetic that when Silverstein took over the lease of the Trade Center on July 24, 2001, he had in hand only temporary contracts from his insurers. Most of those had been executed on the basis of a sample form that Willis had circulated, a form that included a broad definition of what constituted an occurrence for insurance purposes. (The encompassing definition was designed by Willis to favor policyholders; the more damage that could be lumped into one occurrence, the fewer deductibles policyholders would have to pay.)

One key carrier, however, had refused to base negotiations on the Willis form. Travelers Indemnity Co. insisted on using its own form, which did not specifically define "occurrence," as the foundation of discussions about a final policy. Willis needed Travelers to stay in the deal, so Willis brokers spent August 2001 deep in negotiations with Travelers underwriters about changes proposed to the Travelers form. (These negotiations, interestingly, did not include discussion of the definition of "occurrence.") As of Sept. 11, Willis had not circulated final policies to any of the 25 carriers. Silverstein and Willis now say that all of the insurance

companies should be held to the terms of the Travelers policy, which, in their lawyers' interpretation of New York state insurance law, leads to the conclusion that the Trade Center collapse constituted two occurrences. The insurers -- no surprise here -- say that the Willis form prevails.

What's more, asserts Ostrager, the Willis brokers who now support the Travelers scenario didn't always. Only after Wachtell Lipton lawyers got involved, Ostrager has said repeatedly in this litigation, did Willis witnesses convert to the story that favors Silverstein. Silverstein himself said as much, Ostrager argues, in a speech he delivered in December 2001 to the "CEO Summit" on Rebuilding Confidence in the U.S. Economy. "I had to find myself the best minds that I could find," Silverstein said, "to get me two events, to provide $7 billion." Those minds, in Ostrager's telling, belong to the Wachtell Lipton lawyers.

Ostrager is a slight 55-year-old with wavy, reddish hair and an insatiable appetite for competition; in his scant spare time he breeds racehorses. He graduated from New York University Law School 18 years after Herb Wachtell, and seems to be fairly frothing for confrontation with him. Ostrager has gone so far as to fling such phrases as "corruption of the discovery process" and "unconscionable interference by Wachtell" into a brief that accuses Wachtell Lipton lawyers of "exerting fantastic pressure" on Willis witnesses and "manipulating" their testimony.

Wachtell, who says that the evidence disproves the very thesis of Ostrager's accusations, responds to the Simpson Thacher lawyer with characteristic irascibility. When his partner Meyer Koplow calls Ostrager's attack "laughable," Wachtell cuts in. "It's not laughable," he says.

Wachtell, 70, is not a physically intimidating man. He has long, slicked-back gray hair, a thin, red face and piercing eyes. He wears half-frame glasses low on his nose. Yet somehow he is fearsome. "I don't like to see my partners accused of suborning perjury," he fumes. Ostrager, he says, is litigating this case with reckless aggressiveness. "He likes to distort facts," says Wachtell. "I am mightily pissed."

So far Ostrager is winning. The insurers have beaten Silverstein on almost every significant pretrial motion in the case, including a summary judgment motion by Wachtell that was denied. That's all just prelude, however. The judge in the case, John Martin Jr. of Manhattan federal district court, has appointed another federal judge, Lewis Kaplan, to oversee settlement talks this fall. If they fail, Ostrager and Wachtell will meet in court in November to try this case. Barry Ostrager will be looking to topple Wachtell. Herb Wachtell will be trying to put the Simpson Thacher lawyer in his place. And one of their clients will walk away hundreds of millions of dollars richer.

Larry Silverstein is Herb Wachtell's oldest friend. They met as teen-agers, at New York City's High School of Music & Art, where they both played piano. At New York University, both played in the band, Silverstein on drums and Wachtell on clarinet. They stayed close enough over the years that Silverstein had dinner at Wachtell's house the Friday before Sept. 11. Silverstein didn't use Wachtell Lipton as his regular lawyers -- Skadden, Arps, Slate, Meagher & Flom and Stroock & Stroock & Lavan routinely represented him -- but when he split from his business partner (and brother-in-law), Wachtell and his partners negotiated the breakup.

On Sept. 13, two days after the towers fell, Silverstein called Martin Lipton, also a close friend and a fellow NYU trustee, to ask if Lipton thought he'd need legal advice. "Marty said, 'And

how,'" says Wachtell. " hadn't thought through the scope of all the legal problems he could be facing. They'd lost four people from a small office. They were all traumatized." Silverstein arranged to come to Wachtell Lipton's offices later that afternoon.

