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Keynote Address

Kenneth R. Feinberg

2015 GEORGIA STATE UNIVERSITY LAW REVIEW SYMPOSIUM: RISKY BUSINESS: THE ART OF REDUCING LITIGATION UNCERTAINTY AND SETTLING CASES

Kenneth R. Feinberg*

Now, this is a topic worthy of a symposium. In the work I do, there is a great deal of discussion about how the 9/11 fund, the GM ignition switch fund, and the BP oil spill fund promote speed and efficiency in establishing compensation schemes outside of the traditional litigation system. [1] Very few commentators, very few critics, very few lawyers or public policy experts focus on what I think is extremely important to claimants who file a claim: the certainty of compensation. When you file a lawsuit, you roll the dice. You roll the dice in terms of outcome. You roll the dice in terms of time. You roll the dice in terms of cost. But most of all, you roll the dice in terms of uncertainty. You have heard it a million times. Lawyers will tell clients nothing is certain. Yes, we may tell a client that there is a ninety percent chance of success. But, nothing in the civil litigation system is certain. And today, this program focuses on prediction and minimizing risk. Very important.

One of the great advantages of what I do is that a policy maker or the Congress sets up, by statute, an alternative to the civil justice system. For example, Congress established the September 11th Victim Compensation Fund thirteen days after 9/11. Anybody who lost a loved one—on the planes, at the World Trade Center, at the Pentagon—anybody who was physically injured was given a choice: sue the World Trade Center, the government, the airlines, the Port

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1. Air Transportation Safety and System Stabilization Act, Pub. L. No. 107-42, 115 Stat. 230 (2001); *In re* Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010, 910 F. Supp. 2d 891, 903 (E.D. La. 2012); GEN. MOTORS, *GM Ignition Compensation Claims Resolution Facility FINAL PROTOCOL for Compensation of Certain Death and Physical Injury Claims Pertaining to the GM Ignition Switch Recall*, http://www.gmignitioncompensation.com/docs/FINAL%20PROTOCOL%20June%2030%20%202014.pdf (last visited March 18, 2015).

Authority, the security guard companies or, at your option, come into a no-fault workers' compensation-type fund. File your claim and within sixty days you will be compensated if you are eligible. And there's the amount. If you do not like the amount, opt out. Go sue. But if you like the amount, or if you are satisfied with the amount, or if you accept the amount, release your lawsuit completely. No lawsuit, here is the money. Taxpayer money! Well, ninety-seven percent of all death claimants took the money. Certainty. "Mr. Feinberg, I lost my son on the airplane." Certainty. Liability is not an issue. The only issue: how much money you are going to receive?

"Mr. Feinberg, as a result of the oil spill in the Gulf of Mexico by BP, I could not fish and I lost a $100,000." Submit your claim. Certainty. No finger pointing as to liability. BP has agreed with the President to front $20 billion to pay the claim. No risk. In sixty days you will know whether you are eligible and how much money you are going to receive. That is not risk. That is an insurance policy. If you do not like it then go litigate. But if you like it sign "I will not sue." Well, in sixteen months, $6.5 billion went out and 222,000 individuals and businesses released their claims.

Nine months ago, GM ignition switch failure was alleged in certain GM automobiles: Cobalts, Ions, Saturns, et cetera. Congress said, "We and GM have decided we will minimize risk. We will set up a no-fault compensation scheme independently designed and administered by Mr. Feinberg. And in that scheme, if you lost a loved one or were physically injured in an accident in one of these automobiles, Mr. Feinberg will evaluate your claim." GM's liability? Irrelevant. Contributory negligence of the driver—speeding, texting, drinking—irrelevant. The bankruptcy bar imposed by the bankruptcy court following GM's bankruptcy? Irrelevant. File your claim and if you are eligible—if you can demonstrate that the switch was the proximate cause of the accident, without regard to contributory negligence or GM's liability—you will receive compensation within sixty days. Minimum risk. And if you do not get the result you want, either in terms of eligibility or amount, go file a lawsuit.

