

## **VICTIM COMPENSATION FUND FREQUENTLY ASKED QUESTIONS**

(Updated July 11, 2002)

### **Section 9 – Waiver/Certification**

#### **9.1 What does it mean to waive rights to file a lawsuit?**

- **If you are an injured Victim**, you will, once your claim is submitted and deemed substantially complete, waive your right to file a lawsuit against any entity seeking compensation for the injury sustained by the September 11 attacks. This waiver does not apply to a civil action to recover collateral source obligations or to a civil action against any person who is a knowing participant in any conspiracy to hijack any aircraft or commit any terrorist act.
- **If the Victim is deceased**, the claimant will waive his or her rights to file an action seeking compensation for the Victim's death. . This waiver does not apply to a civil action to recover collateral source obligations or to a civil action against any person who is a knowing participant in any conspiracy to hijack any aircraft or commit any terrorist act. The statute may be interpreted to mean that the submission of a claim for a deceased Victim will waive the rights of other beneficiaries of that Victim to file a lawsuit.

#### **9.2 Whose rights are waived by filing a claim?**

The claimant's rights are waived. The statute may be interpreted to mean that the submission of a claim for a deceased Victim will waive the rights of other beneficiaries of that Victim to file a lawsuit

#### **9.3 If I apply for compensation for an Advance Benefit, do I give up my rights?**

Yes, once you submit the Eligibility and Application for Advance Benefits part of the new Compensation Form (or the previously published Eligibility Form and Application for Advance Benefits) and it is deemed substantially complete you will have waived your rights. The Act provides that upon the submission of a claim under the Fund, the claimant waives the right to file a civil action (or to be a party to an action) in any Federal or State court for damages sustained as a result of the terrorist-related aircraft crashes of September 11, 2001, except that this limitation does not apply to civil actions to recover collateral source obligations or to a civil action against any person who is a knowing participant in any conspiracy to hijack any aircraft or commit any terrorist act.

#### **9.4 When do I give up my rights to file other claims in court?**

You waive your rights once your submission of a claim is deemed substantially complete based on the determination of a Claims Evaluator. If you apply for an Advance Benefit and the Special Master determines that you have submitted a substantially complete Eligibility and Application for Advance Benefits part of the new Compensation Form (or

the previously published Eligibility Form and Application for Advance Benefits) you will have been deemed to have filed claim and will be giving up your rights to bring a lawsuit.

If you do not request Advance Benefits, you will be deemed to have filed and will be giving up your rights to bring a lawsuit if the Special Master determines you have submitted a substantially complete Personal Injury Compensation Form or Compensation Form for Deceased Victims, as well as the Eligibility and Application for Advance Benefits (form or part).

#### **9.5 Will submission of a claim to the Fund affect other benefits I get?**

That will depend on the particular benefit program. You should check with the administrators of the programs from which you receive benefits. If you are receiving workers compensation benefits, you should check with your carrier or union or employer to make sure you have obtained all the necessary information, agreements or waivers.

#### **9.6 Is a notice of claim or intent filed with the Port Authority, the City of New York, or a Workers' Compensation carrier considered a civil action that would bar a claim with the Victim Compensation Fund?**

No. A notice of claim or intent filed with the Port Authority, the City of New York, or a Workers' Compensation carrier does not constitute a civil action in federal or state court. If you have filed such notices, you may still file a claim with the Victim Compensation Fund. However, if you proceed with a lawsuit (or are made a party to a lawsuit) in state or federal court for damages as a result of the crashes, you will not be able to claim from the Victim Compensation Fund, unless it is a civil action to recover collateral source obligations or a civil action against any person who is a knowing participant in any conspiracy to hijack any aircraft or commit any terrorist act.

#### **9.7 I've filed a claim, and one of my family members objected because he wants to file a lawsuit. Will my claim be processed?**

The Fund will process the claim if it is filed by an eligible personal representative and that claimant is not a party to an action in state or federal court seeking damages as a result of the September 11<sup>th</sup> terrorist attacks and if there is no legitimate objection to the claim. We cannot advise on how the court will address the issue of waiver or whether the family member will be permitted to pursue a lawsuit.

#### **9.8 Q&As Regarding Lawsuits Against Terrorist Conspiracy Participants**

##### **Question A**

**Q:** If I file a claim under the Fund, may I also file or be a party to a lawsuit against someone who "is a knowing participant in any conspiracy to hijack any aircraft or commit any terrorist act?"

**A:** Yes.

### **Question B**

**Q:** What happens if I file a claim with the Fund and also file a lawsuit against someone who is not a "knowing participant in any conspiracy to hijack any aircraft or commit any terrorist act?"

**A:** Section 405(c)(3)(B)(i) states that a claimant to the Fund "waives the right to file a civil action (or to be a party to an action) in any Federal or State court for damages sustained as a result of the terrorist-related aircraft crashes of September 11, 2001," and makes exceptions only for lawsuits "to recover collateral source obligations" and lawsuits against a defendant that is a "knowing participant in any conspiracy to hijack any aircraft or commit any terrorist act." If you file a claim with the Fund and also file a lawsuit against someone who is not a "knowing participant in any conspiracy to hijack any aircraft or commit any terrorist act," you are still eligible for compensation from the Fund, but your lawsuit will be dismissed. This rule applies regardless of whether you file your claim with the Fund before or after filing the lawsuit.

### **Question C**

**Q:** Who will decide whether a defendant is in fact a "knowing participant in any conspiracy to hijack any aircraft or commit any terrorist act?"

**A:** In all cases, regardless of whether you file your claim with the Fund before or after filing the lawsuit, the court will decide the issue whether a defendant is a "knowing participant in any conspiracy to hijack any aircraft or commit any terrorist act." If the court determines that the plaintiff has submitted a claim to the Fund and that a defendant is not a "knowing participant in any conspiracy to hijack any aircraft or commit any terrorist act," then it must dismiss the lawsuit against that defendant (unless the lawsuit is one to recover collateral source obligations).