

9-10-2010

Newsroom: Logan and Migliori on BP Fund Chief

Roger Williams University School of Law

Follow this and additional works at: https://docs.rwu.edu/law_archives_life

Recommended Citation

Roger Williams University School of Law, "Newsroom: Logan and Migliori on BP Fund Chief" (2010). *Life of the Law School (1993-)*. 66.

https://docs.rwu.edu/law_archives_life/66

This News Article is brought to you for free and open access by the Archives & Law School History at DOCS@RWU. It has been accepted for inclusion in Life of the Law School (1993-) by an authorized administrator of DOCS@RWU. For more information, please contact mwu@rwu.edu.

Newsroom

Logan and Migliori on BP Fund Chief

Dean David A. Logan and Adjunct Professor Don Migliori are both quoted by AOL News in this profile of BP Compensation Fund administrator Ken Feinberg.

AOL News on Sept. 10, 2010, ran "[Master of Disaster -- Ken Feinberg: From 9/11 to BP](#)" by Senior Washington Correspondent Andrea Stone.

WASHINGTON (Sept. 10) -- Kenneth Feinberg may have to rewrite the book on the Sept. 11 attacks.

In "What Is Life Worth?" -- his 2005 account of his experience as special master of the 9/11 Victim Compensation Fund -- the lawyer and mediator wrote that his work putting a value on the lives lost or scarred in the attack nine years ago Saturday was "the greatest challenge of my career."

That was before the BP oil spill.



Feinberg worked pro bono for 2 1/2 years to distribute more than \$7 billion to 5,562 people harmed by the terrorist attacks in New York, Washington and Pennsylvania. Now he is embarking on a three-year paid assignment to divvy up the \$20 billion BP compensation fund. So far, there are more than 50,000 claimants -- and counting.

Though far more people died on 9/11, that tragedy was "rather contained," Feinberg told AOL News in an interview. "Geographically, it was a limited group, whereas with BP we're talking about alleged harm in five states throughout the gulf. This is a much more pervasive, expanded claims cohort than in 9/11."

Just two weeks after his Gulf Coast Claims Facility opened, Feinberg is backtracking on a promise to do better than BP has in processing and paying claims promptly.

"I underestimated the time it takes to calculate economic loss," he said. More than 10,000 claims have been paid, but that is just a fraction of the total in the queue. In the case of 9/11, Feinberg worked under a mandated formula based on estimates of victims' lost lifetime income. In the case of BP, there are more variables to consider -- including as-yet-unknown effects of the spill -- and the need to limit claims to those in closest proximity to the Gulf of Mexico. "It can't be done with a silver bullet," he said.

If anyone can measure up to the daunting task, the nation's premier master of disaster can.

Before President Barack Obama gave Feinberg the BP job in June, the Treasury Department had employed him as executive pay czar for companies bailed out by the government during the fiscal crisis. After a gunman killed 32 people at Virginia Tech in 2007, the university asked Feinberg to administer a memorial fund for victims' families and those left wounded in the rampage.



From his first major case in 1984, when it took him six weeks to secure \$180 million for 250,000 Vietnam War veterans injured by the defoliant Agent Orange after an eight-year legal stalemate, to helping decide how much the Zapruder film of President John F. Kennedy's assassination was worth, Feinberg has been "the go-to guy" for mediation, said **David Logan, dean of the Roger Williams University School of Law.**

"He is going to be doing some of the work of Solomon again, saying who's deserving and who's not" in the BP disaster, Logan said. "But he's done that before. He's one of the great mediators and arbitrators in the country."

'A Better Listener'

Feinberg personally conducted nearly 1,500 hearings with survivors and family of 9/11 victims. The experience made him "a better listener," he said. Now his ear is tuned to residents at Gulf Coast town hall meetings.

