

Statement by the District Attorney The Deutsche Bank Fire

This Statement is made pursuant to, and is incorporated as part of, the Non-Prosecution Agreement, dated December 22, 2008, between the New York County District Attorney's Office (“DANY”) and Bovis Lend Lease LMB, Inc. (“Bovis”). It is also made pursuant to and incorporated as part of the Agreement, dated December 22, 2008, between DANY and the City of New York.

BACKGROUND

The Deutsche Bank building, located at 130 Liberty Street, is at the south central end of the former World Trade Center site. The Deutsche Bank building was once a 41-story commercial office building that housed the bank’s principal business offices in New York City.

The terrorist attack on September 11, 2001, caused the South Tower of the World Trade Center to collapse onto the Deutsche Bank building, creating a 15-story gash in the building’s Liberty Street side. The collapse filled the building with debris, asbestos, World Trade Center dust, and other hazardous substances. The building’s sprinkler system was permanently disabled, leaving the building’s dry standpipe system as the only means of bringing water into the building for fire fighting.

In August 2004, the Deutsche Bank building was purchased by the Lower Manhattan Development Corporation (“LMDC”), subsidiary of the Empire State Development Corporation, to facilitate the dismantling of the building so that reconstruction of the site could commence. In September 2005, the LMDC proposed a

deconstruction plan that required the simultaneous abatement of toxic substances and demolition of the building. Bovis, a multi-national general contracting construction company, was selected by the LMDC to be the Construction Manager. Bovis, in turn, selected a subcontractor, The John Galt Corp. (“Galt”), to do the deconstruction and abatement of the Deutsche Bank building; the selection of Galt was approved by the LMDC.

Bovis and Galt created an Implementation Plan to define the methods and means to effectuate the LMDC’s Deconstruction Plan. The Deconstruction and Implementation Plans were unique in that they required simultaneous demolition and abatement of the building with a four-story buffer zone separating the floors undergoing demolition from the floors undergoing abatement. This plan to simultaneously deconstruct and abate a 41-story high-rise building in a dense residential and commercial neighborhood had never been done before in New York City.

As part of the plan, Bovis and Galt agreed, among other things: (1) to comply with all applicable laws and statutes; (2) to perform daily inspections to ensure that the work did not endanger the employees working there or the general public; (3) to maintain the building’s standpipe so that it would be functioning and available at all times during the project; (4) to inform the New York City Fire Department (“FDNY”) of any change in the Implementation Plan; (5) to coordinate their scope of work with the FDNY; (6) to prepare a fire plan that complied with all FDNY and New York City Department of Buildings (“DOB”) codes; (7) to call 911 to report any fire in the building; and (8) to prohibit smoking in the work area.

Additionally, pursuant to the Rules and Regulations of the City of New York (“NYCRR”) and the New York City Administrative Code (“NYCAC”), Bovis and Galt specifically were required to inspect, maintain, and protect the building’s standpipe and to maintain unobstructed egress from the building. By law, Bovis was required to employ a full-time Site Safety Manager to insure compliance with its various safety obligations. Although Galt also agreed contractually to hire a Site Safety Manager, in fact, none was ever employed by Galt. Instead, several Galt managers, including Galt’s Directors of Abatement and Demolition took on this responsibility by default.

As with all construction or deconstruction projects in New York City, a number of City agencies had regulatory responsibilities and obligations to enforce compliance by Bovis and Galt with these commitments, in order to oversee the safety of the project. These agencies included the FDNY and the DOB. The City agencies’ responsibilities and obligations included, among others: (1) to inspect the building’s standpipe to enforce compliance with the requirement that it was being maintained in a state of readiness and in good working order at all times; (2) to inspect the building’s egress and enforce compliance with the requirement that egress was clearly marked, visible and maintained free of obstructions at all times; (3) to perform inspections of the site at least every 15 days for the purpose of detecting violations of law, fire hazards, or other conditions which represented hazards to workers or the public; and (4) to enforce compliance with requirements that there be no smoking. The City attempted to satisfy these obligations by staffing the site with inspectors. City inspectors were present at the site every day.

From the outset, the potential for fire at the building was recognized by City agencies, Bovis and Galt. Bovis’ risk assessment plan for the building recognized that

the risk of fire was substantial. According to the abatement and deconstruction plans, after abatement of each floor was complete, acetylene cutting torches were to be used to dismantle the remaining steel and concrete superstructure. Although there was a buffer between the floors undergoing abatement and deconstruction, the risk that fires would result from falling “slag” (superheated semi-liquid metal reduction that separates from its ore during burning) caused by the use of the torches was significant and recognized. As a result, and at the insistence of the FDNY, Bovis and Galt were required to notify the FDNY of any fire that took place during the project by calling 911. In addition, the FDNY was required by its own rules to inspect the building at least every 15 days.

In fact, a series of fires did occur in the Deutsche Bank building in the months prior to August 18, 2007. None of these fires were reported to the FDNY through 911 by Bovis, Galt, the LMDC or any individual workers. Furthermore, the FDNY did not learn of these fires during their required 15-day inspections, because those inspections simply never took place.

On June 11, 2007, slag was observed dripping from the 32nd floor to the 31st floor, and burning slag was observed by a DOB inspector. Although workers extinguished the fire, neither Galt nor Bovis employees called 911 to report it to the FDNY. On June 13, 2007, burning plastic was observed in the building. Again, Bovis did not report the incident to the FDNY. However, Bovis was reminded by the LMDC about its obligations to maintain a safe work environment.

