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COURT OF APPEALS
STATE OF NEW YORK

IN THE MATTER OF CLAIM OF GARCIA

NO. 93

20 Eagle Street
Albany, New York
October 15, 2025

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

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Official Court Transcriber



1 CHIEF JUDGE WILSON: Next case on the calendar is
2 Matter of Claim of Garcia.

3 MR. DEGER-SEN: May it please the court. Samir
4 Deger-Sen for the appellant. I'd like to reserve three
5 minutes of my time for rebuttal.

6 CHIEF JUDGE WILSON: Yes.

7 MR. DEGER-SEN: This case concerns whether in
8 extending workers' compensation benefits to those who
9 volunteered in the aftermath of 9/11, the legislature
10 silently and arbitrarily withheld a key component of those
11 benefits.

12 JUDGE GARCIA: Counsel, let's assume, just
13 without deciding, that you have a death benefit for a
14 volunteer, why wouldn't that benefit have to be filed
15 within two years under Section 28, the way it is for an
16 employee?

17 MR. DEGER-SEN: I think if there is a death
18 benefit for a volunteer, then it would come under Section
19 168. And Section 168 - - -

20 JUDGE GARCIA: That, to me, clearly refers to
21 participant and does something different. So how do you
22 fit - - - you know, Section 28 and other sections talk
23 about death benefits and claimants for death benefits.
24 Section 128 doesn't seem to do that to me.

25 MR. DEGER-SEN: Oh, I mean, I think that the

1 claim - - - Section 128 talks about a claim by a
2 participant.

3 JUDGE GARCIA: Right.

4 MR. DEGER-SEN: But that I think, you know,
5 subsumes a claim that is consequential to a claim by - - -

6 JUDGE GARCIA: But in other statutes it does not,
7 particularly in Section 28. I think it - - - Section 18
8 breaks out those two types of claims, which we've said are
9 very different.

10 MR. DEGER-SEN: I actually think Section 28 does
11 exactly the same thing. If you look at, for example, the
12 occupational disease prong of Section 28. The language of
13 that part of Section 28 says, quote, "the right of an
14 employee". And so I think "participant", of course, is
15 used all over 8-A, but in the same way that "employee" is
16 used in Article 2. So if you look at Section 28, the
17 occupational disease prong, "The right of an employee to
18 claim compensation under this chapter for disablement
19 caused by any occupational disease ... shall not be barred
20 by the failure of the employee to file a claim within such
21 period of two years."

22 JUDGE GARCIA: So why isn't that the rule?

23 MR. DEGER-SEN: And the board and everyone agrees
24 that that occupational disease prong under Section 28, that
25 subsumes death benefit claims. So you're allowed to bring

1 a death benefit - - -

2 JUDGE GARCIA: Well, the Workers' Comp Board here
3 found this wasn't an occupational disease, right?

4 MR. DEGER-SEN: But I'm saying the logic of
5 saying that a claim by - - - the phrase, "claim by a
6 participant" is meant to be some sub silentio way of
7 excluding death benefits. If you extend that logic to
8 Article 2 - - -

9 JUDGE GARCIA: But I don't think - - -

10 MR. DEGER-SEN: - - - itself you would say that -
11 - -

12 JUDGE GARCIA: - - - but I'm assuming there is a
13 death benefit. But according to the Attorney General's
14 brief, as I understand it, if an employee is working at the
15 Trade Center and they file a - - - the decedent, you know,
16 on behalf of the decedent there is a death claim filed,
17 they're held to a two-year statute of limitations. Right?
18 Under Section 28.

19 So why wouldn't a volunteer in the same
20 circumstances be held to the same statute of limitations?

21 MR. DEGER-SEN: We are holding - - - no, we're
22 holding them to - - - you know, their - - - they would have
23 a claim under 168. We think volunteers should be in the
24 same position as employees at the World Trade Center.

25 JUDGE GARCIA: But they're saying employees get

1 two years, and there are board decisions that say that.

2 MR. DEGER-SEN: I mean, they would be able to
3 avail themselves of Section 168 - - -

4 JUDGE GARCIA: You think they just - - -

5 MR. DEGER-SEN: - - - in exactly the same way.

6 JUDGE GARCIA: - - - that those are mistaken as
7 well?

8 MR. DEGER-SEN: No, no. I - - - I think that - -
9 - we're saying that volunteers should be in the same
10 position as employees, which is - - -

11 JUDGE GARCIA: But they say they treat employees
12 as having a two-year statute of limitations for claims for
13 World Trade Center diseases. Is that not true?

14 MR. DEGER-SEN: That's - - - I mean, I don't
15 think that is their position, but you can ask them. And I
16 think an employee in the World Trade Center would be able
17 to avail themselves of Section 168, and that says, "A claim
18 by a participant in the World Trade Center rescue,
19 recovery, or cleanup operations whose disablement occurs
20 between" - - - you know. In our prong of this is 2015 and
21 2017, "shall not be disallowed as barred by Section 18 or
22 28 of this subchapter", and we're seeking to avail
23 ourselves of that provision.

24 I will say all of the briefing in this case has
25 been about the antecedent question. And the antecedent

1 question, which - - - and it's the board's position in this
2 case, and all the briefing is focused on is whether a
3 volunteer, the family - - - surviving spouse of volunteer,
4 even has a death claim in the first place. And that's
5 their position.

6 JUDGE GARCIA: The board found that you failed to
7 abide by Section 28, as I read the board decision.

8 MR. DEGER-SEN: Well, I think there are - - - I
9 think that there are multiple ways in which we could
10 satisfy the timeliness provision. One is under 168,
11 another is the dissenting judge below said under 163, you
12 could - - -

13 JUDGE GARCIA: That's a notice provision though,
14 right? That's not a claim provision.

15 MR. DEGER-SEN: Right. But the notice provision
16 there, I think it must be the case that if you're not
17 required to give notice until the time in which you have
18 actually discovered that the death is causally related to
19 the 9/11 condition. If you don't have - - - if you're not
20 - - - if you're not permitted to give notice or required to
21 give notice, it seems very strange to say your statute of
22 limitations can run before notice. That's at least an
23 argument we'd like to develop below.

24 And then the final thing I'll say is we would
25 also like to - - - there's be no development below about

1 when Ms. Garcia discovered or could have discovered that
2 the death here was causally related - - -

3 JUDGE GARCIA: But how is that relevant to the
4 claim if they're saying this isn't an occupational disease?
5 How is that relevant to the time you file a claim?

