

Testimony of **Neil V. Getnick**
before the
House Committee on Homeland Security
Subcommittee on Management, Integration and Oversight
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9/11 Federal Assistance to New York:
Lessons Learned in Fraud Detection, Prevention, and Control

Good afternoon Chairman King, Chairman Rogers, and members of the Subcommittee. My name is Neil Getnick, and I am an attorney and the Managing Partner of the law firm, Getnick & Getnick, which is located in New York City. It is a privilege and an honor for me to appear before you today to speak about my firm's participation in the clean-up and recovery effort which took place at the site of the World Trade Center after the terrorist attacks upon our Nation on September 11th. I am especially honored to appear this afternoon with New York City's Commissioner of the Department of Investigation, Rose Gill Hearn. The Department of Investigation has long utilized Integrity Monitors to assist New York City in fighting fraud, waste and abuse in City projects and departments, and was responsible for the appointment of Integrity Monitors to participate in the clean-up and recovery effort at Ground Zero.

New York City has shown that government can join together with private individuals, serving as Integrity Monitors, to effectively and economically combat and prevent fraud, not only in the area of disaster relief, but also in the regular day-to-day business of government. Historically, the use of Integrity Monitors was an essential component of the City's campaign to combat mob infiltration and corrupt influence in key industries and markets, such as wholesale food markets, commercial carting, and school construction. The Integrity Monitors proved highly effective and the City expanded their use. Examples of this are found not only in the disaster relief effort at Ground Zero, which I will address in more detail shortly, but also in situations where the City enters into contracts with private business and has a concern that there is the potential for misuse of taxpayer funds, and therefore appoints an Integrity Monitor to oversee a particular contractor or project. New York City's innovative use of private individuals and firms as Integrity Monitors is an example of government and the private sector working together for the public good in a cost-effective manner.

Although I am speaking today in my capacity as the Managing Partner of Getnick & Getnick, I am also the President of the International Association of Independent Private Sector Inspectors General ("IAIPSIG"). IAIPSIG is a nonprofit professional association whose mission is to preserve and promote integrity, honesty, impartiality and professionalism in the work of IPSIGs, monitors and independent investigators. An IPSIG is an independent, private sector firm (as opposed to a governmental agency) that possesses legal, auditing, investigative, and loss prevention skills, that is employed by an organization (i) to ensure that organization's compliance with relevant laws and regulations, and (ii) to deter, prevent, uncover, and report unethical and illegal conduct

committed by the organization itself, occurring within the organization, or committed against the organization. Notably, an IPSIG may be hired voluntarily by an organization or it may be imposed upon an organization by compulsory process such as a licensing order or contract issued by a governmental agency, by court order, or pursuant to the terms of a deferred prosecution agreement. The IPSIG may also, in appropriate cases, participate with management in enhancing the economy, efficiency and effectiveness of the organization. Members of the IAIPSIG adhere to a comprehensive Code of Ethics and have been appointed as Integrity Monitors by local, state and federal agencies, as well as voluntarily retained by private industry.

When I speak about Integrity Monitors today, I am speaking about an IPSIG which has been imposed upon an organization, and in the case of disaster assistance we are referring to construction management firms and general contractors, as a condition set forth in the contract to provide disaster relief services. This was the situation that existed at Ground Zero.

After the attack on the World Trade Center on 9/11, Mayor Giuliani and top New York City officials realized that, as with any construction-type project, the potential for fraudulent and abusive behavior was present at Ground Zero. The City was determined not to allow that type of behavior to occur. Within a few weeks after the disaster the New York City Department of Investigation reached-out to private firms with extensive past experience as Integrity Monitors on City projects and in short order put into place an Integrity Monitor program to oversee the recovery and clean-up process. There were four construction management companies assigned to oversee the disaster clean-up, and the site was divided into four quadrants with each construction manager assigned to a particular quadrant. Our firm, Getnick & Getnick, was assigned as the Integrity Monitor to oversee the work performed on the quadrant assigned to the joint venture between Turner Construction Company and Plaza Construction Corporation. The other three Integrity Monitors were Thacher Associates, LLC, assigned to monitor Bovis Lend Lease; Stier, Anderson and Malone, LLC assigned to monitor AMEC Construction Management, and DSFX (Decision Strategies) assigned to monitor Tully Construction. Each of the four monitors were well known to the Department of Investigation, having been pre-qualified to serve as Integrity Monitors in the past and having successfully handled other monitorship assignments for the City.

