

**FULL COMMITTEE HEARING ON
RECOVERY IN THE GULF: WHAT
THE \$20 BILLION BP CLAIMS FUND
MEANS FOR SMALL BUSINESSES**

HEARING

BEFORE THE

**COMMITTEE ON SMALL BUSINESS
UNITED STATES
HOUSE OF REPRESENTATIVES**

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

HEARING HELD
JUNE 30, 2010



Small Business Committee Document Number 111-071
Available via the GPO Website: <http://www.access.gpo.gov/congress/house>

U.S. GOVERNMENT PRINTING OFFICE

57-283 PDF

WASHINGTON : 2010

For sale by the Superintendent of Documents, U.S. Government Printing Office
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CONTENTS

OPENING STATEMENTS

	Page
Velázquez, Hon. Nydia M.	1
Graves, Hon. Sam	2

WITNESSES

Feinberg, Mr. Kenneth, Administrator, Golf Coast Claims Facility	4
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APPENDIX

Prepared Statements:	
Velázquez, Hon. Nydia M.	26
Graves, Hon. Sam	28
Feinberg, Mr. Kenneth, Administrator, Golf Coast Claims Facility	30

**FULL COMMITTEE HEARING ON
RECOVERY IN THE GULF: WHAT
THE \$20 BILLION BP CLAIMS FUND
MEANS FOR SMALL BUSINESSES**

Wednesday, June 30, 2010

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Committee met, pursuant to call, at 10:03 a.m., in Room 2360, Rayburn House Office Building, Hon. Nydia M. Velázquez [Chair of the Committee] presiding.

Present: Representatives Velázquez, Moore, Shuler, Dahlkemper, Schrader, Kirkpatrick, Critz, Bean, Altmire, Clarke, Halvorson, Graves, Bartlett, Westmoreland, Buchanan, Luetkemeyer, and Thompson.

Chairwoman VELÁZQUEZ. Good morning. This hearing is now called to order.

For the last 72 days, the Nation has watched anxiously as oil has spilled into the Gulf of Mexico. With estimates of up to 60,000 barrels per day, this spill has paralyzed the economy of this region during its normally most prosperous time of the year. In fact, economists estimate that over 7 million businesses will be impacted by the oil spill. Almost 6 million of them will be small businesses with less than 10 employees. For entrepreneurs, this is a catastrophe of an unthinkable size and scale.

To compensate the small business owners and provide the local economies with the support they need, BP established a \$20 billion Gulf Spill Independent Claims Fund. There is hope that the creation of this escrow account will avoid the situation created by the 1989 Exxon Valdez oil spill in Alaska. That catastrophe took decades of litigation to assess damages. The roughly 32,000 claimants, primarily fishermen, received only about a quarter of the losses filed by each claimant after the Exxon Valdez spill. The hope is that at this time small businesses will be more fairly compensated for their losses.

During today's hearing, we will examine how the claims fund will meet the needs of small businesses. Today, 81,701 claims have been opened, from which more than \$128.4 million has been disbursed since the fund began operating on June 16. We need to make sure that small businesses know how quickly they will receive payment and how these payment amounts are being calculated.

The Committee looks forward to hearing Mr. Feinberg's thoughts on these matters today. This is important to all businesses but particularly those industries that have been directly affected by the spill and the resulting closure of nearly 40 percent of the Gulf.

The commercial fishing industry, made up of independent shrimpers, crabbers, oyster farmers and fishermen, accounts for over 200,000 jobs and \$5.5 billion in revenue. Not only has the closure of fishing areas limited their ability to operate, but many are finding that the public's confidence in Gulf products has been eroded, creating another obstacle for the local economy.

The problems faced by businesses in the fishing industry are matched by those in the tourism sector. Hotels and restaurants rely heavily on tourism, with some of New Orleans's restaurants reporting that they rely on nonlocals for up to 70 percent of their business. Alabama, in the midst of what is normally its high season, has already experienced a 50 percent decline in tourism due to public fear of tarballs on local beaches. In Florida, economists predict a loss of 195,000 jobs and a cost of almost \$11 billion if just half of their tourism and leisure income goes away.

Unfortunately, it is clear that small firms across the Gulf are in for a tough summer. The claims fund that Mr. Feinberg administers is essential to the ongoing recovery and eventual restoration of the Gulf Coast economy. As we have seen in the past, a little assistance to these businesses will enable them to innovate and begin anew.

