

## HELPING A MOM LEFT BEHIND

**Gilbert, Heintz lawyers fight to keep 9/11 death benefit from absent father**

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Shortly after her 30-year-old son died in the World Trade Center on Sept. 11, 2001, Elsie Caldwell filed a claim to receive his \$50,000 workers' compensation death benefit.

She was shocked to find that her ex-husband, who she alleges deserted the family soon after their son's first birthday and then failed to pay adequate child support, was going after the money as well.

An account representative at the Alliance Consulting Group on the 102nd floor of the north tower, Kenneth Caldwell left behind no will or family of his own. Under New York workers' compensation law, that means his parents are entitled to his benefits -- without regard to the role they played in his life.

With the help of pro bono lawyers from D.C.'s Gilbert, Heintz & Randolph, Elsie Caldwell is challenging that standard in an appeal now pending before the New York Supreme Court Appellate Division Third Department.

In essence, Caldwell and her lawyers, associate Timothy Delahunt and partner Gary Thompson, have asked the court to define the word parent.

Although the applicable New York statute does not define parent, it does specifically bar a "spouse who has abandoned the deceased" from receiving benefits.

Delahunt is urging the court to extend the reasoning and define parent so that biological parents who permanently abandoned their children are excluded from receiving benefits as well.

The case is being appealed from the New York State Workers' Compensation Board Legal Appeals Unit, which found the issue of abandonment to be "without merit." The board concluded that surviving parents are entitled to collect benefits regardless of whether they abandoned their children or not.

The remedy Elsie Caldwell sought, the board wrote, should be prescribed by the legislature, not an administrative law tribunal.

On Aug. 21, 2002, the panel ordered that Kenneth Caldwell's father, Leon W. Caldwell, be paid \$25,000 -- half of the death benefit. However, the panel subtracted \$12,460 for outstanding child support, to be paid to Elsie Caldwell and the Child Support Enforcement Unit of Philadelphia, where Elsie Caldwell raised Kenneth and another son, Leon D. Caldwell.

Leon W. Caldwell could not be reached for comment. New York City's Brecher, Fishman, Pasternack, Popish, Heller, Rubin & Reiff represented him before the workers' comp board. The matter, says firm partner Dominick Tuminaro, belongs in the "province of the legislature, not in the province of the workers' compensation judge who deals with the law as it is, not how we want it to be."

According to Delahunt, no party appeared on behalf of Leon W. Caldwell for the Oct. 9 argument before a five-judge panel of the New York Supreme Court Appellate Division.

## HELPING A MOM LEFT BEHIND (CONTINUED)

The New York attorney general's office, which is charged with defending the workers' compensation board, neither filed a brief nor appeared in court. A spokesman for the office declined to offer an explanation for its absence in the case.

The appellate court has not yet ruled.

Thompson, the Gilbert, Heintz partner, says the case was referred to him by a friend and that he felt personally moved to help Elsie Caldwell.

"After Sept. 11, 2001, so many of us watched the television," says Thompson. "I remember hearing all of these firemen and police officers [say], 'We did what we could do.' I thought, 'Well, what could we do? We're insurance lawyers.' "

Gilbert, Heintz is involved in other Sept. 11 pro bono cases as well and has pledged to dedicate 10 percent of all billable hours to pro bono efforts.