FINAL REPORT

OF

THE SPECIAL MASTER FOR THE SEPTEMBER 11TH VICTIM COMPENSATION FUND OF 2001

VOLUME I

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PREFACE

In preparing this Report, I personally want to acknowledge the valuable contributions made by hundreds of individuals to the success of the Program. Although it is simply impossible to list the individual names of every person who worked to assure the success of the September 11th Victim Compensation Fund of 2001, I offer a special word of thanks to four skilled individuals who prepared this Report and helped assure the success of the September 11th Victim Compensation Fund. Deborah E. Greenspan, Jacqueline E. Zins, and Jordana Harris Feldman are three brilliant attorneys who exemplify the very best of our legal profession. Camille Biros was instrumental in assisting me in administering and coordinating the entire Program. I thank each of them for a job well done. To each and every individual who exhibited the dedication, commitment and determination to help those in need as a result of the September 11th terrorist attacks, you have my deep thanks and appreciation.

A special word of thanks to the Attorney General of the United States who designated me as Special Master to administer the Fund. His total support and cooperation during the past 33 months, as well as that of the Department of Justice, helped assure the success of the Fund. I extend my personal thanks to the dedicated lawyers and individuals at the Department of Justice who worked with me and my staff in implementing and administering this unique and unprecedented experiment in American democracy.

Kenneth R. Feinberg
Special Master
The September 11th Victim Compensation Fund of 2001

INTRODUCTION

As the Special Master for the September 11th Victim Compensation Fund of 2001 (the "Fund"), I respectfully submit this Report detailing the activities of the Fund. The Report provides an extensive accounting of the operation and administration of the Fund and of the final resolution of all claims. The Fund is a unique Program created in the aftermath of the tragic events of September 11, 2001. It was conceived, implemented and concluded within a 33-month period. I am pleased to report that, in my view, the Fund was an unqualified success: 97% of the families of deceased victims who might otherwise have pursued lawsuits for years have received compensation through the Fund. The Fund provided generously for those directly affected by the attack. In total, the Fund distributed over $7.049 billion to survivors of 2,880 persons killed in the September 11th attacks[1] and to 2,680 individuals who were injured in the attacks or in the rescue efforts conducted thereafter. The average award for families of victims killed in the attacks exceeded $2 million. The average award for injured victims was nearly $400,000. The success of the Fund was directly attributable to the unprecedented cooperation from the legal and financial communities, the judiciary, federal and state agencies, state governments, public and private sector employers, individual citizens, and of course, the victims and their families. I am grateful to all those who contributed tirelessly to the successful operation, administration and conclusion of the Fund.

Nearly every family of an individual killed in the September 11th attacks chose to participate in the Fund. To the extent that participation is a measure of success, the Fund was extraordinarily successful. What factors contributed to this success? In our view, there are five major factors that resulted in this overwhelming acceptance of the Fund as a means of compensation. First, the alternative of litigation presented both uncertainty and delay. Second, the Fund took extraordinary steps to assure that families could obtain detailed information about their likely recovery from the Fund. Third, the Fund took a proactive approach – personally contacting each claimant, ensuring that claimants were able to obtain and present the best information in support of the claim; assisting claimants to obtain helpful information; explaining to claimants information that would assist the Fund in maximizing the computation of economic loss and resolving uncertainties in favor of the claimant. Fourth, the Fund offered in-person informal meetings along with hearings so that claimants could "have their day in court" and explain the magnitude of their loss and their views about the way in which the Fund should treat their particular situation. Fifth, the Fund offered certainty without significant delay, allowing families the option of a type of "closure." Although the Fund's decision to create an accessible, proactive program undoubtedly added to the administrative costs of the program, it proved to be the appropriate choice for the claimants. By giving the claimants the meaningful opportunity to

present the strongest claim and by giving claimants access to the Fund's decisionmakers, the Fund empowered claimants. Claimants had a personal stake and involvement in the process. Had the Fund opted to curtail access or failed to offer explanations of the manner in which the Fund would treat each individual's situation, some portion of claimants would likely have been sufficiently uncomfortable or uncertain to commit to the Fund.

This Report is comprised of five parts. Part One of the Report describes the legislation creating the Fund, the development and implementation of the Regulations and basic policy decisions that guided the operation and administration of the Fund. Part Two outlines the substantive guidelines adopted by the Fund to evaluate and pay claims, as well as the administrative process established to accomplish these tasks. Part Three sets forth various issues that I believe should be considered in the event there are any future efforts to establish a similar "compensation program." Part Four sets forth, in chart format, the demographics of the claimant and victim population, the processing statistics and the breakdown of the distribution of awards. Part Five is an appendix containing relevant Fund documents and information that were posted on the Fund's website.

I. STATUTE AND REGULATIONS

A. Statutory Framework

In the immediate aftermath of the terrorist attacks of September 11, 2001, Congress enacted the Air Transportation Safety and System Stabilization Act (the "Act").[2] That legislation, signed by the President on September 22, 2001, sought "[t]o preserve the continued viability" of the air transportation industry.[3] To that end, the Act's express purpose was to provide financial assistance to an airline industry potentially threatened with collapse as a result of the terrorist attacks and thereby to protect the American economy against the consequences of that collapse.[4]

As part of that legislation, Congress also created the "September 11th Victim Compensation Fund of 2001."[5] The stated purpose of the Fund was "to provide compensation to any individual (or relatives of a deceased individual) who was physically injured or killed as a result of [the September 11th attacks]."[6] In creating this Program, Congress intended, in part, to establish a mechanism that would provide financial security and assistance to the victims of the attacks without the uncertainties, delays and costs of traditional litigation. The principal provisions of the statute are the following:

- The Act establishes the Fund as an administrative alternative to litigation for victims of the terrorist attacks.[7] For persons choosing litigation, the exclusive remedy for damages arising out of the crashes on September 11 is a federal cause of action[8] in the United States District Court for the Southern District of New York.[9] Air carrier liability for compensatory and punitive damages is capped at the limits of liability insurance coverage maintained by the air carrier.[10]

- A Special Master appointed by the Attorney General is to administer the Fund and promulgate any necessary "procedural and substantive rules."[11]

- The Special Master is to determine eligibility to receive compensation from the Fund.[12] Eligible individuals are defined by the Act to include those individuals aboard the flights and individuals present at the World Trade Center, the Pentagon, or the site of the aircraft crash at Shanksville, Pennsylvania at the time, or in the immediate aftermath, of the terrorist-related aircraft crashes who have suffered physical harm or death as a result of the air crashes. In the case of a decedent, the "claimant" is defined as the Personal Representative of the decedent.[13]

- The Special Master is to determine the amount of compensation to which a claimant is entitled based on the harm to the claimant, both

economic[14] and non-economic,[15] the facts of the claim and the individual circumstances of the claimant.[16] The Special Master is prohibited from considering issues of liability or punitive damages.[17] The Special Master is obligated to deduct from any award, payments the claimant received from certain collateral sources - such as insurance.[18]

- The Act authorizes the appropriation of sums necessary to pay the costs for the administration of the Fund.[19] The Act does not limit either the aggregate amount to be paid for all claims or the amount to be paid to any individual claimant.

- Any claim for compensation must be submitted on a claim form developed by the Special Master.[20] Only one claim may be submitted by an individual or on behalf of a deceased individual.[21] The Special Master is required to complete a review, make a determination, and provide written notice to the claimant, with respect to the matters that were the subject of the claim under review, no more than 120 days after the claim is filed.[22] The Special Master's determination of "the matters that were the subject of the claim" is "final and not subject to judicial review."[23] The Act further requires the Special Master to authorize payment "regarding the amount of compensation due" within 20 days of the date of determination.[24] Claims must be filed no later than "2 years after the date on which Regulations are promulgated."[25]

- The Attorney General appointed Kenneth R. Feinberg as the Special Master on November 26, 2001.

B. The Regulations

1. Overview

The Act required the Department of Justice (the "Department") to issue administrative Regulations within 90 days of the date of enactment. During that 90-day period, the Department and the Special Master solicited public comments and undertook extensive efforts to obtain the views of all interested parties. The Special Master and attorneys working with the Special Master met personally with victims' advocacy groups, individual members of the victims' families, lawyers, employers, government agencies, members of Congress, members of the judiciary, associations, charities, representatives of the military, fire and police departments, and individuals in state governments to solicit views, concerns and comments about the nature of the Program and its administration. In addition, the Special Master and senior attorneys reviewed the thousands of comments submitted to the Department, researched theories of compensation and methodologies for the calculation of economic loss, as

well as the various state laws governing wrongful death actions, appointment of Personal Representatives and determination of state law beneficiaries. The supervising attorney in the Special Master's Office (as well as officials at the Department assisting the Fund) met with numerous economists, experts and actuaries, both in the private sector and in the federal government. These individuals provided extensive valuable information on issues related to the determination of future economic loss, evaluation of employer benefits and valuation of insurance and other potential collateral source payments. These meetings, as well as the submissions from various interested parties, were invaluable to the process of developing the regulatory scheme. Each submission was reviewed carefully, and considered in the course of developing the Regulations. The Special Master is grateful to all the individuals who took the time to outline issues, concerns and proposals.

The Department and the Special Master issued Interim Final Regulations on December 21, 2001. The Interim Final Regulations set forth detailed information about the determination of economic and non-economic losses, and the procedures for submitting claims. The Fund also opened its doors on December 21, 2001 - just 14 weeks after the tragedy - by establishing temporary "walk-in" offices in New York and in the Washington, D.C. area, setting up toll-free information telephone lines and providing an "Eligibility Form and Application for Advance Benefits" that permitted claimants to seek immediate emergency compensation.[26] After evaluating 2,687 timely comments to the Interim Final Regulations, the Department and the Special Master issued the Final Regulations on March 13, 2002.[27] At the same time, the Fund published the final compensation forms necessary to enable claimants to submit their claims for full compensation.

2. Development of the Regulations

The comments submitted demonstrated divergent views about the purpose and proper implementation of the Act. Various individuals and groups expressed opinions about virtually every component of the Act. Some raised questions about the nature of the compensatory program. Did Congress intend to provide "tort type" compensation or to establish a reparation program? Should the program provide equal compensation to every family or should the compensation vary based on income or other factors? Should the program differentiate between the pain and suffering of different individual victims? Some questioned the scope of the Act. Did Congress intend to cover anyone affected emotionally or psychologically by the attacks? Others expressed concern about the process by which awards would be determined and distributed. Should the Fund conduct evidentiary hearings to determine the harm and loss in each case? How could the Fund determine the appropriate recipients of the award? Still others viewed the Act as a means to "reform" perceived inequities in state legal systems, arguing for example that the Act should provide financial security to individuals – such as domestic partners – who were not entitled under most state laws to obtain compensation based on "wrongful death." Still others viewed the Act as some type of blueprint for "tort reform."

In developing the Regulations, the Department and the Special Master were guided by the plain language, structure, and evident purpose of the Act. First, Congress had created a hybrid compensation system that encompassed some but not all elements of tort compensation: the Act required the Special Master to consider such traditional elements of tort compensation as economic and non-economic loss but *precluded* the Special Master from considering issues of liability or punitive damages and *obligated* the Special Master to reduce any awards by payments that the claimant received from certain collateral sources. Second, Congress wanted a system that would *quickly* provide fair compensation to the families of the victims of the September 11th attacks. Congress placed strict time limits on the evaluation of claims, thereby evidencing the intent to avoid a complex, adversarial process that would inevitably delay awards. Third, Congress did not intend to extend compensation to all persons affected by the events of September 11. The statute focused on a narrow group of individuals *physically* harmed or killed at the sites and in the immediate aftermath of the attacks. Finally, the structure and language of the Act and the public nature of the Program demonstrated that, while compensation should vary based on the circumstances of the individual claim, Congress did not intend that claimants should receive widely disparate awards from the Program. The Act charged the Special Master with the obligation to determine an *"appropriate"* award, taking into account the individual circumstances of the claimant, the facts of the claim and the harm to the claimant.

To achieve these purposes, the Department and the Special Master felt it essential to craft a system that would assure fairness and consistency among claimants, both with respect to the process for submitting and evaluating claims and the methodology for determining the appropriate award. The Act mandated not only that each award be determined based on the individual circumstances of the claimant, but also that each award be determined promptly within extraordinarily short time deadlines. Given these two potentially conflicting mandates, the Department and the Special Master determined to establish policies and guidelines that would apply uniformly to the evaluation of all claims, taking into account certain individual factors. The Department and the Special Master further concluded that the award methodology should be designed to assure that families and injured victims were given adequate financial support to provide a "safety net" from which to rebuild their lives, while avoiding widely divergent awards that would be unfair, speculative, or based on questionable theoretical projections. Finally, claimants would need to be kept informed fully about the methodology for computation and other factors that would be evaluated so that they could make an informed decision about whether to submit a claim to the Fund or to pursue litigation.

To achieve these objectives, the Regulations established: (1) guidelines defining eligible claimants; (2) a "presumed award" methodology, providing a uniform set of guidelines for the valuation of economic loss which would be favorable to most victims and yet based on information that claimants should be able to obtain easily; (3)

policies for the assessment and deduction of collateral source compensation; and (4) flexible procedures for the submission and presentation of claims.

a) The Presumed Methodology

The Regulations set forth guidelines for the determination of economic and non-economic loss and directed the Special Master to develop a methodology for computing "presumed" economic and non-economic loss for claims on behalf of deceased victims based on objectively verifiable factors. The Special Master published detailed guidelines explaining the computation methodology and assumptions that would be incorporated into the calculations as well as charts showing computation examples. In order to minimize, as much as possible, the speculative nature of computing future economic loss, the presumed methodology relies on a combination of the victim's own objectively verifiable historical experience with assumptions about likely future events based on publicly available national data. [28] In this manner, the methodology incorporates the individual circumstances of the victim and generally accepted non-speculative assumptions about the future. By recognizing the financial history of the victim through incorporation of individual income data and utilizing favorable assumptions about continuous wage growth and work life, the presumed award loss computations for most deceased victims provide the necessary financial support to the families in an individual tailored manner.

The presumed economic loss methodology computes the victim's future earnings by starting with the victim's earnings history. The Special Master has discretion under the Regulations to select the most appropriate measure of the victim's historical earnings based on the victim's own circumstances.[29] The selected compensation level is then reduced by applicable state and federal taxes. The formula accounts for the fact that some portion of the victim's income is self-consumed and therefore not a measure of the economic loss to the survivors by incorporating a consumption deduction (derived from available national data).

The methodology assumes that the victim's income would grow over time at an average growth rate and would continue through an average work life. Finally, the methodology takes into account the potential for periods of future unemployment by incorporating an unemployment risk factor (based on national average data). The resulting figures are reduced to present value using age adjusted after-tax rates.

The presumed methodology was designed to provide generous awards to the families and to be simple to administer. Claimants did not need to present detailed computations or analyses. Instead, they needed only to supply the Fund with easily obtained data: the victim's historical earnings, the victim's age, the age and status of members of the victim's household, the victim's employment benefits and collateral offset data. The presumed methodology assured that the economic loss calculation for similarly situated victims (*i.e.*, same age, number of dependents and income level) would be consistent.

The Regulations provide that the presumed award methodology will be applied only to income levels up to the 98th percentile of individual income in the United States.[30] This limitation was dictated by policy as well as fact. First, the Act was intended to provide fair and appropriate awards based upon families' individual circumstances, needs and resources. (The Special Master is directed to determine an appropriate award, not to calculate the maximum, theoretically possible, future earnings of each victim.) Second, the assumptions applied in the presumed methodology are inappropriate and become extremely speculative and conjectural when applied to incomes above the 98th percentile which are often comprised of a variety of forms of compensation, some of which are variable and volatile and tied to factors other than standard inflation and promotion increases. For victims whose income exceeded the 98th percentile, the Fund calculated a "*presumed*" economic loss using $231,000 as the income level (*i.e.*, the 98th percentile income level in the year 2000).

The Special Master and the Department understood that the presumed award methodology might be inadequate for claimants with extraordinary needs or circumstances. Accordingly, the Regulations provide that claimants who believe that the presumed methodology will not address their individual circumstances can request that the Special Master depart from that methodology. If a claimant established extraordinary circumstances, the Fund had the obligation under the Regulations to evaluate all the individual circumstances of the claim, including the claimant's particular needs and resources and to determine the appropriate award based on factors that might not be reflected in the presumed methodology.[31] Extraordinary, sustainable income above the 98th percentile was one such factor that could, in the Special Master's discretion, be considered.

The treatment of claims involving victims with incomes that exceeded the 98th percentile generated significant discussion and controversy among victims' families. Families and representatives of various employers argued that the Fund was required to assume that such victims would inevitably have continued to earn a high income throughout the standard (or even extended) work life. While those families were willing to have the Special Master consider their needs in continuing a lifestyle supported by a high income, they objected to the Special Master also considering their resources. In addition, families of decedents with incomes at or below the 98th percentile objected to significantly larger awards for families of higher income victims as insulting and demeaning to the memory of their lost family members.

In numerous instances, the Fund departed from the presumed methodology when the victim's earnings history revealed consistent earnings in excess of the 98th percentile, the earnings history being one element in the specific facts demonstrating extraordinary circumstances. For such high-income claims, the Fund computed economic loss applying claim-specific facts. Specifically, the Fund considered the position of the victim, the victim's demonstrated "career path," and the nature of the income (*i.e.*, variable and subject to fluctuation or guaranteed). The Fund did not

apply the presumed award assumptions about consumption, taxation and growth in calculating economic loss for such claims. Rather, the Fund determined claim-specific discount and growth rates and further adjusted consumption and other factors to the projected future income levels.

The Regulations establish uniform figures for "presumed" non-economic loss for decedents and dependents because the Department and Special Master could not justifiably conclude that one deceased victim or one victim's family suffered more than another. (Non-economic loss for the decedents was intended to address such intangible factors as pain and suffering and loss of enjoyment of life.) This system was administratively simple: each claim received a uniform non-economic award of $250,000 for the death of the victim and an additional non-economic award of $100,000 for the spouse and each dependent of the victim.

The Regulations allow the Special Master to depart from the "presumed" non-economic loss in extraordinary circumstances. The Fund did, in fact, award extraordinary non-economic loss in some instances: for example, the Fund increased the presumed $250,000 non-economic loss award in situations where a victim ultimately died after surviving for days, weeks or even months after the tragedy. The non-economic loss issues are discussed in more detail at II(C)(2)(c).

The Regulations do not include a specific methodology for the calculation of awards for surviving victims who suffered physical injury. Economic loss for physical injury victims was computed using the same methodology that was applied for deceased victims adjusting for the duration of economic loss on a case-by-case basis.[32] However, the Department and the Special Master did not believe that it was either possible or appropriate to determine in advance, through schedules or formulae, non-economic loss for physical injury victims. Because the physical injuries were so vastly different[33] and had significantly different long-term effects, the Regulations direct the Fund to evaluate each individual physical injury claim to determine the extent, nature and permanence of the injury and establish non-economic loss accordingly. Thus, the Regulations do not mandate any uniform amount or formula for non-economic loss for physical injury claimants. Instead, the Regulations provide that the Special Master may rely upon the non-economic loss methodology for deceased victims and adjust the losses based upon the extent of the victim's physical harm.[34]

b) The Assessment and Deduction of Collateral Source Compensation

One of the most controversial aspects of the Act is the requirement that the Special Master deduct "collateral offsets" from the award. The Act defines collateral sources to include a variety of types of payments but does not give detailed definitions or guidance. While the Regulations provide some additional guidelines for claimants, the Special Master recognized that it would be difficult for an individual claimant to understand precisely how the collateral source provisions might affect his or her claim. Accordingly, the Fund provided the opportunity for claimants to meet with the staff

of the Fund or the Special Master for specific guidance.[35] In general, the Fund adopted the policy that collateral source payments would not be deducted if the payment was contingent, was payable to someone who was neither a beneficiary nor a close family member of a beneficiary, or had been funded by defined contributions made by the victim (to the extent of such funding). These guidelines were intended to avoid reducing an award for funds that the claimant either would not or might not receive and to avoid deducting benefits that the victim had effectively "earned" prior to death.

The deduction of collateral offsets had a significant effect on the amount paid from the U.S. Treasury to victims and their families: collateral source compensation reduced overall payments from the U.S. Treasury by approximately 29%, saving over $2.9 billion.

The following chart shows the aggregate economic and non-economic loss computed for all eligible claimants before offsets, the total offsets attributed to those claims and the ratio of total offsets to total economic and non-economic loss before offsets:

Type of Claim	Total Economic & Non-Economic Loss	Total Offsets	Offsets as % of Total Computed Loss
Death	$8,461,041,779	$2,464,780,777	29.13%
Injury	$1,503,401,608	$450,247,073	29.95%
Totals	**$9,964,443,387**	**$2,915,027,850**	**29.25%**

c) Procedures for the Submission and Presentation of Claims

The Regulations address the mechanics of submitting a claim as well as the deadlines for the determination of awards. Extensive comments received from families and advocates for victims indicated a need to provide a flexible process to address the individual circumstances of claimants. Some families felt they could not submit an adequate claim to the Fund without a personal hearing where they presented information about the victim and facts relevant to the award computation. Others could not face the pain of an in-person hearing and wanted an award based solely on written submissions. The Regulations address these varied desires by allowing a claimant to elect one of two "tracks" for the review and evaluation of claims as described in detail at II(B) below.

Importantly, the claim submission, evaluation, and hearing process were designed to be non-adversarial. Claimants could submit any data, information or arguments they felt were relevant. The hearings were conducted informally, and claimants were entitled to bring experts, advocates and family members. All testimony was under oath, but there was no "cross-examination." The process was designed to secure the required information so that it could be evaluated by the Fund. This non-adversarial approach was necessary to assure prompt determination of awards as

required by the Act and to minimize the burden on claimants. Had the Regulations established an adversarial process, claimants would likely have been less willing to seek guidance from the Fund staff, the costs of administration would have risen significantly, and the time and staff required for the resolution of claims would have increased.

The Regulations establish policies addressing the election of remedies required by the Act and due process concerns of victims and their families. Because the filing of a claim with the Fund bars a claimant from pursuing a lawsuit for damages, the Department and the Special Master concluded that it was essential to establish a clear-cut definition of "filing" for the benefit of both potential claimants and potential defendants in litigation.[36] Without such a rule, potential claimants would have been fearful that minimal contact with the Fund, such as requesting information or supplying background materials necessary for the Fund to provide informed guidance, could constitute "filing" a claim. To solve this problem, the Regulations provide that a claim is deemed filed when it is "substantially complete" and that the Fund itself will determine whether and when a claim is substantially complete.[37]

3. Implementation of the Regulations/Policy Guidance

During the initial stages of the Fund's operation, the Special Master's Office focused on establishing detailed guidelines for evaluating claims and providing sufficient information to permit claimants to evaluate their options. The Special Master's Office concluded that it was important for claimants and representatives of claimants to have open access to Fund personnel and the opportunity to have all their questions and concerns addressed. Claimants were invited to meet with representatives of the Fund at any time for any purpose. The Special Master and the senior attorneys conducted hundreds of meetings with claimants to discuss issues relating to the operation of the Fund, address specific questions about the Fund's treatment of the individual claimant's situation, and provide realistic estimates of the potential award from the Fund. Some of these meetings were conducted as "town hall" meetings in various locations around the United States and in England. Others were conducted as individual meetings with a single claimant or family. Throughout its operation, the Fund maintained its open-door policy inviting claimants or their representatives to call or meet with Fund representatives. The Fund made it a firm policy to ensure that each claimant understood the basis of the award determination. Thus, the Fund responded to all questions in writing, telephonically, or in person, even after the award was issued.

One of the key functions of the Fund was to assist claimants. The Fund rejected the concept that it need only respond to the submission made by the claimant. Instead, the Fund took a proactive role advising each claimant of information that would assist in the evaluation of the claim, even undertaking – to the extent possible – to obtain information from third parties. The Fund took measures to ensure that claimants were not treated differently merely because one claimant was represented by

an effective advocate and another was not. The Fund scrutinized every claim to ensure that information that could affect the outcome of the claim was considered and in certain circumstances gathered information that the claimant might not have presented. To foster the claimant assistance and information process, the Fund collected all questions from claimants and continuously published guidance in the form of Frequently Asked Questions ("FAQs") to update claimants on new issues, policy decisions and the Fund's treatment of various issues.[38]

The Fund staff also met extensively with key employers of victims of the attacks. These meetings were exceedingly useful; the Fund advised employers of the type of information that they could provide the families in order to facilitate the claims process and at the same time, the Fund developed extensive data about the compensation and benefits policies of specific companies. Through this process, the Fund was able to tailor its evaluation guidelines to account for employer-specific issues. The Fund staff created employer-specific models to ensure that all calculations were appropriate and consistent for victims employed by the same entity. This streamlined the claims processing operation and relieved the individual claimants of some of the burden of producing information for the Fund.

In sum, the Regulations, methodologies and policies adopted by the Fund were designed to accomplish several objectives: (1) provide full and complete information to the claimants, allowing informed choices about participation in the Fund, (2) ensure consistent and understandable awards through the adoption of clear-cut guidelines, (3) ensure generous awards consistent with the Regulations by resolving ambiguity and uncertainty in favor of the claimant, (4) allow claimants the opportunity to participate in an in-person hearing, (5) ensure that claimants who did not secure a lawyer or other expert would not be penalized in their opportunity to participate in the process and obtain a fair and consistent award, and (6) make certain that the staff of the Fund was accessible to claimants to answer questions and respond to concerns.

4. Challenges to the Regulations

Some families disagreed with the Fund's guidelines for determining economic loss and sought to challenge the Regulations. On January 24, 2003, the families of a few deceased victims of the September 11th attacks filed suit in the Southern District of New York against the Special Master, the Attorney General, and the Department of Justice alleging that the Regulations and the interpretive policies of the Special Master were arbitrary and capricious and in violation of the Act. On May 8, 2003, Judge Hellerstein granted the United States' Motion for Judgment on the Pleadings and dismissed the complaints.[39] The plaintiffs had contended that the Regulations and the methodologies and policies employed by the Special Master: (1) imposed an arbitrary and unreasonable cap on awards; (2) improperly took into account the financial needs or resources of the claimant or the victim's dependents and beneficiaries; (3) utilized a restrictive analysis of state law for determining economic loss; (4) failed to publish a methodology for determining presumed economic loss beyond the 98th percentile of

individual income and improperly focused on earnings for 1998-2000; (5) improperly required claimants to present "extraordinary circumstances" in order to obtain an adjustment in the presumed award; (6) improperly used post-tax income as the basis for calculating economic loss; (7) improperly used a consumption rate for single decedents that was higher than that utilized for married decedents or decedents with children; and (8) violated equal protection and due process rights in making award determinations.[40]

The District Court, in rejecting these contentions, concluded as a preliminary matter that the Regulations and the Special Master's methodologies did not exceed the bounds of the Congressional delegation, which expressly granted the Special Master the power to promulgate procedural and substantive rules to administer the Fund.[41] As to the challenged Regulations and the Special Master's methodologies and policies, the District Court found that the procedures required by the Regulations and by the Special Master fairly implemented the Act, were entitled to judicial deference, and did not infringe on plaintiffs' constitutional and statutory rights.[42]

The plaintiffs appealed Judge Hellerstein's decision to the United States Court of Appeals for the Second Circuit. That Court affirmed the District Court's decision on September 26, 2003.[43] The Court found that, while a *de facto* cap on awards would be impermissible under the statute, the Special Master had not imposed such a cap.[44] The Court rejected the plaintiffs' challenge to the Regulation defining "individual circumstances" to include the financial needs of the victim's dependents and beneficiaries,[45] and also rejected the challenge to the Regulation construing the statutory phrase "to the extent recovery for such loss is allowed under applicable state law" to mean that only the categories of loss compensable under governing state law may be used to calculate economic loss.[46] Finally, the Court concluded that it lacked jurisdiction to decide whether the higher consumption rates used by the Special Master to calculate the losses for single decedents without children were arbitrary and capricious since the use of this methodology was committed to the discretion of the Special Master under the Administrative Procedure Act.[47]

II. IMPLEMENTING THE FUND

A. Outreach

One of the Special Master's principal objectives was to disseminate information regarding the Fund to the public at large and in particular to all victims, families of victims, and other interested parties. Outreach was essential for a number of reasons. The Program created by Congress was unique, and it quickly became apparent that an education process would be necessary to explain the Fund and its procedures to eligible claimants. In addition, the Program was established by Congress within weeks after the September 11th tragedy, when grieving families and victims understandably were often unable to comprehend the purpose of the statute and the details of the application process. If the Program were to be successful, it was essential that the Special Master and his staff become proactive in helping familiarize eligible claimants with the benefits of the Program. Outreach, therefore, was critical to the Program's success.

The Fund used several different outreach vehicles to publicize the Program to victims and families, including:

- Helpline – A toll-free helpline to assist potential claimants was established and put into operation on October 22, 2001. The helpline received over 54,000 calls during the course of the Program.

- Claims Assistance Sites – The Fund established claims assistance sites[48] in 13 locations at various points during its operation. The sites were staffed with individuals who could provide information and assistance to claimants and their families in the claims submission process. The claims assistance sites were visited by 2,250 individuals.

- Internet – The Fund established a website on which the Fund posted documents, FAQs, claim forms, and other relevant information to support claim submission and processing, and an email link that individuals could use to easily email questions or comments to the Fund. The website was updated over 830 times during the Fund's operation.

- Mass Mailings – The Fund sent out 33 separate mass mailings to potential claimants. These mailings included information, guidance and instructions for the preparation of a claim, copies of Claim Forms and FAQs and logistical information regarding the Claims Assistance Site locations. Follow up mailings were sent periodically as reminders.

- Town Hall Meetings – Beginning in January of 2002, over 25 meetings were organized and in most cases conducted by the Special Master to provide an update on Fund progress, answer questions, and provide case-specific assistance after the meetings. The meetings were promoted via special mailings, the Fund website, and the Helpline's recorded self-service system.

- *Pro Bono* Legal Training Sessions – Training sessions were held for *pro bono* legal counsel to educate them on claim submission guidelines, supporting documentation requirements, common submission errors, and ways to expedite claim processing.

- Individual Meetings – The Special Master and senior attorneys working on the Fund also conducted hundreds of individual meetings at the request of claimants to answer claim-specific questions.

- Special Interest Group Meetings – The Special Master conducted meetings for special interest groups representing groups of claimants with similar circumstances allowing issues specific to their situation to be addressed.

- Advertisements and Media – Notification to potential claimants about the existence of the Fund and information on where and how to apply was placed in a number of publications.[49] In addition, numerous interviews by the Special Master were conducted by the television[50] and the print media.[51]

B. Process for Submission and Evaluation of Claims

The Fund established two "tracks" for the review and evaluation of claims. Claimants were asked to elect either Track A or Track B. Under Track A, the Fund evaluated the claim submission first to determine whether the claim was "substantially complete."[52] The Fund then issued a determination on eligibility and a presumed award within 45 days of the substantially complete determination. Upon receipt of this determination, the claimant could request a review (*i.e.*, an appeal). On appeal, the claimant had the right to an in-person hearing and to request that the Fund make a determination of "extraordinary circumstances" that might justify a departure from the presumed award calculation. After review of the presumed award, a final award was issued; there was no further right of appeal.

