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Before the Committee on the Judiciary
Constitution, Civil Rights and Civil Liberties Subcommittee
United States House of Representatives

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Chairman Nadler, Ranking Member Collins, Chairman Cohen and Ranking Member Johnson and distinguished members of the Subcommittee, thank you for inviting me to testify before you today on behalf of the September 11th Victim Compensation Fund (the VCF or the Fund). I am very appreciative of the Committee's interest in the important work of the VCF and grateful for its attention to the needs of the 9/11 community, which includes the responders and survivors of that terrible day and of the weeks and months of rescue, recovery, and remediation efforts that followed. We all know that the world changed forever on September 11, 2001, but the work that I am privileged to do every day – and hearings like this one – remind us all that the events of September 11 marked only the beginning of an ongoing and evolving tragedy. I know that some of those who were there, who responded to the sites of the attacks, or were just living their lives only to be caught up in events beyond their control, are in the room, and I join the members of the Committee in commending them for their heroism and their sacrifice. I have spent my career in public service, including more than 20 years at the Justice Department, but since the Attorney General appointed me to serve as Special Master for the VCF in 2016, I have been humbled by the responsibility of serving this strong and resilient community. I was privileged recently to attend the dedication of the Memorial Glade at the 9/11 Memorial and Museum in New York City and I was reminded again of the startling fact that the nearly 3,000 lives lost on September 11 may soon be overtaken by the number of lives lost in the years afterwards to the illnesses that stemmed from exposure to toxins at the three sites. While no amount of money can fully compensate for the losses that were suffered as a result of that day, I am proud that the VCF has been able to provide at least some measure of needed relief to those who have sacrificed so much and suffered for so long.

BACKGROUND

By way of brief background, the VCF was originally created in 2001, immediately following the attacks, by Public Law No. 107-42 (Sept. 22, 2001), as amended by Public Law No. 107-71 (Nov. 19, 2001), as an alternative to tort litigation, and was designed to provide compensation for any individual (or a personal representative of a deceased individual) who suffered physical harm or was killed as a result of the terrorist-related aircraft crashes of September 11, 2001, or the clean-up and debris removal efforts that took place in the immediate aftermath of those crashes. The original VCF (known as "VCF I") operated from 2001-2004 under the direction of Special Master Kenneth Feinberg, and distributed over $7 billion. VCF I concluded operations in June 2004, after compensating the families of over 2,880 people who died on 9/11 and 2,680 individuals who were injured.

In 2011, Congress passed and the President signed the James Zadroga 9/11 Health and Compensation Act of 2010 ("Zadroga Act"), Public Law No. 111-347 (Jan. 2, 2011), which reactivated the September 11th Victim Compensation Fund (known as "VCF II"), expanded its pool of eligible claimants, and appropriated $2.775 billion to pay claims. VCF II opened in October 2011 and was originally authorized to accept claims for a period of five years, ending in October 2016. Prior to reaching the October 2016 claim filing deadline, however, in December 2015, Congress passed and the President signed the James Zadroga 9/11 Victim Compensation Fund Reauthorization Act, Public Law No. 114-113 (Dec. 18, 2015). The new Act extended the VCF for an additional five years, allowing individuals to submit claims until December 18, 2020, and appropriated an additional $4.6 billion to pay claims, bringing the total appropriated amount for VCF II to $7.375 billion.