With oil continuing to flow, however, no one can foresee what the future holds. But what we do know is that these Gulf Coast businesses have overcome similar challenges like they did after Hurricane Katrina. These entrepreneurs are resilient, and they should not be underestimated.

It has been projected that over 40 percent of businesses fail to recover following a disaster. In many cases, these businesses go under simply because they lack financial resources necessary to restart their enterprises.

In the case of the oil spill, however, it is different and much more complicated. It is not just about the money but making sure that the leak is stopped and the physical damage is mitigated. Then we will need to restore the public's trust in the Gulf as a center for commerce and tourism.

I think I can speak for all the Committee members here today in saying that we will do whatever it takes to help these small businesses overcome these challenges. Given this, I think it is appropriate that Mr. Feinberg's first appearance before Congress is before this Committee, and I want to thank you for taking time out of your busy schedule to appear before our Committee today.

With that, I will now yield to Ranking Member Graves for his opening statement.

Mr. GRAVES. Thank you, Madam Chairman.

Thank you for holding this hearing, a very timely hearing, I think.

My thanks go out to Mr. Feinberg for joining us today, and I am looking forward to hearing your plans for managing BP's \$20 billion compensation fund.

The Deepwater Horizon oil rig explosion, which cost 11 workers their lives on April 20, was a tragedy of enormous proportions; and the seemingly unstoppable leak of millions of gallons of oil created an environmental and economic disaster of unimaginable proportions.

Let us all remember that this catastrophe is not first to befall this region in recent years. Hurricanes Katrina and Ike, the 2008 energy crisis and recession each brought new layers of devastation to the Gulf, devastation that families and businesses are still working to overcome. Just as the people in the Gulf region begin to recover, they have now been hit with a new disaster, one that has leveraged even more trauma on an already delicate economy.

The oil spill has put a halt on nearly every component of the economy in the Gulf region. Right now, Louisiana has been hit hardest by the oil spill. The State's economy relies heavily on oil and natural gas production, chemical and petrochemical production, commercial fishing, and tourism. Louisiana contains about 10 percent of all the known U.S. oil reserves. It is the country's third-largest producer of petroleum and has impressive reserves in natural gas, producing approximately one-quarter of all the U.S. supply of natural gas.

The State's commercial fishing industries are responsible for about 25 percent of all the seafood landed in America, and its tourism industry employs over 80,000 workers. Travelers spend an estimated \$5.2 billion in the State each year; and, sadly, the oil spill has effectively shut down each of these segments of the State's economy.

As the spill spreads east, the economies in Alabama, Mississippi, and Florida are soon going to be under siege. Florida's tourism industry, which is responsible for 80 million visitors each year, could be particularly devastated by the oil spill; as this industry brings more than \$60 billion in taxable sales revenue and employs in excess of one million Floridians.

The widespread implications of the spill become clearer every day. We must work together to minimize the environmental and economic impact of this spill and determine how we can help rebuild the Gulf region.

On June 16, BP agreed to create a \$20 billion escrow account to compensate affected businesses, business owners, and other victims of this spill. As the independent authority on processing and administering payment of the hundreds, if not thousands, of claims that are soon going to come from the businesses, Mr. Feinberg will be responsible for keeping the economy and small businesses in the Gulf region intact as we all work to recover from the spill's destruction.

Mr. Feinberg, I look forward to your testimony today with a special interest in how you are going to ensure the claims processes are orchestrated efficiently and fairly for small business. I am sure you are already well aware of the critical role such entrepreneurs play in America's economy, and I expect that they will receive adequate compensation so they can survive yet another disaster in the Gulf and come out stronger on the other side.

Madam Chair, I appreciate, again, you calling this hearing.
Chairwoman VELAZQUEZ. Thank you.

It now is my great honor to welcome Mr. Kenneth Feinberg. He is the founder and managing partner of the law firm Feinberg Rozen. He is a renowned expert in arbitration and was recently named the independent administrator of a \$20 billion fund to compensate victims of the oil spill in the Gulf of Mexico. He is currently setting up an independent claims facility to process business and individual claims against BP.

Mr. Feinberg's experience includes managing the September 11 victims' fund, the Virginia Tech victims' fund, and serving as chief of staff to the late Senator Ted Kennedy.

Thank you, Mr. Feinberg, and welcome.

**STATEMENT OF KENNETH R. FEINBERG, ADMINISTRATOR,
GULF COAST CLAIMS FACILITY**

Mr. FEINBERG. Thank you, Madam Chairwoman.