6 MR. DEGER-SEN: Well, I - - - I think we would
7 like to make an argument under Section 28 that this should
8 be considered an occupational disease. And all the
9 legislative history suggests that the legislature wants to
10 keep this - - - wanted to have, you know, treat this in
11 exactly the same way as an occupational disease. That's on
12 the first page of the bill jacket.

13 But I do want to say, I do think those are all
14 issues that could be sorted out on remand. Because the
15 antecedent question, which is what the briefing in this
16 case is focused on, is just whether a volunteer has a death
17 benefit claim at all in the first place. And so if this
18 court thinks that Ms. Garcia might have a timeliness
19 problem - - -

20 JUDGE RIVERA: And so - - - so to that issue
21 then, given that Section 163 refers to injury or death and
22 that 8-A lumps together for purposes of definition of
23 participant, both employees and volunteers, why can't we
24 read these - - - this disjunctive as death is for those who
25 otherwise would have a death benefit like employees, but

1 not otherwise volunteers because they would not otherwise
2 have that benefit? It would be expressly set out in the
3 statute. Why doesn't the disjunctive make a difference?

4 MR. DEGER-SEN: Well, there's - - - so there's no
5 lifetime benefit that's set at - - - set on the statute
6 either. And these things - - -

7 JUDGE RIVERA: But those are very obvious and
8 clear that a participant can - - - can assert a claim. And
9 a participant is defined as a volunteer.

10 MR. DEGER-SEN: Oh, I mean, I don't think that
11 it's obvious or clear in the sense that the root - - - if
12 you look at the way in which Article 2 - - -

13 JUDGE RIVERA: Isn't the point - - - is - - - I
14 mean, isn't the point - - - you said it yourself. The
15 point of this part of the legislation was to expand
16 benefits for volunteers.

17 MR. DEGER-SEN: Right. And to put the volunteer
18 in - - -

19 JUDGE RIVERA: Right.

20 MR. DEGER-SEN: - - - in the same position as the
21 first responder. And the first responder gets - - -

22 JUDGE RIVERA: Well, that would have been the
23 easy way to write the statute, but they didn't do that.

24 MR. DEGER-SEN: I think that is what they tried
25 to do. So what - - - you know, if you look at the way in

1 which Article 2 works. Article 2 says the root of the
2 benefits here are Article 2, Section 10. And Article 2,
3 Section 10 says each employer shall quote, "secure
4 compensation to his employees" - - - there's that word
5 "employees" again, "and pay or provide compensation for
6 their disability or death from injury arising out of and in
7 the course of their employment."

8 So disability and death are just the two things,
9 the two substantive rights that - - - that are - - - that
10 employees are entitled to under Section 10. That's a
11 substantive right.

12 And then, you know, Section 15 sets out the
13 schedule for disability. Section 16 sets out the schedule
14 for death benefits. The statute doesn't treat them
15 differently. They're two sides of the same coin. They are
16 always things that flow together and travel together.

17 And then what does 8-A do? On - - - in Section
18 164 it says, the date of disablement should be treated as
19 an accident within the meaning of this chapter. So that's
20 that. Then you look back to Article 2, Section 10. That's
21 the thing which triggers disability and death. And then it
22 says the practice and procedure provided in this chapter
23 shall apply to all proceedings under this article. So it
24 just transfers across the benefits that you get under
25 Article 2 to the new kinds of beneficiaries. And there is

1 not a single thing in the statute that suggests that it
2 wanted to extend one kind of benefit and not the other, and
3 these are the kinds of benefits that have always traveled
4 together.

5 There isn't one word in all of the legislative
6 history that at all suggests that there was an attempt to
7 distinguish between the things to separate out death
8 benefits.

9 JUDGE SINGAS: But yet the board has
10 distinguished between those things, and they've
11 consistently ruled that 8-A forecloses death benefits for
12 volunteers. I'm assuming the legislature is aware of that
13 and never made any attempt to correct it. Should that
14 impact our decision at all?

15 MR. DEGER-SEN: No. I don't think there's any
16 indication the legislature is aware of that. And this
17 court has said that, you know, trying to make inferences
18 from legislative inaction is a hazardous - - -

19 JUDGE RIVERA: We do - - - we do assume the
20 legislature is familiar with the law.

21 MR. DEGER-SEN: Well, but - - -

22 JUDGE RIVERA: That's the assumption.

23 MR. DEGER-SEN: - - - but this - - - but this
24 court has said that - - -

25 JUDGE SINGAS: And the way we interpret the law.

1 MR. DEGER-SEN: - - - the - - - the - - - it's,
2 you know, when acting - - - you know, when you make an
3 inference about what a statutory - - - a statute means from
4 subsequent legislative inaction, that's a hazardous
5 enterprise. And there needs to be a requirement that there
6 - - - the legislature specifically considered that. And
7 here you actually have the opposite. If you look at the
8 legislative history of - - - for 169, the Assembly memo
9 there makes it pretty clear that it actually thought that
10 timely claims of workers', quote, "surviving dependents had
11 been denied without cause".

12 So the legislative history indicates that,
13 actually, the legislature believed that there - - - there
14 were claims available for surviving spouses. And by the
15 way, the board's precedent on the - - - the fund's
16 precedent on this is very inconsistent. So we have found
17 cases where volunteers were receiving payouts, obviously,
18 after the decision below and after Fierro-Switzer.

19 Now, the board's precedent and the fund's
20 behavior has been very clear, but before that, it was not
21 particularly clear. And this was hardly a powerful
22 political group. This, you know, the surviving spouses of
23 the people who volunteered at 9/11, who were able to put
24 this on the legislative agenda. There is absolutely no
25 indication the legislature was aware of this and silently

1 ratified this at all. In fact, the legislative history is
2 to the contrary.

3 And so what I think the ultimate argument that
4 they're making is that you have to infer some attempt to
5 distinguish between these two kinds of benefits. And the
6 only thing they have been able to point to is the use of
7 the phrase "participant". But participant is used in
8 exactly the same - - - of course, participant is all over
9 the statute in the same way that employee is all over the
10 statute under Article 2. Because everyone agrees that it's
11 the participant and the injury of the participant that
12 triggers these kinds of benefits. That's why on - - - in
13 Article 2, Section 10, you see that exact same word
14 "employee". Well, that's why in Section 28 of occupational
15 disease, you - - - you see that it's only the right of the
16 employee to claim compensation. But this - - - this court
17 and the board itself has always interpreted those
18 provisions to mean that the - - - that there's a death
19 benefit claim, and that exact mode of statutory
20 interpretation would basically transform the way you would
21 think about Article 2.

