
National Roundtable on Victim Compensation

Exploring the Role and Future of Crime Victim Compensation

National Center for Victims of Crime

Approaches for Compensating Victims Of Crime: Lessons from the September 11th Attacks

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The September 11th attacks caused staggering loss of life, property, and income and caused emotional distress to untold numbers of people. This paper first reviews the main sources of private and public assistance offered victims and their families in the aftermath of September 11th, namely private insurance, civil law suits, government assistance, and charity. The second half of the paper examines how these responses and experiences may inform the development of policies and programs for crime victims more generally. The primary focus of this paper is on those killed or seriously injured by the September 11th attacks. However, we also address the broader groups affected by the September 11th attacks, such as displaced residents, workers who lost their jobs, and businesses whose operations were interrupted. We touch on these other groups because the response to September 11th provides insights on how “victim” can be defined and how their losses can be addressed.

Our descriptions and analyses are based on a review of reports, program descriptions, and studies by government agencies, charities, and academics. We also draw on 45 in-person and telephone interviews with individuals closely involved with the various assistance and compensation programs in New York City.² Interview respondents included plaintiff attorneys, senior managers at a number of the companies that suffered the most significant number of losses, insurers, managers of charities, and managers of government programs.

PROGRAMS FOR THOSE KILLED AND SERIOUSLY INJURED IN THE SEPTEMBER 11TH ATTACKS

Overview of Losses

On September 11, 2001, 2,819 people were killed at the World Trade Center (NYC Medical Examiner’s Office, 2002). Of those, between 415 and 438 were emergency responders (depending on how inclusive a definition of emergency responder one uses).³ There were 40 people killed aboard United Airlines Flight 93 that crashed into a field in Somerset, PA, and 184 people were killed when American Airlines Flight 77 crashed into the Pentagon. Total deaths associated with the tragedy stand at 3,043.

²This paper draws from on-going work on at RAND on compensating individuals and business harmed by terrorist attacks. The work is conducted in RAND’s Institute for Civil Justice. A report summarizing the findings should be available in Fall 2003.

³There were many programs, particularly from charities, available to emergency responders only. We do not discuss these special programs in this paper, although they will be addressed in our larger report.

According to a McKinsey study completed in June of 2002, 63 percent of the deceased left behind a spouse, and 56 percent of those spouses were not employed at the time of the attacks. Average household income for families of the deceased including income from charitable donations and government assistance fell 40 percent between 2001 and 2002 (McKinsey & Company, 2002, p. 12).

Serious injuries never reached the levels that were predicted in the early hours of the attacks. According to the Red Cross, 4,600 people received some sort of health service related to health needs resulting from the attacks between September 11, 2001 and May of 2002. As a direct result of the attacks, 250 persons were hospitalized for one day or more and 100 were physically disabled for three or more months. No formal data has been collected on the number of persons catastrophically injured in the attacks.⁴ Experts interviewed for this study estimate the number to be approximately 25. Trial Lawyers Care, the organization coordinating free legal services for prospective claimants to the VCF, is currently representing ten such cases.

Table 1 overviews the types of losses suffered by those killed or seriously injured and their families. Those killed or seriously injured and their families suffered economic losses and incurred additional expenses because of the disaster. They also suffered emotional injury. In addition to the persons killed and seriously injured, there may be people with latent injuries due to September 11th, particularly respiratory ailments resulting from exposure to airborne particulates during the recovery period at Ground Zero. While the hope is that the number of latent injuries will be low, the potential number of such injuries remains unknown.

We now describe the role each of the four compensation mechanisms played in compensating those killed or seriously injured in the September 11th attacks.

Insurance

According to the representatives of the dead and seriously injured whom we interviewed (plaintiff attorneys and senior managers at the firms who suffered significant losses), the population lost in the WTC attacks lacked sufficient life insurance. Even though many of those lost were high-wage earners with spouses and dependents, many carried little if any life insurance. Many had life insurance provided by their employers, although these policies are generally more modest than plans purchased by individuals. It was consistently reported to us

from both insurers and the insureds that insurance benefits, when available, were paid promptly and in full. In fact, a number of the affected firms reported that corporate insurance carriers paid out on multiple lines of coverage—including lines for which the insureds were not eligible (for example, some paid on travel coverage, even though the insureds were killed at their workplace). Estimated cost to life insurers of the September 11th attacks (including payments and claims adjustment expenses) is \$2.7 billion (Hartwig, 2002, Exhibit 2). To put this number in perspective, if these costs are equally spread over the 3,043 killed (which of course they are not), the average comes to approximately \$890,000 per deceased.

Table 1—Losses Suffered by Those Killed and Seriously Injured and Their Families

Type of Loss	Description of Loss
Death or bodily injury	3,043 killed, 100 physically disabled for three or more months, an estimated 25 with catastrophic injuries
Latent physical injuries	There may be some people with latent physical injuries due to exposure to toxic substances such as asbestos after the attacks. The number of such injuries is unknown
Emotional injury	Some suffered anxiety, depression, or post traumatic stress disorder
Property damage	Some of those killed or seriously injured may have also been residents of lower Manhattan whose homes were physically damaged by the disaster. We address such losses in the discussion of displaced residents below
Lost wages or other forms of income	Foregone or reduced lifetime earnings
Additional expenses	Medical expenses due to the attacks; funeral expenses; value of services in the home (such as repair work or cooking) that are no longer provided

Tort

Congress significantly limited the tort options of those killed or seriously injured in the September 11th attacks. The Air Transportation Safety and System Stabilization Act (PL 107-42), passed into law just 11 days after the attacks, capped the liability of the airlines to the existing insurance coverage maintained by the airlines.⁵ The Act granted exclusive

⁴ Trial Lawyers Care defines catastrophic injury as those persons who either (1) spent at least two weeks in a burn unit and suffered third degree burns over at least 20 percent of the body, (2) suffered spinal cord injuries such as quadriplegia or paraplegia, or (3) suffered serious brain injuries such as full loss of sight, hearing, speech or significant loss of memory.

