

Congress of the United States

Washington, DC 20515

June 10, 2003

The Honorable George Pataki
Governor
Executive Chamber
State Capitol
Albany, NY 12224

Dear Governor Pataki,

We are writing to you about the volunteers who selflessly risked their lives at the World Trade Center site after the terrorist attacks of September 11, 2001, and who are now experiencing serious health problems.

As the *New York Daily News* of Monday, June 9, 2003, "State Stiffs WTC Angels" (copy enclosed) states, the problems of volunteers who came to New York to help in the aftermath of 9/11 are serious and unaddressed. We are concerned that the State of New York has not, according to the *Daily News*, taken the necessary steps to provide assistance to these volunteers who came to New York to provide assistance to us. We are particularly concerned about the fact that the federal government provided millions of dollars in assistance for the New York State Workers Compensation program, but the State has not taken steps to use it to provide workers compensation for volunteers from New York and those who traveled to New York to help.

As you know the Mount Sinai Center for Occupational and Environmental Medicine has been examining workers from Ground Zero for injuries that occurred from working at the site, and of the 6,300 people examined, approximately 40% have respiratory problems resulting from working at Ground Zero. Of those individuals that they have examined, officials at Mt. Sinai estimate that about 10% screened were volunteers at Ground Zero.

Volunteers like Judy Wolff, a constituent of Representative Ron Kind (D-WI), traveled to New York City as a Red Cross volunteer to serve as a Family Services worker. Upon her return home, she experienced health problems including a persistent cough, bouts with pneumonia, and a weakened immune system. She recently went to New York City to participate in the medical exams that were being conducted by Mt. Sinai for volunteers and workers who have become ill since being at Ground Zero. According to Mrs. Wolff, she was told that she may possibly be ill for at least an additional three years, and that her immune system will be weak during that time. Mrs. Wolff also tested positive for RADS (Reactive Airways Dysfunction Syndrome), and is now using inhalers every day. Because of her chronic health problems, Mrs. Wolff has been unable to work, and her family is experiencing serious financial difficulties. Another volunteer, Richard Coyne of the East Village, who volunteered as an ironworker at Ground Zero and who has been experiencing respiratory problems, applied for workers compensation months ago and has not heard from the State.

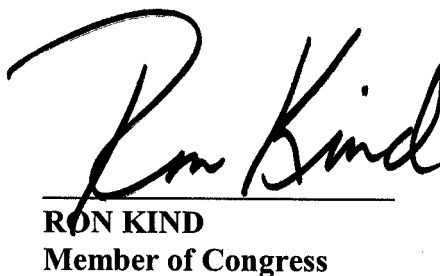
We believe that volunteers like Mrs. Wolff and Mr. Coyne should receive assistance for

their medical needs and assistance for the financial hardships that their illness has caused. We believe that you would agree that it is the least we could and should do. The fastest and easiest way to help these people who helped New York would be to use the funds provided. As the attached memo from the Congressional Research Service states, the funds provided by the federal government could, if New York State acted, be used to provide volunteers like Ms. Wolff with Worker's Compensation for their injuries. We would urge you to take immediate action to ensure that these people receive the help they need and deserve.

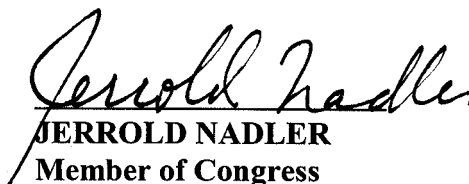
Thank you for your attention in this matter.

Sincerely,

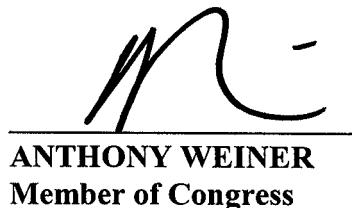

CAROLYN B. MALONEY
Member of Congress

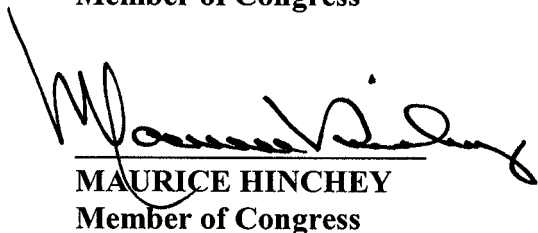

RON KIND
Member of Congress

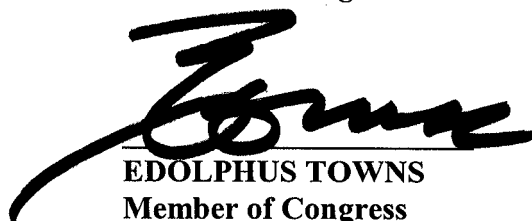

CHARLES RANGEL
Member of Congress


JERROLD NADLER
Member of Congress


STEVE ISRAEL
Member of Congress


ANTHONY WEINER
Member of Congress


MAURICE HINCHEY
Member of Congress


EDOLPHUS TOWNS
Member of Congress

New York Daily News
State stiffens WTC angels
By GREG GITTRICH
DAILY NEWS STAFF WRITER
Monday, June 9th, 2003

The failing health of Judy Wolff is well-documented. She suffers from chest pains, shortness of breath and a weakened immune system. She has battled pneumonia repeatedly.