22 And there isn't a coherent explanation for these
23 two express references to death. I mean, it really makes
24 no sense if the legislature secretly thought that death
25 benefits was the one thing that was being withheld, that it

1 would mention death in these two ways, including in 169,
2 where it specifically says, "claims filed for death". And
3 then 163 says, "the notice requirements for injury or death
4 resulting from a qualifying condition".

5 The only situation where you would have to give
6 notice as a result for a qualifying condition is if you
7 have a death benefit, and that incorporates Section 18.
8 And that says, "notice of an injury or - - - or death for
9 which compensation is payable". So it incorporates that
10 phrase, "for which - - - death for which compensation is
11 payable". So these are express references to death in
12 Article 8. And those - - - and just they're not
13 explicable, if you think that there was some silent desire
14 to remove death benefits. And then ultimately there is no
15 coherent legislative purpose behind doing this. The only
16 thing they point out is, well, it could, you know, save
17 some money. But there were only 30,000 volunteers, and a
18 very tiny fraction of these people would have had death
19 benefits. There's no reason to assume that the legislature
20 wants to save money in this completely arbitrary way.

21 JUDGE RIVERA: Well - - -

22 MR. DEGER-SEN: And if they - - -

23 JUDGE RIVERA: - - - it - - - it does seem they
24 want to save money since most of it has been tied - - -
25 these benefits, most of them have been tied to federal

1 funds.

2 MR. DEGER-SEN: Well, but they revised the
3 statute and said that, in fact, that wasn't going to be the
4 case. And it's not tied to federal funds now, and it's the
5 the Uninsured Employers' Fund. So the - - - and this has
6 been a statute that has been read time and again to expand
7 benefits.

8 And then the final thing I'll say about this is
9 you read all of this within - - -

10 JUDGE RIVERA: Well, that's my point. It would
11 be so easy to say exactly what you said at the beginning.
12 They're on equal footing. They get every benefit that an
13 employee would have otherwise gotten.

14 MR. DEGER-SEN: It would be so easy to say they
15 get - - -

16 JUDGE RIVERA: That's right. So one must then
17 look at the language, and the fact that this is
18 incremental, and say, well, there's something - - - there's
19 a reason for doing it this way.

20 MR. DEGER-SEN: Well, but - - - it would be so
21 easy to say the opposite. I mean, I think it would be - -
22 - if - - -

23 JUDGE RIVERA: What's the opposite?

24 MR. DEGER-SEN: - - - if really what they wanted
25 to do was something unusual. I mean, it - - -

1 JUDGE RIVERA: What's the opposite? I'm sorry.

2 MR. DEGER-SEN: The opposite would be to say we
3 want - - - we're extending disability benefits, and we're
4 not extending death benefits. But it doesn't say anywhere
5 affirmatively - - -

6 JUDGE RIVERA: Well, no, they want to make clear
7 - - -

8 MR. DEGER-SEN: - - - they're extending
9 disability benefits.

10 JUDGE RIVERA: - - - that the employee - - - I
11 guess, participants include employees, may very well be
12 eligible for death benefits, or their survivors may be very
13 well eligible - - -

14 MR. DEGER-SEN: No. I - - -

15 JUDGE RIVERA: - - - for death benefits.

16 MR. DEGER-SEN: - - - I appreciate that. But - -
17 -

18 JUDGE RIVERA: That's why you've got that.
19 That's why I asked about the disjunctive.

20 MR. DEGER-SEN: But I think if the statute - - -
21 if the goal of the statute was, what we want to do here is
22 something unusual. We're going to carve-out this group of
23 volunteers and we're going to say, unlike the first
24 responders, we don't want to put them in the same position
25 - - -

1 JUDGE RIVERA: No, no, no. But what's unusual is
2 to grant the volunteers, right? To grant the volunteers
3 benefits because they're not otherwise entitled to these
4 benefits.

5 MR. DEGER-SEN: But everyone agrees that - - -
6 that this statute was trying to grant - - -

7 JUDGE RIVERA: Oh, absolutely.

8 MR. DEGER-SEN: - - - volunteers some benefits.

9 JUDGE RIVERA: But I'm saying that's why you need
10 the legislation, because that's what's unusual. Right?

11 MR. DEGER-SEN: I - - - but - - - but I think the
12 - - - I think it wouldn't be unusual to say we're going to
13 just grant volunteers the suite of benefits. I think to
14 me, what's unusual is to say, well, these - - - these two
15 benefits that always come together, and for a hundred years
16 of workers' comp you've got death benefits, and you've got
17 lifetime benefits, and the employer has to do both.

18 JUDGE RIVERA: They don't always come together.
19 Right?

20 MR. DEGER-SEN: Well, I mean - - -

21 JUDGE RIVERA: You got to show causation? I
22 mean, not - - - not - - - no?

23 MR. DEGER-SEN: No, no. That - - - that - - -
24 you - - - you - - - you don't always get one from the
25 other, but their entitlement to them comes together. The

1 employer has to provide you with both disability benefits
2 and has to provide you with death benefits. And the idea
3 here is the legislature apparently wanted to decouple those
4 things, and only for volunteers. They wanted to say,
5 volunteers, you're going to be in a different situation to
6 the first responders. The first responders' families, they
7 get the death benefits. But the volunteers, we don't think
8 that those families should get the death benefits.

9 And if they wanted to do that, that does seem a
10 little bit unusual. You would expect them to do that much
11 more clearly in the language. But they don't do that.
12 What they do is they try - - - they then, in all these
13 provisions, just say we're going to take across what
14 Article 2 provides. All of the procedures and practices of
15 Article 2. And then there are even these express
16 references to death, which would be pretty anomalous if in
17 the back of the legislature's mind, they weren't really
18 thinking about death at all, because they wanted to only
19 give half of the suite of benefits. And certainly if they
20 wanted to do that unusual thing, someone would have talked
21 about it. It would have been somewhere in some of the
22 legislative history that, yes, we're - - - we're giving,
23 you know, lifetime benefits, disability benefits, but it'd
24 be too expensive to give death benefits. So we're going to
25 hold those back.

