

National Aeronautics and  
Space Administration  
**Headquarters**  
Washington, DC 20546-0001



March 26, 2004

GG

Reply to Attn of:

The Honorable William H. Webster  
Milbank, Tweed, Hadley & McCloy LLP  
International Square Building  
Suite 1100  
1825 Eye Street, NW  
Washington, DC 20006

Dear Judge Webster:

On behalf of NASA, I would like to formally request that you serve as an advisor to the Administrator to assist him determining the compensation, if any, to be offered by NASA to the family members of the astronauts onboard Columbia during the STS-107 mission to resolve claims they may have against NASA or its contractors.

Your determinations will be recommendations only, and will not constitute a binding or final decision on the Agency. Upon receipt of your recommendations, the Administrator will review them and will make the final determination of what compensation, if any, NASA should offer to the families. In the event that family members should choose to accept the amount that NASA may offer, those individuals would be required to sign a form (to be drafted by NASA alone) releasing NASA and its contractors from any legal responsibility arising out of the Columbia tragedy. If any family member were to decline compensation offered by NASA, that family member would, of course, remain eligible to pursue other forms of recourse, legal or otherwise.

In order for you to better understand the task that the Administrator is asking you to undertake, I am providing the following background information. After the tragic loss of Columbia, NASA's General Counsel's office examined pertinent legal authorities to determine the potential legal exposure of NASA and its contractors to the families of the Columbia astronauts. This examination involved legal research as well as a review of the Columbia Accident Investigation Board (CAIB) report of August 2003, reports of internal investigations by the agency to support the CAIB, and other reports of factual investigations by NASA. NASA's examination of potential legal exposure is privileged and confidential, and it would be inappropriate for me to further describe that examination or its conclusions in this letter. It bears noting, however, that NASA had approved indemnity clauses, pursuant to Pub. L. 85-804, for inclusion in the contracts under which it obtained supplies and services to support the shuttle program, and these indemnity clauses generally encompass third-party claims growing out of the loss of an orbiter.

ENCLOSURE A

As you know, the Administrator has advised the families that NASA is willing to receive and evaluate claims from them in connection with the loss of Columbia without requiring them to file suit against either NASA or one or more of NASA's contractors. In other words, the Administrator has volunteered to engage in a form of mediation with the families as an alternative dispute resolution process. (As you know, alternative dispute resolution procedures are being used with increasing frequency by federal agencies to avoid the costs and delays associated with conventional litigation.)

NASA has apprised the families that they should retain counsel to advise them in connection with this process, inasmuch as they will be required to sign a broad release in exchange for any compensation. Some families have, in fact, retained counsel, and we have had preliminary conversations with these lawyers. All of our conversations with counsel have been positive and constructive.

If you accept the Administrator's invitation to undertake this responsibility, your role in the dispute resolution process will be to conduct an assessment of the families' circumstances, and to formulate recommendations as to the amounts of compensation, if any, that NASA, through its Administrator, should offer family members in exchange for a release of all claims they may have against NASA and/or its contractors in connection with the Columbia tragedy. While NASA seeks your independent assessment and judgment, your recommendations should reflect findings and determinations on the following issues/items:

First, you should determine which family members should be eligible for compensation ("Eligible Family Members").

Second, you should make findings regarding the economic losses suffered by the Eligible Family Members of the STS-107 crew, and appropriate measures of compensation for the same.

Third, you should make findings regarding non-economic losses to Eligible Family Members and appropriate measures of compensation for the same. Alternatively, you may, in your discretion, recommend that non-economic losses be compensated for, if at all, through an amount determined by you that does not vary among Eligible Family Members.

Fourth, you should take into account the benefits that the Eligible Family Members have received or will receive from any source as a consequence of the death of the Columbia crewmembers.

If you choose to accept this responsibility, you may receive information regarding Eligible Family Members losses from anyone you wish, including the families directly or through their authorized representatives or counsel. The manner in which you receive such information (e.g., in writing, or through face-to-face meetings) shall also be subject to your discretion. The family members will be advised that any information disclosed to you for use in this process will remain confidential to the extent described below, consistent with law. NASA

will provide you with any information you require which is in our possession, consistent with applicable laws and regulations.

NASA will enter into a contract with you to perform this work. I understand that you wish to be uncompensated for your efforts, but you will have administrative expenses and will most likely wish to retain experts to assist you in this endeavor. The contract is intended to be a vehicle to pay your expenses and allow you to subcontract for any legal, financial or other staff as may be needed. Any person you engage shall enter into a confidentiality agreement with you, with the consent of the NASA General Counsel's office, in advance of receiving or creating any information relative to this matter, and shall agree to be bound by the confidentiality provisions set out below and in the contract.

Both to preserve the privacy of Eligible Family Members, and to protect NASA's legal privileges (including the deliberative process privilege), all information provided to you, your work papers, or any other memoranda or documents of any kind which may be maintained by you and relied upon by you in connection with these deliberations including, but not limited to, your report to the Administrator, shall be and shall remain the property of NASA and shall be deemed deliberative and pre-decisional and/or attorney work product. NASA will retain the absolute right to determine the propriety of the release of any such documents or information. Upon the conclusion of your work, you will forward all of the documents or records of any kind that you may have retained to the NASA General Counsel's office.