VCF PROGRESS AND OPERATIONS

The VCF, as reconstituted under the Zadroga Act, as amended, is an extraordinarily successful program. As of May 31, 2019, the VCF has awarded over $5.174 billion in compensation to nearly 22,500 individuals who have suffered physical health conditions (including the families of over 850 people who have died), as a result of their exposure to the terrorist attacks in New York City, at the Pentagon, and in Shanksville. Those compensated include first responders; people who worked or volunteered in rescue, recovery, clean-up, construction, or debris removal at the three sites; as well as people who lived, worked, or went to school in the affected areas of New York City and were exposed to toxins resulting from the attacks, the airline crashes, and the building collapses. The VCF has received claims from individuals in every state of the nation. This includes those who traveled to New York City, the Pentagon, and Shanksville from all over the country as part of the response efforts, both in official capacities and as volunteers, and those who have relocated elsewhere in the intervening years since the attacks. In the three years since my appointment, moreover, the VCF has made significant strides in improving its efficiency and its claim determination rates: whereas the VCF issued just over 9,000 awards in the first five years of the program, the VCF now issues nearly 8,000 determinations on new claims and amendments annually.

The VCF operates with a dedicated team of 173 Justice Department employees and contractors, headed by Deputy Special Master Jordy Feldman, who serves as the Director of our New York Office, and Deputy Special Master Stefanie Langsam, who oversees all operations in the D.C. office. The staff includes attorneys and support personnel who process, evaluate, and/or adjudicate claims; contractors who are responsible for VCF operations, including our toll-free Helpline, correspondence, and payment processing; and information technology specialists who are responsible for designing, developing, testing, and maintaining the VCF's claims management system, which allows for the filing of online claims. The VCF also has the strong support of the Department of Justice, and specifically, of the Department's Civil Division, which provides operational and administrative support to the VCF, and I wish to thank the Attorney General, Civil Division Assistant Attorney General Jody Hunt, Civil Division Deputy Assistant Attorney General Tom Ward, and the Civil Division's Executive Officer Catherine Emerson for their strong and unwavering support of the VCF.

The scale of the VCF's operations is impressive. Each month, the VCF's dedicated Helpline receives more than 3,000 incoming calls, we mail approximately 10,000 letters to claimants and

their attorneys, we process an average of 3,000 pieces of incoming mail, and, on average, we receive nearly 700 new claims or amendments. It is important to note, when discussing VCF operations, that all of the VCF's administrative funding comes from the VCF's total appropriation, Public Law No. 112-10 (Apr. 15, 2011), and, as such, is part of the same pool of funds available for awards to claimants. For that reason, as Special Master, I am committed to keeping administrative costs down while also minimizing the burden placed on claimants and their representatives, and maximizing claims processing speed and efficiency. As of December 31, 2018, the VCF's administrative costs are less than 3% of total awards issued.

VCF CLAIMS PROCESS

The VCF reviews claims in two phases: eligibility and compensation.

- For eligibility, the VCF reviews the claim to determine whether the claimant is eligible to receive compensation under the Zadroga Act, including assessing whether: the claim was timely registered; the claimant has sufficiently proven that he or she was present at one of the attack sites or in the New York City Exposure Zone (Manhattan, south of Canal Street); the claimant suffers from an eligible physical injury or condition as certified or verified by the World Trade Center Health Program; and the claimant has properly complied with the Act's requirements that any 9/11-related lawsuit be properly settled or dismissed in order to qualify for compensation from the VCF.

- For compensation, all awards are individually calculated based on the specific circumstances of the claim. The VCF reviews eligible claims to determine the appropriate amount of non-economic loss (commonly referred to as "pain and suffering") based on the nature or severity of the individual's physical injury or condition. Non-economic loss awards are capped by statute at $90,000 for non-cancer conditions and $250,000 for a cancer condition. If a government entity or private insurer has formally determined that the claimant suffers a full or partial occupational disability as a result of an eligible 9/11-related physical injury or condition, the VCF generally also will calculate economic loss. This portion of the award can encompass a variety of components, including loss of income as well as loss of pension and other employment benefits; the VCF is required by law to cap annual gross income at $200,000 when calculating economic loss. The VCF also awards, in limited and appropriate cases, reimbursement of out-of-pocket medical expenses, replacement services losses, and reimbursement for burial costs in deceased claims.

