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Roger Williams University School of Law

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# Newsroom

## Financial Times Cites Logan on BP

Dean David Logan explains why the compensation fund set up by BP for victims of Gulf of Mexico oil pollution could prove unattractive to claimants.

The [Financial Times](#) of London recently quoted **Dean David Logan** on the feasibility of BP's compensation fund for victims of the Gulf oil spill:

### Compensation pot 'unattractive'

*By Michael Peel, Legal Correspondent*

**June 24 2010:** The compensation pot set up by BP over the Gulf of Mexico oil pollution could prove less attractive to claimants than the fund for victims of the September 11 2001 terrorist attacks, legal experts said on Wednesday.

A higher proportion of potential fund applicants were likely to launch private lawsuits in the BP case, rather than forfeit their right to sue by signing up for the compensation deal, observers said.



The comments highlight how Kenneth Feinberg's 9/11 fund has parallels with his BP compensation foundation but is far from an exact model for how it will work.

Doug Kysar, professor at Yale Law School, said Mr Feinberg's main problem would be that BP seemed a more culpable and lucrative litigation target than were bodies such as airlines and the government after 9/11.

He said: "I just don't think [the fund] will be as attractive a compromise for plaintiffs in this case. There is a business case to be made for plaintiff lawyers to stay out of the fund and instead go to the courts and look for the jackpot verdict".

The taxpayer-financed 9/11 fund paid more than \$7bn to 5,560 people, with an average award for a death of just over \$2m (EUR1.6m, £1.3m). The take-up by victims and their relatives was almost total, with fewer than 100 choosing to launch private lawsuits instead.

The main selling point behind both the 9/11 and BP funds is their offering to claimants of a payout without the time, expense and risk of a court case.

Another dynamic pushing people towards the BP fund might be that many claims are likely to relate to hard-to-prove economic damage. The importance of these benefits was emphasised by the decisions of families of some high-salaried 9/11 victims to accept less money from the fund for loss of earnings than they might have secured from the courts.

As **Prof David Logan, dean of the Roger Williams University School of Law**, put it: "How could you prove how many shrimp you would have caught? How could you prove the number of buyers that were turned away from your condominium project?"

But other factors in the BP affair were likely to sway more potential claimants towards litigation than was the case after September 11, legal experts said. These included that the company was the obvious lead defendant in any lawsuit, whereas the legal targets post-9/11 were harder to identify and bring proceedings against. Claimants for economic loss in the BP case might also be better able to cope with the stress of court proceedings than were relatives of the September 11 dead.

BP has so far declined to comment on its legal position.

Mr Feinberg told the Financial Times that those who went to court in the BP case faced the risk of losing, the possibility of long delays in receiving their money even if they won, and lawyers' bills amounting to as much as 30 or 40 per cent of the proceeds. He said. "I continue to believe the claims facility is the best avenue."

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