



# **THE SEPTEMBER 11 VICTIM COMPENSATION FUND OF 2001**

**U.S. DEPARTMENT OF JUSTICE  
OFFICE OF THE INSPECTOR GENERAL  
AUDIT DIVISION**

**AUDIT REPORT 04-01  
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# **THE SEPTEMBER 11 VICTIM COMPENSATION FUND OF 2001**

## **EXECUTIVE SUMMARY**

Shortly after the terrorist attacks of September 11, 2001, Congress passed the Air Transportation Safety and Stabilization Act, Public Law No. 107-42 (the Act). Among other things, this legislation established the September 11 Victim Compensation Fund of 2001 (VCF or the Fund). The Fund was designed to compensate individuals who were injured or relatives of individuals who were killed in the attacks. For fiscal years (FY) 2002, 2003, and 2004, a total of \$5.12 billion was budgeted to compensate the victims and their families. According to the Act, the VCF is scheduled to sunset on December 22, 2003; no claims may be filed after that date.

The Act specified that the Attorney General, acting through a Special Master, would administer the program, promulgate procedures and substantive rules, and employ and supervise personnel to perform the duties of the Special Master. The Attorney General appointed a Special Master, Kenneth Feinberg, who, in conjunction with the Department of Justice (Department) Civil Division, developed the VCF regulations and the procedures for processing claims.<sup>1</sup> Mr. Feinberg is a Washington, D.C. attorney who has specialized in mediation, arbitration, and negotiation, and was the Special Settlement Master for Agent Orange litigation. He and two employees of his private mediation firm who are involved in the VCF are providing their services without compensation; the Department is paying for their expenses.<sup>2</sup>

According to the Department, as of August 14, 2003, a total of 2,205 (1,177 death and 1,028 personal injury) claims had been filed, and of these claims, 451 death and 155 personal injury awards had been accepted or finalized. The remaining 726 death and 873 personal injury claims were denied, temporarily suspended, withdrawn, or were in some stage of processing.

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<sup>1</sup> The regulations for the September 11 Victim Compensation Fund of 2001 are codified at 28 CFR Part 104 at 11233 (March 13, 2002).

<sup>2</sup> The Department contracted with the accounting firm of PricewaterhouseCoopers (PwC) in January 2002 to assist the Special Master and his staff with the administration of the Fund. PwC operates the Claims Processing Center (CPC) in Arlington, Virginia.

The number of claims that actually will be filed before the sunset date of December 22, 2003, is unknown. During the time of our fieldwork, Fund officials estimated that the total number of paid claims could reach 3,000 death claims and 300 injury claims. However, in their response to the draft report dated September 15, 2003, Department officials indicated that the Special Master is now predicting 3,000 death claims and between 2,500 and 3,000 personal injury claims. If these revised estimates prove accurate, the Special Master and his staff may see an influx of over 3,700 death and personal injury claims in the final four months of the program.

We reviewed various aspects of the Fund to determine how claims were being processed, including the number of claims filed, the amounts paid, the consistency and timeliness of the processing, the adherence of the VCF personnel to the regulations developed in accordance with the Act and procedures for processing claims developed by PwC and the Special Master's office, and the controls in place to identify fraud. We also reviewed the adequacy of the funds budgeted to pay victims and the preparations for the deadline for filing a claim on December 22, 2003.

### **The Award Process**

Each claim begins at the Department's contractor, PwC, where the claim form and supporting documents submitted by the claimant are reviewed against eligibility criteria. The Special Master or his representative reviews each claim and determines the eligibility status. Claimants who meet specific criteria may receive Advanced Benefits that are credited against their final award.

Once a claimant has been determined to be eligible and the information needed to calculate a presumptive award has been gathered, the claim is classified as "substantially complete" and the claim is considered "filed." After the claim is substantially complete, the Special Master has 45 days to present the claimant with a presumed award and 120 days to issue a final award. Also, when the claim is substantially complete, the claimant is barred from pursuing certain lawsuits such as those against the City of New York, the airlines, the airports, the Port Authority of New York and New Jersey, and the security companies involved in the events of September 11.

PwC personnel compute a presumptive award using six automated calculation models prepared for different categories of death claimants: (1) military personnel, (2) employees of the New York City Fire Department and the New York City Police Department, (3) federal employees under the Federal Employees Retirement System (FERS), (4) federal employees under

Civil Service Retirement System (CSRS), (5) federal employees covered by both CSRS and FERS, and (6) everyone else.<sup>3</sup> Generally, the amount to which a claimant is entitled is computed by calculating the claimant's economic damages, adding non-economic damages, and then subtracting qualified collateral sources such as life insurance.

The economic portion of the award is calculated by determining the victim's post-tax income and then, adding in the victim's employer-provided benefits, such as bonuses and 401K matches. This figure is then increased based on the victim's work-life expectancy and an applicable wage-growth rate. A percentage representing the victim's share of household expenditures and consumption is subtracted, and the final amount is reduced to present value.

The non-economic portion of the award (pain-and-suffering) has been presumptively set at \$250,000. For a death claim, \$250,000 is awarded for the decedent, \$100,000 for the spouse, and \$100,000 for each dependent. For physical injury claims, the \$250,000 presumptive award can be increased or decreased by the Special Master based on the individual's circumstances.

Once economic and non-economic damages are calculated, qualified collateral sources must be deducted from this total. Qualified collateral sources are the benefits the family of the victim has received as a result of the victim's death or physical injury. Examples of collateral source benefits include: life insurance, survivor pensions, Social Security Death Benefits, past Social Security Survivor Benefits paid to spouses, past and future Social Security Survivor Benefits paid to children and dependent adults, and past and future non-contingent Workers' Compensation Benefits. PwC personnel review the collateral source benefit information provided by the claimants. Ideally, the claimant provides on the claim form all of the information needed to complete the identification and valuation of collateral sources. However, PwC personnel often need to augment the claim through other sources, including the Social Security Administration, the victim's employer, and third-party payors of the benefits.

There is no maximum payout established by the Act or the regulations. However, the regulations establish a minimum award for a single deceased person, before collateral income sources are deducted, of \$300,000, and for a married deceased person or a deceased person with a dependent of

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<sup>3</sup> At the time of our fieldwork, PwC was using six calculation models. In their response to the draft report, Department officials indicated that a seventh model was now in use designed for Employee Retirement System (ERS) Port Authority civilians.

\$500,000. As of June 16, 2003, the average award for a death claim was \$1.44 million, and personal injury awards ranged from \$500 to \$6.8 million.

## **Fraud Controls**

VCF personnel also review claims for fraud as they process the claims. Specifically, fraud detection begins when the PwC staff at the CPC reviews the claims against eligibility criteria. CPC personnel ensure that the names of the victim, claimant, and award recipients, are not on the list of terrorists. They also check the claimants' names against individuals who have already been flagged in the VCF's claim processing system because of suspicious behavior, either with the VCF or with September 11 charities. For death claims, PwC staff request that the claimant submit an original death certificate and at least one other document to corroborate the reported death. They also check that those original documents, including original death certificates and original letters of administration appointing the personal representative, are submitted with claims. VCF personnel stated that "the single greatest fraud protection in place" is the requirement that the claimant be appointed the victim's personal representative because courts usually appoint personal representatives. Moreover, the individuals named as distributees of the award under the claimant's distribution plan must undergo a Federal Bureau of Investigation (FBI) background check before being approved to receive their shares of awards. In addition, physical injury claims require proof of injury through medical records, which are verified through doctors and hospitals.

Fund personnel also require proof of collateral source benefits, usually from employers and the Social Security Administration. They also document the value of airline death benefits that have been paid to the victims. VCF personnel also stated that they are trained to ask probing questions of claimants to determine whether other collateral sources are available.

## **Audit Testing and Results**

We reviewed various aspects of the Fund to determine how claims were processed, including the number of claims filed, the amounts awarded, the consistency and timeliness of the processing, the adherence of the Special Master to the rules and procedures, and the controls in place to deter fraud. We limited our review to the 792 claims that had been filed as of November 13, 2002, the beginning of our audit, and chose samples from these claims for detailed testing. We reviewed claim files for documentation of eligibility, economic loss, and collateral sources, and documents in claim files suspected as fraudulent. For claims included in our samples, we reviewed data from the Victim Claims Management System, a customized

database specifically developed to track VCF claims, to determine the status and the timeliness of claim processing. In addition, we interviewed officials from the Civil Division, PwC, and the Special Master's office.

