

## LECTURE

*Kenneth R. Feinberg\**

Why am I here in Alabama, even for a few hours? There are a couple of reasons that I am here in Alabama. First, I was invited to come by Dean Kenneth Randall, and when you get a letter from the Dean of a distinguished law school, you try to fit the invitation into your schedule—especially since The University of Alabama is a place I have always wanted to visit because of my long relationship and friendship with Senator Heflin of Alabama. The second reason I am here is one of the nation's foremost public interest litigators, Suzette Malveaux. She asked me to come and I've learned in a very short period of time, knowing Professor Malveaux, that when she asks you to do something, you'd best try to accommodate her. It has not gone unnoticed throughout the country that people of such caliber have joined a distinguished faculty. And that is why I jumped at the chance to come to a law school which really, by all accounts, is one of the best and most progressive moving forces in legal education. It's really an honor to be here.

What I thought I would do is spend a few minutes just talking about the fund and then throw it open to questions because this is a very distinguished group and I really want to encourage some dialogue. Anything that I fail to say about the 9/11 Fund, just ask Tom Henderson. You know, Tom Henderson is one of a half-dozen people responsible for this law. This is a law that was enacted within a few weeks after 9/11 by Congress, and it wouldn't have happened without people like Tom Henderson who had his thumb on the need for something like this and helped, with others, to pull it off. So I may miss a few nuances or technical points about the law, but if you want to know more about the law after I leave with a trail of questions unanswered, he's going to be here for a few days. Take advantage of it.

Basically, the law can be easily explained. The law is simple to read and hideously complex to implement and administer. The law simply says that anybody who lost a loved one on 9/11 or anybody that was physically injured on 9/11 as a result of the 9/11 terrorists attacks is eligible for federal, tax-free compensation, funded by you, the taxpayer. It's that simple. No one has to participate. You have an option. If you want, you can—instead of entering the fund—go to court and litigate against the airlines, the World

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\* Special Master, September 11th Victim Compensation Fund. Mr. Feinberg delivered this lecture at The University of Alabama School of Law on April 8, 2004, as a Distinguished Guest Lecturer.

Trade Center, the Security Guards, the Port Authorities, whatever. You can do that. But if you voluntarily would rather come into this administrative, no fault, quick, efficient scheme, set up by Congress, you can get a check from the taxpayers, tax-free. But, you must forego your right to sue. Virtually everybody has decided to come into the fund. The number of people who have elected to sue rather than commit to the fund is less than one hundred. Some 97% of all eligible families signed up to enter the fund.

Now, the statute then goes on to say that if you decide to come into the fund, there is a formula to compensate eligible claimants. And, that formula will be administered by one person, the Special Master, appointed by the Attorney General of the United States. No appeals, no committees. One person will receive your application, calculate an award and render a check. And the formula that the Special Master shall use for all eligible victims or families is found in the statute.

One, the Special Master shall calculate the economic loss suffered as a result of the death or physical injury of the victim. Well, that's clearly stated. I shall calculate what a victim would have earned over her or his lifetime, but for 9/11. That is a tort-based concept. Juries in Tuscaloosa do it every day. They calculate what the victim would have earned over a lifetime but for the injury or death. That's what the statute says I must do. And that is the first part of the formula.

Then, the statute says I shall add to that number non-economic loss. Again, that's tort-based: the pain and suffering of the victim, the emotional distress visited upon the family who survived. That shall be added to the economic loss. That's what the statute says—right in bold print.

Then, the statute says that the Special Master shall subtract from that amount collateral sources of income like life insurance, workers compensation, social security death benefits, disability death benefits, and other sources of income. That, as you know, is not a tort-based concept. That is a social welfare-type concept designed as a safety net for people who otherwise don't have any other sources of income. That is alien to the tort system. That is a social welfare administrative concept. But that's part of the formula.

But Congress didn't stop there. It said that there shall be a fourth element that is part of this formula: after the Special Master computes those numbers, he shall exercise his discretion to make sure that justice is done. Well, thank you very much! Basically, Congress said, after you calculate pursuant to this formula, Ken Feinberg, make sure that it's fair. And as you all know from watching television, for the first year and a half, practically every family that visited with me decided that I was unfair. That has turned around dramatically in the last year or so.

That's the formula. It's right there in the statute. I can't change it. The statute also says, "no appeals." Whatever the award, you signed up, you decided not to sue, you are stuck with that award. There's no remedy beyond the Special Master.