Before he arrived, though, Wachtell had to figure out whether the firm could represent Silverstein beyond this emergency counseling session. "This would be a mammoth drain on firm resources," says Wachtell, who heads a litigation department of 53 lawyers, almost half of whom have become involved in the World Trade Center litigation. "It was a firm issue -- could we afford to take this on?" Wachtell Lipton's midtown Manhattan offices were in turmoil on Sept. 13. Some investment bankers from Keefe, Bruyette & Woods Inc., which had its offices in the World Trade Center, had been at a meeting at Wachtell Lipton when the planes hit the towers; the law firm volunteered to provide the Keefe Bruyette survivors (as well as some other lower Manhattan refugees) with a temporary headquarters. People were walking around carrying computers and phones for the guests. Wachtell Lipton lawyers were still in shock; collectively, they knew dozens of Trade Center victims. Many lawyers weren't even in the office. Herb Wachtell rounded up all of the partners who were around for an impromptu firm meeting. "We decided to do it for two reasons," he says. "Larry is my closest and oldest friend. And this was a civic thing -- we felt an obligation to be involved in the rebuilding of the city."

Silverstein, according to Wachtell Lipton partner Eric Roth, didn't stay long at Wachtell Lipton's offices on Sept. 13. Wachtell recalls talking briefly with Silverstein about several potential issues, including insurance. As it happened, Wachtell Lipton had argued an insurance coverage case in the New York Court of Appeals a week earlier (Simpson Thacher partner Mary Kay Vyskocil argued against him; Wachtell Lipton eventually won). He told Silverstein that, in his opinion, unless the insurance policy clearly stated otherwise, New York's laws would define the terrorist attacks as two occurrences, two insurable events.

But at that point, Silverstein's lawyers didn't know what the insurance policy said. Silverstein had already been in touch with John Gross, a partner at Proskauer Rose who specializes in insurance coverage. On Saturday the 15th, Gross and the Wachtell Lipton lawyers talked for the first time. "We had no idea what had happened," says Gross. "We were new counsel, we had not participated in the placement. I suggested we go meet with the Willis people and find out what was going on." Roth agreed: "We had to go meet with Willis."

Willis Group Holdings Limited is a giant insurance broker, specializing in coverage for big commercial properties. Even by Willis standards, though, the World Trade Center insurance program was huge. The Port Authority of New York and New Jersey, which finished building the complex in 1972, carried only $1.5 billion (per occurrence) in coverage on all of its buildings, which, in addition to the Trade Center, included the three New York City area airports. Silverstein's lenders insisted on more coverage, first demanding $2.3 billion, then $3.2 billion, and then, right before the lease deal closed, $3.55 billion. The lead Willis broker on the insurance placement, Timothy Boyd, and his team hustled in June and July to satisfy the lenders, contacting carriers in the United States, Europe and Bermuda to place coverage. Willis distributed to many, but not all, of the carriers underwriting packets that featured not only the risk analysis documentation on the World Trade Center, but also a 37-page sample property insurance policy that Willis had developed, a form called the WilProp 2000. The WilProp form included a specific definition of occurrence, one designed to minimize deductibles for policyholders: "all losses or damage that are attributable directly or indirectly to one cause or to one series of similar causes."

The goal in multicarrier property insurance deals is to get all of the insurers to agree to issue the

same final policy, so that there are no gaps in coverage. Carriers with smaller shares of the coverage frequently defer to the policy demands of bigger insurers, however, so brokers don't expect to negotiate final policy language with all (or even most) carriers. In the World Trade Center program, for instance, no negotiations took place with the London insurance syndicates, which actually, at the time they agreed to provide coverage, waived the right to sign off on final policy wording. Moreover, insurers typically issue temporary contracts binding them to provide coverage before they finish negotiating final policy language. Usually there's plenty of time to reconcile policies after the binders come in.

Distilling facts from the frenzied discussions that took place between Willis brokers and insurance company underwriters in July 2001 is no easy task, especially now. Willis broker Boyd testified that he didn't expect carriers simply to accept the WilProp sample form, but considered it a starting point for negotiations. Swiss Re seems to have regarded it the same way. Underwriter Daniel Bollier agreed on July 9 to carry about 22 percent of all layers of coverage beyond the first $10 million, but he told Willis broker Paul Blackmore that he wanted changes in the sublimit language in the WilProp form. (Bollier was satisfied with the WilProp occurrence definition and did not attempt to negotiate changes to it.) Other carriers also seemed to expect negotiations of final policy language; only two Bermudan insurers, ACE Ltd. and XL Capital Ltd., specifically referred to the WilProp form in their binders.