Under Track B, the Fund initially reviewed the claim submission to determine whether it could be deemed substantially complete. Once a claim was found to be substantially complete, the claimant was notified and a hearing was scheduled. Under Track B, the Fund would not issue a decision until after a hearing was conducted. The decision issued after the Track B hearing was final; there was no right of appeal.[53]

Claims for deceased victims were nearly equally divided between Track A and Track B: 47% of claims for deceased victims elected Track A and 53% elected Track B. Election of the Track B process often correlated with the victim's income level: over 69% of claims for victims with income levels in the top 2% (*i.e.*, over $231,000) elected Track B. In comparison, 48% of claims of victims with the lowest income levels (under $25,000) elected Track B. In general, Personal Representatives asserting claims for victims with higher incomes expressed the view, in meetings and in hearings, that the presumed methodology, calculated at an income level of $231,000 with favorable growth and stability assumptions, was inadequate to address these families' needs and individual circumstances.

Physical injury victims, on the other hand, overwhelmingly elected Track A: over 89% of injury victims elected Track A. As with claims for deceased victims, physical injury victims with higher incomes elected Track B more frequently: over 67% of physical injury claimants with income levels above $200,000 elected Track B while 89% of physical injury victims with income below $150,000 elected Track A.

The Fund established an extensive, proactive process to respond to claim filings. In the intake process, submissions were assigned tracking numbers, sent to data entry and all documents were imaged. Submissions then went through a review process to determine the appropriate next action. Upon receipt of an initial claim submission, the Fund contacted the claimant both to acknowledge receipt and to advise of documentation that appeared to be missing. Claims were then assigned to individual case managers who were responsible for following up with the claimant to obtain any information necessary for evaluating the claim. This process was designed intentionally to be proactive. Case managers contacted claimants or their representatives personally to discuss what documents were necessary and provided assistance to claimants in obtaining their documents. While this practice added to the administrative costs, it effectively helped to reassure claimants while also ensuring that the Fund received the information necessary to properly evaluate the claims.

After sufficient documentation was obtained for evaluation, the claim was sent to an adjudicator who would prepare the initial presumed award calculations using the standard model (as adjusted for specific employers). After a quality control process, the claim was sent to an attorney in the Special Master's Office for review. If the claim was designated as a Track A claim, the attorney reviewed the claim, determined whether the claimant was eligible, decided whether the claim was substantially complete and if it was, determined the appropriate inputs for the presumed award calculation so that an award letter could be issued. If the award or eligibility denial was appealed, the claim was reviewed again, along with the transcript of the hearing by a managing attorney in the Special Master's Office and a final award was determined and issued. If the claim was designated as Track B, the attorney reviewed the claim to determine eligibility, whether the claim was substantially complete, and the appropriate presumed award calculation. If the claim was found to be substantially complete, the claimant was sent a letter advising of the substantially complete

determination and the timing of a hearing. After the Track B hearing, each claim was reviewed again, along with the transcript of the hearing, by the supervising attorney in the Special Master's Office who then determined and issued the final award.

The Fund conducted a total of 3,962 eligibility and award hearings involving 3,629 claims.[54] The hearings were conducted informally and claimants were entitled to submit any testimony, including expert testimony, that they felt was relevant to the claim. In general, claimants used the hearing process to inform the Fund of the effect of September 11 on their daily lives and to clarify issues relating to need, individual circumstances, the victim's employment history and future prospects and other information submitted with the claim. The Fund used the hearing process to elicit information from claimants regarding the details of their claims and to ascertain individual factors or circumstances that the Fund should take into account in determining the award.

The hearing process was integral to the success of the Fund. Claimants in general felt a strong need to advise the Fund personally of their circumstances. Indeed, many claimants felt that without a hearing, they would have been deprived of "due process." Many attorneys and claimants expressed the view that the hearing process provided a degree of closure and, in some cases, a cathartic experience. Clearly the hearings were emotionally difficult for claimants. (Informal settings were designed to minimize claimants' fears and concerns as much as possible.) The Fund placed no restrictions on time or content of hearings, although Hearing Officers received instructions from the Special Master's Office designating specific questions to ask the claimant. (It was rare for a hearing to exceed two hours.)

The following table shows the number of hearings held by claim type and track. Hearings on objections and statements of interest are counted as separate hearings, even if they relate to the same claim.

HEARINGS - ALL CLAIMS (7,403 CLAIMS FILED)				
	TRACK A	TRACK B	TOTAL	% OF TOTAL CLAIMS FILED WITH HEARING(S)
AWARD HEARINGS	1,302	1,742	3,044	
ELIGIBILITY HEARINGS	653	109	762	
OTHER OFFICIAL HEARINGS	91	65	156	
TOTAL (3,962 Hearings on 3,629 Claims)	2,046	1,916	3,962	49.00%
HEARINGS - DEATH CLAIMS (2,880 DEATH CLAIMS WITH FINAL AWARDS)				
	TRACK A	TRACK B	TOTAL	% OF TOTAL DEATH CLAIMS WITH HEARING(S)
AWARD HEARINGS	518	1,455	1,973	
ELIGIBILITY HEARINGS	6	2	8	
OTHER OFFICIAL HEARINGS	32	61	93	
TOTAL (2,074 hearings on 1,977 Claims)	556	1,518	2,074	68.60%
HEARINGS - PHYSICAL INJURY CLAIMS (2,680 PHYSICAL INJURY CLAIMS WITH FINAL AWARDS)				
	TRACK A	TRACK B	TOTAL	HEARING(S)
AWARD HEARINGS	783	283	1,066	
ELIGIBILITY HEARINGS	331	62	393	
OTHER OFFICIAL HEARINGS	30	2	32	
TOTAL (1,490 hearings on 1,265 Claims)	1,144	347	1,491	47.20%
CLAIMS WITH MULTIPLE HEARINGS -- (CLAIMS WITH FINAL AWARDS)				
	# of Claims	% Claims with Multiple Hearings		
CLAIMS WITH MULTIPLE HEARINGS -- ALL CLAIMS WITH FINAL AWARDS	285	5.13%		
CLAIMS WITH MULTIPLE HEARINGS -- DEATH CLAIMS WITH FINAL AWARDS	62	2.15%		
CLAIMS WITH MULTIPLE HEARINGS -- PHYSICAL INJURY CLAIMS WITH FINAL AWARDS	223	8.32%		

C. Evaluation of Claims

1. Eligibility

The first step in the claim evaluation process was to determine whether a claimant was an "eligible individual."[55] Eligibility is defined by the Act to include individuals aboard the flights and individuals present at the World Trade Center, the Pentagon, or the site of the aircraft crash at Shanksville at the time or in the immediate aftermath of the crashes or Personal Representatives of deceased individuals who would otherwise be eligible. In addition, an individual must have suffered physical harm or death as a result of one of the air crashes. The Act also states that only one claim may be submitted by an individual or on behalf of a deceased individual.[56] The statute provides no definitions of "present at the site," "immediate aftermath," "physical harm," or "Personal Representative." While the Regulations fill some of

these gaps as described below, the senior attorneys in the Special Master's Office, consistent with the Act and the Regulations, further developed criteria and procedures to administer the claims as the Program proceeded.

a) Eligibility for Physical Injury Claims

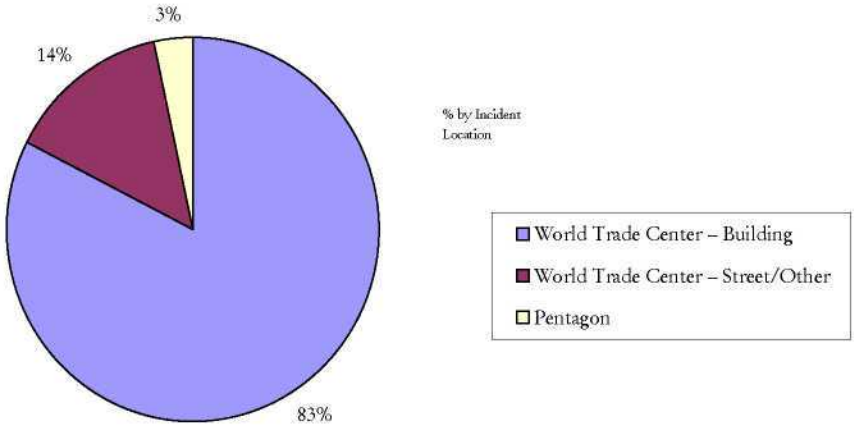
(1) Presence at the Site

Obviously, the definition of "present at the site" (*i.e.*, the World Trade Center, the Pentagon, or the Shanksville site) would have dramatic implications for the number and type of claims that would be eligible, particularly in regard to physical injury. For example, some argued that "the site" should encompass the island of Manhattan, thereby creating the possibility of a vast universe of claimants that could include individuals a substantial distance from the World Trade Center who might have suffered relatively minor injuries while leaving the City. The Regulations reject this approach and define "the site" to include "the buildings or portions of buildings that were destroyed as a result of the airplane crashes," and "any area contiguous to the crash sites that the Special Master determines was sufficiently close to the site that there was a demonstrable risk of physical harm resulting from the impact of the aircraft or any subsequent fire, explosions or building collapses (generally, the immediate area in which the impact occurred, fire occurred, portions of building fell or debris fell upon and injured persons)."[57] To implement this Regulation with respect to the World Trade Center site, the attorneys in the Special Master's Office examined aerial photographs and maps of the debris field for all debris larger than particulate matter. These sources indicated that the overwhelming majority of the debris fell within an area well inside the boundaries of the New York Police Department ("NYPD") Pedestrian No Access Zone. To add a margin of safety, the Special Master's Office extended borders of this zone by one block in each direction; the resulting area became the zone utilized to determine presence at site for victims in New York.[58] Individuals who were outside the zone but who received blunt trauma injuries after having been struck by debris (*i.e.*, something substantially larger than particulate matter) were also found eligible. Other individuals who were injured outside of the zone were denied eligibility. Implementation of the Regulation defining the Pentagon and Shanksville sites was less complex and did not require the definition of a specific zone.

The following chart shows the breakdown of injury claims by incident location:

PHYSICAL INJURY CLAIMS BY INCIDENT LOCATION

Location	# of Claims	Amount Awarded
World Trade Center – Building	2,212	$892,824,923.59
World Trade Center – Street/Other	382	$108,687,824.01
Pentagon	86	$51,641,786.96
TOTAL	**2,680**	**$1,053,154,534.56**



(2) Immediate Aftermath

The second eligibility requirement is that the victim must have been present at the sites at the time or "in the immediate aftermath" of the crashes.[59] The statute provides no definition of "in the immediate aftermath." Consistency in administration of the Act's eligibility requirement required a bright-line definition for this term; "immediate aftermath" is defined in the Regulations to mean "until 12 hours after the crashes."[60] The rationale for this definition was that this period of time would cover all of those who suffered actual physical injury or death as a direct result of the attacks, other than rescue workers.[61] In recognition of "their heroic efforts and their selfless reasons for being at the sites as well as the high level of danger and difficulty during the first four days of rescue operations,"[62] the Regulations define the "immediate aftermath" for rescue workers to include the period from the crashes until 96 hours after the crashes.[63] The Special Master does not have discretion to vary the 12- and 96-hour deadlines set by the Regulations.

(3) Physical Harm

To be eligible, an individual must have suffered physical harm or death as a result of the air crashes. The Regulations adopt a plain reading of the term "physical harm."[64] Although many individuals may have experienced significant psychological injuries, the Department and the Special Master concluded that the Act's use of the

term "physical harm" meant "a physical injury to the body," thus excluding psychological injuries.[65] Individuals who suffered from only a psychological injury were ineligible, and individuals who suffered psychological injuries as a result of physical injury were not eligible for additional compensation resulting from their psychological injury.

The Regulations address Congress' intention *not* to cover those who face only a risk of future injury by setting standards for time of treatment. The Special Master's Statement regarding the Interim Final Rule explains the conclusion that those with only latent injuries are ineligible:

> The statutory term 'physical harm' also indicates that Congress did not intend for this Fund to cover those who face only a risk of future injury (*i.e.*, latent harm that does not fully manifest itself within the statutory time period for this Fund). Indeed, because participation in this Fund precludes claimants from recovering through tort litigation, those with latent injuries that later became manifest would likely be *undercompensated* if they sought compensation now from the Fund before the injuries became manifest. Conversely, those who recovered for latent injuries that did *not* later become manifest could be *overcompensated* if they recovered from the Fund.[66]

The Regulations require that a physical injury be verified by "contemporaneous medical records created by or at the direction of the medical professional who provided the medical care."[67] Each file was reviewed to determine whether sufficient medical documentation existed. The Fund recognized that many of the overburdened medical facilities dealing with the massive influx of September 11th victims, including most triage sites, could not and did not create clear or thorough records on September 11. When these facilities were involved, the Fund accepted testimonial evidence or a combination of later credible medical records that demonstrated that the victim's injuries were treated within a 72-hour time frame after the attacks.

The Interim Final Regulations define physical harm to mean a physical injury to the body that was treated by a medical professional within 24 hours of the injury having been sustained or within 24 hours of rescue. In addition, the injury must have required hospitalization as an in-patient for at least 24 hours or caused (whether temporarily or permanently) partial or total physical disability, incapacity, or disfigurement. Comments to the Interim Final Regulations argued that the 24-hour requirement was unfair because many individuals with serious physical injuries were reluctant to seek immediate treatment or were persuaded not to seek treatment in the 24 hours following the attacks in order to allow physicians to care for those suffering potentially life-threatening injuries. In response, the Final Regulations expand the time period from 24 to 72 hours for those victims who failed to appreciate immediately the extent of their injuries or for whom appropriate medical care was not

available on September 11.[68] In many instances, the Fund granted eligibility to injured victims who were unable to seek medical treatment within 24 hours. In addition, the Final Regulations give the Special Master discretion to extend the time period even further for rescue personnel who did not seek or were not able to obtain medical treatment within 72 hours.[69] The Fund defined "rescue worker" to mean an individual who had directly and materially assisted in the effort to rescue or recover victims. In general, rescue workers included workers directly engaged in rescue and recovery at the World Trade Center site, including those removing debris to aid in the search for victims and those shuttling other rescue workers in and out of the zone. Throughout the operation of the Fund, each request for waiver of the 72-hour rule was reviewed by a staff attorney and decided on a case-by-case basis. The Fund granted waivers to hundreds of rescue workers who were diagnosed with demonstrable and documented respiratory injuries directly related to their rescue service.

b) Eligibility for Claims for Deceased Victims

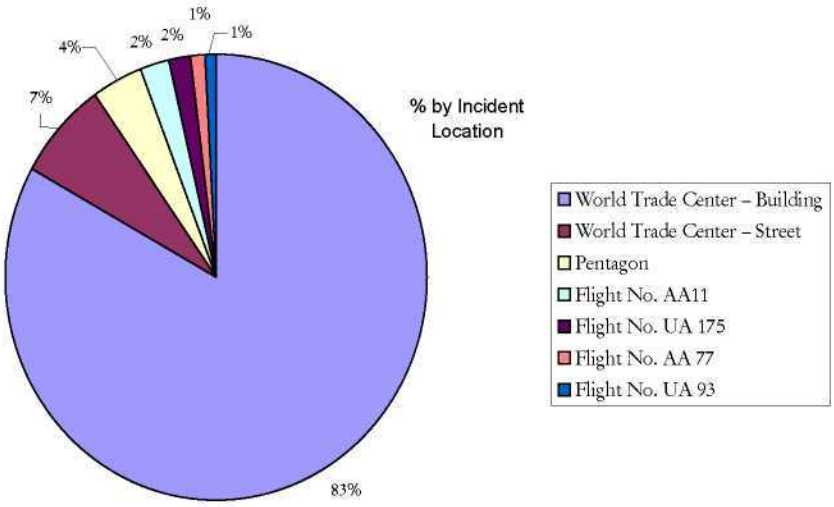
(1) Proof of Death/Presence at the Site

Issues relating to proof of death and presence at the site for deceased victims were significantly less complex than those issues presented by injury claims. The Fund allowed various forms of proof of death, including a death certificate or other evidence, such as an employer affidavit and presence of a victim on an airline manifest. Where the death certificate was based on an actual autopsy or medical examiner confirmation of identity, the Fund did not require another form of proof. Where death certificates could not be obtained by the claimant, other official documentation was accepted. For example, in Virginia a death certificate could not be obtained if a body had not been identified. The Fund instead accepted a report of casualty from the Department of Defense and a court order establishing the death.

To determine presence at the site, the Fund examined death certificates, records of employment, affidavits from employers and other knowledgeable persons, airline records, DNA test results and other documentation.[70] The Fund denied 45 claims asserted on behalf of deceased victims for: (1) lack of proof of death, (2) lack of proof of presence at the site; or (3) lack of proof that the death was related to the September 11th attacks.[71]

The following chart provides a breakdown of claims for deceased victims by location:

World Trade Center – Building	2,388	$5,083,751,440.29
World Trade Center – Street	209	$439,185,736.33
Pentagon	114	$172,571,215.31
Flight No. AA11	65	$119,638,023.32
Flight No. UA 175	46	$69,556,753.04
Flight No. AA 77	33	$57,908,226.32
Flight No. UA 93	25	$53,649,607.47
TOTAL	**2,880**	**$5,996,261,002.08**



(2) The Personal Representative

The statute provides that the claimant in the case of a decedent shall be "the Personal Representative of the decedent."[72] In addition, no more than one claim may be submitted on behalf of a deceased individual.[73] There is no further guidance regarding the identity of the Personal Representative or the procedures that should be utilized to appoint the Personal Representative, to provide other potential beneficiaries with notice that the Personal Representative has filed a claim or to allow other potential beneficiaries to object to the authority of an individual to file as the Personal Representative. The Regulations address each of these issues, primarily by looking to the pertinent state law of the victim's domicile. By relying upon reference to state law, the Fund was able to avoid the difficulties associated with attempting to gather facts relevant to the designation of Personal Representatives and Fund beneficiaries on a case-by-case basis.

c) Appointment of the Personal Representative

In recognition that the state probate courts have mechanisms for the appointment of Personal Representatives and, in many cases, would have already appointed the appropriate Personal Representative for the administration of a victim's estate, the Regulations state that the Personal Representative shall be the person appointed by a court of competent jurisdiction either as the Personal Representative of the decedent or as the executor or administrator of the decedent's will or estate.[74] The Regulations also anticipate, however, that there may be situations where the court has not appointed the Personal Representative. Rather than allow the lack of such appointment to create an obstacle to resolution of a claim, the Regulations provide that, in the event the Personal Representative has not been appointed by a court and there is no pending litigation regarding the issue, the Special Master has the discretion to appoint a Personal Representative for the purposes of compensation by the Fund. If there is a will, the Special Master may appoint the executor or the administrator as the Personal Representative or, if no will exists, the Special Master may, in his discretion, determine that the Personal Representative is the first person in the line of succession established by the applicable intestacy laws.[75] In practice, there were few instances where it was necessary for the Special Master to appoint the Personal Representative. These instances included claims where the state courts did not require appointment of the Personal Representative under the particular circumstances and the claimant preferred not to seek such an appointment due to unrelated circumstances, as well as those rare cases where the identity of the appropriate Personal Representative was disputed and the parties were unable to agree upon a particular individual to fill the role.

The reliance of the Regulations upon the state courts to appoint the Personal Representative was the most reasonable and efficient approach in light of the expertise of state probate courts. In most states, the mechanism was trouble-free. However, the requirement created significant problems in the State of New York where many of the Surrogate's Courts construed the Surrogate's Court Procedure Act and the New York Estates, Powers and Trusts Law to mandate the continued involvement by the courts in many aspects of the Program. For example, certain Surrogate's Courts viewed state law to require bonding, court approval of the compromise of the claim, supervision of distribution and payment to minors, approval of any award, and approval of the distribution of the award. As a result, many of the Surrogate's Courts began issuing "limited" Letters of Administration[76] that functionally prohibited claimants from completing an application to participate in the Fund. These letters contained different types of limitations. Some limitations restrained the Personal Representative from compromising any right of action, thereby precluding participation in the Fund. Other restrictions limited the amount of money the claimant could collect. Often, limited Letters of Administration contained both types of restrictions. At the inception of the Program, the limitations were particularly problematic because many claimants filing early were seeking the immediate payment of Advance Benefits due to financial hardship.[77] Requiring state court approval of these payments was contrary to

the purpose of the Advance Benefit Program, *i.e.*, to allow especially needy claimants filing death claims to receive $50,000 immediately upon proof of eligibility.[78]

An additional problem was created by the lack of uniformity of the New York Surrogate's Courts' interpretation of their responsibilities under state law to supervise Personal Representatives filing with the Fund. As a result, New York residents seeking Letters of Administration to apply to the Fund received different types of letters depending on the Surrogate's Court issuing their letters. For example, if a decedent was domiciled in certain counties, the Personal Representative was able to obtain unlimited Letters of Administration that allowed the submission of an application to the Fund and the collection of both Advance Benefits and a final award. In other counties, however, the Personal Representative might receive letters with various restrictions, preventing submission of a claim or collection of an award.

The Special Master analyzed various avenues for resolution of these problems and concluded, ultimately, that the most expedient approach was to seek legislation setting forth uniform rules regarding appointment of Personal Representatives in New York for purposes of the Fund that would allow the Personal Representative appointed by a Surrogate's Court to submit a claim, compromise a claim, and accept an award without prior court approval. The Special Master's Office was able to work effectively with Governor Pataki's office to ensure that these issues would be resolved expeditiously by legislation. On May 21, 2002, the September 11th Victims and Families Relief Act (the "New York Act") was enacted due to the efforts of the Governor and the New York Senate and Assembly.[79] The New York Act included, *inter alia*, provisions addressing the issues relating to the appointment of Personal Representatives.

The New York Act amended the New York Estates, Powers, and Trusts law by providing that the Personal Representative appointed by the Surrogate's Courts could file and compromise a claim even if there were restrictions in the Letters of Administration.[80] The New York Act further provided that families of the victims could commence probate and related Surrogate's Court proceedings in any county in the state of New York.[81] Finally, in response to concerns expressed by both attorneys and claimants regarding the potential liability of a Personal Representative, the New York Act also provided that a Personal Representative who submitted a claim on behalf of a victim of the terrorist attacks would have no liability for actions taken reasonably and in good faith with respect to the Fund.[82]

(1) Notice of Appointment of the Personal Representative

Notice to all parties who might have a financial interest in a Fund award was of paramount importance to the fair administration of the Fund. Some comments to the Interim Final Regulations suggested that a regulation requiring notice was not necessary and would be duplicative of the notice requirements required by state courts issuing Letters of Administration to the Personal Representative. Contrary to this

view, the Final Regulations adopt a notice provision *broader* than that of most state courts. The Regulations require that written notice of the claim must be provided by the purported Personal Representative not only to the immediate family of the decedent (including the decedent's spouse, former spouses, children, other dependents, and parents) and to the executor, administrator and beneficiaries of the decedent's will, but also to any persons who "may reasonably be expected to assert an interest in an award or to have a cause of action to recover damages relating to the wrongful death of the decedent."[83] In order to cast as wide a net as possible, the Special Master also required notice to siblings of the decedent.[84] The Personal Representative was required to submit with the claim a list of individuals notified, along with a certification that the required notice was provided to all of those individuals either by personal delivery or certified mail and that the Personal Representative was not aware of anyone else to whom such notice should be provided.[85] The certified list of those provided with notice was reviewed and checked by the Fund against other sources of information including obituaries, news articles, the Internet, and other information contained in the file.

The breadth of the required notice resulted in notification of some individuals who were not beneficiaries of the award under state law. In requiring overly broad notice in some cases, the Special Master intended to make certain that there was as little risk as possible that either a *bona fide* beneficiary or a person with relevant information regarding the appropriate Personal Representative or beneficiaries would be deprived of notice and thereby unable to participate in the process. In some instances, the purported Personal Representative objected to the broad scope of the notice requirement on the ground either that notification of extended family members with no financial interest in the award would aggravate acrimony in the family or that it was impossible to locate certain estranged family members. The Fund evaluated these objections on a case-by-case basis and, if satisfied that a specific individual could not under state law assert a valid interest in the award and that the reasons underlying the objection were compelling, granted the requested waiver. In response to an assertion that a specific family member could not be located, the Fund required the Personal Representative to take a number of steps to prove that location was not possible. If the Fund concluded that all reasonable efforts had been exhausted, a waiver of the notification requirement was granted.

The Fund took various additional steps to ensure that the Personal Representative had notified all interested parties. Although the Personal Representative was required to certify on the claim form that all persons required to be notified by the Regulations (as described above) had in fact been notified in writing, the Fund took the further step of publishing the names of the deceased victims for whom claims had been filed on the Fund's official website for 90 days. This additional safeguard was designed to alert any person not notified by the purported Personal Representative that a claim had been filed. In some cases, individuals who had not been notified by the purported Personal Representative for a variety of reasons

(including that their existence or relationship to the victim might not have been apparent) did in fact learn of the filing of the claim through the website.

(2) Objections and Statements of Interest

The Regulations provide that an objection or statement of interest ("SOI") may be filed up to 30 days following the filing of a claim by the Personal Representative and that a timely objection will be considered evidence of a "dispute."[86] In practice, the Fund considered objections and SOIs even if they were received after 30 days. Indeed there were some cases where the Fund acted upon evidence of a dispute regarding the identity of a Personal Representative that was particularly compelling even after issuance of an award.

An individual could file an objection to a claim on one of two grounds: first, to the identity or authority of the purported Personal Representative to file the claim, and second, to the filing of *any* claim on behalf of a decedent. Additionally, a person asserting an interest in the award could file an SOI setting forth any information relevant to his or her relationship to the victim or the proposed distribution plan.

Where an objection to the identity of the Personal Representative was filed, the Fund presumed that the court-appointed Personal Representative was the appropriate claimant unless the objector submitted evidence that the state court ruling was incorrect. Determinations by the Fund that the appointment by a court was not appropriate were extraordinarily rare and were limited to cases where the objector could demonstrate facts that had not been considered by the court (*e.g.* evidence of a voided marriage) and cases where more than one Personal Representative had been appointed by different courts.[87]

Many objections to the identity of the Personal Representative were, in fact, requests to include the objector in the distribution of the award, resulting in little distinction in the content of these objections and SOIs. The bases of these objections were typically that the Personal Representative would not fairly represent the objector's interest and, accordingly, they were considered by the Fund as SOI's. The majority of objections or SOIs were filed on behalf of potential beneficiaries from families distinct from that of the Personal Representative, such as children of the decedent who were not children of the Personal Representative, parents of the decedent when the spouse was the Personal Representative, or fiancées and domestic partners when a parent or other family member was the Personal Representative. In these circumstances, the Special Master abided by the court appointment of the Personal Representative, but reviewed all documentation provided by the family member or interested party to make certain his or her interests were adequately addressed by the Fund. To ensure full participation by those filing an objection or SOI, the Special Master or his designee held a hearing for those filing an objection or SOI when requested.[88]

Another common reason for the filing of an objection was the concern by a potential beneficiary that the Personal Representative would choose *not* to file a claim and thereby deprive the beneficiary of the opportunity to receive a portion of an award from the Fund. In some of these cases, the Personal Representative had little or no incentive to file a claim, whereas a particular potential beneficiary had a strong interest in filing.[89] Given the Act's clear designation that only one claim could be filed by the Personal Representative, the Special Master had no discretion to accept these objections or attempts to file a claim in the face of a decision by a duly appointed Personal Representative not to file with the Fund.[90]

The Special Master and the Fund's staff worked with families to attempt to resolve differences when possible.[91] If a hearing was requested by both the Personal Representative and those individuals submitting an objection or SOI, the Fund conducted separate hearings with various family members. This procedure preserved confidentiality and ensured that all parties had the opportunity to be heard in an informative but non-acrimonious atmosphere. In some circumstances, family members or other interested parties felt this procedure unfairly deprived them of information necessary to advance their claim. It was the Special Master's experience, however, that evaluating and processing competing interests in this manner did not limit the Special Master's capacity to fairly evaluate the claims and, in fact, contributed to containing familial discord.

(3) Processing of Disputes as to the Appropriate Personal Representative

The Regulations provide that the Special Master shall not be required to arbitrate, litigate, or otherwise resolve any dispute as to the identity of the Personal Representative and that in the event of a dispute over the appropriate Personal Representative, the Special Master may suspend adjudication of the claim or, if sufficient information is provided, calculate the appropriate award and authorize payment, but place in escrow any payment until the dispute is resolved either by agreement of the disputing parties or by a court. As an alternative, the Regulations allow the disputing parties to agree to the identity of a Personal Representative to act on their behalf while they work to settle their dispute.[92]

In most cases involving a dispute as to the identity or authority of the Personal Representative, the Fund was able to calculate an appropriate award pending resolution of the dispute. After receiving notification of a dispute, the Fund continued to receive and gather information necessary to calculate a claim and, when necessary, conducted more than one hearing to make certain that all relevant information was taken into account in calculating a fair and appropriate award. The Fund kept the claim open until the end of the Program with the hope and expectation that the parties would resolve the dispute and thereby obviate the necessity to place any payment in escrow. By its end, the Fund had only 6 claims that could not be paid directly to the Personal Representative, to the decedent's estate or to beneficiaries under state law.

The awards for these claims were paid to state courts in New York and New Jersey where the disputes will be resolved.[93] Only 3 of these claims actually involved the identity of the Personal Representative. The other 3 awards were paid to the courts due to concerns regarding distributions to minors.

(4) Foreign Personal Representatives

Appointment of a foreign Personal Representative raised special challenges. While review of domestic Letters of Administration from various states resulted in certain complexities due to variation from state to state, such a review could be conducted by the Fund's attorneys with some confidence. Review and verification of the authenticity and meaning of foreign documents was a different matter. For these claims, the Fund reached out to the consular offices of the foreign country in question, had direct communications with the appropriate legal authorities, and conducted a document verification process. If the Fund received appropriate assurances that the type of document received was sufficient for the appointment of the Personal Representative and that the person appointed was the correct individual under foreign law, the appointment was accepted. In the rare instance where a foreign appointment and a domestic appointment conflicted and the parties were unable to agree upon the appropriate Personal Representative for purposes of compensation by the Fund, the dispute was referred to a state court for resolution.

d) Proof of Eligibility of Undocumented Aliens

Under the Act, in addition to foreign claimants, undocumented aliens and their families were eligible for compensation. Undocumented workers and their families posed special problems for the Fund, due to difficulties in locating the claimants and reluctance by some to enter the Fund for fear of legal sanctions. The Special Master and the Department made clear that these fears were unjustified. Nevertheless, it took patience and intensive outreach efforts to convince these eligible claimants that they were welcome in the Program.

Undocumented aliens and their attorneys as well as various legal organizations communicated significant concerns to the Special Master regarding the Fund's proof of eligibility requirements. The eligibility portion of the claim form required the claimant to state the victim's country of citizenship and Social Security Number or national identification number. In addition, the claimant was required to sign an authorization allowing the Department to disclose any records or information relating to the form to other parties to the extent necessary for the claim's review (including other government agencies), and to release information relating to the claim where such information indicated a violation of law to any civil or criminal law enforcement authority.[94]

Undocumented aliens and their families and advocates voiced concerns that information provided to the Special Master could be used against the claimant by the

Immigration and Naturalization Service ("INS")[95] for deportation or other proceedings arising out of their immigration status and that the specter of INS proceedings or penalties would prevent former employers from providing information supporting the claims of undocumented aliens. The Special Master communicated with the INS to assure that undocumented aliens and their families could file with the Fund without fear of reprisal. The Fund received eligible claims from families of 11 deceased victims confirmed to be undocumented aliens.

