

GCCF

Gulf Coast Claims Facility
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Testimony of Kenneth R. Feinberg
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Committee on Natural Resources
U.S. House of Representatives
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Mr. Chairman:

I thank this Committee for the opportunity to testify concerning the design, implementation and administration of the Gulf Coast Claims Facility (“GCCF”), with a mandate to compensate all eligible claims arising out of the oil discharges from the Deepwater Horizon spill on April 20, 2010. I have been asked by both the Administration and BP to administer the GCCF, which evaluates, processes and decides any and all claims from private individuals and businesses impacted by the spill. Since its inception on August 23, 2010, the GCCF has received approximately one million claims from individuals and businesses located not only in the five state Gulf Region, but from all 50 states and 38 foreign countries.

I note, for example, receipt of 303 claims from the State of Washington; 166 of these were determined to be eligible and were paid a total of \$2,704,388. And, the GCCF has received 328 claims from the ranking minority member’s State of Massachusetts; 51 of these claims were determined to be eligible and were paid a total of \$723,103.

The GCCF has processed 95 percent of all claims received, an extraordinary accomplishment considering the volume and complexity of the claims. As of October 21, 2011, we have paid approximately \$5.5 billion (with an additional \$400 million in outstanding offers) to some 213,068 claimants, honoring approximately 379,611 claims.

Even though the oil spill occurred some 18 months ago, the GCCF continues to receive on average about 2,270 new claims each week, convincing statistical evidence that the GCCF is

accomplishing its mission in providing efficient, fair and generous compensation to the victims of the environmental disaster in the Gulf. Whatever constructive criticism may be directed at the GCCF, the current filing rate is proof positive that we are doing something right. Individuals and businesses victimized by the spill clearly are not hesitating in filing claims in unprecedented numbers with the GCCF.

The GCCF remains in place to process any remaining claims that may be submitted until August 22, 2013. This was a wise decision; there is still plenty of time for claimants to submit a claim to the GCCF.

As you know, a \$20 billion escrow fund was established by BP to pay all eligible claims that are submitted to the GCCF. And BP has agreed to supplement this escrow fund as needed to assure full and fair compensation to all individuals and businesses that are found to be eligible for payment. The entire cost of the GCCF is being borne by BP, without any cost to the taxpayers or the citizens of the Gulf Region.

During the initial three-month Emergency Advance Payment phase of the GCCF – from August 23, 2010 until November 23, 2010 – approximately \$2.58 billion was paid to some 170,000 eligible individuals and businesses to cover up to six months of documented damage. These interim payments were made without any requirement that the claimant waive any right to litigate or return to the GCCF for additional compensation. Since the end of the emergency phase of the Program, the GCCF has paid additional claims totaling almost \$3 billion to eligible claimants.

All claimants are provided a voluntary choice concerning the nature of the payments: a Final Payment for all remaining past, present and future documented damage; an Interim Payment for past quarterly documented damage; or a Quick Payment requiring no further documentation concerning damage for those claimants who received a prior payment from the GCCF. Those individual claimants opting for a Final or Quick Payment cannot return to the GCCF for additional compensation and must sign a release waiving their right to litigate against BP and any other defendant companies allegedly involved in the oil spill. Those selecting the Interim Payment option are not required to sign any release, and may return to the GCCF for subsequent payments for ongoing additional documented damage attributable to the spill.

As of October 21, 2011, 127,313 claimants have opted for the Quick Payment option, 63,133 have preferred the Final Payment option and 29,742 have opted for an Interim Payment. The choice is entirely up to the individual claimant; the GCCF does not prefer one option over another. The volume of claimants choosing each of these three payment options is sound evidence that all three options are readily available depending upon the unique circumstances confronting each individual claimant.

All claim determinations are made by the GCCF without any interference from either the Administration, BP or any other interested parties. My work is monitored by the Department of Justice and BP, but, again, there has been absolutely no interference with the discretion of the GCCF in the processing of individual claims and making individual determinations of eligibility and damage.

Any praise or criticism concerning the administration of the GCCF should be directed to me and me alone.

To meet the onslaught of claims, the GCCF initially established 35 regional claims offices throughout the Gulf Region to handle claims and assist claimants. (The GCCF has employed as many as 3,200 individuals in performing the various functions of the GCCF.) Fifteen full-time site offices (and an additional four offices with once-weekly or by appointment hours) currently remain in place as in person claim volume gradually diminishes, particularly from certain regional offices. Claimants may file claims in a number of ways including in person by visiting a site office, by U.S. mail, by fax and electronically through the GCCF website. During the past eight weeks, only 13.5% of all claims filed with the GCCF were submitted through local claims offices; the remainder were filed either electronically or by mail.