1 CHIEF JUDGE WILSON: Thank you.

2 MR. DEGER-SEN: Yet there isn't one mention of
3 that anywhere in the legislative history.

4 And the final thing I'll say, and I'll mention
5 about again, is that you - - - you at least have to say
6 it's ambiguous. And if it's ambiguous, then we have to
7 prevail.

8 Thank you, Your Honor.

9 CHIEF JUDGE WILSON: Thank you.

10 MR. WOODS: Afternoon. May it please the court.
11 Patrick Woods, on behalf of the Workers' Compensation
12 Board.

13 I'd like to start off just to clarify for Judge
14 Garcia's question. It is the board's position that the
15 two-year statute of limitations applies to death benefits
16 claims by employees, because those benefits are derived
17 from Section 16 and not from 8-A.

18 CHIEF JUDGE WILSON: Wasn't that extended
19 statutorily, or no?

20 MR. WOODS: The board's precedent consistent with
21 - - - consistently has been that death benefits are outside
22 of 8-A. So they don't - - - a filing for death benefits
23 does not get the same benefit of the extended filing
24 deadlines that a claim for lifetime benefits.

25 CHIEF JUDGE WILSON: That apply to 18?



1 MR. WOODS: Correct.

2 CHIEF JUDGE WILSON: Right. Okay.

3 MR. WOODS: Well, 18 for notice, but - - -

4 CHIEF JUDGE WILSON: Yeah.

5 MR. WOODS: - - - yes.

6 JUDGE GARCIA: So as I read 28 there was some
7 discussion about this also implies - - - applies to
8 employees. But as I read that, that's for disability
9 applications and not for death claims. Death claims have
10 to be filed within two years; is that right?

11 MR. WOODS: That's my understanding as well. I
12 will double-check with the board on that and would be happy
13 to inform the court - - -

14 JUDGE GARCIA: So again, I know your position is
15 different. But assuming there's a death benefit available,
16 why doesn't 168 apply under 8-A to extend the time?

17 MR. WOODS: I mean, I think it is the - - - I
18 don't think the record has been developed on that fully
19 below. But to the - - - I believe Ms. Garcia's claim was
20 filed like three and a half years later.

21 JUDGE GARCIA: Right.

22 MR. WOODS: So it - - - it part - - - partly is
23 that there wouldn't be a death benefit for it to attach to.
24 But I - - -

25 JUDGE GARCIA: So the claim that - - - and I had

1 some trouble finding this as well. The claim that 168
2 extends the time to file a death benefit, has that been
3 raised here?

4 MR. WOODS: Not to this court, no.

5 JUDGE GARCIA: Below?

6 MR. WOODS: I don't bel - - - primarily we've
7 been trying to get - - - resolve the question of whether
8 there's a death benefit available here at all.

9 JUDGE GARCIA: Right.

10 MR. WOODS: If I could turn to - - - Judge
11 Rivera, one of the things that you observed that I think is
12 correct, and to some extent this, I think, got a little bit
13 lost is that this does apply - - - the whole statute
14 applies to employees as well as to volunteers. And that
15 fully explains 163 and 169's references to - - - to death,
16 because the employees are entitled to a - - - an ordinary
17 death benefit under Section 16. And one - - - what 163 and
18 169 are doing make perfect sense in terms of applying to a
19 Section 16 death benefit claim. One is potentially
20 addressing or modifying what the filing - - - what the
21 notice deadline is for those claims. And the other is
22 providing a modification to the evidentiary burden that a
23 claimant for a death benefit who would not be the
24 participant is making to allow them to use certain kinds of
25 evidence that was accepted by the federal government. And

1 just as much for - - - in any death benefits claim, they do
2 need to establish causation. And here it's modifying that
3 causation.

4 To the extent that it - - - that death in either
5 of those provisions needs to be or should be understood to
6 apply to volunteers at all, we've given, I think, some
7 reasons as to why that would be. And even in those
8 situations, notice is still going to be required in terms
9 of telling the board that the payment should be going in,
10 like, on 15 - - - 15-4, should be going to the family for
11 the remainder of that, as opposed to going to the claimant
12 who's no longer alive.

13 And I think one of the reasons that 163 in
14 particular is not a very strong place to try to anchor the
15 creation of a death benefit here for volunteers, is further
16 on in the language of Section 163 itself. The first part
17 that refers to injury or death makes no changes to the
18 timeline in 18. And then where it's making any change at
19 all, it says, "within two years after the disablement of
20 the participant or after the participant knew or should
21 have known". Parallel that to what is in Section 18, where
22 they specifically say, "shall be given to the employer
23 within thirty days of the accident causing such injury, and
24 also in the case of death from the employee resulting from
25 such injury within thirty days after death".

1 And this goes to one of the things that I
2 respectfully disagree with counsel on the other side about
3 is that it is not subsumed in the definition of employee
4 throughout the Workers' Compensation Law, that that also
5 includes the employees' beneficiaries. There's broken out
6 repeatedly. Section 16 is a whole separate section about
7 what the beneficiaries get under a death benefits claim.
8 15-4 is specific to what the beneficiaries get under a
9 death benefits claim.

10 In the older provisions for Civil Defense
11 volunteers, Section 303 creates a - - - an entirely
12 separate section for death benefits claim.

13 JUDGE GARCIA: But what about the reference in
14 163 to the notice requirement for death?

15 MR. WOODS: I mean, I think it's essentially
16 saying there's no change to the notice requirement for
17 death for claimants - - - decedents who have it under
18 Section 16. We're not modifying that.

19 Which would be a bit odd, I would admit, if
20 you're going to read a death benefit into 8-A.

21 JUDGE GARCIA: Actually, I thought that Section
22 163 is saying you don't have to go by Section 18. It gets
23 you out of Section 18 notice limits. So why would you need
24 it? It's not reaffirming anything. It's getting you out
25 of it. It actually cross-references and says that, right?

1 MR. WOODS: It - - - if for - - - for the
2 "except" for the second half of that sentence. The first
3 half of the sentence says, "it shall be the same as set
4 forth in Section 18".