2. Determination of Awards

The Special Master is obligated by the Act to determine the extent of harm to the claimant, including economic and non-economic loss and the amount of compensation to which the claimant is entitled based on the harm to the claimant, the facts of the claim and the individual circumstances of the claimant. To satisfy this obligation, the Fund first undertook to evaluate economic loss.

a) Economic Loss – Deceased Victims

The Act expressly requires the Special Master to determine "the extent of the harm to the claimant, including any economic...losses."[96] The Regulations establish that economic loss should be computed with reference to the future earnings potential of the victim.[97] The components of the economic loss calculation included compensation history, fringe benefits, work life, growth rates, consumption, adjustments for taxes and risk of unemployment and present value factors. Presumed economic loss was calculated using standardized assumptions for these components. Computer models were constructed that incorporated the presumed award assumptions allowing each claim to be evaluated through a uniform process.[98]

(1) Income

The starting point in valuing economic loss was to ascertain the most appropriate measure of the victim's historical income. The Fund counted as income combined compensation from all sources including salaries and bonuses (including variable performance-based bonuses and commissions), stock options, partnership or equity distributions, self-employment earnings, capital gains, deferred compensation, overtime pay, and part-time income.[99] In general, the Fund relied on pay stubs and employer statements as the most accurate depiction of actual compensation. Where such information was not available, the Fund considered the data in W-2 forms.[100]

The Regulations give the Special Master discretion to apply average income for the three years prior to 2001, to apply annualized 2001 compensation, to select other years, or to rely on published pay scales.[101] The Special Master's Office evaluated the compensation history of each victim and any information provided by the employer regarding the victim's status (including planned promotions) as well as the family circumstances in selecting the appropriate compensation base for the calculation.

In general, the Fund considered an average of 1998-2001 income[102] to determine base compensation. Use of these years was appropriate because it "averaged out" fluctuations in income and it benefited claimants by counting years of high earnings particularly for those working in the financial industry. However, in many instances, the Fund determined that compensation data from other years, or a specific year, was a more appropriate basis for the calculation of lost future income. For instance, the Fund typically used the victim's most recent income (2001 annualized) where a victim's income had increased significantly due to a substantial promotion (such as a change in job responsibility or title), re-negotiated contract, or change in employer or educational degree. Likewise, the Fund deviated from the 1998-2001 average where use of the historical earnings data would unfairly disadvantage the claimant. For example, where a victim stopped working or had worked on a reduced schedule for some period of time due to personal issues (*e.g.*, maternity leave, temporary disability, caring for ill family members) or professional issues (*e.g.*, layoff), those years were viewed as unrepresentative of future lost earnings and were excluded from the earnings basis. Additionally, if the employer established that a victim had been promoted shortly before the attacks or was guaranteed a promotion shortly after the attacks, the Fund might apply the post-promotion income.

For victims in the uniformed services (military, fire, and police departments), the Fund's economic loss model incorporated all forms of compensation to which the victim was entitled. For military personnel, such compensation included basic pay, basic allowance for housing, basic allowance for subsistence, federal income tax advantages, overtime, bonuses, differential pay, and longevity pay.[103] For New York Fire Department ("FDNY") personnel, the Special Master also included the retroactive pay increases authorized after September 11 as part of the victim's earnings basis.

In some cases a victim had little or no earnings history on which to base future economic loss. In light of the highly speculative nature of future income in these cases, the Fund either applied the minimum loss computation specified in the Regulations, assessed economic loss based on generalized data derived from national statistics or based economic loss on a replacement services loss analysis.[104] For example, the Fund generally calculated economic loss for minor children, students and many victims who had just started working by using the average income of all wage earners in the U.S. (which was $32,864 in 2000).[105] Economic Loss for homemakers and retired persons was determined under a replacement services loss analysis.

(2) Employer-Provided Benefits

The Fund incorporated all employer-provided benefits in the computation of historical compensation. For those claimants who did not have or could not document any fringe benefits, the Fund incorporated a "presumed" default value for health insurance and pension contributions. The default values were averages derived from studies of the employee benefits programs in the U.S. and were incorporated on the theory that at some point in his or her work life, the average worker would receive

such fringe benefits. Since the Fund was calculating future lost income, the Fund included these "assumed" benefits. The following sections describe the treatment of specific components of the "fringe benefits" included in the calculations.

(a) Pensions

The value of the pension that a victim would have received but for his or her death in the September 11th attacks was considered a component of the victim's lost income. Under the Fund's methodology, in the absence of case-specific data, the economic loss calculation included an assumed employer contribution of 4% of pension-eligible compensable income. Where, however, the claimant provided data about a specific pension plan, the Fund valued the pension (through average life expectancy) in accordance with the terms of the actual pension plan under which the victim was covered. As an example, every economic loss calculation for FDNY, NYPD, and military victims included as part of the economic loss the value of the future pension that the victim would have received had he or she lived to retirement age.[106] For victims in the private sector who were entitled under the terms of their employment to a specific pension, the Fund calculated the present value of the lost future pension starting at the later of the age the victim would have been eligible for benefits under the plan or the end of the victim's work life (as determined by the Fund's methodology), and continuing through the victim's life expectancy.[107]

(b) Health Insurance and Other Fringe Benefits

Health insurance benefits were also included in lost earnings as an element of the victim's employer-provided benefits. The presumed award computation used the actual employer cost of health insurance in computing the loss. If there was no information about the cost or if the victim did not have health insurance coverage, the Fund assumed health insurance costs of $2,400 per year in current dollars.[108] The Fund also counted as lost "fringe benefits" the value of life and disability insurance, employer 401(k) or savings plan contributions, profit sharing and other employer provided benefits (such as car allowance).

(c) Stock Options

In certain circumstances, stock option grants were valued as a component of lost earnings. In cases where the victim's earning history showed a consistent pattern of stock option grants, the calculations assumed that the options were reflective of annual grants and were thus treated as future recurring income. The stock options were valued as of September 11, 2001 using the Black-Scholes model (which is the generally accepted method for measuring stock option value). However, where awarded as a one-time, nonrecurring event – for instance, upon hire – stock option grants were typically viewed as unrepresentative of continuing compensation and therefore excluded from the economic loss calculation.

(3) Work Life

The presumed economic loss calculation adopted a standard of expected remaining years of workforce participation was based on the victim's age at the time of death. The presumed work life was based on the expected remaining years of workforce participation for active males in the United States.[109] Average work life for males is longer than the average work life for females. The Fund adopted the more generous standard for males to avoid any gender bias in assumed future work life patterns and to ensure consistency .

(4) Growth Rates

The presumed methodology also accounts for earnings growth, in excess of inflation and overall productivity adjustments, through the victim's expected work-life. The percentage change at each age incorporates an annual inflation or cost of living expense of 2% plus productivity adjustment of 1% plus real life-cycle growth consistent with age.[110] Since the life-cycle increases for males are higher than those for men and women combined, the Special Master applied the growth patterns for all males into earnings growth for all victims, both for the sake of consistency and to ensure adequate awards.[111] The Fund determined that the incorporation of age-specific growth rates reflects an expected pattern of earnings over one's career, *i.e.*, real life-cycle increases are typically higher in the earlier stages of one's career due to unrealized opportunities for advancement and promotion that individuals in later stages of their careers have already experienced. The age-specific growth rates thus generated more equitable and consistent projections for victims.

(5) Consumption

Under the presumed methodology, the victim's projected earnings (including income and benefits) were reduced by his or her share of household expenditures or consumption as a percentage of income.[112] This consumption reduction is a standard adjustment in evaluating loss of earnings in wrongful death claims because some portion of the victim's income would have been consumed personally by the decedent and not by other household members.[113] The victim's "self consumption" is thus not a "loss" from the perspective of the surviving family. The victim's consumption was calculated as a share (based on household size) of certain expenditure categories including food, apparel, services, transportation and entertainment.

The consumption rates used in the presumed methodology were more favorable in several respects than the rates that would be used to calculate damages under standard tort law. For instance, although the actual consumption rate of low-income earners is often greater than 100% (because some of their needs are met by sources other than personal income), expenditures were scaled to income so that claimants for all decedents would receive an award. Furthermore, although the consumption rate was computed based as a percentage of *before-tax* income, the

presumed consumption rates were applied to after-tax income to reduce the actual amount of the deduction. Additionally, the victim's consumption was determined as a share of the victim's own earnings only rather than the standard share of total household earnings, thus further reducing the deduction. The consumption rate, computed based on the victim's income level as of the date of death, was applied to all future years, except that it was adjusted for household size as minor children reached the age of 19.

Although the consumption rates were based on national data, the Fund determined which consumption rate to apply based on the individual facts and circumstances of the claim. For example, the Fund occasionally adjusted consumption for single victims based on credible evidence demonstrating that the victim's consumption patterns were atypical of a single individual. For instance, where a single victim was living with his or her family in a transitional period (*e.g.*, after graduation from college or after relocation) and contributing to household expenses, consumption was often adjusted for the time period the family reasonably expected the victim to remain at home (typically only a few years). Where a victim was older, had been living with and sharing household costs with his or her parents for a number of years and had no immediate plans to move out, consumption was often adjusted for a longer period, depending on the needs of the family. Likewise, where the victim was contributing to the care or support of his parents or other family members – whether or not they physically shared the same household - consumption was often lowered to reflect the victim's decreased self-consumption.

Consumption was also sometimes adjusted, on a case-by-case basis, where a single victim was engaged to be married or was living with a fiancé or other individual in a long-term arrangement. In these cases, the presumed consumption rates for single victims did not reflect the reality of the victim's household arrangements and consumption patterns. Generally, the Special Master required evidence of an impending marriage, long-term commitment or shared household, along with need or demonstrated extraordinary circumstances to support a departure from the presumed consumption rates. For example, consumption was sometimes adjusted where a victim and his fiancée had already set a wedding date or where a victim lived with and shared household expenses with a domestic partner for many years. Consumption was not adjusted where there was a factual dispute over whether a long-term commitment existed or where the claimant merely proffered general statistics regarding the victim's likelihood of marriage based on his or her demographics.

The practical effect of applying the standard consumption rates (for the relevant income level) for a single person and adjusting it to account for other circumstances was significant since the consumption rates (and therefore deduction) for single victims with no dependents was considerably higher than the rate for victims who were married or had dependents.[114] As a result, awards often increased dramatically where consumption adjustments were made.

Children were assumed to remain in the household for consumption purposes through age 18. However, where the evidence demonstrated that the victim was supporting his or her children beyond age 18, consumption was adjusted accordingly. For example, where the victim was contributing toward a child's college or graduate school education or caring for a disabled child, the Special Master adjusted the consumption rate for the period of time the family reasonably expected such support to continue.

(6) Adjustments

The presumed methodology adjusts future income to account for taxes and risk of unemployment.

(a) Taxes

The presumed methodology determines the net income after deducting the average effective combined federal, state and local income tax rate for the victim's income bracket applicable in the state of the victim's domicile.[115] The computation of tax rate was based on the lesser of two rates – one calculated using Internal Revenue Service ("IRS") data or one calculated based on the victim's actual tax returns. When calculating economic losses using the presumed methodology, the tax rate that corresponded to the victim's compensable income bracket as of the date of death was assumed to apply for the remainder of the victim's career, without increase. This assumption generally favored the claimants since the lost earnings calculations assumed that younger victims would cross into higher income brackets, and be subject to corresponding higher income tax rates, over the course of their projected careers.

(b) Risk of Unemployment

The presumed methodology incorporates a low reduction factor of 3% to account for the risk of unemployment since lifetime jobs are not representative of the modern economy. The unemployment adjustment was not applied in cases where the nature of the victim's job or other factors demonstrated that the risk of unemployment was negligible or non-existent. For example, the adjustment generally was not applied to uniformed service workers[116] or to older victims who had maintained the same job for several years. Likewise, the risk factor was eliminated where a victim was a long-time government employee nearing retirement age since the likelihood of unemployment was insignificant.

(7) Present Value

The projected compensable income and benefits were adjusted to present value, using blended after-tax discount rates based on the victim's age on the date of death. The after-tax rates are computed by tax-adjusting average yields on mid to long-term U.S. Treasury securities.

(8) Replacement Services Loss

Replacement services loss represents the value of household services the victim provided to the household. Such services include cleaning, cooking, child care, home maintenance and repairs, and financial services, among many others. The Regulations provide that a replacement services loss analysis should be used to compute presumed economic loss where a victim had no prior earned income or did not work outside the home.[117] Thus, the Fund determined presumed economic loss for homemakers and retired persons based on such an analysis.[118]

The Fund recognized that services losses were very real and could be substantial, not only for families of homemakers and retirees, but also for part-time or full-time workers. However, due to the variability of replacement services losses among claimants, the presumed methodology generally did not account for such losses. Rather, as explained at Part IIC2.a)(11) claimants were permitted to present, in a hearing or through sworn testimony, individualized data to support an award for replacement services losses for all victims, regardless of whether they were employed.

(9) Medical Expenses

The Regulations also provide for losses related to out-of-pocket medical expenses incurred as a result of the victim's death. To the extent that such expenses were documented and not reimbursed by health insurance, charities or other organizations, they were considered on a case-by-case basis as a potential element of economic loss.

(10) Loss of Business Opportunities

The Regulations further require the Special Master to consider the loss of business or employment opportunities.[119] Since the value of such losses depended on individual circumstances, they were not accounted for by the presumed methodology. Rather, the Special Master invited claimants to present the facts and circumstances surrounding any lost opportunities at a hearing for consideration.

In calculating these losses, the Special Master examined the victim's role and responsibilities in the business and how, if at all, that role had been performed since the victim's death. In the case of an owner or active partner in a privately-held business, the Special Master considered not only current compensation but also the loss in future value of the enterprise due to the death of the principal or partner.

(11) Adjustments to Presumed Economic Loss Based on Extraordinary Circumstances

The Fund departed from the presumed methodology in situations where claimants demonstrated "extraordinary circumstances."[120]

(a) Special Issues Surrounding High-Income Earners

As specified by the Regulations, the Fund calculated a presumed economic loss figure for victims with incomes that exceeded the 98th percentile by applying the presumed methodology to the 98th percentile income (*i.e.*, $231,000). The families of high-income earners had the option of accepting the award computed in this manner or seeking a hearing and requesting a departure from that computation.

In many instances, families of high-income earners argued that the fact that the victim had received compensation at one point in time in excess of $231,000 was in itself an "extraordinary circumstance." The Fund did not accept such a generalized argument but rather considered the issue on a case-by-case basis. If the Fund found extraordinary circumstances, economic loss of high-income earners was not computed pursuant to the presumed methodology.[121]

As required by the Regulations, economic loss under these circumstances was based on individual factors. In general, to compute economic loss for a high-income earner in a claim that presented extraordinary circumstances, the Fund applied the presumed methodology assumptions pertaining to work life, actual fringe benefits and unemployment risk. Other factors were varied as follows: (1) the tax rate was projected to change as the income projections moved into higher brackets during work life instead of freezing the tax rate at the initial base salary level; (2) the consumption deduction was applied to before-tax earnings, thereby increasing the deduction; (3) variable discount rates were applied to variable income to account properly for risk; and (4) different growth rates (as opposed to the standard presumed growth rate) were applied based on the compensation structure.

(b) Adjustments to Calculations Based on Extraordinary Employment and Family Circumstances

The Fund adjusted growth rates and work life assumptions in the presumed methodology to account for employment situations that varied from the norm. For example, where the victim had recently joined the workforce and therefore had limited earnings history, the Special Master applied industry or company-specific growth information for a period of time.[122] Adjustments were also made to age-specific growth rates where the individual's age did not correspond to his or her work experience. For example, where a middle-aged victim changed careers shortly before September 11, and had not yet settled into a new career (*i.e.*, by building up a client base or establishing a reputation in the industry), the age-specific growth rates undervalued the victim's potential. Accordingly, the Fund applied higher growth rates to reflect the victim's greater potential for future advancement.

Evidence of the victim's impending advancement within a company also supported a departure from the presumed methodology. For example, where an employer provided proof that the victim had been selected for a management position

within a specified period of time, growth rates were adjusted accordingly. Furthermore, where the victim's future earnings growth was set forth in a contractual wage guaranty (*e.g.*, pursuant to a union agreement), the scheduled increases were applied if they exceeded the presumed rates.

The Fund adjusted work life if the family showed extraordinary financial need, *i.e.*, that the victim would not have been able to meet financial obligations had he or she ceased work on the date determined using the average workforce participation data.

(i) Replacement Services Loss in Cases of Extraordinary Circumstances

The Fund awarded as part of economic loss the present value of the victim's services where extraordinary circumstances were demonstrated. Replacement services were awarded when the Fund determined that the victim (in the case of physical injury claims) or victim's family would suffer significant out-of-pocket expenses in order to maintain daily care and household services. Replacement services were determined on a case-by-case basis based on the type of services the victim had provided, the amount of time spent performing such services and the cost of replacing those services. The Fund typically determined the value of the services based on testimony and the documented actual costs of the replacement services. If the Fund was unable to obtain useful data through testimony or similar means, the Fund relied on survey data specifying the average time and cost expended for care and household services in the New York Metropolitan area.[123]

(ii) Special Needs

Over 300 victims' families demonstrated extraordinary special needs, such as children suffering from serious medical conditions or developmentally disabled family members who had depended on the victim's assistance for daily care. To determine a replacement services loss award under these circumstances, the Fund computed the cost of replacing the care and services the victim had provided to the family members with special needs or, in rare cases involving a family member with an extremely severe or life-threatening condition, the projected reasonable cost for the care of the special needs family member. In addition, in some cases, the Fund computed the reasonable cost of providing the care and support the family member with special needs would require throughout his or her expected lifespan. The Fund endeavored to obtain data through testimony or other documentation as to the actual time spent by the victim in providing the care and other services. If the Fund was unable to obtain useful data through testimony or similar means, the Fund relied on survey data.

(iii) Unborn Children

The Fund received 13 claims documenting the loss of unborn children as a result of the attacks. Eleven decedents were pregnant and 2 spouses of deceased victims had miscarriages or still-born children due to the trauma from the attacks. The Fund considered these losses to be "extraordinary circumstances" and increased the award of the claims filed on behalf of the deceased victim accordingly.

b) Economic Loss – Physical Injury Victims

Economic loss for physical injury victims was comprised of two components: actual lost income or expenses incurred as a direct result of the injury and future lost income and costs caused by the future effects of the injury.

(1) Actual Lost Income or Expenses

The computation of economic loss for claimants who suffered relatively minor injuries, resulting in either short-term loss of work or out-of-pocket expenses, was straightforward. The award in such cases was comprised of the documented losses, plus an award for non-economic loss, less any collateral offsets received.

(2) Future Lost Income and Costs

Many victims suffered more extensive, long-lasting injuries. In each case, the Fund evaluated the qualifying injury to determine the following: 1) whether the injury was permanent or temporary; 2) if temporary, how long the effects of the injury would remain; 3) whether the claimant had a total disability; and 4) whether the claimant had a partial disability.

The answer to each of these questions affected the computation of economic loss. If a claimant suffered from a temporary disability, the Fund computed economic loss for the period of disability. If a claimant suffered from a permanent total disability, the Fund computed the economic loss through the conclusion of the ordinary work life of the individual. If the claimant suffered from a permanent partial disability, the Fund computed economic loss based on the diminution of earning capacity resulting from the qualifying injury. In each case, economic loss was computed using the same standards applied to the computation for deceased victims, except that the consumption reduction was eliminated from the calculation.

(3) Replacement Services Loss for Physical Injury Victims

On a case-by-case basis, the Fund provided an award for the value of replacement services for physical injury victims. In general, the replacement services computations addressed the value of services lost to the victim's family as a result of the injury as well as the cost of obtaining services that the victim could no longer perform for him or herself. For example, if a physical injury victim required nursing

assistance in order to perform activities of daily living (and that assistance was not provided through health care coverage or other programs for which the victim was eligible), the Fund computed the present value of the reasonable cost of obtaining such services for the duration of the disability or incapacity. As with claims for deceased victims, the value of the services was based either on average costs for the New York metropolitan area or actual out-of-pocket costs if sufficient documentation was provided.

c) Non-Economic Loss

The Fund provided an award for non-economic loss for every claim.[124] Each person who was killed or injured in the September 11th attacks suffered horrific and grievous harm, and experienced the unspeakable events of that day in a unique way. Some victims experienced terror for many minutes, as they were held hostage by terrorists on an airplane or trapped in a burning building. Some victims had no warning and died within seconds of a plane hitting the building in which they worked. While these circumstances may be known in some cases, for the vast majority of victims the precise circumstances are unknown.

Faced with the unfathomable task of placing a dollar amount upon the pain, emotional suffering, loss of enjoyment of life, and mental anguish suffered by the thousands of victims of the September 11th attacks, the Special Master and the Department determined that the fairest and most rational approach was to establish a uniform figure for the pain and suffering of deceased victims and their dependents.

(1) Presumed $250,000 Non-Economic Award for Deceased Victims

To determine an appropriate presumed non-economic loss figure for deceased victims, the Special Master and the Department looked to the amount of compensation available under existing federal programs for public safety officers who are killed while on duty, or members of the United States military who are killed in the line of duty while serving our nation.[125] The presumed non-economic loss award of $250,000 for victims who died as a result of the aircraft on September 11 is roughly equivalent to the amounts received by survivors under these other federal programs.[126] The Regulations allow claimants to attempt to demonstrate in a hearing any extraordinary circumstances that justify departure from the presumed non-economic loss award.[127]

(2) Additional $100,000 Non-Economic Award for Spouse and Dependents of Deceased Victims/Definition of Dependent

The Regulations also provide for an additional $100,000 for the spouse and each dependent of the deceased victim.[128] The $100,000 figure for the spouse and each dependent includes a non-economic component of "replacement services loss."[129] Under the Regulations, the Special Master "shall identify as the spouse of a victim the person reported as the spouse on the victim's federal tax returns for the year 2000

unless: (1) [t]he victim was married or divorced in accordance with applicable state law on or after January 1, 2001; or (2) [t]he victim was not required by law to file a federal income tax return for the year 2000."[130]

While seemingly straightforward, the identification of a victim's spouse, for purposes of allocating an additional $100,000, presented some complicated problems, including challenges to the validity of a victim's marriage or the enforceability of a victim's divorce, the legal effect of separations, and alleged bigamy. In response to these issues, the Fund established guidelines for assessing marital status for valuation purposes only. Marriage certificates, recent joint tax returns and other similar evidence, were accepted as presumptive proof of marriage.

The Regulations define "dependents" as "those persons so identified by the victim on his or her federal tax return for the year 2000 (or those persons who legally could have been identified by the victim on his or her federal tax return for the year 2000) unless: (1) [t]he claimant demonstrates that a minor child of the victim was born or adopted on or after January 1, 2001; (2) [a]nother person became a dependent in accordance with then-applicable law on or after January 1, 2001; or (3) [t]he victim was not required by law to file a federal income tax return for the year 2000."[131]

To evaluate assertions of dependency, the Special Master used the definition of dependency set forth in the IRS guidelines.[132] The IRS applies five dependency criteria: (1) member of the household or relationship test; (2) joint return test; (3) gross income test; (4) support test; and (5) citizen or resident test.[133]

To be eligible as a dependent, the person must either have been living with the victim for the entire year (except for qualifying temporary absences)[134] as a member of the victim's household or must be related to the victim in one of the ways specified by the IRS guidelines,[135] and the person asserting dependency must not have filed a joint return.[136]

The gross taxable income of the person claiming dependency must not have exceeded the exemption amount of $2,900 in the year 2000. Taxable income includes money, property and services, and unemployment compensation. Welfare benefits and nontaxable Social Security benefits are excluded from taxable income. The gross income test does not apply if the dependent is a child of the victim and was either under age 19 at the end of the year, or a full-time student under age 24 at the end of the year. Accordingly, a child attending college, vocational, technical or trade school could qualify as a dependent even if his or her gross income exceeded the allowable amount.

The gross income test was the most prohibitive of the dependency requirements. Typically, the persons asserting dependency were the victim's parents or adult children. The low exemption amount effectively disqualified parents and adult children who were not full-time students and who maintained any type of

employment, since even part-time income generally exceeded this amount. However, parents who were retired or disabled and relied on Social Security as their sole source of income may have qualified so long as the other tests were met.

The victim must also have provided more than half of the purported dependent's total support for the entire year. Support includes food, clothing, shelter, education, medical and dental care, recreation, and transportation, as well as welfare, food stamps, and housing provided by the state. In determining whether the support test is met, the dollar value of the support provided by the victim is compared with the total support the dependent received from all sources. The support test considers all income, not just taxable income. Accordingly, retired or disabled parents who received tax-exempt income such as Social Security benefits (which is excluded from "gross income") must nevertheless have shown that the victim contributed more than half of their support in order to satisfy this test.

The Fund applied special rules to children of divorced or separated parents. Under the IRS Regulations, only one parent (generally the custodial parent) can claim the child as a dependent. However, the Special Master recognized that, under certain circumstances, children of divorced or legally separated parents who were claimed as dependents on their surviving parent's 2000 tax returns could have been claimed on the victim's tax returns but for the exemption rule described above. So, for example, where the victim provided over half of his or her child's support, the Special Master determined that this prong was satisfied, despite the exemption rule. This determination acknowledged both the realities of current family circumstances as well as the unfair effect that a strict application of the IRS rule would have on children who were financially dependent on the victim notwithstanding an agreement between their divorced or separated parents assigning the exemption to the surviving parent.

Finally, to qualify as a dependent under the IRS Regulations, a person must be, for some part of the year, a U.S. citizen or resident, or a resident of Canada or Mexico. In order to avoid penalizing foreign citizens or nationals, the Special Master did *not* apply the "citizen or resident" test. Accordingly, foreign citizens or nationals were considered dependents under the Fund provided that they satisfied the four other dependency tests.

(3) Adjustments to Presumed Non-Economic Loss for Decedents' Claims due to Extraordinary Circumstances

In rare cases, based on extraordinary circumstances demonstrated at a hearing, the Special Master deviated from the presumed non-economic loss values. These circumstances included cases where multiple family members were killed on September 11, where other members of the nuclear family unit died shortly before or after September 11, where children were left with no parents, where victims survived the attacks but subsequently died as a result of injuries sustained (for example, burn victims who later died from complications), where victims were pregnant at the time

of death, and where spouses of deceased victims lost an unborn child due to the trauma of September 11. The Fund adjusted the $250,000 presumed award for the decedents' pain and suffering where the victim died days or even months after the attacks for injuries sustained on September 11. The Fund adjusted the $100,000 presumed non-economic award for dependents for other circumstances, such as loss of multiple family members. The Fund increased presumed non-economic loss in a total of 75 claims for deceased victims.

(4) Non-Economic Loss for Physical Injury Victims

The nature and severity of pain and suffering due to injuries sustained by victims who survived the attacks varied greatly, from cuts and bruises to catastrophic burns. Accordingly, the Special Master rejected the uniform approach used in evaluating the presumed non-economic loss for deceased victims. Instead, the Regulations allow the Special Master to determine the non-economic losses for physical injury victims by referring to the non-economic losses set forth in the Regulations for decedents, *i.e.*, $250,000, and adjusting the losses based upon the extent of the victim's physical harm.[137]

The Fund established the non-economic awards for physical injury victims based on the nature, severity and duration of the injury and the individual circumstances of the claimant. The Fund assured consistency by categorizing injuries so that claimants with like injuries (in terms of severity and duration) would receive a similar non-economic award. Thus, for example, claimants with respiratory injuries with the same degree of disability received a uniform non-economic award. Similarly, claimants with joint injuries (knee or shoulder injuries) received awards in the same range. (Of course, there were variations in the awards based on individual factors such as the necessity for surgery, or multiple injuries.) The non-economic awards for physical injury victims ranged from $500 to $6 million. In general, the non-economic awards for physical injury victims were lower than the presumed non-economic award for deceased victims, reflecting the fact that most injuries were relatively moderate and did not result in long-term physical pain and suffering. Approximately 53% of the non-economic awards for physical injury claims were under $100,000. Only 4% of the non-economic awards for physical injury victims exceeded the $250,000 awarded for deceased victims. The Fund did not provide non-economic awards for the dependents of physical injury victims.

3. Collateral Offsets

The Act expressly directs the Special Master to reduce the amount of compensation awarded to the claimant "by the amount of the collateral source compensation the claimant has received or is entitled to receive as a result of the terrorist-related aircraft crashes of September 11, 2001."[138] Collateral offsets are defined by the Act to include "all collateral sources, including life insurance, pension

funds, death benefit programs, and payments by Federal, State, or local governments related to" the September 11th attacks.[139]

The deduction of collateral source payments from awards proved to be one of the Fund's most contentious issues. Although most claimants recognized that the Fund was legally mandated to follow the Act's directive, some nevertheless vociferously argued against the appropriateness of reducing awards by collateral source payments. They asserted both that the rule unfairly penalized families of victims who planned ahead by purchasing life insurance or other means of ensuring financial security for their families and that collateral sources are typically not offset in wrongful death suits.

In administering the Program, the Special Master sought to reconcile the unequivocal language of the Act on collateral offsets with the Fund's purpose of providing financial support to victims' families based upon their individual needs and circumstances. This required balancing, within the legislative framework, the interests of the victims' families with the legal obligation to expend tax dollars only in accordance with the Congressional mandate. The Fund was an expression of compassion by the U.S. taxpayers who generously subsidized the Program, and the Special Master attempted to recognize both factors in administering the Program.

To that end, the Fund exercised discretion in valuing the appropriate deductions for collateral offsets by determining: (1) whether the particular offsets fell within the definition of collateral source compensation; (2) whether beneficiaries of the Fund were "entitled" to receive payments from those collateral sources; (3) whether the amount of the collateral source payment was certain or could be computed with sufficient certainty to enable its deduction; and (4) whether the amount deducted took into account the time value of money and contributions made before death by the victim in the nature of investment or premiums.

The Special Master invited claimants to meet with him or other Fund representatives to get a clear reading as to whether particular types of collateral source payments would fall within the statutory definition and how such payments would be valued. However, he cautioned that such consultations would focus on broad categories of payments and would not necessarily provide claimants with a precise determination of their award. Instead, a deliberate review of the facts and circumstances of each individual claimant would be necessary before deciding how certain offsets in a particular claim would be treated.

a) Definition of Collateral Offsets

(1) Expressly Included Benefits

The Act specifically includes life insurance, pension funds, death benefit programs and payments by federal, state and local governments as collateral source compensation. On a general level, these benefits share a common thread: they create an entitlement arising by contract or operation of law. However, the Fund recognized that variations existing within and among these categories created distinctions that affected their treatment as collateral offsets.

