

Memorandum

From: Special Masters
James A. Henderson, Jr.
Aaron D. Twerski

Re: Minor Changes to Severity Chart

Date: September 15, 2008

In anticipation of tomorrow's hearing before Judge Hellerstein, we have made some minor changes to the Severity Chart. They are not substantive. We noted that in the "Zero" category of the Severity Chart, there is a notation to "go to 'Not Meeting Impairment Criteria' Chart". The "Zero" category does, in some instances, reflect symptoms that are worthy of note and thus the reader should not be referred to either Chart Two or Three.

Attached please find a slightly modified version of the Introduction to the Severity Chart and a slightly modified version of Charts Two and Three.

Introduction to Severity Charts

Chart One ranks the relative severities of current physical impairments of WTC plaintiffs who claim to suffer from certain enumerated diseases. It ranks severities only within each enumerated disease category, and does not compare or rank severities across the disease categories for which rankings are provided. Thus, for example, while a rank-four emphysema impairment claim is more severe than a rank-three emphysema claim, it may or may not be more severe--measured by negative impacts on the plaintiff-- than a rank-three asthma claim. Comparisons across disease categories are left to a later date. Chart One relies on clearly stated criteria that do not make cross-disease comparisons.

Chart One does not purport to test the factual accuracy of plaintiffs' assertions that they suffer from particular diseases or, for that matter, that those diseases were caused or aggravated by exposures to WTC conditions. For example, Chart One does not require, as do the relevant AMA guidelines, plaintiffs to show they have been examined and diagnosed by a qualified physician. This information will be included in the database. To succeed with a claim for which Chart One provides relative rankings of severity of current impairment, a plaintiff will be required to satisfy proof

requirements on all elements of traditional tort claims.

Chart One does not purport, even within the enumerated disease categories, to measure the relative monetary values of claims. To be sure, relative severity of impairment is a relevant consideration to monetary value; but so also are other considerations not included in the chart. Indeed, claims that do not qualify for an impairment ranking in Chart One may have significant monetary value. It also follows that the "Zero" column on Chart One does not necessarily connote claims that have no value, but rather refers to claims that currently do not satisfy the criteria for an impairment ranking of "One" or higher.

Chart Two deals with claims that do not currently satisfy the criteria applied in Chart One for ranking impairment. When impairments that satisfied Chart One criteria are alleged to have existed previously but have subsequently been completely resolved, the previous impairment will be ranked according to the criteria in Chart One even though such impairment is not current within the terms employed in Chart One. Thus, a plaintiff who previously suffered from a relatively severe impairment that has been completely resolved and thereby eliminated (by medication, or otherwise), may have a valuable tort claim even though the plaintiff's claim does not belong on Chart One. For example, a patient suffering from GERD who underwent anatomy-altering surgery leaving no residual impairment may be entitled to damages reflecting that reality. In cases involving partial resolutions of previous, higher-level impairments, any residual,

post-resolution impairment will be treated as a separate claim for impairment under Chart One.

Chart Three asserts that claims for impairments based on diseases enumerated in Chart One for which the tests referred to in Chart one have not been performed will not be ranked for severity.

CHART TWO: CLAIMS FOR IMPAIRMENTS
REFERRED TO IN CHART ONE THAT OCCURRED PREVIOUSLY,
BUT HAVE BEEN RESOLVED

- I. Previous impairments under Chart One that have been resolved completely will be ranked by impairment severity levels under Chart One reached before resolution.

- II. Regarding previous impairments under Chart One that have been resolved partially, leaving current residual impairments under Chart One:
 - A. Previous impairments will be ranked by impairment severity levels under Chart One reached before partial resolution.
 - B. Current residual impairments will be ranked by impairment severity levels under Chart One.

**CHART THREE: CLAIMS FOR IMPAIRMENTS REFERRED
TO IN CHART ONE THAT HAVE NOT YET BEEN DEMONSTRATED
BY TESTS DESCRIBED IN CHART ONE**

Claimed impairments referred to in Chart One for which the tests for impairment described in Chart One have not been performed, whether or not otherwise valid for recovery purposes, will not be ranked for severity.