

Introduction: After Disaster: The September 11th Compensation Fund and the Future of Civil Justice - Ninth Annual Clifford Symposium on Tort Law and Social Policy

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INTRODUCTION

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On September 11, 2001, American notions about the world and our place in it underwent a profound change. The shock of the assault on the World Trade Center and the Pentagon altered the way we approach an array of matters from international relations and the policing of our polity to the role of government in restoring the well-being of corporations and citizens struck down by brutal foreign attack.

Within ten days of the disaster, Congress passed unprecedented legislation to aid the crippled airline industry. As part of that airline assistance package, individual victims who otherwise might have sued air carriers (among others) were to be provided compensation for their economic and noneconomic losses, so long as they agreed to relinquish their legal claims. This program was to be carried out by the September 11th Victim Compensation Fund of 2001.

Congress directed that the Compensation Fund be run by a Special Master vested with extraordinary powers to direct its workings. On November 26, 2001, Kenneth Feinberg was appointed Special Master and immediately launched into the daunting task of translating a novel legislative initiative into an effective and fair government program.

The challenges faced by the program have been many and varied. There were few precedents to draw upon in helping to design a workable approach, and those that existed seemed ill-fitted to the events of September 11th and the subsequent legislation. There were also a number of problems posed by preexisting tort law, rules governing insurance, and traditions fixed for charitable relief.

The goal of the Ninth Annual Clifford Symposium is to examine a range of issues raised by the September 11th Compensation Fund. To that end we have assembled one of the finest groups of scholars ever drawn together at the Clifford Symposium. Their work was first presented on April 24 and 25, 2003 at a meeting attended by Kenneth Feinberg, as well as one of the authors of the Compensation Fund

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legislation, Robert Peck, and Kenneth Nolan, a leader of the aviation bar who represents a significant number of claimants before the Fund.

The Symposium focuses on a number of topics. It starts with two pieces that examine prior occasions in American history when the government considered or actually extended aid to victims of mass disaster.¹ It then turns to the question of how we may determine whether the September 11th Compensation Fund has been a success or failure as measured from a psychological vantage point,² the perspective of procedural due process,³ in light of the public commentary submitted to the Special Master in reaction to his regulatory proposals regarding the Fund,⁴ in the context of the grief and trauma suffered by those who lost loved ones,⁵ and from a variety of traditional legal perspectives, including torts,⁶ previous governmental programs to compensate for loss,⁷ charity law,⁸ insurance law,⁹ civil procedure,¹⁰ and welfare principles.¹¹ The Symposium concludes with several pieces that consider the future implications of the precedent established by the Compensation Fund.¹²

It is our hope that this Symposium, in some small way, contributes to a mending of the social, legal, and political fabric so grievously torn

1. Lawrence M. Friedman & Joseph Thompson, *Total Disaster and Total Justice: Responses to Man-Made Tragedy*, 53 DEPAUL L. REV. 251 (2003); Michele Landis Dauber, *The War of 1812, September 11th, and the Politics of Compensation*, 53 DEPAUL L. REV. 289 (2003).

2. Tom R. Tyler & Hulda Thorisdottir, *A Psychological Perspective on Compensation for Harm: Examining the September 11th Victim Compensation Fund*, 53 DEPAUL L. REV. 355 (2003).

3. Stephan Landsman, *A Chance to be Heard: Thoughts About Schedules, Caps, and Collateral Source Deductions in the September 11th Victim Compensation Fund*, 53 DEPAUL L. REV. 393 (2003).

4. Deborah R. Hensler, *Money Talks: Searching for Justice Through Compensation for Personal Injury and Death*, 53 DEPAUL L. REV. 417 (2003).

5. Elizabeth M. Schneider, *Grief, Procedure, and Justice: The September 11th Victim Compensation Fund*, 53 DEPAUL L. REV. 457 (2003).

6. Anthony J. Sebok, *What's Law Got to Do with It? Designing Compensation Schemes in the Shadow of the Tort System*, 53 DEPAUL L. REV. 501 (2003).

7. George L. Priest, *The Problematic Structure of the September 11th Victim Compensation Fund*, 53 DEPAUL L. REV. 527 (2003).

8. Robert A. Katz, *Too Much of a Good Thing: When Charitable Gifts Augment Victim Compensation*, 53 DEPAUL L. REV. 547 (2003).

9. Kenneth S. Abraham & Kyle D. Logue, *The Genie and the Bottle: Collateral Sources Under the September 11th Victim Compensation Fund*, 53 DEPAUL L. REV. 591 (2003).

10. Janet Cooper Alexander, *Procedural Design and Terror Victim Compensation*, 53 DEPAUL L. REV. 627 (2003).

11. Matthew Diller, *Tort and Social Welfare Principles in the Victim Compensation Fund*, 53 DEPAUL L. REV. 719 (2003).

12. Robert L. Rabin, *The September 11th Victim Compensation Fund: A Circumscribed Response or an Auspicious Model?*, 53 DEPAUL L. REV. 769 (2003); Marshall S. Shapo, *Compensation for Terrorism: What We Are Learning*, 53 DEPAUL L. REV. 805 (2003); Alan B. Morrison, *Lessons To Be Learned: The Victim Compensation Fund*, 53 DEPAUL L. REV. 821 (2003).

by the events of September 11, 2001. We believe that it is through the rule of law, rather than by force or largesse, that our nation becomes stronger.