⁵An amendment to the Act, enacted in November of 2001, added a number of other third parties to the list of those whose liability was capped to existing levels of insurance coverage. These additional third parties included the City of New York (capped at \$350M) and the owners and operators of the airports from which the aircraft involved in the attacks took off.

jurisdiction to the U.S. District Court for the Southern District of New York for all cases related to the terrorist attacks of September 11th (115 STAT. 241). The Act also required that a person pursuing a claim through the Victim Compensation Fund (VCF), established by the same Act, had to “waive the right to file a civil action (or 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.” (115 STAT. 240) This requirement was later amended to allow for suits pursuing collateral sources of assistance (such as life insurance) as well as suits against persons who knowingly engaged in acts of terrorism.

These limits on tort activity substantially increased the difficulty of recovering damages from parties somehow connected with the events of September 11th. A possible exception may be the 40 passengers on UA Flight #93. The cap on liability for Flight #93 is \$1.5 billion, which would be adequate to cover the 40 eligible claimants according to plaintiff attorneys interviewed for this study. According to these attorneys, available insurance coverage on the other three planes will not be enough to meet the potential combined property/casualty, business interruption, and bodily injury claims. As a consequence, it was believed that the tort system has little to offer the dead and injured, other than those on Flight #93. Even given the adequacy of insurance coverage, most of the plaintiff attorneys we interviewed believed that the families of passengers on Flight #93 were likely to find the speed and relative certainty of outcome associated with the VCF compelling, and would in the end opt in rather than out of the VCF program.

As of July of 2002 just over 450 families had filed a notice of intent to sue the Port Authority of New York and New Jersey related to losses suffered on September 11th (Chen, 2002). The closing date for filing an intent to sue was September 11, 2002. Any family who decides to pursue a claim through the Victim Compensation Fund will be required to drop a pending case against the Port Authority. As a result it is widely believed that very few of these case filings will ever transition into actual lawsuits. Cases have also been filed against the terrorist organizations, individuals believed to support terrorist organizations, and state sponsors of terrorism. There is little confidence that suits against terrorists will ever amount to much. Experience from past events such as the Pan Am Lockerbie crash suggest that such court cases take years to reach any sort of resolution and rarely result in judgments that lead to cash payments to the families of the deceased or injured.

Government Programs

September 11th Victim Compensation Fund. The Victim Compensation Fund (VCF) is an unprecedented program established to compensate those killed or seriously injured by the September 11th attacks. The VCF was established as a part of the Air Transportation Safety and System Stabilization Act. It was hoped that the fund would provide speedy and generous compensation to the families of the deceased and seriously injured while simultaneously limiting the liability of the airlines and other parties (such as the owners of the WTC, the operators of the implicated airports, and the Port Authority of New York and New Jersey). Eligibility for the VCF is limited to those who were killed or seriously injured at the WTC site, the Pentagon, and the victims on UA Flight #93 that crashed in Pennsylvania. To be eligible for the program individuals must have been at the site within 12 hours of the attacks, suffered a physical injury, and been treated by a medical professional within 24 hours of the injury, within 24 hours of rescue, or within 72 hours of injury or rescue for those victims who were unable to realize immediately the extent of their injuries or for whom treatment by a medical professional was not available on September 11. Rescue workers are eligible for the program if they were at the site within 96 hours of the attacks, and the Special Master has discretion to extend the limit for seeking medical care beyond 72 hours (28 CFR, Section 104.2). Those persons with emotional injuries but no physical trauma are not eligible for benefits from the VCF.

The VCF provides two primary sources of compensation. First, it provides compensation for non-economic losses, and second, it compensates economic losses. Non-economic losses are paid on a flat schedule with all eligible claimants receiving \$250,000 per victim, and an additional \$100,000 per spouse and dependent child. Economic losses are paid using a complex formula that reflects the presumed lifetime earning capability of the victim. The Fund makes these calculations based on incomes up to the 98th percentile of all wage earners in the United States (\$231,000).⁶ For victims with incomes above that level awards are much more difficult to predict. The supporting documents available at the Department of Justice website for the VCF state that it would be a “highly speculative exercise” to attempt to determine lifetime earnings for the top 2 percent of wage earners and that award amounts replacing incomes beyond the 98th percentile are not necessary in order to ensure that the financial needs of claimants are met. Plaintiff attorneys interviewed for this study state that they have high-wage earning clients who

⁶Burial and memorial expenses not covered through other sources are also covered by the Fund.

have been assured by the Special Master that their actual earnings will be used as the basis of the presumptive life-time earning calculation (rather than using \$231,000 as the base). None of these high-earning claimants have finished the claims process at this time. It remains unclear how these high wage earners will in fact be addressed by the Fund.

The language of the Air Transportation Safety and System Stabilization Act establishing the Victim Compensation Fund states that all awards will be reduced by the value of collateral source compensation available to a claimant as a result of the terrorist attack. It further stipulates that collateral sources include “life insurance, pension funds, death benefit programs, and payments by Federal, State, or local governments related to the terrorist-related aircraft crashes of September 11, 2001” (Public Law 107-42, 115 STAT. 237). The Special Master of the VCF clarified this language and explicitly excluded any monies paid to eligible individuals by charities responding to the tragedies (meaning receipt of such funds does not cause a reduction in an award amount). In addition, the Special Master stated that pension monies in victim 401K accounts would not be used as an offset in the Final Rule for the VCF. Finally, the Special Master clarified that contingent government benefits, such as contingent Social Security payments that might adjust in the future if a decedent remarried, would not be counted as collateral sources. However, he left in the remaining collateral source deductions stipulated in the original legislation. In particular, life insurance payments (but not premiums) are to be deducted from the awards.

