

## **SUMMARY OF ATTORNEY GENERAL SPITZER'S OBJECTIONS TO DOJ REGULATIONS**

The September 11<sup>th</sup> Victim Compensation Fund (“Fund”), which was signed into law on September 22, 2001, was intended to provide compensation for all victims of the September 11<sup>th</sup> terrorist attacks, including all individuals who were injured and the families of those who were killed. The law grants victims the right to present their case to a Special Master at a hearing, including the right to testify about the extent of their losses. The most significant flaws in the regulations include the following:

- Congress decided that individuals who suffered any “physical harm” should be entitled to file a claim. The DOJ regulations, in contrast, require that the harm be so severe that it causes a partial or total “disability, incapacitation or disfigurement”. As a result, thousands of victims whose injuries cause them significant pain and suffering, but who are not “disabled, incapacitated or disfigured”, are prevented from seeking compensation from the Fund.
- The DOJ regulations require contemporaneous medical records verifying that claimants were treated by medical professionals within 24 hours of the attacks. Hundreds, and perhaps thousands, of injured victims were treated at emergency medical triage locations on September 11<sup>th</sup>, and there is no documentation of those visits, and many of these individuals therefore will be ineligible to recover from the Fund.
- The requirement for medical treatment within 24 hours also eliminates the ability of victims to file claims for injuries discovered or treated after that time period. For example, if a worker in the World Trade Center suffered severe respiratory problems as a result of inhalation of the dust and debris, but did not visit a doctor until the afternoon of September 12, that person cannot file a claim, and must instead file a lawsuit and wait years for any recovery. Similarly, if a firefighter learns today that he or she suffered severe lung damage as a result of inhalations during the rescue operations, that firefighter is precluded from seeking compensation from the Fund.
- In most cases, the DOJ regulations limit recovery to spouses and immediate relatives of the deceased victims. Some of the victims were either engaged to be married or were living with life partners, and these individuals -- who were closest to the victims and have suffered tremendous financial and emotional hardships -- are effectively precluded from recovering under the Fund.
- Many victims were undocumented aliens who worked at the World Trade Center. Those who were injured, and the families of those who were killed, are understandably reluctant to file claims with the Department of Justice (which oversees the Immigration and Naturalization Service). Despite these real fears, the regulations provide no protections governing use of the information submitted to the Special Master, or any other procedures to encourage these individuals – who are suffering tremendously from their losses – to seek compensation from the Fund.

- The DOJ regulations determine – before hearing any evidence from any victim – that all individuals killed in the attacks are presumed to have suffered exactly \$250,000 in “non-economic” losses, which includes items such as physical pain, emotional suffering, and loss of enjoyment of life. While it is important to give potential claimants an idea of potential recoveries so that they can decide whether to file a claim, the \$250,000 “presumptive” amount is clearly too low.
- Even worse, the regulations make it very difficult for claimants to recover any more than the \$250,000 “presumptive” award for non-economic damages, by requiring claimants to provide evidence of “extraordinary circumstances” distinguishing their deceased relatives from all other individuals killed in the attacks.
- The regulations reduce awards by the amount of collateral compensation that the claimant has received, even if the collateral compensation was unrelated to the damages for which recovery is sought. For example, assume that an injured victim received \$30,000 in “collateral source” government benefits to cover lost income, and incurred \$20,000 in medical costs. If the individual filed a claim for the \$20,000 in medical expenses, a \$20,000 award from the Fund would be reduced to \$0, due to the \$30,000 “collateral source” payment for the lost income, thereby leaving the victim with no recovery and a \$20,000 medical debt.
- The regulations are not clear on the impact of charitable donations. DOJ admits that charitable contributions are “different” than the collateral sources listed in the federal law, and notes that reducing awards by the amount of collateral source payments “would have the perverse effect of encouraging potential donors to withhold their giving until after claimants have received their awards from the Fund.” While the regulations first state that charitable donations are not a collateral source and will not be used to reduce awards, the regulations also state that the Special Master “may determine” that private charitable payments “constitute, in substance” collateral source payments. This uncertainty, in addition to being contrary to settled law and the intent of Congress, will lead to the exact “perverse effect” that DOJ claimed it wanted to avoid.
- Congress gave victims and their families the right to have a hearing, including the presentation of witnesses. The DOJ regulations fulfill that promise in name only, by providing that the “hearings shall be limited in length to a time period . . . generally not to exceed two hours.” It is unreasonable to tell the spouses and other family members of those killed in the September 11<sup>th</sup> attacks that they have only two hours to explain the emotional, physical and financial impact of the loss of their loved ones.
- If the family of a deceased victim files a claim and seeks a hearing, and the hearing officer makes a clear error and awards an unreasonably low amount to the family, there is no right to have the Special Master review the amount, and even unconscionably low awards are binding and unappealable.