Before the lease deal closing, Willis issued certificates of insurance to Silverstein, confirming to his lenders and to The Port Authority that he had sufficient coverage. His 99-year lease, for which Silverstein put up only $14 million of his own money, closed on July 24. Willis broker Boyd, however, still had work to do. One carrier, Travelers, had informed Boyd that if Travelers was to participate in the primary layer of coverage, it would have to be on the basis of its form, not the WilProp form. Boyd had tried to find a substitute carrier with as high a rating as Travelers, but the market for World Trade Center insurance was saturated.

So in late July, Boyd began serious discussions with Travelers underwriter James Coyle III about what the final Travelers policy would say.

There is no dispute that Coyle first sent Boyd the Travelers sample policy on July 11. But what did Boyd and the rest of the Willis brokers tell the other carriers about the Travelers form? On this critical question, the accounts of the Willis brokers and insurance company underwriters diverge drastically.

If the case ever goes to trial, one of the key issues will be the exchanges between London broker Blackmore and Swiss Re underwriter Daniel Bollier. Blackmore testified that sometime between July 17 and 23, he told Swiss Re underwriter Bollier that WilProp had been replaced by Travelers; on July 23 his assistant e-mailed the Travelers form to Swiss Re. But Bollier swore he remembered no conversation with Blackmore about the Travelers form. He said he paid little attention to the e-mail attachment, which arrived without a note advising that Travelers was replacing WilProp. Timothy Boyd of Willis testified that he specifically informed underwriters at eight other insurance companies that Travelers would be the primary form; notes in the files of at least three carriers indicate that their underwriters had been told. But most of the carriers deny that anyone from Willis ever told them Travelers was replacing WilProp.

At the end of August, Coyle of Travelers sent Willis' Boyd a draft policy that included the changes they'd discussed. The Travelers policy did not define occurrence, leaving the interpretation to state law. Boyd, who did negotiate the wording of Travelers' deductibles clause, never attempted to add Willis' occurrence definition to the Travelers form. On that point, he

deferred to Travelers. Boyd looked over what Coyle had sent him at the end of August, but didn't respond. Labor Day weekend arrived, and there didn't seem to be any rush.

Sept. 11 found most of the brokers on the Willis World Trade Center team in Nashville, at a previously scheduled meeting of Willis' property insurance group. Like the rest of the country, they watched the television in horror. With planes grounded, the brokers were marooned in Nashville, without their paperwork. Inevitably, they began the debate: Was the attack one occurrence or two?

Willis' counsel, Stuart Gerson of New York's Epstein Becker & Green, insists that these conversations were informal and purely hypothetical. Nevertheless, when Timothy Boyd, the lead broker on the World Trade Center program, called Willis' London office as he tried to reassemble the Silverstein documents, he told London staffers, according to the notes of one, "In their opinion this is one occurrence." (Both Boyd and the London staffer testified that they did not recall the conversation.) Another broker said something similar to Swiss Re's Daniel Bollier, according to Bollier's testimony. Silverstein's own risk manager hurriedly faxed a copy of portions of the WilProp form to a lawyer for The Port Authority with a cover note: "FYI the 'occurrence' definition and the insuring agreement and the exclusions in the Willis policy that we are working with." Several hours later he sent the same materials to one of Silverstein's lenders.

At the same time, however, Boyd was working with Jim Coyle of Travelers to get a final policy issued. Coyle agreed to send Boyd a policy that reflected the state of their negotiations as of Sept. 10. On Friday, Sept. 14, Travelers faxed a final policy -- which included no definition of "occurrence" -- to Willis' temporary headquarters in New Jersey. From there, Willis faxed it to Wachtell's offices.

"We were told two things," says Wachtell, "that the Travelers form was the governing form; and that they wanted to disseminate the policy to the marketplace. We said, 'No! You may not send it out until we can confirm the facts.'" Silverstein's lawyers pressed the Willis team for interviews with the brokers. Willis senior executives agreed that John Gross of Proskauer and Eric Roth and Marc Wolinsky of Wachtell Lipton could come to New Jersey on Monday, Sept. 17, to talk to the brokers.

Over the weekend, Gross and the Wachtell Lipton lawyers studied the documents Willis had sent them. Gross is as emphatic as Wachtell about the implications of the Travelers policy. Since it didn't specifically define "occurrence," the definition was left to state law. And under New York state law, Gross asserts, the attack on the twin towers constituted two occurrences. "I knew it without even going to the books," he says. But did the Travelers policy govern the World Trade Center insurance coverage? Gross and the Wachtell Lipton lawyers say that they got their answer in their interview with the Willis broker Timothy Boyd on Monday, Sept. 17.