On June 25, 2007, a small fire occurred on the 29th floor. Once again, the fire was reported to Bovis as well as to the DOB and the LMDC, but no one notified the FDNY by calling 911. On the same day, as a result of the fire, a DOB inspector alerted Bovis’

Site Safety Manager that the standpipe had been capped too far below the demolition floors. By law, the standpipe should have been capped no more than one floor below the floor being deconstructed, which at that time was the 31st floor. Instead, it had been capped at the 28th floor, one floor below the fire. Thus, Bovis was required to extend the standpipe back up to the 31st floor. Also on July 25, 2007, a small fire started in the southeast corner of the 22nd floor, a result of sparks dropping from burning operations on the roof of the building. After the incident, Galt was told to increase its fire safety precautions, but no report of the fire was made through 911 to the FDNY.

Another fire started the following day, July 26, 2007, in nearly the same location as the day before. Again, both Bovis and Galt were notified and were urged to increase the number of fire guards in order to identify and extinguish fires in the building quickly, but no report was made to 911. On July 31, 2007, a small piece of burning slag fell from the 28th floor to the outside netting affixed to the scaffolding on the 15th floor. Although the resulting fire was extinguished, no call to 911 was made to alert the FDNY. (Also on that date, a steel pipe fell from the 28th floor to the 22nd floor of the building.)

On August 3, 2007, a shower of sparks flew down from the 28th floor to the 24th floor. Again, Bovis and Galt were made aware of the resulting fire and were urged to implement measures to safeguard the building against fire. Later that day, the LMDC was notified by their construction consultant, URS, that Bovis should no longer be trusted to ensure building safety. The LMDC was notified that the building was “an accident waiting to happen” due to the lack of Bovis’ vigilance.

On August 9, 2007, burning slag fell from the 27th floor to the 20th floor and remained ignited near a column adjacent to the hoist on that floor. Bovis, Galt and the

LMDC were notified -- in fact, a photo had been taken of the fire -- but no notification was made to the FDNY by calling 911. The next day, August 10, 2007, another slag fire occurred in the southwest corner of the 23rd floor. There were no fire guards or fire extinguishers on that floor. Again, the FDNY was never notified of the fire.

AUGUST 18, 2007: THE FIRE

On August 18, 2007, a massive fire raged through nine stories of the Deutsche Bank building. The fire was caused by a cigarette discarded in the south vestibule on the 17th floor. The first person to identify the fire was a maintenance worker. She was on the 18th floor at approximately 3:25 p.m. when she smelled something burning and observed a very light haze of smoke.

At approximately 3:30 p.m., an unidentified civilian notified a member of the Engine 10/Ladder 10 firehouse (the “10/10 Firehouse”), which is located across the street from the Deutsche Bank building, of the fire. It took approximately 30 seconds for the first two units from the 10/10 Firehouse to assemble and depart the firehouse. The FDNY fire dispatcher was first notified about the fire at 3:36 p.m. Engine Companies 10 and 4, Ladder Companies 10 and 15, and Battalion Chief 1 were assigned to the fire at 3:37 p.m. Within the next five minutes, numerous additional units, including Engine Company 24, were dispatched to the fire. Other units were added as the fire grew out of control.

Engine Company 10 was the first to enter the building at 3:43 p.m. Before doing so, the unit’s Lieutenant was informed by unidentified individuals that the fire was on the 17th floor, that the standpipe was a dry system, and that it was operational. In accordance

with FDNY procedure, a staging area was established two floors below the reported fire by members of Engine 10 who took the north hoist to the 15th floor (the south hoist was already engulfed in flames). Once firefighting operations were underway, representatives of the contractors inaccurately advised several Fire officials in charge of firefighting efforts that the standpipe was in working order.

Ladder Company 10 and Ladder Company 15 followed shortly thereafter. As they ascended up the building in the hoist, the Lieutenant from Ladder Company 10 asked the civilian hoist operator whether there were any civilians inside the building. The hoist operator responded that there could still be workers in the building.

Once inside, firefighters quickly assessed the structural framework of the building. The building was a steel and concrete structure with two independent stairwells in the center “core” area of each floor, with stairwell “A” offset to the south and stairwell “B” offset to the north. Both stairwells leading from the 15th floor to the 16th floor had been sealed because of ongoing asbestos abatement. Thus, the firefighters’ ability to ascend was completely blocked. For the next 20 minutes, operations within the building were consumed with breaching the barriers leading up to the 16th floor. The first barrier was breached at approximately 4:04 p.m. by members of Ladder Companies 8 and 10. By the time the first barrier was breached, the fire had raged unchecked for approximately 21 minutes since the first firefighters had entered the building.

Meanwhile, conditions in the building deteriorated rapidly as smoke and fire quickly descended downward from the floors on fire. The fire, which had first been identified on the 17th floor at 3:36 p.m., had descended to the 16th floor by 3:54 p.m. and had reached the 15th floor by 4:06 p.m. Thick, choking smoke reduced visibility to near

zero, disorienting many of the firefighters and chasing others down to the 14th floor. The 14th floor provided only a brief respite; before long it too was filled with impenetrable black smoke. By 4:21 p.m., the fire itself had reached the 14th floor. Firefighters attempted to escape the deadly conditions by descending below the 14th floor – but their escape was blocked by the wooden planking forming the containment barriers in both stairwells. With no water (see below), and further downward egress prevented by additional stairwell barricades, it became a chaotic situation.

The first “Mayday” transmission was made at 4:14 p.m. by Engine Company 10 Control. It was the first of 14 “Mayday” and 19 “Urgent” calls that were transmitted over the next 63 minutes. Rescue Companies, specially trained to assist other firefighters in distress, were overwhelmed – first by the number of firefighters in distress and then by the conditions themselves, as even their elite search and rescue members became lost in the increasingly dangerous, smoky conditions.

