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MEMORANDUM

To: All Counsel
From: Laraine Pacheco, Special Master
Date: November 28, 2007
Re: Resolution of Issues Raised About Integrity of the Active Docket with Respect to Certain Cases Applied for by Weitz & Luxenberg

As all parties agree, the integrity of the NYCAL docket is of primary importance.

There is no way to determine whether the defendants' position has merit, either in whole or in part, without a lengthy and expensive proceeding that will, among other things, consume limited judicial resources that are better utilized in moving the docket forward.

Weitz & Luxenberg will isolate and identify all cases from among the 2000 plus cases where the diagnosis of illness has been made independently by a Board Certified pulmonologist, without any reliance on a PFT conducted by a screening company or a B Read undertaken by Dr. Levine. Defendants will review those cases for approval on the Active Docket.

With respect to the balance of the cases, Weitz & Luxenberg has agreed to identify any additional cases from that group that it wishes to have placed on the Active Docket and have those plaintiffs examined by a Board Certified pulmonologist. That physician must administer a new PFT, take a new set of X-rays and make a diagnosis independent of any previous medical records. Because defendants are unable to recommend any B readers that meet with their approval, for this group of cases and this group of cases only, the requirement of a B read shall be waived. As those cases are "re-certified," they shall be placed on the Active Docket, retaining their FIFO order according to their index number.

I form no opinion and see no need to form an opinion or make a recommendation to Justice Freedman with respect to whether any plaintiff seen by either screening company or by Dr. Levine has an illness that would merit inclusion on the Active Docket. That issue has been rendered moot by this directive.