A total of 792 claims had been submitted for payment by the VCF as of November 13, 2002. The status of these claims follows:

Presumed Award Letters Issued	92
Denied or Withdrawn	73
Possibly Fraudulent	17
Awaiting Presumptive Award Calculation	<u>610</u>
	<u>792</u>

Our testing revealed that the number of claims paid as of November 13, 2002, was relatively low. Of the 792 claims that were filed as of that date, only 92 had been issued presumed awards.<sup>4</sup> For the remaining claims, the largest category (610 claims) was awaiting award calculations, and 585 of those lacked sufficient information from the claimant to calculate a presumptive award.<sup>5</sup> In our judgment, these delays occurred despite efforts by the Special Master and his staff to inform potential claimants of the Fund and to provide them with assistance in the filing of claims.

Shortly before the issuance of the draft report, we requested updated claim statistics from the Civil Division. These figures were received after the draft report was issued, and, while not audited, demonstrate that participation in the fund is still quite low approximately four months prior to the sunset date. The Civil Division reported the following claim status as of August 14, 2003:

Presumed Award Letters Issued	720
Denied, Withdrawn, or Suspended	257

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<sup>4</sup> Of these 92 claims, 7 claimants had been paid, 60 awards had been accepted by the claimants but not yet paid, 8 claimants had requested a hearing with the Special Master, and 17 claimants had not yet responded.

<sup>5</sup> In order to calculate a presumptive award in a death claim, the Special Master requires, among other documents, copies of all tax returns filed by the victim for 1998-2000; written proof of salary/wages for 1998-2001 and all other compensation received during those years (bonuses, commissions, overtime); evidence of employer-provided benefits during 2000 and 2001, including health benefits, pensions, transportation/club/housing allowances, and 401k; life insurance policies and payments; Social Security and Workman's Compensation applications and determinations; and a certified copy of the will, if applicable. In addition, VCF personnel independently collect other documentation, such as obituaries, that support the number of the claimant's asserted dependents.

Awaiting Presumptive Award Calculation	<u>1,228</u>
	<u>2,205<sup>6</sup></u>

The data indicated that of the 1,228 claims waiting presumptive award calculation, fully 1,048 claims lacked sufficient information to calculate a presumptive award.

Our testing to assess the timeliness of claims processing found that once a claim was substantially complete, the Special Master presented a final award amount to the claimant in substantially less than the statutory time frame of 120 days. This was the case for nine of the ten claims in our sample. The remaining claim was still in process during our fieldwork. According to our sampled cases, the average number of days to process substantially complete claims was 35 days.

With respect to our testing for consistency of treatment, in all of the cases that we examined, VCF personnel appeared to process claims in a manner that would maximize award payments. In the cases where discretion was used, we found justification for the amount of the award in the claimant files. For example, we found that although the procedures state that VCF personnel should attempt to calculate representative income from an average of 1998-2001 annual income figures, in some cases VCF personnel eliminated one or more years of income from the average because they were atypically low. The reasons underlying the judgments were documented in the file.

Our testing of fraud controls determined that the controls implemented by VCF personnel appeared adequate to deter fraud. Essentially, fraud controls include, among others: (1) requirements that certain essential documents be certified such as death certificates, wills, and court appointments of personal representatives; (2) submission of third party documentation such as employer verifications, W-2s and Social Security determinations; (3) independent verification by VCF personnel of family structure, medical expenses, and collateral sources; (4) attestation by the claimant that the information provided is true, complete, and accurate; and (5) background investigations of all distributees by the FBI. We believe that these procedures are reasonable and, while time consuming, are necessary to minimize the payment of a fraudulent claim.

In addition, Fund personnel forward any claim that is suspected of being fraudulent to the Department's Office of the Inspector General (OIG)

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<sup>6</sup> The number of potentially fraudulent cases is still reported at 17; however, the Civil Division did not indicate the categories of these 17 claims in the statistics supplied to us.

for investigation. As of November 2002, VCF personnel had referred eight cases to the Fraud Detection Office (FDO) within the OIG's Investigations Division.<sup>7</sup> As of July 2003, the FDO reported the following dispositions:

- two individuals pleaded guilty to making false statements and mail fraud, respectively, and were sentenced;
- one individual was acquitted on all counts but is currently being held by the Bureau of Immigration and Customs Enforcement pending immigration court proceedings;
- judicial proceedings continue against four other individuals; and
- one individual is still under investigation.

We also identified two issues during our review that require continued monitoring and oversight. These issues involve: (1) the large number of claims that could be filed at the last minute just prior to the VCF's sunset date, and (2) whether the \$5.12 billion in budgeted funds will be sufficient to pay all claims.

**Last Minute Claims:** The VCF may experience an influx of claims immediately prior to December 22, 2003, the sunset date for the Fund. According to the Department, the number of claims submitted as of August 14, 2003, was 2,205 (1,177 death and 1,028 personal injury), and the number of awards that had been finalized (track B) and accepted (track A) was 606 (451 death and 155 personal injury). The number of claims that actually will be filed before the deadline is unknown, but Fund officials are now estimating the total number of claims at 3,000 death claims and 2,500 to 3,000 injury claims. Several VCF officials noted that programs such as the VCF usually experience a surge in the number of claim submissions as the filing deadline approaches. VCF officials explained that in anticipation of this surge, they are making efforts now to increase the number of personnel at PwC and at the Special Master's office. In addition, the Special Master has arranged for administrative law judges to be assigned, if necessary, to assist him with additional hearings. In our judgment, these are reasonable, proactive measures to address what may be a very large surge in claim submissions. However, because of the potential volume of claims that could be filed at the last minute, we believe Fund personnel must continually monitor the status of claims processing to be able to respond to a potential surge in claims.

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<sup>7</sup> The FDO is a centralized, specialized investigative office in Washington, D.C. that proactively uncovers instances of fraud in connection with Department programs and operations. Staffed by special agents and forensic auditors, it reviews and investigates allegations of payment irregularities in contracts, grants, medical services, the management and sale of seized assets, and the falsification of applications for benefits that fall under the Department's statutory authority.



**Sufficiency of Budgeted Funds:** The Act established a permanent and indefinite appropriation for the VCF. Through 2004, \$5.12 billion was budgeted for the VCF to compensate victims and their families, which appears adequate for anticipated claims at the current average award levels and should be sufficient to pay all of the potential claims against the Fund. The expected amount for physical injury claims is difficult to quantify because awards vary considerably depending on the specific conditions of each case. However, based on the final awards as of August 14, 2003, as provided by the Department, the average personal injury award was \$159,072.<sup>8</sup> If we apply this average to the 3,000 claims estimated by the Special Master, and account for the one awarded and three anticipated high-dollar awards, personal injury awards would total approximately \$504 million. If the anticipated 3,000 death claims are awarded at the average death award experienced by the VCF through August 2003, as calculated from the figures supplied to us by the Civil Division, the Fund will show a surplus of about \$27 million, as follows:

<u>BUDGET PROVISIONS</u>	(dollars in millions)
2002 (Enacted)	\$ 60
2003 (President's Request)	2,700
2004 (Request)	<u>2,361</u>
Total Provisions	<u>\$5,121</u>
 <u>ESTIMATED OUTLAYS</u>	
Average Death Award	\$ 1.53
Anticipated Total Death Awards	<u>X 3,000</u>
Total Estimated Outlays for Death Awards	\$4,590
 Average Physical Injury Award	 \$ .159
Anticipated Total Physical Injury Awards	<u>X 3,000</u>
Total Estimated Outlays for Physical Injury Awards Based on Average	<u>\$ 477</u>
 High-Dollar Physical Injury Award to Date	 \$ 6.77
Anticipated Total High-Dollar Physical Injury Awards	<u>X 4</u>
Total Estimated Outlays for High-Dollar Physical Injury Awards	<u>\$ 27</u>
 Total Estimated Outlays for Physical Injury	 <u>504</u>
Total Estimated Outlays	<u>\$5,094</u>
 <u>BUDGET PROVISIONS LESS ESTIMATED OUTLAYS</u>	 <u>\$27</u>

Source: DOJ Civil Division

<sup>8</sup> The Civil Division provided us with unaudited claim statistics current as of August 14, 2003 for 155 personal injury awards. In order to calculate the average personal injury award, we omitted the highest personal injury award to date, \$6.77 million, as it exceeded the next highest award by over \$5.5 million. We projected the average of the remaining 154 awards to the anticipated 3,000 claims. The Special Master's office indicated that there might be three additional awards that are similar in amount to the \$6.77 million award. Therefore, in order to account for these claims, we projected \$27 million for the four awards.

