Levine, Robin

From: Lieberman, Brian [BLieberm@law.nyc.gov]
Sent: Wednesday, October 24, 2007 2:51 PM
To: Levine, Robin
Cc: Schiano, Frank
Subject: FW: OCME - World Trade Center Debris Removal Litigation - Document Retention Directive
Importance: High

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Robin: It was a pleasure talking to you, and again congratulations on becoming GC. I know we never met during the course of the WTC Unit's prior work with DEP, but I guess you'll get to know us a bit now.

As we discussed, because the City is still involved in so many new and ongoing WTC-related matters, the Law Department and our outside counsel for the WTC litigation, Patton Boggs, decided that due diligence and best practices warrant the use of updated preservation hold notices. We have already disseminated hold notice/directives at OCME (see below) and have a draft pending with the Mayor's Office (which I will forward separately). we think that DEP, as one of the other agencies still substantially involved in WTC matters, should also use an updated preservation hold. Other agencies include OEM, NYPD, DDC, DOB and FDNY.

I agree that it makes no sense to distribute a preservation directive throughout all of DEP. Only a small portion of the agency's 6000 employees are involved in ongoing projects, such as senior staff and some other personnel in the Bureau of Environmental Compliance, Legal Affairs and the Commissioner's Office.

Please review and let me know your thoughts as to the form of the preservation hold and recipients. It may be helpful for me to send you and Frank a list of all the staff we collected from during the evidence collection project at DEP. I look forward to speaking with you again soon.

Sincerely,

Brian

Brian Lieberman
Senior Counsel
WTC Unit
New York City Law Department
100 Church Street
New York, NY 10007

From: Kamelhar, Leslie [mailto:lkamelhar@ocme.nyc.gov]
Sent: Tuesday, August 14, 2007 2:49 PM
To: ALL_OCME_USERS
Cc: Small, Adlai; Lieberman, Brian; Glasband, Elissa
Subject: OCME - World Trade Center Debris Removal Litigation - Document Retention Directive
Importance: High

OCME - World Trade Center Debris Removal Litigation - Document Retention Directive

As we have communicated in the past, the City of New York remains obligated to preserve documents that may concern the on-going litigation relating to the response to the aftermath of the collapse of the World Trade Center ("WTC") buildings following the attacks of September 11, 2001.

Purchase and Remarketing Fund

(a) There is hereby created a fund to be held by the Tender Agent and described as the "2008 Series BB Bonds Purchase and Remarketing Fund." The following Accounts shall be established within the 2008 Series BB Bonds Purchase and Remarketing Fund: (i) the Purchase Account, (ii) the Remarketing Proceeds Account and (iii) the Authority Available Moneys Account. The 2008 Series BB Bonds Purchase and Remarketing Fund shall not be part of the pledge of the Authority contained in the Second General Resolution. Amounts on deposit in the 2008 Series BB Bonds Purchase and Remarketing Fund shall not be commingled with the amounts held in any other Fund or Account under the Second General Resolution or Supplemental Resolution No. 48.

(b) All drawings on the Credit Facility to pay the Purchase Price of Tendered Bonds shall be deposited in the Purchase Account and used only for the payment of the Purchase Price of Tendered Bonds in the manner at the times specified under the heading "Tender of 2008 Series BB Bonds for Purchase".

(c) All amounts received by the Tender Agent from the Remarketing Agent representing the Purchase Price of Tendered Bonds remarketed by the Remarketing Agent shall be deposited in the Remarketing Proceeds Account and shall be used only for the payments of the Purchase Price of Tendered Bonds so remarketed as provided under the heading "Remarketing of 2008 Series BB Bonds" or for the payment of the Facility Provider for Tendered Bonds purchased by it and remarketed.

(d) All other Available Moneys to be applied to the payment of the Purchase Price of Tendered Bonds shall be deposited in the Authority Available Moneys Account and used only for the payment of the Purchase Price of Tendered Bonds in the manner specified under the heading "Tender of 2008 Series BB Bonds for Purchase" or for the payment of the Facility Provider for Tendered Bonds purchased by it.

(e) No moneys provided by the Authority shall be accepted for deposit to the credit of the 2008 Series BB Bonds Purchase and Remarketing Fund, nor shall any such moneys, if deposited by mistake or otherwise, be used for the purchase of Tendered Bonds. Moneys in the 2008 Series BB Bonds Purchase and Remarketing Fund shall be held uninvested and without liability for interest thereon.

Appointment of Remarketing Agents

UBS Securities LLC is hereby appointed as Remarketing Agent for the 2008 Subseries BB-1 Bonds, Merrill Lynch, Pierce, Fenner & Smith Incorporated is hereby appointed as Remarketing Agent for the 2008 Subseries BB-2 Bonds, Goldman, Sachs & Co. is hereby appointed as Remarketing Agent for the 2008 Subseries BB-3 Bonds, Banc of America Securities LLC is hereby appointed as Remarketing Agent for the 2008 Subseries BB-4 Bonds and A.G. Edwards & Sons, Inc. is hereby appointed as Remarketing Agent for the 2008 Subseries BB-5 Bonds.

