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Days of Service

First Quarter 2010 Project

MA 9/11 Fund Families Stock Food Pantry in Dorchester, MA

Represented by a dedicated group of family members and two staff, in January of this year The Massachusetts 9/11 Fund unloaded *almost 2,000 lbs.* of food for the **Yawkey Center** food pantry run by **Catholic Charities**. This small but mighty group then assembled roughly 175 food packages as well as stocked shelves with goods from the Boston Food Bank, all in the spirit of volunteerism fostered by the **9/11 Day of Service and Remembrance**. As always, we are thankful for the helpful direction of **Ms. Beth Chambers** at Catholic Charities.



Second Quarter Project

Memorial Day with The Massachusetts Military Heroes Fund

The Massachusetts Military Heroes Fund (MMHF) is busy planning events honoring Memorial Day 2010. **There may be extensive volunteer opportunities** beginning the week before Memorial Day involving the set up of large memorial display in Boston honoring all fallen service members since WWII. For the most up to date information, contact Erica Cabag at 617-482-8153 or erica.cabag@massfund.org, or visit the web site of the Heroes Fund at www.massmilitaryheroes.org.

Summer Red Sox Event

4th Annual baseball outing to take place Sunday, July 18

Join us for a baseball game as the Boston Red Sox take on the Texas Rangers, on Sunday, July 18 at 1:35 pm. The seats are located in the left field grandstand and the price per ticket is \$52.00. Maximum tickets purchase is **2 per household**. Depending on the demand, we may be able to extend to 3 tickets per household. Financial assistance is available to those who are experiencing a hardship. For those attending the game, we are hosting a **pre-game reception at Jillian's Boston** which will take place from **11:30 am – 1:00 pm**. Ticket reservation requests will be taken on a first come, first served basis beginning **Saturday, May 15th at 10:00 am**. Reservation requests can be made by email (preferred) to erica.cabag@massfund.org, or, if you do not have access to email, by leaving a voicemail at 617-482-8153 (or 617-482-8151 if the first mailbox is full). Please leave your name, number of tickets, number of adults and children under 16 and a contact phone number or email address. **(Note: Please do not call or email reservation requests before May 15th at 10:00 am, as they will not be accepted.)** Once you have received confirmation of your reservation, we will send details on how to secure your reservation with prompt payment and on how to collect your tickets if you are not attending the pre-game reception. Please feel free to call **Erica Cabag** with any questions.

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Upcoming Board of Directors Meeting

Families invited to attend June 15th meeting

The Board of Directors of the Massachusetts 9/11 Fund, Inc. would like to invite you to special meeting on **Tuesday, June 15, 2010** at a location to be determined off of Rte. 128. **The main topic of discussion will be the downsizing and transition** of the Fund's responsibilities from the staff to the Board, Family Advisory Committee and consultants at the end of this year. We are encouraging everyone to attend who has questions, concerns or input they'd like to share about this process. A light dinner will be served. If you are interested in attending, please RSVP to Erica Cabag at erica.cabag@massfund.org or 617-482-8153.

Family News, Notes & Articles

This month, we are pleased to share two articles from family members. The first is an article written by **Teresa Mathai** regarding her experience at the **International Congress for Victims of Terrorism**. The second is an informative article written by family member **Bob Grodberg** and his colleague **Peter Toland** regarding some frequently asked questions about **worker's compensation benefits**.

If you have a news item or article you'd like us to put in the newsletter, please let us know!

International Congress for Victims of Terrorism

By Teresa Mathai

On February 9, I was invited to travel to Spain to attend the **6th International Congress for Victims of Terrorism**. This conference was hosted by the International Observatory on Victims of Terrorism, founded by the San Pablo CEU University in Madrid.

