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## The 9/11 Victim Settlements: A Chat With Skadden's Sheila Birnbaum

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By ASHBY JONES



Last week, settlements in 92 of the 95 cases filed on behalf of those injured or killed in the 9/11 terrorist attacks were announced, shortly after they were approved by Alvin Hellerstein, a federal judge in Manhattan.

The total amount paid was close to \$500 million, according



to the mediator in the case, Sheila Birnbaum, of Skadden, Arps. Click [here](#) for the LB post on the settlement; [here](#) for a copy of Judge Alvin Hellerstein's order, which attaches the report filed by Birnbaum on the settlements.

The lawsuits were brought by those who chose not to participate in the Victim's Compensation Fund, a special fund Congress established that distributed more than \$7 billion to more than 5,000 survivors.

We threw a few questions to Birnbaum and Skadden counsel Thomas Fox on Friday about the process, what it was like sitting between the defendants — airlines, security companies and insurers — and the plaintiffs, mostly relatives of those killed on 9/11. [Unless otherwise specified, the answers were provided by Birnbaum.]

**Hi Sheila, Tom. Thanks for taking the time. How'd all this start for you?**

Well, in 2006, the judge wanted the parties to at least start to have some settlement discussions, and they all agreed to have a mediator. I was suggested to be the mediator, and the parties agreed that I was mutually acceptable.

**Tell us about the initial settlement meetings. Who was there?**

At the initial mediation sessions, we had a large group of people in attendance. We had all of the attorneys for the plaintiffs and all the attorneys for the defendants. Initially, we had two days of meetings in which each of the sides presented their points of view generally on liability. First the plaintiffs went and then the defendants went. From where we sat, we were interested in getting all the facts and getting a good sense of what the legal issues were.

**Now, the plaintiffs were all people who had opted out of the Victims' Compensation Fund. Was there anything that unified these people? In other words, was there a common reason why they'd all opted out?**

Not really. The reasons were very different. You had some instances in which the person killed had been a large wage earner who had a large life-insurance policy. Because life-insurance recoveries were deducted from what you could recover under the fund, some people figured they'd be better off going into litigation. Others were folks who really wanted to see the facts unfold and wanted to tell their stories. There really was no

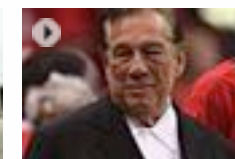
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one-size reason.

### What were the legal issues?

The legal issues, believe it or not, were very complicated, highly complex, largely because the choice-of-law issues were very tricky. The plane crashes happened, of course, in three states — New York, Pennsylvania and Virginia. But each state's choice-of-law statute said something different and really sent us exploring all of the intricacies of the various laws and how those differences might apply in different cases.

### Really? How so?

Well, for instance, the choice-of-law rule in New York says that in determining which wrongful-death statute applies to any given individual, you have to look to that person's home state. For instance, California law would apply to California residents who were killed in the Twin Towers crash; Connecticut law would apply to Connecticut residents, etc.

Thing is, those laws are extremely different from one to another. For instance, New York is what's called a pecuniary-loss state. If you're a young and unmarried person, the value to your beneficiary would be fairly small. But in Connecticut, a beneficiary might get whatever the decedent would have gotten from a lifetime of working. Of course, the difference between these two could be very substantial.

### Okay. So talk about the process. How did the mediation unfold?

Generally speaking, it was a very long process and at times extremely emotionally draining. We realized quite quickly that we needed to have individual mediations with various lawyers. At first, it was easier to do it with lawyers who had 10 cases than with one who had one or two. Still, it was a lot of work since each case was so unique, so different from all the others in terms of determining what damages would be. Each case had to be examined individually.

### But couldn't you get a sense pretty quickly in regard to each individual as to how much they were likely to get? Or at least be able to calculate a ballpark range?

No. Not at all. You really don't realize how many factors there are that come into consideration. For instance, if the decedent had been taking care of someone who is handicapped, you would have to factor that into consideration. You had to consider how

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many children someone had, what their ages are. Each individual, each family was unique.

### Okay. So how did it wrap up?

We were able to reach agreements in 92 of the 95 cases, but it was only recently that we decided that we weren't going to reach a settlement in the last three.

### And those three will go to trial?

Presumably. Unless, of course, a settlement is reached.

### From where you sat, how did the plaintiffs come away? Were they relieved, angry, happy, upset? What was the emotional tenor?

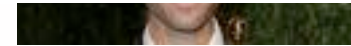
It really varied considerably. Some people were angry and unhappy to be taking the settlements; others were relieved to be moving on. The truth is that nobody walks away from a settlement feeling 100% good about it. It's typically a mixed bag.

**Fox:** One thing we tried hard to impart is that we weren't trying to place a value on the life of a loved one. The law is really not trying to do that, because it cannot. Rather the law is trying principally to deal with an economic hole created by the loss of a person's life. I think coming to that understanding helped some people move on where previously they couldn't.

**Birnbaum:** But I think a lot of people felt like they needed to vent their anger at the defendants. They were very angry about 9/11, and their anger was especially vehement. In many cases, we brought in executives from the airlines so individuals could confront the defendants. Some, however, simply wanted to tell their stories to the court, so we arranged for meetings with the court. People had various ways of expressing their emotions as well as negotiating settlements.

**Some people reading this are likely going to say 'wait a minute, why are these people receiving anything at all? The events of 9/11 weren't the fault of the airlines or airport security, but the fault of 20 terrorists hellbent on causing massive destruction.' How would you respond to that?**

But that's not a decision for us to make. From the point of view of liability, a jury might



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