I am confident that the GCCF's local presence throughout the Gulf Region is more than sufficient to handle all claims inquiries by local citizens visiting GCCF offices.

The GCCF has received an incredibly diverse and complex number of claims from both individuals and businesses: death and physical injury claims; lost income and lost profit claims; subsistence claims; real and personal property damage claims; and removal and cleanup cost claims. We have received claims not only from fishermen, shrimpers, oyster harvesters, hotels, restaurants, real estate agents and developers and retail businesses, but also from builders,

contractors, developers, dentists, veterinarians, chiropractors, and restaurants and businesses located thousands of miles from the site of the spill. All are being processed. As already indicated, the GCCF is generally current when it comes to notifying claimants about the status of their claim: the calculated amount to be paid and why; reasons why the claim is denied; or reasons why the claim may yet be eligible for payment but lacks the minimum documentation necessary for the GCCF to pay the claim. If a claim is deemed deficient, the claimant is invited to work with the GCCF in supplementing the individual file in order to make the claim payable.

Claims may be denied for a variety of reasons: no documentation of damage or no evidence that the alleged damage is linked to the oil spill. (The GCCF recently completed a mass mailing to all denied claimants notifying these claimants of the opportunity to re-file a claim with the GCCF if they now have the necessary documentation to support the damages asserted.) In addition, since its inception in August of 2010, the GCCF has lacked jurisdiction to process damage claims alleged by local governmental entities; such claims must be submitted to BP itself for evaluation and payment. Unfortunately, the GCCF also lacks the necessary authority to process and pay any and all individual and business claims arising out of the federal government's moratorium pertaining to certain oil rig drilling in the Gulf of Mexico. BP has established a separate \$100 million fund in New Orleans to process eligible moratorium claims. I direct all moratorium claimants (currently approximately 1,600 claimants) to that Fund for consideration of their claims. The GCCF is in no way involved with that Fund.

Pursuant to the Federal Oil Pollution Control Act, the decisions of the GCCF are accountable to the United States Coast Guard and a Liability Trust Fund. Any claimant dissatisfied with GCCF decisions pertaining to eligibility or the calculation of damages has the statutory right to ask the Coast Guard to conduct an independent review of the GCCF's decision. To date, the Coast Guard has received 1,486 requests for such an independent review and has completed the review of 1,359 of these requests; *in every single instance the Coast Guard has agreed with the ultimate decision rendered by the GCCF.* Based upon claims volume, the number of claims that continue to be filed with the GCCF from thousands of individuals and businesses, the amount of funds being distributed by the GCCF, and the independent opinions rendered by the United States Coast Guard ratifying GCCF decisions, it is clear to me that the GCCF is succeeding in its mission.

The Program is not perfect and I welcome constructive criticism from the distinguished Members of this Committee. With claims volume at approximately one million submitted claims, there may be a certain inconsistency in the treatment of similarly situated claimants who offer similar proof of damage; when we review and discover such inconsistencies, we fix the problem by supplementing the payments.

Much of the criticism directed at the GCCF concerns allegations that the procedures used by the GCCF to determine both eligibility and compensation are enveloped in mystery, leading to inconsistency and a perception that the process is too often arbitrary and capricious. The GCCF has taken the following steps designed to deal with this criticism:

- a. We have retained the services of seven local professional organizations, including lawyers and claims processing experts in each impacted Gulf state, to assist claimants in responding to individual inquiries about their respective claims and the reasons underlying GCCF eligibility and calculation determinations. Individuals from six of these local firms remain in place throughout the Gulf Region. Claimants may at any time, or by appointment, visit a site office and meet with one of our local liaisons. Claimants now have various options for contacting a GCCF representative for assistance with filing a new claim or providing information on the status of an existing claim. One of the most important improvements in the process is that each claimant is provided the name and telephone number of specific claims' representatives included in each and every determination, deficiency and denial letter sent to all claimants. Claimants may call the toll-free GCCF helpline or email questions to our information email box and receive a written response; claimants may log onto the secure website and receive the status of their claims as well as copies of any letters and payment information that were sent by the GCCF concerning that claim. In addition, we have enhanced the information regarding notices and other important information on the GCCF website in order to alert claimants about issues regarding the claims process. I believe these steps go a long way in alleviating much of the frustration and anger of claimants who previously could not get answers to their claims questions.