The US team comprised of eight members and included Lee Ielpi, Jennifer Adams, and Ben Urizar from the September 11th Families' Association and the WTC Tribute Center, NY, Candy Cucharo and Kathy Murphy from Tuesday's Children, NY, Rosemary and Denise Dillard from the Pentagon Memorial, Virginia, and me from the Mass 9/11 Fund. We were among over 800 delegates consisting of family members and victims of terrorism, mental health professionals, social workers, professors, journalists, government officials, and representatives from organizations of victims of terrorism from Argentina, Algeria, United States, France, Ireland, Italy, United Kingdom, Israel, Columbia, Russia, and of course, the host country, Spain.

The very first International congress was held on the first anniversary of the Madrid Bombings, in 2005. Since then, it has taken place every alternate year in Spain and other countries willing to host it. Oklahoma City had offered to host it, last year, but they dropped out due to lack of funds. The WTC Tribute Center and the September 11th Families' Association hope to host the next International congress in NY right after the 10th anniversary of 9/11. More details will follow if the conference venue is confirmed at NY.

This year, victims from all over the world congregated for 3 days in the medieval city of Salamanca, north of Madrid, to share their stories and to join their voices in protest against the legitimization of political violence.

We heard stories from people affected by terrorist incidents including the Madrid train bombs, the car bomb in Omagh, Northern Ireland, bomb attacks in Israel, ETA attacks in Spain, a Columbian congressman who was taken hostage by FARC, a French airliner that was blown up over the Tenere desert, and 9/11 in the US.

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**Bosque del Recuerdo – Forest of Remembrance
Memorial Garden for Victims of 2004 Madrid Train Bombing**

Mr. Ielpi and Ms. Dillard recounted their personal stories and the importance of memorials to the victims' families. This year, among other topics, most organizations talked about their various memorials, as only recently many of them had been built after many years of persistence and seeking justice against the terrorists.

The Congress was attended by many high-ranking officials from the national, regional and local Spanish Governments and was formally opened by the Crown Prince and Princess Asturias. The conference schedule included panels on Victims and justice, memorials and their importance for victims, overcoming post-traumatic stress, and a range of other related topics, including, dignity and rights of the victims vs those of the perpetrators, justice and the search for truth, the role of government, and the driving search for peace for the future.

During the conference, ceremonies paying homage to victims around the world were held in the main Cathedral, the main Plaza de la Concordia- where the Manifiesto for victims rights were read out, and also at the Symphony orchestra, where the concert included a special piece composed in honor of victims around the world. On the second day, an event was held in Salamanca's Plaza Mayor (Main Square) to pay tribute to victims of terrorism all over the world. Over 3000 members of the public attended the event to show their respect and solidarity with the victims of terrorism from all over the world.

When can a Worker's Compensation Insurer Terminate a Surviving Spouse's Worker's Compensation Payments? By Bob Grodberg, Esq. and Peter Toland, Esq.

Under the **Worker's Compensation statute governing surviving spouse's benefit payments**, there is an initial period (of at least 250 weeks, or equal to \$207,722.50 in weekly payments) where the Insurer is obligated to pay a surviving spouse weekly benefits, at two-thirds of their deceased spouse's average weekly earnings with cost of living adjustments. During this initial period, the surviving spouse ability to support her or himself is not a factor and the payment of benefits is unconditional, except in the event of death or remarriage.

After this initial period, the Insurer paying surviving spouse benefits has the right to petition the Department of Industrial Accidents to discontinue payments, if the Insurer can convince a judge of the DIA that the beneficiary is currently "fully self-supporting" in the words of the relevant statute, a phrase not further defined in this law, M.G.L. Ch. 152 §31.

Any determination as to whether a beneficiary is fully self-supporting, could potentially be affected by the amount of any Federal 9/11 awards received. However, the question of whether or not the 9/11 awards can even be counted as part of the beneficiary's assets in connection with the "fully self-supporting" determination is a complicated one which has not been specifically addressed by the courts in Massachusetts.