It is important to note what the appropriate role of an Integrity Monitor is, and is not, at a disaster relief site. There are many participants from the private and public sectors who take part in a disaster relief project. There is a construction manager whose job is to: manage the day-to-day operations on the work site; hire and supervise all subcontractors; interact with the relevant governmental agencies overseeing the project; prepare daily information logs; prepare billing requisitions; in addition to other responsibilities. Typically, a government agency with in-house engineering capability oversees the performance of work by the construction managers and the subcontractors working under them. At the World Trade Center, the New York City Department of

Design and Construction performed this task. Numerous governmental agencies inspected the work for compliance with applicable laws, rules and regulations, such as OSHA requirements and safety and environmental regulations. At the World Trade Center site, in addition to the New York City Police and Fire Departments, various federal agencies were present on a daily basis, including representatives from the Federal Emergency Management Agency, the Environmental Protection Agency, the Occupational Safety and Health Administration, and the Federal Bureau of Investigation, among others.

An effective Integrity Monitor does not duplicate or supplant the functions of these other participants in the project. Rather, an Integrity Monitor uses a multidisciplinary approach, bringing to a project its unique knowledge and expertise in the following areas: (i) legal, (ii) investigative, (iii) auditing, (iv) loss prevention, and (v) other project-specific requirements such as engineering, environmental, etc. The Integrity Monitor utilizes these specific skill sets to review and monitor policies, procedures, and practices in the area of record-keeping and billing, as well as for the actual field work. The Integrity Monitor evaluates these procedures and work progress to assess efficiency, accuracy and compliance with all applicable law, rules and regulations. It reports its findings to the assigned governmental agency, as in the case of the World Trade Center the Integrity Monitors reported to the Department of Investigation. Much of the information reported to the Department of Investigation was subsequently shared with the monitored companies and the other governmental agencies involved in the project. An Integrity Monitor in many cases, and this was certainly true at the World Trade Center, works with the monitored parties to develop programs and procedures which prevent corrupt practices, ensure compliance with all pertinent laws and regulations, and promote the efficient and cost-effective completion of the project. For example, when a billing issue was discovered which did not fall into the category of potential criminal behavior, the Integrity Monitor brought the issue to the attention of the construction manager and the Department of Design and Construction, discussed ways to avoid that problem in the future, and the billing was adjusted to reflect the proper amount. This is an example of how the Integrity Monitor facilitated corrections and improvements so that the City was not overbilled. In cases where corrupt and fraudulent behavior was suspected, whether in the area of billing or construction-related matters, the Integrity Monitors reported the matter to the Department of Investigation and then worked with it and the appropriate law enforcement agencies to assist in the investigation and in some instances, ultimate prosecution, of the responsible parties.

Because of the unique role and skill set of the four Integrity Monitors assigned to the recovery and clean-up at Ground Zero, we were able to provide coordinated assistance to the companies and governmental agencies working at the site, as well as to serve as a deterrent to those seeking to take advantage of the disaster situation for their own selfish gain. Members of the Integrity Monitor teams had expertise in legal, investigative and forensic accounting work and were former government lawyers, police officers and accountants with many years of experience working in law enforcement and

on criminal investigations. We were in the field on a daily basis, observing the work in progress, speaking with the workers on the site, monitoring a complaint hotline 24 hours a day, and gathering significant intelligence. We reviewed billing submissions, checked back-up documentation, visited home offices of subcontractors when appropriate, and compared the billing submissions with our own observations in the field. Using this approach, we worked together with the Department of Investigation and the other governmental and private agencies on the project, to expose and prevent waste, fraud and abuse.

My firm has been appointed or retained as an IPSIG and Integrity Monitor on numerous federal, state and local projects across a wide variety of industries. Based on that experience generally, and at the World Trade Center disaster site specifically, I would like to highlight for you the types of improper and often criminal behavior which can take place during the clean-up and recovery phase of a disaster site, which, because of its emergency nature, is typically billed on a time and materials basis, as opposed to a fixed price basis following a competitive bidding process.

- Improper Payroll and Labor Billing: (1) ghost employees on the payroll; (2) employees who sign-in and out of the work site but who go to off-site work locations during the day, often to work on private jobs in nearby areas; (3) employees who “loan” their identity to others who work in their place and receive a portion of the wages, with the balance being pocketed by the employee named on the books; (4) excess labor present on site resulting in inefficient use of work force, i.e., workers on site who are not being utilized; (5) contractors paying employees substandard wages and billing the government at a higher rate; (6) bribes to union officials to permit non-payment of pension and welfare benefits to union employees; (7) inflating the amount of union benefit payments in labor bills submitted to the government; (8) work slow-down to incur overtime pay.
- Improper Equipment Billing: (1) billing for equipment not present at the site; (2) billing for equipment present at the site which is either unnecessary or is not functioning and in need of repair; (3) billing for repairs which were not performed or which were occasioned by off-site use; (4) billing for inflated rates higher than those permitted by contract; (5) billing for inflated rates higher than those charged on private work; (6) double-billing of equipment; (7) excessive and inaccurate billing for fuel needed to operate equipment on site.
- Improper Materials Billing: (1) billing for substandard materials required for proper job performance; (2) inflating the price of materials purchased for the site; (3) inadequate inventory control resulting in billing for materials which are removed from the job site and used at a different location; (4) double-billing for materials; (5) kick-back schemes and bribes resulting in inflated prices for materials used on the work site.
- Safety and Environmental Issues: (1) failure to properly train employees in safety procedures and use of equipment, and to enforce those procedures on the job site; (2)