b. The GCCF has also become much more open and transparent in providing a wealth of information (available in English, Spanish, Vietnamese and Khmer) on its website. Among other things, the GCCF website currently provides Important Notices and Information, a lengthy set of Frequently Asked Questions, posted copies of the GCCF Protocol for Interim and Final Claims, a copy of the Final Rules Governing Payment Options, Eligibility and Substantiation Criteria; a Summary of Options for Filing Claims, the Final Payment Methodology, specific information regarding supporting documentation requirements, a list of Claims Site Offices, information regarding Free Legal Assistance and information on how to report fraud. All claimants have the opportunity to file claims electronically and can access information relating to their claims, including copies of all letters sent to them by the GCCF, the status of their claims, determination letters and payment offer explanations. We are also providing more detailed information in all correspondence with claimants. This has also improved the process, providing claimants with a sense that they are not simply part of an “assembly line” that does not take into account the individual characteristics of their claim.

We have also agreed with the Department of Justice that an independent audit should be made of the GCCF, focusing on procedures, practices and data, in order to determine just how efficient, consistent and successful the GCCF has been in analyzing claims and compensating eligible claimants. I am confident that the audit will be both truly “independent” and focused. I look forward to this audit. I am confident it will validate the work of the GCCF and its dedicated personnel.

I also think it important to emphasize the unprecedented nature of the GCCF, and the role it has assumed. As an Adjunct Professor of Law, having taught Mass Torts at New York University School of Law, Columbia University Law School, the University of Pennsylvania Law School and Georgetown University Law Center, I know of no other mass disaster in which any Administration has worked with a private company in establishing a multi-billion dollar private fund to pay all eligible victims. The GCCF is unique. It will not easily be replicated in other contexts.

When I was asked by the Bush Administration and Attorney General John Ashcroft to design and administer the September 11th Victim Compensation Fund enacted by Congress, I knew that all compensation paid to the victims of the 9/11 attacks would consist entirely of public funds. The GCCF, however, is funded entirely by BP without any contribution from the government or other private entities. During the 33-month history of the 9/11 Fund, I processed a total of just over 7,500 submitted claims, paying about \$7 billion in public taxpayer funds to approximately 5,300 families and physically injured victims. In administering the GCCF, I have often received over 7,500 submitted claims in just one week (!) and, as already indicated, have already authorized payment of \$5.5 billion in just the first year of the GCCF's existence.

Again, Mr. Chairman, I very much appreciate the opportunity to testify before this distinguished Committee and look forward to answering any questions that Members may have pertaining to the design, implementation and administration of the GCCF. I wish to assure you and the Members of this Committee personally of my ongoing efforts to make the GCCF process work so as to benefit those individuals and businesses most in need. I believe that the GCCF is achieving its objective. I will continue to work with you and others to make sure that the GCCF is as efficient, effective and fair as possible.

I am also attaching for the Committee's consideration two documents that summarize important statistics pertaining to GCCF submissions, processing and payment of claims. I would be pleased and honored to answer any questions from you and any other Members of this distinguished Committee.

Attachment A

Overall Program Statistics (Status Report as of October 21, 2011)

All Claimants	No. of Claimants
Total All Claimants (Claims: 993,217) <i>(This is a unique count that includes all Emergency Advance Payment Claimants)</i>	549,503
1. Individual	435,797
2. Business	113,706
<i>Claimants Represented by Counsel: 68,132</i>	

Current Claimant Status	No. of Claimants
Interim and Final Claimants - Phase II <i>(This report reflects Claimants' current status as of the report date, therefore each Claimant is only represented in one category below.)</i>	350,318
Reviewed - Phase II Only	333,233
1. Final Payment Issued	180,206
a. Quick Payment	124,901
b. Full Review	55,305
2. Final Release Accepted Pending Payment	864
3. Final Offer Acknowledged Pending Accepted Release	4,654
4. Final Offer Made	11,326
<i>With Interim Payment (5,032 out of these 11,326 Final Offers)</i>	
5. Other Claim Determinations:	136,183
a. Claimants Without an Established Loss	12,710
b. Withdrawal Requested	485
c. Claimants Notified Additional Information Required	17,698
d. Claimant Denied	105,290
Under Review	17,302
1. Phase II - Interim & Final	17,085
2. Phase I - EAP Unresolved / Under Review (Claims Subject to Liens, Audit Holds, etc.)	217
Claimants with Resolved EAP Submissions <i>(Many EAP Claimants have re-filed in the Phase II: Interim and Final Claim Stage)</i>	448,266

