§ 104.46 Determination of presumed noneconomic losses for claimants who suffered physical harm.

The Special Master may determine the presumed noneconomic losses for claimants who suffered physical harm (but did not die) by relying upon the noneconomic losses described in §104.44 and adjusting the losses based upon the extent of the victim’s physical harm. Such presumed losses include any non-economic component of replacement services loss.

§ 104.47 Collateral sources.

(a) Payments that constitute collateral source compensation. The amount of compensation shall be reduced by all collateral source compensation, including life insurance, pension funds, death benefits programs, and payments by Federal, State, or local governments related to the terrorist-related aircraft crashes of September 11, 2001. In determining the appropriate collateral source offset for future benefit payments, the Special Master may employ an appropriate methodology for determining the present value of such future benefits. In determining the appropriate value of offsets for pension funds, life insurance and similar collateral sources, the Special Master may, as appropriate, reduce the amount of offsets to take account of self-contributions made or premiums paid by the victim during his or her lifetime. In determining the appropriate collateral source offset for future benefit payments that are contingent upon one or more future event(s), the Special Master may reduce such offsets to account for the possibility that the future contingencies may or may not occur. In cases where the recipients of collateral source compensation are not beneficiaries of the awards from the Fund, the Special Master shall have discretion to exclude such compensation from the collateral source offset where necessary to prevent beneficiaries from having their awards reduced by collateral source compensation that they will not receive.

(b) Payments that do not constitute collateral source compensation. The following payments received by claimants do not constitute collateral source compensation:

...
(1) The value of services or in-kind charitable gifts such as provision of emergency housing, food, or clothing; and

(2) Charitable donations distributed to the beneficiaries of the decedent, to the injured claimant, or to the beneficiaries of the injured claimant by privately funded charitable entities; provided however, that the Special Master may determine that funds provided to victims or their families through a privately funded charitable entity constitute, in substance, a payment described in paragraph (a) of this section.

(3) Tax benefits received from the Federal government as a result of the enactment of the Victims of Terrorism Tax Relief Act.

Subpart F—Limitations

§ 104.61 Limitation on civil actions.

(a) General. Section 405(c)(3)(B) of the Act provides that upon the submission of a claim under the Fund, the claimant waives the right to file a civil action (or be a party to an action) in any Federal or State court for damages sustained as a result of the terrorist-related aircraft crashes of September 11, 2001, except that this limitation does not apply to recover collateral source obligations, or to a civil action against any person who is a knowing participant in any conspiracy to hijack any aircraft or commit any terrorist act. The Special Master shall take appropriate steps to inform potential claimants of section 405(c)(3)(B) of the Act.

(b) Pending actions. Claimants who have filed a civil action or who are a party to such an action as described in paragraph (a) of this section may not file a claim with the Special Master unless they withdraw from such action not later than March 21, 2002.

§ 104.62 Time limit on filing claims.

In accordance with the Act, no claim may be filed under this part after December 22, 2003.

§ 104.63 Subrogation.

Compensation under this Fund does not constitute the recovery of tort damages against a third party nor the settlement of a third party action, and the United States shall be subrogated to all potential claims against third party tortfeasors of any victim receiving compensation from the Fund. For that reason, no person or entity having paid other benefits or compensation to or on behalf of a victim shall have any right of recovery, whether through subrogation or otherwise, against the compensation paid by the Fund.