Programs like I have been asked to design and administer try and minimize the amount of "risky business." Now, when policy makers set up these programs, they are not really thinking about Georgia State's symposium and "risky business." What they are thinking about is the other two pillars of what I do—speed and efficiency. They are focused on setting up a compensation system that is voluntary. No one has to participate. Rather, setting up a system that people will know quickly how much money they are going to receive. And they will know this without the necessity of all of this litigation cost. And that is why in 9/11, in BP, in GM, virtually everybody comes into the program. It may be voluntary. Why not? Why not come into this program? Why not get a free preview of what you will receive for one of these Feinberg-administered programs? If you do not like it, do not take it.

Everybody takes it, virtually. The money is very, very generous. Because, do not forget, you are trying to voluntarily entice people to enter into these programs. There is no mandate. You have to convince them. Forgo a suit; take the compensation. Well, in order to do that you have to have a pretty generous fund. You better have the money. You better have the wherewithal to set up a program like this. The average award for a death claim in the 9/11 fund was a little over $2 million tax-free. The average award for a physical injury claim in the 9/11 fund, a little over $400,000. Ninety-seven percent accepted the money.

The other ninety-four people opted out and sued. They all settled their cases five years later. Some may have received a little more. Some may have received a little less. Five years of waiting and you have to pay your lawyer twenty-five percent. BP, ninety-two percent of the fishermen, oyster harvesters, ship boat captains, and hotels accepted the money. In sixteen months, $6.5 billion paid out. Very little "risky business."

And now GM. Well, GM is ongoing. You cannot file a claim any longer. The deadline was January 31st, 2015. Almost 4,500 claims. We have paid so far I think fifty-eight deaths attributable to the switch and maybe another 125 or 135 physical injuries. How many

people have opted out of the program once they know how much they were going to get? None. No one has opted out. Why would they? Why would they opt out? You are going to go sue? That is "risky business."

First of all, the automobile accidents occurred years ago. If you can get around the statute of limitations and the GM bankruptcy bar, you have a chance. But the accidents occurred a long time ago. You know most—not all—most of the drivers were young drivers and most were drunk, speeding, fell asleep at the wheel, texting. So you confront a contributory negligence barrier that does not exist in my program. We are not interested in any of that. We are interested in what the police reports say, what the maintenance records show, what the photographs of the accident show in demonstrating proximate cause. Just like it is a first-year tort law school exam.

So these programs minimize risk and promote certainty. They do an end run around the subject matter of uncertainty. Now, if they do an end run around litigation uncertainty by minimizing risk and promoting certainty, why is there not more of this? Why do companies and public policy makers—judges, Congress, governors, mayors—not provide more of these alternatives to the traditional conventional civil justice system? Well, there are some real downsides to these programs. I must say, as somebody who for the last thirty years has been involved in designing and administering these programs, and not just these three—Boston Marathon; Virginia Tech; Indiana State Fair; Aurora, Colorado; Newtown, Connecticut—I have done a dozen of them. Now why do we not see more of this? What are the public policy downsides? You have seen it is not uncertainty. We are promoting certainty, efficiency, cost effectiveness, and speed with these programs. So what is wrong with these programs? Well there is a great deal wrong with them. A great deal.

First, they single out for very special, certain treatment, only a certain eligible group. Bad things happen to good people every day in this country, and you do not have a 9/11 fund or a BP oil spill fund. Instead, policymakers say, "If you lost a loved one on 9/11 we are

going to give you money, certainty, and speed. Everybody else, fend for yourself." Well that is not America you see. That is not America. That is elitism. That is the favored few. You should have read some of the emails I received during my administration of the 9/11 fund. "Dear Mr. Feinberg, my son died in Oklahoma City. Where is my check?" "Dear Mr. Feinberg, I do not get it. My daughter died in the basement of the World Trade Center in the original 1993 attacks committed by the very same type of people. Where is my check?" And it was not just terrorism. "Dear Mr. Feinberg, last year my wife saved three little girls from drowning in the Mississippi River, and then she drowned a heroine. Where is my check?"

