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State of Connecticut
**WORKERS' COMPENSATION
COMMISSION**

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May 13, 2002

The Hon. Brian Mattiello, Under Secretary
Office of Policy and Management
450 Capitol Avenue
Hartford, CT 06106-1308

Dear Secretary Mattiello:

I reviewed the recent faxes which you have forwarded to us concerning correspondence between Governor Rowland and Mary Fetchet of Voices of September 11th, together with the press release indicating actions taken by the State of New York.

It is my understanding that the representatives of Voices of September 11th are concerned about the following issues:

1. may an award received pursuant to the federal Victim Compensation Fund be used as an offset against any award for which a person would be eligible under Connecticut Workers' Compensation;
2. whether insurance companies may terminate workers' compensation benefits being paid to victims and/or their families if they seek compensation from the federal Victim Compensation Fund;
3. whether the workers' compensation insurance payer would have a lien against benefits paid to the victims and their families from the federal Victim Compensation Fund;
4. whether the personal representatives of individuals killed in the terrorist attack could be held liable for good faith actions taken with respect to the federal Victim Compensation Fund.

With respect to question no. 1, benefits received under Connecticut Workers' Compensation would not be subject to offset by any benefits received under the federal Victim Compensation Fund. Under Connecticut law, there is no provision which would allow for a workers' compensation payer (insurer or self-insured) to assert a lien against workers' compensation benefits paid unless the victim received a recovery in a civil negligence action or had previously received benefits for an injury to the same part of the body. Since there is no pre-existing injury that would exist pertinent to the claims that would arise from the

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September 11th tragedy, and since recovery is by way of the federal Victim Compensation Fund as opposed to civil litigation, there would be no Connecticut statutory provision enabling a payer to claim an offset and/or a lien. Consequently, questions no. 2, 3, and 4 above would never come into play under Connecticut law.

I understand from the correspondence that you forwarded to me that a concern has been raised as to whether the type of law change that was made in New York would be required in Connecticut. It does not appear as if this is necessary. Sec. 29(1) of the New York State Workers' Compensation law creates a statutory lien on an injury worker's benefit recovery. Further, if the injured claimant does not pursue recovery by way of a negligence action, the right to bring said suit is assigned to the New York State Fund, the insurer or the employer. This appears to be the reason why legislation was required in New York to accomplish the intended purposes.

The law in Connecticut gives the employer the right to bring a tort action with or without the injured worker. Consequently, since the employer already has the right to bring a civil action should it choose, and since also there is no statutory right for the employer and/or insurance payer to assert a lien unless the individual had previously been compensated for a pre-existing injury, statutory changes in Connecticut do not appear to be necessary in order to answer the last three (3) questions listed above in the negative.

I hope this provides answers to the questions posed. Should you have any additional questions after you have had the opportunity to review this communication, please do not hesitate to contact me.

Very truly yours,

John A. Mastropietro
Chairman

JAM:nhc