NO WATER IS AVAILABLE TO FIGHT THE FIRE

At 3:43 p.m., seven minutes after the first alarm was broadcast by the fire dispatcher, the Engine Company 7 Chauffeur, whose job it was to get water into the building’s standpipe system, was parked next to a hydrant on Greenwich Street. Within a minute or two, he had hooked up to the hydrant, pumped water into his fire truck, and stretched a hose line from the fire truck to the Siamese connection of the Deutsche Bank building’s standpipe. Accordingly, water was flowing into the building by approximately 3:45 p.m.

At approximately 3:56 p.m., the Engine Company 10 Chauffer charged a second line on the Albany Street (south) side of the building.¹ However, it was not long before both engine company chauffeurs realized that something was amiss. Engine Company 7 Chauffer was pumping 700 gallons of water per minute at 200 pounds of pressure. Under those circumstances, the standpipe system should have been fully charged in no more than three minutes. Still, the standpipe system failed to become fully charged and no water was reaching firefighters trying to fight the blaze on the upper floors.

As a result, between 4:10 p.m. and 4:41 p.m., numerous firefighters created an exterior riser to get water onto the fire. They did this by using the hoist and physically hauling the hose line up to the 14th Floor Stairwell B landing. The hose line was charged with water at approximately 4:44 p.m., approximately 61 minutes after firefighters first entered the building. This was the first time water was available to fight the fire and alleviate the deadly smoke conditions.

FIREFIGHTERS BEDDIA AND GRAFFAGNINO

Members of Engine 24, including Firefighters Joseph Graffagnino and Robert Beddia, arrived at the building at approximately 3:49 p.m. They entered the building via the exterior hoist with Squad 1 and proceeded to the 15th floor of the building a few minutes after 4:00 p.m. After hearing radio transmissions of water problems, members of Engine 24 entered Stairwell B looking for a serviceable water connection; the firefighters did not know that the connections to the B Stairwell standpipe had been removed.²

¹ The third Siamese connection on the corner of Albany and Washington Streets and was accessed later during fire fighting operations.

² In fact, the FDNY CIDS (Critical Information Dispatch System) card which contains building specific conditions relayed by the fire dispatcher to responding firefighter indicated that the Deutsche Bank building

Although the firefighters were able to connect hose line to the standpipe riser in Stairwell A, no water was being pumped through the standpipe to the upper floors.

Consequently, members of Engine 24 joined with other firefighters gathered in the 14th floor vestibule to run an exterior hose line up the side of the building. Smoke conditions gradually worsened on the sealed 14th floor as firefighters raced to complete the exterior riser and bring water into the building.

The exterior riser was completed and charged with water at approximately 4:44 p.m. Members of Engine Company 24 immediately took the charged hose line to the landing in the B stairwell between the 14th and 15th floors. Engine Company 24 Lieutenant (“24 Lieutenant”) advanced onto the 15th floor, but he was soon overcome by heat and smoke. Lost and disoriented in the pitch black conditions, 24 Lieutenant broadcast a Mayday transmission and attempted to exit the building.

A few minutes later, the remaining members of Engine 24, including Graffagnino and Beddia, decided to retreat from the intense smoke and heat of the 15th floor landing. Beddia was working the nozzle with Engine Company 24 Backup (“24 Backup”) directly behind him. Graffagnino was working the control position, keeping the hose from getting entangled. As the 24 Backup turned to descend the stairs, he observed Graffagnino gasping for air behind him, in the stairwell between the 14th and 15th floors. Graffagnino was experiencing oxygen-deprivation and was unable to comply with 24 Backup’s pleas to crouch to the floor to get under the smoke. 24 Backup attempted to pull Graffagnino down, but 24 Backup slipped and fell, his hand landing on a garden hose that had been used in the abatement process, which 24 Backup previously had seen

was a Hazmat building, that its sprinkler system was inoperable and that the only functioning standpipe was located in Stairwell A. Unfortunately, not all responding firefighters had access to this information.

leading to the outside hoist. Knowing that the only way to save Graffagnino and Beddia would be to reach the hoist and get assistance, 24 Backup followed the garden hose through the dense smoke to the hoist landing. Along the way, 24 Backup gave the following Mayday transmission: “There are two members on the 14th floor, out of air ... at the stairwell... gonna make some noise by the entrance.”

By 4:53 p.m., both 24 Lieutenant and 24 Backup had reached the 14th floor hoist area, where a number of rescue firefighters were staging. Firefighters from Rescue Company 1 reentered the 14th floor in search of Graffagnino and Beddia. Both were found unconscious shortly thereafter on the 14th floor.

Firefighters Beddia and Graffagnino died as a result of their injuries sustained fighting the fire at the Deutsche Bank building. Beddia was 53-years-old; Graffagnino was 33. In addition to the deaths of Graffagnino and Beddia, 105 other firefighters suffered a myriad of other injuries.

THE FAILURE TO MAINTAIN THE STANDPIPE

The investigation has concluded that the failure to get water on the fire in a timely fashion contributed to the conditions that led to the deaths of Firefighters Graffagnino and Beddia. This failure resulted from the dismantling of the standpipe system in the basement of the Deutsche Bank building at least eight months before the fatal fire.

The purpose of a standpipe is to transport water from a local hydrant, through an FDNY fire truck from which it gathers pressure, then to be pumped vertically through a building to a specific floor as needed by the FDNY to fight a fire. Firefighters connect their hoses to the standpipe connection on that floor.

The Deutsche Bank building was equipped with a dry standpipe system.³ The system attached to three operable Siamese connections in the building's Level A cellar (the basement had two levels: the upper level was denominated Level A; the lower level was denominated Level B). One connection was located in the building's northeast quadrant (on Greenwich Street approximately 40 feet south of Liberty Street); the other two connections were in the southern portion of the cellar along the Albany Street side of the building. From these connections, the standpipe ran along the cellar ceiling into the building's two stairwells, stairwell A and stairwell B. One pipe rose vertically in each stairwell. Contractors installed a two-inch copper pipe in the B stairwell riser to provide water to abatement and deconstruction operations. Thus, the standpipe riser in the A stairwell was intended to be preserved solely for firefighting operations. As noted, the building's sprinkler system had been irreparably damaged during the terrorist attacks of September 11, 2001. The absence of a functioning sprinkler dramatically increased the importance of maintaining the standpipe in proper working order.