You better be careful when you take taxpayer money and set up a program for certain innocent victims. Everybody else, sorry, you go the traditional route. That is why the 9/11 fund is a derelict on the waters of the law. It stands alone. It will never be repeated. I think to use taxpayer money to pay just some victims but not others is highly, highly unlikely. Now, what do I think about the 9/11 fund? Great, absolutely the right thing to do at the time. Exhibiting the best of our American heritage, our character. From the perspective of the American people, we will show the world we take care of our own. A wonderful program. But do not ever do it again. Not that way. So that is one problem. There is a political, philosophic problem with creating special funds for special people and only those people.

Then there is a second problem. You promote certainty and minimize risk by setting up these funds. And how do you do that? By delegating unfettered discretion to one person. "Well, one way we can promote certainty: let Feinberg do it with no appeals, no committees, no checks and balances. Delegation run riot. Let him do it. It will work." Well it better work because there is no real due process here in the sense of others promoting uncertainty by providing appellate review, checks and balances, access to the courts, access to a committee to review Feinberg's determinations. No! We do not want "risky business," so delegate everything to Feinberg. The lawyers howl about this, some of them. Some lawyers—trained at Georgia State and elsewhere about the litigation system, the

adversary system, due process, the civil justice system—some lawyers howl when they see this. But some lawyers are constructive critics exclaiming that all of this delegation to one person is not law. They believe that these systems do not provide due process, and that they are riding roughshod over due process in the interest of promoting certainty.

Now, critics of these lawyers say "Sure, it is their fees that are at stake." I do not buy that. There may be some of that. Every case I settle and get a release is one less lawsuit at forty, thirty, or twenty percent for a fee. So there is some self-interest or self-motivation. But I must say lawyers who have been trained in our litigation civil justice system believe the way to achieve justice is to hire a lawyer, and the judge and jury will decide. I must say when those lawyers stand up and criticize what I do, many of them do so in good faith, and I can understand that concern. That is a second reason why these programs are relative aberrations.

I am asked all the time, "Mr. Feinberg, will you speak about your GM, BP, 9/11 funds, as the wave of the future." They are the wave of nothing. They are aberrations. Maybe you will see another BP type program, but that will require a company to front $20 billion before there is even a finding of liability. But it takes a rare situation. Unprecedented, to come up with that type of money to resolve claims quickly, efficiently, with certainty.

Now remember we are not only talking about certainty from the perspective of the victim. We are also talking about company certainty. Companies want certainty. So certainty, avoiding "risky business," you have to look at that from the perspective today of both claimant and company—or defendant or government—because everybody involved in the civil justice system wants certainty. BP made it very clear. Its stock price reflected it. Its public comments reflected it. Its business plan reflected it. BP: "President Obama, what we are worried about after the BP oil spill is uncertainty. We do not want Exxon-Valdez[2] for the next twenty-two years and counting.

2. Mr. Feinberg is referring to the Exxon-Valdez oil spill that resulted in 11 million gallons of oil polluting Prince William Sound off the coast of Alaska. *In re* Exxon Valdez, 270 F.3d 1215, 1223 (9th

We want certainty. Our stock price wants certainty. Our shareholders want certainty. Our board wants certainty. We will set up this Feinberg-type alternative to promote certainty. Our stock price will rise. Investors will see there is a plan. We are closing the circle. We are resolving the claims. We will get this behind us and financially we will move on." GM: "Congress, we do not want a tarnished reputation or open litigation wounds. We want certainty, no risk. We will set up a program and in one year all of these cases will be gone." Certainty, without the necessity of prediction.