"You learn from 9/11 and Agent Orange and Virginia Tech how diverse human nature is, how people react very differently to a tragedy: anger, frustration, disappointment, hope," said Feinberg, 64, a Brockton, Mass., native who has offices in New York and Washington but still speaks with a thick New England

accent. "You realize that one size does not fit all when you evaluate these claims. You're not dealing with a mass group of people but thousands of individuals with their own perception and perspective on the tragedy. You have to be flexible."

You also need, Feinberg said, "a stiff backbone" to tackle the kind of complex, politically charged disputes he has handled.

A former federal prosecutor and chief of staff to the late Sen. Edward Kennedy who once wanted to be an actor, Feinberg has come under fire from officials and businesses in Florida and Alabama who fear they will be shut out of BP compensation because the oil didn't directly hit most of their states' shores.

"The legal claims are diverse and the damages are very difficult to determine because it's uncertain when the environment will come back," said Ed Sherman, a law professor at Tulane University. "There is a reservoir of good feeling about him, but, of course, people want to see what happens, how quickly he can get the cash out on these emergency claims."

Under a "Protocol for Emergency Advance Payments" released last month, individuals and businesses have until Nov. 23 to file for interim compensation. That's separate from final lump-sum payments that claimants can agree to accept later in exchange for signing away their right to take legal action against BP.

Feinberg said he will rely on state laws to determine payouts. Some complain the setup is unfair because victims will be forced to settle before the full extent of the damage to the gulf is known.

"Ken understands how to formulate a compensation program that will be broadly acceptable to the different people involved," said Richard Nagareda, a resolution dispute expert at Vanderbilt University. "He has the ability to persuade people that they can litigate for years and may not get everything they want or can go with a more streamlined compensation program."

One pundit called Feinberg the "czar of the gulf," while an editorial page wished he could be cloned because of his singular renown "for allocating money wisely amid political and emotional firestorms." But he insists what he does is "not rocket science."

"I bring the credibility that goes with experience, but that credibility can go in an instant if you fail," he said. "It's very difficult, very emotionally wrenching because you have to have a stiff backbone."

'Why People Keep Coming Back'

Some people are left feeling stiffed themselves.

Alice Hoagland, whose son Mark died on Flight 93 on Sept. 11, said in an interview that Feinberg showed "remarkable callousness" toward families like hers that wanted to sue the airlines for lax security. She said she felt "bullied" by the mediator and her ex-husband to settle instead of going to court. "It was set forth to me as a no choice, and that's what's happening with the oil spill victims," she said. "He prides himself on coercing families."



Don Migliori, a lawyer for dozens of 9/11 families as well as victims in the gulf, said Feinberg may look independent because the White House assigned the oil spill case to him. But he charged that Feinberg is beholden to BP, which is paying his fee.

"The special master is really there to get claims paid for as little as possible as quickly as possible so that that liability goes away," he said. "The reason why people keep coming back to him is because he's able to use the media in a way to get people to come into his system, but in the end his system is designed to get relief for the wrongdoer. That was true in 9/11 and it's true here in BP."

Feinberg rejects such criticism. He said settlement is voluntary and anyone can sue BP.

"I don't believe I'm applying any undue pressure," he said. "I'm giving people options. They have to decide for themselves."

Stanford University law professor Robert Rabin defended Feinberg's integrity. "It seems out of the question that he would try to satisfy BP as a kind of payback for the salary that he's getting," he said. "He has a very deep commitment to public service and taking on challenges that are not just intellectually challenging but also have tremendous importance for the country."

Meredith Rothenberg, who lost her husband on Flight 93, agrees. She said Feinberg dealt fairly with her and she was "as satisfied as one can be in this kind of situation." Recalling their formal meeting at a Manhattan hotel, she said he tried to put her at ease. "He took his job very seriously and tried to do the best for the families," she said.

Tracey Lane, whose son Jarrett was killed at Virginia Tech, also praised Feinberg's "sympathetic" handling of her case. "He was as understanding as he could be," she said. "I could tell he had done this before."