5 JUDGE GARCIA: Right.

6 MR. WOODS: And then it makes a carve-out. But
7 the one that only refers to disablement and makes no
8 reference to death. And I think that's very - - -

9 JUDGE GARCIA: "Issue within two years after the
10 disablement of a participant", right? It's different than
11 18.

12 MR. WOODS: Yes, it is. It is making a
13 modification. But it's a - - - but by only referencing
14 disablement, as opposed to disablement and death, which is
15 where consistently throughout the statute otherwise.
16 There's - - - both of those are being mentioned, right?
17 Here, they're only mentioning one. And I think that's
18 pretty strong evidence that the legislature was only
19 contemplating - - -

20 JUDGE GARCIA: Why would - - -

21 MR. WOODS: - - - one kind of benefit.

22 JUDGE GARCIA: I'm sorry. I'm just not following
23 what you mean. Why would you have to refer to the death
24 benefit there?

25 MR. WOODS: Because it's a notice of a different

1 thing. In the same way that in 18 you're separately
2 referring to both the death benefit and the lifetime
3 benefit.

4 JUDGE GARCIA: But you're only - - - your point
5 is in 163 you're only changing the time limit for
6 participant, like benefits. Not the death benefit, right?

7 MR. WOODS: Correct.

8 JUDGE GARCIA: So why refer to the death benefit
9 at all?

10 MR. WOODS: You would refer to it in the first
11 half of the sentence, which it does when you say nothing
12 changes. It's what - - - the beginning of the sentence
13 reads, "Notice requirements for injury or death resulting
14 from a qualifying condition for a participant in the World
15 Trade Center rescue, recovery, and cleanup operations shall
16 be the same as set forth in Section 18 of this chapter".

17 JUDGE GARCIA: But if there was no death benefit
18 under 8-A, why wouldn't you just say the notice
19 requirements for injury resulting from? Why do you have to
20 put death in there at all?

21 MR. WOODS: I don't know that you would have to.
22 But it would certainly make, I think, it clearer that
23 nothing changes in terms of the death benefits that are
24 available under Section 16 by specifying it.

25 JUDGE GARCIA: I guess the point might also be

1 that employees, who are participants, get death benefits?

2 MR. WOODS: Yes. To not inadvertently exclude
3 them or somehow say that their Section 16 benefits don't
4 exist, which they do.

5 And to turn to the point about the legislative
6 history. I think under the circumstances of a 9/11 benefit
7 statute, we need to look at what we can reasonably expect
8 to find in the legislative history. I think it's unlikely
9 or unreasonable to expect we're going to find legislators
10 saying we are expressly not providing a certain kind of
11 benefit. I do think we would expect, if a certain kind of
12 benefit was intended to be provided, that you would see
13 legislatures expressly trumpeting all of the benefits that
14 they intended to be in the statute. And that's also not
15 here.

16 In fact, the history of the statute is - - - cuts
17 just the other way. As Judge Rivera pointed out, the
18 initial version of the statute limited the amount. And for
19 the first, until 2016, limited the amount of money that
20 could be paid to volunteers to the amount that the - - -
21 the state government could be reimbursed from the federal
22 government.

23 It made other changes over time. It has has
24 repeatedly amended the extended deadline for filing, but it
25 has never removed it. That shows an intention that after a

1 certain period of time, benefits are not going to be
2 claimable.

3 JUDGE GARCIA: Counsel, we talked earlier about
4 the board finding that injuries related to World Trade
5 Center activity is not an occupational disease. And that
6 seems to be the rule that was applied here by the board,
7 and I assume, in the other cases involving employees that
8 you were talking about. Why isn't this an occupational
9 disease?

10 MR. WOODS: 161 defines the universe of claims
11 for which a participant can make. And it, in fact, it's
12 another thing that changed in the statute that narrowed
13 available benefits. In 2013, the year prior to that, the
14 language had been any latent disease or condition. And
15 subsequent to that, 161 has an enumerated list of
16 compensable diseases or conditions.

17 To point about there being no reason for the
18 legislature to have made a distinction between one or the
19 other. There's quite a good reason. And the reason is the
20 source of the funding, which is the Uninsured Employers'
21 Fund. That's a fund that is funded by penalties on
22 employers who did not carry the necessary insurance. And
23 if it runs out on an assessment on all employers statewide.
24 It's not a dedicated, separate fund for volunteer claims.
25 And it's not designed to be that way.

1 And expressly limiting the amount of exposure
2 that the fund could have was very clearly the legislature's
3 initial intention with the statute in 2006. And if you
4 look at, I think, it's page 5 of the bill jacket there,
5 you'll see it very, very clearly that it was intended to
6 limit the claims of volunteers to only those that the state
7 could receive reimbursement for and not to be out of
8 pocket.

9 And that did eventually change in 2016. But it's
10 not, I think, enough to show that there was intended to be
11 a death benefit here. Which is one of the statutory
12 construction things that I think appellants sort of flip on
13 their head. You can't read a benefit statute to say unless
14 they have excluded the provision of a benefit, then the
15 benefit should be read into the statute. It's did the - -
16 - does the statute actually provide the benefit? It's not
17 removing a benefit by not expressly including a benefit.
18 It's not providing a benefit in the first place for which
19 there needs to be the statutory support in order for the
20 board to provide that benefit. No matter how - - - how
21 worthy we might believe claimants in this case, to be of
22 receiving benefits the board has to live within its
23 statutory authorization, and it cannot grant claims that it
24 doesn't, on its best reading of the statute, think are
25 available for it to grant.

1 The board would have, obviously, no problem if
2 the legislature wanted to amend the statute, provide a
3 funding source, and provide death benefits to the families
4 of volunteers.

5 JUDGE RIVERA: Why isn't he right, though, that
6 over time, what is obvious is that the legislature is
7 attempting to treat all participants the same? What he's
8 arguing is the equal footing. Why isn't he right about
9 that? Because that seems to be true throughout. Right?

10 MR. WOODS: Well, I mean - - -

11 JUDGE RIVERA: Because they're lumped together
12 participants. It's always in the reference to
13 participants.

14 MR. WOODS: Well, I - - -

15 JUDGE RIVERA: But are decoupled later on.

16 MR. WOODS: Well, I think one piece of evidence
17 that they're not - - - we're not intending to do that for
18 at least from 2006 to 2016, is the fact that the total
19 amount that could be paid out to volunteers was capped.
20 And it was - - - there was no cap on the amount for
21 employees.