Understand that companies today and individual claimants are all interested within the confines of the civil justice system to promote certainty and avoid risk. So, it is all well and good. Today, I have talked about these very creative offline, separate channels used by BP, GM, and the 9/11 fund to promote certainty. What about everybody else? Well, within the system—the civil justice system—companies, individuals, and lawyers are all looking for ways to promote certainty. Now what are some of the ways even within the civil justice system? I observe. I experience it as a mediator. How does certainty get promoted within the system? From what I have observed as a mediator, you have to look at certainty today, and it seems to me there are two ways.

One is substantively. What does decision tree analysis show? What does the offer, demand, and acceptance of a specific claim show?, What is the formula that you use to compensate eligible claimants? How can we, in deciding who to pay and how much, how does that promote certainty? What homework do we have to do? Substantively. Look at our past inventory. See what we have settled and for how much. What have we learned from those settlements? What have we learned from those trials? How do we feed that substantive information into the future to try and make the crystal ball less murky? That is substantive, you see. You have to know exactly the nature of the claim or claims to predict the result if you do not settle.

Cir. 2001). Exxon spent $2 billion in an effort to remove the oil from the water, and $300 million on voluntary settlements prior to any judgments being entered against it. *Id.* Also, the State of Alaska and the United States brought actions against Exxon for the injury to the environment, which were resolved when Exxon agreed to pay at least $900 million to restore damages natural resources. *Id.*

What factors go into that prediction? Valuation. That is all a substantive discussion. Industry by industry, claim by claim. Important, not only for the company, but very important for the individual claimant represented by a lawyer who knows all about slip and falls, medical malpractice, mass torts, et cetera. I know seventy-five percent of what I need to know because I have done it before. Now I have got to predict the other twenty-five percent. Here are the variables that go into it. Here are the variables that are irrelevant. I am trying to minimize the uncertainty for my client.

Meanwhile, the company, substantively, is thinking about the very same thing. "Look, this is the ninety-third medical malpractice case we have received as an insurance company. We have settled or tried ninety-two." Based on that wealth of information, we minimize risk, we predict, we know, and that is for litigations that are already in place, that are time honored, that are well known, substantively. Now another factor, in substance of course, is factoring into your analysis of prediction and certainty, regulatory developments—very important. What do the regulators say? What cases do they say are ripe versus immature or unsupportable? How much of the regulatory regime in our country is factored in? Especially by companies trying to minimize litigation risk. The regulatory side as a mirror, as a predictor of what might be in the future, now that is all substantive.

And the reason that panelists like John Childs are on this panel and others like John, they have done it, they know. They know exactly what I'm talking about. About factoring in the past in order to minimize risk and predict the future. Now, it is all well and good to say, "Yes, that prediction we may know maybe seventy-five, eighty-three, ninety percent accurate." Well that is good but, of course, for some companies and individual claimants a ten percent risk is too much. It is too much. It is a science. It is very sophisticated. But that is all on the substantive side.

Now, the procedural side also influences certainty and predictability. There are many companies in this country, contrary to what you may think, that welcome aggregation, Rule 23,[3]

3. FED. R. CIV. P. 23.

Multidistrict Litigation (MDL), any way to aggregate the claims in one forum, so they can get them resolved. We do not want the risk of the long tale—the future unknown. We want to consolidate now and get the claims resolved; and not only the current claims if you want to minimize risk. I will tell you in the civil justice system the best way I think the best way for a company to minimize risk going forward is Rule 23. We will shut down all of our current mass claims and we will wipe out the tail of the future by giving people ninety days, one hundred twenty days, to either opt out or they are in. Aggregation. Aggregation as a procedural tool, for a company that wants it, is designed first and foremost to minimize risk and promote certainty.