On January 25, 2003, several potential claimants filed a lawsuit against the DOJ, the Attorney General, and the Special Master. Similar lawsuits were filed on February 14, 2003, and February 20, 2003. Among other issues, the plaintiffs expressed concern about the use of after-tax income to compute economic loss and alleged that the \$231,000 limitation on income creates an unlawful cap. The court heard oral arguments for all three lawsuits on April 14, 2003, and ruled against the plaintiffs on all issues on May 8, 2003. Colaio et al. v. Feinberg et al., No. 03-CV-558, (S.D.N.Y. May 8, 2003). If the District Court's ruling is appealed and overturned, the above computation would require adjustment, and the Fund might require a significant increase in funding. However, if the Court's ruling is not overturned and the above estimates hold true, the Fund may have a surplus of approximately \$27 million.

The details of our work are contained in the Results of Review section of this report. Our audit scope and methodology are detailed in Appendix I.

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## INTRODUCTION

In response to the terrorist attacks of September 11, 2001, Congress passed the Air Transportation Safety and Stabilization Act, Public Law No. 107-42 (the Act). This legislation, enacted on September 22, 2001, established the September 11 Victim Compensation Fund of 2001 (VCF or the Fund) and designated the Attorney General to administer it. Congress declared that the purpose of the VCF was "to provide compensation to any individual (or relatives of a deceased individual) who was physically injured or killed as a result of the terrorist-related aircraft crashes of September 11, 2001." Victims of September 11 who only experienced economic harm, such as the loss of employment or property damage, are not entitled to recovery from the VCF under the Act.

On November 26, 2001, the Attorney General, in accordance with the Act, appointed Kenneth Feinberg as the Special Master. In conjunction with the Civil Division of the Department of Justice (DOJ), he is responsible for administering the VCF and promulgating the rules necessary for the program. VCF officials finalized regulations on March 13, 2002 and developed internal procedures for implementing the regulations.<sup>9</sup> Mr. Feinberg is a Washington, DC attorney specializing in mediation, arbitration, and negotiation. He previously served as Special Counsel to the Senate Committee on the Judiciary, worked as an Assistant U.S. Attorney in New York City, and served as Special Settlement Master involving Agent Orange litigation. Several of the Special Master's partners and staff members from his mediation firm are also working for the VCF, providing eligibility determinations, verifying original documents, approving Fund distribution plans, and researching legal questions. Mr. Feinberg and two employees of his mediation firm who are involved in the VCF are providing their services without compensation. An additional employee is compensated as a special government contract employee. The Department is paying for their expenses.

On January 9, 2002, the DOJ Civil Division contracted with PricewaterhouseCoopers (PwC) to assist the Special Master with the administration of the VCF. As part of the contract, PwC operates a Claims-Processing Center (CPC) in Arlington, Virginia, for the intake of claims, review of eligibility factors, procurement and maintenance of necessary documentation, recommendation to the Special Master of the claimant's eligibility status, and computation of presumptive awards using calculation

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<sup>9</sup> These regulations are codified in at 28 CFR Part 104 (March 13, 2002) at 11233.

models.<sup>10</sup> The PwC personnel do not conduct award hearings; only the Special Master or his designee conducts hearings and makes final award determinations. The PwC contract and other Fund administrative expenses are paid by the Civil Division, and not from VCF appropriations.

When the Special Master and the Civil Division formulated the regulations for the Fund, they created a website that provides information on the Fund, claim forms, information on how to file a claim, and a method for the public to comment on the Fund. Starting in January 2002, VCF staff members began an outreach program by holding meetings in major Northeast cities, as well as in Los Angeles, London, and Australia; sending letters and full claim packets to prospective claimants on numerous occasions; running advertisements in newspapers; and setting up nine claim assistance centers in the Northeast and Arlington, Virginia, to help claimants file their claims. The VCF began processing advance benefits to eligible claimants after December 20, 2001, and issued the first final award letters in August 2002.

We reviewed various aspects of the Fund to determine how claims were being processed, including the number of claims filed, the amounts paid, the consistency and timeliness of the processing, the adherence of the VCF personnel to the regulations developed in accordance with the Act and procedures for processing claims developed by PwC and the Special Master's office, and controls in place to identify fraud. We also reviewed the adequacy of the funds budgeted to pay victims and the preparations for the deadline for filing a claim on December 22, 2003. The details of our audit objectives, scope, and methodology are contained in Appendix I.

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<sup>10</sup> See Appendix II for definitions of commonly used terms and Appendix III for an explanation of the claim process.

## **RESULTS OF REVIEW**

Fund officials developed rules and procedures in accordance with the Act and are operating within that framework. The awards are being made in a consistent and timely manner. Established fraud controls also appear adequate to minimize the risk of a fraudulent payment. Current funding for the VCF for FYs 2002 through 2004 appears sufficient to pay all claimants. Fund personnel are planning appropriately for a potential surge of claims as the application deadline draws near by increasing the number of contract personnel and utilizing administrative law judges to conduct hearings with claimants.

### **REVIEW OF PROCEDURES AND THE AWARD PROCESS**

#### **CLAIM PROCESSING<sup>11</sup>**

Our review concentrated on three primary areas of claim processing: (1) determination of eligibility, (2) verification of the victim's income, and (3) confirmation of the proceeds from collateral sources. We compared VCF activities in these areas against a random sample of 10 claims from a universe of 92 claims that had been issued presumed award letters. Our sample contained nine death claims and one physical injury claim.

#### **Eligibility**

The VCF procedures require that each death claim establish eligibility through: (1) a death certificate, (2) at least one other document that confirms the victim's presence at one of the designated locations on September 11, (3) an original court document appointing a personal representative to represent the deceased, and (4) proof that all interested parties have been notified that the claim is being submitted. Physically injured claimants must substantiate their presence at one of the specified locations on September 11 and provide medical records establishing the nature of their injuries and the dates of treatment. For each of the nine death claims in our sample, we verified that the file contained an original death certificate and at least one other document that substantiated the victim's death on September 11, usually a statement from the victim's employer that the victim was at work on that date. Each death claim file also contained an original court document appointing a personal

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<sup>11</sup> See Appendix II for definitions and Appendix III for a detailed explanation of the claim process.

representative and proof of notification of the claim to other interested parties. For the one physical injury claim in our sample, the claim file contained original medical records and a statement from the victim's employer that he had been working around the World Trade Center on September 11.

Our review was limited to the claims that were submitted by November 13, 2002, the date of the entrance conference for this audit. Of the 792 claims that had been submitted as of that date, 73 claims were denied by the Special Master or withdrawn by the claimant. We selected a sample of 10 of these 73 claims (9 denied and 1 withdrawn) to determine whether the reasons for denying a claim were consistent and whether the reasons for both denials and withdrawals were documented in the claim files. In our sample, one claim was withdrawn because the claimant did not realize that she would be forfeiting her right to sue. In our review of the nine denied claims, one was a death claim that was disqualified because the claimant was not the proper personal representative. The remaining eight claims were physical injury claims that were denied because of insufficient documentation of the victim's presence at one of the specified sites, the victim was not treated by medical personnel within the requisite period of time (72 hours for rescue personnel and 24 hours for all others), no medical records were provided, or the injury did not meet the qualifications established in the regulations. VCF officials denied five of these eight claims for more than one of the listed reasons.

Our review disclosed that all of these files were adequately documented with the reason(s) for the denial. Based on our review, VCF officials are consistently applying the criteria for claim eligibility and properly documenting the decisions made about these claims, and are substantially in compliance with procedures for verifying claimant eligibility.

### **Income Verification**

The VCF procedures require claimants to submit documentation to verify the victim's income for calendar years 1998 through 2001. This documentation includes tax returns, year-end payroll statements, Internal Revenue Service (IRS) W-2 forms, pension benefits, and the cost of employer-provided benefits. We reviewed our sample of ten claims to determine how the VCF staff calculated the victim's income for input into the calculation model and whether these income calculations were made consistently. The victim's income was only required for the death claims, which comprised nine of the ten claims

in our sample. The income of the physically injured claimant was not applicable to his claim, because the award did not include any future work limitation. For eight of the nine death claims in our sample, VCF personnel verified the last four years of the claimant's income through tax returns or employer statements. In the remaining death claim, VCF staff members did not find any income for 1998.

