



The State of New York



The City of New York

November 27, 2001

VIA OVERNIGHT MAIL

Hon. George W. Bush
President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear President Bush:

As the Governor and Attorney General of New York State and the Mayor of New York City, we write to comment on the eligibility for victim compensation under the Air Transportation Safety and System Stabilization Act ("ATSSSA") of domestic partners and other family members who may lack formal legal recognition, but who unquestionably suffered losses as a result of the death of a loved one during the September 11th terrorist attacks.

The families of the victims of the September 11th attacks reflect the full spectrum of the people of New York and of America in terms of gender, race, religion, color and national origin, as well as marital status and sexual orientation. Among the grieving are many survivors who had not formalized their relationship by obtaining a marriage certificate or an adoption order. Some are unmarried life partners or other persons with whom they had shared a mutual interdependent relationship; others are nonbiological children, who may not have been formally adopted.

The lack of formal legal recognition, however, does not mitigate the shattering impact of the death of a beloved companion, parent, or guardian. The emotional injuries are profound and will take long to heal. The economic losses are immediate as well as long term. In many cases, these individuals were dependent on the income from the deceased, and this financial adversity, if unaddressed, will exacerbate the emotional pain.

ATSSSA is a unique legislative enactment, designed to address the unprecedented scope of the September 11th attacks. Congress clearly recognized the tremendous hardships being faced by the victims and their families, and responded by ensuring that they would not be forced to seek damages through the normal process of litigation. ATSSSA eliminates all of the existing common law and statutory requirements of standard tort litigation, and instead authorizes all victims and their families to seek compensation directly from the federal government, without proving culpability by any party.

ATSSSA therefore clearly reflects the intent of Congress to compensate all the loved ones of those killed or injured as a result of the September 11th attacks. The statute does not limit recovery to spouses or children, and the legislative history is replete with references by members of the Senate and House that their intent was to compensate the "families" of the victims. Indeed, the thousands of victims of the September 11th tragedy include many individuals who were in long-term domestic partnerships, some of whom engaged in acts of great heroism as they tried to save the lives of others that day. Certainly Congress did not intend that those dependent upon these heroes should be denied compensation under the fund.

This is consistent with other compensation programs, such as New York State's emergency relief program, which provides compensation to all persons who were dependent upon a victim of the World Trade Center attack, including spouses, children and persons in a relationship of unilateral dependence or mutual interdependence. Indeed, less than a month after the attacks, Governor Pataki issued an Executive Order to authorize crime victim awards for all persons who can show such a relationship with victims of the September 11th attacks, looking at an array of factors, including but not limited to "common ownership of property, common householding, shared budgeting and the length of the relationship between such person and the victim." Exec. Order 113.30. New York City also has recognized these relationships, and permits domestic partners to file applications for death certificates. See 24 R.C.N.Y. § 205.01(d)(1).

Similarly, compensation afforded by ATSSSA to the families of the victims "should find its foundation in the reality of family life." Braschi v. Stahl Associates Company, 74 N.Y.2d 201, 211, 543 N.E.2d 49, 53, 544 N.Y.S.2d 784, 789 (1989)(protecting from eviction under New York City housing regulations family members living with a tenant including life partners). Indeed, actions by several federal agencies relating to victims of the September 11th attacks -- such as the INS statement that it will not affirmatively seek information about victims who are undocumented aliens, and the IRS statement authorizing charities to provide relief to families without first requiring a full demonstration of need if the payments are made in good faith using objective standards -- demonstrate a recognition by the federal government this great tragedy requires an unprecedented and compassionate response.

Thus, the Department of Justice and Special Master should adopt regulations that provide all grieving family members with a full opportunity to seek compensation for their losses. ATSSSA authorizes the filing of a single claim per victim, but recognizes that more than one family member may have incurred losses as a result of the victim's death or injury. Moreover, the filing of a claim and the obtaining of compensation pursuant to this federal victim compensation program will preclude the filing of most litigation for compensation. The personal representative who is authorized to file a claim on behalf of the deceased victim therefore must reflect the concerns of all those who incurred losses as a result of the September 11th attacks.

Specifically, the personal representative should be required to provide notice that a claim is being filed to all survivors of those killed in the crashes. Notice should extend to any individual who incurred economic and noneconomic losses as a result of the loss of someone with whom he

or she shared a mutually interdependent relationship. The determination of whether an individual was in such a relationship and therefore is entitled to compensation should be based on the totality of the circumstances, based upon the exclusivity and longevity of the relationship, the emotional and financial commitment, and other factors such as those set forth in Governor Pataki's Executive Order 113.30.

In sum, we urge you to ensure that the September 11th victim compensation fund extends to all family members of the deceased victim who are suffering as a result of this great tragedy, including domestic and life partners and non-biological children whose relationships had not been formalized. Thank you for considering our views on this important matter.

Sincerely,


Governor George Pataki
Attorney General Eliot Spitzer
Mayor Rudolph Giuliani

cc: Hon. John Ashcroft