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Ken Feinberg
The Feinberg Group, LLP
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Ken Wexler
Wexler Wallace LLP
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Co-Host Roger Clark
Clark & Goldberg
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Today, we are pleased to have on our show, **Ken Wexler**, founding partner of Wexler Wallace LLP who devotes his practice to helping those whose rights have been denied or who have been victims of the unscrupulous or fraudulent actions of others, most often more powerful entities. Founder of the firm that bears his name, Ken was also a founding partner in the firm of Miller Faucher Cafferty and Wexler, LLP. Prior to that, he was a partner in the Chicago law firm then known as Much Shelist Freed Denenberg Ament & Eiger, P.C.

Ken has been in leadership positions in cases with far-ranging subject matters, including brand name

manufacturer suppression of competition from generic drugs, fraudulent and deceptive product overcharges, discrimination and harassment, corporate waste and mismanagement, cost recovery for defective medical devices, false advertising, and government fraud. Ken's practice is devoted to complex class action and commercial litigation.

Ken has served as lead counsel in numerous high profile cases, including the following.

- In *Re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456 (D. Mass.) (Early in 2002, WTW initiated a wave of class-actions nationwide against the dominant pharmaceutical manufacturers to stop the fraudulent publication of a fictitious price called Average Wholesale Price, or AWP. Manipulation of AWP by defendants caused federal and state governments, third party payors and consumers to vastly overpay for prescription drugs)

- **Ken** was appointed co-lead counsel and have been actively involved in all aspects of this monumental case.

- Trial began against AstraZeneca, Bristol Meyers Squibb, Johnson & Johnson and Schering Plow in November, 2006. Jennifer Connolly, another partner at WTW, has had a prominent role on the trial team.

•Nichols v. SmithKline Beecham Corp., Case No. 2:00-CV-06222-JP (E.D. Pa.) (An antitrust case in which plaintiffs alleged that several of Defendants' patents for paroxetine hydrochloride were improperly listed in the FDA Orange Book and that Defendants' patent infringement litigation against various generic drug manufacturers was "sham" litigation designed to keep generic versions of Paxil® off the market)

Ken, as one of three co-lead counsel, had to build the Paxil case from the ground up. The Paxil litigation is believed to be one of the first, if not the first, to allege misuse of patents to delay generic competition in a pharmaceutical market brought under Section 2 of the Sherman Act rather than Section 1.

Despite these hurdles, and after extensive discovery and investigation, the case settled for \$65 million in cash. The favorable response to this hard-fought settlement was overwhelming ---- over 60,000 consumers filed claims.

- Wiginton v. CB Richard Ellis, Inc., Case No. 1:02-CV-06832 (N.D. Ill.) (A nationwide class-action brought by WTW seeking to remedy systemic sexual harassment in the offices of CB Richard Ellis nationwide)

- New England Carpenters Health Benefits Fund v. First DataBank, Case No. 1:05-CV-11148 (D.Mass.) (Ken is co-lead counsel in this matter alleging a conspiracy to suddenly increase the published spread between Average Wholesale Prices and Wholesale Acquisition Cost for pharmaceuticals in the 2001-2002 time frame, causing end purchasers to pay billions of dollars extra for needed pharmaceuticals. The case has settled against one defendant and preliminary estimates pin the savings to consumers and third party payors resulting from the settlement at \$4 billion. The case is still pending against

another alleged co-conspirator in the United States District Court sitting in Boston.)

- In re BP Products North America, Inc. Antitrust Litigation, MDL No. 1801 (N.D. IL) (Ken has again been appointed interim co-lead class counsel, representing purchasers of propane who were injured by BP's alleged unlawful manipulation of the price of propane gas after it cornered the TET propane market in February 2004)

KENNETH R. FEINBERG, is the Managing Partner and the founder of The Feinberg Group. Mr. Feinberg is an attorney and one of the nation's leading experts in mediation and alternative dispute resolution.

He was appointed by the Attorney General of the United States to serve as the Special Master of the Federal September 11th Victim Compensation Fund of 2001. In this capacity, he developed and promulgated the Regulations governing the administration of the Fund and administered all aspects of the program, including

evaluating applications, determining appropriate compensation and disseminating awards.

Today, **Ken** speaks about his experiences as the Special Master of the Federal September 11th Victim Compensation Fund of 2001. He authored a remarkable study of his experiences in this unprecedented book entitled: *What Is Life Worth?: The Unprecedented Effort to Compensate the Victims of 9/11*.

Ken's experience as an attorney and a mediator, having mediated the suit between Vietnam vets and manufacturers of Agent Orange, made him uniquely qualified to handle the delicate task of compensating families victimized by the 9/11 terrorist attack and reducing the prospects for lawsuits against the airlines and the U.S. government. But his experiences did not prepare him for the emotional toll of the unprecedented task. In this personal account, he calls his charge one of the most harrowing yet rewarding experiences of his life. For 32 months, he tried to "fill the hole in a family's life with money," attempting to bring some fairness to settlements for the families of wealthy stockbrokers,

middle-class firemen and policemen, and immigrant restaurant workers. What Ken struggled with most was the awesome task of deciding the value of human life, acknowledging his own clumsy insensitivity at the beginning, and gradually learning to deal with grieving families who wanted as much to be heard as to be compensated.

The Feinberg Group, LLP is the foremost law firm in the nation specializing in the negotiated resolution of complex legal disputes. Whether a complex dispute calls for mediation, other forms of alternative dispute resolution (ADR), or a comprehensive negotiation strategy, **The Feinberg Group** is preeminent in achieving an effective resolution and preventing years of protracted, expensive, and uncertain litigation.

Ken was a member of the Presidential Advisory Commission on Human Radiation Experiments from 1994 to 1995; the Presidential Commission on Catastrophic Nuclear Accidents from 1989 to 1990 and

the Carnegie Commission Task Force on Science and Technology in Judicial and Regulatory Decision Making from 1989 to 1993. He is currently a member of the National Judicial Panel, Center for Public Resources, and chaired the American Bar Association Special Committee on Mass Torts from 1988 to 1989. He is also an arbitrator for the American Arbitration Association. He is listed in "Profiles in Power: The 100 Most Influential Lawyers in America" (National Law Journal, April 4, 1994; June 12, 2000) and was named "Lawyer of the Year" by the National Law Journal (December, 2004). He is the author of numerous articles and essays on mediation, mass torts and other matters.

Roger Clark is the founding member and managing partner of Clark & Goldberg., www.clarkgoldberg.com . In his more than 25 years practicing law, Roger has earned a national reputation as a successful trial attorney representing insurers, cable television providers, and small and large businesses in a broad range of business litigation matters. "My philosophy has always been that the attorneys in this law firm must be prepared not just to 'litigate' a case, but to try it before a judge or jury, while at the same time keeping the client's goals and objectives squarely within our sights." Roger is rated "AV" by Martindale-Hubbell, which is the highest rating that can be bestowed upon an attorney.

Hosted by Steve Murphy.



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