



9/11 Aftermath

Lawsuit or Victims' Compensation Fund - A Difficult Decision to Make

Suing the Terrorists is Not

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Matthew Sellitto, son of Matt Sellitto, Anthony Sellitto's cousin, worked for Cantor Fitzgerald and died on September 11, 2001

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Many families who lost loved ones on September 11 are now faced with a difficult decision. That is whether or not to accept compensation for their losses from the fund set up by Congress as part of the *Air Transportation Safety and System Stabilization Act* enacted on, September 22, 2001. This fund more commonly referred to as the *Victims' Compensation Fund* was put in place with the purpose of compensating the victims and their families for their economic and non-economic losses (pain, suffering and emotional distress). In return for accepting this payment, the claimants are required to give up their right to file lawsuits against the airlines, the lessee of the World Trade Center and other domestic parties who might be held negligent in some way or another thereby contributing to the losses of September 11th. By reducing or eliminating the civil responsibility of the airlines, that industry, which was already on shaky financial ground would have a better chance of surviving as we now know it. The source of payment for the losses would be spread among all taxpayers and, as Congress felt, rightfully so as the attacks of September 11 were not only directed at the occupants of a few aircraft and buildings but at all Americans.

Kenneth Fienberg, the Special Master appointed by the President to oversee the *Fund* has been the subject of some recent criticism in his administration of same. Mr. Feinberg has a difficult and somewhat complicated responsibility of creating formulas to calculate the economic losses suffered by the victims and their families. The recently published report submitted by *Cantor Fitzgerald* pointed out some significant discrepancies between the yearly growth in income experienced by many of its employees and the formulas prepared by Mr. Feinberg used to calculate that growth. The income of many Cantor employees, especially the new employees, grew at rates far higher than Feinberg assumed. This difference in income growth rates might mean a *Fund* award that is millions of dollars less than the actual economic loss suffered by many families. Subtract from those awards any life insurance proceeds (of which the high income earners usually had the highest coverage) and the families of many deceased victims may be looking at *Fund* payments of less than \$500,000. Some people now criticize those family members as being greedy. What the critics fail to recognize is that the families of those high income growth victims would be able to claim their *full* economic loss in a court of law. In that forum the actual yearly growth rate would be used. There also would be no deduction from a jury award for life insurance proceeds. It is this vast difference in award potential between the *Fund* and a lawsuit against the airlines and others that substitutes the word *greed* with *sound economic sense*.

I am not advocating that the families of these persons should sue the airlines or the Port of Authority. I would hope that all family members forego lawsuits and stay with the *Fund*. That was the intent of Congress in creating it (the *Fund*) - to eliminate lawsuits and protect the financial stability of the airline industry. The problem is that many families may have no choice but to go the litigation route. There are far too many cases where the families may not receive full compensa-

tion for their economic loss. To answer the critics as to why should some families receive more in economic loss than others, it's a fact of life that some people just made more money than others and the economic loss to the families of these people is greater. Those same families would receive much higher awards in a court of law.

Feinberg's across the board award for pain, suffering and emotional distress of \$250,000 treats every life and everyone's emotional distress the same. I should point out that, in a court of law, awards for these non-economic losses would be much higher. Almost every day we read somewhere about family members who are still suffering from severe psychological problems and are in need of frequent counseling and medication. As seriously disabled as some of these people may be, many of these people would be willing to accept Feinberg's low award for emotional distress if they knew that they would be receiving their full economic loss. The *Fund* was and is an appropriate response by our country to aid the victims and their families. Let's be sure we administer it in such a way that all families utilize it.

There is a lawsuit, however that I am advocating and encouraging all victims and family members to join in as plaintiffs. Participation in the *Fund* prohibits suits against the domestic defendants but does not prohibit participation in any suit against the terrorists and their supporters. The suit that I am referring to is entitled *Burnett v. Al Baraka Investment*. This lawsuit was filed by the *9/11 Families United to Bankrupt Terrorism*. The lead attorneys in the suit are Ron Motley, who successfully sued tobacco companies for \$300 billion on behalf of the Attorneys General of 36 states, and Allan Gerson, lead attorney in the suit by the families of Pan Am 103 against Lybia. These attorneys are known for their success in handling difficult and complicated cases. This suit, filed in the Federal District Court in Washington DC, has almost 4,000 victims and family members of 9/11 as named plaintiffs. My cousin, Matt Sellitto and his wife Loreen lost their son Matthew on September 11th. Matt, Loreen and their younger son Jonathan are three of those plaintiffs. I am proud to state that I am one of the attorneys of record in this lawsuit

Our suit, in addition to naming Bin Laden and Al Qaeda as defendants, also names a number of Saudi Princes who donated to certain charities knowing that their donations would be funding terrorism. Other defendants include those charities and also banks, individuals and corporations who helped channel the money to the terrorists. The Republic of Sudan is a defendant as it one country officially recognized by the United States as a *state sponsor of terrorism*. The federal anti-terrorism laws, passed after Pan Am 103 and the Oklahoma City bombing, give the victims and families of 9/11 cases of action against these defendants. Many of the defendants have substantial assets in the United States and a civil judgment will allow execution on those assets. The suit not only includes claims for economic loss but also claims for both the intentional and negligent infliction of emotional distress suffered by family members who witnessed the death of their loved ones. Our suit also includes as plaintiffs the fiancées of many of those killed. They, the fiancées, have been told they have no claim with the *Victims Compensation Fund*. They did, however, also suffer severe emotional distress and we are including their claims for that emotional distress in our suit. It is the intent of our suit to take as much money as we can from the terrorists and their benefactors and give it to the victims and their families. When we are successful we will have sent a message to the World that it will hurt terribly in the pocketbook of those who fund terrorism. Hopefully Saudi Princes and others will then think twice before they donate to certain organizations.

Let us not forget the intent and spirit of the *Victim's Compensation Fund*. Let us make the heroes of 9/11 and their families whole again, at least in a financial sense. There are bills now pending in Congress which will correct some of the major points of argument with the *Fund* payments. We should all support and encourage the passage of these bills. Make the families whole – fairly, expeditiously and economically - and at the same time keep airlines aloft. Let the family members concentrate instead on their participation in our lawsuit. We are engaged in the War Against Terrorism. *Burnett v. Al Baraka* is one of the battlefields of that War.