If you go back and look at the class actions that have failed in this country; many of them, maybe half, have failed because plaintiff lawyers opposed them. We do not want that type of certainty; we do not want to wrap this up. Asbestos is the best example—a nightmare. Asbestos could have been resolved thirty years ago but the Supreme Court said no by a vote of seven to two.[4] Justice Stevens and Justice Breyer got it right in their dissent. We better allow this class, because if we do not allow aggregation as a way to promote certainty and minimize risk, asbestos will remain pervasive and horrible litigation for the next thirty years, and that is just what happened. So aggregation, as a tool to promote procedural certainty—very important. There are other innovative ways: local and regional consolidation. Judge Weinstein did it years ago in Brooklyn, New York.[5] He successfully consolidated all of the asbestos cases in Brooklyn and resolved them.

But even if you cannot aggregate cases, how do you promote certainty and minimize "risky business"? You see companies with "inventory settlements." Insurance companies do this all the time. Look, it is just another medical malpractice case. All we do in

4. Amchem Prod., Inc. v. Windsor, 521 U.S. 591, 591 (1997); Ortiz v. Fibreboard Corp., 527 U.S. 815, 815 (1999).

5. *In re* E. and S. Dist. Asbestos Litig., 772 F.Supp. 1380, 1380 (E.D. N.Y. 1991); Loper v. Eagle-Picher Indus., Inc., Nos. CV–87–1383, CV–87–1384, CV–87–2273, 1990 WL 126474, at *1 (E.D. N.Y. Aug. 13, 1990).

medical malpractice cases, we know that the litigation system, if we go forward, there's a 91.3% chance that we will be found liable and be forced to pay $500,000. We know it. There is nine percent uncertainty, but we have a pretty good idea. So, quite apart from Feinberg's programs, and quite apart from ongoing litigation, we will settle. And we will settle at a price where, based on our experience, we know what it is worth. It has a value. These claims are very, very mature. We know when they are filed what they are worth. All we need, to promote the type of certainty we need as businessmen—ABC—the plaintiff lawyers also know. "Mrs. Jones you were hit by an automobile. Now I have thirty-four automobile cases like yours. I know what Chubb will pay. I know what Liberty Mutual will pay."

Workers' compensation—in fifty states—is based on minimizing uncertainty. You lose an eye on the job, you get $3,200 a month. That is it. Why $3,200? "We've gauged these every year. We know what a lost eye is worth." Well you can fight about that, but that is different. "$3,200 ought to be $6,800." That is a substantive issue. I am talking about how, claimants and businesses alike, do not like "risky business." They do not like it. It is bad for business; it is bad for the claimant. We want the same type of certainty that Feinberg provides to these companies through these programs like GM and BP. It is the same type. That is what we want. And what you are going to hear today are some variations on this discussion. What is the endgame? Promoting certainty. Everybody wants it. No one wants to roll the dice. How do you promote certainty and minimize risk? I know of no program quite like this symposium where you will talk about, even as an existential matter, certainty and minimizing risk. That is what it is all about you see.

QUESTION & ANSWER SESSION

Q: Do these alternative systems undermine the precautions big corporations might take for safety by having this be able to resolve issues that come up later? Are they taking all the stuff they can to make the situations as safe?

A: Well you are saying, "Does the tort system deter and if you can go to an optional alternative system—BP, GM—does that undermine safety?" I do not think it undermines safety. We will see I guess. I think GM and BP, for all of their effort in setting up these alternative systems, there is plenty of other litigation to deter. If there is anything I have learned in this country, in this litigation system, it probably over deters and in these types of cases where BP sets up an alternative program or GM sets up an alternative program, they still confront thousands of other cases involving thousands of other automobiles or oil spills and I do not think that these programs in and of themselves prevent deterrence. These programs are very expensive by the way; I mean BP did pay $6.5 billion. Billion! So I do not think that the deterrence argument sits well. Especially in conjunction with the regulators who, after a spill and after automobile accidents, suddenly, are on their white horse with regulatory aggressiveness. So I think between that, I would think danger is not enhanced.

Q: Is there any data or estimate about the premium that BP or GM paid for certainty as compared to no funds and having to deal with lawsuits?

