

## **STATEMENT OF THE SPECIAL MASTER REGARDING THE PROGRESS OF THE SEPTEMBER 11<sup>th</sup> VICTIM COMPENSATION FUND**

As I have administered the September 11<sup>th</sup> Victim Compensation Fund, I have faced many of the challenges that I expected and others I did not. Indeed, in all my past dealings with victims, I have never experienced the level of emotion and pain that I see on a daily basis in my meetings with victims of 9/11. The tragic events of September 11, 2001 caused – and continue to cause – pain that no amount of money can undo. Nonetheless, the Fund – along with the generosity of so many individuals, private charities, state and local governments, and other government programs – has done much to help victims’ families begin to rebuild their lives. The Fund is a testament to the generosity of the American people.

The Fund is a truly unprecedented program. Neither the judicial system nor other government programs can provide a model for the Fund, as Congress established aspects of the Fund that are inconsistent with each model. For example, I have received comments from Americans who believe that the Fund, as a government program, should not value lives differently by providing different awards based upon individual circumstances such as income. They note that it is inappropriate for some of the high end awards to be several times greater than the lowest awards, and they raise specific objections to the multimillion dollar awards that the program has issued. While I appreciate such arguments, disparities among awards are unavoidable here because the statute creating the Fund expressly requires that I consider the claimant’s “economic loss.” Given that statutory language, I had no choice but to make income one of the many individual circumstances that I consider in calculating awards.

At the same time that many have criticized the program’s multimillion dollar awards, others have criticized the Fund for exactly the opposite reason – that the high-end awards are not enough. They argue that the “economic loss” language in the statute requires that the government pay certain claimants many millions of dollars – *i.e.* more than 20, 30, 40 or even 50 times as much as other claimants. To that, I note that the statute expressly calls for consideration of the “individual circumstances” of the claimants, one of which under the regulation is the financial need of victims and surviving families in rebuilding their lives. A pure calculation of potential lost earnings, without consideration of individual circumstances such as need, would undercompensate some victims’ families relative to their needs while overcompensating others. I therefore noted in the Preamble to the Final Rule creating the Fund that it would be very rare for claimants to receive less than \$250,000 after collateral source offsets, or for claimants to receive more than \$3 million or \$4 million tax-free.

As the attached chart demonstrates, the awards for deceased victims determined to date are generally consistent with my estimates when the program began. And as I then projected, no eligible claimant in a claim based on death has received less than \$250,000, even after the required deductions for collateral source compensation. While there have not yet been many awards in excess of \$4 million, awards between \$3 and \$4 million (after collateral source deductions) have turned out to be more common than we anticipated.

Some have asked if it is possible to receive awards in excess of the numbers set forth on the presumed award charts I issued in connection with the Final Rule. The answer is yes. Indeed, many of the “presumed awards” to date under Track A of the regulations would exceed the numbers listed in the presumed awards charts if collateral source deductions were backed out. It is also possible that the claimants who request individual extraordinary circumstances hearings will receive awards beyond those anticipated on the charts. Nonetheless, it is important to reiterate the guidance given in the Preamble to the regulations — that “[c]laimants should not

expect awards grossly in excess of the highest awards listed on the Special Master's presumed award chart." Thus, while it is possible that claimants may receive awards higher than those on the attached chart based upon a review of individual circumstances, many claimants' awards will not be dramatically higher.

The average award on the chart is \$1,487,455, after collateral source compensation has been deducted as required by statute. The average award before collateral source offsets is \$1,893,080 — consistent with — indeed slightly higher than the amount I projected when I announced the final presumed award charts. I continue to believe that these awards, provided as lump-sum tax-free payments, should be sufficient to help victims' families to rebuild their lives, especially when considered in the context of the other generous benefits that have been provided by private charities, state and local governments, and the federal government — such as the rebate of two years of federal taxes for all victims' families, the federal Public Safety Officer Benefit for uniformed officers, and the numerous death benefits for military personnel.

I have also provided below a description of 10 sample awards to demonstrate how different claims are being handled. While each award is based on individual circumstances and we are withholding more specific information due to the privacy interest of the claimants, the information we are releasing today should give potential claimants more information regarding how their claims will likely be treated.

In addition to providing compensation based on death, the Victim Compensation Fund provides payments to victims who have suffered personal injuries. It is more difficult to give guidance regarding personal injury awards, as the range of injuries suffered on September 11 makes this a highly individualized process. While some of the injuries require only modest compensation where the injuries are less severe and medical expenses were fully covered by insurance, a few of the most severely injured may receive in excess of \$5 million due largely to their extreme, ongoing pain and suffering.

The percentage of claimants who have accepted the presumed awards is substantially higher than we anticipated, indicating a general satisfaction with the presumed award methodology. I often receive questions regarding the number of potential claimants who have opted to enter the program to date. While the majority of potential claimants have not yet decided whether to enter the program or instead to file lawsuits against potentially culpable parties, far more have chosen the compensation program than have chosen litigation. To date, 830 claims have been filed with the Victim Compensation Fund. My experience with mass tort compensation programs is that most claimants wait until the very end of the program to decide whether to participate. This is largely because victims' families need time to cope with their losses and because victims and the lawyers advising them wish to see how other claimants are treated before making a decision. I expect that the numbers that I am releasing today should assist victims' families in making educated decisions.

My office also is going to great lengths to provide assistance to claimants as they work their way through the claims process. Each claim receives individual attention and is reviewed thoroughly and carefully. Claimants are invited to set up appointments to obtain assistance in completing claims, securing documents or in understanding offsets or award calculations.

As of December 5, 2002, we have issued awards for a total of 132 claims.