failure to properly dispose of hazardous waste material; (3) billing for substandard and ineffective environmental monitoring and testing; (4) performance of unnecessary and duplicative environmental monitoring and testing; (5) billing for safety equipment not utilized at the disaster site; (6) utilization of machinery and equipment on site which does not comply with current safety and environmental standards; (7) failure to maintain adequate site records and logs to determine whether required site safety and environmental standards are met.

- Subcontractors: (1) selection of subcontractors based on improper criteria which does not include ability and pricing, such as payment of bribes, personal relationships, etc.; (2) improper mark-up of subcontractor billings; (3) retention of subcontractors unqualified and incapable of providing required services; (4) improper vetting of subcontractors' qualifications and background.
- Security: (1) insufficient site security and spotty enforcement of security regulations, such as failing to check identification and to inspect deliveries, allowing for unauthorized personnel and goods on work-site; (2) theft of property from site due to inadequate security, inventory control and theft prevention procedures; (3) inadequate coordination between various organizations and individuals responsible for site security.
- Management of project: (1) relationships between construction managers and subcontractors which prevent objective evaluation of job performance; (2) corruption of supervisory personnel by bribes, threats, etc., (3) inadequate supervision and implementation of appropriate procedures to prevent fraud, waste, abuse, and violations of rules and regulations; (4) inability to perform necessary tasks and assignments.

Many of these kinds of activities were identified as issues or potential problems by the Integrity Monitors at the World Trade Center clean-up and recovery project, and have been encountered during other monitorships we have worked on in the past. Due to the multidisciplinary approach and extensive experience in combating fraudulent and criminal activity on construction and other government projects which the Integrity Monitors brought to bear on this challenging task, and our partnership with City Government, we were able to identify and address these problems, and, when appropriate, work with law enforcement agencies to gather evidence for criminal prosecution. As a result, the money spent on 9/11 disaster relief at the World Trade Center site was spent for its intended purpose.

I understand that the Committee on Homeland Security is considering legislation which will address fraud prevention in disaster relief programs. Based on our extensive experience in working as an Integrity Monitor and IPSIG on various governmental assignments, we offer the following suggestions with respect to that proposed legislation:

- A list of pre-qualified organizations which can act as Integrity Monitors should be established so that qualified individuals can quickly mobilize to monitor disaster relief

programs. These organizations should have among its members individuals with legal, investigative, forensic auditing and loss preventions skills, and have extensive experience in acting as Integrity Monitors on other government projects.

- The obligations and duties of an Integrity Monitor at a disaster recovery site should be clearly delineated, and should include adherence to a Code of Ethics such as the one followed by members of the IAIPSIG (copy attached to this testimony).
- The construction manager or contractor overseeing the disaster relief project should be required as a condition of its contract with the government to cooperate with the Integrity Monitor, including providing access to all books and records and access to all personnel, and require all of its subcontractors to do the same. The four construction managers working at the World Trade Center disaster site entered into such agreements with each of their respective Integrity Monitors as a condition of the CMs providing construction services at the site.
- The hallmark of an IPSIG and an Integrity Monitor is its independence. Integrity Monitors should have no prior business or personal relationships with the monitored entity which would create a conflict of interest, or even the appearance of one.
- Indemnification should be provided to the Integrity Monitor, similar to the type of indemnification provided to public officials acting during the course of their official duties.
- Payment to the Integrity Monitor for services provided should be guaranteed on a regular basis to ensure that the Integrity Monitor is not thwarted in carrying out its obligations by companies that might withhold or delay payment in an attempt to deter the Integrity Monitor from performing its duties.

Any construction project, even one which is anticipated and planned in advance, is susceptible to fraud, waste and abuse. By its very nature, a disaster recovery project is more vulnerable to this type of conduct. As we have seen with the World Trade Center recovery and clean-up after 9/11, however, the appointment of Integrity Monitors allowed the City of New York to detect improper behavior on a real-time basis, and not just after the fact. This enabled the City to remedy problems and bad practices quickly, and thus save significant sums of money. Even more noteworthy, however, is the preventive effect the Integrity Monitors had at Ground Zero in stopping fraudulent and wasteful conduct before it occurred by their presence and involvement at the site. This deterrent effect is invaluable. The use of Integrity Monitors at future disaster relief sites will have the same impact and will ensure that the money designated for disaster recovery is used for its intended purpose.

Thank you for the opportunity to address you this afternoon on this very important topic. I am happy to answer any questions you may have for me at this time.