

to extend the liability cap to the contractors, or in the alternative, to omit all references to the liability cap in the opinion.

The Contractors' motion is denied.

The case before me has three claims for relief: (1) a claim seeking a declaratory judgment that the Lloyd's syndicates have a duty to defend the City and its contractors; (2) a breach of fiduciary duty claim asserting that the Lloyd's syndicates breached their duty to WTC Captive by failing to assume the defense of the City and its contractors, thereby forcing the WTC Captive to do so, and seeking damages for the breach; and (3) an equitable contribution claim, seeking to recoup the defense costs advanced by the WTC thus far which should have been borne by Lloyd's. At oral argument, I ruled in favor of the plaintiff on the declaratory judgment and equitable contribution claims, stated that a written opinion would follow (it was issued April 15, 2008), and expressed the belief that the breach of fiduciary duty claim seeking damages lacked merit and should be dropped. Thus, upon issuance of my opinion, the lawsuit in the district court likely will end.

The WTC Contractors' motion for intervention will complicate the lawsuit, raise extraneous issues, and likely cause it to be continued.

The contractors are in the process of producing their insurance policies. They have sought a high degree of confidential protection with regard to those policies, a request that makes it difficult to evaluate the precise scope and limits of their coverage. The relationship between the City's Department of Design and Construction, which oversaw the clean-up efforts, and the contractors engaged to do the work has not yet been made clear, and also is the subject of ongoing discovery. WTC Captive's complaint against the City's preceding insurers seeks relief from the duty to defend because the duty lies more properly with the City's other insurers. It is

not the place to evaluate the relationships of those insurance policies at issue in the case to the policies insuring the WTC Contractors. And it is not the place to evaluate which plaintiffs may make claims against which contractors, or whether and to what extent the liability limits of section 408 (a)(3) protect the contractors engaged by the City, as well as the City. Cf. In re World Trade Center Disaster Site Litigation, 456 F. Supp. 2d 520 (S.D.N.Y. 2006), *affirmed in part by* – F.3d –, 2008 WL 783386 (2d Cir. March 26, 2008) (holding that claims of state and federal immunity asserted by the City, its contractors and other defendants in the World Trade Center Disaster Site Litigation were too fact-intensive to be decided at this stage in the litigation, and could not be resolved until after “[d]iscovery, additional proceedings, and a more extensive factual record, and perhaps a trial”).

There will be time and opportunity to evaluate the concerns expressed by the WTC Contractors. Nothing in my opinions thus far will bar the Contractors from making their arguments and expressing their concerns at the proper time and in the proper context. This is not the time or context. The motion to intervene is denied.

SO ORDERED.

Dated: April 16, 2008
New York, New York


ALVIN K. HELLERSTEIN
United States District Judge