As of May 20, 2003, 1,706 claims had been submitted, 472 awards letters had been issued, and 276 offers had been accepted with an average claim value of \$1.4 million (for deceased victims, after offsets). Claimants have until December 21, 2003 to file a claim with the fund (two years from the date of the Final Rule for the program). The Special Master is required to make a final determination on a claim within 120 days of its filing, and must make a payment available within 20 days of the determination of claim value (if there is such a determination). According to statements provided by the Special Master of the Fund (available at the DOJ website), it is his belief that few if any claims will be valued at less than \$250,000, and at the other extreme, few if any claims will be valued above \$4 million. Total payouts from the fund are expected to range from \$4 billion to \$6 billion.

It is believed by those who represent the dead and seriously injured (both plaintiff attorneys and representatives of the affected firms) that most eligible claimants will eventually file a claim within the VCF and that few will take the option of making a tort filing of any kind.

Delays in filing with the VCF to date are believed to have been caused by a combination of grief, desire to better understand the likely level of payments generated by the Fund, and the time needed to put together the supporting documents needed to process a claim. For example, some firms we interviewed stated that at the time of our interviews (September of 2002) they were still in the process of completing the detailed forensic economic work believed necessary to better support claims filed with the VCF.⁷ Much of this forensic work was scheduled to be completed in the spring of 2003, allowing eligible claimants to begin to file claims immediately after receipt of such documents.

Two of the most politically volatile aspects of the fund are the manner with which it deals with collateral sources of assistance and the calculation of economic losses for high-income earners. Representatives of the victims' families have expressed outrage and dismay that decedents and dependents of those victims who engaged in financial planning and who went to the expense of purchasing life insurance will in the end receive reduced payments from the fund. It is conceivable that there are individuals with so much life insurance that they would receive very little in economic damages from the fund (they would still receive payments for non-economic losses).

Although exact numbers are not available, it is clear that many workers in the WTC earned more than \$231,000 per year. Companies such as Cantor Fitzgerald have been quite vocal about their opposition to determining awards limiting economic damages to the 98th percentile of income earners. It is their belief that not only is such a methodology profoundly unfair; they also assert that it runs counter to the intent of the legislation that established the fund (Cantor Fitzgerald, 2002). The Air Transportation Safety and System Stabilization Act directs the Special Master to determine "the extent of the harm to the claimant, including any economic and non-economic losses" and "the amount of compensation to which the claimant is entitled based on the harm to the claimant, the facts of the case, and the individual circumstances of the claimant (PL 107-42, Section 405 (b)). Some argue that this language directs the Special Master to pay full economic damages. Others argue that even though the Act requires the Special Master to calculate economic and non-economic losses, it does not require the Special Master to pay them. Rather, the award can be based on the individual circumstances of the claimant. In

⁷Many occupants of the WTC kept incomplete records off site and were left in the position of needing to rebuild financial and accounting databases so that accurate information could be provided concerning lost employees' wages and benefit histories.

this line of argument, individual circumstances include individual needs, and providing compensation beyond the 98th percentile would rarely be necessary to insure that financial needs were met (see U.S. DOJ, Section III(B)(1), 2002).

There are a number of legal cases pending involving the Victim Compensation Fund itself. Seven Cantor families, as well as two other unrelated families, have filed similar suits alleging that the Special Master, through the rules and regulations adopted in his Final Rule, is in violation of the legislative intent of the statute that established the VCF (PL 107-42). Most of the Cantor complaint centers on what they view as an improper cap on payments to high wage earners, as well as unfair and discriminatory treatment for young single people. The seven Cantor families filed together in January of 2002 and sought Class Action treatment at that time. Judge Hellerstein in U.S. District Court for the Southern District of New York heard all of these cases on an extremely expedited schedule and on May 8, 2002 threw all of them out (Chen, 2003). The Cantor families have filed a notice of intent to appeal and expect that their cases will be heard by the 2nd Circuit Court of Appeals in September of 2002.

Other Government Assistance Programs

A plethora of other government programs were made available to the families of the dead, missing and seriously injured.

Workers' Compensation. Workers' compensation programs in the States of New York and New Jersey, as well as federal workers' compensation benefits for federal employees all approached the September 11th attacks as a one-of-a-kind event and issued separate rules for claims related to these attacks rather than implementing standard compensation rules and procedures. Death benefits were paid to those persons killed at work, or while attempting to leave work. The maximum death benefit in New York for a spouse is \$20,857 per year (tax free), whereas in New Jersey the maximum is \$30,816. In both states benefits last for life or until remarriage. Children are entitled to death benefits until they turn 21 (23 if they are full-time students). In New York a flat payment of \$50,000 is made to the estate of an employee who left no dependents. There is no such payment in New Jersey. In both states, up to \$6,000 is available to cover funeral expenses. (New York Committee for Occupational Safety and Health, 2001.)

Though a limited number of those affected by the September 11th attacks have access to the federal VCF, many more are eligible for workers' compensation benefits. In particular, the

VCF is not available to those who suffered only emotional harm, whereas the workers' compensation system is. Further, it appears likely that workers' compensation programs in New York and New Jersey will provide coverage for latent injuries caused by smoke inhalation or other contact with airborne particulates—a set of injuries excluded from the VCF (New York Committee for Occupational Safety and Health, 2003).

According to a recent internal report published by the New York Office of Occupational Safety and Health, the State of New York has opened 7,327 WTC-related workers' compensation claims, 2,195 of which were death claims. Of those death claims, they have fully resolved 2,091 of them (the vast majority were found in favor of the claimant.) Eighty-two percent of other claims (exposure/injuries) have been resolved (Sullivan, 2003). The Insurance Information Institute estimates that insured workers compensation benefits (including claims adjustment costs, will amount to \$1.5 billion to \$2.5 billion (Hartwig, 2002, p. 6).