22 I think the other thing to look at is - - - is
23 while the legislature is amending the statute over time, it
24 is simultaneously amending other statutory provisions. And
25 these are identified in the brief to the RSSL, the

1 Education Law, the New York City Administrative Code with
2 respect to retirees, to expressly separate and provide
3 death benefits to 9/11 workers in those other statutes.
4 And it's doing it in the exact same piece of legislation
5 that it's modifying what's in A-8.

6 CHIEF JUDGE WILSON: Well, those are - - - those
7 are pension enhancements, not workers' comp enhancements.
8 Right?

9 MR. WOODS: Correct. But it does show that death
10 benefits were something that the legislature was thinking
11 about when it's crafting this legislation. And for some of
12 those amendments, they're - - -

13 CHIEF JUDGE WILSON: I'm not sure that you can
14 draw the conclusion that because they decided to provide
15 retirement benefits for employees - - - to enhance those, I
16 should say - - - that they therefore decided not to provide
17 workers' comp benefits to survivors? That - - - those seem
18 disconnected.

19 MR. WOODS: I don't think it's - - - it's more of
20 a question of looking at the sort of the general canon of
21 statutory construction. That if the legislature intended
22 to do something, it would do it. It's just sort of added
23 evidence for why that canon is appropriate here.

24 CHIEF JUDGE WILSON: But I guess what I'm saying
25 is that the conclusion they decided to do something in the

1 retirement benefits for people who are actually employees,
2 who have - - - my understanding is what they did is they
3 said these are going to be treated as accidental deaths.
4 So you get the enhanced seventy-five percent benefit
5 instead of fifty.

6 That seems to me disconnected from a legislative
7 decision about whether to provide death benefits for
8 workers' comp claims. Those seem different.

9 MR. WOODS: They're certainly different policy
10 choices. The point I'm making here is limited to sort of
11 the question of if - - - if the legislature wanted to
12 provide it here, it could have done it expressly in just
13 the same way it did in those retirement statutes.

14 CHIEF JUDGE WILSON: Well, that's not clear
15 because the volunteers are not employees and weren't
16 entitled to even ordinary retirement benefits for
17 disability. So you couldn't do something analogous for
18 somebody who was not an employee?

19 MR. WOODS: No. I'm not suggesting that they
20 would have done something in the RSSL or in the Education
21 Law. I'm suggesting that the fact that they did not
22 include similar language in the Workers' Comp Law in 8-A,
23 in the same bill, right, means that they were - - - they
24 were thinking about provision of death benefits generally
25 to 9/11 workers, and they didn't go into 8-A and make sure

1 that they were available for the families of volunteers.

2 Unless the court has any further questions?

3 CHIEF JUDGE WILSON: Thank you.

4 MR. DEGER-SEN: Thank you, Your Honor.

5 I'd like to make three points. The first is
6 about Section 163. There is no way to read 163 as having
7 meaning here unless you adopt our interpretation.

8 I understood the answer from the other side to be
9 that the reference to death in 163 could be because it's
10 just referencing employees. But that's not possible
11 because the 163 itself specifically references volunteers.

12 So 163 says, "The notice requirements for injury
13 or death resulting from a qualifying condition for a
14 participant in the World Trade Center rescue, recovery, and
15 cleanup operations shall be the same as that in Section 18
16 of this chapter, except that the notice should be given
17 within two years for the disablement of the participant".
18 And let me just read the full - - -

19 JUDGE RIVERA: Yeah. But that was my point
20 before about participants includes two distinct classes.

21 MR. DEGER-SEN: Right.

22 JUDGE RIVERA: That's the - - - that was the
23 point about the disjunctive, that you could. It might be
24 inartful, but I don't think it's an unreasonable
25 interpretation - - -

1 MR. DEGER-SEN: No.

2 JUDGE RIVERA: - - - of this provision.

3 MR. DEGER-SEN: But this provision says it's
4 given to the employer, or in the case of a volunteer, to
5 the board within two years after disablement. So it is
6 extending - - - is giving the benefit of 163 to the
7 volunteer. The - - - it uses the word volunteer in 163.

8 JUDGE RIVERA: But then his point was after the
9 disablement. It doesn't say death there.

10 MR. DEGER-SEN: Dis - - - dis - - -

11 JUDGE RIVERA: Death is at the first part of the
12 provision.

13 MR. DEGER-SEN: Right. Disablement. Under the
14 board's precedent, disablement can include death. And
15 there's lots and lots of cases with death.

16 JUDGE RIVERA: It can. But if you've used death
17 above, one would think you would probably use it again.

18 MR. DEGER-SEN: Well, but - - - but there's no
19 way to explain death - - - the word death above. It says
20 death from a qualifying condition, and it incorporates
21 Section 18, which is about - - - which is about death
22 claims, which incorporates death claims. And it extends
23 that benefit to volunteers specifically. So there's - - -
24 and - - - and the key other part of it is that it's death
25 from a qualifying condition. And so they suggest that, oh,

1 maybe you just want to give notice of death to make sure
2 you're not going to, you know, the family's not going to
3 receive any more money. That wouldn't be death from a
4 qualifying condition. That could be death for any reason.

5 The only reason you would have death from a
6 qualifying condition, and then directly incorporate Section
7 18, is because you're incorporating the death benefits
8 provision of Section 18. And we know it extends to
9 volunteers because Section 163 uses the word volunteers.
10 So it is just pure superfluidity on 163 if you don't adopt
11 our interpretation.

12 The second thing I'll say is that I do think this
13 is - - - it's critical to note the statute doesn't provide
14 affirmatively any benefit. So the way in which it provides
15 benefits is through the incorporation under 164. The
16 assumption seems to be on that side, you know, they're
17 saying, well, you know, it provides lifetime benefits, but
18 not death benefits. But it never does that.

19 It uses the word claim by participant in two
20 places. One is in Section 162. That's just the trigger
21 that says in order for a claim by the participant to come
22 within this article, he has to file a written and sworn
23 statement. That's just a way of figuring out who the
24 people who are the equivalent of the employees are. And
25 that's like, you've - - - you know, you - - -

1 JUDGE RIVERA: Well, the survivors have the claim
2 for death benefits. No?

3 MR. DEGER-SEN: The survivors have the claim for
4 death benefits, but - - -

5 JUDGE RIVERA: Right. Not the participant?

6 MR. DEGER-SEN: But - - - but - - -

7 JUDGE RIVERA: The participant has a claim to the
8 lifetime benefits.

9 MR. DEGER-SEN: I agree. But nothing in this - -
10 - in the language of Article 8-A limits. It says only
11 participants have claims. It just says, first of all,
12 statutory trigger is if anyone's going to get any benefits,
13 a participant has to file a - - - you know, and let
14 everyone know he worked at 9/11. That makes total sense.
15 The only other place that comes in is Section 168. Even if
16 you read - - - and 168 is a later enacted provision. Even
17 if, as Judge Garcia was suggesting, you read 168 as
18 different and saying, well, you know, they didn't want to
19 extend that timeliness provision specifically to death
20 benefits, that's fine.