The Special Master has the discretion to use this income information or to modify it as he deems necessary to arrive at an income amount that is most representative of the victim's future income. This discretion is specifically stated in Section 104.43 of the regulations:

The Decedent's salary/income in 1998-2000 (or for other years the Special Master deems relevant) shall be evaluated in a manner that the Special Master deems appropriate. The Special Master may, if he deems appropriate, take an average of income figures for 1998-2000, and may also consider income for other periods that he deems appropriate, including published pay scales for victims who were government or military employees.

Similarly, the VCF procedures that PwC follows in computing the victim's representative income to be used in the calculation model also allow discretion.

In accordance with these procedures, PwC provided reasons in the claim files for excluding one or more years of the victim's income from the calculation of representative income. For seven of the nine death claims that we examined, the income used in the calculation model was higher than the 4-year average. Although VCF personnel are varying the number of years used to calculate the victim's income, this practice is in compliance with the regulations and VCF procedures. The Special Master stated that he wants to give claimants every consideration in determining the award amount and to include as many claimants as possible in the Fund. Based on our review of these claims, VCF personnel are compliant with the procedures for verifying the victim's income.

### **Collateral Source Verification**

The Act requires that the award calculation be based on economic loss plus noneconomic loss less collateral sources of



compensation.<sup>12</sup> Because of the nature of collateral sources, verification of their existence can be difficult. For example, if a victim has purchased a life insurance policy privately, its existence would be unknown to Fund personnel and difficult to identify. Therefore, the claim form requires the claimant to verify the accuracy of the information included on the form “under penalty of law.” Our sample of ten claims included nine death benefit claims and one personal injury claim. All of the nine death benefit claims included offsets for one or more of the following (frequency of type in parenthesis): pensions (1), life insurance (6), social security (4), workmen’s compensation (7), employer death benefit (4), or special fund benefits (3). The personal injury claim had no offset for collateral sources of income. The claim files included notations showing that the case manager verified the collateral sources.

## **AWARD DETERMINATION**

We examined whether Fund personnel were consistent in the calculation of award amounts. We reviewed the use of calculation models, the Special Master’s consideration of extraordinary circumstances, the valuation of physical injury claims, and the treatment of awards for high-income victims. We further reviewed the timeliness of the award process, the sufficiency of budgeted funds to pay all potential claimants, and the preparations that the staff have made for a last-minute influx of claims. Each of these areas is discussed below.

### **Use of Calculation Models**

When the Fund was established, the Special Master established a presumed award methodology. PwC then created calculation models for computing presumed award amounts for each claimant. We tested the veracity of the presumed award amounts generated by the calculation models. Using the PwC calculation models and actual presumed award calculations provided to us, we were able to replicate the calculation model’s results for the two claims selected.

### **Consideration of Extraordinary Circumstances**

After submitting the claim form and receiving notification of the presumed award amount generated by the calculation model, the claimant can elect to attend a hearing with the Special Master. At this hearing the claimant presents additional information describing

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<sup>12</sup> See Appendix II for the definition of collateral sources and a list of examples.

“extraordinary circumstances” that could entitle the claimant to an award amount greater than the presumed award amount. We found that the Special Master made a finding of extraordinary circumstances in 5 of the 92 claims that received presumed award letters. We reviewed these five claims to determine: (1) what circumstances the Special Master considered extraordinary to warrant an award above the presumed award amount, and (2) whether the reasons behind the Special Master’s findings of extraordinary circumstances appear to be consistent.

When the Fund was established, the Special Master set the noneconomic portion of the award (pain and suffering) for death claims at \$250,000. Therefore, even if claimants were not entitled to any economic loss because of large collateral source offsets, they would still be awarded the \$250,000 for noneconomic loss. In two of the five extraordinary circumstances claims, the result was less than \$250,000 after the calculation model computed the economic loss, added the noneconomic loss, and reduced this amount by the collateral source offsets. Therefore, these claimants received an increase to raise the presumed award amount up to the minimum of \$250,000 for noneconomic loss, but no additional amount. In the other three cases, discretionary amounts were awarded, in addition to the presumed award amount, for extraordinary circumstances as follows:

- (1) replacement services for loss of spouse - \$1,992,851;
- (2) care of the minor child and dependent father - \$159,528; and
- (3) replacement and loss of guidance for the children - \$680,006.

These decisions fall within the discretion provided to the Special Master in the Act.

### **Valuation of Physical Injuries**

We reviewed all four of the physical injury claim awards issued as of November 13, 2002, to determine whether the Special Master is consistent in his valuation of noneconomic loss for physical injuries. Two of the injuries appear relatively serious in comparison to the other two. The Special Master awarded \$7,500 to a claimant who suffered corneal abrasions, and \$15,000 to a claimant who suffered an ankle fracture and a temporary disability. On the other hand, the VCF awarded \$250,000 to a victim with burns, fractures, and a permanent partial disability and \$5 million to a totally disabled claimant who

suffered severe burns. Again, these decisions fall within the discretion of the Special Master.

### **Treatment of High Income Claims**

The maximum starting income used in the calculation model for the presumed award is \$231,000 per year, which, according to VCF officials, represents income in the 98<sup>th</sup> percentile for the country. This limitation is one of the major criticisms of the calculation models raised by relatives of high-income victims. The VCF's website explains that the Special Master limited income to this point because calculations of larger awards would be highly speculative and would not be necessary to meet the financial needs of the claimant. In addition, the website notes that limiting income to \$231,000 in the calculation model lessens the disparity between the awards of high-income and low-income victims. High-income claimants can request hearings with the Special Master to present their cases.

In our review of the 92 claims for which presumed awards had been issued, we identified 8 claims with \$231,000 entered as the victim's representative income in the calculation model. Review of the 8 high-income claim files revealed that for 6 of the 8 claims, the 4-year average of the victim's actual income was greater than \$231,000. For the remaining two claims, the 4-year average of the victims' actual incomes (including an annualized amount for 2001) were less than \$231,000 each. However, the projected amounts of these two victims' incomes for all of 2001 indicated that they would have earned more than \$231,000 each during that year. We determined that only one of these eight claimants requested a hearing with the Special Master. Based on our review, we concluded that the VCF staff has consistently applied the \$231,000 limitation to the victim's income when using the calculation models.

### **Timeliness of Claim Processing**

We reviewed a sample of 10 of the 92 claims to determine the timeliness of their processing. We identified three key process dates: the date the claim is substantially complete and considered filed, the date the presumed award amount letter is sent to the claimant or the claimant is notified of eligibility, and the date the final award amount letter is sent to the claimant. The VCF only deems a claim "filed" once it is "substantially complete," meaning that the claimant has submitted all the information needed to establish eligibility and calculate a presumptive award. Under Section 104.31 of the regulations, the VCF

has 45 days after a claim has been filed to notify the claimant of the presumed award amount (Track A claims) or of the claimant's eligibility (Track B claims). (See Appendices II and III for the definition and discussion of Track A and B.) For 9 of the 10 claims in our sample, the length of time between the date the claim reached substantially complete status and the date VCF personnel presented a presumed award amount to the claimant was less than 45 days. VCF personnel explained that 1 claim required 77 days because of the claimant's indecision in selecting Track A or Track B. VCF personnel noted that the claimant initially selected Track B and the VCF staff prepared to schedule a hearing, but the claimant decided to switch to Track A. By the time the claimant switched from Track B to Track A, the 45-day time limit had already passed. For all 10 claims, the average number of days that passed between the date filed and the presumed award date was 12 days. The shortest length of time between these two dates was 1 day, and the longest was 77 days. Based on this analysis and using the "filed" criteria, we concluded that VCF officials are compliant with the 45-day requirement to notify the awardee.

Under Section 405(b)(3) of the Act, VCF personnel must provide the claimant with a final award within 120 days of the date the claim was filed. For 9 out of 10 claims in our sample, the length of time between the date the claim reached substantially complete status and the date VCF personnel presented a final award amount to the claimant was less than 120 days. The shortest length of time between the date that the claim was substantially complete and the date that a final award amount was presented was 10 days, and the longest was 116. The average was 35 days. The remaining claim was still in process during our fieldwork. Based on our review, and using the VCF's definition of "filed," we determined that VCF officials met the 120-day time limit specified in the Act.