A: Far from a premium, I think, BP and GM calculated that it is cheaper to go this route. Not to pay law firms and not to litigate for twenty-two years or ten years or eight years and roll the dice with punitive damages and all of that risk. I think they have concluded, as a dollars and cents matter, our stock price and our investors would rather have us cabinize the problem and get rid of it quickly, rather than run into "risky business." And I think, far from paying a premium, they see this as a very cost effective way to satisfy claimants and at the same time move on without uncertainty hovering over their shoulder.

Q: I read recently in the newspaper that BP had appealed all the way to the Supreme Court, basically saying they made a bad deal and the court should let them out of it?

A: That is right. After I left, I might add. After I departed in March of 2012, BP decided that they would settle all other private claims

pursuant to Rule 23.[6] And they proceeded to sign a 1,000-page settlement agreement with the plaintiff lawyers. Well, after that they became disenchanted with that settlement, with the administration of that settlement, and they are now litigating in New Orleans. But I read the newspapers like you do. I am long gone from that. Thank goodness.

Q: You indicated that in administering the funds for GM you did not look at contributory negligence, but rather you focused on proximate cause. How do you make that distinction? Because if a young driver is drunk, does that not lead into proximate cause?

A: Well what we do is we isolate the young drivers drinking and speeding and we want to look at the mechanical problem. I mean somebody may be drunk and still it may be an ignition switch that is defective. We said the following: "We are not interested in anything other than the link; the causal connection between the switch and the accident." If somebody is drinking or going ninety miles an hour we are not interested in that. We want to focus on the mechanical mistake. So here is what we look at to determine proximate cause. First, we look at the police report. If the police report says "air bags did not deploy," well if the air bags did not deploy and it is a front end collision with a car that hit a tree going fifty miles per hour, the power is off or the airbags would have deployed. If the power is off, why is the power off? It might be the switch.

Second, we look at the contemporaneous photos of the accident itself. If the airbag didn't deploy, maybe it's a rear end collision and the photos will show it and the air bags should not have deployed—if it is a rear end collision or a side collision. Air bag non-deployment is critical, but we got to look at the photos because there might be other reasons the air bag did not deploy.

Third, we look at what the maintenance records show. Now the maintenance records before the accident will not usually mention a defective switch, but they may mention non-power problems.

6. Campbell Robertson & John Schwartz, *How a Gulf Settlement That BP Once Hailed Became Its Target*, N.Y. TIMES (April 26, 2014), http://www.nytimes.com/2014/04/27/us/how-a-gulf-settlement-that-bp-once-hailed-became-its-target.html?_r=0.

"Maintenance guy, my car keeps stalling going fifty miles per hour, all of a sudden it shuts off. I pull over, but the antilock brakes do not work, the power steering is not functioning, and the car is stalling. I do not get it." We look at that circumstantial evidence, then of course if you have direct evidence—the black box, the computer in the engine, that is great, that will tell you within a tenth of a second whether the power was off prior to the accident. So you look at all of that and then you say, this is circumstantial evidence of proximate cause. Ignore the kid speeding. GM found thirteen deaths based on direct evidence, they looked at the car; and we are already at fifty-eight deaths based on proximate cause—a much more lenient standard than direct evidence. So it works.

Q: Are you suggesting that a worker's compensation kind of system would be appropriate for any type of tort claim or are there some kinds of tort claims that necessarily do not lend themselves to a worker's compensation system?

A: That is a policy issue. First of all understand, I am not the person, ever, that decides to create these programs. Governors, Congress, presidents, attorneys general, judges, they come to me and say, we have decided we want to create this program. Now you design it and administer it. I cannot answer the question, "Are there certain types of mass catastrophes where a workers compensation type model would not work?" I do not know. I tend to think that the answer to that is rather provocative. Well, they can work in any one of those situations.