The VCF is required by law to subtract from the calculated award certain "collateral offsets," which are benefits paid to the claimant by other entities because of the eligible 9/11-related condition. These offsets may include disability benefits, settlements from 9/11-related lawsuits, and in the case of deceased claims, life insurance paid to the victim's beneficiaries.

The VCF reviews claims in first-in, first-out priority order, which is established by the date on which the claim or amendment for compensation was submitted. Claim determinations are highly individualized and, on average, it takes about 16-18 months for a claim to go from filing to determination, although some claims can be done sooner and some take longer, depending on the complexity of the claim and the extent of documentation required. The VCF is currently reviewing compensation claims and amendments submitted in mid-to-late 2017, and claims

submitted in the early part of 2018 are expected to come under review soon. In addition, the VCF has an established process for expediting claims in cases involving terminal illness or significant financial hardship and is steadfast in ensuring that the criteria used to determine eligibility for this process are rigorously applied so that only those claimants with the most severe needs are allowed to jump the line. So far in 2019, the VCF has expedited 183 claims, which can move from filing to payment in as little as three weeks, and I wish to express our gratitude to the Department's Justice Management Division and the United States Department of the Treasury, which work closely with us to make sure that expedited payments are made as soon as possible. The circumstances that warrant expedition are truly saddening, and yet we are gratified to be able to issue these payments quickly and provide some sense of solace and financial security to claimants facing their darkest days.

In making eligibility and compensation determinations, the VCF works closely with our sister program under the Zadroga Act, the World Trade Center Health Program, operated by the Department of Health and Human Services' National Institute for Occupational Safety and Health, under the stellar leadership of Dr. John Howard, which provides medical monitoring and treatment for those affected by 9/11. The VCF also has established beneficial relationships and direct data exchanges with multiple federal and state entities, each of which provides information used by the VCF in assessing claims. These include the Social Security Administration, the Department of Veterans Affairs, the Department of Labor, the Office of Personnel Management, and the Department's own Office of Justice Programs' Public Safety Officers' Benefit Program, as well as the New York State Workers' Compensation Board, the Fire Department of New York, the New York Police Department, the New York City Employees' Retirement System, and various other New York city and state pension boards and unions.

By statute, claimants are limited to filing only one claim with the VCF, but VCF policy allows claims to be amended at any time before the program closes in 2020 if the claimant suffers a new injury or incurs a new and previously uncompensated loss. Claimants are also allowed to appeal in the case of an eligibility denial, or if the individual believes the award calculation did not properly account for the individual circumstances in the claim. Hearings are non-adversarial and provide an opportunity for claimants to tell us their story, and we have a dedicated staff of pro bono hearing officers (who operate under a special appointment from the Attorney General) who generously lend their expertise and gravitas to the VCF's administrative appeals process; in 2018, the VCF held 380 appeal hearings; so far in 2019, we have held 299. The law provides that the ultimate decisions of the Special Master on eligibility and compensation are final and unreviewable by any judicial authority, which is an extraordinary grant of discretion that I take extremely seriously.

The VCF also takes very seriously its role in ensuring that public funding is allocated only to those individuals who are suffering as a result of 9/11, and has a robust system of standards and procedures in place to prevent fraud. All claim form responses and information submitted to support a claim are subject to 18 U.S.C. § 1001, the statute that criminalizes false statements made to the federal government. Moreover, key information used to establish eligibility and to calculate loss is independently verified with various third parties. Multiple internal checks take place throughout the claim review process to ensure that factual inconsistencies, data discrepancies, and other potential indicators of fraud are identified and resolved. In addition, the

Federal Bureau of Investigation (FBI or Bureau) provides a background check for every individual who is receiving a VCF payment, and the VCF receives dedicated assistance when needed through a strong partnership with the Department's Office of the Inspector General. The VCF also undergoes regular independent government audits and an annual financial audit. We are very proud of the fact that the VCF under the Zadroga Act has not documented any instance of fraud in a paid claim.