Now, this statute may be simple to read. You can read it in five minutes. Trying to solve the problems that arise in the administration of the statute, however, will test anybody's skill, judgment, personality, and character. It is very, very difficult to administer this statute. And I will tell you why. I will give you three or four of the biggest problems Congress left unanswered when they drafted and enacted the law.

One, I have to predict, calculate, and decide what some victim would have earned in the future. Life is extremely unfair. Curve balls are thrown every day in all of our lives. The crystal ball is very murky. Asking me to calculate what a loved one who was lost on 9/11 would have earned over a lifetime is very difficult. Juries in Alabama do it every day, but they do it out of the public eye. They do it collectively. They do it in the jury room, in private deliberations. That's the way the jury system works in every village, hamlet, and city in this country. Asking one man in Washington to calculate what thousands of people would have earned over a lifetime? I could take the distinguished group in this room, all very accomplished people, give you a fact pattern, and ask you to calculate an amount of money, put it in an envelope, and seal it. You tell me what a person would have earned over a lifetime. I bet I would receive one hundred different answers. I don't think any of us would come up with the same number. Asking me, without an appeal procedure, to render a decision on economic loss—that is a tough call. And I do it every day. But it isn't easy.

“Mr. Feinberg, I lost my son on 9/11. He was a first year associate at a distinguished law firm in the World Trade Center. But when you calculate his economic loss, I know he would have been a partner in eight years. And I know he would have been the managing partner. They would have changed the name of the firm from Brown and Smith to Brown, Smith and Jones. So, you'd better calculate around \$500,000 a year instead of \$81,000 a year.”

“Well, I can't do it.”

“Don't tell me you can't. You have all the power, you can do whatever you want.”

That's the first problem—calculating economic loss.

The second problem with the statute is non-economic loss. Now, that, I solved very simply. I told all of the families straight out:

“If you think I am going to make distinctions between the pain and suffering and emotional distress of one victim and one family versus another, you have another thing coming. I'm not able to do that. I'm not going to say the person who lived twenty extra minutes, on the 86th floor, is entitled to more pain and suffering than the person killed instantly. I can't. First of all, I have no way to calibrate that.

And second, I'm not going to fuel divisiveness among you by doing that. Everybody gets the same non-economic loss: \$250,000 for the death of the victim and \$100,000 for every spouse and surviving dependent. That's it."

True, I have discretion to vary that. I think I have exercised my discretion in no more than a half-dozen death cases. In physical injury cases, I have wide discretion in calculating pain and suffering depending on the nature of the physical injury.

By the way, as you probably know, with physical injuries, serious physical injuries, you can count the number of cases on two hands. You either got out of those buildings and planes or you didn't. The number of really serious physical injuries—burn victims, horrible, traumatic injuries—was small. The hospitals were open, but nobody came. Either they escaped or they died. So, the number of really serious injuries is very limited, and we're paying \$7.5 million or \$8 million to a couple of burn victims who were burned over 85% of their body. But the injury side of the fund is mostly respiratory claims—inhaling the fuels and debris where the buildings came down.

In death cases, I have a standard non-economic formula. I wasn't going to make distinctions and I think that decision has gone over quite well. In fact, everybody, all the families, came together and criticized the amount. So that's a good thing. They didn't agree on anything except that the amount was too low. So I did something good. I had them all talking to one another in a collective way.

The third problem is very interesting. This is a problem that few people focus on. Nowhere in the statute does it say who shall receive the money and who can apply on behalf of the family.

"Mr. Feinberg, make sure my brother doesn't get a nickel. He's not to be trusted and the victim didn't even like him."

"Mr. Feinberg, did my mother come here to tell you she doesn't trust me? My mother never got along with anyone, so I should get all the money."

"Mr. Feinberg, I'm a fiancé. I was going to be married October 11th. I should be treated like a spouse. The marriage was imminent."

Father of the victim: "Did she say they were going to get married? Never would have happened. I'm sure."

"Well, Mr. Jones, the invitations went out. You held a shower."

"Oh, he was going to call it off. She shouldn't get a nickel."

