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Folder Title: [Procedures for Civil Actions]

Section 809
("Procedures for Civil Actions")

Analogues to Air Transportation Act Provisions

- **Consolidation**

- Section 408(b) of the Air Transportation Act consolidates all cases arising out of the September 11 attacks in a single federal court.
- Section 809 (a)-(c) of the proposed bill would consolidate all cases arising out of a mass terrorism incident in a single federal court.

- **Punitive Damages**

- Section 405(b)(5) of the Air Transportation Act precludes recovery of punitive damages in the victims' claims process, and Section 408(a) limits any recovery against air carriers to the limits of their liability policies.
- Section 809(e) of the proposed bill would preclude recovery of punitive damages, and would not cap damages against any defendant.

- **Offset**

- Section 405(b)(6) of the Air Transportation Act requires that recovery by a claimant in the victims' claims process be reduced by the amount of collateral source compensation the plaintiff has received or is entitled to receive.
- Section 809(f) of the proposed bill would require that a plaintiff's recovery be reduced by the amount of collateral source compensation the plaintiff has received or is entitled to receive.

- **Non-Economic Damages**

- Section 408(a) of the Air Transportation Act limits recovery against air carriers to the limits of their liability policies and applies state law limits on joint and several liability.
- The proposed bill would not limit or cap the liability of any particular defendant (the limit in the Air Transportation Act, which is tied to insurance coverage, would not make sense for future incidents, as it would create perverse incentives). Rather, as a more limited measure to help preserve the pool of defendants' assets in a mass tort incident and allow for an equitable distribution to successful plaintiffs, Section 809(g) of the proposed bill would require that non-economic damages be awarded in proportion to the percentage of the harm caused by the defendant and only to plaintiffs who have suffered physical injury. (The proposed

bill is more modest than many proposals: It would not eliminate non-economic damages entirely, nor would it impose proportional fault for economic damages.)

- **Substantive Standard for Liability**

- Section 408(b) of the Air Transportation Act provides that the substantive standard for liability is to be derived from the law of the State where the incident occurred.
- Because the procedure in Section 408(b) of the Air Transportation Act could be unwieldy and unfair in a mass terrorism incident that occurs in multiple states, Section 809(h) of the proposed bill would establish a single federal standard of gross negligence. The gross negligence standard is a middle-ground standard between simple negligence and intentional wrongdoing and is particularly appropriate in tort cases where, by definition, the injury has been caused by the criminal acts of an intervening third party, not by legitimate bystander property and business owners.

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