CURRENT STATUS OF THE VCF

Under the Zadroga Act, as amended, the VCF is required to close to new claims and amendments on December 18, 2020. At the beginning of 2019, VCF projections showed that the $7.375 billion in total funding was expected to be insufficient to pay all claims already pending and claims expected to be filed. The law passed by Congress when it reauthorized the VCF in 2015 recognized the possibility that funding might be insufficient and required the Special Master to annually reassess the VCF's policies and procedures to ensure that (1) funding is prioritized for those individuals who suffer from the most debilitating physical conditions; and (2) funds are not obligated in excess of the $7.375 billion appropriation. Under the law, if, as a result of this annual reassessment, I determine that those requirements cannot be met, I am required to take actions or make modifications to VCF policies and procedures as necessary to achieve these statutory requirements. Thus, once I made the determination that funding was insufficient in February 2019, I did as the law required and modified VCF policies and procedures to reduce VCF award values for all pending and potential claimants to ensure that the VCF would stay within the appropriated limits while still continuing to prioritize the claims from the claimants with the most debilitating conditions. I would like to use the remainder of my time to explain how we got here and why I made the decision that I did.

The VCF was authorized with a limited amount of funding but, while the population of potential claimants is a finite set, its exact numbers are unknown. There is no accurate count of how many people might have been exposed to toxins stemming from the attacks, and there is considerable uncertainty about the number of individuals who ultimately will fall ill due to the long latency periods that can elapse before manifestation of the cancers determined to be related to 9/11 exposure. The VCF also has suffered from an information gap; in the early years of the program, many eligible individuals were not aware that the VCF was an available resource, assuming it was meant only for New York City first responders. In fact, even the FBI, which has lost at least 16 employees to 9/11-related illnesses, did not recognize until fairly recently that its employees might be eligible for VCF compensation. The efforts of Director Christopher Wray and his staff have been instrumental in ensuring that the Bureau and other federal law enforcement agencies are made aware of the programs that are available to help them.

As a result of increasing outreach, not only within the federal government but by victims' advocacy groups, many of which are represented here today, by the World Trade Center Health Program, and by the lawyers who represent over 80 percent of VCF claimants, but also as a harbinger of the increasing seriousness of 9/11-related illnesses, the VCF received a record number of new claims in 2018 and is on pace to exceed that number in 2019. For perspective, in the first five years of the Fund, through December 31, 2016, roughly 19,000 compensation forms were filed. In the two years after that, through December 2018, almost 20,000 additional compensation forms were filed, with an additional 7,700 compensation forms filed so far in 2019

(see Chart A). We have awarded $5.174 billion to nearly 22,500 individuals, some more than once due to an amendment or an appeal. Keeping in mind that we must maintain a funding reserve for administrative costs, we have just over $2 billion left, with over 21,000 claims and amendments still needing a decision. While some number of those pending claims will be denied, and some number of amendments will not warrant any change to the original award, it is still clear that the VCF projects a shortfall.

Consistent with the reassessment mandate in the statute, each of the VCF's Annual Reports published since reauthorization in December 2015 has addressed the possibility of a funding shortfall. In the first reassessment conducted following Reauthorization, published March 13, 2017, as part of the VCF's Fifth Annual Report, the VCF projected that funding would be sufficient based on the data available at the time. We recognized, however, that there was considerable uncertainty in those projections and that the reauthorization of the VCF, with its new claim filing deadline and additional funding, provided opportunities for more people to benefit from the funding allocated to this important program. In the second reassessment, published with our Sixth Annual Report in February 2018, we projected that the VCF would remain just barely within its funding limit, projecting a total expenditure of $7.295 billion out of the appropriated $7.375 billion. Noting the relatively thin margin that existed, we indicated at that time that we would continue to monitor our projections over the course of the year to determine if changes would be needed prior to the following year's annual reassessment. In October 2018, following the anniversary of the September 11th attacks, and after internal projections done with August 2018 data suggested that the VCF, at the existing compensation levels, would exceed the available appropriated amount, the VCF published a Notice of Inquiry in the Federal Register, alerting the public of the possibility of a funding shortfall and seeking public comment on how to distribute the remaining funds in the most fair and equitable manner.