Well, I can't get involved in this. I don't know who's right or wrong in these matters. I haven't got the time or knowledge to referee family disputes which, by the way, get more serious and more vitriolic as the dollars go up. I can't get into that. What do I do? I think that I came up with a rather creative solution. I looked to the intestate and wrongful death laws of the state of the victim's domicile. That's all I can do. If there was a will, I followed the will. Only 25% of the victims had wills. These people were young, so nobody thought they needed a will. I looked to the law of the state, for example, New York. If you died without a will in a car accident or you fell off a ladder, fifty percent to the spouse, the other fifty percent to the children. No spouse, no children, all to the biological parents. That's it. Now that, of course, doesn't do much for the fiancé or the same sex partner. And as for those, I managed almost always to work out a voluntary solution. Most of the time. There have not been many—I'd say forty—squabbles where the claimants did not agree and they'd come to me. Usually, I sat them down and I worked it out. If not, go fight in circuit court or probate court.

And, finally, the toughest problem. The program doesn't provide anywhere in the statute for an appeal. It prohibits it. But we decided that what Congress meant was an appeal to the judiciary. So, we established an administrative appeal process. Anyone who doesn't like their award can come talk to Ken Feinberg, personally, or his designee if there are too many of you. And, you have a chance to meet face to face and try to explain why you think the award is too low. The appeals process has worked very well, except it is extremely difficult, as I do fifteen hearings a day with bereaved parents, and spouses, and children, coming to tell me stories about how they lost a loved one. It can't help but have a tremendous psychological impact on you. The stories you hear make you appreciate life, and the vicissitudes and uncertainties of life.

“Mr. Feinberg, my husband was a fireman. He was over at the World Trade Center and he helped thirty people escape, and he brought them across the street to safety. Then he saw another five or six over at the World Trade Center in the lobby meandering around, not knowing how to get out. He ran back to help them. While he was running across the plaza, he was killed when somebody jumped and hit him. If he had only moved one step either way. But somebody on the 90th floor jumped out of the building, fell to her death, and hit him full square and killed him.”

What do you say to a wife? What can you possibly say to something like that?

“Mr. Feinberg, my son got out of the Pentagon. He thought his sister was trapped, so he went back in to look for her. She got out a side door. He died looking for her.”

Money is all I can offer. Small solace, but that's what the government offers in the way of help.

Has the program worked? The statistics tell you. Ninety-seven percent have signed up. It will cost the taxpayers about \$7 billion by the time the program ends on June 15th. Based on the statute, the average award for a death claim is, tax-free, about \$2 million. The median award, a much more important number, is about \$1.7 million. Half the people get more than \$1.7 million; half the people get less than \$1.7 million. The awards range, for death, from a low of \$500,000 to a high of about \$7 million. On the physical injury side, the awards range from a low of \$500 to over \$8 million to a burn survivor who escaped the World Trade Center with third degree burns over 85% of her body. Over \$8 million.

Now, before I take questions, I want to leave you with two questions about this program that go to the heart of our nation that are not only political questions, but, I think, philosophical questions. And, I want to leave them with you because I want you to mull over them, and maybe discuss them in Suzette's class, in Dan's class, in Torts, in Remedies, in Legislation.

Question number one. Is this program a good idea? Now, before you say it's a great idea, I happen to think it is. I think it's a wonderful example of immediate, compassionate legislation. Only in America could you see this program. No other nation on earth will ever do anything like this. We have never done anything like it before. But be careful in agreeing with me. Read some of the letters I get:

"Dear Mr. Feinberg, my daughter died in Oklahoma City. Where's my check?"

"Dear Mr. Feinberg, my husband died in the African Embassy bombing in Kenya in '98. Where's my check?"

"Dear Mr. Feinberg, my son died on the U.S.S. Cole in Yemen by a terrorist attack. How do I apply for the fund?"

"Dear Mr. Feinberg, I don't get it. My daughter died in the first World Trade Center in '93, committed by the very same people. How come I'm not eligible?"

And it doesn't stop there:

"Dear Mr. Feinberg, last year my husband saved three little girls from drowning in the Mississippi River. And then he went under, a hero. How do I apply to this fund?"

"Dear Mr. Feinberg, my fourteen year old daughter was walking down the street on the sidewalk when she was killed by a hit-and-run drunk driver. How do I apply to the fund?"

Can we justify, in a free society like ours, carving out for special treatment a very small, defined group of people? Can we do that fairly? Or when you step back from the emotion of it, do you say this is well-intended, but it's a bad idea because we are making arbitrary distinctions among American citizens? That is wrong. Bad public policy. Or do you say 9/11 is "different," and it justifies this type of special treatment? A unique response to a very unique historical event. That's question number one.