(a) Life Insurance

The Act expressly includes life insurance as collateral source compensation.[140] In most cases (with the primary exception of uniformed workers whose families were entitled to receive generous survivor pension benefits), life insurance proceeds proved to be the largest offset and, thus, the greatest factor in reducing awards.[141] Life insurance policies fell into two categories: those that were provided by the victims' employers[142] and those that were privately funded. The Fund offset the net proceeds (after deduction of premiums) of all life insurance and accidental death policies paid to a beneficiary entitled to receive a portion of the Fund award.

Employers were exceedingly cooperative in providing relevant income and benefit information about their employees, including information about life insurance or other benefits granted as a result of employer-provided benefits. However, there was no independent verification mechanism available to ensure that all private insurance policies were disclosed to the Fund.[143] Instead, the Fund relied on the legal obligation of claimants to provide full disclosure: a claimant was required to sign an affirmation in the claim form attesting to the accuracy of the information provided and confirming his or her understanding that false statements may result in fines or imprisonment.

(b) Pensions/401K

The Act specifically defines pension funds as collateral offsets[144] but provides no guidance as to how pensions should be valued. The Fund determined that it would be inappropriate to consider, as a collateral offset, pensions or similar programs to the extent they were "self-funded" by the victim. Accordingly, the Fund did not offset monies or other investments in victims' 401(k) accounts, IRA accounts or similar plans on the grounds that such accounts are akin to savings plans.

Unlike defined contribution plans, defined benefit plans provide for a specific monthly benefit at retirement or to a survivor upon the participant's death based on a formula that takes into consideration the participant's salary and years of service.

Whether and to what extent such defined benefits were offset from Fund awards depended on the language of the plan and the entitlement of the beneficiaries. The Fund determined that it would be inappropriate to offset pension benefits that were contingent on specific future events.

Families of deceased uniformed officers, such as FDNY, NYPD and Port Authority fire and police victims, received survivor pensions that were considered collateral offsets under the terms of the Act. In determining the amount of the offset, the Fund computed the annual value of the death benefit for the expected life span of the spouse (or relevant period of time the benefit is payable to children or parents) in accordance with the rules governing the payment of death benefits and discounted the payments to present value. To maximize the awards and to properly reflect the uncertainties in computing the value of a future collateral payment, the Fund assumed that the survivor pension benefit would not be increased over time, as any increases would have to be legislatively mandated. For FDNY and NYPD survivors, that meant that the offset was based on the victim's salary as of September 11 without increases. [145] On the other hand, in computing the lost pension as part of economic loss, the Fund did account for income growth since income was assumed to grow under the Fund's methodology.

(c) Death Benefit Programs

Death benefits are also expressly listed in the Act as collateral source compensation.[146] Many employers provided the victims' families with generous benefits as a result of a victim's death.[147] As a general rule, any benefits paid by an employer as a result of a victim's death, even if voluntary, were offset from the awards. However, a case-by-case analysis of the nature of these payments was often necessary in order to determine whether or not they fell within the scope of the offset provisions.

The Fund was careful to avoid "penalizing" victims' families for the generosity of employers. In investigating these benefits, the Fund determined that certain payments, while referred to as death benefits by the employer, in fact represented compensation earned by the victim before his or her death.[148] To the extent that the payments reflected the past performance of the victim (such as any bonus the victim would have received at the end of the year but for his or her death), or an acceleration of future compensation owed (such as bonuses or commissions that ordinarily would have been paid in a later year or severance payments that were owed due to corporate restructuring), they were not offset. Similarly, certain company profit-sharing plans set up as an additional source of employee compensation were also deemed to fall within the scope of this exception.[149] To the extent that payments were made solely as a result of a victim's death, they were offset.

Some payments were treated as death benefits, and thus offset, because including them would have resulted in a double recovery. An example was payments

representing salary continuation. Since the Fund's economic loss models calculated lost income beginning on September 11, and thus covered lost earnings for the final quarter of 2001, any income continuation paid by the employer to the victims' families had to be offset to avoid what would be, in effect, a double payment.

(d) Payments by Governments

Payments by federal, state and local governments made to families in the aftermath of September 11 are also included in the statutory definition of collateral offsets.[150] In determining whether payments created, managed or funded by a government agency should be treated as collateral offsets, the Fund considered whether such payments were mandated by law or contract. To the extent that specific government payments were legally, contractually or otherwise prescribed, thus vesting a right in the beneficiary to receive the payment, they were offset.

(2) Other Payments

Many victims or victim's families received support from charities or other privately-funded entities. This financial assistance, like that provided by the Fund, was intended to provide resources to victims or their families in times of desperate need. The Special Master concluded that charitable donations were different in kind from the collateral offsets specifically enumerated in the Act. Charities are under no contractual or legal obligation to provide assistance to any particular individual and deducting such benefits from the awards could encourage potential donors to withhold their contributions until after the claimants had received their awards from the Fund, frustrating the intent of the Act. Accordingly, the Regulations exclude from collateral source compensation "[t]he value of services or in-kind charitable gifts such as provision of emergency housing, food or clothing" and charitable donations from privately funded charities, but provide that "the Special Master may determine that funds provided to victims or their families through a privately funded charitable entity constitute, in substance, a payment described in [the definition of collateral sources]" and thus should be offset.[151] By changing the phrase "private charitable entities" used in the Interim Final Regulations to "privately funded charitable entities" in the Final Regulations, the Special Master sought to make clear that charitable gifts would not be treated as collateral offsets, even if the charities were created or managed by government entities, subject to the exception noted above.

The Regulations also exclude from collateral offsets any tax benefits received from the federal government as a result of the enactment of the Act.[152]

b) Entitlement

The Regulations grant the Special Master discretion to exclude collateral source compensation where the recipients of the collateral offsets are not beneficiaries of the award and "where necessary to prevent beneficiaries from having their awards reduced by collateral source compensation that they will not receive."[153] In general, where

collateral source payments were paid to non-beneficiaries of a Fund award, Fund beneficiaries had no reasonable expectation of receiving any benefit from them and offsetting them would unfairly reduce the award. However, under certain circumstances, payments made to persons who were *not* Fund beneficiaries nevertheless benefited persons who *were* Fund beneficiaries. In such cases, the payments could be offset. These determinations required a detailed review of the facts and circumstances of each individual claim.

(1) Non-Beneficiaries

The Fund offset collateral source payments received by any state law beneficiary or other person listed on a distribution plan. In addition, the Fund generally offset collateral source payments received by siblings of a deceased victim where the state law beneficiaries were the parents of the victim. However, if the sibling demonstrated that no portion of the collateral source payment would be used to benefit the parents, then the Fund eliminated that offset.

(2) Disclaimers

Some claimants argued that collateral source payments made to state law beneficiaries who disclaimed the Fund award should not be offset. Under many state laws, in order to disclaim or renounce any or all interest in a victim's estate, a formal disclaimer must be filed with a court of competent jurisdiction within nine months of the victim's death.[154] Once a disclaimer is properly filed with the court, the person disclaiming his or her interest is treated as if he or she predeceased the victim, and the distribution never vests in the disclaiming party. As such, the next of kin inherits the renouncer's share, and the renouncer cannot recover any interest in the victim's estate or wrongful death proceeds.[155]

When a surviving spouse formally disclaims any interest in the victim's estate, the victim's children normally receive the award. In those cases, the spouse arguably continues indirectly to enjoy the benefit of the disclaimed funds, since such funds can reduce the costs of the maintenance, health and education of the children. The Fund concluded that fairness required payments to a spouse who disclaimed the Fund award to be treated as collateral offsets. This decision stemmed in part from the Fund's concern that the intent of the Act and Regulations could be circumvented by filing a disclaimer and thereby increasing the award from the Fund.

(3) Unidentifiable Beneficiaries/Disputed Beneficiaries

Where the Fund could not identify the proper distributee of a collateral source payment as a Fund beneficiary, the collateral source was not offset. This situation generally arose in cases of pending disputes regarding who was entitled to a particular collateral source benefit. For example, under the New York Workers' Compensation Act existing on September 11, 2001, when a victim was survived by parents, but no spouse or children, the parents were the sole beneficiaries of any benefits payable as a

result of the victim's death. However, on August 20, 2002, the New York Workers' Compensation Act was amended retroactively to allow qualified domestic partners to receive benefits arising from the death of victims of the September 11th attacks.[156] As a result, situations arose in which a victim's domestic partner asserted a claim for workers' compensation benefits that the victim's parents had been receiving under the previously existing law. Litigation over the identity of the proper beneficiary of such benefits ensued and, in many cases, was pending at the time of a final determination from the Fund. Insurance carriers, in an effort to avoid making double payments, indicated they would seek recovery of any benefits paid to parents in the event that a domestic partner was declared eligible by the Workers' Compensation Board. In light of these uncertainties, the Fund determined that such benefits would not be offset.

c) Contingent or Uncertain Payments

The Regulations allow the Special Master to reduce collateral offsets for future benefit payments that are contingent on future events to account for the possibility that the future contingencies may not occur.[157] Thus, in determining the appropriate deduction for collateral sources, the Fund considered whether the benefits could be computed with reasonable certainty. Where the benefits were uncertain, unpredictable or contingent on unknown future events, such benefits were only offset to the extent that they had already been paid.

(1) Workers' Compensation/Social Security Benefits

Many survivors were eligible for benefits from programs, including workers' compensation or Social Security, that provide periodic payments subject to adjustment or termination depending on future events that cannot be predicted. Such benefits are paid only under certain conditions and for specified periods of time. Additionally, they are paid periodically over a period of years.

For example, under some state workers' compensation programs, including New York, Massachusetts, and Virginia, as well as the Federal Employees' Compensation Act ("FECA"), benefits payable to a surviving spouse terminate upon remarriage. Likewise, benefits from the SSA and other similar programs are payable only if the spouse does not re-marry or does not earn income above a certain threshold. In light of these contingencies, the Fund determined that such benefits would only be offset to the extent they had already been paid by the time the claim was filed. By contrast, survivor benefits from SSA and from the military to children of victims who are entitled by law to periodic payments until they reach a certain age are more definite and subject to computation. These benefits were therefore offset.

Some workers' compensation laws, both domestic and foreign, contain provisions which would allow the insurance carrier to assert a lien against an award issued from the Fund. In an effort to ensure that victims and their families received the full amount of compensation to which they were entitled and to protect such

awards to the greatest extent possible, New York amended its workers' compensation law to prohibit insurance carriers from asserting liens against awards from the Fund.[158] However, not all states followed suit. As a result, where survivors were eligible to receive workers' compensation benefits in states where a lien could be asserted, the Fund decided that it would be inappropriate to offset even those payments already received in light of the possibility that such payments might ultimately have to be relinquished.

(2) Pension Benefits

Some company pension benefits are contingent upon future events, such as the remarriage of the surviving spouse. Due to this contingency, the Fund generally did not offset future survivor pension benefits payable to surviving spouses under such pension plans.

(3) Other Benefits

Many employers promised to continue to provide medical coverage to the victims' families for a specified period of time based on the coverage maintained by the victim on September 11. However, since these employers were not contractually obligated to continue coverage and could terminate medical benefits at any time, past or future benefits were not offset from the award.

d) Appropriate Amount of Deduction

The Regulations allow the Special Master to reduce the amount of collateral offsets to reflect self-contributions or premiums paid by the victim during his or her lifetime and to take into account the time value of money.[159]

(1) Self-Contributions and Premiums

The Fund generally reduced the amount of offsets by any premiums or assets that the victim paid into a life insurance program to build up a tax-deferred cash value.

(2) Present Value

The Fund reduced future periodic payments or benefits from collateral sources to present value based on higher before-tax discount rates and current yields on mid- to long-term U.S. Treasury securities. This had the effect of decreasing offsets and thereby increasing the award. For example, in the case of Social Security benefits paid to children, the Fund determined the monthly benefit to the child, multiplied that benefit by the number of months remaining until the child reached age 18 (taking into account possible limits such as maximum family benefits available), included a factor for inflation (as consistent with Social Security guidelines), and then discounted the total to present value to determine the amount of the offset.

(3) Burial Costs

The Fund also had discretion to adjust the amount of offsets by considering burial costs incurred by the claimant and not otherwise reimbursed by state workers' compensation programs, employers or other sources. Out-of-pocket burial costs were characterized as an economic loss in the Regulations.[160] They were treated as a counter-offset in calculating awards (achieving the same bottom-line result).

e) Effects of Collateral Offset Deductions on Awards for Deceased Victims

The deduction of collateral offsets had a significant impact on the amounts paid to claimants. The average collateral offset for claims for deceased victims was approximately $855,000, but offsets for death claims ranged to as high as nearly $10 million. Overall, offsets accounted for a 29% reduction in the awards for deceased victims. Life insurance constituted the single largest offset for families of victims working in the private sector. Survivor pensions generally constituted the largest offset for families of uniformed victims. Collateral offsets affected awards at all income levels, but offsets in general were somewhat higher for claims for deceased victims at the highest income levels, as illustrated in the chart below:

INCOME LEVEL OF DECEASED VICTIM	RATIO OF OFFSETS TO TOTAL ECONOMIC & AND NON-ECONOMIC LOSS
$24,999 or Less	14.76%
$25,000 to $ 99,999	29.64%
$100,000 to $199,999	30.30%
$200,000 to $499,999	29.04%
$500,000 to $999,999	26.74%
$1,000,000 to $1,999,999	28.40%
$2,000,000 to $3,999,999	31.36%
$4,000,000 and Greater	35.90%

In some cases, collateral source deductions exceeded non-economic and economic loss and would have eliminated the award.[161] In the Statement by the Special Master accompanying the Final Rule, the Special Master stated his expectation that when the total needs and circumstances of the victims' families were considered, it would be rare that a claimant would receive less than $250,000.[162] In fact, no claim on behalf of a deceased victim received less than $250,000 from the Fund.

f) Valuing Foreign Collateral Payments

When valuing collateral source offsets paid in foreign currency, the Fund used March 11, 2002 – the date the compensation forms were first available for completion – as the conversion date. In addition, if the collateral source payment was taxed by the beneficiary's country, the Fund counted as an offset only the portion that the claimant actually received.

g) Collateral Offsets for Physical Injury Claims

The Fund was also obligated to deduct collateral offsets from physical injury awards. Most commonly, physical injury claimants received payments from the Social Security Administration ("SSA"), workers' compensation, disability insurance, state and federal governments (such as in the case of disabled firefighters) and pensions. All of these payments were considered collateral offsets and were deducted from the total economic and non-economic loss. Forty-seven percent of physical injury victims with temporary or permanent disabilities reported some form of collateral source compensation.

The Fund endeavored to ensure that the offsets applied matched the Fund's determination of the duration of injury. Thus, if the Fund found that the claimant was only temporarily disabled, the Fund would offset only those collateral source payments received by the claimant during the defined period of disability for the qualified injury. Collateral offsets reduced physical injury awards by nearly 30% on average. The average collateral offset for a physical injury claim was approximately $168,000. The highest offset was nearly $3 million.

D. Demographics of Deceased and Physical Injury Victims

1. Deceased Victims

The Fund disbursed $5.99 billion to 2,880 families of deceased victims of the September 11th attacks. Although the deceased victims as a whole spanned a wide socio-economic range, most of the victims (55.24%) had annual incomes ranging from $25,000 to $99,999. A relatively small percentage of deceased victims (6.25%) had income levels below $25,000 and less than 3% of victims had annual incomes over $1 million. Eighty-three percent of victims had incomes below $200,000. Fourteen percent had incomes between $200,000 and $1 million.

Of the funds disbursed, 68% was paid to families of deceased victims with incomes below $200,000; nearly 18% was disbursed to families of victims who had incomes in the $200,000 to $500,000 range.

The following chart shows the breakdown of claims and amounts awarded by income level. Note that income is defined for purposes of this chart as the average of the victim's historical compensation for the four-year period from 1998-2001:

Breakdown of Death Claims by Income Levels

Income Level	# of Claims	% of Claims	% of Total Awarded
$ 24,999 or Less	180	6.25%	3.22%
$ 25,000 to $99,999	1,591	55.24%	40.34%
$ 100,000 to $199,999	633	21.98%	24.30%
$ 200,000 to $499,999	310	10.76%	17.55%
$ 500,000 to $999,999	89	3.09%	7.05%
$1,000,000 to $1,999,999	52	1.81%	4.92%
$2,000,000 & Over	25	.87%	2.62%
Total	2,880	100.00%	100.00%

The deceased victims ranged in age from 2 to 85. Over 65% were between 31 and 50. Seventy-six percent of the deceased victims were males and 24% were females. Claims on behalf of male decedents represented 83% of the total amount awarded on behalf of deceased victims and claims on behalf of females represented 17% of the total.

The following chart shows a breakdown of deceased victims by gender and age:

	Age Range	Claim Count	Award Amount
Female			
	25 & Under	55	$84,483,690.68
	26-30	93	$172,998,972.03
	31-40	212	$356,996,222.65
	41-50	193	$268,166,342.79
	51-60	104	$89,769,339.59
	61-70	27	$21,178,460.11
	Over 70	8	$5,459,153.75
	Sub Totals:	692	$999,052,181.60
Male			
	25 & Under	96	$167,352,503.98
	26-30	253	$572,081,177.11
	31-40	842	$2,347,011,727.86
	41-50	630	$1,418,855,991.40
	51-60	299	$427,192,091.63
	61-70	57	$58,159,862.69
	Over 70	11	$6,555,465.81
	Sub Totals:	2,188	$4,997,208,820.48
TOTALS		**2,880**	**$5,996,261,002.08**

Sixty-four percent of the deceased victims were married and 36 percent were single. Most of the victims (72%) left at least one dependent (as defined by the Regulations). Forty-eight percent of claims were filed on behalf of deceased victims who had minor children under the age of 18 on September 11, 2001 who were included in the household for consumption purposes in computing economic loss.[163] Eighty percent of the total amount disbursed for deceased victims was paid to claims where the beneficiaries included at least one minor child or dependent within the meaning of the Regulations.

The following chart shows by state of residence the breakdown of death claims of victims with minor children in the household. This includes children under the age of 18 on September 11, 2001 who were included in the household for consumption purposes in computing economic loss. Ten percent of the victims who left minor children in the household were single.

Victim Residence	# of Minor Children	# of Claims
STATE		
ARIZONA	3	2
ARKANSAS	2	1
CALIFORNIA	11	9
COLORADO	1	1
CONNECTICUT	93	44
DISTRICT OF COLUMBIA	10	5
FLORIDA	10	4
GEORGIA	7	3
ILLINOIS	4	2
LOUISIANA	1	1
MAINE	2	1
MARYLAND	45	27
MASSACHUSETTS	39	23
NEW HAMPSHIRE	4	2
NEW JERSEY	827	391
NEW MEXICO	2	1
NEW YORK	1,628	805
NORTH CAROLINA	4	1
OHIO	2	2
PENNSYLVANIA	27	15
RHODE ISLAND	1	1
TENNESSEE	1	1
TEXAS	2	1
VIRGINIA	62	36
COUNTRY		
CANADA	2	2
GERMANY	7	4
UNITED KINGDOM	9	5
TOTALS	**2,806**	**1,390**

Deceased victims resided in 29 states. Over half (62%) of the victims resided in New York State; 24% resided in New Jersey. Claimants for victims from the state of New York received $3,417,832,930.47 (57% of the total disbursed for death victims); claimants for victims from the state of New Jersey received $1,752,276,148.72 (29% of the total disbursed for death victims).

The victims resided in 10 different countries (including the United States). Although nine percent of victims (249) were citizens of countries other than the United States, only 30 victims resided outside of the United States. Most were living and working in the United States.

The following chart shows the breakdown of death claims by victims' employment category:

DEATH CLAIMS			
EMPLOYMENT CATEGORIES	***# OF CLAIMS***	***TOTAL AWARD***	***% of Total Fund Awarded***
Attorneys/Legal Profession/Law Firm Staff	23	$47,370,341.37	0.79%
Civil Service	105	$136,925,005.82	2.28%
Communications Industry/Telecommunications/Broadcast	26	$43,478,760.85	0.73%
Construction (including carpenters, electricians, etc.)	55	$84,055,990.64	1.40%
Emergency Medical Technicians & Assistants/Paramedics	5	$7,567,620.84	0.13%
Finance/Banking/Insurance/Accounting	1,669	$4,099,933,810.82	68.37%
Fire Department	342	$559,197,606.41	9.33%
Homemakers	4	$3,568,113.68	0.06%
Maintenance/Janitorial	28	$37,808,186.01	0.63%
Medical/Doctors/Nurses	9	$14,031,181.86	0.23%
Military	54	$102,000,055.64	1.70%
Pilots/Flight Attendants/Other Airline Employees	30	$37,994,215.96	0.63%
Police Department	23	$34,771,624.63	0.58%
Port Authority	75	$127,395,765.33	2.12%
Restaurant/Food Workers/Wait Staff/Dishwashers	97	$131,140,863.73	2.19%
Retired	13	$12,890,255.07	0.21%
Security Personnel/Private	32	$32,329,579.41	0.54%
Students	3	$2,767,526.47	0.05%
Technology/Computer Related	130	$235,857,731.69	3.93%
Unemployed	4	$7,038,280.77	0.12%
Other	153	$238,138,485.08	3.97%
Total	**2,880**	**$5,996,261,002.08**	100.00%

2. Injury Victims

The Fund disbursed $1.053 billion to injured victims. Eighty-four percent of the physical injury victims who received awards from the Fund were male. Victims range in age from 18 to 86 years old.

Again, the victims spanned a wide socio-economic range. However, the injured victims generally appeared to fall into lower income groups than the deceased victims. Forty-five percent of the injured victims reported an income under $25,000. Only 2% reported an income over $125,000.

Physical injury victims suffered a variety of types of injuries. The most common injury, representing 51% of claims, was respiratory ailments.

The following chart shows the breakdown of claims and payments by injury type:

INJURY TYPE	# OF CLAIMS	% OF CLAIMS
ASTHMA/OTHER RESPIRATORY	1,377	51.38%
BACK INJURY (Disc Problem, Back Pain, etc.)	94	3.51%
BROKEN BONES/FRACTURES	87	3.25%
BRUISES/CUTS	44	1.64%
BURNS	40	1.49%
HEART ATTACK/OTHER CARDIAC PROBLEMS	6	0.22%
NEUROLOGICAL PROBLEMS (Stroke, Seizure, Brain Damage, etc.)	8	0.30%
OTHER INJURY	67	2.50%
SENSORY PROBLEMS (Vision, Hearing, etc.)	31	1.15%
SOFT TISSUE (Ligaments and Cartilage)	91	3.40%
MULTIPLE INJURIES	835	31.16%
TOTAL	2,680	100.00%

Injured victims resided in 31 states. The majority (85%) of the victims resided in New York State and received 84% of the funds distributed to injury victims; less than 7% resided in New Jersey.

Physical injury victims resided in 6 countries (including the United States). Of the 85 citizens of foreign countries, only 14 resided outside of the United States.

E. Distribution

The Act's silence regarding the distribution of awards for decedents' claims created a huge vacuum in the administration of the Fund. While the Act was intended to benefit the families of deceased victims, questions regarding which family members should be included in a plan of distribution and how the award should be allocated were left to the Department and the Special Master to resolve. The Regulations and the procedures developed by the Fund attempted to create a mechanism for the allocation of awards that would be consistent among similarly situated families, efficient, and easy to administer, but would also allow for the consideration of the individual needs of the families. The Department and the Special Master determined that these goals would be best served by distributing the award in a manner consistent

with the law of the decedent's domicile. Consistency would be assured by authorizing the Special Master to approve or disapprove the plan depending on whether it complied with state law. Efficiency would be served by requiring the Personal Representative to submit a plan of distribution to the Fund for the Special Master's approval, thereby eliminating the involvement of the state courts where the Special Master determined that the plan followed state law. Fairness and the evaluation of individual factors would be accomplished by allowing the Special Master to direct distribution to specific family members if the Personal Representative's proposed plan did not appropriately compensate these relatives.

The Regulations require the Personal Representative to distribute the award in a manner consistent with the law of the decedent's domicile[164] or any applicable rulings made by a court of competent jurisdiction. In order to monitor the actions of Personal Representatives in meeting this obligation, the Personal Representative was required to submit a proposed distribution plan to the Special Master. If the distribution plan submitted appeared to be consistent with state law, the Fund approved the plan; if it did not comply with state law, the plan was not approved. In the latter case, the Personal Representative would need to seek a determination from the relevant state court as to the proper distribution of funds.

1. Distribution Plan Guidelines

At the outset, claimants required substantially more guidance than that provided by the Regulations in order to submit a plan that the Fund would consider consistent with state law and would ultimately approve. Attorneys also were in need of guidance since even those expert in the applicable state trusts and estates law were often uncertain as to which particular state law rules applied to various portions of the award. In order to clarify the components of an appropriate plan, the Fund provided guidelines on its website,[165] at town meetings, in mailings,[166] and by telephone. Claimants were told that the Personal Representative must provide a proposed distribution plan to the Fund for review prior to payment and that the distribution plan would need to address three components of the award: (1) a non-economic award on behalf of the victim, (2) a non-economic award for a spouse and each dependent, (3) and an economic award. As to these three components, the following guidelines were provided. First, the $250,000 non-economic presumed award on behalf of the victim was to be distributed in accordance with the victim's will or, in the absence of a will, according to the intestacy law of the state where the victim had been domiciled. The Fund's website provided claimants and their attorneys a chart summarizing the intestacy law for most states where decedents had been domiciled.[167] Second, the $100,000 additional non-economic award for a spouse and each dependent was to be distributed to each qualifying person. Third, the economic loss portion of the award (in most cases the bulk of the award) would be governed by the wrongful death law of the state of the victim's domicile. A chart summarizing the wrongful death law for most applicable states was also posted on the Fund's website.[168]

The review of distribution plans and the process required for approval of a plan proved to be extremely time-consuming for the Fund attorneys. Many claimants found the requirement that the plan account for three different components of the award complex and confusing. Likewise, trusts and estates attorneys accustomed to distributions of estate property and physical injury lawyers familiar with wrongful death awards initially found the hybrid nature of the Fund's award perplexing. However, as the Program proceeded, the management of the distribution plan process by claimants and attorneys significantly improved. Nevertheless, the process of education of claimants and attorneys in conjunction with evaluating plans and working to achieve approvable plans was ultimately one of the more labor-intensive tasks in administering the Fund. From the claimant's perspective, however, the process was significantly more efficient than that of seeking approval for the distribution of an award from a court of competent jurisdiction.

While claimants and attorneys found the appropriate allocation of the non-economic award to be comparatively simple, the allocation of the economic portion of the award posed greater challenges. Unlike wills and state intestacy laws, which delineate the identity of the distributee as well as the portion of the estate the distributee should receive, the wrongful death law of most states provides that damages should be distributed to those eligible to recover under a state's intestacy law, "in proportion to their pecuniary loss."[169] A finding of proportionate "pecuniary loss" often requires a court to engage in time-consuming fact-finding. However, the goal of efficient and speedy resolution of claims obviously would not have been served had the Fund regularly engaged in distribution plan hearings to determine the "pecuniary harm" of significant numbers of beneficiaries. In order to avoid this result and provide Personal Representatives and their attorneys with guidance regarding "pecuniary loss," the Fund adopted criteria considered by state courts. Generally, the Fund determined that the economic portion of a plan of distribution would be approved if the allocation either followed the intestate law of the state of domicile or, in the case of distribution between a spouse and children, a formula developed by the New York Surrogate's Courts in *In re Kaiser Estate* that based pecuniary loss on remaining years of dependency.[170] These criteria provided the Personal Representative with some flexibility while still protecting the interests of beneficiaries. For example, the option of relying upon the *Kaiser* formula was particularly helpful to a spouse with older minor children, since under those circumstances the *Kaiser* formula would provide a larger portion of the economic award to a spouse with many years of remaining dependency than an allocation based on the intestate laws, which usually split the estate equally between a spouse and children.

In some situations, the Fund concluded that certain state laws created potential hardships for claimants by limiting a spouse's share to less than half of the economic recovery. To address these circumstances, the Special Master determined that, in the interest of both uniformity and fairness, it would be appropriate to allow every Personal Representative the option of utilizing the *Kaiser* formula for allocation of the

economic portion of the award regardless of whether "pecuniary loss" was the measure for wrongful death allocation in the state of the victim's domicile.

The Fund carefully scrutinized distribution plans involving minor children. For claims where minor children would be the recipients of awards, the Fund generally required strict compliance with either the *Kaiser* formula[171] or the intestate law. However, in the case of consenting adults, the Fund accepted consensual distribution plans that deviated from a strict application of state law so long as all potential beneficiaries agreed and the plan was not contrary to the purpose of the Act or state law.[172] This option was utilized most often by parents of a single victim without children who chose to distribute a portion of the award to the decedent's siblings.[173]

Some of the most difficult distribution problems involved allocation of the economic portion of the award between a victim's spouse and parents, where there were no children.[174] Many state wrongful death laws, including those in New York and New Jersey, the domicile of most decedents, provide that when there is a surviving spouse and parents, but no children, the parents may recover in proportion to their pecuniary loss. Under these circumstances, the Special Master did not develop criteria for apportionment of pecuniary harm since the application of a general formula to every case could overstate or understate a parent's pecuniary harm depending on whether and to what extent a parent had relied or reasonably expected to rely upon the decedent. Instead, the Special Master encouraged the parents and spouse to enter into a consensual distribution plan. When the Special Master was not able to approve a plan under these circumstances, the award was issued to the Personal Representative in his or her capacity as Personal Representative, and the Fund sent a letter to the Personal Representative advising that he or she was legally obligated to distribute the award in accordance with the law of the victim's domicile and that the distribution must be based on either an agreement of all potential beneficiaries or the direction of a court of competent jurisdiction.[175] A copy of this letter was also sent to the potential beneficiaries of the award. The Personal Representative thereafter had the fiduciary responsibility to enter into an agreement with the other beneficiaries or to seek resolution of the dispute in the appropriate court.[176]

An additional area of frequent dispute regarding distribution included claims where a fiancée or domestic partner had filed an SOI or an objection. Since few states recognize the claim of a fiancée or a domestic partner to either an intestate share of an estate or a portion of a wrongful death award, a domestic partner or fiancée could ordinarily only receive an award from the Fund if he or she was provided for in the decedent's will (and thus entitled to all or a portion of the $250,000 non-economic award) or was financially dependent upon the decedent (and thus entitled to the $100,000 non-economic award).[177]

2. Protection of the Interests of Minors

Both the Act and the Regulations are silent regarding the payment of awards to or on behalf of minors. Accordingly, the Fund set about developing a mechanism that would provide flexibility to custodians in overseeing an award for a child's benefit, while affording protection to the child. In order to accomplish this goal, the Fund evaluated a variety of options including guardianship, trusts, custodial accounts, representative payees and periodic payments through structured settlements.

The Fund initially considered requiring the appointment of a guardian of the property[178] for every minor beneficiary. Becoming a guardian of the property is a comparatively simple process in undisputed cases, particularly where a natural parent is seeking guardianship. In addition, the surrogate and probate courts nationwide were extremely responsive to the Fund's requests that this process be expedited for purposes of facilitating payment of Fund awards. However, many states impose significant limitations on the ability of the guardian to access the minor's funds.[179] The fundamental premise in these states is that it is the guardian's duty to protect the funds during the child's minority, and, therefore, the award is to be used only after a parent's obligation of support has been satisfied. In New York, for example, in order to utilize funds a parent must disclose his or her financial means and indicate why access to the funds is necessary. The court then decides whether to allow the expenditure.[180]

Many parents of minor beneficiaries, particularly those residing in New York, argued that requiring a parent to be appointed guardian of the property would be cumbersome and unnecessarily restrictive. These parents complained that they would be unable to provide adequately for their children's needs if they were required to submit to the probate and surrogate's courts requirements in their jurisdiction. They asked the Fund to provide an alternative mechanism for payment to minors that would be less onerous.