You are absolutely right. This is the first opportunity I have had to meet here in Congress by the House or the Senate to discuss the plans for the design, implementation, and administration of this Gulf Coast claims facility.

It is very, very difficult to say "no" to the chairwoman, who was so helpful to me during the administration of the 9/11 victims' compensation fund, which impacted her district tremendously. This is one opportunity for me to thank the chairwoman publicly for all she did in helping me with the administration of that program.

I am accompanied today by the Deputy Administrator of the fund, Camille Biros, who is also here if there are particular questions where I need to consult with her.

But let me say that if I do nothing else in the next few minutes, I want to clarify and emphasize certain points about this Gulf Coast claims facility.

First, by agreement, between the administration and BP, this is an entirely independent facility. It is not beholden to the administration. It is not beholden to BP. By agreement, they decided, let's establish and fund a truly credible independent facility that will process eligible claims and pay them promptly.

Second, understand, please, that I am not the administrator of the \$20 billion escrow fund. I am the administrator of the Gulf Coast claims facility which will draw on part of that \$20 billion fund. That \$20 billion fund may also be used for government claims against BP, for cleanup costs brought by States, local government, Federal Government. Those costs come out of the \$20 billion escrow, but it is not part of my obligation or mandate.

So please make the distinction between my responsibility in processing private claims of all types arising out of that \$20 billion and other claims that might be brought by government against BP, part of that \$20 billion, that are not on my watch.

This is a purely private facility. It is not a facility of the Federal Government or a subfacility of an agency. It is a private compact creating this independent facility which I will design and administer.

Next, in addition to the \$20 billion, the administration and BP agree to set aside \$100 million for so-called moratorium claims involving laid-off rig workers who may be out of work because of the imposed moratorium on other drilling in the Gulf. That \$100 mil-

lion is not part of the \$20 billion; it is in addition. Whether or not I will administer that \$100 million moratorium fund is up to the administration and BP. I don't think that has been finally resolved yet.

It may be that the \$100 million limited to moratorium rig worker claims—moratorium rig worker claims, not small business moratorium claims—wage loss, whether that fund will be a separate segregated account in the facility or whether it will be parked and administered somewhere else, it remains to be seen. Whether those rig workers subject to the moratorium will file claims with me or file claims with some other administrator implementing the \$100 million distribution, it remains to be seen.

That is not on my watch. It has to be resolved between the administration and particularly BP; and I think BP is going to have to decide in the next few days whether that \$100 million should be part of the facility, separate from the \$20 billion, but administered by me or whether it should be administered by somebody else.

So I want to make that clear, because there has been some confusion generated by some of my earlier comments and others. Because I am trying to figure out myself exactly how that \$100 million for moratorium workers will be designed and administered.

Next, I welcome and urge all eligible claimants to file a claim with this facility that has been established under my direction. I want to emphasize that those claimants include, as the chairwoman and Congressman Graves pointed out, not just individuals, small businesses, large businesses. Anybody, any private individual or company who feels that they have a valid claim to draw out of this facility should file a claim.

There is no obligation to filing a claim with this facility. You do not give up any rights. You do not have to make any decisions at this time. You are seeking emergency financial assistance, which this facility is recognizing, and only later, if you decide to remain in the facility and seek a lump-sum settlement down the road, would you then have to decide whether to surrender your rights to sue in return for a lump-sum payment. But that is down the road. Right now, if you file a claim, we will give you a number, we will process your emergency application, and, if you are eligible, we will pay you promptly within a matter of days.

So I would urge everybody in the Gulf who believes they may have a claim to file a claim, because there is no obligation in so doing.

Now, to date, even before this facility was established, BP set up on its own a claims process that has so far, as the chairwoman pointed out, paid about \$130 million to claimants. It is not as if—unlike the 9/11 fund or Virginia Tech or Agent Orange, when I got involved, it is not as if I am building from scratch. There is a program in place that is, as we speak, accepting, processing, and paying claims.

Now, unfortunately, that program could work better. It is not sufficiently efficient. It is not paying all that many small business claims. It needs to pay more small business claims and large business claims.

It is not sufficiently transparent. I am getting a lot of objection from State and local governments that they are having trouble

processing how—monitoring how BP is doing in accepting claims, considering them, and then approving or disapproving claims.