State Crime Victim Compensation Programs. The State of New York Crime Victims Board also provided a set of benefits to those killed or physically injured in the September 11th attacks. Medical expenses were provided, with no maximum, to anyone who suffered an injury as a direct result of the attacks. Reasonable burial expenses were covered without a stipulated maximum. For those who suffered an injury or death, essential personal property lost or destroyed as a result of the attacks was covered up to \$500. Loss of earnings or support, up to a lifetime maximum of \$30,000 was paid to families of those killed, and to those unable to work as a direct result of injuries sustained during the attacks. Rehabilitative occupational training was made available to victims and their families. The value of offsetting benefits (such as workers' compensation, social security and personal insurance policies) was subtracted before the Crime Victims Board payments were made (New York State Crime Victims Board, 2003).⁸

FEMA. The Federal Emergency Management Agency (FEMA) had several programs that could assist families of the dead and seriously injured. Households whose income fell 25 percent because of the death or injury and who received a late notice for a rent or mortgage payment were eligible for up to 18 months of rent or mortgage payments. The program was available

⁸For example, if someone was eligible for \$600 per week in wage replacement from the Crime Victims Board, but were already receiving \$200 from workers' compensation, only \$400 would have been paid by the Crime Victims Board.

only to U.S. citizens, non-citizen nationals, or qualified aliens. Data on how many families of the dead or seriously injured took advantage of this program are not yet available.⁹

FEMA also provided disaster food stamps in the weeks immediately after the attacks that that were available to lower-income families of the dead and seriously injured.

Finally, FEMA funded Project Liberty, a program that provides free crisis counseling, education, and referral services to individuals, families, and groups affected by the September 11th attacks. The program was administrated by the New York State Office of Mental Health and offered services in New York City and 10 surrounding New York counties (Project Liberty, 2002). Project Liberty provides short-term, relatively informal counseling and education sessions. It provides referrals to appropriate agencies or licensed mental health professionals for those who require mental health treatment and support. Through August 2002, FEMA provided \$155 million to New York State for Project Liberty and \$11 million for crisis counseling in Connecticut, Massachusetts, New Jersey, and Pennsylvania (FEMA, 2002, p. 32). Project Liberty was available to all New Yorkers, not just the families of those killed or seriously injured. Utilization rates of the program by the families of the dead and seriously injured are not known.

Medicaid. The City of New York expanded the income eligibility standards of its existing Medicaid program so that a total of 380,000 persons (presumably including some of the families of the dead and seriously injured) were made eligible for temporary Disaster Relief Medicaid (DRM) benefits. The program included initially four months of temporary fee-for-service Medicaid benefits, and was later expanded to include the possibility of permanent enrollment in Medicaid (City of New York Office of the Comptroller, 2002, p. 32).

Tax Breaks. The federal government also provided tax breaks to those killed or seriously injured in the attacks. There is a rebate of two years of federal income taxes for all victim families with eligibility determined by the same language as used by the Victim Compensation Fund (PL 107-134). The rebate period is the year before the attacks and the year of the attacks. In addition, the first \$8.5M of the victim's estate is shielded from estate taxes. Finally, the law includes provisions that make virtually all assistance related to the September 11th attacks non-taxable (including charitable donations, payments from the Victim Compensation Fund, and workers' compensation payments).

⁹As discussed in the section on displaced workers below, this program was also available to others affected by the

Charities

Charities distributed substantial sums to those killed and seriously injured in the September 11th attacks, and as discussed above, these awards will not be deducted from payments received from the VCF. The two largest charities report contributions per eligible family that sum to over \$150,000 per family. Specifically, the September 11th Fund reported in September of 2002 that they had distributed \$244.3 million in cash assistance and \$27.7 million in services to the families of the dead and seriously injured—an average of \$90,000 per eligible family. An American Red Cross report in September 2002 puts their total cash assistance to eligible families of the deceased, missing or seriously injured at nearly \$75,000 per family. A survey completed by McKinsey & Company (2002) found that families of victims other than emergency responders had, by May 2002, received an average of \$90,000 from charitable sources.

Beyond the major charities, a number of other smaller organizations provided assistance to the families of the deceased and seriously injured. The New York World Trade Center Relief Fund provided \$10,000 to surviving spouses and domestic partners, as well as \$5,000 to children under the age of 21. They paid \$10,000 to parents of victims for whom there was no surviving spouse, domestic partner, or child. (Lower Manhattan Development Corporation, 2002, p.5). Emergency responders that were killed or seriously injured received large additional payments from a number of charities.

In the process of completing the interviews for this project, a serious and notable disconnect arose. According to the attorneys and employers representing some of those killed with the highest incomes, their clients and/or employees had received little if any financial support from any of the charities. Those interviewed consistently expressed their dismay and disappointment that charitable monies had not made their way, in any significant form, to the families they represented. We are not aware of any policy by charities to exclude households with high incomes from their programs. It could be that charities did try to steer awards away from the highest income earners. It could also be that from the perspective of the high-income earners, the charitable contributions were small relative to the reductions in income they were experiencing or that it was too time-consuming or too-embarrassing for the high-income earners

attacks besides the dead and seriously injured.

to fill out the forms necessary to receive the aid. High-income earners could also have decided that it was inappropriate to apply for charity benefits.

PROGRAMS FOR OTHER CATEGORIES OF VICTIMS FROM THE SEPTEMBER 11TH ATTACKS

Many others than those killed or seriously injured were affected by the September 11th attacks. In this section, we briefly review the types of losses and sources of assistance available for displaced residents, displaced workers, and small business.¹⁰ Our goal here is not to provide an exhaustive list of all sources of assistance, but to characterize the main sources of assistance and their goals.