The standpipe system failed on August 18, 2007, because there were three breaches in the system in the basement. Two of the breaches were at either end of a 42-foot gap in the standpipe running north - south in the northeast quadrant of the basement along the Greenwich Street side of the building. The third breach occurred at an elbow joint in the northwest quadrant of the building.

On the day of the fire, the standpipe system was charged promptly by experienced firefighters at two Siamese connections outside of the building. Water flowing through the system, however, simply dumped into the cellar from the 42-foot gap in the standpipe

³ A dry standpipe system's pipes are "dry" until it is charged with water by connecting a water source (e.g., a hydrant) to an outside Siamese connection to risers within the building.

in the basement. As a result, no water reached the vertical riser in stairwell A. If the standpipe had been working properly, water would have flowed through the vertical riser and would have been accessed by firefighters. If water had been accessible, it would have been sufficient to dissipate the toxic smoke and extinguish the fire.

The elbow joint breach occurred during firefighting efforts and after Firefighters Beddia and Graffagnino had been removed from the building. A significant volume of water had accumulated in the cellar as a result of the 42-foot gap in the standpipe in the basement, and concern began to mount that the rising water could pose an electrical threat. A firefighter from the Special Operations Command was dispatched to the building to pump the water out of the cellar. Approximately one hour after Graffagnino and Beddia had been removed from the building, the Special Operations firefighter observed the standpipe elbow burst and water stream out from that breach.

CONSEQUENCES OF A LACK OF WATER

It is axiomatic that water is critical to firefighting operations. Nearly everything that firefighters do in fighting a fire in a building is based on getting access to water. Fire spreads in the absence of water, and smoke and heat conditions grow worse.

Conversely, when water is applied, smoke and heat dissipate and fire is extinguished.

The critical need to have access to water is magnified in a high-rise building undergoing deconstruction and decontamination. Because of the density of New York City, high-rise buildings cannot be demolished with explosive charges. Rather, they must be dismantled floor by floor, necessitating the use of cutting torches. Cutting structural

steel with acetylene torches is a significant fire hazard. So too is the presence of flammable construction materials utilized in the deconstruction process.

When asbestos abatement is added to the mix, the potential for fire increases exponentially. Abatement requires the construction of isolation barriers to separate, contain, and seal the areas undergoing abatement from other areas within a building that are not going through that process. The barriers constructed within the stairwells on containment floors at the Deutsche Bank building were horizontal barriers consisting of plywood and steel framing covering the stairwell and supported by 2 x 3 wooden braces. These structures contained a hinged escape hatch that opened upward. The barriers were then covered with six millimeter plastic sheeting and sealed with tape, glue and foam.

The barriers, as constructed, were different than those described in the Implementation Plan. In the Implementation Plan, the barriers to the containment chambers were to be walls with “kick-out” panels that would be accessible to first responders or workers who had to evacuate in an emergency. The fact that the barriers as constructed were horizontal (like flooring) rather than vertical (like walls) significantly contributed to the dangerous conditions that developed during the fire.

These barriers delayed firefighters’ attack on the fire above the 15th floor, and prevented retreat below the 14th floor. Firefighters entering the building had no idea that horizontal containment barriers existed or how they had been constructed. In the smoky conditions that developed, they had great difficulty breaking through the sealed plastic sheeting and the plywood covering the stairwells. Moreover, numerous firefighters were trapped on the 14th floor between the stairwell containment barriers and the rapidly

descending fire. All of these conditions made it even more imperative that water be accessible.

On August 18, 2007, firefighting operations at the Deutsche Bank building were completely crippled by the failure to deliver water to the upper floors promptly. The delay in getting water into the building allowed the fire to burn unchecked and out of control for approximately one hour longer than it should have. The delay allowed the fire to drop down three floors, from the 17th floor to the 14th floor, filling each floor with unbearable heat and acrid, toxic smoke. A properly functioning standpipe was the only means to deliver water rapidly to the firefighters in time for them to control the blaze.

A. The standpipe is breached in the basement

The failure to get water up through the standpipe to the firefighters was caused by a critical breach in the standpipe system in the basement of the building. This breach went undetected for more than eight months, despite the requirements that the contractors maintain the standpipe, despite the presence of site safety personnel whose job it was to make sure the standpipe was functional, and despite the City's obligation to inspect, including the duty on the part of the FDNY to inspect at least every 15 days. The failure to maintain the building's standpipe in proper working order contributed to the conditions that led to the deaths of Firefighters Graffagnino and Beddia.

The Deutsche Bank building deconstruction and decontamination plans called for groups of floors to be abated completely before they were deconstructed. While Galt and Bovis were responsible for thoroughly abating floors, the contractors could not proceed to the deconstruction stage without approval from the environmental regulators, made up

of representatives from the DEP, the New York State Department of Labor (“DOL”), and the United States Environmental Protection Agency (“EPA”). The environmental regulators maintained exacting standards for post-abatement cleanliness; virtually any amount of dust or debris would result in regulatory disapproval and, consequently, exhaustive re-cleaning of the floor. The cycle would repeat itself until the floor satisfied the standards of the regulators. This system, however, resulted in delays, which increased contractor costs. Before long, the environmental regulators and the contractors were at odds.