Question number two—equally difficult. Even if you assume that the program is wise, good, sound public policy, did Congress do the right thing in stating in the law that everybody who is eligible will receive different amounts of money? Or, would it have been wiser for Congress to say that everybody gets the same? Now, this is very problematic and fuels a good deal of divisiveness among the families.

"Mr. Feinberg, let me make sure I understand this. My husband died a fireman, rescuing people from the World Trade Center. A hero. You're giving me \$1 million. The banker on the 103rd floor, working for Enron, you're giving him \$3 million. I don't get it. You're demeaning my husband's life. Why are you giving me \$1 million, and the banker's widow is getting \$3 million?"

That's one problem. And then, this problem. Remember the formula:

"Mr. Feinberg, let me make sure I understand this. I would normally be entitled to \$3 million because my husband was a banker, but you offset \$2 million of life insurance because we sat down and planned for the future wisely. So, you're leaving me net \$1 million. Now, my next door neighbor whose husband was a banker, she gets \$3 million because they didn't buy life insurance. Instead, they went to Las Vegas and spent the premium dollars. Now, I guess I'm missing something, Mr. Feinberg. Why are you penalizing me for wise financial planning, when my next door neighbor, the spend-thrift, gets two extra million?"

"Well, ma'am, what would you like?"

"I'd like my \$3 million and \$2 million. That would be fair."

So, these problems are very real issues in a free society like ours. If this happens again, what's the answer to these two questions? Should we enact such a law again? And, if we should, should it work the same way? Those are some of the tough questions. Now I don't deal with these two questions every day because Congress has spoken. I give a glib answer:

"Well, the law is the law."

Two weeks ago, you may have read that Mrs. Pearl, whose husband Danny died in Pakistan, killed by terrorists, came to me.

“Why aren’t I eligible?”

“Mrs. Pearl, maybe you should be eligible, and maybe the 1993 World Trade Center people should be eligible, and maybe Oklahoma City people should be eligible. But I can’t help you. I administer the law in front of me.”

But, that’s glib. That’s not a very good answer, although that’s the only answer I can give now.

“Mrs. Pearl, go see your Congressman.”

And, the answer I give to the firefighter’s widow who wants as much as the banker’s widow is:

“I’m sorry. The law is the law. I’m administering the law.”

But those are tough questions.

Question: How does one qualify as a victim and how does the statute define a victim? What is your discretion to define a victim and how directly does the death or injury have to be connected to the events on 9/11?

Answer: The statute says “9/11.” Well, that’s all right for deaths, because you have the World Trade Center, the airplanes, and the Pentagon. It’s easily defined. But, in implementing the statute, we had to decide what constitutes an eligible “physical injury.” Someone could be watching the planes hit the World Trade Center and slip on a banana peel on East 68th Street and say, “I received a physical injury on 9/11.” So, how did we define the universe of eligible injury victims? Well, we did it by regulation. You had to have a physical injury, not a mental injury. Don’t file a claim with post-traumatic stress disorder. You had to have a physical injury, and that physical injury had to occur within a defined radius of the World Trade Center or the Pentagon. And you must have received medical treatment within 72 hours of your injury. That was designed by us to make sure that we compensated the most serious injuries. And we made these decisions by regulation. I’m not sure if everyone is happy with these decisions. But we felt there has to be some limitation. I think it worked very well, but it’s a tough issue. People would say:

“You know my husband died of a heart attack in Jersey City watching the planes hit.”

“Sorry, you weren’t in the range, in the zone. We can’t do it.”



I'm not sure that's right, but I think it's fair.

Question: You came up with a number of innovative solutions for really tough problems. Did you perceive these problems at the outset or was it more of a process?

Answer: We foresaw most of the problems, except one. I vastly underestimated the degree of emotion and grief visited upon these families so soon after 9/11. My experience in mass disaster cases comes through the litigation system—Agent Orange, Dalkon Shield, breast implants, heart valves—all mass torts where the victims wait for years before it gets to me. Here, Congress passed this law within weeks of 9/11, and within four or five weeks I was meeting with families. And I'm the only visible government official to whom they can address their grief. I'm used to dealing with good lawyers, and I'm used to dealing with families five or six years after the tragedy. The idea that I would be thrown into the lion's den with families weeks after 9/11—this was very difficult. And the tension was not sufficiently ameliorated by me during the first few months of the program. Flash ahead to the last 18 months; time has passed. People have to move on. Wives, husbands with little kids, they've got to move on. And there is much more comfort and familiarity with the program. This is human nature. There is much more willingness to accept the government's offer of help. So, for me, the first year and the last 18 months are like Pluto and Earth in terms of the attitude of the families and maybe the attitude of the Special Master. I must say, I learned a lot about human nature. I should have spent a little more time, I think, dealing with the emotional side of these families. It's just courageous that they can even go forward at all after this tragedy.