Displaced Residents

A substantial number of people were displaced from their homes as a result of the September 11 attacks. Estimates of the number of households displaced range from 6,000 to 18,000 out of the approximately 37,000 housing units south of Canal Street.¹¹ Most residents returned to their homes shortly after the attacks, although a small number were still not back in their homes a year later.¹² Losses were not restricted to residents who were displaced from their homes. Other residents suffered degraded air quality, high amounts of settled dust, and interruptions in basic services.

Some residents in Lower Manhattan did possess private insurance. The Insurance Information Institute estimates that the insured losses for dwellings and autos could add up to as much as \$800M (Hartwig, 2002, p. 24).¹³ There have been reports from residents that that insurance carriers have haphazardly settled claims for widely varying amounts (Office of Congressman Nadler, 2002). In the course of our interviews, we heard no complaints about insurance industry claims payments.

¹⁰Our on-going study also covers programs for larger businesses, but we do not cover them here.

¹¹The September 11th Fund estimates that 6,000 households were displaced (September 11th Fund, 2002), the Red Cross estimates 18,800 (American Red Cross, 2002). Estimates of the number of residential units south of Canal Street are from LMDC, 2002, p. 13. According to Senator George Mitchell's office, the independent overseer of the Red Cross' Liberty Disaster Relief Fund, 81,000 people were displaced for some time following the attacks (Mitchell, 2002, p.4).

¹²The August 2002 Quarterly Report from Senator Mitchell's office predicted that 20 households would be unable to return to their homes before October 2002 (Mitchell, 2002, p.4).

¹³The Insurance Information Institute estimates that less than 2 percent of insurers' September 11 losses were from dwelling and auto policies (personal lines) and that total insured losses will come to \$40 billion (Hartwig, 2002, p. 24). According to the Insurance Services Office, 31,500 personal property claims (excluding auto claims) and 4,300 auto claims had been filed through August 2002. 30,000 personal property claims and 4,000 auto claims had been filed in New York; 1,500 personal property claims and 300 auto claims had been filed in Virginia (Hartwig, 2002, p.3).

So far the tort system has not been a substantial source of aid for residents in Lower Manhattan. The same liability limits and procedural requirements apply to lawsuits brought by residents as by other parties suffering losses due to the September 11th attacks.

Residents did receive substantial support through government assistance programs and private charities. The principle government programs include

- **FEMA Disaster Housing Program** (\$26.5 million paid to 5,287 beneficiaries, or \$5,012 per household, through 8/02). Covers alternative lodging and funds to clean up residences.
- **Small Business Administration (SBA) Home Disaster Loans** (\$5.7 million loaned to 385 households, or \$14,805 per loan, through 9/02). Low interest loans to those whose homes or possessions were damaged because of the attack.
- **FEMA Individual and Family Grant Program** (\$8.1 million paid to 6,139 beneficiaries, or \$1,319 per beneficiary). Expenses to make homes habitable and for necessary clothing and cars; costs of vacuum cleaners and air purifiers.
- **EPA Indoor Residential Cleaning Program** (\$80 million budgeted for 4,838 residences, or \$16,536 per residence). Testing and cleanup of homes for asbestos.
- **Lower Manhattan Development Corporation (LMDC) Residential Grant Program** (\$280.5 million budgeted for 36,554 eligible residences, or \$7,674 per eligible residence). 30 percent rent reduction for those who enter a two-year lease in Lower Manhattan; \$1,000 grant for those who resided south of Canal prior to September 11 and still live there; \$750 to \$1,500 extra for households with children (LMDC, 2002).

Charity programs for displaced residents include

- **Red Cross Program for Displaced Residents.** Assistance with relocation expenses, replacement of home furnishings, crisis counseling. The amount distributed to displaced residents is uncertain. The Red Cross has not broken out payments to displaced residents versus payments to families of those killed or seriously injured and displaced workers.
- **September 11th Fund Cash Assistance Program.** Expenses related to the attacks including legal assistance and crisis counseling, \$2,500 gift check to residents who lived below Chambers Street and west of Broadway. The amount distributed to displaced residents is uncertain. The September 11th Fund has not broken out payments to

displaced residents versus payments to families of those killed or seriously injured and displaced workers.

The programs for displaced residents had varying goals. FEMA's Disaster Housing and Individual and Family Grant programs were meant to cover expenses needed to get through the disaster, not to restore the household to its pre-event state. In contrast, some of the programs attempted to restore at least certain aspects of the household to its pre-event state. Residents can use subsidized SBA loans to replace or repair damaged property, and the EPA Indoor Residential Cleaning Program attempts to remove environmental hazards caused by the attacks. Charity programs often allowed households to restore furnishing and personal property to pre-event states.

Some programs also provided at least some compensation to displaced residents for the hardship and inconveniences they had suffered. The \$2,500 gift distributed by the September 11th Fund at the end of 2001 was not tied to any particular expense and thus at least in some cases provided compensation for distress caused by the attacks. The \$1,000 LMDC grant for residents who lived South of Canal prior to 9/11 and continued to live there 6 months later is a type of partial compensation for the "significant inconvenience, disruption, and economic costs that residents have experienced since September 11th as a result of the disaster" (Lower Manhattan Development Corporation, 2002).

The LMDC rent subsidy programs are a noteworthy response to the effects of the disaster. LMDC's goal is to restore Lower Manhattan's economy and make it a desirable place to live. The goal is in effect to restore Lower Manhattan to its pre-event state, or even improve on its pre-event state. The subsidies also provide some compensation to those who lived through the attacks. The rent subsidies benefit renters who lived through the disaster and continue to live in the area. They also benefit property owners and landlords who saw rents and property values fall post-9/11.