### **The Budget**

The Act established a permanent and indefinite appropriation for the VCF. Through 2004, \$5.12 billion was budgeted for the VCF to compensate victims and their families, which appears adequate for anticipated claims at the current average award levels and should be sufficient to pay all of the potential claims against the Fund. The expected amount for physical injury claims is difficult to quantify because awards vary considerably depending on the specific conditions of each case. However, based on the final awards as of August 14, 2003, as provided by the Department, the average personal injury award was

\$159,072.<sup>13</sup> If we apply this average to the 3,000 claims estimated by the Special Master, and account for the one awarded and three anticipated high-dollar awards, personal injury awards would total approximately \$504 million. If the anticipated 3,000 death claims are awarded at the average death award experienced by the VCF through August 2003, as calculated from the figures supplied to us by the Civil Division, the Fund will show a surplus of about \$27 million, as follows:

<u>BUDGET PROVISIONS</u>	(dollars in millions)
2002 (Enacted)	\$ 60
2003 (President's Request)	2,700
2004 (Request)	<u>2,361</u>
Total Provisions	<u>\$5,121</u>
<u>ESTIMATED OUTLAYS</u>	
Average Death Award	\$ 1.53
Anticipated Total Death Awards	<u>X 3,000</u>
Total Estimated Outlays for Death Awards	\$4,590
Average Physical Injury Award	\$ .159
Anticipated Total Physical Injury Awards	<u>X 3,000</u>
Total Estimated Outlays for Physical Injury Awards Based on Average	<u>\$ 477</u>
High-Dollar Physical Injury Award to Date	\$ 6.77
Anticipated Total High-Dollar Physical Injury Awards	<u>X 4</u>
Total Estimated Outlays for High-Dollar Physical Injury Awards	<u>\$ 27</u>
Total Estimated Outlays for Physical Injury	<u>504</u>
Total Estimated Outlays	<u>\$5,094</u>
<u>BUDGET PROVISIONS LESS ESTIMATED OUTLAYS</u>	<u>\$27</u>

Source: DOJ Civil Division

On January 25, 2003, several potential claimants filed a lawsuit against the DOJ, the Attorney General, and the Special Master. Similar lawsuits were filed on February 14, 2003, and February 20, 2003. Among other issues, the plaintiffs expressed concern about the use of after-tax income to compute economic loss and alleged that the \$231,000 limitation on income creates an unlawful cap. In one of the

<sup>13</sup> The Civil Division provided us with unaudited claim statistics current as of August 14, 2003 for 155 personal injury awards. In order to calculate the average personal injury award, we omitted the highest personal injury award to date, \$6.77 million, as it exceeded the next highest award by over \$5.5 million. We projected the average of the remaining 154 awards to the anticipated 3,000 claims. The Special Master's office indicated that there might be three additional awards that are similar in amount to the \$6.77 million award. Therefore, in order to account for these claims, we projected \$27 million for the four awards.

lawsuits, a plaintiff alleged that although the calculation methodology computed her award to be between \$14.5 and \$15 million, the Special Master informed her that he would only allow her a \$4.5 to \$6 million award. The plaintiff alleged that the expert she hired to do an independent analysis of her claim found that the plaintiff should be entitled to an award between \$28.5 and \$40.1 million. The court heard oral arguments for all three lawsuits on April 14, 2003, and ruled against the plaintiffs on all issues on May 8, 2003. Colaio et al. v. Feinberg et al., No. 03-CV-558, (S.D.N.Y. May 8, 2003).

If the District Court's ruling is appealed and overturned, the above computation would require adjustment and the Fund might require a significant increase in funding. However, if the Court's ruling is not challenged and the above estimates hold true, the Fund may have a surplus of approximately \$27 million.

### **Preparations for Processing Claims as Deadline Approaches**

According to the Department, as of August 14, 2003, 2,205 claims had been submitted, and 606 awards had been finalized or accepted. The number of claims that actually will be filed before the December 22, 2003 deadline is unknown. Furthermore, the Civil Division informed us in its response to the draft report that the Special Master hopes to arrange for major advertising to run beginning in September 2003 to notify potential claimants that time is running out. Several VCF officials noted that programs such as the VCF usually experience a surge in the number of claim submissions as the filing deadline approaches. VCF officials explained that in anticipation of this surge, they are "making efforts now to increase the number of personnel" at PwC and at the Special Master's office. In addition, the Special Master has arranged for administrative law judges to be assigned, if necessary, to assist the Special Master with additional hearings. Based on these efforts, we concluded that the VCF is appropriately preparing for this anticipated surge in claim submissions.

## **EXAMINATION OF FRAUD CONTROLS**

We reviewed the established claim process to determine what controls Fund personnel have implemented to minimize the possibility that a payment will be made on a fraudulent claim. We examined the claimant files that the VCF staff identified as potentially fraudulent, noted the actions that the VCF had taken to support these suspicions, and spoke with investigators about those claims that had been forwarded to their unit.

Primarily, VCF personnel rely on multiple verifications of each claimant's eligibility, economic loss, and collateral sources to detect fraud. For instance, to verify the victim's death, VCF officials require primary documentation, such as a death certificate, with secondary documentation, such as an employer's affidavit that the victim was at a specified site on September 11. To combat fraudulent representations of income, VCF officials review both the victim's IRS W-2 forms and the Social Security Administration's payment histories. During the claim review, the victim's tax returns and the family structure reported in the obituaries are used to confirm the number of dependents. As a result, several VCF personnel stated they believed it is highly unlikely a claimant would be able to move a false claim through the entire system.

Despite their efforts, VCF personnel noted that valuation fraud, specifically of privately purchased collateral sources, could escape detection. For example, one official noted that a victim's individually purchased life insurance policy, which was not reported on the claim form, would be "virtually impossible to detect." VCF personnel stated that they rely on the threat of prosecution to prevent this fraud.

The Fund's use of multiple sources to corroborate claim information has been effective in identifying suspected fraudulent claims. In particular, many of the 17 claims identified as possibly fraudulent were for victims whose names were not found on any of the victim lists. Also, in several cases, verification of a document with its creator, such as medical records through the named hospital or a death certificate from a foreign country, exposed the document as fake. When a claim is suspected to be fraudulent, PwC officials send the claim to the Special Master's office. If the Special Master's office agrees, the claim is sent to the Fraud Detection Office (FDO) within the OIG's Investigations Division or to the FBI.<sup>14</sup>

Of the 17 claims that the Special Master identified as potentially fraudulent, 8 claims were determined not to be fraudulent and were returned to processing. Of the remaining nine claims, the Special Master referred eight cases for investigation to the FDO and one to the FBI. As of July 2003, the FDO reported the following dispositions:

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<sup>14</sup> The FDO is a centralized, specialized office within the OIG Investigations Division tasked with pro-actively uncovering instances of fraud in connection with Department programs and operations. Staffed by special agents and forensic auditors, it reviews and investigates allegations of payment irregularities in contracts, grants, medical services, the management and sale of seized assets, and the falsification of applications for benefits that fall under the Department's statutory authority.

- Two individuals pleaded guilty to making false statements and mail fraud, respectively, and were sentenced.
  - Tyrone Darks, a death row inmate in Oklahoma, pleaded guilty to making false statements in connection with two fraudulent claims he submitted to the VCF. Darks claimed that his wife and children were killed at the World Trade Center. Darks was sentenced to 12 months to be served concurrently with his death sentence.
  - Tommie Martin pleaded guilty to mail fraud for submitting a fraudulent application in which she claimed that her brother, a New York City firefighter, was killed in the terrorist attacks. The FDO developed evidence that Martin did not have a brother who was a firefighter killed in the attacks. She was sentenced to serve 18 months in prison.
- One individual was acquitted on all counts but is currently being held by the Bureau of Immigration and Customs Enforcement pending immigration court proceedings.
- Judicial proceedings continue against four other individuals.
- One individual is still under investigation.

It is also important to note that the FDO is working with State Regional Fraud Task Forces and other OIG investigative field offices to bring these cases to closure. Based on our review of these claims and the VCF's claim processing procedures, we concluded that the controls to detect fraud are reasonable.

## **CONCLUSION**

We found that VCF personnel substantially comply with the rules and procedures developed in accordance with the Act. Based on our review of a sample of claims, VCF personnel process claims and issue awards in a consistent and timely manner. Controls incorporated into the system are reasonable to identify potentially fraudulent claims and serve to minimize the risk of a fraudulent payment. The VCF appears to have sufficient funds to pay all claimants considering the dismissal by the District Court of three lawsuits against the VCF. In anticipation of a large influx of claims as the sunset date approaches, Fund personnel are taking appropriate steps to prepare for this potential surge of claims, primarily by increasing staff.