If Barry Ostrager's theory -- that Wachtell concocted the Travelers policy scenario -- was correct, the "fantastic pressure" that Wachtell supposedly exerted on the Willis witnesses would have had to have begun during those Sept. 17 meetings, as the lawyers and brokers figured out what to tell the insurance market about the governing policy. Willis is a sophisticated company, so, naturally, its brokers were represented by their own lawyer at these initial interviews with Silverstein's counsel. Sitting at the head of the table as Roth, Gross and Wolinsky questioned Willis witnesses was a lawyer named Andrew Amer, from the firm that is Willis' longtime outside counsel: Simpson Thacher. Amer is a partner in the department headed by Barry Ostrager.

Amer, who declined to comment, presumably heard the Willis witnesses tell Silverstein's lawyers that the Travelers policy governed the World Trade Center coverage. He said as much in a Sept. 20 e-mail to Eric Roth, confirming that Willis believed that coverage was based on the Travelers form. "We await your approval to distribute the policy to the market," Amer wrote.

So how could Ostrager later assert that Wachtell was pushing to get the Travelers policy out, that Wachtell Lipton lawyers were manipulating Willis witnesses to tell a story that favored Silverstein? Ostrager says he never talked to Amer about those meetings. To protect Willis' attorney-client privilege, he says, Simpson Thacher -- which had informed Willis from the start that it would be representing a carrier in the litigation -- erected a wall between Amer and the lawyers representing Swiss Re. When Ostrager wrote the brief accusing Wachtell of "unconscionable interference" and "corruption of the discovery process," he based his accusation on notes Travelers underwriter Coyle took during a post-Sept. 11 conversation with Willis broker Boyd in which Boyd complained about feeling so much pressure from the lawyers that he was thinking of quitting. The comment later turned out, however, to have been a reference to Willis in-house lawyers, pressing Boyd to produce documents.

Epstein Becker's Gerson, the lawyer who replaced Amer soon after those initial meetings, also rejects any suggestion that Willis witnesses were coerced, in the Sept. 17 meeting with Wachtell Lipton lawyers or in any meeting after that. "I have been at every single prep session," Gerson says. "There has been no pressure of any kind put on any Willis witness by anyone at Wachtell. I wouldn't let that happen. I am not a potted plant."

Ostrager says he never meant to suggest that Wachtell Lipton lawyers had suborned perjury, merely that in hours of preparing Willis witnesses for deposition, Wachtell Lipton partners had subtly shaped their recollections and perspectives. (Willis, insurance lawyers have noted in court, may be concerned about the possibility of Silverstein suing the brokerage for malpractice.) Immediately after Boyd's deposition testimony about pressure from lawyers, Ostrager did notify Judge Martin that Boyd had been referring to in-house lawyers, not Wachtell; and he did tell the judge in a letter and in court that he wasn't accusing Wachtell of impropriety. But he didn't withdraw his brief. And he doesn't believe that Wachtell is as indignant about his tactics as Wachtell says he is. In a deposition of Blackmore, Ostrager told Wachtell that he was going to call the judge if Wachtell didn't stop interrupting his questions. "If you want to be a litigator," Wachtell retorted, "don't be so thin-skinned every time you get an objection." Says Ostrager: "That applies in spades to him. want to be aggressive, but, like any bully, they don't want to be punched back."

Ostrager came into the World Trade Center insurance case at around the same time Wachtell did, within two days of the collapse of the towers. Swiss Re wasn't necessarily expecting litigation, Ostrager says, but retained him "as a matter of prudence." As Willis circulated the Sept. 14 Travelers policy to the other insurance companies, Swiss Re's prudence proved justified. Swiss Re, as well as a host of other carriers, notified Willis that they'd bound coverage on the basis of the WilProp form, and had never agreed to substitute the Travelers form at all. The Travelers policy, they said, wasn't their policy; many said that the Willis notice was the first they'd heard of it.

For a few weeks, Ostrager and his second-in-command, Mary Kay Vyskocil, let Silverstein set the course of the case. The real estate developer badly wanted to begin collecting the business interruption portion of his insurance, so that he could continue making payments to his lenders and his landlord, The Port Authority. Wachtell urged a meeting between Silverstein and the insurers. Willis executives organized a session on Oct. 2 at Manhattan's Metropolitan Club. "I

thought it would be helpful if Larry could talk to them, let them see him in the flesh, show them he was not trying to get a windfall," Wachtell says. "We told them we understood there was a difference of opinion on occurrence, but we had to get the business interruption insurance going. Larry said, 'We ought to be sitting down and talking.' He was met with dead silence."