In response to these concerns, the Fund evaluated a number of other options for the payment of minors. Many parents and attorneys argued that the Fund should allow parents the option of payment into a custodial account pursuant to the Uniform Transfer to Minors Act. However, this option appeared to be unworkable. In most states, payments of over a certain sum into a custodial account require either court supervision or utilization of a bank as co-trustee.[181] Various banks contacted by the Fund indicated that in order to serve as co-trustee, they would require an order specifying the purpose of the funds, the amount that could be withdrawn by the custodian per annum, and other directives including orders from the Special Master before withdrawals could be made by a custodian.

The Fund also considered the option of depositing awards into a trust. Depending on the provisions, trust accounts can be substantially less restrictive than guardianship. This option was advocated by many parents as the most protective, yet flexible mechanism available. However, the Fund concluded that the utilization of trusts was problematic. First, there were significant legal questions regarding whether

an award could be deposited into a trust without court approval. Second, the trust option would create administrative difficulties since a review of the trust documents -- by the Fund or a court -- to determine whether the instrument was sufficiently protective of the minor and whether it comported with state law would likely be appropriate.

The Fund also considered the option of appointing a parent as a representative payee. This approach has been used in other federal programs.[182] Under this option, a parent would apply to the Fund to serve as a representative payee. Upon appointment by the Fund, the representative payee would hold the funds on behalf of the minor and would have the fiduciary responsibility to ensure that the award to the child was utilized for the child's current needs, and, if not currently needed, saved for the child's future needs. The advantage of this option was its flexibility and ease of administration. The disadvantage was the lack of oversight and supervision of the representative payee by a third party.

Finally, the option of establishing periodic payments through structured settlements for minors was evaluated. The advantage of this option was that payments to minors would be disbursed over time (instead of upon reaching the age of majority) and the earnings on the portion of the award that was structured are not taxed. Such an option necessarily involved insurance or annuity contracts and implicated issues concerning the taxability of future periodic payments when received. The benefit of this option was contingent upon the IRS' consideration of the tax implications of structuring a Fund award.

The Fund weighed the advantages and disadvantages of the above alternatives. While requiring every parent or custodian to become a guardian and receive funds for the minor in his or her capacity as a guardian was the most protective option, the Fund concluded it did not promote the Program's goal of providing funds to parents and custodians of minor children for purposes of the child's current as well as future needs. Accordingly, those parents and custodians who chose to become appointed guardians and receive funds for a minor in this capacity were able to do so, but those who desired greater flexibility were not required to accept this option. The Fund rejected the alternative of depositing an award into a custodial account as an administratively unworkable solution. The Fund simply would not be able to provide advice and guidance to banks regarding payments after the completion of the Program, and supervision of the accounts by a court would result in the same administrative issues as guardianship. As to the trust option, the Fund concluded that payment of a minor's award into a trust would be made by the Fund if the trust had been approved for this purpose by a court of competent jurisdiction.[183] The Fund also decided to implement a representative payee program as an option to allow custodial parents to receive awards on behalf of their minor children, if they applied for such status. Applicants for the representative payee program were required to sign an acknowledgment that he or she could be held liable if he or she did not prudently invest the funds, maintain separate accounts, and maintain records, or if he or she

misused or misappropriated the funds. In addition, the applicant was required to acknowledge that the minor was entitled to receive the award upon reaching 18 years of age and that, at such time, the award would be distributed to the minor unless the minor otherwise consented.[184]

Parents and custodians of minor children were informed of their various options by letter. In addition, an explanation of the options was published on the Fund's website and was reviewed at town hall meetings and in response to inquiries by telephone. The Fund found that most custodial parents chose to utilize the representative payee program, presumably due to its flexibility and ease of administration.[185] Non-custodial parents and custodians who were not parents were obligated by the Fund to receive a minor's award either as a court-appointed guardian or in a court-approved trust. Despite the availability of the representative payee program, some custodial parents chose to receive their children's awards in their capacity as court-appointed guardians either on advice of counsel or in order to obtain the additional protections afforded by the court's supervision.[186]

A final option of utilizing a structured settlement for minors became available after the Fund was notified of the IRS' decision on October 28, 2003 regarding the election of a periodic payment option through a structured settlement.[187] Senior attorneys at the Fund and at the Department worked with the IRS and Department of Treasury for well over a year in an effort to obtain a detailed determination on the availability of the structured settlement option. In order to assure that the structure was entered into by an individual with authority to bind the minor, the Fund required that a parent or custodian signing the structure documents be appointed guardian of the property for the minor by a court of competent jurisdiction.[188] For many parents or custodians, such an appointment had to be made on an expedited basis to allow timely approval of the structure. The various surrogate's and probate courts were able to respond quickly to the Fund's request to expedite these applications for guardianship by granting such appointments for the limited purpose of entering into a structured settlement agreement for the Fund award. The cooperation of these various courts was instrumental in making the structured settlement option viable for minors.

While most parents and guardians were able to utilize a mechanism for payment that met their needs, some parents and guardians were dissatisfied and complained that none of the options allowed both the flexibility to bypass state court requirements that limited the use of the funds for support of the child and protected the funds from dissipation after the minor had reached the age of majority.

3. Distribution to Non-U.S. Claimants and Beneficiaries

As discussed above, in evaluating the appointment of an appropriate Personal Representative for foreign claims, the Fund enlisted the help of the consular offices of the foreign country in question. This procedure was effective because the issues relating to proper appointment were relatively discrete. However, in regard to

distribution plans submitted by foreign claimants, the Fund concluded that, due to the diversity and complexity of various applicable foreign laws, it was not feasible for the Fund to adequately evaluate distribution plans, even with the help of the consular offices. Accordingly, for foreign claims, the final award was paid to the Personal Representative in his or her capacity as Personal Representative. The Personal Representative thereafter had the responsibility to distribute the award consistent with applicable foreign law.

4. Application of Offsets to Award Distribution

When determining the amount of the award for each Fund beneficiary, the Fund applied collateral offsets against the share of the individual who received the collateral source payment. Any excess offsets were applied against the remaining shares of the award. The Fund, however, agreed to depart from this general rule in certain circumstances. If the Personal Representative believed that a hardship was created by applying collateral offsets against individual shares, he or she had the option of sending a written request to the Fund for a reallocation of collateral offsets. The most common reallocation was where a spouse had received most of the collateral source payments (*e.g.*, life insurance) and was using these payments to support the victim's minor children, who were all part of one nuclear family unit. In such a situation, the collateral source payments could be so large that deduction of the collateral offset individually from the spouse's portion would leave little, if any, of the award for the spouse's support. If the Fund found reallocation appropriate, the total collateral offsets were deducted from the entire award and the remaining award was apportioned according to state law.

5. Distribution Hearings

The Regulations provide that, in the event the Special Master concludes that the plan for distribution does not appropriately compensate the victim's spouse, children, or relatives, the Special Master can direct the distribution of the award to such spouse, children or other relatives.[189] The Special Master exercised this discretion rarely. In most cases, when the distribution plan submitted by the Personal Representative appeared to be inconsistent with state law, one of the Fund's attorneys worked with the Personal Representative or his or her attorney to approve an appropriate plan. If this could not be accomplished due to an intractable dispute among the potential beneficiaries or a case where strict adherence to state law would have been inequitable due to special circumstances, a managing attorney held a distribution hearing. Throughout the Program, only 3 distribution hearings were held. These hearings were conducted separately with each of the opposing parties in order to mitigate familial acrimony. The Fund thereafter approved a distribution plan based on the information presented at the hearings that appropriately compensated the victim's spouse, children, or other relatives. In a limited number of cases, the Special Master determined that the issues presented by a dispute regarding distribution required extensive fact finding and were more appropriately resolved by a state court

of competent jurisdiction. In these cases, the Fund authorized payment of the award to the applicable court, and the parties were referred to the court for resolution of the claim.

F. Confidentiality and Transparency

The Special Master recognized from the beginning of the Program the deep concern that claimants would have in preservation of their privacy. Most claimants submitted substantial private and intimate information regarding their loved ones and the victim's family's needs that they intended to be utilized solely by the Fund to issue a fair and individualized award. Balanced against this need for confidentiality was the legitimate interest of both claimants and potential beneficiaries in obtaining information enabling them to make an informed judgment whether to file a claim or to file a lawsuit. In addition, the Fund was a *public program*, funded by the taxpayers. Accordingly, the Special Master concluded that, notwithstanding the need for confidentiality, a certain degree of information about the Program must be made available to all American citizens.

The Fund responded to these concerns by protecting the confidentiality of the claimants through dissemination of information regarding the Program that would be informative but would not be linked to treatment of a particular claim. In regard to specific inquiries by claimants, the Special Master, the senior attorneys and other Fund staff were available to every claimant and his or her attorney to discuss the methodology utilized in evaluating the particular claim as well as the specific issues relating to the claim.

1. Confidentiality

The information submitted by a claimant was confidential and not disclosed to other parties except pursuant to the Authorization for Release of Information (the "Authorization") that was signed by each claimant. This Authorization fulfilled a variety of needs. First, the Authorization allowed the Fund to gather and verify information necessary to process the claim. The potential sources of this information included employers, hospitals, medical service providers, and federal, state and local agencies, such as state workers' compensation boards and the SSA. By contacting these entities directly, the Fund obtained information that the claimant might have been unable to obtain in such a limited time period (due to administrative issues or paralyzing grief) and also corroborated information submitted by the claimant relating to the victim (*e.g.*, compensation) or the beneficiaries (*e.g.*, death benefits).

Second, the Authorization allowed publication of the name of the claimant and the victim for whom compensation was sought. Pursuant to the Authorization, the Fund published a list of names on its website.[190] The purpose of this publication was twofold: to notify all potential beneficiaries that a claim had been filed on behalf of the victim so that any potential beneficiary could file an objection or SOI with the

Fund and to ensure that any person who might be impacted by the waiver of rights signed by the claimant was on notice of the filing. In the interest of balancing confidentiality with publication of information, the names of the victim and claimant were removed from the website after 90 days, a period of time that the Special Master concluded would effectively provide notice to any interested parties. In addition, the Authorization allowed the Fund to provide notice of the proposed distribution of the award to potential beneficiaries, thereby providing these interested parties the opportunity to participate in the process.

Finally, in order to allow the investigation of potentially fraudulent claims, the Authorization allowed the release of information relating to the claim where such information indicated a violation or potential violation of law to any authority investigating or prosecuting such a violation.

2. Transparency

In order to keep claimants, potential beneficiaries, and other interested parties, including the public, informed regarding the process and the decisions made throughout the Program, the Special Master published on the Fund website information and statistics relating to awards. The information and statistics published were presented in a manner designed to safeguard the confidentiality of claimants.

Other information provided to keep claimants and other parties informed regarding the awards issued by the Fund included, for death claims, a listing of all award amounts sorted by income level but with no other identifying information,[191] as well as statistics including the number of claims resolved, the number of award letters issued, the average awards for deceased victims after offsets, the median deceased victims' awards after offsets, and the range of award values for claims relating to deceased victims sorted by income level and age.[192] The Fund also published the number and range of amount of physical injury awards.[193]

A principal goal of the Fund was to engage claimants in the process through consistent communication with victims and families of victims regarding their claims. The Special Master held countless hearings and meetings with families to discuss how the Fund would evaluate their claim and to give estimates of the award. In addition, a member of the Fund staff was available to respond to any and all questions regarding the award and its calculation. Indeed, the Fund staff continued to respond to inquiries well after the Fund had completed the issuance of all awards.

G. Coordination with Government and Private Entities

From the inception of the Program, the Fund established channels of communication with various government and private organizations. Procedures were established to obtain and verify information from these organizations in order to foster efficiency of claims processing, ease the burden of information gathering for

claimants, verify the accuracy and completeness of information included in the claim, and facilitate the payment and distribution of awards.

1. Verification of Information from Government and Private Employers

In order to ensure that the Fund had access to and a full understanding of particularized information for each claim, the Fund developed valuable relationships with employers who had lost multiple employees. These employers included the Department of Defense, the New York City Police Department, The New York City Fire Department, the Port Authority of New York and New Jersey, and various private employers.

a) Department of Defense

Through contacts established with the Department of Defense ("DOD"), the Fund was able to obtain detailed information about the compensation of every victim employed by the military, thereby obviating the need for families of the military to compile documents on their own, and ensuring that the Fund treated members of the military consistently. The military provided the Fund information through the Defense Finance and Accounting Service, Army Casualty Assistance, Navy Casualty Assistance/Family Liaison, and Marine Corps Casualty Assistance. Information was obtained from these sources regarding compensation for 2001 from the most recent military Leave and Earnings Statement, the military pension calculation methodology, the Survivor Benefit Plan, Dependency Indemnity Compensation, and basic pay schedules, basic allowance, and basic allowance for subsistence by year, rank, and geographic location.

The Special Master's Office held meetings with representatives of the DOD Civilian Personnel Management Service to gain a thorough understanding of the unique aspects of the compensation and benefits for civilian employees of the DOD who were killed in the Pentagon. These meetings, along with explanatory documentation received from the DOD facilitated the processing of claims for DOD civilian employees.

b) Department of Labor

The Special Master's Office met with representatives of the Department of Labor ("DOL") concerning benefits under the Federal Employees' Compensation Act ("FECA")[194] to gain an understanding of how such benefits should be treated in the calculation of awards, and also to gain an understanding of the DOL's claims process as relevant to establishing the Fund's own processes and procedures.

c) New York City Fire Department[195]

The assistance provided by the FDNY was invaluable for the evaluation of both death and physical injury claims. The FDNY and the New York City Office of the Actuary provided information critical to the computation of death claims, including explanations of retirement and survivor pension benefits, union pay agreements, post-September 11th overtime, and other compensation and benefit information. The FDNY also provided valuable information for the evaluation of physical injury claims, including retirement dates, monthly pension amounts, the monthly annuity provided by excess optional contributions, 2003 retroactive pay adjustments resulting from FDNY contract changes, the results of a claimant's 1B medical board hearing and FDNY medical board minutes memoranda.

d) Port Authority of New York and New Jersey

The Fund developed lines of communication with the Port Authority Fire and Police Pension Group and the New York City Employee Benefits Division. These groups provided compensation and pension information for uniformed Port Authority firefighters and police officers as well as other Port Authority victims.

e) Private Employers

In order to expedite claim processing, verify compensation and other benefits data, and assist claimants in providing complete and thorough information, the Fund established relationships with several of the private employers who lost multiple employees.[196] Initially, the Fund contacted the human resources department of identified organizations and requested a list of all employees who were killed on September 11, along with an affidavit supporting presence at site requirements. These affidavits were used to establish eligibility and obviate the need for claimants to submit separate proof of presence at site. In response to the Fund's goal of streamlining the claims process for as many claimants as possible, several of the larger employers compiled packages of information specific to each victim. The Fund reviewed these materials and accepted the packages in lieu of claimants completing certain sections of the compensation form.

Throughout the administration of the Fund, employers who had lost multiple employees (as well as employers with few losses) were invaluable in providing necessary information. For employers who had lost multiple employees, specific procedures were established to efficiently gather information, including the identification of a specific point of contact for communications. For other employers, information was requested on a case-by-case basis. These communications not only streamlined the process, but also facilitated processing of claims in cases where a claimant had only submitted minimal information, allowing preparation by the Fund of a "baseline" model for each claim, which could be then finalized when and if additional information was received from the claimant.

2. Verification of Benefits by Government Entities

The claim form requested the claimant to list various offsets received. In the case of offsets received from government entities, the Fund established procedures to obtain information and verify benefits received from the New York State Workers' Compensation Board and the SSA. These procedures facilitated the efficient processing of claims.

a) Social Security Administration

Initially, the Fund met with SSA representatives, including the New York Regional Commissioner, to gain an understanding of SSA benefits payable to claimants, and to discuss how the Fund could coordinate with the SSA on obtaining data related to claimants to assist in the valuation and verification of claims and offsets.

At the beginning of the Program, the Fund communicated with the SSA on a weekly basis to confirm and calculate total SSA benefits paid to eligible beneficiaries. As claim volume increased and processing time decreased, requests were sent to the SSA on a daily basis. The SSA provided the Fund with the following information: Social Security payments related to each victim, including the Social Security number and date of birth of each beneficiary, the month each beneficiary began receiving benefits, the total amount paid to each beneficiary, and the current monthly payment amount. This information was used to verify the collateral offset amounts associated with Social Security benefits received by family members of a victim. Under certain circumstances, dates of birth received from the SSA were utilized to determine appropriate award calculations and distributions. Occasionally, when documentation for an individual's income was missing for a given year, the Fund used the SSA information to determine an earnings history for that individual.

b) New York State Workers' Compensation Board

The Fund established a relationship with the New York State Workers' Compensation Board that allowed the Fund to access the New York State Workers' Compensation system data. This data was used both for physical injury and death claims. For death claims, administrative decisions regarding survivor benefits were obtained directly from the New York State Workers' Compensation system, if not provided by the claimant. For physical injury claims, the New York State Workers' Compensation system was used to obtain critical pieces of information for valuation. This information included average weekly wages, the amount of Workers' Compensation benefits paid to claimants, the period of time the benefits were paid, and injuries for which Workers' Compensation was paying benefits. The Board provided the Fund with electronic access to claimants' medical records, Independent Medical Exam Reports, Workers' Compensation claim forms, billing information for medical services performed, and Workers' Compensation Board decisions on benefit payments and compensable injuries.

3. Investigation of Potential Fraud: Coordination with the FBI and the Department of Justice - Office of Inspector General

The Special Master's Office coordinated with the FBI and The Department of Justice - Office of the Inspector General (OIG) to determine whether any claims should be investigated as potentially fraudulent or as relating to a person potentially involved in any terrorist activities. All victim, claimant, payee, and distributee names were submitted to the Department of Justice with associated Social Security Numbers and dates of birth. This information was forwarded to the FBI, where it was checked against FBI records. Payments of awards were made after the FBI indicated that it had located no pertinent information regarding the victim, claimant, and payee(s). If the FBI determined that an individual name required a review of records, this information was reported to the Special Master's Office. The Special Master's Office reviewed the information and made a determination regarding whether the records indicated potential fraud or any other basis for further investigation of the claim before authorization of payment. If the Special Master's Office concluded that the FBI records required further investigation, the claim was sent to OIG for review. Additionally, the Special Master referred all other claims to OIG which it concluded warranted a more thorough review for potential fraud. After its investigation, OIG sent a report of its findings to the Special Master's Office.

During the course of the Program, 28 claims and one SOI were sent to OIG for investigation. As of the date of this Report, 6 had been prosecuted with 5 having resulted in criminal convictions. By any measure, the Fund proved remarkably free from fraud and other criminal activity.

4. Assistance to Claimants

a) Establishment of Periodic Payments Program: Coordination with the IRS

From the inception of the Program, significant numbers of claimants expressed interest in receiving awards as periodic payments through structured settlements. Claimants and beneficiaries, however, were understandably concerned as to how such periodic payments would be treated by the IRS (*i.e.*, whether they would be granted tax-exempt status). The Special Master's Office initially contacted the IRS Office of the General Counsel in the spring of 2002 to determine the best mechanism to allow victims the opportunity to receive their award in the form of periodic payments. The Special Master's Office continued to work with the IRS and the Treasury's Office of Tax Policy throughout 2003. On November 17, 2003, the Commissioner of the IRS issued Revenue Ruling 2003-115 that provided the IRS' final guidance on the issue. Thereafter, the Fund offered a periodic payment option to beneficiaries of a Fund award. A total of 181 claims were paid, in some part, via this option.

b) Coordination with the INS

Undocumented aliens and their families voiced concern from the outset of the Program that filing a claim could adversely affect their status with the INS. After discussing the issue with senior INS representatives, the Special Master received assurances from the INS that information submitted by claimants to the Fund in support of their claims would not be used to initiate immigration proceedings against claimants who lacked legal immigration status.

c) Coordination with the State Department and Foreign Consulates

The Fund communicated with foreign consulates in order to ensure effective notice of the Fund was provided to foreign victims and their families. Consular offices were extremely helpful in assisting the Fund regarding the laws and procedures of their countries relating to notice, trusts and estates laws, and the foreign appointment of Personal Representatives.

The Special Master met with officials at the State Department in May 2003 to enlist the State Department's help in the Fund's outreach effort to victims of foreign countries. As a result of that meeting, cables were sent to numerous diplomatic and consular posts in countries believed to have lost citizens on September 11, which included a Fund Fact Sheet with information regarding the Fund. This same information was also cabled to United States' embassies in over 20 countries. In order to maximize the notice provided by these cables, the Fund Fact Sheet was translated into five languages: French, Spanish, German, Russian, and Japanese.

d) Coordination with The National Center for Victims of Crime

Members of the Fund's staff interacted with the families and victims of September 11 throughout their work day. In order to equip the Fund's staff to handle these often emotionally charged interactions in a responsive, professional, and caring manner, the Fund sought the services of the National Center for Victims of Crime ("the Center"), a resource and advocacy group for crime victims. The Center conducted training sessions with Fund staff members on several occasions. As a result of these educational interchanges, Fund staff members reported that they were better able to communicate with claimants and their families and to deal with the stress of their positions in a healthy manner.

e) The Role of Attorneys

The legal profession proved to be a valuable ally in assuring the success of the Fund. Attorneys throughout the nation stepped forward in unprecedented numbers to provide free legal assistance to those September 11th families and victims in need. The legal community also offered extensive support to the Fund from the inception of the Program. Significant numbers of attorneys in private practice, as well as various legal organizations, provided thoughtful and helpful comments to the Regulations

which were considered and, in some cases, adopted in the Interim and Final Regulations.

Due to the proactive role of the legal community, most claimants were represented by counsel. Of the 2,968 death claims submitted, 2,666 or 90% of claimants were represented by an attorney. Of the 4,435 physical injury claims submitted, 2,763 or 62% were represented by an attorney. When claimants and potential beneficiaries were unrepresented by counsel, the Fund went to great lengths to assure that the results obtained by those unrepresented, both in terms of final awards and the opportunity to be heard, were consistent with the results achieved by represented individuals. The Fund's staff spent a significant amount of time assisting unrepresented claimants by explaining the procedures of the Fund, describing the type of information necessary to process a claim, and contacting third parties to obtain relevant and helpful information, where appropriate. In addition, the Fund uniformly applied determinations made in one claim with regard to treatment of components of income and promotions to all other similarly situated claims. Hearing Officers were trained to conduct hearings where claimants were unrepresented in a manner that would assist in ensuring that the Fund obtained the information necessary for a complete evaluation of the issues posed.

The legal community was extraordinarily helpful to the Fund not only in the dissemination of information to claimants and the representation of claimants and potential beneficiaries before the Fund, but also in bringing to the fore countless problems and issues that related not only to an attorney's single client but to significant numbers of other claimants. Just a few examples of the myriad problems addressed by attorneys representing individuals, but impacting larger numbers of claimants included the treatment of pensions, the treatment of collateral offsets, the interplay of the probate court system and the Fund's processes, the availability of periodic payments, specific issues relating to undocumented aliens and foreign claimants, and mechanisms to ensure protection of the interests of minors.

The unprecedented *pro bono* effort undertaken by the legal community included law firms, consortiums of firms, individual practitioners, bar associations, and Trial Lawyers Care ("TLC"), a national non-profit organization founded by senior trial attorneys and significantly funded by the Association of Trial Lawyers of America, specifically for the provision of free legal services to victims who chose to seek compensation from the Fund. As reported by TLC, 1,092 TLC attorneys represented 1,745 families with claims before the Fund.[197] A primary reason for the Fund's ultimate success can be attributed to TLC and other lawyer organizations which met the challenge of providing legal assistance and counseling to claimants. The Special Master is in their debt.

TLC staff interacted with the Fund on an ongoing basis throughout the operation of the Program. Initially, this interaction was focused on coordination of referrals of potential claimants seeking *pro bono* assistance. As the Program proceeded,

the Fund arranged training for TLC attorneys conducting several training sessions to ensure that TLC attorneys were educated on the claims process, including factual and legal issues. The Fund maintained daily communication with TLC to answer questions regarding specific claims as well as global issues. Refresher training programs as well as meetings relating to specific areas of concern were conducted with TLC attorneys throughout the operation of the Fund.

TLC's original mandate was to provide legal assistance by lawyers familiar with physical injury and wrongful death cases to individuals who sought compensation from the Fund. This assistance, in most cases, did not include representation on issues relating to trusts and estates. While the Fund's Regulations necessarily required some TLC lawyers to interact with the probate courts, in many claims involving complex trusts and estates issues relating to distribution, the assistance of attorneys specializing in that field was necessary. Once again, the legal profession rose to the challenge and provided *pro bono* assistance to many families in need. The New York City Bar Fund's September 11th Legal Initiative (the "City Bar Fund") played a significant role in providing this type of *pro bono* assistance. The City Bar Fund reported that the Initiative provided assistance to over 200 individuals with issues relating to their claims before the Fund.[198]

The following chart shows the breakdown of claims by type and attorney representation. Note that this chart includes all filed claims, whether or not they ultimately were determined to be eligible.

All Filed Claims With Attorney Representation			
Claim Type	Total Claims Filed	# of Claims with Attorney Representation	% of Claims with Attorney Representation
Death	2,968	2,666	89.82%
Physical Injury	4,435	2,763	62.30%
Total	7,403	5,429	73.34%

5. Participation of Hearing Officers from Federal Agencies

Under the Regulations, every claimant was entitled to a hearing, whether he or she chose Track B and proceeded directly to a hearing, or chose Track A and elected to appeal a presumed award. In addition, a claimant deemed ineligible was also entitled to a hearing reviewing the finding of ineligibility. Under this regulatory framework, it was clear early in the Program that the Special Master and his relatively small staff would be unable to conduct every hearing without additional personnel. As a result, the Fund worked with the Department of Justice to designate qualified individuals to preside over hearings. Eleven Assistant United States Attorneys from offices throughout the country were designated as Hearing Officers. In addition, 9 federal agencies volunteered the time of 47 Administrative Law Judges.[199] Finally, 4 attorneys from the private sector served as Hearing Officers on a *pro bono* basis. Through the

efforts of these individuals, the Special Master's Office was able to fulfill its mandate to provide a hearing to every claimant who requested one. During the course of the Fund, 3,962 hearings were held. Of these hearings, the Special Master conducted 931, and the attorneys working in the Special Master's Office conducted 1,822. The remaining 1,209 hearings were conducted by the Administrative Law Judges and *pro bono* Hearing Officers.

Hearing Officers were trained by attorneys from the Special Master's Office. The training consisted of a review of the Act, Regulations, claims process, methodology for valuation of claims, and substantive issues raised in the hearings. All Hearing Officers were required to observe hearings conducted by the Special Master or an attorney from the Special Master's Office before conducting their own hearings. A report regarding each claim set for hearing was prepared by an attorney from the Special Master's Office and was submitted to the Hearing Officer prior to the hearing along with the entire claim file. These reports summarized the documentation submitted by the claimant, as well as issues presented by the claim. The attorney who had reviewed the claim and prepared the pre-hearing report was available to the Hearing Officer both before and after the hearing to answer any questions. After the hearing, the Hearing Officer reviewed the hearing transcript and any exhibits submitted at the hearing, prepared a report which focused on explaining the testimony presented, and submitted the report to the Special Master's Office. One of the senior attorneys in the Special Master's Office then reviewed the hearing transcript, exhibits, the Hearing Officer's report and the claim file, including documentation submitted after the hearing, before issuing a final determination. The Hearing Officer's observations regarding the credibility of witnesses informed the senior attorneys' award decision. *Every* claim and hearing transcript was reviewed *de novo* by the Special Master's Office before a final award was issued.

Attorneys from the Special Master's Office supervised the Hearing Officers and provided refresher training sessions. In addition, supervising attorneys fielded questions regarding the Program and the hearing process on an ongoing basis during conference calls and via email. A managing attorney periodically reviewed transcripts to evaluate the performance of the Hearing Officers and to provide feedback to Hearing Officers, when appropriate. In addition, comments from claimants and attorneys regarding the performance of various Hearing Officers were elicited and utilized for purposes of maintaining quality control and providing additional feedback to the Hearing Officers.

H. Administration of Program/Staffing/Costs

To achieve the Fund's goals of fairness, transparency, consistency, and one-on-one communications with claimants, their attorneys, and interested parties with the maximum efficiency and cost-effectiveness, the Special Master concluded that decisions regarding evaluation of claims, policy, process, and implementation of policies and rules should be made by a limited number of attorneys working directly with the Special Master. In order to provide the back-up necessary to allow a limited number of attorneys to evaluate and recommend decisions regarding awards, the Special Master decided that one over-arching consultant should be retained to manage the operation of claims processing. After a formal solicitation and bid process, PricewaterhouseCoopers LLP ("PWC") was retained by Department of Justice to operate the Fund's Claims Processing Center and provide management services for the Fund.

1. Attorney Staff

For the sake of consistency, efficiency, and quality control, the Special Master limited the staff of attorneys to a few individuals at the outset of the Program when policies and procedures were being developed and the number of claims were limited. As the Program ramped up and greater numbers of claims were filed, the staff of attorneys was increased slowly, on an as-needed basis, with the largest addition of attorneys in the last six months of the Program when the number of claims ready for evaluation was at its peak. The structure consisted of one overall supervising attorney responsible for all policy development and determinations, management of the claims processing contractors, establishment of rules for economic loss calculation and specific loss valuation models, and determination of final Track B awards as well as all supervision of awards involving high-income claims, and two managing attorneys, one responsible for the supervision of the attorneys analyzing death claims and for adjudicating appeals, and one responsible for oversight of attorneys processing injury claims. The supervising attorney was Deborah E. Greenspan. The two managing attorneys were Jacqueline E. Zins, and Matthew Connelly.

During the first year of the Program, the Special Master was assisted by attorneys, administrative and support staff from The Feinberg Group, LLP ("The Feinberg Group") as well as one junior attorney from the Civil Division of the Department. During this period of time, the policies and procedures that would govern the administration of the Fund throughout its operation were, in large part, developed and implemented. In September of 2002, one senior attorney and one junior attorney from the Department of Justice joined the Fund at which point the legal staff was divided into attorneys specializing in either death or physical injury claims. By the spring of 2003, the legal staff had been increased by four more staff attorneys from the Department of Justice, two specializing in physical injury claims

and two in death claims.[200] In anticipation of the filing of massive numbers of claims in and around the deadline for filing, the legal staff for the last six months of the Program, from January through June of 2004 was increased to a total of 29.[201] This number included 2 attorneys from The Feinberg Group, 11 attorneys from the Civil Division of the Department, 15 Assistant United States Attorneys, and one attorney from the Department of Agriculture. Of the 29 attorneys working in the Special Master's Office by the end of the Program, 8 were specialists in death claims and 21 in physical injury claims. The cost for The Feinberg Group attorneys was zero since the Special Master and his firm's attorneys were working on a *pro bono* basis. The cost for the government attorneys working in the Special Master's Office was $3,667,000.[202]

In addition to The Feinberg Group attorneys working in the Special Master's Office, the Special Master was also assisted by various other administrative and support staff from The Feinberg Group. The Feinberg Group donated a total of 15 individuals (full or part-time) to assist in administering the Fund. The actual costs associated with the time expended by the Special Master and The Feinberg Group attorneys and administrative and support staff as well as the additional government lawyers working in the Office of the Special Master represented a small percentage (less than 5%) of the costs of administering the Program due to three factors: the *pro bono* nature of the work performed by the Special Master and the legal, administrative, and support staff of The Feinberg Group,[203] the decision to operate the Fund with a limited core group of attorneys at the outset of the Program and to increase that number only on an as-needed basis, and the administrative support provided by PWC.