## **APPENDIX I**

### **AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY**

The purpose of this audit was to determine, in conformance with the Act's requirements, the effectiveness of the process created to compensate the victims and their families. Our objectives were to: (1) review the procedures established by the Special Master appointed by the Attorney General to administer the Fund, (2) analyze the award determination process to determine whether the program's compensation awards to claimants are consistent and timely, and (3) examine the Fund's fraud controls, specifically in relation to how fraudulent claims are identified and how the collateral sources of claimants are reviewed and verified.

We conducted our audit in accordance with Government Auditing Standards issued by the Comptroller General of the United States and, accordingly, included such tests as were considered necessary to accomplish our objectives.

We obtained an understanding of the VCF and its procedures by reviewing the VCF's website and by examining numerous newspaper and media articles related to the Fund. In addition, we reviewed pertinent documents including the Act which established the VCF, the Interim Final Rule, the Final Rule (the regulations), the VCF standard operating procedures, claim forms, and award calculation models. We conducted interviews with officials from the DOJ, PwC, and the Special Master's law office. Our fieldwork was performed through March 13, 2003, at the Washington, D.C. offices of the Civil Division, the CPC in Arlington, Virginia operated by PwC, and the Washington, D.C. law office of the Special Master. In addition, we reviewed claim files located in PwC's Arlington, Virginia offices. In some cases, our samples were randomly selected; in other cases, we expanded our review to examine 100 percent of claims with specific characteristics.

## APPENDIX II

### DEFINITIONS

Advance Benefits – Fixed awards of \$50,000 for claimants of deceased victims and \$25,000 for physically harmed victims payable within 15 days after the claimant is determined to be eligible.

Calculation Model – A computerized computation of the presumptive award amount based on economic loss plus noneconomic loss less collateral sources of compensation.

Claim Assistance Site - An office location manned by PwC personnel where potential claimants can obtain or submit claim forms and receive assistance in filling out the claim forms.

Collateral Sources – These include payments from life insurance, pension benefits, death benefits, and payments by federal, state, or local governments related to the terrorist-related aircraft crashes of September 11, 2001, but do not include charitable donations and contingent payments.

Final Award – This is the last amount determined in the award determination process and is the amount paid to the claimant once the claimant approves it.

Presumed Award – The first award amount issued by the Special Master to the claimant, which may be different from the presumptive award.

Presumptive Award – The award amount calculated by PwC using the calculation model.

Representative Income – The amount determined by review of historical data for the years preceding September 11 that best typifies the victim's current and potential earnings.

Special Master – The individual appointed by the Attorney General to administer the VCF.

Substantially Complete – Status of a claim achieved when there is enough information in the file to establish the claimant's eligibility and to calculate a presumptive award.

Track A – The claim processing option whereby, once the claimant’s eligibility is determined, PwC uses the calculation model to calculate the presumptive award, and following review and approval by the Special Master, the claimant receives notification in writing of the presumed award amount. The claimant can accept the presumed award and receive payment or the claimant can seek a higher award through a hearing with the Special Master.

Track B – The claim processing option whereby, once the claimant’s eligibility is determined, the claimant is notified in writing of his or her eligibility, but is not provided with a presumed award amount. The claimant instead proceeds to a hearing with the Special Master to present his or her claim and have the Special Master calculate the final award.

## **APPENDIX III**

### **EXPLANATION OF THE CLAIM PROCESS**

#### **Eligibility**

PwC staff receives the claim and reviews the claimant's eligibility based on the Act and the regulations. PwC provides the Special Master with an eligibility recommendation, and the Special Master then makes a final determination. To be eligible to file a death claim, the victim must have died while present at one of the sites or from injuries sustained at one of the sites on September 11. To be eligible to file a physical injury claim, the victim must have been present at one of the sites on September 11 and have suffered a physical injury that required in-patient hospitalization for at least 24 hours or "caused, either temporarily or permanently, partial or total, physical disability, incapacity, or disfigurement." The claimant must also have sought medical attention within 24 hours of sustaining the injury; however, this time requirement was expanded to 72 hours for rescue personnel.<sup>15</sup> VCF procedures require that each death claim must contain: (1) a death certificate, (2) at least one other document that confirms the victim's presence at one of the designated locations on September 11, (3) an original court document appointing a personal representative for the deceased, and (4) proof that all interested parties have been notified that the claim is being submitted. Physically injured victims must substantiate their presence at one of the designated locations on September 11 and provide medical records establishing the nature of their injuries and the date(s) of treatment. Two PwC officials review all recommendations of eligibility before submitting their recommendation to the Special Master. The Special Master reviews the eligibility recommendations and makes a final decision on the claimant's status.

#### **Advance Benefits**

Under the regulations, some claimants have the option of receiving Advance Benefits. Advance Benefits are designed to assist claimants who are financially troubled. Death claimants are entitled to Advance Benefits if they have not received more than \$450,000 in collateral source compensation. Physical injury claimants must have undergone at least one week of hospitalization to be eligible to receive Advance Benefits. All Advance Benefits that are awarded are credited against the claimant's final award.

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<sup>15</sup> September 11 Victim Compensation Fund of 2001, 28 CFR Part 104.2 (March 13, 2002) at 11233.

## **Award Process**

After VCF officials determine a claimant is eligible, they review the claim to assure that all necessary information has been included in the file. When all relevant documentation is received, VCF personnel classify the claim as "substantially complete" and it is formally considered "filed." At this point, the claimant waives his or her right to file a civil action for damages sustained as a result of these terrorist related aircraft crashes of September 11. PwC personnel then use a computer model to calculate a presumptive award. The Special Master has 45 days to present the claimant with a presumed award amount and 120 days to present the claimant with a final award amount.

The presumptive award amount is computed using a calculation model and data taken from the claim file. The Act requires that the award calculation be based on economic loss plus noneconomic loss less collateral sources of compensation (see detailed discussion below). Thus, claim form data includes the victim's income, age, family structure, and dependent information in addition to the proceeds from collateral sources. VCF procedures require claimants to provide documentation of the victim's income for calendar years 1998 through 2001. This documentation can be in various forms, including tax returns, employer-provided information, and Social Security Administration records. The claim form requires that claimants accurately divulge this information under penalty of law. While the methodology used to calculate the awards is not explained in the regulations, the VCF's website does explain the calculations for potential claimants.

We obtained the models used to calculate the presumptive awards from PwC.<sup>16</sup> These calculation models are used only for death claims; physical injury claims are handled on a case-by-case basis. PwC has six calculation models for different categories of death claimants: (1) military personnel, (2) employees of the New York City Fire Department and the New York City Police Department, (3) federal employees under the Federal Employees Retirement System (FERS), (4) federal employees under Civil Service Retirement System (CSRS), (5) federal employees who switched from CSRS to FERS, and (6) all others.

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<sup>16</sup> In their response to the draft report, the DOJ Civil Division informed us that a seventh model had been developed since our on-site review. This model is designed to calculate presumptive awards for Employee Retirement System (ERS) Port Authority civilians.

## **Economic Loss**

PwC personnel calculate the economic portion of the presumptive award by determining the victim's income, subtracting federal, state, and local taxes, and then adding in the victim's employer-provided benefits, such as bonuses and 401K matches. This figure is increased based on the victim's work-life expectancy and an applicable wage-growth rate is then applied. A percentage representing the victim's share of household expenditures and consumption is subtracted, and the whole amount is reduced to present value.

## **Noneconomic Loss**

The VCF set the noneconomic portion of the award (pain-and-suffering) at \$250,000. For a death claim, the VCF automatically awards \$250,000 for the decedent with an additional \$100,000 for the spouse and \$100,000 for each dependent of the decedent. For physical injury claims, the Special Master can increase or decrease the \$250,000 presumptive amount based on the individual's circumstances. For example, he awarded \$7,500 to a claimant who suffered corneal abrasions, and \$15,000 to a claimant who suffered an ankle fracture and a temporary disability. On the other hand, he awarded \$250,000 to a victim with burns, fractures, and a permanent disability, and \$5 million to a totally disabled claimant who suffered severe burns.