The moment the 46-year-old Wisconsin mom began feeling ill also is not in dispute. It was three days before she returned home from volunteering at Ground Zero.

"I have always been the one to help others," said Wolff, who handed out Red Cross vouchers near Ground Zero in October 2001. "Where is the help now that I need it?"

Hundreds of volunteers who gave all they could to New York after the Sept. 11 attacks are being shut out of state programs designed to cover medical bills and lost wages of those hurt at Ground Zero.

Although Congress gave New York \$150 million in emergency aid to pay for workers' compensation, the state has used only \$44 million of the money.

Confusing technicalities have prevented volunteers from being eligible for most of the funds - and not a cent of the \$25 million earmarked to help volunteers has been spent, the Daily News has learned.

"Here is one instance where Washington gave New York the money and it seems like New York is not using it to help all the people it should and could," said Rep. Carolyn Maloney (D-N.Y.).

Congressional researchers put out a memo last week concluding New York's workers' compensation law suggests that most of the federal funds cannot be used "to benefit volunteers."

The three-page document said, "In general, volunteers are not entitled to workers' compensation because they are not deemed to be employees."

In extreme cases, like Wolff's, the lack of financial assistance has forced volunteers to borrow thousands of dollars to pay mounting medical bills.

State Sen. Guy Velella (R-Bronx) introduced a bill in April to amend state law so volunteers could get help for specific medical conditions. A similar bill has been proposed in the Assembly.

Both have yet to win widespread support.

Fraction of aid spent

Congress gave New York the federal aid about four months after the twin towers collapsed. The money was divided essentially into two programs.

The state got \$125 million to process workers' compensation claims related to the attacks.

As of last week, \$44 million of that money had been spent, said Jon Sullivan, spokesman for the New York State Workers' Compensation Board.

Sullivan said the state also got \$25 million specifically to cover lost wages and medical benefits of volunteers. None of that money has been paid out.

Sullivan defended the state, noting the workers' compensation board has spent \$44 million resolving nearly 90% of the 7,335 Ground Zero-related claims it has handled so far. Among those are 2,093 death claims.

He said the board had gotten only a "small number" of inquiries from volunteers and had "sent acknowledgment letters" to those people.

But Scottie Hill, a social worker at Mount Sinai Medical Center, criticized the state, insisting that volunteers she has dealt with have yet to even be given case numbers - so their claims technically don't exist.

"Every volunteer that I've assisted has not received payment or authorization for medical coverage," Hill said. "It's really a problem. They need, need this medical coverage."

Sen. Hillary Clinton (D-N.Y.), who helped secure the federal money, said she has been pressing the state board to get volunteers more assistance.

On Friday, she said her office "has been assured that volunteers and workers from out of state can apply for workers' compensation."

Without workers' compensation, little help exists for the volunteers, who fed weary firefighters, gave clothing to the displaced and risked their lives searching for the dead.

Their plight can be seen daily at Mount Sinai, which is screening World Trade Center volunteers and workers for health problems as part of a federally funded program.

Some 6,300 people had been seen as of last week. About 40% were found to have respiratory problems, including asthma and bronchitis. More than 50% suffer from posttraumatic stress syndrome.

"These are very high rates," said Dr. Stephen Levin, the occupational health specialist who oversees the program.

Mount Sinai officials estimated that about 10% of the people screened were volunteers around Ground Zero.

The hospital also has been giving free medical and mental health treatment to a couple of hundred volunteers and workers, using private funding. But a \$1 million grant from Bear Stearns is scheduled to run out this year.

An agonizing wait

Richard Coyne, 56, of the East Village said he hopes his workers' compensation claim will be approved by then.

Coyne speaks about his time volunteering as an ironworker at Ground Zero with a fragile voice. He often pauses and coughs uncontrollably.

"It feels like George Foreman is trying to punch his way through my lungs and out of my chest," he complained.

With help from Mount Sinai, Coyne said, he sent his workers' compensation forms to the state this year.

"It's been months," he said. "Nothing."