As noted, the Special Master and his staff of attorneys were also assisted in the conducting of hearings by Administrative Law Judges from various agencies and *pro bono* lawyers. The hearings conducted by the Special Master and attorneys from The Feinberg Group were done on a *pro bono* basis, while the costs of the hearings conducted by the remainder of the staff attorneys is captured in the total attorney costs of $3,667,000. The costs associated with the hearings conducted by the Administrative Law Judges represent an additional $679,000.

2. PricewaterhouseCoopers

PWC was retained by the Department of Justice to implement the Special Master's claims processing procedures. PWC's management of the Claims Processing Center encompassed administration of all aspects of the process, including:

- Operation of 13 claims assistance sites open at various points in time during the operation of the Fund, throughout the United States and in London, England. The sites provided in-person assistance to claimants in completing compensation forms, answering questions relating to the Program, and forwarding substantive inquiries to the Special Master's Office. The claims assistance sites were visited by 2,250 individuals.

- Staffing and coordination of 25 Special Master town hall meetings.

- Operation of a toll-free helpline which responded to general inquiries by claimants or interested parties, forwarded specific questions to the claims assistance sites and referred complex questions to the Special Master's Office. Over the course of the Program, the helpline handled over 54,000 calls and processed over 10,000 requests for claims forms.

- Management of 329,504 documents and 1,313,150 pages received, as well as generation and mailing of over 81,000 letters relating to claims.

- Management of contacts with claimants after submission of an application to ensure that claims were complete when evaluated, and that all questions after submission of a claim were answered by an appropriate and knowledgeable Fund representative.

- Construction of the Victim Claims Management System, a web-based system used to manage claim applications through the entire evaluation process, up to and including the determination of a final award.

- Development of various economic loss models, including models incorporating employer-specific data and assumptions, as determined by attorneys in the Special Master's Office.

- Design and update of the Fund's website. The site was updated over 830 times.

- Initial review of claim submissions to assist attorneys in the Special Master's Office by compiling all eligibility and economic data and providing initial loss calculations using the standard presumed models.

- Coordination of scheduling and logistics for 3,962 hearings and meetings.

- Coordination of the payment process, including gathering information necessary for the Special Master's Office to review and render distribution plan decisions as well as gathering information from claimants and coordination with the Special Master's Office and the Department to authorize and complete the payment of final awards.

PWC began the project with a staff of 129 (including staff of paid subcontractors). Additional personnel were added as the number of claim filings increased. At the peak of the Fund's activity the PWC team (including subcontractors) had a staff of 474. The total number of hours worked by the PWC team was 781,625 at a total cost of $76,511,000. [204]

Insight into the efficiency and success of the Fund can be found by examining the overall costs of administering a program which provided over $7 billion in benefits to over 5,560 eligible claimants. The total costs of administration were approximately $86 million; this amount is broken down as follows:

PricewaterhouseCoopers including costs of subcontractors	$76,511,000
Government Attorneys & Support Assigned to the Program	$ 3,667,000
Administrative Law Judges	$ 679,000
Aspen Systems	$ 4,674,000
CACI	$ 862,000
Consultants	$ 76,312
The Feinberg Group Professional Services	$ 0
Out-of-pocket-expenses	$ 404,000
Total	$86,873,312

The overall cost of $86,873,312 constitutes 1.2% of the total dollars awarded to eligible claimants. By any measure, the overall costs of administration demonstrate the efficiency, streamlining and lack of bureaucracy of the Special Master's Office and associated staff. When one compares this efficiency with the costs associated with protracted, complex and uncertain litigation, or other administrative compensation schemes, it is clear that the Act was implemented in a cost-effective manner with due consideration given to minimizing administrative overhead.

III. OBSERVATIONS AND LESSONS LEARNED

Did the September 11th Victim Compensation Fund of 2001 constitute sound public policy? This question, repeatedly asked by the public, media representatives, public officials and, especially, the September 11th families themselves, is posed in different ways. Did Congress do the right thing in enacting the Victim Compensation Fund? How does one justify the creation of such a Fund limited to September 11th victims and their families, while ignoring the claims of other victims of terrorist attacks at Oklahoma City, the African Embassy bombings, the USS Cole, and the first World Trade Center attack in 1993? Why should Congress provide very generous compensation to a limited number of individuals while excluding other victims of life's misfortunes?

A second question also arises. Even if the Fund can be justified in benefiting only a very small segment of the population, was it a good idea for the Act to require individualized and different amounts of compensation for each eligible claimant? Would it have been wiser to provide a flat payment - the same amount - to each individual claimant? What problems arise when the statutory mandate requires a separate tailored calculation for each individual? What are the strengths and weaknesses, the pros and cons, of the flat payment, one-size-fits-all approach to public compensation?

Finally, the most frequently asked question: In the event of another terrorist attack, should Congress establish a similar victim compensation fund? Is the September 11th Victim Compensation Fund a viable precedent for a similar future program, or should it be viewed as *sui generis*, a unique response to a unique historical event?

These are the questions considered in a preliminary summary review of the issues posed. The words "preliminary" and "summary" must be emphasized. The September 11th terrorist attacks occurred just three years ago. They constitute a contemporary event that currently drives public policy. We still lack the benefit of historical perspective. Compounding this difficulty is the fact that the Fund itself has just been completed and the implementation and administration of the Fund is only beginning to undergo scrutiny by public officials, academics, the September 11th families and the public at large. It will, therefore, be a few years before a comprehensive evaluation of the September 11th Victim Compensation Fund in all of its aspects and complexity can be completed. Nevertheless, it is appropriate and timely to offer the Special Master's personal perspective on these issues as at least a preliminary blueprint to guide policymakers – an initial road map to be modified as we learn more about the impact of this unique Program.

A. The September 11th Victim Compensation Fund of 2001: Sound Public Policy?

The September 11th Victim Compensation Fund of 2001 was enacted by Congress and signed into law by the President only 11 days after the terrorist attacks. It provided generous compensation to eligible victims and their families. But the law was limited to September 11; it did not provide compensation to other families and victims of terrorist attacks in Oklahoma City or Kenya, nor did it declare eligible the families and victims of the terrorist attacks on the USS Cole or at the first World Trade Center attack in 1993.

Various arguments have been made attempting to justify this limitation in the Act, none of them particularly convincing to me. First, it is often argued that the Fund can only be understood in the context of the overall Act that protected the airlines from tort lawsuits which would threaten their financial viability. According to this argument, the Fund constituted a surrogate for litigation. Since the collection of tort damages against the airlines was limited by the Act to the airlines' existing insurance coverage, the Fund served as an attractive alternative, encouraging would-be plaintiffs to opt for a prompt and predictable administrative compensation program over the risks, delays, expense, and challenges of the courtroom. But this argument assumes too much. A statutory restriction on tort claims against the airlines could have been enacted without the Fund, leaving the courts to determine its constitutional validity when challenged.

Nor can the status of the victims — killed or injured by a foreign terrorist attack on domestic shores — be used to justify the enactment of a unique compensation act. Under this justification, the victims and families of the first World Trade Center attacks would be equally deserving of compensation. Also, it appears difficult to justify generous compensation to some victims of terrorism, but not others. Does the fact that the terrorists were foreign justify providing $2 million to the family of a victim at the World Trade Center, Pentagon or the airplanes, while denying similar relief to those who lost a loved one in Oklahoma City solely because the terrorist was an American citizen? And what is the definition of "an act of terrorism"? Should the recent anthrax attacks or the bombing of abortion clinics be deemed "acts of terrorism"? To justify a very generous public compensation scheme based upon the status of the perpetrator or the victim is problematic and cannot help but promote divisiveness between eligible claimants and ineligible victims and their families who do not understand the basis for the distinction.

How, then, can one justify the September 11th Victim Compensation Fund of 2001? It must be viewed from the perspective not of the *victim* but, rather, that of the *nation*, a unified community response to a unique and unprecedented historical tragedy. The September 11th terrorist attacks, and their impact on the collective psyche of the United States, evoked a national response to the tragedy. One aspect of that response was the creation of a public compensation scheme that not only

provided financial relief to the victims, but also expressed a shared national grief, horror, and revulsion in response to the terrorist atrocities. The September 11th Victim Compensation Fund is different because the response to the attacks was so universal and profound nationwide. While in no way diminishing the tragedy of Oklahoma City or other terrorist acts, the September 11th attacks constitute a unique historical event, similar in kind to the American Civil War, Pearl Harbor and the assassination of President Kennedy. Viewed in this context, the Fund constitutes a legitimate response by the nation. Critics of the Fund are, therefore, off-base when they focus on the restrictive definition of the victims in arguing unfairness. It is not the victims that justify the Fund, but rather the response of the entire nation to the tragedy. In the genesis and magnitude of the attacks, we find justification for the Congressional response that became the September 11th Victim Compensation Fund. This is why the Fund constitutes sound public policy and why it could legitimately and appropriately be limited to the families and victims of September 11.

B. The September 11th Victim Compensation Fund of 2001: Different Amounts or the Same for All?

Questions are also posed as to whether Congress acted wisely in providing a statutory compensation scheme that mandated different amounts of compensation for each eligible claimant. Was this a mistake? Why did Congress take this approach and what alternatives might be preferable?

It is easy to understand why Congress did what it did. Since the Act placed limitations on the potential recovery of families and victims in court, the alternative compensation scheme was designed to track the civil justice system in critical respects. Similarly, the definitions of economic and non-economic loss built into the statutory framework tracked traditional tort concepts. The Fund became a familiar conceptual alternative to the tort system and was designed to attract victims and families who otherwise might file thousands of lawsuits against the airlines and others. Individual, tailored awards were designed, at least in large part, to mirror the civil justice system. (Of course, the notion of collateral offsets, also part of the statutory framework, was decidedly not a familiar tort concept, and proved controversial with September 11th families and their lawyers who argued that the offsets severely undercut the very idea of mirroring the tort system.)

But the very idea of individual awards, tailored to the particular circumstances of each eligible claimant, necessitated a more complex analytical approach to the administration of the Fund. That these challenges were overcome, that, ultimately, 97% of eligible families who lost a loved one on September 11 voluntarily participated in the Program, and that the objectives of the Act were accomplished in such a relatively brief period of time and in a cost-effective manner, can be traced in large part to the Regulations which addressed and solved the most serious problems created by the enabling statute. These Regulations, and the day-to-day administration of the Fund, proved to be of critical importance in convincing eligible claimants and the

public that this unique Program was a credible and effective alternative to conventional litigation.

What were the most serious challenges posed by the statute concerning the calculation of individual awards? First, the statutory mandate vested substantial authority and discretion in "one person" - the Special Master and his "designees" - to determine an appropriate award without a right of appeal. In essence, the Special Master and his staff were both judge and jury. To vest such authority in one group, however credible and qualified, without opportunity for appeal, raised perceptions of unfairness and guaranteed second-guessing by claimants determined to compare their awards with others. The Regulations and the Fund confronted this problem by providing: 1) a substantial degree of transparency concerning the calculation of awards (what factors and variables would be important and what constituted "extraordinary circumstances"); 2) an intensive outreach program designed to familiarize claimants with the Fund, its Regulations, and procedures; and 3) a rigorous adherence to standards assuring consistency and predictability. In addition, although the Act prohibited appeal of award determinations to the courts, the Regulations established an administrative hearings process which actually encouraged families to meet face-to-face with the Special Master or his designees to discuss family views of an appropriate award and created the opportunity of a review, albeit in front of the Special Master. The objective in all of this was not to limit the Special Master's discretion conferred by statute, but, rather, to give families an opportunity to avail themselves of the Program's procedural protections and to assure that the Fund took into account all relevant information. As potential claimants became more familiar with the Program, and learned over time that the Special Master and his staff would exercise discretion in a consistent manner while taking into account individual circumstances, the Fund proved to be increasingly attractive as a viable alternative to litigation.

A second challenge posed by the requirement of individual calculations concerned the issue of efficiency in light of the necessity of individual computations for each and every eligible claimant. How could such awards be calculated quickly so that families would receive immediate financial assistance? Fairness and consistency were assured by establishing standard presumptions and assumptions embodied in the computer models used for every claim. Here, the decision was made to concentrate the actual calculation of individual awards in a very few hands. Although a large staff was required to process claims, to make sure that appropriate documentation was submitted, and to promote outreach efforts designed to familiarize claimants with the Program, the actual determination of presumed awards was delegated to 26 lawyers and the determination of individual final awards after hearing was accomplished by 3 lawyers. This streamlined operation not only assured a high degree of consistency in the treatment of individual applications, but also permitted a quicker, more efficient response to claimants' needs. It is axiomatic that a statutory compensation scheme providing the same fixed amount for all eligible claimants would have been swifter and easier to administer, but given the nature of the unique statutory mandate, the effectiveness of the results speak for themselves – over 7,400 individual applications

processed and completed in less than three years! Compared to the delays, costs and uncertainties of the civil justice system, the Fund proved to be an efficient and effective alternative.

Nevertheless, despite this efficiency and effectiveness, there are serious problems posed by a statutory approach mandating individualized awards for each eligible claimant. The statutory mandate of tailored awards fueled divisiveness among claimants and undercut the very cohesion and united national response reflected in the Act. The fireman's widow would complain: "Why am I receiving less money than the stockbroker's widow? My husband died a hero. Why are you demeaning the value of his life?" The statutory requirement of collateral offsets added to the controversy: "Let me make sure I understand this. Because my wife and I planned our financial future by buying life insurance, you are deducting these life insurance payments from my award. So I am receiving less than my neighbor who never bought life insurance but spent the money on vacations and new automobiles." The statutory requirement that each individual claimant's award reflect unique financial and family circumstances inevitably resulted in finger-pointing and a sense among many claimants that the life of their loved one had been demeaned and undervalued relative to others also receiving compensation from the Fund.

A better approach might be to provide the same amount for all eligible claimants. Such an approach would eliminate the problem of discerning fact from speculation in calculating individual awards. It would also be easier and quicker to process claims since eligibility for compensation would be the sole issue for a Special Master. Most importantly, such an approach might reduce divisiveness among eligible claimants since, by statute, one size would fit all.

But such an approach is not without controversy. Hundreds or thousands of individual claimants could argue that their financial wherewithal and "exceptional circumstances" justify greater compensation than the uniform amount established by Congress. The same amount, whatever it might be, would have a much different impact on the family of the stockbroker or banker than the family of the waiter, policeman or member of the military. Thus, the impact of any flat award would depend upon the financial and family circumstances of the surviving claimant. Providing the same amount for all eligible claimants can easily be criticized as providing no more than "rough justice." But, on balance, I believe that this approach has much to recommend it, especially when one considers the available alternatives.

However, the flat amount approach begs two critically important questions - what exactly *is* the appropriate amount for an eligible claimant, and should the award come free of any restrictions on the ability of the claimant to access the civil justice system by commencing a lawsuit? These two questions are interrelated. If Congress mandates a flat amount for all, it will likely be relatively modest, tracking, for example, the $250,000 award currently afforded the families of a fireman or police officer killed in the line of duty. This award is mandated by federal law without any

restriction on the right of the eligible family to commence a lawsuit against alleged tortfeasors. If the flat amount approach is to be used in the future as the basis for compensating victims of terrorist attacks, it should not be part and parcel of restrictions imposed on the right to litigate in court. Alternatively, the flat amount mandated by statute might arguably be high enough to constitute fair consideration for limiting access to the courtroom. But what is "fair consideration?" Would Congress establish it in the statute or delegate the responsibility to a Special Master? All of these questions and approaches are important food-for-thought in determining the design and contours of any future terrorist compensation program which provides the same amount for all eligible claimants.

C. The September 11th Victim Compensation Fund of 2001: A Precedent for the Future?

Commentators and the public have repeatedly asked whether the September 11th Victim Compensation Fund should be replicated if the nation is the unfortunate victim of another terrorist attack. Some have suggested that a statute establishing a future compensation fund should be enacted now, to be triggered by a certification from the Secretary of State that an attack by foreign terrorists has occurred in the United States. The supporters of such legislation suggest, with some justification, that careful consideration of a future public compensation scheme should be undertaken now, prior to the unfortunate future event, so that all options can be carefully considered, free from the emotion and trauma associated with a future terrorist attack.

This approach has a certain appeal and should not be automatically rejected. But, although the Congress and the Administration might consider the structure of some type of future compensation program and debate the alternatives, it is unlikely that such a statute would be established at the present time. Nor would it be wise to do so.

If it is true that the triggering event justifying the creation of a program like the September 11th Victim Compensation Fund is the traumatic impact of the September 11th attacks on our nation, it is probably true that, absent such an attack, no such program can or should be established. The September 11th Victim Compensation Fund was a unique response to an unprecedented historical event. It is unlikely — and probably unwise — to establish a similar program for future implementation absent the profound conditions which existed immediately after the September 11th attacks. It was precisely these conditions, and the national sense of grief and compassion associated with September 11, that led to enactment of the Fund. To expect that this would or should be done outside of such a context is probably incorrect. Only if Congress, the Administration, and the public at large conclude that a similar horrific attack justifies the establishment of such a fund should one be enacted. This is not to say that Congress and the Administration should not consider the strengths and weaknesses of the existing Act and begin to consider modifications and alternatives. It is not too early to begin the debate. But I do not recommend the enactment of similar

compensation legislation at the present time. Hopefully, the September 11th attacks will remain a unique historical event, never to be repeated. And there will be no need to cite the September 11th Victim Compensation Fund of 2001 as precedent for establishing a similar program.

NOTES

[1] The total number of deceased victims was compiled from lists of victims provided to the Fund by the Department of Defense, American and United Airlines, the States of New Jersey, Massachusetts, Connecticut and New York, the NYPD and the FDNY.
[2] Pub. L. No. 107-42, 115 Stat. 230 (codified at 49 U.S.C. § 40101) [hereinafter the "Act"], attached hereto as Exhibit A.
[3] *See* note following 49 U.S.C. § 40101.
[4] *See id. See, e.g.*, 147 Cong. Rec. S9599 (statement of Sen. Leahy) ("the airline industry of this country is in grave danger of collapse"; "[i]f Congress does not pass this legislation today, it is likely that all of our Nation's air carriers would cease service next Wednesday"); *see also* 147 Cong. Rec. S9594 (statement of Senator McCain) ("The effect on the airlines of the September 11 terrorist attack put Congress in the unenviable position of having to take immediate action to prevent the collapse of the aviation industry as a result of the federally ordered grounding of all aircraft and the anticipated reduction of air travel."); 147 Cong. Rec. S9600 (Sept. 21, 2001) (statement of Sen. Byrd) ("[t]he Federal Government cannot allow this industry to fold without seriously disrupting the United States economy").
[5] *See* Act § 401.
[6] *Id.* § 403.
[7] The Act provides that "[u]pon submission of a claim" to the Fund, a claimant "waives the right to file a civil action (or to be a party to an action) in any Federal or State court for damages sustained as a result of the terrorist-related aircraft crashes of September 11, 2001." *Id.* § 405(c)(3)(B)(i). There are two exceptions to the limitation on a civil action. First, the statute does not preclude any civil action "to recover collateral source obligations." *Id.* § 405(c)(3)(B)(i). Second, the statute does not limit the liability of any person who is "a knowing participant in any conspiracy to hijack any aircraft or commit any terrorist act." *Id.* § 408(c). The statute does not define "a knowing participant."
[8] *See* Act § 408(b)(1). In such an action, the Act provides that the "substantive law for decision . . . shall be derived from the law, including choice of law principles, of the State in which the crash occurred unless such law is inconsistent with or preempted by Federal law." *Id.* § 408(b)(2).
[9] *See id.* § 408(b)(3).
[10] *See id.* § 408(a).
[11] *See id.* §§ 404(a)(1), (2).
[12] *See id.* § 405(b)(1)(A).
[13] *See id.* § 405(c).
[14] The Act defines economic loss as "any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law." *Id.* § 402(5). The statute does not define the phrase "to the extent recovery for such loss is allowed under applicable state law."
[15] The Act defines non-economic losses as "losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature." *Id.* § 402(7).
[16] *See id.* § 405(b)(1)(B).
[17] *See id.* § 405(b)(5).
[18] *See id.* § 405(b)(6).
[19] *See id.* § 404(b). It also establishes claimants' entitlement to compensation by setting forth "the obligation of the Federal Government to provide for the payment of amounts for compensation." *Id.* § 4.06(b).
[20] *See id.* §§ 405(a)(1), (2)(A).
[21] *See id.* § 405(c)(3)(A).

[22] *See id.* § 405(b)(3).
[23] *Id.*
[24] *Id.* § 406(a).
[25] *Id.* § 405(a)(3).
[26] In total, the Fund provided this emergency assistance to 236 families, issuing "Advance Benefit" payments in the amount of $11,300,000.
[27] *See* Final Regulations, September 11th Victim Compensation Fund of 2001, 28 C.F.R. Part 104 (2002), attached hereto as Exhibit B.
[28] The Department and the Special Master rejected the suggestion that all economic loss calculations should be based strictly on an analysis of compensation and workforce participation specific to either New York City or to workers in the financial industry in New York. Although a fair number of the victims worked in the New York financial industry, the victims were actually a diverse group: the victims resided in 36 states and were citizens or permanent residents of 66 foreign countries; they ranged in age from 2 years to 85 years and had varying levels of education and job experiences; the group included retired persons, young people still in school, and people established in the workforce; the income levels ranged from zero to well over $4 million annually.
[29] The Special Master could select either one particular year or an average of several years based on the information submitted by the claimant. For example, if a decedent had in the year 2001 begun a new career, the Special Master could conclude that the income level for 2001 was the appropriate predictor of future wage loss.
[30] *See* 28 C.F.R. § 104.43(a).
[31] *See* 28 C.F.R. §§ 104.31(b)(2) (for Track B claims), 104.33(f)(2) (for Track A claims).
[32] *See id.* § 104.45.
[33] The injuries ranged from minor abrasions to catastrophic burn and crush injuries. Catastrophic burn and crush injuries accounted for only about 1% of the injury claims that received awards.
[34] *See id.* § 104.46.
[35] *See* September 11th Victim Compensation Fund, Statement of the Special Master, Final Rule, 67 Fed. Reg. 11,234 (Mar. 13, 2002).
[36] The Regulations require that to be considered a claim, a compensation form must be filed. *See* 28 C.F.R. § 104.21(a). *See* Compensation Form for Deceased Victims attached hereto as Exhibit C; *see also* Compensation Form for Physical Injury Victims, attached hereto as Exhibit D.
[37] The Regulation defining the "filing" of claims was also motivated by the specific deadlines established by the Act for issuing awards. It would be impossible to meet those deadlines if the "filing" were triggered by the submission of various components of a claim without the documentation necessary to compute an award.
[38] *See* FAQs, attached hereto as Exhibit E.
[39] *Colaio v. Feinberg*, 262 F. Supp. 2d 273 (S.D.N.Y. 2001).
[40] *See id.* at 282-283.
[41] *See id.* at 286.
[42] *See id.* at 286-301.
[43] *Schneider v. Feinberg*, 345 F.3d 135 (2d Cir. 2003).
[44] *See id.* at 143-44.
[45] *See id.* at 147 (citing 28 C.F.R. § 104.41)
[46] *See id.* at 148 (citing 28 C.F.R. § 104.42).
[47] *See id.* at 148-49.
[48] Permanent sites were located in Arlington, VA; Boston, MA; Edison, NJ; Jersey City, NJ; Manhattan, NY; Melville, NY; Piscataway, NJ; Stamford, CT; and Staten Island, NY. Some examples include: U.N. Consulate Representatives (outreach for foreign victims), British Consulate for families of British Citizens, Australian Consulate for families of Australian Citizens, FDNY Family Assistance, Windows of Hope for undocumented workers and other foreign language speaking victims or families, Catholic

Charities, Red Cross, Trial Lawyers Care, NY Financial Planning Association, Boston, MA Financial Planning Association, Manalapan, NJ Outreach for Injured, NY Bar Association, and Twin Towers Fund.

[49] The New York Times, The New York Daily News, The Washington Post, Staten Island Advance, Newark Star Ledger, Bergen County Record, The Boston Herald, The Boston Globe, El Diario, USA Today (National Edition), Newsday, New York Times, San Francisco Chronicle and The Wall Street Journal.

[50] Examples include the News Hour with Jim Lehrer, Meet the Press, The Today Show, NBC News – Tom Brokaw, 60 Minutes, CNN – Wolf Blitzer, CNBC, MSNBC, ABC Nightly News – Peter Jennings, CBS – The Early Show, Fox News, BBC, Telemundo, Bloomberg News, The Blade Magazine, New York One, Voice of America, NPR, NBC – Boston affiliate, Israeli News, and New Zealand News Radio.

[51] Some examples include: The New York Times, The Washington Post, The Boston Globe, The New York Daily News, Newsweek Magazine, and Fortune Magazine.

[52] Pursuant to the Act, the Special Master must complete a review, make a determination and provide notice to the claimant no later than 120 days after a claim is filed. *See* Act § 405(b)(3). Under the Regulations, a claim is "filed" when it is "substantially complete." 28 C.F.R. § 104.21(a). Only attorneys in the Special Master's Office had the authority to determine whether a claim was substantially complete. Such a determination required the attorney to find that: (1) the individual intended to submit a claim (as opposed, for example, to a request for an informational evaluation), (2) all necessary documentation establishing the claimant's eligibility (including, for example, proof of death, presence at site, and the claimant's authority as the Personal Representative) existed, (3) information necessary for a basic determination of economic loss and collateral offsets was available, and (4) the Fund had obtained the claimant's signature authorizing the release of information, acknowledging a waiver of rights and certifying the accuracy of the information provided.

[53] Although there was no right of appeal from a final Track A decision or a Track B award, the Special Master's Office reviewed and responded to post-award inquiries and, in some cases, issued a revised award where the Fund found either a computation error or where clarification of data resulted in a revised calculation.

[54] For this purpose, the term "claims" is defined as a group of submissions (claims, objections and statements of interest) involving the same victim.

[55] *See* Act § 405(b)(1)(A).

[56] *See id.* § 405(c)(3)(A).

[57] 28 C.F.R. § 104.2(e).

[58] The zone was defined as follows: the northern boundary runs, starting from the intersection of Reade and Center Streets, west along Reade Street to the Hudson River; the western boundary is the Hudson River; the southern boundary runs, starting from the Hudson River, east along the line of W. Thames Street, Edgar Street and Exchange Place to Nassau Street; the eastern boundary runs, starting from the intersection of Exchange Place and Nassau Street, north along Nassau Street to the intersection of Center and Reade Streets.

[59] Act § 405(c)(2)(A)(i).

[60] 28 C.F.R. § 104.2(b).

[61] *See* September 11th Victim Compensation Fund of 2001, Statement of the Special Master, Interim Final Rule, 66 Fed. Reg. 66,276 (Dec. 21, 2002).

[62] *See id.*

[63] *See* 28 C.F.R. § 104.2(b); 66 Fed. Reg. 66,276 (Dec. 21, 2001).

[64] 66 Fed Reg. at 66,276.

[65] *See* 28 C.F.R. § 104.2(c)(1).

[66] 66 Fed Reg. at 66,276.

[67] 28 C.F.R. § 104.2(c)(2).

[68] *See id.* § 104.2(c)(1).
[69] *See id.*
[70] *Id.* § 104.21(b)(3)(ii).
[71] Some of these 45 claims were denied for more than one of these reasons.
[72] *See* § 405(c)(2)(C).
[73] *See id.* § 405(c)(3)(A).
[74] *See id.* § 104.4(a)(1).
[75] *See* 28 C.F.R. § 104.4(a)(2).
[76] In New York, Letters of Administration are issued when a decedent dies intestate (without a will); Letters Testamentary are issued when a decedent dies with a will. For purposes of this discussion, the term Letters of Administration will hereinafter be used to refer to both types of letters.
[77] The Regulations allow the Personal Representative to apply for immediate "Advance Benefits" of $50,000 to alleviate financial hardship faced by the beneficiaries of the decedent. *See* 28 C.F.R. § 104.22.
[78] In response to the Special Master's request to remove limitations in the Letters of Administration, certain Surrogate's Courts issued amended limited Letters of Administration that allowed claimants to at least submit an application to the Fund and collect a $50,000 Advance Benefit. However, some of these letters continued to contain a requirement that the applicant file an application with the Court to receive approval for collection of a final award from the Fund.
[79] *See* 2002 N.Y. Laws Ch. 73(S.7356).
[80] The New York Act provided that, "Notwithstanding any other provision of law to the contrary, or any restrictions set forth in letters relating to any decedent who dies as a result of wounds or injury incurred as a result of the terrorist attacks on September eleventh, two thousand one, a duly appointed Personal Representative is authorized to file and prosecute a claim with the [F]und, and the filing of such a claim for an award from the [F]und, and the resulting compromise of any cause of action pursuant to the Act, shall not violate any restriction on the powers granted to the Personal Representative relating to the prosecution or compromise of any action, the collection of any settlement, or the enforcement of any judgment." *Id.* § 4(e)(3), *amending*, N.Y. EST. POWERS & TRUSTS § 11-4.7(e)(3).
[81] *See* New York Act § 5(3), *amending* N.Y. SURR. CT. PROC. ACT § 205(3).
[82] *See* New York Act § 4(e)(2), *amending* N.Y. EST. POWERS & TRUSTS § 11-4.7(e)(2).
[83] 28 C.F.R. § 104.4(b).
[84] *See* Compensation Form for Deceased Victims - Instructions to Part IV - Supporting Documentation Checklist, Notice of Filing a Claim, attached hereto as Exhibit C.
[85] *See* Compensation Form for Deceased Victims - Instructions to Part IV - Supporting Documentation Checklist, List of Individuals Notified of Claim Filing, attached hereto as Exhibit C.
[86] *See* 28 C.F.R. § 104.4(c).
[87] In some cases, courts appointed more than one Personal Representative out of concern that an individual that the court considered a *bona fide* beneficiary would not be fairly compensated due to a conflict between the potential beneficiary and the Personal Representative.
[88] Hearing were not held on objections or SOI's unless requested. This practice resulted in complaints after the issuance of a final award by some family members who had not requested and therefore had not received a hearing.
[89] For example, if a spouse was the Personal Representative and had received significant collateral offsets (*e.g.*, life insurance), he or she might decide not to submit a claim even though a child of the victim from a different marriage might have no offsets and could have received some portion of an award.
[90] In some instances courts appointed "co-Personal Representatives." Under these circumstances, the Special Master required both Personal Representatives to agree to the submission of a claim.
[91] Those filing an objection or SOI signed an authorization allowing disclosure of any records or information relating to the objection or SOI to the Personal Representative. *See* Objection/Statement of Interest Form, Authorization for Release of Information, attached hereto as Exhibit F. As a rule, the

Personal Representative was informed of the submission of an objection or SOI and was provided with the form, but generally not provided with any submitted supporting documentation. The Fund adopted this procedure in an attempt to limit formal discovery. However, if the Personal Representative requested additional documentation, it was provided pursuant to the authorization for release. Conversely, the authorization for release of information signed by the Personal Representative did *not* contain authorization for release to those who filed an objection or SOI. *See* Compensation Form for Deceased Victims, Part III Attestations and Certifications, attached hereto as Exhibit C. Accordingly, individuals filing an objection or SOI were not provided with the claim or supporting documentation submitted by the Personal Representative.

