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Opinion Letter

Re: Covid 19 Federal Death Benefits Fund

Over 100 years ago, States created workers' compensation programs to address workplace injuries. Such systems were initially designed to provide prompt wage loss benefits and medical coverage to workers who suffered traumatic injuries at work. Over the years, the programs were expanded to cover certain cumulative injuries such as carpal tunnel syndrome and occupational diseases such as asbestosis.

By law, employers were then required to secure workers' compensation insurance coverage for industrial injuries and occupational diseases.

Clearly, these workers' compensation systems were never intended to cover deaths associated with a pandemic.

Now, this Country faces a situation where thousands of workers will die as a result of being exposed to the coronavirus during their occupational duties whether as health care providers, transit workers, police officers, or first responders, as well as a myriad of other workers.

Every state workers' compensation agency will soon receive these claims for death benefits in the upcoming weeks and months. Under current workers' compensation laws, some insurance companies will accept the claims, but other carriers and employers will contest and litigate the claims.

I say this based on my prior experience as the Chair of the NYSWCB at the time of the September 11 attack when some carriers and employers readily accepted liability for the death claims and promptly paid the claims, yet other carriers and employers contested the claims.

While such refusal to pay was allowed under the law, such actions required the NYSWCB devote substantial additional resources to these claims at a time when widows and other family members were grieving the loss of their loved ones. Thankfully, in the case of the NYSWCB response to September 11, certain legal precedent existed supporting the claims; and the dedicated CSEA and PEF members worked tirelessly to meet our mission of providing prompt and fair claims administration on those claims.

In the current pandemic, however, since there will be multiple jurisdictions handling the Covid-19 death claims, the families of those who have died may see a patchwork response to such claims with some claims accepted and other claims denied depending on the nuances of state workers' compensation laws.

Further, on the contested claims, the families of those deceased workers will be subjected to delays associated with litigation on these claims.

Quite frankly, those families deserve better.

Hence, I believe that Federal action is appropriate and I respectfully recommend the following proposal for Federal action:

As part of the next Federal Relief Package, a Covid-19 Federal Death Benefit Fund be created and administered by the September 11th Victim Compensation Fund (VCF) with procedures adopted by the VCF;

The family of any worker who dies from Covid-19 be allowed to file a claim for death benefits subject to a maximum specified dollar amount;

Such death benefit claim shall be afforded a presumption that the Covid-19 is related to the decedent's work duties; and,

Such benefit claim must be reviewed and processed by the VCF and the final death award be paid within 90 days subject to any reasonable analysis and adjustment by the VCF.

This Fund will provide a family of such deceased worker a prompt payment of a Covid 19 related death award as well as the formal recognition that the deceased worker had contributed his or her life in the national response to the pandemic.

Finally, such Federal award does not preclude any family from filing a separate death benefit claim with their respective workers' compensation agency which may

accept or deny the claim according to the laws of such jurisdiction and the facts of the case.

Thank you.

Respectfully,

Robert R. Snashall

Former Chairman of the New York State Workers' Compensation Board 1995-2003