Ostrager regarded the meeting as a turning point. "I knew what was going on in that Oct. 2 meeting," Ostrager says. Silverstein wanted the business interruption cash, Ostrager says, to fund his two-occurrence litigation. "It was transparent and self-evident," Ostrager says. "I knew to a moral certainty that Silverstein was going to use the business interruption money> to initiate a declaratory judgment action against the insurers." So Ostrager and Vyskocil grabbed control of the litigation. On Oct. 22 they filed, on behalf of Swiss Re, a complaint for a declaratory judgment against Silverstein, asking the court to hold that the Trade Center disaster was, for insurance purposes, one occurrence. Ostrager admits that not all of the other insurers were happy about his suit. "There was a band of reactions ranging from 'We would have wanted to participate' to 'We would have appreciated it if you had consulted us,'" he says.

The Silverstein side portrays Ostrager as a litigation outlaw, infuriating the other insurers with overly aggressive tactics, starting with that declaratory judgment action. Lawyers for most of the other major insurers declined to comment publicly but insist privately that all of the insurers are working together. "There's a high level of cooperation," says Travelers counsel Harvey Kurzweil of New York's Dewey Ballantine, who, along with his partner Saul Morgenstern, has become a spokesman for the other insurers. "We've put on a remarkably cohesive, coordinated." And a successful one, so far. Though Ostrager has sometimes been alone at the extremes of the case, the insurance lawyers have united on major motions. As Ostrager had predicted, in January, Silverstein did file suit against all of the insurers, seeking a summary judgment against Travelers. Gross and the Wachtell Lipton team asked Judge Martin for a ruling that, as a matter of law, the World Trade Center disaster constituted two occurrences under the Travelers policy. Martin denied Wachtell's summary judgment motion, and, on another heavily litigated pre-trial issue, granted the insurers' motion to compel testimony from the Willis witnesses about their meetings with Wachtell.

Judge Martin seems eager for the case to settle, and has appointed federal Judge Lewis Kaplan to oversee talks, the first since a few utterly fruitless sessions late last fall. (Silverstein did settle with the two Bermudan insurance companies that explicitly mentioned the WilProp form in their binders. Those insurers agreed to pay, in cash, their policy limits for one occurrence, a total of about $350 million.) Proskauer's John Gross is still hoping for a deal; after all, if Silverstein can get anything more than his $3.55 billion one-occurrence limit, he's won. (Silverstein has stated repeatedly that he intends to use the insurance money to rebuild lower Manhattan.) Harvey Kurzweil says that Travelers and the other insurers would participate in talks; he is one of four insurance lawyers who was scheduled to meet with Wachtell Lipton partner Meyer Koplow in late August. Ostrager was also supposed to participate. One senses his heart wouldn't be in it, though. There's only one place Ostrager wants to be on Nov. 4: in Judge Martin's courtroom, picking a jury of New Yorkers whose votes he and Herb Wachtell can fight for.

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http://www.omhros.gr/Kat/History/WTC/LloydGoldman.htm

Developer Scrambles to Save World Trade Center Deal

By Charles V. Bagli

- Silverstein Closes World Trade Center Deal (Apr 26, 2001)
- Deal Is Signed to Take Over Trade Center (Apr 27, 2001)
- Lumber Trade Dispute Escalates (Apr 3, 2001)

An 11th-hour attempt to resurrect his bid for control of the World Trade Center, a developer rushed back to the bargaining table yesterday evening, vowing to sign a $3.22 billion deal and to put down a hefty deposit for the 10.6 million- square-foot office complex.

The developer, a group led by Larry A. Silverstein, had been negotiating with the Port Authority of New York and New Jersey for the last 36 days over a 99-year lease for the 110-story towers and the Trade Center.

But in recent days, Port Authority officials became increasingly concerned about the group's financial viability, especially as Mr. Silverstein appeared to retreat on a number of issues, including reducing his $800 million down payment. The four Port Authority commissioners in charge of the sale decided yesterday to end negotiations, but relented when Mr. Silverstein asked for a final opportunity to complete a deal.

According to top executives at the Port Authority, Mr. Silverstein must sign a contract and put down a $100 million deposit by this afternoon when the Port Authority board meets, or he is out.

"They're going down there this evening in an effort to close the deal," Howard J. Rubenstein, a spokesman for Mr. Silverstein, said late yesterday afternoon. "They'll take as long as it takes to get it done."