Asbestos removal began in level A of the basement in the summer of 2006. Pursuant to the Implementation Plan, Bovis and Galt had three options in abating non-porous items, such as basement pipes: (1) they could be cleaned and remain in place, to be inspected by the environmental regulators; (2) they could be cleaned and disposed of as conventional construction waste; or (3) they could be disposed of as asbestos waste without being cleaned. The first option was the most time consuming and expensive; it subjected the items to exhaustive cleaning, regulatory inspection and, as was often the case, re-cleaning as required by the regulators. The third option was the least time consuming and expensive; it required neither cleaning nor inspection. The Implementation Plan made clear that, “The option of cleaning non-porous materials to a visual cleanliness standard or disposing of them as asbestos shall be at the discretion of the on-site abatement supervisor.”

When abatement began in the basement, the ceiling included a multitude of different pipes stretching throughout the cellar and beyond. Nonetheless, it was commonly known among asbestos supervisors that there were certain “untouchable

pipes,” one of which was the building’s standpipe. Despite the assemblage of piping, the standpipe itself was distinguishable; it was a large, heavy pipe, connected in sections by red clamps. In at least three locations, the standpipe led to an exterior wall, where it coupled with a Siamese connection. In addition, the standpipe’s path could be identified from the building’s blueprints, copies of which were maintained by, or accessible to Bovis, Galt and the City.

As work began in the basement, a Galt foreman identified the standpipe and instructed his workers that the pipe needed to be protected. At the start of each workday, Galt’s foreman and Galt’s Director of Abatement, would decide which pipes in the basement would be removed and which would be cleaned and left standing.

Accordingly, in the early stages of the basement abatement operation, walls and pipes were removed in such a way as to ensure that the standpipe would be protected.

But pipe cleaning in the basement was an arduous and lengthy process. It required that pipes be washed and then scrubbed with a variety of different brushes. Because the basement was damp, there was a great deal of rust on many of the pipes, including the standpipe and the hangers that supported it. Despite that, everyone working in the basement knew that the pipes had to be completely clean if they were to pass regulatory inspection. Even then, satisfying the regulators’ formidable cleanliness standard was hardly guaranteed, and any item left in the basement increased the chances that the entire floor would fail inspection and require re-cleaning. Behind schedule and with manpower costs exceeding expectations, Galt supervisors decided to shift the project’s focus from cleaning pipes to removing them.

The standpipe was particularly problematic to clean. It was held by circular hangers that were attached to rods hanging vertically at intervals from the ceiling. The only way to clean the rods and hangers (and the bolts and screws holding them together) was to use small, wire hand brushes. Abatement workers cleaned the pipe for weeks, closely supervised by Galt bosses, who made it clear to the workers that they needed to work faster. Galt's abatement director personally inspected the cleaning of the standpipe, scrubbing it with a small brush and examining the hangers that held it to the ceiling.

To expedite the process, in or about fall of 2006, Galt supervisors decided to remove the most troubling portions of the problem. They sawed off the hanging rods that supported the standpipe within inches of the ceiling. It was a decision with deadly consequences: without proper support, a large portion of the standpipe broke free and crashed to the ground. Another large portion also tore loose and hung semi-suspended by the remaining clamps.

The sound of the large, steel pipe crashing to the ground reverberated throughout the lower parts of the Deutsche Bank building and soon drew a crowd to the basement. Galt's foreman, Salvatore DePaola, its Director of Abatement, Mitchell Alvo, and Bovis' Site Safety Manager, Jeffrey Melofchik, gathered at the foot of the broken standpipe. The decision was made to disconnect the precariously hanging section and remove it from the building along with the section that initially had fallen to the ground. As a result, and under the direction of DePaola and Alvo, workers cut the two sections of pipe into smaller pieces, which were treated as asbestos containing material, bagged and discarded. The open ends of the standpipe then were sealed with tape and glue.

The removal of the two sections resulted in a gaping, 42-foot breach in the standpipe. Once the ends were sealed, basement abatement continued uninterrupted. The broken standpipe was neither repaired nor reported by those who knew, or should have known, that the building was now defenseless against the threat of significant fire. From in or about the fall of 2006 to August 18, 2007, the standpipe remained inoperable because of the 42-foot-long breach.

The basement abatement was completed by the end of December 2006. By that time, many of the basement pipes had been removed. As a result, what was once an intricate web of intermingled piping had been reduced to a handful of pipes, one of which was the breached standpipe. Indeed, now that many of the other pipes had been removed, the breach in the standpipe was visible to anyone curious enough to look up. The fact is that no one did.

B. The failure to detect the breach in the standpipe

Testing the standpipe to determine its functionality was feasible long before the fire that killed Firefighters Beddia and Graffagnino. In fact, in the spring of 2006, Bovis' then-Site Superintendent appreciated the risk of abating and deconstructing a 41-story building and determined that the standpipe's viability had to be confirmed. Armed with the same building diagrams available to everyone working on the project, this Site Superintendent enlisted the aid of another Bovis employee, an experienced mechanical engineer, and the two men traced the standpipe from the roof, down through the building's floors (deconstruction not having begun), and throughout the basement to ensure that there were no visible breaches in the system. None were found, but the Site

Superintendent still insisted on pressure testing the standpipe system, as an additional safeguard.⁴ Over the strenuous objections of Alvo, and despite the threat to suspend work at the site indefinitely, the Site Superintendent ultimately was allowed to pressure test the standpipe; the standpipe passed the test at that time.

Soon after the pressure test, Bovis replaced this Site Superintendent with another, who proved to be less safety-conscious and the standpipe was never tested again prior to the deadly fire. Of course, a pressure test was hardly necessary to identify the 42 feet of missing standpipe in the basement; any cursory inspection of the standpipe system in the basement, any effort to trace the standpipe from the Siamese connections to the stairwells, would have revealed the massive breach. And yet, even though the LMDC, Bovis and Galt each had an independent responsibility to maintain the standpipe in working order and the City had responsibility for enforcing their compliance, the standpipe was not maintained and the breach was discovered by firefighters only as a result of the deadly fire.