As we evaluated the comments received in response to the Notice and prepared the reassessment at the end of 2018, we were able to pinpoint several new trends, which reflect significant changes to the composition of the VCF's claimant population since Congress last examined this law in 2015, in terms of the types of claims filed, the types of conditions claimed, and the types of claimants filing claims. Since the Reauthorization of the VCF in December 2015, we have seen:

- A dramatic increase in deceased claim filings, meaning claims filed on behalf of those who have died as a result of their 9/11-related physical health condition. At the end of 2015, the VCF had received 610 deceased claims. As of May 31, 2019, we have received 2,252 (see Chart B), with more than a quarter of that total (676) filed year-to-date in 2019.

- A marked increase in cancer claims. In 2015, the Congressional Budget Office estimated that, should the VCF remain in operation through 2025, we would issue awards on a total of between 2,500 and 10,000 cancer claims. We have already found over 8,800 cancer claimants eligible, and already awarded compensation to 7,750 of these individuals (see Chart C). And we are a full six years away from 2025.

- A marked increase in claims from the survivor population, meaning those who lived, worked, or went to school in the area. At the time of Reauthorization in December

2015, not quite 14% of all VCF awards were paid to survivors. Today, just about 38% of claims filed are from this population (see Chart D).

When you take these trends, factor in that deceased claims and cancer claims tend to be higher value awards, and also consider the fact that we have made significant improvements to our processes which have significantly increased the rate at which awards are issued, the plain fact is that we are expending the available funds more quickly than assumed, and there are many more claims than anticipated.

Using data as of January 31, 2019, and in consideration of these trends, I determined in the third reassessment required by the law, published with our Seventh Annual Report in February 2019, that the VCF had insufficient funding to continue to compensate all pending claims and claims projected to be filed by December 18, 2020, under the VCF's then-existing policies and procedures. As described in that report, available at www.vcf.gov, the VCF projected, using a trend-based analysis, that, after considering all awards made through January 31, 2019, we would expect to make a total of 28,185 additional original and revised awards, which would mean that, based on average award values, the VCF's total expenditures at program end (including necessary administrative costs) would require a total cumulative outlay of $11.991 billion, $4.616 billion more than the $7.375 currently appropriated. Given my determination of insufficient funding, the law required me to modify VCF policies and procedures so as to ensure that the VCF does not obligate funds beyond its appropriation. This meant that the VCF needed to make significant reductions in awards.

In choosing how to go about this task, I attempted not only to adhere to the VCF's two statutory directives – not exceeding the available appropriation, and prioritizing funding for claimants with the most debilitating conditions – but also to meet three central policy goals: (1) ensuring that all eligible claimants filing before the statutory deadline, December 18, 2020, would receive some compensation for their suffering (subject to applicable statutory offsets); (2) holding a reasonable amount of money in contingent reserve to ensure against further unanticipated increases in claim filings, and to be able to make increased awards in appropriate cases where claimants are suffering from extraordinarily severe conditions; and (3) minimizing operational and administrative implementation challenges to avoid a delay or outright halt in claim determinations.

After thoroughly evaluating every potential available option, I agreed with the clear majority of the commenters who responded to the VCF's published Notice of Inquiry and concluded that the fairest way to implement the required reduction of awards was to do so across the board, applying a percentage reduction to all awards. Other approaches would have had the effect of disproportionately affecting the claimants with the most debilitating conditions, which I believed to be inconsistent with the VCF's statutory mandate. Reducing the highest value awards, for example, or making changes to the way in which economic losses are calculated, would most affect those claimants whose 9/11-related physical health conditions are so severe that they are no longer able to work. Continuing to make VCF awards without any changes until the funding ran out would have meant that claimants with the most severe conditions whose claims had not yet been filed would be left entirely uncompensated. I could not abide a plan that would leave

some claimants uncompensated or that would fail to make any allowance for the claimants who suffer the most.