Question: How difficult has it been to locate and identify these collateral sources of compensation?

Answer: Not hard. We asked everybody who filed a claim to list all of their collateral sources. We know most of them. Identify social security, workmen's compensation, pension, and life insurance. There are only so many. We didn't offset private charity. Don't forget—lost in the shadow of 9/11—is this compelling fact: never in American history have the American people given so much private charity to one event. I believe around \$2.7 billion in charity. The charities can't get rid of the money fast enough. The problem is: Do we offset collateral sources of income including charity? Some members of Congress said:

“You know, you should really offset charity.”

Well, I went and met with the charities. I said:

“You know, under the statute, it says I should offset collateral sources of income. It doesn't say charity, but isn't charity a collateral source of income, and shouldn't I offset it?”

I got two answers from the charities:

“One, no you can’t offset charity because the donors, the private citizens who gave this money, never intended that they would be subsidizing the federal government. The idea that you are using private money to offset the taxpayers’ money won’t sit well and is contrary to the intention of the donor. Second, if you do decide to offset charity, we’re going to stick it to you because we’re not going to distribute any of the charity money until you distribute your federal money and that way you can’t offset it.”

The minute I heard that argument I blinked. I’m going to be responsible for holding up the distribution of \$2.7 billion dollars? We’re not offsetting charity! And that sat well with most of Congress and the American people who, after all, gave the charity money. And I think they felt it shouldn’t be offset, so we didn’t. I’m not sure if we were right about that. Frankly, I think Congress intended for all collateral sources to be counted, but we felt it just wasn’t practical.

Question: I’m curious about how the justice component of your decision played out in cases. Did you actually use that to a great extent?

Answer: Yes. It’s a very difficult question to answer. In the exercising of my discretion, in raising awards, or in lowering awards, or adjusting awards, what went into the “justice” component? What circumstances made me act somewhat like Solomon in making sure justice was done? Most of the areas involved “need.”

“Mr. Feinberg, I need ‘x’ dollars. This is my only source of income. I have five children. My economic loss and non-economic loss is \$500,000. I have five children under the age of 12. Help.”

That’s an example. Economic need.

Then, you get other problems—not directly attributable to economic need, but sufficiently related so you can’t turn your eyes away from a request.

“Mr. Feinberg, I lost my husband and I have two children. I need more money because I have terminal cancer and my two children will be orphans within three months. Won’t you please take that into account?”

Yes, of course I’ll take that into account. I’ll raise the award substantially. But this emphasis on justice is unbelievably complex. Let me give you an example.

“Mr. Feinberg, I’m here for my hearing. Now I see you’re only giving me \$4 million. I need double that. I can’t get by with \$4 million. I need \$8 million. My husband was earning, at the age of 38, \$3 million a year. If you compute the economic loss, you owe me \$26 million. You’re not giving me that. You exercised your discretion and reduced my award. Okay, I understand I can’t get double digit millions. But I need about \$8 million. And if I can’t get \$8 million, I want to tell you something. One, I have four kids. I’ve got to pull them all out of private school. They’ll have to go to public schools. That’s what I’m going to have to do. The Mercedes, gone. I’ll have to buy a Saturn or Ford, or Honda. I can’t keep the Mercedes. And worst of all, if I don’t get \$8 million, you’re going to make me sell my \$4 million property in Southampton on the Long Island Shore. Now, I want to tell you something about justice, Mr. Feinberg. You can sit here and tell me I don’t ‘need’ all those things. Don’t tell me what I ‘need.’ Have you been out to Southampton with my kids, which is the only place they can go to get away from the horror of knowing their father died on 9/11? My husband and I sat and planned for these kids to go to Exeter and Andover. You can tell me, ‘Well, you don’t need it. The public schools in New Jersey are fine.’ Easy for you to say. Have you visited the public schools, Mr. Feinberg?”