As noted, Bovis was obligated to protect the standpipe and maintain it in a state of readiness at all times. Melofchik was one of many Bovis supervisors to whom this duty applied. Pursuant to the NYCRR, Title 1, Chapter 26, Appendix A, Melofchik was supposed to inspect the standpipe system (i) on a daily basis to ensure it was in a state of readiness for FDNY use; and (ii) periodically to ensure it was connected to a water source and Siamese connections. The investigation disclosed that Melofchik knew that the 42-foot gap in the standpipe existed – he responded to the basement when it fell - but he took no action to remedy it.

⁴ In a pressure test on a dry standpipe, air is forced under pressure through the Siamese connection and up through the standpipe system. The standpipe is capped at its highest point and a pressure gauge is attached. To pass the test, the air pressure must be maintained for at least one hour, as measured by the gauge.

Not only did Melofchik disregard his obligation to maintain a functioning standpipe, he also prepared false paperwork indicating that the standpipe was in working order. Beginning no later than December 2006, through the day of the fire, Melofchik filled out a five-page Project Checklist at the end of each workday. Each checklist contained multiple categories identifying building safety issues – 158 in all. The Project Checklists required that one of three boxes be marked for each safety item. The boxes were marked “Y” for compliance, “N” for noncompliance, and “NA” for not applicable.

Under the section “Fire Protection and Prevention,” there are a number of items listed involving fire safety. Even though the building’s fire suppression equipment was not functioning (the sprinkler was inoperable and the standpipe was broken), Melofchik did not indicate it on the checklists. In fact, during that entire period, the daily Project Checklists are virtually identical in every material respect except for the date and Melofchik’s hand-written initials. All of the entries in the Project Checklists were computer-generated, with the exception of the signature line. None of the numerous fires and accidents that occurred in the building prior to the fire was ever listed in the Project Checklists. For example, on May 17, 2007, when a 15-foot pipe fell from the 37th floor of the building and penetrated the roof of the 10/10 Firehouse injuring two firefighters, no report of this event appeared on the Project Checklist for that day. In addition, the sections of the Project Checklist indicating “stairways clean and clear” and “paths of emergency egress kept clear” are always checked in the affirmative, never indicating the existence of containment barriers. Although most of the checklists bear Melofchik’s signature, Bovis Site Superintendents knew that there were occasions when others who

were not licensed Site Safety Managers reportedly performed the inspections for Melofchik and then forged his initials to make it appear he had done the inspections.

Melofchik was joined in his disregard of the fact that the standpipe was not operable by his Bovis superiors. From June 2006 to the day of the fire, Bovis employed three different Site Superintendents to manage the project. Each knew, or should have known, that the standpipe was the only source of water in the building for firefighting operations. Each knew, or should have known, that if there were a fire and the standpipe was inoperable, workers and firefighters could be injured or killed.

Despite this knowledge, none of them ever (i) reviewed the operative Implementation or Deconstruction Plans or (ii) examined the standpipe system, either physically or as depicted on the building's blueprints. Instead, each Site Superintendent blindly relied on Melofchik -- the Site Safety Manager. Yet, none took any steps to ensure that Melofchik was doing his job properly. Rather, they relied almost exclusively on Melofchik's Project Checklists to assess the state of the building's fire preparedness. Clearly no one ever checked whether those Project Checklists were accurate because, as became clear in the aftermath of the tragic fire, those checklists were fraudulent.

THE CITY'S FAILURES:

a. The Fire Department

Building inspections are critical to the FDNY's firefighting operations. Inspections lead to the discovery of hazards and familiarize firefighters with buildings in which they may have to operate. Access to water and means of egress are critical to firefighting operations and safety and are, therefore, important conditions on which to

focus during inspections. Just as quality inspections save firefighters' lives, ineffective or incomplete inspections put firefighters' lives in jeopardy.

The complete failure of the FDNY to conduct a thorough inspection at the Deutsche Bank building before the fire contributed to the firefighters rushing into the burning building with no idea of the obstacles they would face. Among other things, firefighters assumed the standpipe was in working condition, with deadly results. The fact that the standpipe was disabled resulted in a substantial delay in firefighters getting water on the fire floors and immediately below, during which period they were unable to dissipate the smoke and extinguish the fire.

The fires on each floor ignited flammable materials, including polyethylene and plywood. These burning materials created an intense black and toxic smoke. Additionally, horizontal isolation barriers on stairwells prevented firefighters from attacking the fire from below or escaping downward as the fire descended onto them. Each of these hazards contributed to the conditions that led to the deaths of Firefighters Beddia and Graffagnino. If inspections by the FDNY had occurred, these hazards would have been identified and corrected.

In recognition that construction and demolition sites present inherent dangers for firefighting operations, the Rules of the City of New York require construction and deconstruction sites be inspected far more frequently than most other structures in the City. The specific provision is referred to colloquially as the "15-Day Rule."

The 15-Day Rule is unique in that it requires "Deputy Chiefs" of the FDNY to "cause continued inspections of buildings in the course of construction and demolition at least every fifteen days, but more where conditions dictate." This regulation requires the

FDNY to focus “particular attention” on 18 specified conditions, among which are the “requirement to maintain a safe construction operation,” an “elevator in readiness for the Fire Department,” inspection for “accumulations of combustible rubbish, old lumber and other combustible debris in and around structures,” “watchpersons,” “fire guards,” and fire protection and extinguishers.

Most importantly, the 15-Day Rule directs that particular attention be paid to “requirements relative to standpipe systems.” The standpipe “requirements” prescribed in the 15-Day Rule can be gleaned from § 27-1014(b) of the New York City Building Code, as the latter section is cited in the former. Building Code § 27-1014(b) states, in pertinent part, that a permanent or temporary standpipe shall be kept in a state of readiness at all times for Fire Department use. To enforce the Code and determine whether the standpipe was maintained in a state of readiness, DOB inspectors should have, at the very least, traced it from beginning to end.