[92] *See* 28 C.F.R. § 104.4(d).

[93] Surprisingly, most state courts where payments were sent by the Fund did not have a process in place to accept the Fund s award pending resolution of a dispute. The courts involved in accepting these awards were accommodating and creative in developing mechanisms for accepting and holding payments pending resolution.

[94] The Fund construed this authorization to allow release of information only when the information indicated a potential violation of law in regard to the submission of the claim.

[95] INS functions were transferred to the Department of Homeland Security in November of 2002.

[96] Act § 405(b)(1)(B)(i). Economic loss is defined by the Act as "any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such losses is allowed under applicable State law." *Id.* § 402(5). The Regulations make plain that the phrase "to the extent recovery for such losses is allowed" is a limiting provision, meant to prohibit the Special Master from awarding "those categories or types of economic loss that would not be compensable under the law of the state that would be applicable to any tort claims brought by or on behalf of the victim." 28 C.F.R. § 104.42.

[97] Thus, for example, economic loss for single victims was determined using the same general methodology as for married victims, even though the persons who were likely to file a claim for a single victim might not have relied on the income of the victim.

[98] In all, the Fund developed 12 different computer models to calculate presumed awards for death claims and 16 models to calculate presumed awards for physical injury claims. The models varied based on employer-specific issues (such as pensions or other employer benefits) or other issues related to the data supporting the economic loss calculation or, in the case of physical injury claims, the duration of any disability resulting in loss.

[99] Part-time jobs were common among firefighters who had flexible schedules. Any documented part-time income that was reasonably expected to continue in the future was included in the economic loss calculations. The Fund also considered unreported income on a limited, case-by-case basis, where a claimant provided clear documentary evidence (*e.g.*, bank statements, invoices, payments) substantiating a secondary income stream. While the Fund in no way condoned the practice of keeping income "off the books," it was appropriate, in some instances, to take such income into account in an effort to more accurately project the victim's expected future earnings.

[100] W-2 forms are a less reliable indicator of compensation than pay stubs and employer statements because they can include one-time payments such as unused vacation time.

[101] *See* 28 C.F.R. § 104.43(a).

[102] 2001 income was annualized, based on the victim's pay stubs or other employer-provided information.

[103] *See id.*

[104] *See id.* § 104.43(c).

[105] *See* 28 C.F.R. § 104.43(a). The methodology assumes that the economic loss calculation begins immediately as if the minor victim was 20 years old on September 11.

[106] The Fund established specific models for these victims, and applied a uniform assumed retirement in order to calculate pension loss. The "retirement" date was based on data received from the FDNY, NYPD and military about the average duration of service.
[107] Life expectancy was determined based on life expectancy for the total population United States, 1999, Vital Statistics, vol. 50, no. 6, United States Department of Health and Human Services, Centers for Disease Control and Prevention, March 21, 2002.
[108] In some cases, employers continued to provide medical coverage to the victims' families based on the coverage maintained by the victim on September 11 and promised to continue such coverage in the future. Since those employers were not contractually obligated to continue such coverage and could terminate medical benefits at any time, the Fund did not eliminate the medical replacement cost component in calculating the award.
[109] James Ciecka, Thomas Donley, and Jerry Goldman, *A Markov Process Model of Work-Life Expectancies Based on Labor Market Actuality 1997-98*, JOURNAL OF LEGAL ECONOMICS, Winter 1999-2000.
[110] Life-cycle percentage change was calculated using a regression analysis of total earnings on experience and experience squared, using 2000 earnings for full-time year-round male workers from the 2001 Current Population Survey Table PINC-04.
[111] *See* U.S. Department of Labor, Bureau of the Census for the Bureau of Labor Statistics, *Current Population Survey*, March 2001.
[112] Consumption rates were derived from data on average annual expenditures from the U.S. Department of Labor, Bureau of Labor Statistics, *Consumer Expenditures in 1999*, May 2001.
[113] Consumption and dependency, while related, differ in terms of the nature of the losses they address and the standards applied. Dependency, a component of non-economic loss, was evaluated by reference to the Internal Revenue Service ("IRS") guidelines which set forth a strict, bright-line test. *See* IRS Publication 501, Exemptions, Standard Deductions, and Filing Information. By contrast, consumption, a component of economic loss, may have been adjusted where there was evidence that a family member relied on the victim for financial support even if the family member did not meet the IRS dependency test.
[114] The presumed consumption reduction for single individuals ranged from 48% to 76.4%, compared to 6.7% to 21.6% for individuals who were married or had dependents, depending on income bracket. These higher rates reflect the presumption that single individuals have fewer financial support obligations to other family members and thus, in general, consume a greater percentage of their earnings.
[115] *See* 67 Fed. Reg. at 11,237-39 (Mar. 13, 2002).
[116] Note, however, the adjustment was applied to any earnings from sources other than the uniformed service.
[117] *See* 28 C.F.R. § 104.43(c).
[118] For retirees, any retirement pension loss was also included in the economic loss calculations.
[119] *See id.* at § 104.43(e).
[120] *See* 28 C.F.R. §§ 104.31(b)(2), 104.33(f)(2).
[121] For example, the Fund found extraordinary circumstances in some cases where the victim had a long standing history of high earnings (in excess of $231,000), and a demonstrated commitment to a long-term career path that was unlikely to change or result in lower earnings, and the family demonstrated that it relied on the income to meet its expenses. The Fund also departed from the presumed methodology in instances where the victim had a guaranteed income in excess of $231,000 and there was evidence of family need.
[122] Aspiring stockbrokers, for instance, typically worked as trainees for two to three years, after which time their income and responsibilities increased significantly.
[123] *See* The Dollar Value of a Day, Expectancy Data, Economic Demographers, 1999 (average hours); 2000 Metropolitan Area Wage Estimates, Bureau of Labor Statistics (hourly wage).

[124] The Act defines "non-economic losses" as "losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature." Act § 402(7).
[125] *See* 38 U.S.C. § 1967 (military personnel); 42 U.S.C. § 3796 (Public Safety Officers Benefit Program).
[126] *See* 38 U.S.C. § 1967 (military personnel) (providing insurance coverage of $250,000 for any qualified member of the uniformed forces); 42 U.S.C. § 3796 (Public Safety Officers Benefit Program) (establishing a benefit of $250,000 for any public safety officer who died as the direct and proximate result of a physical injury sustained in the line of duty).
[127] *See* 28 C.F.R. §§ 104.31(b)(2), 104.33(f)(2).
[128] *See id.* § 104.44.
[129] *Id.*
[130] *Id.* § 104.3(c).
[131] *Id.* § 104.3(b). The Final Regulations expand the definition of dependency set forth under the Interim Final Regulations, which limited dependents to those persons who were claimed as dependents on the victims 2000 tax returns. This expansion reflected the Special Master's recognition that many deceased victims provided crucial financial assistance to extended family members who, due to residence or citizenship or applicable tax law, were not claimed on the victim's tax returns, and that some of the limitations imposed by the tax laws were inconsistent with the purposes of the Fund.
[132] *See* IRS Publication 501, Exemptions, Standard Deductions, and Filing Information.
[133] *See id.*
[134] *See id.* Temporary absences include attending school, taking vacations, business trips, military service, and hospital stays. (If the person is placed in a nursing home for an indefinite period of time to receive constant medical care, the absence is considered temporary.)
[135] *See id.* The relationship between the taxpayer and the dependent must not violate local laws (*e.g.*, zoning restrictions on the number of unrelated persons living together). Allowable relationships include: child, parent, brother/sister, stepparent, stepchild, stepbrother/stepsister, half brother/half sister, grandparent, grandchild, son-in-law/daughter-in-law, mother-in-law/father-in-law, brother-in-law/sister-in-law. Also, if related by blood, relatives can include uncle/aunt and niece/nephew.
[136] *See id.* The joint return test does not apply if a joint return is filed by a dependent with his or her spouse merely to claim a refund of withheld tax and no tax liability would exist for either spouse on separate returns.
[137] 28 C.F.R. § 104.46.
[138] Act § 405(b)(6); 28 C.F.R. § 104.47(a).
[139] Act § 402(4).
[140] *See id.*
[141] The Fund did not specifically track the sources of offsets in its electronic database. However, a random sampling of 200 claims demonstrated that an average of $525,947 per claim (or 63% of total average offsets) was attributable to life insurance. The amount of insurance benefits received by the victims' families varied widely based on the income level of the victim, with a strong correlation between higher income and higher insurance benefits. For example, the families of victims earning $24,999 or less received an average of $126,971 of insurance, which comprised about 49% of total offsets per claim. By contrast, families of victims earning $200,000 to $499,999 received an average of $993,666 of insurance, which comprised nearly 73% of total offsets per claim. To be sure, there was some variation even among similarly situated victims. For example, there were victims who earned over the 98th percentile who maintained no private insurance policies and there were administrative personnel who took out significant policies. However, such cases were unusual.
[142] Many employers covered their employees under company-subsidized insurance policies, the proceeds of which were payable to the victims' families as a result of death. Some of these policies provided a

uniform amount among eligible employees; others conferred a benefit commensurate with the employee's position or income.

[143] Although the Fund investigated the possibility of obtaining information from databases maintained by private insurers, it found that the logistical problems in such an endeavor were overwhelming.

[144] *See* Act § 402(4).

[145] All pensions were "counted" on both sides of the ledger. Thus, the Fund computed the value of the pension benefits lost as a result of the premature death of the victim in determining economic loss and separately computed as an offset the present value of any pension received by the survivors as a result of the victim's death. In many cases the value of the lost future pension exceeded the collateral offset attributable to the survivor benefit.

[146] *See* Act § 402(4).

[147] Examples of payments that were considered "death benefits" by the Special Master included: United Airlines and American Airlines benefits for families of passengers aboard the flights; FDNY and NYPD benefits, granted to uniformed personnel killed in the line of duty, including a contractual benefit of $25,000 and a Mayor's Office Benefit generally equal to the victim's final year salary; and Defense Finance and Accounting Service ("DFAS") payments provided to families of military personnel and some civilian Pentagon victims.

[148] For example, the "Voluntary 9/11 Death Benefit" issued by Fred Alger and the "Gratuitous Benefit – Hardship Payment" issued by Carr Futures were determined to represent pro-rata bonuses earned in 2001 that would have been paid in 2002 but for the victim's death. Neither payment was offset.

[149] An example of such a plan was that of Keefe, Bruyette & Woods.

[150] *See* Act § 402(4).

[151] 28 C.F.R. §§ 104.47(b)(1), (2).

[152] *See* 28 C.F.R. § 104.47(b)(3).

[153] *Id.* § 104.47(a).

[154] *See e.g.*, N.Y. EST. POWERS & TRUSTS § 2-1.11; N.J. STAT. ANN. § 3B:9-5.

[155] Wrongful death law typically refers to applicable intestate law to determine the class of beneficiaries eligible to recover.

[156] *See* N.Y. WORK. COMP. § 4.

[157] *See* 28 C.F.R. § 104.47(a).

[158] *See* N.Y. WORK. COMP. § 29(1-b).

[159] *See* 28 C.F.R. § 104.47(a).

[160] *See id.* § 104.43(d).

[161] The Regulations provide for a minimum award *before* collateral offsets have been deducted ($500,000 for claims on behalf of deceased victims with a spouse or dependent or $300,000 for claims on behalf of deceased victims who were single with no dependents), but do not set forth a minimum award *after* offsets. *See id.* § 104.41.

[162] *See* 67 Fed. Reg. at 11,242 (Mar. 13, 2002).

[163] This statistic includes minor children who did not qualify as dependents.

[164] *See* 28 C.F.R. § 104.52. Issues relating to the decedent's proper domicile were raised in a number of claims, particularly where decedents were in the military or working for foreign companies located in New York. Rather than looking to the specific law and the potential places of domicile and negotiating the complexities and distinctions between various states' choice of law rules, the Special Master adopted criteria for the determination of domicile. These criteria were published on the Fund website. Most claimants were able to resolve questions regarding domicile by reference to these criteria. *See* Frequently Asked Questions, Section 1.16, "What is domicile?" attached hereto as Exhibit E.

[165] *See* Distribution Plan Information for Deceased Victims-Summary of State Wrongful Death and Intestacy Statutes, attached hereto as Exhibit G.

[166] *See* Sample Letters Notifying All Interested Parties of Final Award Determination, where a distribution plan had been approved, attached hereto as Exhibit H, and where a distribution plan had not been approved, attached hereto as Exhibit I.
[167] *See* Distribution Plan Information for Deceased Victims – Summary of State Wrongful Death and Intestacy Statutes, attached hereto as Exhibit G.
[168] The Summary of State Wrongful Death and Intestacy Statutes was intended to be a general summary only. The summary specifically stated that it was only meant to provide information regarding relevant state law as a guide to devising plans for distributions that were consistent with state law and that, to the extent state law varied with the chart, state law controlled. In addition, the summary advised claimants that if more information was needed, an attorney familiar with state statutes and case law should be consulted.
[169] *See* Distribution Plan Information for Deceased Victims - Summary of State Wrongful Death and Intestacy Statutes, attached hereto as Exhibit G.
[170] *See In re Kaiser's Estate*, 100 N.Y.S.2d 218 (1950). Under *Kaiser*, each distributee receives a percentage of the award in proportion to the number of years of dependency for which that distributee would have looked to the deceased for support. The formula is achieved by adding up all of the years of "dependency." The figure for each child is the number of years it would take to reach the age of 21. For the spouse, the length of anticipated dependency is measured by mortality tables. (The presumption utilized by the Fund for these purposes was that the life expectancy for males is 78 and females is 80.) The total number of years for the spouse and children constitute the denominator, and the respective number of years of ••dependency••is the numerator for each of the distributees. Note that under a strict application of the rule, a child over 21 would not be entitled to any portion of the wrongful death award. However, because dependency is defined so broadly and because many states determine wrongful death allocations based on what is "fair and equitable," the Fund required the consent of an adult child to an economic award distribution that excluded him or her.
[171] Where the Personal Representative elected allocation pursuant to a *Kaiser* formula, the Special Master allowed the allocation among children to be equalized if the family did not want children to receive differing percentages of the award as long as the spouse s portion of the award was not increased at the children s expense. For example, if under *Kaiser* a spouse was entitled to 60% of the economic award and the two children were entitled to 22% and 18% respectively due to their different ages, the Special Master would approve a submitted plan allocating each child 20% of the economic award.
[172] For example, the Special Master would not have approved a distribution plan that included a charitable institution as a beneficiary of the award.
[173] In claims where the decedent was single and a parent was the Personal Representative, 45% of the approved plans included not only the parent, but also a sibling or other person.
[174] Allocation to the parents was not an issue when there were surviving children since most states do not allow recovery for parents under either intestate law or wrongful death when there are surviving children.
[175] *See* Sample Letter Notifying All Interested Parties of Final Award Determination where a distribution plan had been approved, attached hereto as Exhibit I.
[176] In rare cases, the Fund was informed by potential beneficiaries that, although the Personal Representative had received an award, the Personal Representative had not entered into a consensual agreement with the potential beneficiaries and had not filed an action in court. In these cases, the Special Master sent written notice to the Personal Representative of the complaint and advised the Personal Representative once again that federal law required him or her to distribute the award in accordance with state law. In addition, the Fund notified the court that had issued the Letters of Administration of the complaint.
[177] Some domestic partners argued that the New York "September 11th Victims and Families Relief Act" (the "New York Act") meant that domestic partners should receive awards from the Fund, even if not provided for in a will or found to be dependent upon the decedent. The New York Act states in

precatory language that it is the legislature's intent that domestic partners of victims of September 11 should be eligible for distribution from the Fund and that the requirements for awards under the New York State World Trade Center Relief Fund and other New York laws should guide the Special Master. *See* N.Y. SURR. CT. PROC. ACT §§ 205, 2307 (2002). The New York Act, however, itself does not provide for any change in the New York intestate or wrongful death law, and therefore, the Fund did not treat this precatory language as a revision to New York's intestacy and wrongful death laws.

In some claims, the consumption factor utilized to determine economic damages was adjusted to reflect the fact that the decedent was living with or was engaged to a domestic partner or fiancée, thereby increasing the award. In these circumstances, the domestic partner or fiancée often argued that he or she should receive the increase in the award that was the result of his or her relationship with the victim. The Regulations, however, require the Fund to follow state law and, if the state wrongful death law did not recognize domestic partners or fiancées as distributees, the Fund could not mandate that a portion of the economic award be allocated to them. In some instances, families chose to share a portion of the award with a domestic partner or fiancée. Provided all beneficiaries were consenting adults, the Fund did not disapprove but did not affirmatively approve such plans. However, when a minor child was the recipient of a portion of the award under state law, a sharing agreement with a domestic partner or fiancée that impacted the minor child's award was not permissible. The Fund determined that a minor child (or a person acting on his or her behalf) could not consent to a redistribution of an award in such circumstances and that he or she should receive the full allocation to which he or she was entitled under state law.

[178] In most states, the guardian of the property is responsible for the child's assets while the guardian of the person has custody of the child. The guardian of the property is hereinafter referred to as the "guardian."

[179] In New York, the guardian must file an annual accounting, *see* N.Y. SURR. CT. PROC. ACT § 1719, investment authority is limited, *see id.* at § § 1708, 1713, and the Surrogate's Court's approval is required for the expenditure of a minor's funds, *see id.* at § 1713. Not all states are this restrictive. In New Jersey, for example, guardians have the option of depositing funds into an unsupervised account so long as bond is provided. *See* N.J. STAT. ANN. § 3B:13-43 (authorizing expenditures for the support, maintenance, education and general use and benefit of minor without court order); 3B:15-1 (generally requiring the posting of a bond by guardian); but *see* N.J. STAT. ANN. § 3B:17-3 (requiring guardian to file accounting at intervals determined by the court).

[180] *See* N.Y. SURR. CT. PROC. ACT at § 1713(2) (court considers a parent's "financial ability to pay" in determining whether to authorize expenditures of guardianship funds and in what amount.)

[181] *See, e.g.*, N.J. STAT. ANN. § 46:38A-14(c) (requiring court approval of transfer exceeding $10,000); N.Y. EST. POWERS & TRUST § 7-6.6 (c)(iii) (prohibiting transfers over $50,000 without court approval); VA. CODE ANN. § 31-42C (restricting transfers over $10,000 without court order).

[182] *See, e.g.*, Social Security Administration, 42 U.S.C. § 405(j); Workers Compensation 20 C.F.R. § 10.424; Railroad Retirement Board, 20 C.F.R. § 266.1.

[183] State law differs on whether and what type of trust could be approved by a court for Fund awards to minors. In New Jersey, specific legislation was enacted in response to parents concerns that large awards would be paid from the Fund to children who would have access to their funds at 18 and might not use these funds responsibly. The New Jersey legislation provided that the Superior Court, Chancery Division, Probate Part, could allow any award from the Fund to be the subject of a trust that could hold the funds for a number of years past the age of majority. *See* N.J. STAT. ANN. § 3B:12-54.1(c)(1).

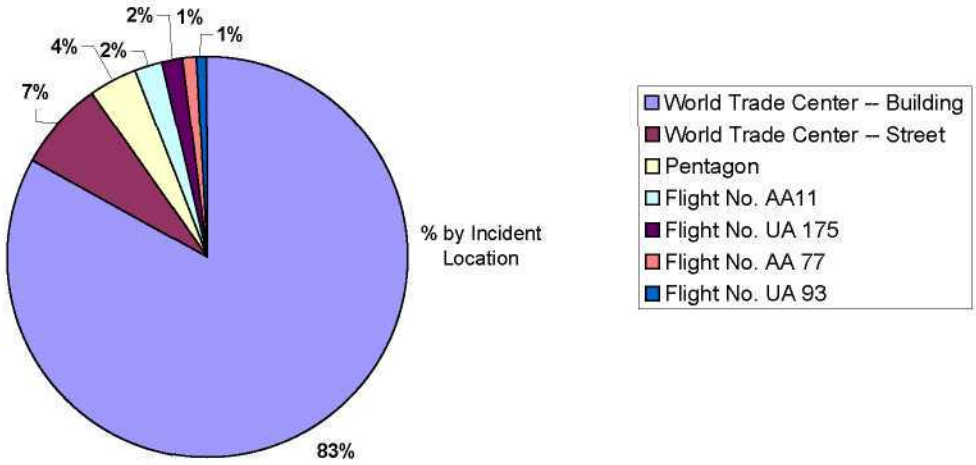
[184] *See* Application for Representative Payee, attached hereto as Exhibit J.

[185] Of the 1,025 approved distribution plans that included minors, 68% had some portion of the minor's award paid to a representative payee while 15% had some portion of the minor's award paid as a structure and 4% had some portion of the minor's award paid to a guardian of the property.

[186] One criticism of the representative payee program was that it could result in potential liability of parents and attorneys in a later action by the child for misuse of the funds.
[187] A Sample Award Determination Periodic Payment Agreement is attached hereto as Exhibit K.
[188] Before the Fund would issue a periodic payment agreement, documentation demonstrating the appointment of a guardian of the property was required. *See* FAQs, Section 11.7, attached hereto as Exhibit E.
[189] *See* 28 C.F.R. § 104.52.
[190] The Regulations authorized the Special Master to publish a list of individuals who had filed claims and the names of the victims, but not the content of any such claim. *See* § 28 C.F.R. 104.21(b)(6).
[191] *See* Award Payment Statistics for Deceased Victims – Substantially Complete Claims/Final Award Amounts, attached hereto as Exhibit L.
[192] *See* Award Payment Statistics for Deceased Victims – General Award Statistics and Range of Award Values, attached hereto as Exhibit M.
[193] *See* Award Payment Statistics for Physical Injury Victims, attached hereto as Exhibit N.
[194] FECA provides workers' compensation benefits for civilian employees of the federal government.
[195] Information relating to FDNY benefits was also applicable to the NYPD.
[196] The Fund established specific channels of communication and procedures for the gathering of information from the following employers: AIG, American Building Maintenance, AON, Banker's Trust n/k/a Deutsche Bank, Cantor Fitzgerald, Carr Futures, Euro Brokers, Fiduciary Trust, Forte Food Services, Inc., Fred Alger, Intellisource Consulting; Keefe, Bruyette & Woods, Inc., Marsh & McLennan, Moneyline Telerate, Oracle, Raytheon, Royal & Sun Alliance, Sandler O'Neill, Sidley Austin Brown Wood, LLP, and TJX.
[197] Final Report, Trial Lawyers Care (July 26, 2004).
[198] Assistance was also provided by Safe Horizon, the largest not-for-profit mediation service in New York City. The Special Master's Office met with members of Safe Horizon in an effort to locate services that victims' families could use as a resource in resolving intra-family issues regarding the filing of claims and distribution of awards. Safe Horizon reported that it handled approximately 90 inquiries and conducted 5 full-scale mediations for families of victims.
[199] The agencies that provided Hearing Officers included: the Department of Labor, the Environmental Protection Agency, the Federal Energy Regulatory Commission, the Federal Mine, Safety and Health Review Commission, Housing and Urban Development, the National Labor Relations Board and the United States Coast Guard.
[200] In addition, in the spring of 2003, one of The Feinberg Group attorneys working on the Fund joined the Department of Justice.
[201] In addition to these 29 attorneys, 3 additional attorneys from The Feinberg Group worked on the Fund periodically throughout the Program.
[202] This cost will increase minimally after the receipt of pending additional invoices.
[203] Kenneth R. Feinberg and the legal, administrative and support staff of The Feinberg Group worked in excess of 19,000 hours during the period beginning November of 2001 through September 2004. The value of this time is estimated to be in excess of $7.2 million.
[204] This figure includes actual costs plus obligated funds through Fiscal year 2004.

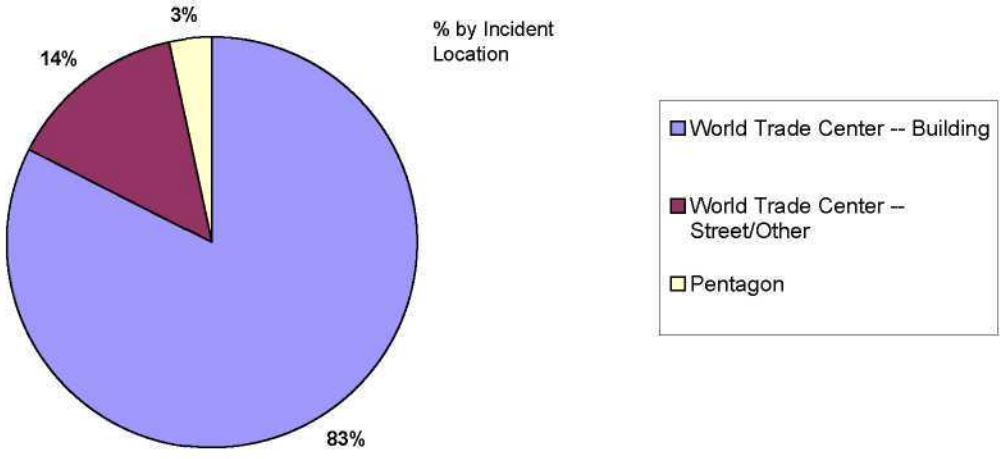
CLAIMS FOR DECEASED VICTIMS BY INCIDENT LOCATION

Location	# of Claims	Amount Awarded
World Trade Center -- Building	2,388	$5,083,751,440.29
World Trade Center -- Street	209	$439,185,736.33
Pentagon	114	$172,571,215.31
Flight No. AA11	65	$119,638,023.32
Flight No. UA 175	46	$69,556,753.04
Flight No. AA 77	33	$57,908,226.32
Flight No. UA 93	25	$53,649,607.47
TOTAL	**2,880**	**$5,996,261,002.08**



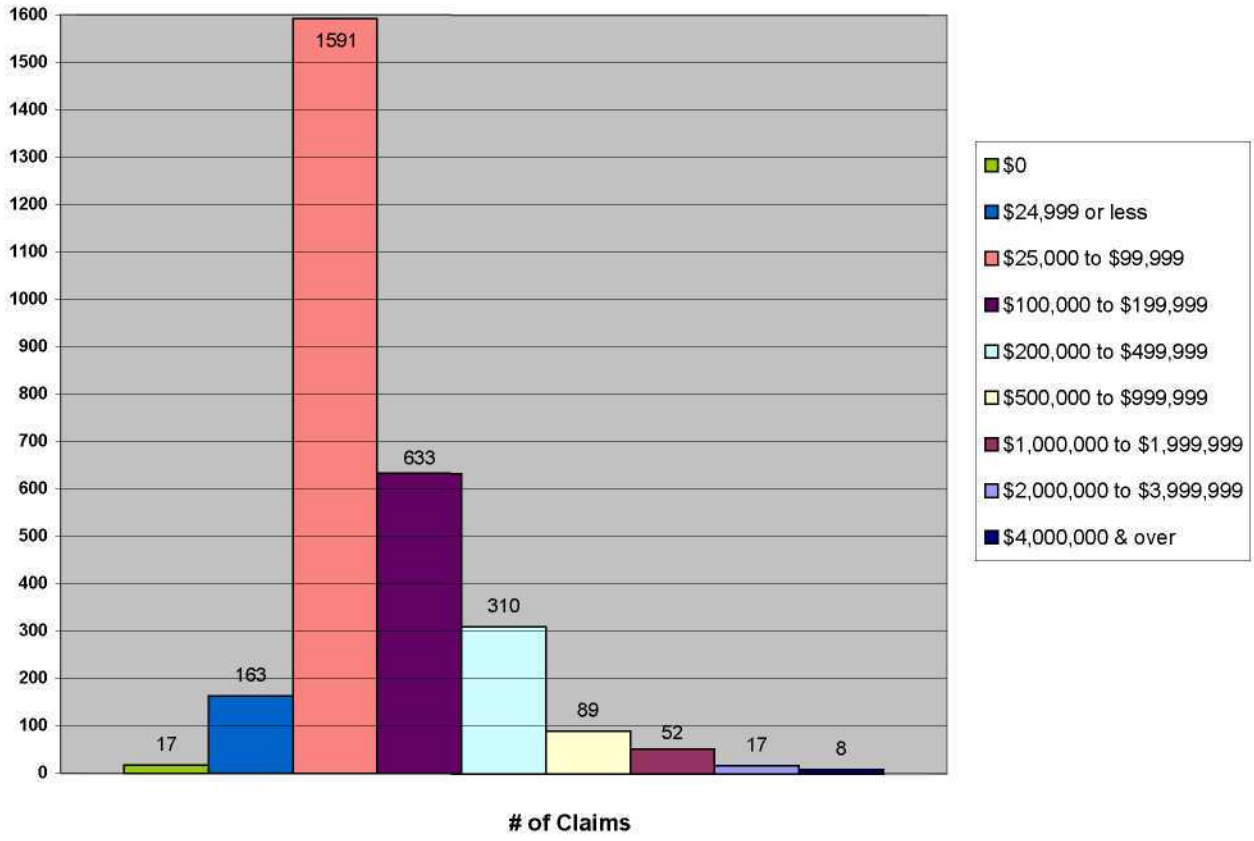
CLAIMS FOR PHYSICAL INJURY VICTIMS BY INCIDENT LOCATION

Location	# of Claims	Amount Awarded
World Trade Center -- Building	2,212	$892,824,923.59
World Trade Center -- Street/Other	382	$108,687,824.01
Pentagon	86	$51,641,786.96
TOTAL	**2,680**	**$1,053,154,534.56**



CLAIMS FOR DECEASED VICTIMS BY INCOME LEVEL

Income Levels	# of Claims	% of Claims Filed	Total Awards	% of Total Awarded for Death Claims
$0	17	0.59%	$13,396,374.59	0.22%
$24,999 or less	163	5.66%	$179,648,077.33	3.00%
$25,000 to $99,999	1591	55.24%	$2,418,567,253.96	40.34%
$100,000 to $199,999	633	21.98%	$1,457,314,626.24	24.30%
$200,000 to $499,999	310	10.76%	$1,052,333,721.38	17.55%
$500,000 to $999,999	89	3.09%	$422,719,241.32	7.05%
$1,000,000 to $1,999,999	52	1.81%	$294,934,413.48	4.92%
$2,000,000 to $3,999,999	17	0.59%	$106,312,992.16	1.77%
$4,000,000 & over	8	0.28%	$51,034,301.62	0.85%
Total Claims	**2,880**	**100.00%**	**$5,996,261,002.08**	**100.00%**