Displaced Workers

The attacks on the World Trade Center caused layoffs and reductions in work hours in New York City and across the country. The Federal Reserve Bank of New York estimates that there were between 38,000 and 46,000 fewer private sector jobs in October 2001 than would

have been the case otherwise (Braum, Orr, and Rapaport, 2002, p. 7).¹⁴ The attack also led to a reduction in the number of hours worked.¹⁵ Overall, the New York Fed estimates that the attack caused wage and salary earnings in New York City to decline \$3.6 billion to \$6.4 billion through June 2002 (Braum, Orr, and Rapaport, 2002, p. 9).

Aid for workers affected by the September 11th attacks came from direct government assistance programs and charities. The tort system and private insurance mechanisms have provided little, if any, aid to workers. Government assistance programs for displaced workers included

- **Unemployment Benefits.** Unemployment benefits were available to workers nationwide whether or not they were laid off because of the attacks. Benefits typically last 6 months, but were extended to 9 months for layoffs subsequent to the September 11th attacks.
- **Disaster Unemployment Benefits.** Unemployment benefits were available to those who do not qualify for standard unemployment benefits, such as the self-employed or those who started working very recently. Available nationwide.
- **FEMA Mortgage and Rental Assistance Program.** Covers rent and mortgage payments for households whose income fell 25 percent or more and who received a late-payment notice. Available to those who lived or worked in Manhattan or were laid off by a business that was economically dependent on a firm in Manhattan.
- **FEMA Disaster Food Stamps and Disaster Medicaid.** Available to low-income households in New York City.
- **Training Programs.** Programs were funded by a variety of agencies and include training vouchers, career counseling, job training, and placement.

Charities also funded a number of programs for displaced workers. Examples include

- **Red Cross Extended Maintenance Assistance Program.** Provided 3 months of basic living expenses on a demonstrated need basis to those working south of Canal Street who lost their jobs, were laid off, or suffered substantially reduced employment prior to Jan 2002.

¹⁴Private-sector employment in New York City was approximately 3.15million in September 2001.

¹⁵Estimates of the job loss vary. The Fiscal Policy Institute in New York City put loss at 73,900 in the fourth quarter of 2001 (Parrott, 2002). In January 2002, Devol et al. (2002) estimated that the attacks would cost employment to be 149,200 lower in 2002 than it would be otherwise. The New York City Office of the Controller put the number at 83,100 jobs lost between September 2001 and July 2002. (City of New York Office of the Comptroller, 2002, p. 9)

- **September 11th Fund Cash Assistance Program.** Replaced net salary up to \$10,000 per person for those ineligible for unemployment benefits (usually undocumented workers).

One of the important lessons of the September 11th attacks is that the economic consequences of a large terrorist attack may be substantial and widespread. Not only did the September 11th attack affect those employees in businesses that were physically damaged, but the effects also rippled through the local and national economies. In this case, it is likely that the number of workers indirectly affected by the slowdown in business swamped the number whose jobs were affected by the direct physical damage of the attacks.

Benefits for those who lost their jobs or worked reduced hours either directly or indirectly due to the terrorist attacks varied. Benefits and resources were greatest in Lower Manhattan and decreased the farther one moved away. Immigration status also affected the benefits received. Undocumented workers were ineligible for unemployment benefits and FEMA programs. Undocumented workers in New York City were fortunate that charities filled in this gap in assistance. Undocumented workers affected by the disaster in other parts of the country were not as lucky.

The current system does not attempt to fully compensate workers for their losses—that is, to make them as well off as if the terrorist attack did not occur. Rather, the goal of unemployment assistance is to provide partial assistance to tide workers over until they find another job. Caps on unemployment benefits mean that the share of wages replaced for higher income workers will be particularly low. These workers may thus bear substantial losses from the September 11th attack.

Small Business

Estimates put the number of small businesses in Lower Manhattan at 1,500 prior to the attacks. Some of these businesses were physically damaged or destroyed by the attacks. Others saw their customer base and revenue drop precipitously because they were in the “frozen zone” closed to the public. Small business owners were thus another type of victim of the terrorist attacks.

Some small businesses had privately purchased insurance that covered property damage and at least some losses due to business interruption. Our interviews with stakeholders in New York, however, suggest that many small businesses had little or no insurance.¹⁶

The tort system also does not appear to be a substantial source of aid for small businesses in Lower Manhattan. The same liability limits and procedural requirements apply to lawsuits brought by businesses as by other parties suffering losses due to the September 11th attacks.

There were a good number of government programs set up for small businesses, although most aid was not available immediately following the attacks—the time that the small businesses needed it most. Programs included the

- **SBA Physical Disaster Loan Program** (\$33 million in loans to 531 businesses in New York State through 8/02). Low interest loans to replace damaged property, machinery, equipment, and inventories.
- **SBA Economic Injury Disaster Loans** (\$433 million in loans to 4,597 businesses in New York State through 8/02). Low-interest loans to cover wages, debt payments, and other ordinary and necessary operating expenses.
- **WTC Business Recovery Loan Fund** (\$50 million budget as of 5/02). Low-interest loans for small businesses south of 14th Street that did not meet SBA credit or eligibility requirements.
- **WTC Business Recovery Grant Program** (\$236 million distributed to 8,500 businesses with facilities with fewer than 500 employees south of 14th Street). Grants to repair or replace damaged equipment and for cleanup costs and to cover lost revenue and wages paid for no work. Period of losses covered ranged from 3 to 25 days depending on proximity to WTC with benefit caps ranging from \$50,000 to \$300,000 per facility.
- **WTC Small Firm Attraction and Retention Grant Program** (expected cost \$291 million). Grants of \$3,500 to \$5,000 per employee, depending on location, to establishments that employed 200 or less and signed a new lease for 5 years or more in Lower Manhattan.