After the attack on the World Trade Center, the windows on the north side of the Deutsche Bank building were blown out, a gash of 15 floors was created that penetrated the steel and concrete exterior of the building, and a section of the South Tower was embedded in the building about 25 floors up. The open air patio in front of the building collapsed and diesel fuel tanks that supported the building’s emergency generating system were pierced, causing a substantial fire that burned for several days before it could be extinguished. As a result, the Deutsche Bank building was contaminated with World Trade Center dust, asbestos, other toxins and ultimately mold.

From the time of the attack on the World Trade Center, the Deutsche Bank building was never thoroughly inspected by the FDNY. The investigation determined

that this was the result of two related factors. First, firefighters do not view inspections as a priority.⁵ Second, the failure to give priority to inspections was magnified at the Deutsche Bank building because the building was contaminated. Consequently, the “Toxic Tower,” as the building was commonly called, went un-inspected.

The history of the building is replete with examples of FDNY failures to inspect. Three years after the September 11th terrorist attack, in October 2004 -- long before any deconstruction or abatement was underway -- a Fire Officer from the 10/10 Firehouse issued violations to the LMDC for failing to maintain clear stairways and a properly functioning standpipe at the building. However, these violations were not the result of any inspection where these conditions were actually observed. Rather, the violations were issued merely as a safety precaution without any physical inspection having been done. Coincidentally, the conditions cited did exist. As a result, the LMDC discovered that the standpipe was in a state of complete disrepair that required months of reconstruction by a licensed plumber, which occurred from October 2004 to January 2005.

On another occasion, the same fire officer issued a notice of violation requiring Bovis to extend the Siamese connection on Greenwich Street past a construction barrier wall that supported scaffolding. This violation notice also required the placement of a sign and red light highlighting the Siamese connection. It was this Siamese connection that led to the northeast quadrant of the basement and the section of standpipe removed in the fall of 2006.

⁵ Nor was sufficient time ever allotted to inspections. At the time of the fire, by contract, firefighters were limited to conducting two three-hour inspection sessions per week for all buildings in New York City.

The investigation disclosed that while the 10/10 Firehouse had the principal responsibility to inspect the Deutsche Bank building, it never conducted any inspections. In fact, the 10/10 Firehouse did not even have the necessary Personal Protective Equipment to enable firefighters to inspect the building. Moreover, the failure to inspect the site and discover the hazards that ultimately contributed to the conditions that led to the deaths of firefighters Beddia and Graffagnino, implicates high-ranking FDNY officials. FDNY officers knew that fire companies throughout the City were not inspecting buildings under construction and demolition with sufficient regularity. The investigation disclosed that the 15-Day Rule was rarely, if ever, enforced; it became a rule almost universally ignored. It was ignored even though high-ranking fire officials clearly recognized that buildings undergoing construction, demolition and abatement were extremely dangerous for firefighting operations.

Even an accident resulting in firefighter injuries and damage to the 10/10 Firehouse itself did not motivate anyone to inspect the Deutsche Bank building. This fact is illustrated by the previously referred to accident on May 17, 2007. On that date, a mere three months before the fatal fire, a 15-foot pipe fell from the Deutsche Bank building through the 10/10 Firehouse roof, injuring two firefighters. The accident of May 17th provoked a reaction at the highest levels of the Fire Department. The Fire Commissioner, accompanied by senior fire officers, visited the 10/10 Firehouse after the pipe fell. The Commissioner and senior staff even ascended to the roof of the firehouse to examine and assess the damage. No one ever inquired at that time as to whether regular inspections were being conducted at the Deutsche Bank building or whether a special fire operations plan for this project was in place.

Time and again, the Fire Department missed opportunities to uncover the dangerous conditions at the Deutsche Bank building. The repeated failures to enforce the 15-Day Rule were endemic throughout the Fire Department.

The FDNY also failed to develop a special firefighting operations plan for the Deutsche Bank building. The FDNY was aware that the Deutsche Bank building was a high profile “toxic tower.” As early as December 2004, a memo was written by an FDNY captain to his Division Chief requesting the creation of a fire incident plan with operation guidelines for future responses to the Deutsche Bank building. He wrote this memorandum out of concern for the limitations of the self-contained breathing apparatus (“SCBA”) firefighters would be required to use during an operation in the building. There was never a response to this memo.

Then, in February 2005, a memo was written by a Hazmat Battalion Chief and forwarded to the then-Chief of Operations containing recommendations for an emergency firefighting operation plan for the building. However, the Chief of Operations neither approved nor endorsed the recommendations; nor did he distribute them to the first-due units, the 10/10 Firehouse, or the Battalion, Division, Special Operations Command or the Manhattan Borough Command.

Finally, on three occasions between January and March 2005, an FDNY Battalion Chief, along with a Hazmat chief and a lieutenant from the local fire company, visited the Deutsche Bank building. These visits each entailed an interview of the construction manager for the building and brief tours of the basement and first floor. The Battalion Chief wrote memos summarizing each of the visits and making recommendations for a specialized firefighting plan for the Deutsche Bank building. Those memos included

items such as a description of the building services, subjects to be considered in formulating an operation plan and recommendations.

In February 2005, on his second visit to the Deutsche Bank building, the Battalion Chief learned that the standpipe system had been out of service in January 2005 but had been restored to service in February 2005. He did not know, nor did he inquire, whether the building had a sprinkler system. The Battalion Chief also did not know whether the local company was inspecting the building. He learned that the building was scheduled for demolition and abatement but did not know when the deconstruction would begin. None of the details regarding the means and methods of deconstruction were available at that time.

