

The Chief



A TOLL HE'S STILL FEELING A DECADE LATER: Now-retired Firefighter Steve Olsen is one of the two former FDNY members suing the contractor formerly known as Bovis Lend Lease for its alleged negligence leading to the Deutsche Bank fire 10 years ago that killed two of their colleagues and left them with lasting physical and psychological issues.

Two Ex-Firefighters Suing Over Lasting Injuries

Claim Contractor at Fault in Deutsche Bank Blaze Trying to Duck Civil Rap

By BOB HENNELLY

Ten years after the Deutsche Bank fire that killed two firefighters, two retired colleagues are still battling in court the contractor responsible for taking down the building. Both firefighters allege permanent physical and psychological damage as a consequence of their role in fighting the seven-alarm blaze that injured 105 firefighters—almost half of those that responded.

The plaintiffs in the case are former FDNY Lieut. Vincent Massa and retired Firefighter Steve Olsen. Both men were also on the scene at the Sept. 11, 2001 World Trade Center collapse.

Contractor Lead Defendant

The lead defendant in their suit, the project's prime contractor, was known as Bovis Lend Lease at the time of the fire. In 2015, it rebranded as just Lend Lease. The Australian-based, publicly-traded construction multi-national is a major player in New York City.

In the criminal investigation that followed the fire that killed firefighters Robert Beddia and Joseph Graffagnino, it was determined that workers for a sub-contractor, under Bovis's supervision, had cut out significant lengths of the building's standpipe system long before the blaze. On the day of the fatal fire, those gaps resulted in at least an hour's delay in getting water on the blaze. The sub-contractor, the John Galt Corporation, was used over the strenuous objections of the city Department of Investigation, which alleged it had links to organized crime and was not qualified.

The partially deconstructed office tower was also undergoing asbestos and other toxic remediation. Both subsequent official investigations uncovered compliance and regulatory failures that implicated the FDNY itself, the Department of Buildings, the Lower Manhattan Development Corporation—which owned the building—and other agencies and contractors.

Above the floors being decontaminated, ironworkers used acetylene torches to cut up and remove the tower's iron frame. The bright blue-and-yellow arc of molten spray wreaked havoc on the plastic sheeting, regularly sparking fires. This aggressive strategy, designed to save time and money, ignored the risk of trying to perform both tasks simultaneously.

An Added Hazard

During the fire, the plastic and wood used to seal off floors became a life-threatening

flammable obstruction for firefighters. "I yell that we have a roaring fire in the plenum and they have no water above us, we have to get everybody down to the next-lower level," recounted Lieut. Gary Iorio in the book "The Fix Is In," by Joseph Graffagnino Sr. "I envisioned the ceiling just crashing down on us. Within minutes, the entire floor was covered in this dense, black smoke from the layers of plastic sheets burning above us."

Mr. Iorio continued, "The plastic must have found holes in the floor and started dripping down to our floor and started more fires on our floor. The fireproof floor was pierced, which allowed the fire to come down...In minutes, the smoke became so dense we couldn't see anything. Our position was untenable. I had thoughts I was going to do die right there. I said 'This is impossible! This is the World Trade Center all over again, but this happened already! It can't happen again.'"

The Manhattan District Attorney's Office indicted three individuals involved in the building's standpipe removal, but they were all acquitted. The John Galt Corporation was convicted, but ultimately filed for bankruptcy.

In 2008, Bovis entered into a non-prosecution agreement with then-DA Robert M. Morgenthau. At the time, Mr. Morgenthau said he decided not to criminally charge the firm because of the potential economic impact a guilty verdict might have had on its city projects already underway.

According to that deal, the DA's Office "could institute a criminal prosecution for manslaughter and criminally-negligent homicide" against the firm, but "in consideration of Bovis's willingness to acknowledge responsibility for its actions," prosecutors would not do so, as long as it complied with "remedial measures." Those measures included paying out millions of dollars for a memorial fund, submitting to an independent monitor and redoubling commitment to workplace safety and compliance.

Legal Vulnerability

The deal also stipulated that the firm's failure to live up to the terms of the agreement would open it up to prosecution for its role in the site management of the 130 Liberty St. site that prosecutors alleged set the stage for the fatal fire.

In 2012, Bovis, now named Lend Lease, was in the crosshairs of Federal prosecutors.

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Ex-Firefighters Sue 'Deutsche' Firm

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who alleged the firm had bilked the city, state and Federal governments of millions of dollars. The projects involved included Grand Central Terminal, the Bronx Criminal Courthouse, the Deutsche Bank building demolition, Citifield and scores of other public projects being built in New York State and New Jersey.

The firm paid the Federal Government more than \$50 million as part of another deferred-prosecution agreement. "Bovis circumvented rules governing minority business subcontractors" and engaged in "pervasive overbilling," Assistant FBI Director Janice Fedarcy said at the time.

Now, in its defense against the retired firefighters' suit, the lawyers for Lend Lease are asserting that the 2008 non-prosecution agreement with the Manhattan DA has no applicability in the case with the retired Firefighters. And in June 2013, a New York State Appellate Division panel agreed with them. "The agreement explicitly provided that Bovis had not



ROBERT M. MORGENTHAU: Deferred prosecution.



SARA DIRECTOR: Firm's rationale won't wash.

admitted liability, that the factual statements contained in the agreement were relevant only for the purpose of compromise between the NYDA and Bovis," according to the panel's decision.

Cite Other Water Source

The construction firm's lawyers are arguing that the firefighters' claims should be dismissed because Bovis "did not violate...the applicable statutes and codes pertaining to standpipe and fire-suppression systems because the building had a functional riser" in a stairwell that could have supplied water, if the FDNY had only connected a hose to that riser.

This alternative narrative did not sit well with Mr. Olsen's lawyer, Sara Director, of Barasch, McGarry, Salzman & Penson. "The FDNY did try that approach that day and it did not work," she said in a phone interview. "The fact remains there are three parts to a functioning standpipe, and if one is not working, the system is not working nor in the condition of readiness that the law requires."

One of the lead lawyers for Lend Lease, reached by phone, said he was engaged in something he could not interrupt, and did not call back.

The legal back-and-forth has seemingly fortified former Firefighter Olsen's resolve to get some accountability. "I came back from 9/11 and I was strong," he said in a phone interview. "But I did not come back from the Deutsche Bank fire. In 9/11, it was terrorists attacking our country. Deutsche Bank was corporate greed attacking our country. Bovis has made a joke out of the whole legal system."

Joe Monaco, who represents former FDNY Lieutenant Massa, was equally disdainful. "What irked me from day one was that a giant entity like Bovis could manipulate prosecutors so as to avoid criminal prosecution by stipulating to facts, and for the purpose of not accepting responsibility for their actions later on in civil litigation exclude the very same facts they had agreed on to avoid criminal prosecution in the first place," he said.



JOE MONACO: 'Bovis manipulating legal system.'