¹⁶Insurers will make substantial payments to businesses related in September 11th losses. Losses are estimated as follows: \$3.5 billion for WTC property damage; \$6.0 billion for other property damage (includes perhaps 10 percent for personal property damage); \$11.0 billion for business interruption; \$1.0 for event cancellation; \$0.5 for aircraft damage; \$3.5 billion for aviation liability; \$10 billion for other liability (Hartwig, 2002, Exhibit 2). Breakouts for large and small business are unavailable.

- **Liberty Zone Tax Benefits** (expected value \$631 million). Federal tax credit of \$2,400 per employee and accelerated depreciation on property rehabilitated or replaced as a result of the attacks for small business in Lower Manhattan.

There were a number of nonprofit organizations in New York City that funneled assistance to small businesses after the attacks. For example, ReStart Central coordinated the donation of equipment from businesses and foundations across the country to small businesses in Lower Manhattan. Seedco, an organization in existence prior to the September 11th attacks, distributed grants and low interest loans made possible by funds from large foundations and other sources.

Low-interest loans are the government's standard approach for addressing losses to small businesses caused by disasters. The goal is not to make the small business whole for losses caused by a disaster, but to provide the resources that will allow the small business to survive until business conditions return to normal. Loans must be paid back, but reduced loan rates and only partial collateral requirements mean that there is a taxpayer subsidy. Several special programs were put in place for small businesses after September 11th that went far beyond loan programs. They sought to provide some compensation for losses, but also to encourage firms to remain in Lower Manhattan. The WTC Business Recovery Grant Program replaced lost revenue, which presumably would include lost profits, for a substantial number of days in many cases, but even then, there were undoubtedly many businesses with uncompensated losses. The WTC Small Firm Attraction and Retention Program and the Liberty Zone Tax Benefits programs provide incentives for firms to stay in or move to Lower Manhattan and compensation to firms experiencing losses due the September 11th attacks.

LESSONS FROM THE SEPTEMBER 11TH ATTACKS ABOUT COMPENSATING VICTIMS OF CRIME

Insurance

Life insurance and other forms of insurance are one way to provide compensation to crime victims. The advantage of life insurance is that people can decide how much they want to buy and policies can be tied to individual needs. Life insurance policies can provide enough coverage to replace the economic losses due to a crime and even provide additional money that can in effect provide compensation for non-economic damages. It may seem inappropriate to put the onus for coverage on the victim when it was the criminal who caused the injury. However, when insurance is broadly purchased, the costs of payouts are spread across society as a whole,

just as government victim compensation programs would be if they were funded by general tax revenues.

The main problem with relying on insurance to provide compensation to victims of crime is that people may not buy insurance or buy inadequate amounts. We saw in the context of September 11th that even high-income earners seldom purchased life insurance adequate to replace much of their lifetime earnings. People with low-incomes will presumably make insurance an even lower priority, viewing it as a luxury crowded out by more pressing financial needs.

Tort

Tort remedies were severely restricted for the losses caused by the September 11th attacks. However, substantial resources are still available to the tort system. The airlines are liable for up to \$6 billion (they had \$1.5 billion in insurance per plane), New York City is liable for up to \$350 million, and other public agencies such as the Port Authority of New York and New Jersey can be sued up to the limits of their insurance policies.¹⁷ Congress did not limit the liability of other parties less closely related to the attacks. As discussed above, some suits have been filed so far, but the tort system's role in September 11th is still unfolding.

What is it about the tort system that led Congress to limit liability immediately? Congress was concerned that litigation could bankrupt the airlines and other potential defendants, with the effects rippling throughout the economy (Stewart, Cohen, and Marangi, 2002, pp. 157-158). The fundamental problem with using the tort system to compensate victims of terrorism or other types of crime stems from two sources. First, the parties primarily responsible often do not have substantial resources. The terrorists responsible for the September 11th attacks are unlikely to have resources anywhere near the amounts needed to compensate the victims, and even if they had substantial resources, they may be beyond the reach of U.S. courts. Second, liability in tort cases is usually joint and several, both for economic and non-economic damages. Thus a defendant who was responsible for only a small proportion of the loss can be forced to pay for the entire loss. It is then up to that defendant to recover costs from other liable parties. Congress was concerned that potentially monstrous liability would bankrupt the airlines and cause serious repercussions in the national economy.

¹⁷The Insurance Information Institute puts the liability limit for the Port Authority of New York and New Jersey at \$650 million (Hartwig, 2002, p. 27).

The possible pernicious economic effects of the tort system do not necessarily mean that tort is inappropriate for all situations related to terrorism or crime more generally. For example, the tort system can provide important incentives to manufacturers of security systems to design, describe the capabilities of, and manufacture their products with care. There are also fixes to the tort system that could lessen the likelihood of adverse outcomes. Replacing joint and several liability with proportional liability, for example, would reduce the chances that a deep-pocket would have to pay the entire loss. However, proportional liability would also likely mean that crime victims would receive less in some circumstances.

The tort system provides one model for the amount of assistance that should be awarded to victims of crime. The tort system attempts to restore the injured parties to their pre-event state—to the extent that is possible with monetary compensation. Parties can recover the costs of medical care, foregone income, and other economic losses. They can also recover non-economic losses such as pain and suffering. Payments for the same injury vary across individuals depending on the individual's earning history and circumstances. Congress set up the September 11th Victim Compensation Fund (VCF), at least in part as a *quid pro quo*. Many consequently argued that the benefits of the VCF should replicate those of the tort system and, as discussed above, criticized the VCF for limiting economic losses for the highest wage earners and also for setting non-economic damages that are lower than plaintiffs with similar injuries had often received in court. It is important to point out, however, that just because those injured in the September 11th attacks might have in principle received substantial compensation through the tort system had liability not been limited, there is no guarantee they would have done so. There is no question that any awards would have been many years in coming, and a jury finding parties other than the terrorists liable is hardly assured.