Accordingly, all pending claims, regardless of when they were filed, are subject to the new policies put in place effective February 25, 2019, to address the insufficiency of funds, although we were able to make some accommodation for claimants whose claims were already pending as of February 1, 2019, as follows:

Effective for any award on which the VCF makes a determination on or after February 25, 2019:

- If the claim or amendment was submitted for compensation review on or before February 1, 2019, the calculated award will be reduced by 50 percent.

- If the claim or amendment was submitted for compensation review on or after February 2, 2019, the calculated award will be reduced by 70 percent.

By law, we cannot reduce the offsets applied to the award and so the offsets are subtracted in full from the calculated reduced award.

The reductions in awards have now been fully implemented. In the period between February 25, 2019, when the reductions became effective, and May 31, 2019, we have issued 835 awards that have been subject to reduction.

CONCLUSION

Taking action to reduce VCF awards to comply with the law was a challenge that I worked to ensure was solved in an equitable and transparent way, as I spend each and every day immersed in the stories of the individuals who make up the 9/11 community. Along with my talented and dedicated staff, I remain deeply committed to serving the needs of the 9/11 community, which we know to be strong and resilient. We are hopeful that the work that we do continues to provide some measure of needed relief. And, most importantly, we are grateful to this Committee and to Congress for re-examining the Zadroga Act and considering how best the nation as a whole might be able to continue to help the members of the 9/11 community.

Mr. Chairman, Ranking Member, thank you for the opportunity to speak here today about this successful and extraordinarily important program. To the extent that the Committee requires further information regarding the evaluation of claims, the unanticipated nature of the illnesses compensated by the VCF, and the projected numbers of those who may be eligible for compensation in the future, I, my staff, and the Department are fully committed to working with you to ensure that Congress has the information that it needs to address appropriate legislative options. Thank you.

