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He's balancing lives, dollars

Wrenching task to decide how much feds pay families

By WILLIAM SHERMAN
DAILY NEWS STAFF WRITER

With a mandate to determine the specific dollar value of each of the 4,558 lives lost in the Sept. 11 terrorist attacks, lawyer Kenneth Feinberg has judgments to make that would paralyze King Solomon, even on his legendary best day.

As the newly appointed special master of the federal victims' compensation fund, Feinberg has to decide who will get money and how much, under a set of rules he must establish.

His decisions cannot be appealed, according to federal legislation, and his power, with no limit on the amount of money he can hand out, is unprecedented.

But so are his problems.

Should the widow and two children of a bond trader earning $2 million a year, for example, receive 40 times the amount given the survivors of a custodian, firefighter or waiter who earned $50,000?

"Is that fair?" asked Frank Granito, one of a small group of lawyers who specialize in aviation disaster litigation. "But look at it the other way. Why should the bond trader's widow and family receive less than her husband was earning?"

Economic awards in wrongful-death cases typically are based on salary and projections of future earnings, whether a single victim is involved or hundreds.

That's the only precedent available to Feinberg, 56, a veteran litigator who must set the rules and have the fund operating by Dec. 23.

He wasn't available for comment yesterday, but on Monday, when he was appointed, Feinberg said, "The whole equity issue, disparate treatment between the well-off and the not-so-well-off, that is the critical issue."

He did not say how he will resolve that issue, except to note, "We will treat claimants with similar needs in a similar fashion."

But the basis for determining the awards is only one of the critical decisions for Feinberg.

"It says relatives can recover, but does that mean wives, siblings, a mother-in-law, a father and/or mother if the victim was single? . . . Are we talking immediate relatives or second cousins?" asked lawyer Mitch Baumeister, a top aviation litigator who is representing the families of 35 victims.

The human element

Then there's the issue of determining how to compensate a widow or child for noneconomic losses, such as the loss of spousal companionship, loss of parental guidance for a teenager as opposed to an infant, psychological treatment and the emotional pain and suffering of survivors.

"In the past, in the Pan Am 103 case, we had a 'loss of society' award of $5 million, but will Feinberg make that kind of award? I don't know," said Granito.

One of his thorniest judgments will be whether to deduct charitable distributions and other payments such as life insurance and Social Security from individual fund awards, the lawyers said. So far, $1.3 billion has been collected by Sept. 11-oriented charities.

That's within Feinberg's mandate as well.

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