Memorandum

June 3, 2003

TO: Hon. Carolyn B. Maloney
Attention: Benjamin Chevat

FROM: Jon O. Shimabukuro
Legislative Attorney
American Law Division

SUBJECT: Workers' Compensation and Volunteers at the World Trade Center Site

This memorandum responds to your question concerning the availability of workers' compensation for volunteers who performed services at the World Trade Center site following the September 11, 2001 terrorist attacks. In particular, you asked about the possible extension of workers' compensation benefits to World Trade Center volunteers under the Department of Defense and Emergency Supplemental Appropriations For Recovery From and Response to Terrorist Attacks on the United States Act ("the Act").¹ Although the Act provided \$125,000,000 to the New York State Workers Compensation Review Board for the processing of claims related to the terrorist attacks, the general lack of coverage for volunteers under New York's workers' compensation statute suggests that the funds are probably not available to benefit volunteers.²

In general, volunteers are not entitled to workers' compensation because they are not deemed to be employees.³ N.Y. Workers' Comp. Law § 2 defines an "employee" to mean "a person engaged in one of the occupations enumerated in section three or who is in the service of an employer whose principal business is that of carrying on or conducting hazardous employment upon the premises or at the plant, or in the course of his employment

¹ Pub. L. No. 107-117, 115 Stat. 2230 (2002).

² The Department of Defense and Emergency Supplemental Appropriations For Recovery From and Response to Terrorist Attacks on the United States Act provided a total of \$175,000,000 for workers' compensation programs. \$125,000,000 was designated to the New York State Workers Compensation Review Board. An additional \$50,000,000 was designated to the New York State Uninsured Employers Fund.

³ Jack B. Hood et al., *Workers' Compensation and Employee Protection Laws* 48 (1999).

away from the plant of his employer . . .”⁴ Although the term “employee” is further defined to include some volunteers, it does not appear that these volunteers resemble the volunteers at the World Trade Center site. § 2 provides that the term “employee” shall also mean “civil defense volunteers who are personnel of volunteer agencies sponsored or authorized by a local office under regulations of the civil defense commission.”⁵ Civil defense volunteers include those members of the civil defense forces “under the provisions of the state defense emergency act who are volunteer persons serving without compensation in the personnel of volunteer agencies.”⁶ Civil defense services appear to involve “the defense of the people of [New York] . . . and the safeguarding of property against attack.”⁷

Under New York law, two other types of volunteers appear to be eligible for workers’ compensation. The Volunteer Ambulance Workers’ Benefit Law establishes a system of benefits for volunteer ambulance workers, and provides for the administration of such system by the Workers’ Compensation Board and its chairman.⁸ Volunteer ambulance workers who die from the effects of injury in the line of duty, and volunteer ambulance workers who are injured in the line of duty may receive benefits in accordance with the Volunteer Ambulance Workers’ Benefit Law. The Volunteer Firefighters’ Benefit Law establishes a similar compensation system for volunteer firefighters.⁹ Volunteer firefighters who die from injuries incurred in the line of duty, and those who are injured in the line of duty may receive benefits in accordance with that law.

Because volunteer ambulance workers and firefighters are entitled to workers’ compensation, and it seems likely that they provided services at the World Trade Center site, they probably received compensation. Funds provided under the Act were arguably used in the processing of their claims. However, because other volunteers do not appear to be eligible for workers compensation under New York law, it would seem that they did not benefit from the Act. Other recent federal legislation that provided funds for monitoring the health of emergency services personnel following the September 11 attacks does appear to apply to volunteers, but is limited to “baseline and follow-up screening and clinical examinations, long-term health monitoring and analysis.”¹⁰

Legislation that would provide workers’ compensation to World Trade Center volunteers has been introduced in the New York legislature. Senate Bill 4693, the Workers’ Compensation Act for World Trade Center Volunteer Rescue Workers, would recognize

⁴ N.Y. Workers’ Comp. Law § 3 identifies various occupations for which compensation is available for injuries or death incurred by employees.

⁵ N.Y. Workers’ Comp. Law § 2.

⁶ N.Y. Workers’ Comp. Law § 302.

⁷ N.Y. Workers’ Comp. Law § 301.

⁸ N.Y. Vol. Ambul. Workers’ Ben. Law § 1 *et seq.*

⁹ N.Y. Vol. Fire. Ben. Law § 1 *et seq.*

¹⁰ 2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States, Pub. L. No. 107-206, 116 Stat. 820, 871 (2002).

volunteer rescue workers "to be in the special employment of the city of New York."¹¹ Workers' compensation benefits would be provided for "disability or death proximately caused by injury, disease, or infection sustained or incurred in the course of such special employment without regard to fault as to cause of injury, disease, or infection."¹² S.B. 4693 defines a "World Trade Center volunteer rescue worker" to include "all persons who rendered service under the direction and control of an authorized rescue entity on or after the September eleventh, two thousand one, terrorist attack on the World Trade Center through and including September eighteenth, two thousand one, at or in the vicinity thereof, without remuneration or compensation."¹³

Funds made available under the Act would seem to be available to benefit volunteers if S.B. 4693 was passed. If World Trade Center volunteer rescue workers were entitled to workers' compensation, the processing of such workers' claims would probably be assisted by the \$125,000,000 provided by the Act.

¹¹ NY S.B. 4693, § 1 (2003).

¹² *Id.*

¹³ *Id.*