VCF Supporting data through May 31, 2019

Chart A
Total Compensation Forms Submitted

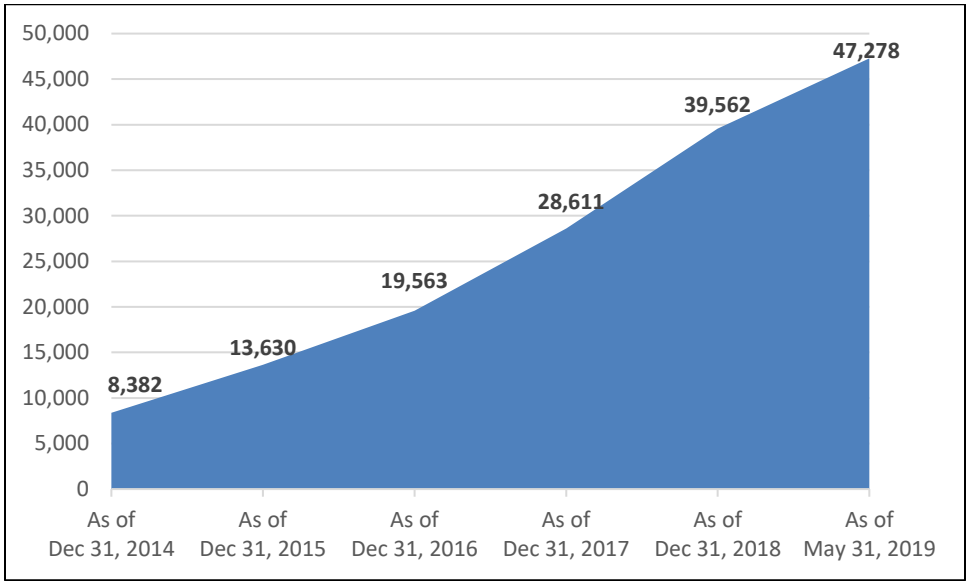


Chart B
Deceased Claim Filings

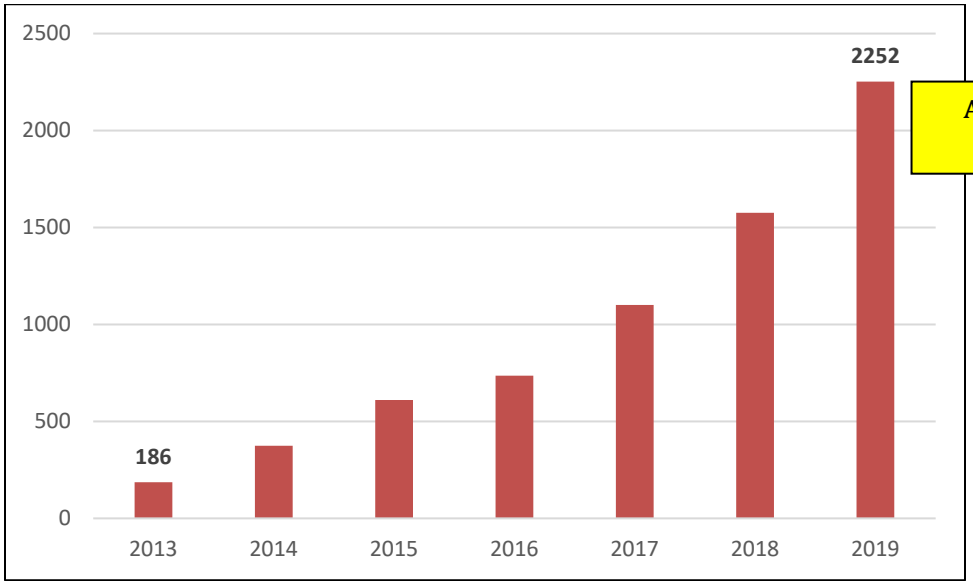


Chart C
Cancer/Non-Cancer – Initial Award Decisions

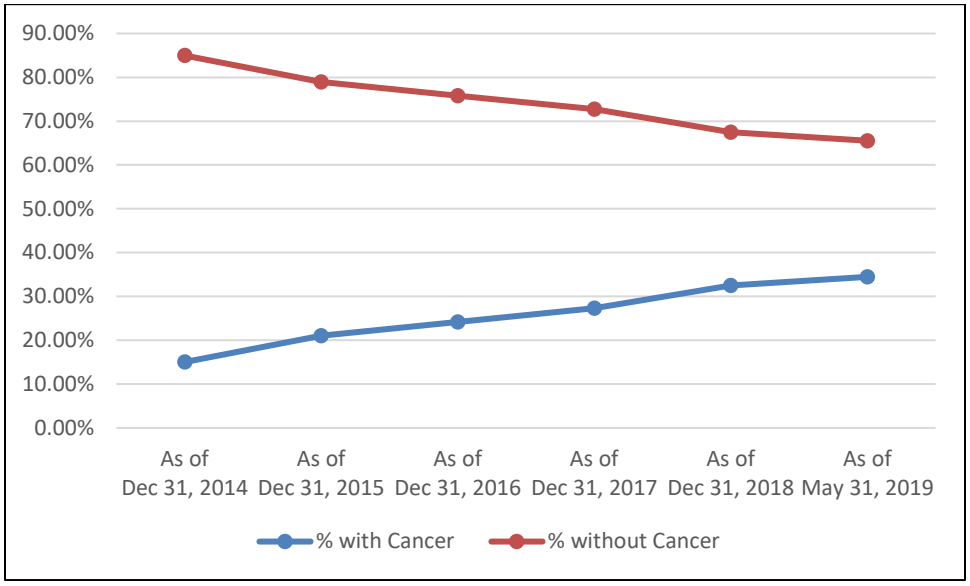


Chart D
Increase in Percentage of Claims from the Survivor Population