## **Collateral Sources**

Once PwC personnel calculate the economic and noneconomic damages, they deduct qualified collateral sources from this total. Qualified collateral sources are the benefits the family of the victim received as a result of the victim's death or physical injury. As a general rule, payments from charities and contingent payments are not considered qualified collateral sources. An example of a contingent payment is future Social Security Survivor Benefits paid to a spouse. Because such payments end if the spouse remarries, Fund personnel cannot accurately calculate the value of such payments over the spouse's lifetime. Ideally, the claimant provides on the claim form all of the information needed to complete the identification and valuation of collateral sources. However, PwC staff often have to augment the claim through other sources, including the Social Security Administration, the victim's employer, and the third-party payors of the benefits. Examples of collateral source benefits that the VCF must deduct to calculate a final award include the following:

- life insurance
- survivor pensions
- Social Security Death Benefits
- past Social Security Survivor Benefits paid to spouses
- past and future Social Security Survivor Benefits paid to children and dependent adults
- past and future non-contingent Workers Compensation benefits.

No maximum payout is established by the Act or the regulations; however, the regulations do establish minimum awards before collateral sources are deducted. For a single deceased person, the minimum is \$300,000, and for a married deceased person or a deceased person with a dependent the minimum is \$500,000. In addition, the Special Master noted that it would be very rare for a death claimant to receive less than \$250,000. During our interview with the Special Master, he explained that he established this policy because he wants as many victims as possible to file claims with the Fund. If potential claimants find that they are not entitled to any compensation, they would have no incentive to participate in the Fund.

## **Hearings**

When submitting their claims to the VCF, claimants select either the Track A or Track B claim-processing option. Regardless of whether a claimant selects Track A or Track B, the Special Master will conduct a hearing for any claimant that desires one. In some cases the Special Master communicated with them before their claims were even submitted to the VCF. Because these claimants were given an opportunity early in the process to discuss their claims with the Special Master, a formal hearing was not needed.

## **Number of Claims Filed and Processed**

As of the beginning of our fieldwork on November 13, 2002, the Special Master had determined presumed awards for 92 of the 792 claims submitted.

## STATUS OF CLAIMS SUBMITTED

Total Claims Submitted	792
Total Claims With Presumed Awards	92
Total Claims Denied/Withdrawn	73
Total Claims Possibly Fraudulent	17
Total Claims Awaiting Presumptive Award	610

Source: PwC

Of the 92 claims that had been issued presumed award letters, 7 had been paid, 60 had been accepted by the claimants but not yet paid, 8 claimants requested hearings with the Special Master, and 17 claimants had not responded.

Of the 610 claims that were waiting for a presumptive award, claimants had not submitted the information required for PwC to perform the calculations for 585 (95.9 percent) of the claims. VCF personnel could not identify any one stumbling block to the claimants' completion of these claims, but they provided the following examples of problems that have been encountered:

- many claimants did not understand that they had to go to court to be appointed as the personal representative in order to provide the VCF with their letters of administration;
- some claimants found it difficult to obtain and submit original documentation of compensation amounts, confirmation of collateral sources, and proof of the victim's presence at the applicable site;
- claim form processing was delayed because claim forms were completed incorrectly, many because claimants signed or initialed the forms in the wrong places;
- claimants refused to sign the lawsuit waiver until they were provided with award amounts; and
- processing delayed by claimants who, with the advice and assistance of outside professionals, added extraneous information to their claim submissions, such as home movies and greeting cards, which do not affect the calculation models, but do add to claim intake and review time.

VCF personnel also indicated that the employer-provided information has improved over time and that some employers have even created resources to assist claimants in filling out claim forms and to explain the employer-provided benefits to the claimant.



The following charts contain unaudited statistics provided by Civil Division regarding the types of claims submitted to the Fund and the number of award letters issued as of August 14, 2003. Of the estimated 3,000 potential death claims, claimants had submitted 1,177 claims to the VCF. For these 1,177 claims, the Special Master issued presumed awards to 532 claimants. In addition, although the Special Master now estimates that up to 3,000 physical injury claims would be eligible for compensation from the Fund, 1,028 physical injury claims had been submitted. The Special Master denied 180 of these 1,028 claims because of the claimant's ineligibility and issued presumed awards for 188 of the remaining claims.

### CLAIM TYPE STATISTICS

Type of Claim	Estimated Number of Potential Claims	Number of Claims Submitted	Percent of Potential Claims
Death	3,000	1,177	39
Physical Injury	3,000	1,028	34
Total	6,000	2,205	37

Source: Civil Division

### AWARD LETTER STATISTICS

Type of Award Letter <sup>17</sup>	Number of Award Letters	Percent of Awards per Claims Submitted	Percent of Awards per Potential Claims
Death	451	38	15
Physical Injury	155	15	5
Total	606	27	10

Source: Civil Division

### Efforts to Increase Participation

To publicize the existence of the VCF to potential claimants, Fund personnel began a series of projects in early 2002. These included holding town hall meetings in affected cities, running newspaper ads, distributing mass mailings, and setting up Claim Assistance Sites (CAS). VCF personnel noted that the VCF procedures were designed so that claimants do not need a lawyer and could bring the documents into the CAS to have VCF personnel

<sup>17</sup> We are including as an "award letter" those awards accepted under track A and finalized through hearings under tracks A and B.

assist them in filling out the claim form. In August 2002, the VCF had nine CASs in operation. Because of decreased demand for assistance, one of those sites has been closed. All but two of the remaining eight are running on appointment-only schedules. In addition to the above activities, VCF personnel communicated with September 11 charities and courts that have contact with victims and their families to obtain their cooperation in notifying potential claimants of the existence of the Fund. According to the Civil Division's response to the draft report, the Special Master anticipates running additional advertising beginning in September 2003 in addition to other outreach activities such as town hall meetings to alert potential claimants that the filing deadline is approaching.

## APPENDIX IV

### AUDITEE'S RESPONSE TO THE DRAFT REPORT



U. S. Department of Justice

Civil Division

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Office of the Assistant Attorney General

Washington, D.C. 20530

September 15, 2003

MEMORANDUM

TO: Domenic A. Zazzaro  
Regional Audit Manager  
Washington Regional Audit Office  
Office of the Inspector General

FROM: Kenneth L. Zwick *KLZ*  
Director, Office of Management Programs  
Civil Division

SUBJECT: Comments on Draft Audit Report - September 11<sup>th</sup> Victim Compensation Fund

Thank you for the opportunity to comment on the Draft Audit Report, in accordance with Guy K. Zimmerman's August 14, 2003 memorandum to Peter D. Keisler. Our major comments pertain to (a) the fact that the Special Master, rather than PricewaterhouseCoopers (PwC), makes the determination of claim eligibility and award amount. PwC merely *makes recommendations*; and (b) the fact that we now anticipate substantially more injury claims than stated in the Draft.

Our comments are set forth below. For your convenience, we are also including a copy of the Draft Audit Report with labels in the right hand margin corresponding to the comments.

The Draft discusses a number of suspected fraudulent claims that the Special Master referred to the Office of the Inspector General and the FBI. It may interest you to know that on September 12th the Associated Press reported that a federal jury convicted Todd Altschul on five counts of mail fraud for attempting to defraud the Fund. He faces up to five years in prison and a \$250,000 fine for each count.

Our comments follow. Please contact me at 202-514-4552 should you need additional information.

A – Reported Claim Volumes (pg i)

The number of death claims that had been filed as of June 16, 2003 is slightly different from what appears in the report. Per the daily scorecard report as of June 16, 2003, the VCF Claims Processing Center (CPC) had received 1,829 claims in total – 928 death claims and 901 personal injury claims.

B – Receipt of Claims before Filing Deadline (pg ii)

Special Master Kenneth Feinberg projects that the number of claims filed could reach a total of 6,000. He has estimated that we will receive 3,000 death claims and 2,500 to 3,000 personal injury claims. As of August 19<sup>th</sup>, we had received 1,190 death claims and 1,032 personal injury claims. If the Special Master's estimate is accurate, we may see an influx of more than 3,500 claims in the remaining four months of the program's filing period.

C – Determination of Eligibility (pg ii)

The PwC staff at the CPC review each claim for eligibility. The PwC staff then makes a recommendation regarding the Claimant's eligibility. The Special Master (or one of his representatives) makes the eligibility determination for every claim.