Mr. Silverstein's partners include GMAC; Westfield America Inc., a shopping center developer; and Lloyd Goldman, an investor. Mr. Silverstein has long expressed his desire to operate the World Trade Center, an office complex he considers to be "the prize of all prizes." But many real estate executives and Port Authority executives remain skeptical that the developer will be able to capture his prize.

The Trade Center is full and generating income of about $200 million a year, but if the present negotiations fail, it would be a major setback for plans to privatize the complex. In 1998, the two states hoped to get about $1.5 billion, but a rocketing real estate market ultimately drove the bidding over $3 billion.

Both the economy and the real estate market have cooled down significantly in recent weeks. The Port Authority could turn to another bidder, a joint venture of Boston Properties and Brookfield Financial Properties. The Port Authority has lost leverage, though.

The Silverstein group would be the second bidder to collapse within sight of the finish line. Last month, Vornado Realty Trust, which had offered $3.25 billion for a 99-year lease, failed to sign a contract after a 20-day negotiating period.

On March 21, the Port Authority opened talks with the second-place bidder, the Silverstein group. Negotiations appeared to be going well, so the Port Authority allowed its April 14 deadline to pass without comment. According to top Port Authority officials, Mr. Silverstein sought to reopen several important issues, including the size of his down payment. Some officials also questioned whether the Silverstein group had a large enough operations group to run the Trade Center properly. They said the developer also sought to get the Port Authority to

pay for $200 million in improvements to the complex.

That may have been a last-minute bargaining tactic, because Mr. Silverstein appeared to have relented yesterday afternoon. The closing scenario was reminiscent of what happened in the Vornado negotiations.

"I don't mean to sound naive," said Charles A. Gargano, vice chairman of the Port Authority, "but it's astonishing to me that they believe they can play a game of chicken with us."

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http://www.omhros.gr/Kat/History/WTC/WTC-Owners.htm

April 26, 2001

Larry Silverstein, Westfield America Inc. (NYSE:WEA) and investor Lloyd Goldman have just clinched a lease on the World Trade Center, Manhattan's biggest real estate trophy.

The 99-year net lease on the 10.6 million-square-foot office and retail complex lease was approved by the Port Authority of New York and New Jersey's Board of Commissioners at their meeting this afternoon.

The deal covers four buildings at the World Trade Center: Number One and Two World Trade Center, better known as the Twin Towers; Four and Five World Trade Center, two nine-story office buildings and about 400,000 square feet of retail space.

Numbers Three, the WTC Marriott Hotel and Six, the U.S. Customs House, are already under lease. Silverstein leases the 47-story office building at Seven World Trade Center.

Despite talk that his team didn't have the equity in place and the set-back from a broken pelvis, Silverstein came through. His team's offer - which wasn't the highest the Authority had received, amounts to $3.2 billion on a present value basis.

"This is a dream come true," Silverstein said. "When we first became associated with the Port Authority with 7 World Trade Center, we looked at the asset of the World Trade Center with tremendous interest. We will be in control of a prized asset. There is nothing like it in the world," he said.

GMAC Commercial Mortgage is providing $833 million in first mortgage financing and is open to providing more, possibly a mezzanine piece, for a total investment that could grow to $1.3 billion.

There was speculation earlier in the day yesterday that the $3.22 billion deal could fall through because the Silverstein team was having difficulty finalizing its financing, but the talk may have been the result of posturing on the part of the Port Authority.

Silverstein and Westfield were runners up in the final bidding process for a lease on the 110-story towers and the Trade Center, losing out to a team led by Vornado Realty Trust. It entered into talks with the Authority on March 20 when Vornado was unable to reach a purchase agreement.

Thanks in part to the holidays, the Silverstein team has had 30-plus days to work out a deal with the Authority and its team of advisers - J.P. Morgan Chase , Cushman & Wakefield and Milstein Brothers Realty Advisors.

Click here, for more articles from http://www.omhros.gr/Kat/History/WTC

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http://www.newsday.com/news/local/newyork/ny-wtcinsure0926.story

Silverstein Loses WTC Claim.

By Alan J. Wax, Staff Writer, September 26, 2002.

In a ruling that may limit the insurance proceeds to rebuild at the World Trade Center site, a Manhattan federal judge said yesterday the destruction of the Twin Towers was only one attack and not two as the leaseholder had claimed.

The decision by U.S. District Court Judge John Martin dealt only with insurance coverage by three of the nearly two-dozen insurers fighting Larry Silverstein's attempt to collect $7.1 billion for the trade center's destruction.

Silverstein, insured for $3.55 billion "per occurrence," has argued that a pair of hijacked jets crashing into the towers Sept. 11 constituted two separate events for insurance purposes.