Powers and Duties of Remarketing Agent

Each Remarketing Agent shall be authorized by law to perform all the duties imposed upon it by Supplemental Resolution No. 48, the applicable Remarketing Agreement and the Credit Facility. Acceptance of the duties and obligations of the Remarketing Agent for 2008 Series BB Bonds hereunder and under the applicable Remarketing Agreement and Credit Facility shall be signified and acknowledged by execution of the Remarketing Agreement. Any Remarketing Agreement shall provide that the Remarketing Agent will, inter alia:

(a) determine the Rates and Rate Periods and give notice of such Rates and Rate Periods in accordance with the terms hereof;

Our outside attorneys and the New York City Law Department have informed OCME that this obligation includes the preservation of all documents and evidence, whether in paper or electronic form, which relate in any way to, among other things, the projects listed below and which may have been generated, created, received, sent, or distributed by OCME or any of its current or former employees. Examples of these projects that we have recently identified include:

(1) The building and rooftop searches at: the Deutsche Bank Building (130 Liberty Plaza), the Millennium Hotel (55 Church Street), 1 Liberty Plaza, 130 Cedar Street, and Fitterman Hall **(collectively the "Building and Rooftop Search Projects")**;

(2) The re-excavation projects at: Haul Road, the Greek Orthodox Church, Liberty Street, and the West Side Highway **(collectively the "Re-Excavation Projects")**; and

(3) The debris sifting projects at: 11 Water Street and the 39th Street Pier in Brooklyn (**collectively the "Sifting Projects")**.

These are only examples of the projects we have identified to date, but other relevant projects will likely arise in the near future. Accordingly, please be advised that you must retain, and that you may not delete, erase, alter or otherwise destroy, any relevant data from your work or personal computers, PDAs, electronic data systems, and any other electronic equipment that you may have used in conjunction with your work on any WTC-related projects.

Documents that must be preserved include: all e-mail messages and files (including both work and personal e-mail accounts), correspondence, drafts of working documents, contracts, agreements, memoranda, reports, personal notes, administrative and computer records, word processing files, spreadsheets, voice mail messages and files, back-up voice mail files, backup e-mail files, deleted e-mails, data files, program files, temporary files, system history files, web site information stored in textual, graphical or audio format, web site log files, cache files, cookies, and data stored on hard drives, CDs, floppy disks, PDAs, servers, backup tapes, and any other electronic media. If you have any doubt as to whether particular data should be preserved, you *must* preserve the data.

To the extent possible, these documents should be kept in the locations in which they are maintained in the regular course of business so that we can properly document the source of each document.

Because we are under a legal obligation to maintain all documents and information regarding the Building and Rooftop Search Projects, the Re-Excavation Projects, and the Sifting Projects (as described above), ***it is critical that no documents or evidence, in paper or electronic form, be deleted, erased, altered, or otherwise destroyed by anyone.*** This policy also applies to any documents you may create in the future that relate to your WTC-related work.

Please do not hesitate to contact me at lkamelhar@ocme.nyc.gov if you have any questions or concerns. Thank you for your anticipated cooperation in this matter.

Leslie C. Kamelhar
Staff Attorney
Office of Chief Medical Examiner
421 East 26 Street – Rm. 1316.D
New York, New York 10016
Phone:212.323.1904
Fax: 212.323.1920

(b) keep such books and records with respect to its duties as Remarketing Agent as shall be consistent with prudent industry practice; and

(c) use its best efforts to remarket Tendered Bonds for which is the Remarketing Agent (including Purchased Bonds and 2008 Series BB Bonds purchased with Available Moneys described in clause (iii) of section (f) under the heading "Tender of 2008 Series BB Bonds for Purchase") in accordance with the Second General Resolution, the terms hereof and the terms of the Remarketing Agreement.

The Remarketing Agreement may contain such other provisions as the Authority deems necessary or advisable.

Change of Remarketing Agent

The Authority may remove a Remarketing Agent at any time upon thirty (30) days' written notice to the Remarketing Agent, the Tender Agent and the Facility Provider and may appoint a successor thereto. In addition, a Remarketing Agent may resign upon thirty (30) days' prior written notice to the Authority, the Facility Provider, the Tender Agent and the Trustee.

Successor Remarketing Agents

(a) Any Person which succeeds to the business of a Remarketing Agent as a whole or substantially as a whole, whether by sale, merger, consolidation or otherwise, shall thereby become vested in all the property, rights and powers of such Remarketing Agent hereunder.

(b) In the event that a Remarketing Agent shall resign, be removed or be dissolved, or if the property or affairs of a Remarketing Agent shall be taken under control of any state or federal court or administrative body because of bankruptcy or insolvency, or for any other reason, the Authority shall appoint or cause the appointment of a successor within thirty (30) days of any such action. If no Event of Default under the Second General Resolution, or an event that, with the giving of notice or lapse of time, or both, would constitute an Event of Default under the Second General Resolution, has occurred and is continuing, the successor Remarketing Agent shall be selected by the Authority.

(c) Each successor Remarketing Agent shall at all times be either a member of the National Association of Securities Dealers, Inc. or registered as a dealer of municipal securities under the Securities Exchange Act of 1934, as amended, and have net capital of at least $25,000,000. The Trustee shall give written notice to the Bondholders, the Facility Provider, Moody's, Fitch and S&P of any resignation, removal or appointment of the Remarketing Agent.

(d) If, at any time and for any reason, there is no entity serving as Remarketing Agent for 2008 Series BB Bonds in a Rate Mode other than the Fixed Rate Mode, the Trustee shall assume the duties of Remarketing Agent solely for the purpose of accepting notices of tender.