Now let me just say, I sit and explain to people:

“I understand that Mrs. Jones. I’m not putting myself in your shoes, but I cannot make you whole. I cannot give you \$8 million tax-free. I don’t think Congress ever intended that.”

Well, she looks and says to me:

“That’s fine but you’re really telling me it’s your decision. You’re the bottom line and that’s it. But I don’t think it’s just. Because it isn’t just. And what would be just is \$24 million. But I understand you cannot do that, so \$8 million is just. Thank you very much.”

And she leaves. Now, what goes into the definition of justice? What we do is a surrogate for justice. We try. We try to be fair. And fair to me is consistency. I have to be able to explain my blueprint to myself, to my staff, to my family, to the experts, to the Congress, to my boss, the Attorney General. If you ask me: Who is the one person in the United States that you have counted to come through in making this program work—one person? It’s the Attorney General, John Ashcroft. He has been behind me 105% from the day he appointed me. What’s most important is that all people who lost loved ones know that we treated everybody fairly. That’s not an easy thing

to convince people, but that's the best we can do. But I must say about that woman seeking \$8 million, I'm not going to say she's wrong. I don't know.

Question: In determining what's fair and just, did you do that personally, or did you have a panel, or use consultants? How did you arrive at a figure?

Answer: We had a group of people. I don't sit and calculate for three thousand claimants and then another four thousand more physical injury claims. We've got hundreds of people at PriceWaterhouse—they've done a fabulous job on contract to the Department of Justice. They do a great deal of physical operations work and the initial calculations. I've got about fifteen lawyers on my staff in Washington. All of this is done out of Washington. Even the New York cases are done out of Washington. We do the final calculations, the legal questions about distribution, and all of that. I've got four fabulous lawyers at the Justice Department. I've got a couple of people at the Office of Management and Budget who helped us draft the economic methodology and the numbers. And, I've got a couple of people from the Bureau of Labor Statistics and the Bureau of the Census. These people are amazing. All these statistics about demographics, about the country, how much a person on Wall Street earns working four days a week in New York. They have all that information at their finger tips. Then, there's the outside help. Tom Henderson got together the trial lawyers—fourteen hundred lawyers to represent these people for free. The program would have floundered. It would have been a disaster. He met with his group, The American Association of Trial Lawyers, and they put together a settlement team. Anyone who wants a lawyer for free to help with the fund, just call this number, we'll provide you a lawyer.

Question: God forbid there is another 9/11 ten years from now. Congress is again thinking of setting up a fund. Who do they go to for help drafting the new statute? Do they go to the previous Master and say, "Mr. Feinberg advise us on creating a statute." What statute do you tell them to draft?

Answer: Now your question makes a big assumption: they'd do it again. Now that's the first question, will we do it again? Assuming we will do it again, what statute do we draft? I think we'll have to adjust somewhat how we go about compensating people. This idea about giving different amounts and asking me to predict—it's tough. On the other hand, it's sort of the American way. Juries do it everyday. The idea that everybody gets the same whether you are a dishwasher or banker, that is not the law of torts. And social security is based on what you earn, so I don't know exactly how else we would approach it. I'm not sure.

Question: If this was to ever happen again, what role does the judiciary play? For example, if this happens again and it wasn't as clear cut as the tragedy on 9/11, and the legislature wanted to come out and make a fund,

but there was a large contingency of people who thought the fund would be unconstitutional, does the Supreme Court have some say? Do they have the ability to strike down such a fund down?

Answer: Absolutely. I was challenged twice. A few sued me in federal court in New York, claiming I was abusing my discretion under the statute in reducing high-end claimants. And it went to the district court which threw out the complaint. It went to the Second Circuit for full oral argument. They affirmed and said that what I was doing was proper under the statute. But, the claimants could have taken the case to the Supreme Court if they had wanted. One issue has never come up. Congress says if you want to sue and not come into the fund, there's only one place you can sue: federal court in New York City. Now this is questionable constitutionally. The idea that in a tort case—if you sue the airline—you can only bring the case in federal court in New York is somewhat problematic. Federal courts have limited jurisdiction. And the idea that you must bring the case in federal court, not have it removed from the initial filing in state court, is problematic. It starts in federal court. Congress should have said it could automatically be removed from state court. That would have solved that problem. But, the idea that it could be brought only in federal court and only in New York is an issue. Someone could have brought a lawsuit on that ground. Nobody did. Yes, I think this is a statute like any other statute. It can be challenged in court. It can be reviewed in court.