21 But that doesn't mean that the categorical rule
22 that the board is advocating here, which is that there's
23 just no such thing as a death benefit claim for volunteers,
24 is right. That's - - - and that's an issue that can be
25 sorted out on remand. But the critical thing is it doesn't

1 - - -

2 JUDGE RIVERA: What about his point on - - -
3 obviously not this. Not the WCL. The other statutes,
4 which at the same time contemporaneously are being amended
5 to expressly refer to death benefits?

6 MR. DEGER-SEN: It's not contemporaneous. I
7 mean, a lot of these are later on. And those - - - I mean,
8 there is no canon of statutory interpretation that says
9 when the legislature later on does something specific, you
10 - - - in a different - - - these are in the RSSL. They're
11 different statutory regimes. Then you then - - - you read
12 that back into an earlier statute.

13 JUDGE RIVERA: Well, but his point I thought - -
14 - I thought his point was that simply - - - it's not his
15 main point, obviously. But that simply indicates that the
16 legislature knows how to expressly refer to death benefits.
17 And having not done that here, since it's being so
18 cautious, being otherwise incremental, it - - -

19 MR. DEGER-SEN: Well, but that - - -

20 JUDGE RIVERA: - - - it means something?

21 MR. DEGER-SEN: It doesn't mean something. It
22 would certainly turn the canon of remedial - - - of
23 interpreting remedial statutes broadly on its head, if you
24 adopted the principle that whenever you find another
25 statute that does something more specifically, you think

1 that therefore the legislature here was not seeking to
2 extend benefits because it didn't do it as precisely as - -
3 -

4 JUDGE RIVERA: Well, we - - - we have referred -
5 - -

6 MR. DEGER-SEN: - - - it did somewhere else.

7 JUDGE RIVERA: We have referred when we're
8 interpreting a statute to other statutes where you see the
9 language that the legislature has adopted to articulate a
10 particular intent. We've done that. The canons allow for
11 that.

12 MR. DEGER-SEN: I think you can do that. But if
13 you adopt it here, you'd basically be saying every time you
14 find the legislature giving someone something really
15 specific, then suddenly you look at other completely
16 different provisions in different statutes, even when
17 they're enacted earlier and say, well, we're going to
18 withhold benefits there because it's not as specific - - -

19 JUDGE RIVERA: But it's still about these
20 benefits related to the exposure at the World Trade Center
21 during 9/11. Right?

22 MR. DEGER-SEN: I don't think that that's - - -

23 JUDGE RIVERA: I mean, it's canon that way.

24 MR. DEGER-SEN: - - - I think some of them are,
25 but some of them are enhanced benefits that there are

1 reasons to be more specific than here.

2 JUDGE RIVERA: On the death, but - - - no, I'm
3 just talking about the death benefits.

4 MR. DEGER-SEN: Right. That, then under Section
5 16, yeah. Those are enhanced death benefits. But you
6 know, Governor Pataki, when he vetoed the original version
7 of that bill, said, well, the - - - you know, he - - -
8 these are already provided for under Article 8-A, so why is
9 it that we would need to have it?

10 JUDGE GARCIA: Counsel, I just want to get to
11 your point on remand. What would we be remanding it for?
12 Because it seems that the Appellate Division said that it
13 was decedent who was entitled to file a claim for benefits
14 outside the period allowed by Workers' Compensation Law 28,
15 claimant cannot piggyback upon that entitlement, as her
16 claim for death benefits accrued at the time of decedent's
17 death. And then they say the language of the foregoing
18 statutory provisions, in short, clearly reflects that
19 claimant cannot avail herself of the exception to the two-
20 year filing requirement created by Workers' Compensation
21 section 168. And then it concludes by saying the limits
22 set forth in Workers' Compensation section 28 did not
23 apply. The time limits that get you out of that. So their
24 disallowance of the claim will be upheld.

25 It seems like down the line they ruled on every

1 one of these issues.

2 MR. DEGER-SEN: Well, I - - - so we have never
3 been able to develop - - - so the threshold issue that even
4 the board said was that like if you're a - - - if you're a
5 volunteer, you don't get a death benefit claim. And so we
6 were never allowed to develop any factual record as to
7 whether or not when Ms. Garcia knew or should have known
8 that this death was causally related to 9/11 exposure.

9 Even under section - - - we would - - - we would
10 at least argue - - -

11 JUDGE GARCIA: So if that doesn't apply, then we
12 don't need to remand. If we were to conclude that when she
13 knew that the death was related, wouldn't toll it in any
14 event, then there's no - - -

15 MR. DEGER-SEN: I think you would have to make at
16 least three legal determinations that have not been briefed
17 in this case, or like have not really been focused on in
18 the brief in this case.

19 One is you would have to say that under Section
20 168, the phrase "claim by participant" there does - - - you
21 know, that's an implied exclusion of death benefits. That
22 was not an alternative - - -

23 JUDGE GARCIA: That's what the Appellate Division
24 ruled. No?

25 MR. DEGER-SEN: But - - - but we - - -



1 JUDGE GARCIA: That's what I just read.

2 MR. DEGER-SEN: Right. And we have a right to
3 appeal that decision. That - - - that part of it has not
4 been discussed in the briefs here. We're happy to file
5 supplementary briefing on any of these, by the way, but
6 that's one - - -

7 JUDGE GARCIA: I think you have, but in a
8 footnote. In footnote 2 in your brief, you raised that
9 issue, I think, about 168.

10 MR. DEGER-SEN: But we certainly haven't - - - I
11 mean, they did not oppose this case by saying, yes, we
12 agree, or even as a backup, say, if it is true, the - - -
13 the - - - that volunteers have, you know, the - - - that
14 their family must have death benefits, you know, Section
15 168 specifically doesn't apply. So we've never really had
16 an opportunity to brief that issue.