There is some sense in the policy community that crime victims have had increasing success in recent years recovering damages through civil actions. However, there is little empirical information documenting any such trend. It would be helpful to the policy discussion on crime victim compensation to better understand how often civil actions are brought, in what types of cases, and in what circumstances they pay off. Similarly it is important to understand trends in the restitution ordered by criminal courts and the amounts that are actually paid. The principles guiding the determination of restitution awards and their implementation should be compared to those that guide the awards in civil cases.

Charity

The charitable response to the September 11th attacks was unprecedented. As of December 2002 the U.S. General Accounting Office estimated that charities had raised over \$2.7 billion specifically for September 11th related recipients (2002, p.1).¹⁸ According to a number of surveys, over two-thirds of American households made contributions to charities specifically for victims of the September 11th attacks (Center on Philanthropy, 2002).¹⁹

Charities can provide an important source of compensation for victims of crime, but the main problem is that the amount of resources available is unpredictable. Even should an event the magnitude of September 11th occur again, the charitable response might not be nearly as large. It may also be difficult to increase the amount of charitable giving beyond current levels for the crimes that affect only one or a few individuals.

Charities also have some advantages in speed and flexibility over government programs, but these advantages also have potential drawbacks. In the context of September 11th, charities were able to get aid out the door faster than many government agencies. They were familiar with the various ethnic groups and subgroups in New York City and in many cases had built up trust with the immigrant community, a community that is often suspicious of the government. These strengths allow charities to identify groups that have been adversely affected by a crime and quickly distribute aid. The downside of this flexibility is that charities do not need to provide equal access to all injured parties. The values and priorities of donors ultimately drive a charity's agenda, and there is no guarantee that all needy groups will be served.

The goal of charitable assistance in the context of natural disasters has been to provide assistance based on need, not compensation of losses. The goal is to provide assistance so that victims can get back on their feet and resume their normal lives. Charitable assistance typically does not strive to compensate injured parties for all economic, let alone non-economic losses. Representatives of several charities we contacted in New York were dismayed that many injured parties were expecting full compensation for their losses rather than assistance to cover the expenses needed to get through a difficult time. They blamed this shift largely on the September

¹⁸This figure includes donations directed to 35 of the larger charities involved in responding to the September 11th disaster. According to the GAO, the Metro New York Better Business Bureau Foundation has identified 470 September 11th-related charities, and the IRS has identified a number closer to 600. Funds raised by these hundreds of smaller charities are not included in the GAO totals.

¹⁹The survey was conducted from October 22, to November 28, 2001. 65.6 percent of respondents reported that they or a member of their household had made a contribution to a 9/11 related charity. Similar survey results were reported by USA Today/CNN/Gallup, December 14-16, 2001.

11th Victim Compensation Fund. The debates around the fund were largely about compensating the full loss, economic and non-economic, of those killed and seriously injured. Other groups such as displaced workers, businesses, and for that matter state and local governments, wondered why their losses should not be treated in the same manner.

Government Programs

When asked whether the VCF is a model for future terrorist attacks or social problems, Kenneth Feinberg, Special Master of the Fund, is fond of saying that with enough money, he can solve any social problem. With payments expected to average on the order of \$1.4 million tax-free per claim, the Victim Compensation Fund is the perhaps the ultimate realization of this approach. The critical issues for government programs are who should pay, how much should they pay, and what are the effects on other programs and the private sector more generally.²⁰ We address each of these issues in turn.

Money can solve many problems, but the question immediately becomes who should pay. The VCF set up a system where those not at fault (*i.e.*, the taxpayers) pay. The government retained the right to pursue claims against parties responsible for the harm (the right of subrogation), and could retain such rights for other compensation programs it sets up. In the case of crime, however, it seems likely that the government will only be able to recover a limited fraction of the payouts.

The amounts paid out by the VCF are unprecedented for a government program. Awards for non-economic damages are arguably less than what a jury in a civil suit would award, but many other sources of compensation, such as the substantial charitable payments, are not deducted from the VCF awards. The very size of the awards has generated controversy. Victim rights groups have asked why the victims of this particular crime are receiving such large payments, when the resources available to someone who died in a drive-by-shooting on September 12, 2001 are so much less. The program may not even make its beneficiaries happy. The variation in awards across claimants has prompted some claimants to ask why the government values the life of their loved ones less than others who receive higher awards.

The effect of the VCF on other programs and policies should also be evaluated. For example, some policymakers in Washington have worried that the potential costs of

²⁰The government has taken different approaches to compensate injured parties in other settings. We review other approaches in our forthcoming report.

compensating victims of war or terrorist events will prevent the United States from adopting foreign policies (*i.e.*, policies that involve military action) that benefit the nation as a whole in the long run.

Summary

Designing a system to compensate victims of crime involves deciding how each of the four mechanisms for compensating losses—insurance, tort, charity, and direct government assistance—can be tailored and combined. Designing such a system involves fundamental value judgments. For example, relying more on government programs and less on individually purchased insurance means that crime victim compensation is more of a social responsibility and less of an individual responsibility. Choosing a tort-like approach implies that the objective should be to compensate victims for their losses rather than assist them through a difficult period and will mean that people with different incomes will be compensated differently for similar injuries. Emphasizing private charity may mean less government bureaucracy and lower taxes, but it likely means less reliable benefits for victims of crime. Designing a compensation system also requires careful consideration of the interaction among the four mechanisms. For example, generous government assistance likely reduces the incentives to buy insurance.

The system of programs put in place to compensate the victims of the September 11th attacks has stimulated the discussion of how we as a society should compensate victims of terrorism and of crime more generally. We should take advantage of this opportunity to sketch out the strengths and weaknesses of the response to the September 11th attacks, the approaches used in the U.S. to compensate victims for other types of losses, and the approaches taken abroad for terrorism and crime victim compensation. Such analyses will help clarify the key tradeoffs and the key value judgments that need to be made in designing a system to compensate victims of crime.

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