Paid Claimants	Paid Claimants	Total Amount Paid
Total Unique Claimants	213,068	\$ 5,423,651,963.19
1. Quick Pay / Full Review / Interim Payment	209,964	\$ 2,840,087,475.31
a. Individual	150,605	\$ 1,080,575,412.87
b. Business	59,359	\$ 1,759,512,062.44
2. Emergency Advanced Payment (EAP)	169,197	\$ 2,583,564,487.88
a. Individual	121,566	\$ 1,020,765,083.50
b. Business	47,631	\$ 1,562,799,404.38
Separate Fund for Real Estate Brokers and Agents		\$ 54,434,574.75
Total Paid:		\$ 5,478,086,537.94

Quick Pay Final Payments	Claimants with Filed Claims	Reviewed Claimants	Paid Claimants	Amount Paid
Total Quick Pay Final Payments	127,313	126,398	124,901	\$ 1,259,515,000.00
1. Individual	94,741	94,128	93,120	\$ 465,665,000.00
2. Business	32,572	32,270	31,781	\$ 793,850,000.00
Interim Payments	Claimants with Filed Claims	Reviewed Claimants*	Paid Claimants	Amount Paid
Total Interim Payments	109,587	101,039	29,742	\$ 378,192,732.74
1. Individual	75,690	69,456	18,723	\$ 133,230,648.10
2. Business	33,897	31,583	11,019	\$ 244,962,084.64
<i>* Details on Interim Claimants, including Status are reflected on Page 10 of this report</i>				
Full Review Final Payments	Claimants with Filed Claims	Reviewed Claimants	Paid Claimants	Amount Paid
Total Full Review Final Payments	143,571	135,867	55,321	\$ 1,202,379,742.57
1. Individual	111,163	104,783	38,762	\$ 481,679,764.77
2. Business	32,408	31,084	16,559	\$ 720,699,977.80

Full Review Final Payment Offers	Offers Made	Amount Offered	Offers Accepted	Amount Accepted
Total Final Offers <i>(Inclusive of Offers with Release Accepted and Final Payment Issued)</i>	80,912	\$ 1,692,150,501.94	63,133	\$ 1,308,036,852.69
1. Final Offers: Individual	53,748	\$ 524,440,175.89	43,862	\$ 441,411,317.32
2. Final Offers: Business	27,164	\$ 1,167,710,326.05	19,271	\$ 866,625,535.37

Attachment B

GCCF - Overall Statistics

(as of October 21, 2011)

I. OVERALL – ALL STATES – OCTOBER 21, 2011	
Number of claimants who have filed - Interim/Final Claims	350,318
Number of claimants who have been paid	213,068
The paid percentage	60.82%
The processing percentage	95.12%
The deficient percentage	5.05%
The denial percentage (No losses or No supporting documentation)	33.68%
Total amount paid (All Phases)	\$ 5,478,086,537.94
II. ALABAMA	
Number of claimants who have filed - Interim/Final Claims	50,742
Number of claimants who have been paid	33,702
The paid percentage	66.42%
The processing percentage	96.56%
The deficient percentage	4.25%
Phase II denial percentage	31.74%
Total amount paid (All Phases)	\$ 993,048,957.60
III. FLORIDA	
Number of claimants who have filed - Interim/Final Claims	144,457
Number of claimants who have been paid	95,169
The paid percentage	65.88%
The processing percentage	96.36%
The deficient percentage	5.34%
The denial percentage (No losses or No supporting documentation)	29.01%
Total amount paid (All Phases)	\$ 2,308,213,239.76
IV. LOUISIANA	
Number of claimants who have filed - Interim/Final Claims	117,708
Number of claimants who have been paid	68,386
The paid percentage	58.10%
The processing percentage	96.32%
The deficient percentage	4.29%
The denial percentage (No losses or No supporting documentation)	38.30%
Total amount paid (All Phases)	\$ 1,686,531,937.68
V. MISSISSIPPI	
Number of claimants who have filed - Interim/Final Claims	39,445
Number of claimants who have been paid	19,352
The paid percentage	49.06%
The processing percentage	91.31%
The deficient percentage	5.86%
The denial percentage (No losses or No supporting documentation)	38.95%
Total amount paid (All Phases)	\$ 497,125,021.30
VI. TEXAS	
Number of claimants who have filed - Interim/Final Claims	10,162
Number of claimants who have been paid	4,055
The paid percentage	39.90%
The processing percentage	74.23%
The deficient percentage	6.59%
The denial percentage (No losses or No supporting documentation)	34.21%
Total amount paid (All Phases)	\$ 207,042,566.12