In his ruling, Martin said definition of "occurrence" in the three insurers' binders rendered the terror attack "unambiguously" a single event.

"The ordinary businessman would have no doubt that when two hijacked planes hit the Twin Towers in a 16-minute period, the total destruction of the World Trade Center resulted from 'one series of similar causes,'" Martin wrote in his 24-page decision on behalf of Hartford Financial Services Group Inc., St. Paul Cos. and Royal Indemnity Co.

Barry Ostrager, a lawyer for Swiss Re, another insurer fighting Silverstein, called the ruling "a major setback" for the developer.

Ostrager said Martin's ruling is consistent with the position taken by Swiss Re, whose case is scheduled for trial on Nov. , and other insurers. Silverstein now has "an impossible burden" of convincing the same judge to rule in his favor, he added.

Silverstein, nonetheless, appeared self-assured at a Manhattan real estate seminar yesterday, discussing his timetable for building 10 million square feet of office space using insurance proceeds. He said construction could begin by 2004, with structural steel rising by 2006 and the first building completed by 2008. He predicted the entire project could be done by 2012.

Silverstein deferred to his spokesman for comment on the court decision.

"Obviously we disagree with the ruling and will consider an appeal," Silverstein spokesman Gerald McKelvey said, who noted the three insurers accounted for only $112 million, or 2 percent, of the total coverage.

"We continue to believe that the terrorist attacks of Sept. 11, 2001, constituted two separate and distinct occurrences as a legal matter under New York law," Port Authority spokesman Allen Morrison said.

Said Matt Higgins, spokesman for the Lower Manhattan Development Corp.: "We haven't reviewed the decision, but it doesn't impact our planning process in any way."

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http://www.archibot.com/dcforum/DCForumID14/5.html

Posted by Stephen Ringold FAIA on Aug-15-02, 11:35 PM (PST)

NEW YORK - Real estate developer Larry Silverstein, who leased the World Trade Center last year for $3.2 billion, likely would cooperate if New York City swapped ownership of its two airports for ownership of the World Trade Center land, Silverstein's spokesman said on Monday.

The Bloomberg administration's proposal for a land swap, which was reported by local newspapers, would get the Port Authority of New York and New Jersey out of the middle of a bruising wrangle over how the 16-acre World Trade Center site should be rebuilt. The Port Authority currently owns the downtown Manhattan site.

Silverstein's spokesman Howard Rubenstein, told Reuters: "He (Bloomberg) floated the idea but none of the details have been presented to Larry Silverstein. He (Silverstein) has a cooperative frame of mind."

Silverstein leased the World Trade Center in July 2001.

The Port Authority has said Bloomberg's proposal for a land swap merits what it called serious examination and consideration.

Spokesmen for New York governor George Pataki and New Jersey governor James McGreavy, who share control of the Port Authority, and New York City Mayor Michael Bloomberg, were not immediately available to comment.

Whether Pataki would agree to let the city swap the airports --LaGuardia and John F. Kennedy-- for the World Trade Center site is not clear. The Republican governor now exerts great influence over the redevelopment process through the Port Authority. But he shares control of the Lower Manhattan Development Corp., the city-state agency charged with rebuilding the 16-acre site, with Bloomberg.

Another big player in the future of the World Trade Center site is insurance company Swiss Re, which is fighting Silverstein in court, claiming it only owes him $3.5 billion. The real estate developer wants twice that amount from the insurer, and another 20 or so other insurers who covered the complex, because he claims the two plane strikes were two separate insured events, not one.

Swiss Re's U.S. chief said on Sunday the company would like to see Silverstein dropped from any role in plans for rebuilding the World Trade Center site.

"They (the city) need to buy Silverstein out, and then we would be happy to deal directly with the city," Jacques Dubois said.

The Port Authority has insisted on replacing the 11 million of square feet of office space that were lost on Sept. 11 when two jets were flown into the World Trade Center's twin towers, toppling them and killing nearly 3,000 people.

The bi-state agency does not want to accept any lower rent. It now gets $124 million a year in rent from Silverstein for the World Trade Center. Business interruption insurance has allowed the developer to continue making these payments.

The Lower Manhattan Development Corp. has tried to accommodate the Port Authority by including 11 million square feet of office space in all six plans for rebuilding the site.

These plans, however, have been criticized as being too crowded, and the Lower Manhattan Development Corp. now plans to open the design competition to more architects.

For years, New York City has been trying to get the Port Authority to pay more than $3 million a year for leasing the La Guardia and John F. Kennedy International airports.

