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## Law That Leaves Survivors Of 9/11 Victims Competing For Benefits Is Challenged

BY MARK FASS

THE PENDING APPEAL of a Workers' Compensation Board ruling pits the children of victims of the Sept. 11, 2001, terrorist attacks against the victims' fiancées and domestic partners.

At issue is §4 of New York's Workers' Compensation Law, a provision that affords the domestic partners of the Sept. 11 victims the same rights as surviving spouses.

The law places domestic partners in direct competition with the victims' children for Workers' Compensation benefits, according to the appellant's brief submitted by Robert Grey to the Appellate Division, Third Department in August. Reply papers from the New York Attorney General's Office are due Nov. 8.

In passing the law, state legislators believed it would only be relevant for gay partnerships, said Mr. Grey of Grey & Grey in Farmingdale.

"They had no clue that heterosexual people that had children by one marriage and lived with a boyfriend or girlfriend would qualify under this statute," he said. Therefore, the law



Robert Grey

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## Survivors Compete for Benefits

A domestic partnership, according to §4, is evidenced by "a nexus of factors including, but not limited to, common ownership of real or personal property, common householding, children in common, signs of intent to marry, shared budgeting, and the length of the personal relationship."

The board, noting such factors as the couple's engagement, "shared budgeting" and joint ownership of personal property, found that Mr. Innella and Ms. Aita were indeed domestic partners.

Under §4, a Sept. 11 victim's domestic partner "shall, if such employee had no spouse at the time of his or her death, be deemed to be the surviving spouse of such employee for the purposes of any death benefit."

The administrative law judge therefore divided the \$400 weekly

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award between Victoria and Ms. Aita, allotting them, respectively, 45 percent and 55 percent.

Mr. Grey filed an appeal on Victoria's behalf.

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to domestic partners," said Mr. Grey.

### Equal Protection Claim

The central argument set forth in the appeal is that the domestic partner provision, by applying only to victims of the Sept. 11 attacks, violates the equal protection clause of the U.S. Constitution.

The appellants argue that such a provision created unequal classes of children of deceased workers.

"The children of parents who died on the same day of other industrial accidents ... were awarded and continued to receive the statutory allotment of \$400 per week (when there was no spouse) regardless of the existence of any 'domestic partner,' while the children of September 11th victims receive only \$180 per week," the appellate brief claims.

While numerous suits have contested payments made, or not made, to domestic partners from the federal Victim Compensation Fund, the pending appeal appears to be the first attack on the Workers' Compensation Law's provision for domestic partners of Sept. 11 victims to reach the Appellate Division.

Mr. Grey said he initially had concerns that the case might be perceived as against homosexuals.

"I don't view this as being in opposition to the rights of gay and lesbian couples," he said. "It just should not be at the expense of children."

A representative for the attorney general's office declined to comment on the appeal, other than to state that the office will file a brief in opposition, "defending the constitutionality of the law," before the court's Nov. 8 deadline.

Robert Koenigsberg, who represents Mr. Innella's fiancée, Ms. Aita, and attorneys from Fischer Brothers, the law firm that represents the Workers' Compensation Board's codefendants, Cantor Fitzgerald and Pacific Employers Insurance, declined to comment.

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ailed to address issues involving emarriage and children, and domestic partners' benefits came into direct competition with surviving children's benefits, Mr. Grey said.

Mr. Grey represents the daughter of Paul Innella, a systems analyst who was among the 658 Cantor Fitzgerald employees killed at the World Trade Center. In addition to his daughter, Victoria, his survivors included his ex-wife, Victoria's mother, and his fiancée, Lucy Aita.

On July 18, 2002, the Workers' Compensation Board issued an administrative decision awarding Victoria the maximum death benefits, a weekly award of \$400 plus a retroactive payment of \$17,360.

Five days later, Ms. Aita filed an appeal of the decision that resulted in reducing Victoria's weekly award from \$400 to \$180. The same ruling awarded Ms. Aita \$220 per week. Memorandum of Board Panel Decision, R.12-16).

The appellant's brief argues, among other things, that the provision for domestic partners denies equal protection of the law to the children of Sept. 11 victims.