D – Number of Calculation Models (pg ii)

When the auditors conducted their interviews at the beginning of the year, PwC personnel had developed six models. PwC now has seven models for the different categories of death Claimants: (1) military personnel, (2) employees of the New York City Fire Department and the New York City Police Department, (3) federal employees under the Federal Employees Retirement System (FERS), (4) federal employees under Civil Service Retirement System (CSRS), (5) federal employees covered by both CSRS and FERS, (6) ERS Port Authority Civilians, and (7) everyone else.

E – Evaluation of Collateral Sources (pg iii)

PwC personnel review the collateral source benefit information provided by Claimants. Ideally, all information needed to complete the identification and evaluation of collateral sources is included on the submitted claim forms.

F – Fraud Detection Check at Eligibility Review (pg iii)

The PwC staff at the CPC begins fraud detection at the eligibility review as personnel ensure that names of Claimants and other recipients of the award are not on the list of terrorists.

G – Receipt of Original Death Certificate (pg iv)

For death claims, PwC staff at the CPC request the Claimant to submit an original death

certificate and at least one other document to corroborate the reported death. They also check that those original documents, including the death certificate and original letters of administration appointing the personal representative, are submitted with the claim application.

#### H – Source for Claim Sample (pg iv)

Claim statuses are tracked in the Victim Claims Management System (VCMS), a highly customized web-enabled database application, developed with extensive input by the Office of Litigation Support, Civil Division and the Special Master's Office. This system is used by all members on the September 11th Victim Compensation Fund (VCF Fund) team, including the Special Master's office and the DoJ. This system does not solely belong to PwC.. It is the virtual meeting place and centralized information repository for all team members to review and process claims.

#### I – Paid Claims (pg v)

Claims are considered paid once PwC staff has confirmed payment – either through receipt of a fax from the Department of Treasury or through telephonically verifying receipt of funds with the bank.

#### J – Copies of Wills (pg v)

Under Section IV (Supporting Documentation Checklist) of the Compensation Form for Deceased Victims, the Special Master does request a certified copy of the Victim's will, if it exists. This Section also includes suggestions for documentation if there is no will.

#### K – Reported Claim Volumes (pg vii)

As of June 16, 2003, the CPC had received 928 death claims and 901 personal injury claims (i.e., 1,829 claims in total).

#### L – Receipt of Claims before Filing Deadline (pg vii)

As mentioned above, Special Master Kenneth Feinberg has estimated that the Fund will receive 3,000 death claims and 2,500 to 3,000 personal injury claims by the filing deadline, December 22, 2003.

#### M – Estimate of Personal Injury Awards (pg viii)

It appears that the estimated outlays for award payments assume that no additional personal injury claims will be awarded after November 2002. As of August 19, 2003, 141 personal injury claims were authorized for payments totaling \$27,465,357.88.

N – Estimated Fund Surplus (pg viii)

The estimated \$800 million surplus does not appear to include any personal injury claims that have been awarded since November 2002. It also does not seem to allow for the 2,500 to 3,000 personal injury claims that are projected to be received by the filing deadline.

O – Determination of Eligibility (pg 1)

PwC staff at the CPC review each claim for eligibility and then provide the Special Master's office with a recommendation for the Claimant's eligibility.

P -- Calculation Models (pg 6)

PwC has developed calculation models based on the presumed award methodology established by the Special Master in accordance with the Fund's rules and regulations. These models were provided to the auditors in addition to the actual presumed award amounts determined by the Special Master's office.

Q – Estimate of Personal Injury Awards (pg 10)

The estimated outlays for award payments do not appear to account for additional personal injury claims that have been awarded after November 2002, nor those eligible personal injury claims that may be awarded. As of August 19, 2003, authorized payments for personal injury claims totaled \$27,465,357.88.

R – Estimated Fund Surplus (pg 11)

The estimated \$800 million surplus does not appear to include any personal injury claims that have been awarded since November 2002. As of August 19, 2003, we had received 1,032 personal injury claims, of which 195 have been issued an award letter, 182 were denied, 15 were voluntarily withdrawn, and 15 have been placed on an inactive status.

S – Timing of Advertising (pg 11)

The Special Master has arranged for major advertising of the Fund and its deadline. Advertisements are scheduled to appear in newspapers beginning September 2003.

T – Documentation Required (pg 11)

Please note that VCF officials – not PwC – require primary documentation (e.g., an original death certificate) along with secondary documentation (e.g., an employer's affidavit stating a Victim's presence at a specified incident site). VCF officials review both the Victim's IRS W-2 forms and the Social Security Administration's benefit histories. During the claim review, the

Victim's tax returns and family structures reported in obituaries are used to confirm the number of dependents.

U – Guilty Pleas (pg 12)

Mr. Darks last name was misspelled.

V – Office in Arlington (pg 14)

The Claims Processing Center (CPC) is located in Arlington, Virginia. This office building is not leased to PwC. Please refer to the Arlington location as the Claims Processing Center, or CPC, in Arlington, Virginia.

W – Approval of Final Awards (pg 15)

Awards become final through two methods: 1) the Claimant accepts a presumed award, or 2) the award is determined through a hearing. Track A claims proceed to a hearing when a Claimant appeals the issued Presumed Award. Track B claims proceed directly to a hearing, after which the final award is determined.

X – Presumed Awards for Track A (pg 16)

Please clarify this definition by noting that presumed awards are determined by the Special Master.

Y – Determination of Eligibility (pg 17)

PwC staff at the CPC review each claim for eligibility and then provide the Special Master with an eligibility recommendation.

Z – Review of Eligibility Recommendations (pg 17)

Two PwC staff members at the CPC review each claim before PwC makes a recommendation to the Special Master's office regarding the Claimant's eligibility. Actual eligibility is determined by the Special Master.

1 – Issuing Presumed Awards (pg 18)

Please note that under the Fund's rules and regulations, the Special Master (not PwC) has 45 days to determine a Claimant's presumed award and 120 days to make a final award determination.

2 – Presumptive Awards (pg 18)

The presumptive award amount is computed using a calculation model and data taken from the file. Using the presumptive award, the Special Master determines the presumed award.

3 – Number of Calculation Models (pg 18)

PwC has now developed seven models to calculate the presumptive awards for the different categories of death Claimants: (1) military personnel, (2) employees of the New York City Fire Department and the New York City Police Department, (3) federal employees under the Federal Employees Retirement System (FERS), (4) federal employees under Civil Service Retirement System (CSRS), (5) federal employees who switched from CSRS to FERS, (6) ERS Port Authority Civilians, and (7) all others.

4 – Number of Calculation Models (pg 20)

Again, please note that the 92 presumed awards were determined by the Special Master. PwC computed the presumptive awards, which the Special Master's office considered in making their presumed award determinations.

5 – Estimate of Personal Injury Claim Submissions (pg 21)

The reference to 300 eligible personal injury claims appears to be based on what had been received as of November 2002. Based on estimates provided to us by the Special Master, we are now anticipating receiving 2,500 to 3,000 personal injury claims by December 22, 2003.

6 – Filling Out Claims (pg 22)

Claims Assistance Sites (CAS) staff assist Claimants in completing their claim forms. They do not complete the claim forms on behalf of the Claimants.

7 – Timing of Advertising (pg 22)

As we approach the claim filing deadline, the Special Master has made arrangements for many outreach activities to take place during the Fall of 2003, including advertisements and town hall events. Newspaper ads will be published beginning September 2003. These ads will alert Claimants of the program's deadline and direct them to the Helpline and CAS sites for assistance. The VCF web site provides information to Claimants on the minimum claim filing requirements for the December 22, 2003 deadline.

Attachment - Annotated Draft Audit Report



## **APPENDIX V**

### **ANALYSIS OF AUDITEE'S RESPONSE TO THE DRAFT REPORT**

We reviewed the Civil Division's response to the draft report and modified the report where warranted. However, we would like to comment on some issues raised by the Civil Division as noted in the paragraphs below.

In its response to the draft report, the Civil Division indicated that the actual number of claims filed as of June 16, 2003, differed from the number of claims identified in the draft report. In the interest of presenting current conditions of the Fund, we obtained updated figures from the Civil Division following issuance of the draft report, and those statistics were used to prepare the final report. Wherever these statistics appear in the final report, we emphasize that these figures are unaudited.

The Civil Division also indicated that the Special Master is now estimating that the number of personal injury claims could be between 2,500 and 3,000. At the time of our fieldwork, this estimate was 300 claims. In order to determine if budgeted funds would be sufficient to pay all claims, we used the highest estimate of 3,000 personal injury claims paid from the Fund.