New York City now needs the money more than ever before because it is facing a $5 billion budget hole. The city's budget assumes it will get the Port Authority to increase its rental payments to $175 million though the state comptroller has warned that money might never materialize.

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http://www.insurancejrnl.com/html/ijweb/publications/IJWest/w122401/larry.htm

Larry Silverstein Squares Off Against Swiss Re in Epic Battle

By Charles E. Boyle

Claims adjusters and policyholders may wrangle over the amount of compensation due following an automobile accident, or a fire, and eventually reach a compromise. But when you're arguing over a difference of three and a half billion dollars, neither party is inclined to give up.

That's the current situation between Larry Silverstein, head of Silverstein Properties, the company which acquired the master lease on the World Trade Center last July, and Swiss Re, the insurer which heads a group of 22 companies that signed binding commitments to insure it. While the "binders" are enforceable insurance contracts under New York law, the absence of a formalized policy has led, perhaps inevitably, to disputes over terms-particularly with regard as to what constitutes an "occurrence."

Swiss Re opened the battle on Oct. 22, when it filed a lawsuit in the U.S. Federal District Court for The Southern District of New York in Manhattan seeking a declaratory judgment "that the September 11 collapse of the World Trade Center is one insured loss." Although it framed the request as necessary in order to determine to whom insurance payments should be made, the company's intent was clear: one occurrence means one loss- and, therefore, liability to pay for only one building, as there was no coverage against a simultaneous loss, a possibility which had

been deemed unthinkable.

The binder placed a maximum limit on liability of $3.56 billion. Swiss Re avows that this is the most the insurers will be required to pay. Its own portion of the loss is 22 percent, around $780 million.

Silverstein responded by reaffirming his position that two loss events occurred and accused Swiss Re of trying to avoid its obligations, which brought a swift denial. He filed a formal response to the legal action two weeks later, asserting that since two airplanes smashed into two buildings, at two different times, two losses had occurred. Therefore, his company, its associate Westfield America, and the WTC's owners, the Port Authority of New York and New Jersey, had the right to make two claims and be paid for two loss events. He also filed for an injunction to prevent ACE and XL from opening an arbitration proceeding in London to determine the extent of their WTC-related losses.

Whatever the court decides, the loser will probably appeal, and it could be a long time before the issue is settled. Other questions that get raised are when the $3.5 billion owed should be paid, and who earns the interest on that money.

Swiss Re has maintained almost from the day of the disaster that it is fully committed to paying its share of the claims. Jacques Dubois, president and CEO of Swiss America Holding and a member of the parent company's executive Board, said special resources had been committed "to help clients manage these unprecedented claims," and initial payments had begun to be distributed.

To pay interest on some $760 million General Motors Acceptance Corp. had loaned Silverstein to purchase the lease, $14.3 million was paid into an account set up by GMAC. Insurers have also begun paying the lost rental on the property, some $25 million a month. Over the five years it is estimated it will take to rebuild the WTC, that amount will come to around $1.5 billion.

Intimating that Swiss Re's attitude was all show and no go, Silverstein opened another front in the confrontation, filing a "Preliminary proof of losses" with the company and demanding payment of the" actual cash value" of the complex.

Dubois led Swiss Re's counterattack. In a written statement, he asserted, "By electing to recover an 'actual cash value' payment, Mr. Silverstein has apparently abandoned his plan to rebuild the World Trade Center." Dubois added that if such were the case, the Port Authority would receive $1.5 billion, Silverstein and Westfield around $1.3 billion, and various lenders, principally GMAC and UBS Warburg, about $700 million.

Barry Ostrager, a lawyer for Swiss Re, told Reuters News Agency that the situation was "just like with your car." If the company pays cash value for it, it doesn't have to then pay to replace it. However, this analogy seems a little thin, as there are very few $3.5 billion cars.

Silverstein shot back that Swiss Re's claim was "total and complete fiction" and emphatically denied he wasn't going to rebuild. He maintained that how the claims are settled is separate from the issue of whether he and the Port Authority intend to rebuild the complex.

Some commentators indicated that Silverstein's demand for the cash value was a move to obtain immediate funds, which might be worth more at present, than a series of payments spaced out during the years it would take to rebuild the WTC. He's probably also aware that office space in

downtown Manhattan is not exactly in demand since Sept. 11. One recent report found 13.2 million square feet of vacant office space in the area, a 49 percent increase in vacancies since the time prior to the attacks.

That's where things stood at the end of November, but either side could open a third or even a fourth front before the battle is over. And even Solomon might have a hard time trying to settle their differences.

From: The World Trade Center Towers collapse as an Enormous Insurance Scam.