

Gays' claims for workers comp benefits take different routes

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New York residents Larry Courtney and Bill Valentine both lost their domestic partners in work-related tragedies, subsequently launching a fight to claim workers compensation spousal benefits.

Courtney won his battle, but Valentine has a long way to go.

New York legislators passed a law in late summer that allows about 20 lesbian and gay people who lost their partners in the Sept. 11 attack on the World Trade Center the right to receive spousal benefits from insurance companies. Gov. George Pataki didn't sign the bill but because he didn't veto it, the measure became law on Aug. 20, 12 days after he received it.

Courtney benefited from the law because his 14-year partner, Eugene Clark, died at the World Trade Center. His survivor benefit claim with the New York Workers Board became unnecessary because Clark's insurer began paying the claim with a retroactive payment of \$18,000 and will pay \$400 week after that, said Lamda Legal Attorney Adam Aronson, who has been representing Courtney in the case.

Transcontinental Insurance (with CNA acting as third-party administrator) covered Clark, and Cambridge Integrated Services Group served as claims manager.

"There is no longer a conflict there so that claims has been resolved," Aronson said. "The insurance company agrees that they are required to pay the maximum they could have to pay under the law."

Courtney will be paid \$400 per week the rest of his life or when he takes on a new legal partner. If the latter event takes place, he'd be paid a lump sum worth two years, payment — about \$40,000.

But Valentine's claim remains pending. That's because he lost his 21-year partner Joe Lopez, a flight attendant with American Airlines, when the airplane on which he was working crashed near Kennedy airport on Nov. 12, not Sept. 11.

Because Lopez didn't die in the Sept. 11 terror attacks, Lopez's insurer doesn't automatically recognize Valentine's claim for spousal benefits. National Union Fire Insurance with American International Group is the third-party administrator, and Specialty Risk Services is serving as claims manager.

Most state laws recognize legal spouses as eligible for spousal death benefits, and same-sex domestic partners aren't recognized as legal spouses in most states —save for the civil unions in Vermont.

Robert Hartwig, chief economist with the Insurance Information Institute, said in a previous InsuranceTimes interview that insurance companies are "legally obligated to go by the letter of the law in terms of who is considered a legal beneficiary," which usually would rule out same-sex domestic partners.

Valentine still plans to move ahead with his claim, Aronson said. "We are waiting to get the insurance company's opposition to our hearing memorandum we submitted over a month ago now," he said.

That filing is due in late October and Aronson plans to file a response by Nov. 5, after which there will be a final hearing on Valentine's case.

"And barring another change in the law by the state legislature there will have to be a ruling by the New York State Workers Compensation Board." Aronson said.

Aronson said he remains hopeful that Valentine's case will win before the Workers Compensation Board.

"The state Legislature has proved to us exactly what we were saying in the claims when we initially brought them. The word spouse CAN include domestic partner and that is enough under the liberal and open rules of interpreting the workers compensation law that New York State's highest court has said are necessary," he said.

"Surely it doesn't make sense to say lesbian and gay relationships only if somebody lost their life partner on Sept. 11. It doesn't make any sense to say that couples are domestic partners for the purposes of one day of the year but not other days of the year any more than to say people are married on one day of the year and not other days of the year, absent divorce or any legal change of status." p