



S. 2106 – Procedural Fairness for September 11 Victims Act of 2007

FLOOR SITUATION

S. 2106 is being considered on the floor under suspension of the rules and will require a two-thirds majority vote for passage. This legislation was introduced by Senator Joseph Biden (D-DE) on September 27, 2007. The bill passed the Senate by unanimous consent on October 3, 2007. It was referred to the House Judiciary Committee and was not considered.

S. 2106 is expected to be considered on the floor on October 30, 2007.

Note: The House Judiciary Committee favorably reported identical legislation, H.R. 3921, on October 24, 2007.

BACKGROUND

After the September 11th terrorist attacks, President Bush signed into law the Air Transportation Safety and System Stabilization Act (P.L. 107-42). Title IV of this law established the September 11th Victim Compensation Fund of 2001, which “authorizes compensation to any individual (or the personal representative of a deceased individual) who was physically injured or killed as a result of the terrorist related aircraft crashes on that day.”

P.L. 107-42 limits liability for all the claims resulting from the 9/11 attacks to an amount no greater “than the limits of liability coverage maintained by the air carrier[s]” involved. Under the law, these claims can only be brought in U.S. District Court for the Southern District of New York. There are a number of liability suits pending against airline companies, airport security firms, airport authorities, and others.

According to Kenneth Feinberg, the Special Master of the Victim Compensation Fund, “the Fund provides an alternative to the significant risk, expense, and delay inherent in civil litigation by offering victims and their families an opportunity to receive swift, inexpensive, and predictable resolution of claims.” The Fund distributed \$7.049 billion to survivors and injured victims, including 97% of the families of deceased victims. According to the Department of Justice, the average award for families of a deceased victim was over \$2 million and the average award for an injured victim was nearly \$400,000.

Anyone that files for compensation from the fund automatically waives their right to file a civil action in state or federal court for damages, unless the civil action is against a knowing participant in the terrorist attacks. Those victims that have chosen not to seek compensation

from the fund can litigate claims in the U.S. District Court for the Southern District of New York.

In accordance with the Rules of Civil Procedure (Rule 45), “a subpoena may be served at any place within the district of the court by which it is issued, or at any place without the district that is within 100 miles of the place of the deposition, hearing, trial, production, or inspection specified in the subpoena” unless a statute specifically dictates otherwise. Therefore, those that opted out of the compensation fund and chose to litigate are limited to seeking a subpoena for testimony and documents within 100 miles of the U.S. District Court for the Southern District of New York.

According to Senator Joe Biden (D-DE), the sponsor of this legislation, “there’s no reason why victims and their families should be prevented from securing documents and witnesses, just because they happen to be more than 100 miles outside the Southern District of New York. This legislation allows them to serve subpoenas anywhere in the country, ensuring that all the parties involved can get all the information necessary to try these cases fully and fairly.”

SUMMARY

S. 2106 allows a subpoena requiring the attendance of a witness at trial or a hearing regarding 9/11 claims to be served at any place in the United States.

COST

The Congressional Budget Office (CBO) did not have cost estimate available at the time of publication.

ADDITIONAL RESOURCES

Final report of the Special Master: http://www.usdoj.gov/final_report.pdf

STAFF CONTACT

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