

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE SEPTEMBER 11 LITIGATION :
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ORDER

21 MC 97 (AKH)

ALVIN K. HELLERSTEIN, UNITED STATES DISTRICT JUDGE:

WHEREAS numerous family members of those who were killed in the September 11, 2001 attacks have indicated that they wish to preserve their rights to file civil actions in this court while their claims with the federal Victims Compensation Fund are pending;

WHEREAS the statute of limitations to bring wrongful death actions in New York is two years, see N.Y. Est. Powers & Trusts Law § 5-4.1 (2003), and the deadline to file claims with the Victims Compensation Fund is December 23, 2003;

WHEREAS it is uncertain whether recent legislation extending the statute of limitations in New York for wrongful death actions related to the September 11 attacks from September 11, 2003 to March 11, 2004 will apply to non-residents of New York;

IT IS HEREBY ORDERED that:

1. Plaintiffs who wish to preserve their right to file a civil action seeking recovery for wrongful death, personal injury or property damage arising out of or in connection with the terrorist-related aircraft crashes of September 11, 2001 shall file a summons and complaint with the Clerk of this Court, accompanied by a motion seeking placement of the case on the suspense docket and an affidavit from the plaintiff stating that he or she wishes this case to be placed on suspense and agrees to be bound by any

proceedings and discovery in the consolidated In re September 11 Litigation, 21 MC 97 (AKH).

2. Service of summons and complaints shall be made in accordance with Rule 4 of the Civil Rules of Procedure.

3. After service of the summons, complaint, and motion is made upon the defendants, the lawsuit shall be suspended and shall remain dormant until the earliest of the following:

(a) December 23, 2003; or

(b) the service of a notice by or on behalf of the named plaintiff that he or she intends to activate the lawsuit and proceed with the litigation.

4. The defendants shall not answer, and shall not be obligated to serve or file any motions to dismiss or otherwise, in response to any complaint filed as herein provided until the lawsuit is activated as specified in paragraph 3 above, and, if required to answer or move, the defendants shall be entitled to raise any and all defenses available to it under the law as if the defendants had just been served with the summons and complaint.

5. The filing and service of a complaint in a case which is subsequently placed on the suspense docket in accordance with this Order for personal or property damage, injury or death arising out of the terrorist-related air crashes of September 11, 2001 shall not constitute an election of remedies so as to prevent the named plaintiff from seeking compensation from the Victim Compensation Fund administered by Special Master Kenneth R. Feinberg. As long as any such lawsuit remains dormant and in suspense, the named plaintiff may proceed with a claim for compensation from the

Victim Compensation Fund, and the claimant shall not be deemed ineligible to receive an award from the Victim Compensation Fund by reason of the pending lawsuit. However, the filing of a claim for compensation with the Victim Compensation Fund by a named plaintiff shall preclude such person from proceeding with any lawsuit as provided in § 405(c)(3)(B)(i). Within 10 days of filing a claim for compensation from the Victims Compensation Fund, the plaintiff shall discontinue its suspended action, or suffer dismissal by order of the Court.

6. Any plaintiff who commences an action and thereafter elects to have the case treated as dormant pursuant to the provisions hereof shall be deemed to have agreed to any proceedings and discovery in any other civil actions against any other defendant for personal or property damage, injury or death as a result of the terrorist-related aircraft crashes of September 11, 2001.

7. This Order is the result of efforts to deal with extraordinary circumstances and nothing contained herein can be used as any type of precedent by any individual.

SO ORDERED.

Dated: New York, New York
 July 22, 2003

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ALVIN K. HELLERSTEIN
United States District Judge