Now the criteria might be different, the procedures might be different, the proof requirements might be different, but I would tend to think that that in at least in a mass claims situation, thousands of claims, a worker's compensation type alternative can work. I say type because the money certainly is not at worker's compensation levels in these programs. If you are going to waive your right to sue you better pay people a commensurate amount that will be adequate consideration for them not to litigate. So you are talking about a non-worker's compensation damages model as to amount. I think they could work just about anywhere if you really wanted to set it up. The

trouble with setting these up more frequently is everybody else does not benefit. There is a certain degree of unfairness. I received claims during BP, "Mr. Feinberg, I could not fish in Alaska, Exxon Valdez, where's my check?" Well go ask Exxon. That does not get you very far with that claimant. He is not happy to hear that. Go ask Exxon. I have no jurisdiction over Exxon. So that is the problem, not the design difficulty, I do not think. I think these templates work.

Q: The law is always evolving. What kind of consequences do you think there are, taking all these settlements out of the courts where there is potential for the law to evolve—new issues, understandings to come about—versus we just have a settlement?

A: There is virtually no chance that in this country we would encourage a comprehensive resolution of cases like this out of the civil justice system. And there are a couple of reasons for that. First of all, the people in this room I think, including the questioner, understand the civil justice system is so engrained in the history of this country. The idea that there would be some 9/11 or BP or GM model to replace the adversary system is tilting at windmills. The civil justice system, unlike any other litigation system in any other country, the system is part and parcel of our country's history. It is engrained in the heritage of the country. It has always been there. And it will always be there. Secondly, even if you came up with a master alternative, good luck. The politics of the country is so antithetical to any type of major change in the way that we resolve disputes, I think that you would be tilting at windmills to think you could get very far politically with it. So I think it takes a type of disaster—like 9/11—where policymakers emotionally say "oh my goodness we need an alternative." But, if Congress had waited two more weeks I do not think there would have been a 9/11 fund, at least not the way they drafted it. So I do not think it is realistic. I think we are absolutely right in this Symposium to focus on how to minimize risk or predict the future within the context of the civil justice system, not with the types of programs I administer.

Q: In these programs, certainty is great if you are economically rational, but as we know people are not economically rational. Can

you comment on how these programs, in any way, either defeat or somehow help satisfy the need of the individuals to essentially be heard?

A: I tell everybody that comes into these programs the statistics. Why? It is not just the money. It is not just financial generosity. You will hear from Professor Galanter and others on this, about the vanishing trial. If you go to court, you do not get heard. You do not get an opportunity to vent. In every one of my programs, GM is a good example, anybody who wants to come and see me, to talk about their claim and confront the face of the program, I will permit it. And if there are too many of you, I will designate a deputy to see you one-on-one, in confidence. It works.

Giving people the opportunity to be heard is essential to success and very few people come to see me to talk about money. They come for two reasons. One, to vent about life's unfairness, "Mr. Feinberg, I lost my nineteen year old son driving a GM car. Why? Life is unfair. There is no God that would take my son from me." And you just listen. They want to vent. Why are they the victims of a curveball? Why them? And they go on and on and vent. Just listen. Or, they come to validate the memory of a lost loved one. It is unbelievable. "Mr. Feinberg, I lost my husband. We were married for twenty five years. He was a fireman and he died in the World Trade Center, and I am at this hearing and I want to show you a video of our wedding twenty five years ago."

"Well, Mrs. Jones, you don't have to show me that video, it won't have any bearing on compensation and it will be very emotional." "You are going to watch! I want you to see what those murderers did to my husband. What a great man. Look how great he looks at the wedding."

That necessity—people are not always financially and economically rational—of giving people the opportunity to be heard is important. Now many people do not want that opportunity; people grieve in many different ways. Some people grieve in private; they do not want to see you, they send in the forms, and are not interested. But some people want to come and see me and they want to validate,

and they want to vent and by giving them that opportunity, overwhelmingly that helps them get over the hurdle and take the money. And it is a critically important part of this.

I am honored to be invited. I cannot think of a symposium that is more timely. I wanted to thank everybody, particularly the law school and particularly the law review. So thank you all very much.