17 Secondly, there's the theory - - -

18 JUDGE GARCIA: But that's what the court decided
19 below, but that didn't give you an opportunity to brief
20 that to us?

21 MR. DEGER-SEN: I think the court decided the
22 threshold issue of the fact that - - - you know, basically
23 based on the categorical rule, that's what we sought leave
24 on. And they haven't defended on alternative grounds.
25 This is the two other theories, that I've just - - - just -

1 - -

2 JUDGE HALLIGAN: But we generally have a case
3 before us, not a particular question. So wouldn't that be
4 presented to us?

5 MR. DEGER-SEN: I think you could address it.
6 I'm not saying it's not within your jurisdiction to address
7 that. I'm saying we haven't - - - there hasn't been
8 briefing on why we would think that 168 specifically is - -
9 - assuming that we are correct on the question that is in
10 the briefs regarding there being a death benefit of
11 volunteers at all, whether 168 is sort of carved out from
12 that. We would have arguments about that.

13 Secondly, there's the theory that the dissent
14 discussed below, which is the possibility that under 163,
15 if the notice provision is pushed out really far, then the
16 statute of limitations should accordingly also be pushed
17 out really far. Because it doesn't really make sense to
18 say that you don't have to give notice until you're aware
19 of the causal connection, but your statute of limitations
20 is somehow expired before you're required to give notice
21 under the statute.

22 And we do know that from the legislative history,
23 there was an intent to extend the limitations period as
24 well via 163. So we have arguments on that front that have
25 not been discussed and those were not discussed below.

1 And then you have to make a third legal
2 determination, which is that Section 28 itself, because we
3 think we have an argument to Section 28 that this is itself
4 an occupational disease, and the legislative history is
5 relatively clear. And I also say Section 161 defines
6 disablement - - -

7 JUDGE GARCIA: Counsel, you were - - -

8 MR. DEGER-SEN: - - - with cross-reference to
9 Article 3 - - -

10 JUDGE GARCIA: Counsel, you were appealing these
11 decisions and the Workers' Compensation Board found that
12 this wasn't an occupational disease. So I have a hard time
13 understanding how you didn't have an opportunity to brief
14 that?

15 MR. DEGER-SEN: Well, the question presented in -
16 - - we - - - we didn't - - - the decision below said that
17 just you categorically did not - - - you know? The
18 precedent we're dealing with is categorically if you're a -
19 - - a volunteer, then you just don't get death benefits.

20 JUDGE GARCIA: I know that's what you would like
21 the decisions to say. But I think they are more than that.
22 And they talk about Section 28, and they talk about 168,
23 and they talk about occupational disease. All those issues
24 are in there, even if they're alternative holdings. You
25 certainly had the opportunity to address those as you

1 appealed those decisions.

2 MR. DEGER-SEN: I - - - I think if this - - - I
3 think if this court should ultimately just address the
4 question that was presented in the leave petition, it can
5 address those - - - you know, it can then send it back down
6 to the third Department to address on remand, and that
7 would at least give us an opportunity - - -

8 JUDGE GARCIA: But you already addressed it.

9 MR. DEGER-SEN: I - - - I guess, I don't believe
10 that it fully addressed those issues, and I don't think the
11 factual questions that underlie them are necessarily
12 ventilated either. About when it was that Ms. Garcia
13 actually discovered this.

14 And so there - - - there are a lot of issues. I
15 think that the - - - the most, you know, ultimately, you
16 can't present everything in one set of briefs. There's the
17 question this court granted leave on. They - - -

18 JUDGE GARCIA: We don't grant leave on a
19 question. Right?

20 MR. DEGER-SEN: Well, and - - - and - - - and the
21 briefing focused on, you know, this one issue. I think
22 this would be making a lot of very significant legal
23 rulings that could have relatively far-reaching
24 consequences. I don't think it should do that in the first
25 instance. I think it should just address that primary

1 question, and then remand, allow those other issues to be
2 ventilated below. Then if a party wins or loses, this
3 court can grant leave or deny leave. And that will be a
4 final decision.

5 But I don't think that this court should address
6 without the aid of briefing questions, like, for example,
7 whether or not Section 28, this occupational disease
8 provision, encompasses WTC-related injuries. That's
9 obviously a very important question. It shouldn't decide
10 the scope of 163 without any briefing. You know, that will
11 create precedent that could have harmful consequences.

12 JUDGE GARCIA: Do you know of another case where
13 a party didn't brief an issue that was decided by the
14 Appellate Division, and we sent it back to the Appellate
15 Division to reconsider, so what? So they could rebrief it?

16 MR. DEGER-SEN: Well, I - - - I mean, the 163
17 issue at least, was definitely not decided by the Appellate
18 Division. I mean, that was the - - - that was the part of
19 it that the dissent said, look, what I would do here - - -
20 the dissent very clearly says there are two questions here.
21 There's the antecedent question, which is the question of
22 are - - - you know, are volunteers entitled to death
23 benefits at all? Then there's the timeliness question,
24 which is really fact specific. You know, they can develop
25 an argument under 163. I would send it back to the board

1 to figure out whether or not they're able to fulfill that
2 argument under 163.

3 That's certainly not within the holding of the
4 Third Department, so I think at the very least, this court
5 would be deciding that issue without the benefit of
6 briefing. And I think the much safer and easier course is
7 just to do the simple thing and say, well, what we know is
8 and this, I think, would be to the benefit of a vast number
9 of people. You know, this might be the unusual case where
10 someone might have a separate timeliness problem. But
11 obviously, the more fundamental question here is whether
12 the board's precedent is correct that volunteers just don't
13 get death benefit claims at all.

14 So at least I would urge the court to address
15 that issue first. If it then, you know, feels like it
16 wants to address the timeliness issue, it can go on to do
17 that. But I think the wiser course would be to not address
18 the timeliness issue and at least allow us the opportunity
19 to develop an argument under 163 that the dissent below
20 suggested and develop the facts that could support an
21 argument like that.

22 CHIEF JUDGE WILSON: Thank you.

23 MR. DEGER-SEN: Thank you, Your Honor.

24 (Court is adjourned)

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C E R T I F I C A T I O N

I, Chrishanda Sassman-Reynolds, certify that the foregoing transcript of proceedings in the Court of Appeals of Matter of Claim of Garcia, No. 93 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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