The Battalion Chief stated in his memos that he considered airborne contaminants to be the main concern for firefighting operations in the Deutsche Bank building. Among his recommendations was that firefighters be required to use SCBA when inside the Deutsche Bank building and that they be decontaminated before leaving the building. He also suggested, consistent with Fire Department Standard Operating Procedures, that a company officer search and evaluate the fire conditions in the building before committing units to operations and that no unnecessary units be permitted to enter contaminated areas. Finally, he recommended that the local company maintain a weekly “surveillance” of the building to update building services and the status of demolition.

Although the Battalion Chief’s memos were sent to the Division Commander, no apparent action was taken in response. Importantly, the memos did not result in the creation of a special firefighting plan for, or inspections of, the Deutsche Bank building. Hence, on August 18, 2007, in addition to fatally faulty intelligence about

the conditions firefighters would face, there was no special plan in place for firefighting operations in the dangerous building.

In addition, the Fire Department's "target hazard program," which still existed in an FDNY All Unit Circular, fell into disuse. Historically, a "target hazard" was a large or complicated building that presented operational issues for the FDNY. If a building was identified as a target hazard, it would be inspected by a Battalion Chief and an operational plan for firefighting in the building would be created. Thereafter, the building would be the site of multiple unit drills. The Deutsche Bank building would have qualified as a target hazard, but the FDNY had discontinued the target hazard program long before the Deutsche Bank fire. Again, this represented a lost opportunity to make sure that firefighters entering the "toxic tower" would know what conditions they would encounter.

Even in the face of significant community concerns regarding the potentially toxic effect of a fire in the Deutsche Bank building, the top management of the FDNY failed to recognize that a plan beyond "standard operating procedures" was necessary for fighting a fire in the building. For instance, on December 7, 2005, a top FDNY officer attended a Community Board One meeting concerning the deconstruction of the Deutsche Bank building. The purpose of the meeting was for city, state and federal agencies to explain to the public how they would respond to emergencies at the building, and in the Fire Department's case, how it would respond to a fire, explosion, building collapse or release of environmental contaminants. The fire officer told the public that the FDNY would respond to an emergency at the Deutsche Bank building by utilizing its standard

operating protocols. Clearly, as was tragically demonstrated August 18, 2007, standard operating procedures were not sufficient.

b. The Department of Buildings

The contractors failed to maintain a readily available water supply and free egress from the Deutsche Bank building and DOB inspectors failed to adequately inspect and enforce the contractors' compliance; DOB's inspectors never went into the northeast quadrant where the 42-foot gap in the standpipe existed. The DOB had the responsibility to enforce the provisions of its own codes and rules. The purpose of the building code is to provide the platform for the "regulation of building construction in the city of New York." Part of an inspector's job is construction monitoring, during which he inspects for construction compliance and site safety issues.

Pursuant to NYC Code §§ 27-934(a) and 27-1014(b), the building owner and contractors must maintain the standpipe in a state of readiness at all times for FDNY use. The DOB did not detect the 42-foot gap in the standpipe in the northeast quadrant of the basement at the Deutsche Bank building because they were never there. Although DOB inspectors were at the site every work day for months before the fire, they never traced the standpipe connection in the northeast quadrant of the basement. Had it been traced just once, the 42-foot gap would have been discovered.

Additionally, DOB inspectors did not identify that the contractor failed to maintain proper egress from the building. Exit passageways were required to be clearly visible and free of obstructions at all times, and stairwells were required to be maintained up to the floor immediately below the demolition floor. Thus, DOB building inspectors

knew, or should have known, that the Building Code required the Deutsche Bank building to have unobstructed egress and clear stairwells during demolition. In fact, the stairways were blocked by unmarked containment barriers that did not permit unobstructed egress. In short, DOB inspectors knew the stairways were blocked, but failed to recognize that it violated DOB code.

Part of the DOB's failings can be attributed to the inexperience of the inspectors assigned to the Deutsche Bank building. Initially, the DOB sought to staff the project with inspectors from its BEST Squad, which is comprised of inspectors who specialize in inspecting, among other things, deconstruction sites. This plan was altered, however, in the beginning of 2007 in favor of staffing the building with inexperienced inspectors who volunteered for the assignment. Their inspections were supplemented with periodic inspections from BEST Squad personnel. In any event, neither team of inspectors traced the standpipe into the basement.

c. The Department of Environmental Protection

Because the LMDC exempted itself from "local law," including DEP's regulations, inspection and enforcement of the abatement activities at 130 Liberty was the exclusive responsibility of the New York State Department of Labor ("DOL"). However, DEP inspectors voluntarily assisted DOL by providing additional inspectional staff and coordinating inspectional activities. EPA inspectors were also on site. The DEP, DOL and EPA inspectors who were at the site regularly, knew, or should have known, that the containment barriers which sealed stairwells violated Code by failing to provide

appropriate egress. At no time did any of the inspectors take any actions to remedy the condition.

CONCLUSION

In summary, everyone failed at the Deutsche Bank building. The contractors violated their contractual provisions and City rules and regulations in the way they conducted the abatement and deconstruction of the building. Worse, they dismantled a large section of the standpipe in the basement with catastrophic results. In turn, the City and its agencies, especially the Fire Department and the Department of Buildings failed to discover the gaping hole in the building's fire protection system. A single inspection of the basement would have uncovered the disabled standpipe, yet that inspection never took place. The Fire Department repeatedly ignored its own rules in not conducting mandated 15-Day inspections and the Department of Buildings never did an inspection in the basement despite having inspectors on-site day in and day out. Finally, the FDNY and DOB failed to enforce compliance with requirements that the containment barriers be built according to plan to maintain unobstructed egress from the building. These failures contributed to the conditions that led to the deaths of Firefighters Robert Beddia and Joseph Graffagnino and the injuries to approximately 105 other New York City firefighters were injured in the blaze of August 18, 2007.