I thank you very much for taking time from your very busy schedule to serve your country by working on this important NASA matter.

Cordially,

*Signed*

Paul G. Pastorek  
General Counsel

## List of Documents and Information concerning Losses

The following information should be submitted by the family representative prior to the meeting. Any additional information, which the family representative wishes to be considered, may also be submitted.

- a. List of family members to be considered by me for compensation.
- b. Birth dates of family members.
- c. Copy of court order showing appointment of Personal Representative, Legal Representative, Executor of Will, or Administrator of Estate for crewmember. (Necessary for some states).
- d. Copy of appointment of an attorney or other representative as the "family representative" by the Spouse, Personal Representative, Executor of Will, or Administrator of Estate. This is only necessary if the "family representative" is other than the Spouse, Personal Representative, Executor of Will, or Administrator of Estate.
- e. Tax returns filed for three previous years.
- f. Compensation information-proof of base salary or wages for last three years, and any other additional sources of compensation (End of year pay statement, bonus letter, commission letter, overtime stubs).
- g. Employer-provided benefit information (Documentation on health benefits, pension plan descriptions, pension plan statements, employer-provided transportation, 401k documentation).
- h. Copy of will of crewmember. (Necessary for some states).
- i. List of family members notified of participation in settlement plan. This is to ensure we know of everyone in the family that may be entitled to compensation, and that everyone possibly entitled to compensation has been notified of this process.
- j. Any other documents or information that the family representatives wish to be considered in assessing damages.

Enclosure B

## Compensation Process

The Administrator has requested that I assist in determining the compensation to be offered by NASA to the family members of the astronauts lost onboard Columbia. The Administrator's guidance to me is enclosed. (Enclosure A)

The following describes more specifically the manner in which I plan to determine the amount of compensation to be provided to family members. I would like to describe the process tonight and give you the opportunity to comment. The process is intended to be as simple and flexible as possible, but certain information and structure is necessary for me to make my recommendation to the Administrator. If you are not prepared to comment tonight, please send me your comments as soon as possible so that I can begin the process as soon as possible.

### 1. Family Representative

I anticipate having one or two associates from my law firm assist me and will engage economic advisors to also provide professional advice. To be sure that information reaches the appropriate members of each family, I would like to have one point of contact or "family representative" for each family. My staff or I will provide assistance to each family if there is any question concerning who may be the family representative. The family representative is the person that my staff or I will contact throughout this process. The family representative would normally be the crewmember's spouse, executor of the will, administrator of the estate, or an attorney or other person appointed by the spouse, executor, or administrator of the estate. The family representative is responsible for notifying all other family members of their representation of the family, and participation in the compensation process. The family representative will also be responsible for assuring the execution of any necessary documentation on behalf of the family members, such as releases from liability in the event a settlement is reached.

### 2. Documentary Evidence

Enclosure B provides a list of documents that I anticipate being necessary in determining the amount of the award. The family representative is responsible for submitting all information requested. They may also submit any additional information they wish me to consider in reaching my recommendation on compensation for economic and non-economic damages. After receiving this information, I will notify the family representative if additional information appears to be necessary. Once I have concluded that all relevant information has been submitted, a meeting will be scheduled.

### 3. Meetings

The objective of the meeting or meetings is to permit the family to orally present information they believe is necessary to fully understand the losses suffered by the family. The family representative will be the point of contact for setting up the meeting. Information may be presented by any family member or other person designated by the family representative. I may

require authentication of documents, and examine the credentials of any experts presenting information.

The family representative is not required to submit information demonstrating noneconomic losses, such as pain and suffering. Each crewmember unquestionably suffered grievous harm, and each family member suffered and suffers this loss to this day. The most rationale and just way to approach noneconomic losses is to assess the loss based on the category of the family member. Therefore, so long as information identifying the relationship of the family member to the crewmember has been submitted, no additional information concerning noneconomic damages is necessary.

With respect to economic losses, family representatives are responsible for submitting evidence prior to the meeting, and for its presentation at the meeting. No decision on compensation will be announced at the meeting. Within ten calendar days after the meeting, either the family representative or I may request a second meeting, in order to resolve issues that became apparent in the first meeting. If such a meeting is requested, I will schedule a second meeting as quickly as possible. Absent extraordinary circumstances, two meetings should be sufficient to resolve any questions concerning damages.

I will consider all relevant evidence presented. I will confirm the representations and documentation submitted by the family representative and consult with experts in reaching my decision. I will develop my recommendation on the award within 60 calendar days of the last meeting.

#### 4. Award Determination

After reaching my recommendation on compensation, I will notify the Administrator of the amount I recommend. It is my understanding that after receiving my recommendation, the Administrator shall make a determination as to the amount of the compensation and notify the family representative of the amount. If the amount of the compensation is acceptable to the family, the Administrator is responsible for making arrangements for payment of the amount of the compensation. If the amount of the compensation is not acceptable, the family may, of course, pursue other remedies, as they deem appropriate.

Payment shall be in full satisfaction of any and all claims against NASA or its contractors. In order to receive an award as a result of this settlement process, each family member who receives compensation will be required to execute a release of liability, waiving any and all claims against NASA or its contractors.