CLAIMS FOR DECEASED VICTIMS
BY
GENDER and AGE

TABLE NO. 3

Female			
	Age Range	**Claim Count**	**Award Amount**
	25 & Under	55	$84,483,690.68
	26-30	93	$172,998,972.03
	31-40	212	$356,996,222.65
	41-50	193	$268,166,342.79
	51-60	104	$89,769,339.59
	61-70	27	$21,178,460.11
	Over 70	8	$5,459,153.75
	Sub Totals:	692	$999,052,181.60
Male			
	Age Range	**Claim Count**	**Award Amount**
	25 & Under	96	$167,352,503.98
	26-30	253	$572,081,177.11
	31-40	842	$2,347,011,727.86
	41-50	630	$1,418,855,991.40
	51-60	299	$427,192,091.63
	61-70	57	$58,159,862.69
	Over 70	11	$6,555,465.81
	Sub Totals:	2,188	$4,997,208,820.48
TOTAL		**2,880**	**$5,996,261,002.08**

CLAIMS FOR PHYSICAL INJURY VICTIMS
BY
GENDER and AGE

TABLE NO. 3a

Female			
	Age Range	**Claim Count**	**Award Amount**
	25 & Under	14	$2,000,345.22
	26-30	28	$14,043,126.00
	31-40	137	$45,417,705.00
	41-50	135	$55,679,111.21
	51-60	87	$16,082,384.00
	61-70	13	$1,423,781.00
	Over 70	4	$346,933.00
	Subtotals:	418	$134,993,385.43
Male			
	Age Range	**Claim Count**	**Award Amount**
	25 & Under	26	$3,682,647.00
	26-30	117	$58,076,207.00
	31-40	776	$387,302,284.72
	41-50	988	$374,401,312.97
	51-60	307	$87,951,300.44
	61-70	43	$6,579,744.00
	Over 70	5	$167,653.00
	Subtotals:	2,262	$918,161,149.13
TOTAL		**2,680**	**$1,053,154,534.56**

BREAKDOWN OF PHYSICAL INJURY TYPES TABLE NO. 4

INJURY TYPE	# OF CLAIMS	% OF CLAIMS	FINAL AWARD AMOUNT	% OF TOTAL AWARDED
ASTHMA/OTHER RESPIRATORY	1,377	51.38%	$573,210,012.71	54.43%
BACK INJURY (Disc Problem, Back Pain, etc.)	94	3.51%	$26,467,639.07	2.51%
BROKEN BONES/FRACTURES	87	3.25%	$23,847,413.22	2.26%
BRUISES/CUTS	44	1.64%	$3,670,167.00	0.35%
BURNS	40	1.49%	$82,843,807.52	7.87%
HEART ATTACK/OTHER CARDIAC PROBLEMS	6	0.22%	$2,472,146.00	0.23%
NEUROLOGICAL PROBLEMS (Stroke, Seizure, Brain Damage	8	0.30%	$9,088,576.00	0.86%
OTHER INJURY	67	2.50%	$18,464,246.00	1.75%
SENSORY PROBLEMS (Vision, Hearing, etc.)	31	1.15%	$3,319,694.00	0.32%
SOFT TISSUE (Ligaments and Cartilage)	91	3.40%	$22,807,193.98	2.17%
MULTIPLE INJURIES	835	31.16%	$286,963,639.06	27.25%
TOTAL	**2,680**	**100.00%**	**$1,053,154,534.56**	**100.00%**

CLAIMS FOR DECEASED VICTIMS BY STATE OF RESIDENCE

TABLE NO. 5

STATE	NO. OF CLAIMS
Arizona	2
Arkansas	2
California	26
Colorado	2
Connecticut	61
Delaware	2
Districtof Columbia	10
Florida	4
Georgia	2
Illinois	8
Iowa	1
Louisiana	2
Maine	4
Maryland	47
Massachusetts	64
Michigan	2
Misissippi	1
Missouri	2
New Hampshire	9
New Jersey	621
New Mexico	1
New York	1,622
North Carolina	2
Ohio	2
Pennsylvania	29
Rhode Island	5
Tennessee	1
Texas	3
Virginia	94
Subtotal	2,631
Foreign Citizenship/Foreign Residence	249
TOTAL	2,880

CLAIMS FOR PHYSICAL INJURY VICTIMS BY STATE OF RESIDENCE

TABLE NO. 5a

STATE	NO. OF CLAIMS
Alabama	1
Arizona	2
California	5
Colorado	1
Connecticut	12
Delaware	2
Districtof Columbia	8
Florida	22
Georgia	2
Kentucky	2
Louisiana	1
Maine	2
Maryland	22
Massachusetts	7
Minnesota	1
Missouri	2
Nevada	1
New Hampshire	1
New Jersey	182
New Mexico	2
New York	2,218
North Carolina	3
Ohio	3
Oklahoma	2
Pennsylvania	24
Rhode Island	3
South Carolina	3
Tennessee	2
Texas	4
Virginia	53
Washington	2
Subtotal	2,595
Foreign Citizenship/Foreign Residence	85
TOTAL	2,680

CLAIMS FOR DECEASED VICTIMS BY FOREIGN CITIZENSHIP OR FOREIGN RESIDENCY*

TABLE NO. 6

Country	No. of Claims	Country	No. of Claims
Argentina	1	Israel	4
Australia	6	Italy	2
Bangladesh	3	Ivory Coast	2
Barbados	1	Jamaica	7
Belarus	1	Japan	23
Belgium	1	Jordan	1
Brazil	3	Kazakstan	1
Canada	18	Lithuania	1
Chile	1	Malaysia	3
China	3	Mexico	5
Colombia	6	Pakistan	1
Dominican Republic	13	Paraguay	1
Ecuador	10	Peru	2
Egypt	1	Philippines	1
El Salvador	2	Poland	2
Ethiopia	2	Romania	1
France	2	Russia	3
Gambia	2	South Africa	1
Germany	8	Sri Lanka	1
Ghana	4	St Vincent	1
Guatemala	1	Sweden	1
Guyana	4	Switzerland	2
Haiti	1	Taiwan	1
Honduras	3	Thailand	1
Hong Kong	1	Togo Africa	1
India	18	Trinidad	3
Indonesia	1	United Kingdom	52
Ireland	2	Ukraine	1
		Uzbekistan	2
		Venezuela	2
		Yugoslavia	1
		Subtotal	**249**
		Citizens of the U.S. with U.S. Residency	2,631
		Total	2,880

*This chart sets forth all death claims where the claimant stated on the claim form that the victim was a foreign citizen or resident of a foreign country. Over 85% of these victims were living in the U.S. on 9/11/01.

CLAIMS FOR PHYSICAL INJURY VICTIMS BY FOREIGN CITIZENSHIP OR FOREIGN RESIDENCY*

TABLE NO. 6a

Country	No. of Claims	Country	No. of Claims
Antigua	1	India	6
Argentina	1	Italy	3
Bangladesh	2	Ivory Coast	1
Belize	1	Jamaica	3
Brazil	1	Liberia	2
Canada	13	Kenya	1
China	2	Mexico	1
Colombia	1	Nigeria	5
Cuba	1	Panama	2
Dominican Republic	9	Peru	1
El Salvador	1	Poland	4
France	2	Russia	1
Germany	1	Thailand	2
Ghana	2	Trinidad	2
Guatemala	1	United Kingdom	3
Haiti	3	Ukraine	1
Honduras	3	Venezuela	1
Hong Kong	1		
		Subtotal	**85**
		Citizens of the U.S. with U.S. Residency	**2,595**
		Total	**2,680**

*This chart sets forth physical injury claims where the claim form states that the victim was a foreign citizen or resident of a foreign country. Over 80% of these victims were living in the U.S. when the claim was filed.

TABLE NO. 7

ALL CLAIMS			
EMPLOYMENT CATEGORIES	*# OF CLAIMS*	*TOTAL AWARD*	*% of Total Awarded*
Attorneys/Legal Profession/Law Firm Staff	46	$49,145,779.37	0.70%
Civil Service	304	$193,295,040.82	2.74%
Communications Industry/Telecommunications/Broadcast	50	$46,867,078.07	0.66%
Construction (including carpenters, electricians, etc.)	158	$116,148,604.39	1.65%
Emergency Medical Technicians & Assistants/Paramedics	30	$21,092,146.84	0.30%
Finance/Banking/Insurance/Accounting	1,864	$4,186,236,350.36	59.38%
Fire Department	1,730	$1,185,982,427.37	16.82%
Homemakers	4	$3,568,113.68	0.05%
Maintenance/Janitorial	96	$55,231,119.66	0.78%
Medical/Doctors/Nurses	32	$20,243,525.86	0.29%
Military	100	$133,639,541.60	1.90%
Pilots/Flight Attendants/Other Airline Employees	30	$37,994,215.96	0.54%
Police Department	228	$119,143,962.63	1.69%
Port Authority	138	$155,838,175.33	2.21%
Restaurant/Food Workers/Wait Staff/Dishwashers	132	$140,090,160.73	1.99%
Retired	22	$13,791,860.07	0.20%
Security Personnel/Private	64	$36,804,938.39	0.52%
Students	6	$2,895,393.47	0.04%
Technology/Computer Related	173	$243,680,812.69	3.46%
Unemployed	6	$7,627,674.77	0.11%
Other	347	$280,098,614.58	3.97%
Total	**5,560**	**$7,049,415,536.64**	100.00%

CLAIMS AWARDED
BY EMPLOYMENT CATEGORIES

TABLE NO. 8

DEATH CLAIMS

EMPLOYMENT CATEGORIES	*# OF CLAIMS*	*TOTAL AWARD*	*% of Total Awarded*
Attorneys/Legal Profession/Law Firm Staff	23	$47,370,341.37	0.79%
Civil Service	105	$136,925,005.82	2.28%
Communications Industry/Telecommunications/Broadcast	26	$43,478,760.85	0.73%
Construction (including carpenters, electricians,etc.)	55	$84,055,990.64	1.40%
Emergency Medical Technicians & Assistants/Paramedics	5	$7,567,620.84	0.13%
Finance/Banking/Insurance/Accounting	1,669	$4,099,933,810.82	68.37%
Fire Department	342	$559,197,606.41	9.33%
Homemakers	4	$3,568,113.68	0.06%
Maintenance/Janitorial	28	$37,808,186.01	0.63%
Medical/Doctors/Nurses	9	$14,031,181.86	0.23%
Military	54	$102,000,055.64	1.70%
Pilots/Flight Attendants/Other Airline Employees	30	$37,994,215.96	0.63%
Police Department	23	$34,771,624.63	0.58%
Port Authority	75	$127,395,765.33	2.12%
Restaurant/Food Workers/Wait Staff/Dishwashers	97	$131,140,863.73	2.19%
Retired	13	$12,890,255.07	0.21%
Security Personnel/Private	32	$32,329,579.41	0.54%
Students	3	$2,767,526.47	0.05%
Technology/Computer Related	130	$235,857,731.69	3.93%
Unemployed	4	$7,038,280.77	0.12%
Other	153	$238,138,485.08	3.97%
Total	**2,880**	**$5,996,261,002.08**	100.00%

PHYSICAL INJURY CLAIMS

EMPLOYMENT CATEGORIES	*# OF CLAIMS*	*TOTAL AWARD*	*% of Total Awarded*
Attorneys/Legal Profession/Law Firm Staff	23	$1,775,438.00	0.17%
Civil Service	199	$56,370,035.00	5.35%
Communications Industry/Telecommunications/Broadcast	24	$3,388,317.22	0.32%
Construction (including carpenters, electricians, etc.)	103	$32,092,613.75	3.05%
Emergency Medical Technicians & Assistants/Paramedics	25	$13,524,526.00	1.28%
Finance/Banking/Insurance/Accounting	195	$86,302,539.54	8.19%
Fire Department	1,388	$626,784,820.96	59.51%
Maintenance/Janitorial	68	$17,422,933.65	1.65%
Medical/Doctors/Nurses	23	$6,212,344.00	0.59%
Military	46	$31,639,485.96	3.00%
Police Department	205	$84,372,338.00	8.01%
Port Authority	63	$28,442,410.00	2.70%
Restaurant/Food Workers/Wait Staff/Dishwashers	35	$8,949,297.00	0.85%
Retired	9	$901,605.00	0.09%
Security Personnel/Private	32	$4,475,358.98	0.42%
Students	3	$127,867.00	0.01%
Technology/Computer Related	43	$7,823,081.00	0.74%
Unemployed	2	$589,394.00	0.06%
Other	194	$41,960,129.50	3.98%
Total	**2,680**	**$1,053,154,534.56**	100.00%

AWARDS FOR
UNIFORMED WORKERS

TABLE NO. 9

	NO. OF CLAIMS	*TOTAL AMOUNT AWARDED*	*% OF TOTAL AWARDED*
DEATH			
			% of Total Amount Awarded for Death Claims
Fire Department	342	$559,197,606.41	9.33%
Police Department	23	$34,771,624.63	0.58%
Port Authority	36	$56,181,110.45	0.94%
Emergency Medical Professionals	5	$7,567,620.84	0.13%
Total	**406**	**$657,717,962.33**	10.97%
PHYSICAL INJURY			
			% of Total Amount Awarded for Physical Injury Claims
Fire Department	1,388	$626,784,820.96	59.51%
Police Department	205	$84,372,338.00	8.01%
Port Authority	24	$13,172,641.00	1.25%
Emergency Medical Professionals	25	$13,524,526.00	1.28%
Total	**1,642**	**$737,854,325.96**	70.06%
ALL CLAIMS			
			% of Total Awarded by the Fund
Fire Department	1,730	$1,185,982,427.37	16.82%
Police Department	228	$119,143,962.63	1.69%
Port Authority	60	$69,353,751.45	0.98%
Emergency Medical Professionals	30	$21,092,146.84	0.30%
Total	**2,048**	**$1,395,572,288.29**	19.80%

AWARDS FOR
DECEASED VICTIMS WITH MINOR CHILDREN*

TABLE NO. 10

Victim Residence	# of Minor Children	# of Claims
STATE		
ARIZONA	3	2
ARKANSAS	2	1
CALIFORNIA	11	9
COLORADO	1	1
CONNECTICUT	93	44
DISTRICT OF COLUMBIA	10	5
FLORIDA	10	4
GEORGIA	7	3
ILLINOIS	4	2
LOUISIANA	1	1
MAINE	2	1
MARYLAND	45	27
MASSACHUSETTS	39	23
NEW HAMPSHIRE	4	2
NEW JERSEY	827	391
NEW MEXICO	2	1
NEW YORK	1,628	805
NORTH CAROLINA	4	1
OHIO	2	2
PENNSYLVANIA	27	15
RHODE ISLAND	1	1
TENNESSEE	1	1
TEXAS	2	1
VIRGINIA	62	36
COUNTRY		
CANADA	2	2
GERMANY	7	4
UNITED KINGDOM	9	5
TOTAL	**2,806**	**1,390**

* This chart includes children under the age of 18 on September 11, 2001 who were included in the household for consumption purposes in computing economic loss.

TABLE NO. 11

GENERAL AWARD STATISTICS FOR ALL CLAIMS

CLAIM DATA FOR ALL CLAIMS			
TOTAL CLAIMS RECEIVED		7,403	
DEATH		2,968	
PHYSICAL INJURY		4,435	
AWARD DETAILS -- ALL ELIGIBLE CLAIMS			
TOTAL ALL CLAIMS WITH AWARDS ISSUED			
TRACK A	67% (of awarded claims)	3,735	$3,029,856,022.91
TRACK B	33% (of awarded claims)	1,825	$4,019,559,513.73
TOTAL AWARDS ISSUED		5,560	
TOTAL AMOUNT AWARDED			$7,049,415,536.64
AVERAGE AWARD			$1,267,880.49
MEDIAN AWARD			$855,919.50
MAXIMUM AWARD			$8,597,732.00
MINIMUM AWARD			$500.00
MINIMUM OFFSET			$0.00
MAXIMUM OFFSET			$9,875,656.44
AVERAGE OFFSET			$524,285.58
MEDIAN OFFSET			$236,810.76
TOTAL ECONOMIC & NON-ECONOMIC AWARDS BEFORE OFFSETS			$9,964,443,386.52
TOTAL OFFSETS (ALL CLAIMS)			$2,915,027,849.88
CLAIMS WITH ADVANCE BENEFITS		236	$11,300,000.00
CLAIMANTS RECEIVING STRUCTURES		181	$528,589,421.13

GENERAL AWARD STATISTICS FOR DECEASED VICTIMS			
CLAIM DATA FOR DECEASED VICTIMS			
NUMBER OF CLAIMS RECEIVED		2,968	
NUMBER OF CLAIMS DENIED/WITHDRAWN/ABANDONED		88	
TOTAL CLAIMS WITH AWARDS ISSUED		2,880	
AWARD DETAILS -- ELIGIBLE DECEASED CLAIMS			
TOTAL ALL CLAIMS WITH AWARDS ISSUED			
TRACK A	47%	1,348	$2,187,641,071.92
TRACK B	53%	1,532	$3,808,619,930.16
TOTAL AWARDS ISSUED		2,880	
TOTAL AMOUNT AWARDED			$5,996,261,002.08
AVERAGE AWARD			$2,082,035.07
MEDIAN AWARD			$1,677,632.54
MAXIMUM AWARD			$7,100,000.00
MINIMUM AWARD			$250,000.00
MINIMUM OFFSET			$0.00
MAXIMUM OFFSET			$9,875,656.44
AVERAGE OFFSET			$855,826.66
MEDIAN OFFSET			$585,657.09
TOTAL ECONOMIC & NON-ECONOMIC AWARDS BEFORE OFFSETS			$8,461,041,778.69
TOTAL OFFSETS (ALL CLAIMS)			$2,464,780,776.61
CLAIMS WITH ADVANCE BENEFITS (216)			$10,800,000.00
CLAIMANTS RECEIVING STRUCTURES (In whole or in part) 178Claims)			$519,602,850.13

GENERAL AWARD STATISTICS FOR PHYSICAL INJURY VICTIMS			
CLAIM DATA FOR PHYSICAL INJURY VICTIMS			
TOTAL CLAIMS RECEIVED		4,435	
NUMBER OF CLAIMS DENIED/WITHDRAWN/ABANDONED		1,755	
TOTAL CLAIMS WITH AWARDS ISSUED		2,680	
AWARD DETAILS -- ELIGIBLE PHYSICAL INJURY CLAIMS			
TOTAL ALL CLAIMS WITH AWARDS ISSUED			
TRACK A	89%	2,387	$842,214,950.99
TRACK B	11%	293	$210,939,583.57
TOTAL AWARDS ISSUED		2,680	
TOTAL AMOUNT AWARDED			$1,053,154,534.56
AVERAGE AWARD			$392,968.11
MEDIAN AWARD			$108,746.50
MAXIMUM AWARD			$8,597,732.00
MINIMUM AWARD			$500.00
MINIMUM OFFSET			$0.00
MAXIMUM OFFSET			$2,972,238.00
AVERAGE OFFSET			$168,002.64
MEDIAN OFFSET			$0.00
TOTAL ECONOMIC & NON-ECONOMIC AWARDS BEFORE OFFSETS			$1,503,401,607.83
TOTAL OFFSETS (ALL CLAIMS)			$450,247,073.27
CLAIMS WITH ADVANCE BENEFITS (20 claims)			$500,000.00
CLAIMANTS RECEIVING STRUCTURES (In whole or in part) 3 Claims			$8,986,571.00

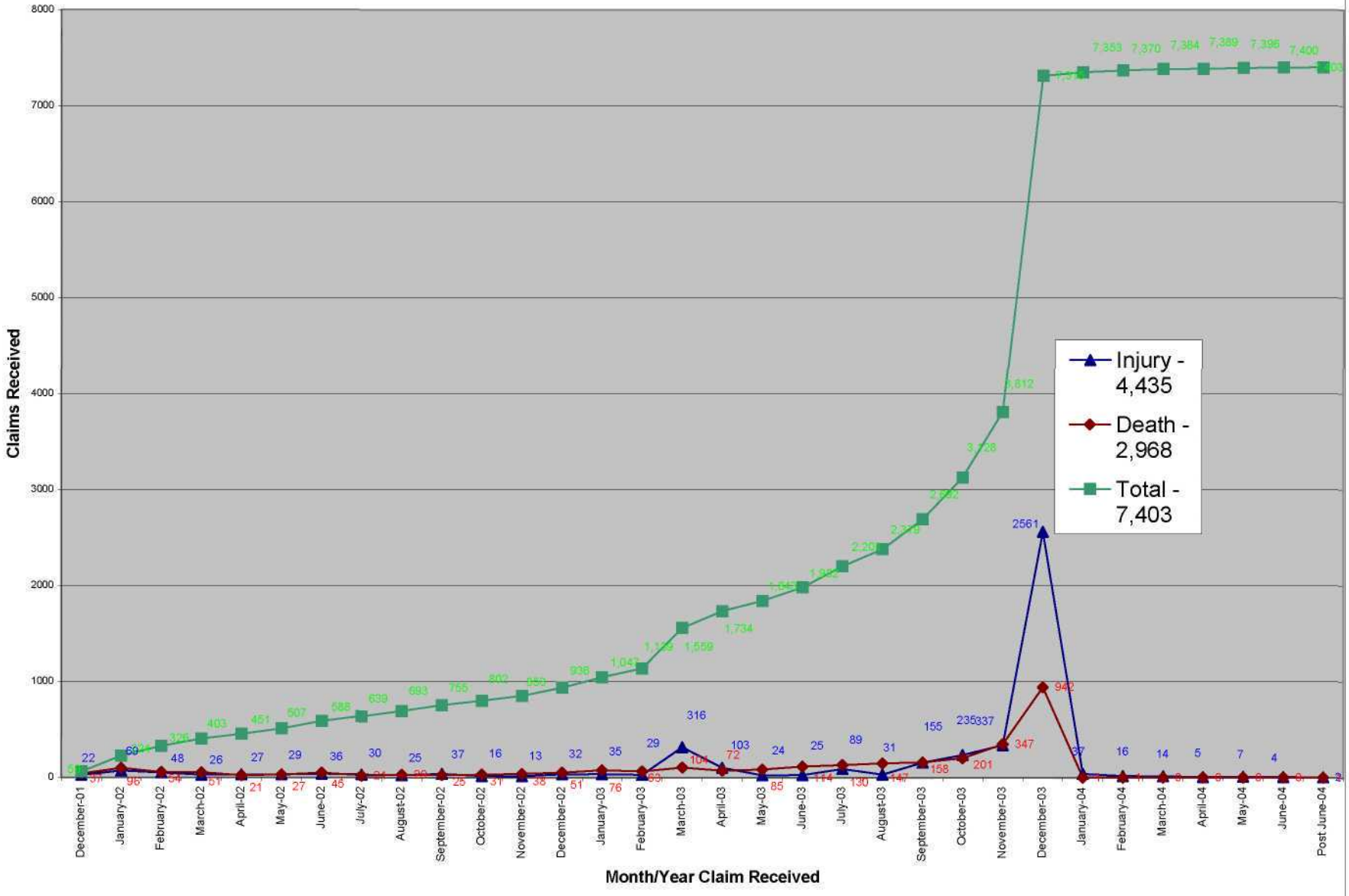
SUMMARY OF HEARINGS FOR ALL CLAIMS
RECEIVED

TABLE NO. 13

HEARINGS - ALL CLAIMS (7,403 CLAIMS FILED)				
	TRACK A	TRACK B	TOTAL	% of CLAIMS FILED WITH HEARING(S)
AWARD HEARINGS	1,302	1,742	3,044	
ELIGIBILITY HEARINGS	653	109	762	
OTHER OFFICIAL HEARINGS	91	65	156	
TOTAL (3,962 Hearings on 3,629 Claims)	2,046	1,916	3,962	49.00%
HEARINGS - DEATH CLAIMS (2,880 DEATH CLAIMS WITH FINAL AWARDS)				
	TRACK A	TRACK B	TOTAL	% OF DEATH CLAIMS WITH HEARING(S)
AWARD HEARINGS	518	1,455	1,973	
ELIGIBILITY HEARINGS	6	2	8	
OTHER OFFICIAL HEARINGS	32	61	93	
TOTAL (2,074 hearings on 1,977 Claims)	556	1,518	2,074	68.60%
HEARINGS - PHYSICAL INJURY CLAIMS (2,680 PHYSICAL INJURY CLAIMS WITH FINAL AWARDS)				
	TRACK A	TRACK B	TOTAL	% OF PHYSICAL INJURY CLAIMS WITH HEARING(S)
AWARD HEARINGS	783	283	1,066	
ELIGIBILITY HEARINGS	331	62	393	
OTHER OFFICIAL HEARINGS	30	2	32	
TOTAL (1,491 hearings on 1,265 Claims)	1,144	347	1,491	47.20%
CLAIMS WITH MULTIPLE HEARINGS -- (CLAIMS WITH FINAL AWARDS)				
	# of Claims	% of Claims with Multiple Hearings		
CLAIMS WITH MULTIPLE HEARINGS – ALL CLAIMS WITH FINAL AWARDS	285	5.13%		
CLAIMS WITH MULTIPLE HEARINGS – DEATH CLAIMS WITH FINAL AWARDS	62	2.15%		
CLAIMS WITH MULTIPLE HEARINGS – PHYSICAL INJURY CLAIMS WITH AWARDS	223	8.32%		
HEARING OFFICERS:				
	# of Hearing Officers	# of Hearings		
Special Master	1	931		
Deputy Special Masters	3	166		
Administrative Law Judges	52	1,209		
(47 From Federal Agencies/4 Pro Bono)				
Department of Justice Attorneys	24	1,656		
Total	80	3,962		

Receipt of Claims Timeline*

TABLE NO. 14



*Of 108 claims received after the 12/22/03 deadline, 11 were accepted as timely based on a finding by the Special Master that the Claimant had taken sufficient action prior to the deadline to effect a timely filing. All others were denied.

CLAIMS
PROCESSING STATISTICS

TABLE NO. 15

	OverallAverage No. of Days for processing	Overall High Average	Overall Low Average
ALL CLAIMS			
COMPENSATION FORM RECEIVED TO SUBSTANTIALLY COMPLETE	128	275 12/1/01 - 5/31/02	80 12/23/03 - Current
SUBSTANTIALLY COMPLETE TO FINAL AWARD DETERMINATION	58	68 6/1/03 - 11/30/03	35 12/23/03 - Current
COMPENSATION FORM RECEIVED TO FINAL AWARD DETERMINATION	186	323 12/1/01 - 5/31/02	114 12/23/03 - current
FINAL AWARD DETERMINATION TO PAYMENT AUTHORIZATION*	20	42 6/1/02 - 11/30/02	15 12/23/03 - current
COMPENSATION FORM RECEIVED TO ELIGIBILITY DENIAL	84	358 12/1/01 - 5/31/02	43 12/23/03 - current
COMPENSATION FORM RECEIVED TO PAYMENT CONFIRMED	261	472 12/1/01 - 5/31/02	183 12/23/03 - current
DEATH CLAIMS			
COMPENSATION FORM RECEIVED TO SUBSTANTIALLY COMPLETE	97	195 12/1/01 - 5/31/02	57 12/23/03 - Current
SUBSTANTIALLY COMPLETE TO FINAL AWARD DETERMINATION	75	83 6/1/03 - 11/30/03	47 12/23/03 - current
COMPENSATION FORM RECEIVED TO FINAL AWARD DETERMINATION	172	245 12/1/01 - 5/31/02	102 12/23/03 - current
FINAL AWARD DETERMINATION TO PAYMENT AUTHORIZATION	25	57 6/1/02 - 11/30/02	17 12/23/03 - current
COMPENSATION FORM RECEIVED TO ELIGIBILITY DENIAL	169	418 6/1/02 - 11/30/02	87 12/23/03 - current
COMPENSATION FORM RECEIVED TO PAYMENT CONFIRMED	259	472 12/1/01 - 5/31/02	177 12/23/03 - current
INJURY CLAIMS			
COMPENSATION FORM RECEIVED TO SUBSTANTIALLY COMPLETE	162	385 12/1/01	87 12/23/03 - Current
SUBSTANTIALLY COMPLETE TO FINAL AWARD DETERMINATION	39	46 12/1/01 - 5/31/02	31 12/23/03/- current
COMPENSATION FORM RECEIVED TO FINAL AWARD DETERMINATION	201	431 12/101 - 5/31/02	118 12/23/03 - current
FINAL AWARD DETERMINATION TO PAYMENT AUTHORIZATION	15	15 12/1/02 - 5/31/03	14 12/23/03 - current
COMPENSATION FORM RECEIVED TO ELIGIBILITY DENIAL	81	357 12/1/01 - 5/31/02	40 12/23/03 - current
COMPENSATION FORM RECEIVED TO PAYMENT CONFIRMED	264	472 12/1/01 - 5/31/02	184 12/23/03 - current

*The Act requires the Special Master to authorize payment of a claim within 20 days of the final determination. *See* Act §406(a). However, in certain cases, the claimant waived his/her right to this requirement, typically to allow the claimant additional time to make alternative payment arrangements (*e.g.*, structured payments, payments into court-appointed trusts). Due to the complexity of these arrangements, it generally took longer than 20 days to authorize these payments.

COSTS ASSOCIATED WITH THE ADMINISTRATION
OF THE
SEPTEMBER 11th
VICTIM COMPENSATION FUND

TABLE NO. 16

STAFFING & COST ANALYSIS THROUGH SEPTEMBER 30, 2004	NUMBER OF STAFF	ESTIMATED COSTS
I. THE FEINBERG GROUP, LLP -- THE SPECIAL MASTER'S OFFICE	15	$0.00
Kenneth R. Feinberg and the Legal, Administrative and Support Staff of The Feinberg Group worked in excess of 19,000 hours during the period beginning November of 2001 through the present. The value of this time is estimated to be in excess of $7.2 Million.		
Out-of-Pocket Expenses		$ 404,000.00
II. PricewaterhouseCoopers, LLP (Including costs paid to subcontractors by PWC)	129 - 474	$ 76,511,000.00
(Total Estimated Costs for PWC reflect actual costs and obligated funds through Fiscal Year 2004)		
III. GOVERNMENT EMPLOYEES ASSIGNED TO THE PROGRAM		
Civil Division Employees (Salaries & Benefits)	13	$ 2,968,000.00
Assistant United States Attorneys	15	$ 636,000.00
Department of Agriculture Detailee	1	$ 63,000.00
IV. ADMINISTRATIVE LAW JUDGES FROM THE FOLLOWING AGENCIES	47	$ 679,000.00
Department of Housing and Urban Development		
Department of Labor		
Environmental Protection Agency		
Federal Energy Regulatory Commission		
Federal Mine Safety & Health Regulatory Commission		
National Labor Relations Board		
Social Security Administration		
United States Coast Guard		
United States International Trade Commission		
V. ASPEN	10 – 50	$ 4,674,000.00
VI. CACI	3 -- 10	$ 862,000.00
VII. CONSULTANTS		$ 76,312.00
VIII. PRO BONO ATTORNEYS & HEARING OFFICERS		
2 Pro Bono Attorneys	2	$0.00
4 Pro Bono Hearing Officers	4	$0.00
TOTAL COSTS TO DATE		$ 86,873,312.00

TOTAL COSTS REPRESENT 1.2% OF TOTAL AWARDS