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For example, another worker's compensation statute, Ch. 152 §38, provides that the insurer cannot point to "savings", "insurance", or "benefits derived from any other source other than the insurer". This statute has been an important factor in two recent court decisions on a surviving spouse's "self-supporting" status where one beneficiary had received her own retirement pension, and another had received other payments based on the death of the spouse, but at present these cases (not involving 9/11 payments) may only apply by analogy as to whether the 9/11 awards may be considered as part of the larger "self-supporting" question.

This question could be presented to a DIA Judge, either by the Insurer seeking to terminate such payments, or by the beneficiary if the insurer has (without approval from the DIA) terminated payments. In the case of a beneficiary filing a claim as a result of such a termination, the beneficiary would be entitled to request a Conference Order of Payment, seeking the restoration of payments back to the date of termination, with interest at 10% per annum on all payments not made. Regardless of how a claim concerning Ongoing survivor's benefits might commence, it is reasonable to assume that the Insurer would appeal any determination in favor of the beneficiary. Appeal of a Conference order would come before the same judge for a full hearing, at which time the sole issue would be the beneficiary's "fully self-supporting" status.

The relevant factual issues at such a Hearing would certainly include: 1) the beneficiary's living expenses vs. his or her own personal income; 2) whether or not the beneficiary's 9/11 award should be considered as part of the "fully self-supporting" analysis, and; 3) what standard of living would the Judge consider appropriate for the beneficiary. (Prior decisions have allowed judges a considerable level of latitude on this last question).

The beneficiary's direct involvement in the Hearing would be limited to testifying to these facts and probably non-controversial testimony before the judge at the DIA. Appeals from a Hearing determination by a judge are also quite likely, which almost always turn on questions of law, since appeals are determined on the original factual record at the Hearing.

A unique aspect of a surviving spouse beneficiary's rights under the Massachusetts worker's compensation laws is that both the beneficiary and the insurer could in future years re-open a case to once again request that the judge make a determination of financial self sufficiency,. The issue of financial self-sufficiency remains open, and even an adverse decision on the question does not preclude the losing party from returning to the DIA at a later time to re-litigate the question seeking a changed order ordinarily based upon changed financial circumstances.

As a matter of law, only the beneficiary's remarriage, or death, or a settlement of the case would the beneficiary's right to claim benefits terminate permanently. Since the beneficiary may always be able to reopen this issue it is not unusual for the insurance company to raise the issue of settlement of this controversy by offering a lump sum payment in exchange for termination of all payments.

Investment analysts with whom we have consulted liken the monthly payments to annuities, and quotations for the cost of a single premium annuity calling for weekly payment, terminating on death may provide a guide for settlement negotiations. However, an analysis by the surviving spouse's financial consultant is preferred. The general experience of workers compensation lawyers appears to be that Insurers operate on a rule of thumb that they would not want to make an initial offer a settlement for more than 10 to 12 times the current annual benefit payable to a surviving spouse, most likely because of the possibility that the recipient's premature death would absolve the Insurer of all further responsibility. But this rule of thumb may not approximate the real present value of the stream of payments to the beneficiary.

In comparing the current payment stream to a lump sum settlement amount, it is important to note that upon the beneficiary's death, the current payment arrangement (unlike a lump sum settlement where the investment fund is available to the estate) leave no asset fund remaining upon the termination of payments due to death or remarriage. It should also be noted that there is no federal taxation of worker's compensation payments or a lump sum settlement of those payments.

In summary, we do not believe that you should accept an insurer's word as final as to what benefits may be due to you. If you are approached by an insurer about settling your claim, or if an insurer notifies you that it intends to terminate your benefits, you should seek competent legal counsel. Attorneys in Massachusetts worker's compensation cases cannot charge by the hour, and do not work on a retainer. Rather, attorneys' fees in contested cases where the employee is successful are paid out of funds awarded against the insurer, and attorneys fees are paid at maximum rates established by law in the event of a lump sum settlement.