So I think one task I have got to do quickly is develop a much more transparent sunlight so that Congress, as part of its oversight function, as well as local governments—Governor Jindal has been very strong on this point. We have got to do a much better job—as has Homeland Security been very strong on this point. We have got to do a much better job as this facility begins to make sure that the data that can demonstrate the efficiency and success of the facility—or its shortcomings—is made available to this Committee and other similar Committees, and that is one objective that I will undertake.

Finally, as a summary point, it is very important that I provide appropriate compensation to all eligible claimants. Every claimant is not eligible. There are going to be two important prerequisites to securing compensation under this facility:

One, is the claim eligible? Is it appropriate to even file a claim? How will I decide that?

Well, Congress gave me some guidance that I think may prove very, very valuable when it enacted the 9/11 Victims Compensation Fund back in 2001. Congress said, in that legislation, in deciding whether a claim, a 9/11 claim, is appropriate, valid, legitimate, look to the law of the State of the victim.

Look to, in this case, the facility, say, let's look at the law of Louisiana, Florida, Mississippi, Alabama, Texas. Maritime law under OPA, the Pollution Control Act, may be the way to decide eligibility is to say to a claimant, look, you can file a claim with me, and I will process that claim. If your claim is legally sufficient under your own State law, I will recognize it. If not, I won't, or maybe I have to exercise some discretion in that regard.

But there has to be some way to categorize and define what is an eligible claim and what is not an eligible claim. There is not enough money in the world to pay everybody who would like some money. You have got to decide in a principled way, as we have in all of these other claims facilities like 9/11. These claims under your own law are not eligible and work out some definition in that regard.

Secondly, even if you have an eligible claim corroborated, you have to corroborate your claim. You can't come in and say, I am out of work. I am losing \$5,000 a month. Pay me. Well, show me that you are out of work. Show me something that corroborates the amount that you seek in order to justify a prompt emergency payment.

So I want to emphasize that this fund established just less than 2 weeks ago, I am determined, as I have in the past, bipartisan, apolitical, I am determined to pay every eligible claim, pay it as promptly as I can, get the money out.

Governor Barbour of Mississippi, last week when I met with him, gave me some very valuable advice. He said, Ken, I just want you to know, time is the enemy. Time is the enemy. You have got to get this money out the door.

I learned that 25 years ago in the Agent Orange Vietnam veterans case when Judge Jack Weinstein, Federal judge who had that case, said, Ken, when it comes to the Vietnam veterans, get

these settlement monies out to them ASAP, and that is what I will try and do.

My final point, this program cannot be administered by me from Washington. The only way this program works, you have to go down to the Gulf and meet the people down there, hear what they say, hear their concerns, why they are worried about their financial future, why they are angry, why they are dispirited, why they are frustrated.

I have—from the moment I was given this assignment, I have constantly been down in the Gulf, in Alabama, Mississippi, Louisiana, tomorrow, back to Alabama and to see Governor Crist in Florida; and I will continue to go back there every week. Because unless you are down there, listening in town hall meetings to what all of your constituents are saying about the problems, you can't really get a feel for the need for this facility to work and to work effectively.

So that is sort of a very brief summary, but I anticipate a fair number of questions, and that is why I am here.

Madam Chairwoman and Congressman Graves, I thank you both for the opportunity to be here. I am honored to be here today.

[The statement of Mr. Feinberg is included in the appendix.]

Chairwoman VELÁZQUEZ. Thank you, Mr. Feinberg.

Let me just say that the lessons that we learned from 9/11 and other funds that you have been able to manage is a test of your integrity, your expertise, your human understanding of the suffering that is required to make a facility like this an effective vehicle to help the people of the Gulf to recover. So thank you for your service.

Mr. Feinberg, studies have shown that businesses who get cash assistance shortly after they are impacted by a natural disaster or any kind of disaster are much more likely to succeed than those who have to go through a prolonged wait for financial assistance. Early payments by BP to small businesses have been limited to one month's worth of lost profits. Small businesses say these payments are too little to cover operating expenses and payroll. Are you considering modifying these methods to allow businesses to secure up-front payments beyond a month's profits?

Mr. FEINBERG. Yes.

Governor Riley of Alabama and Senator Landrieu of Louisiana both suggested to me that when it comes to small businesses, instead of month-to-month-to-month emergency payments, Mr. Feinberg, how about a 6-month lump-sum payment or something like that to give small businesses more certainty? Absolutely. We plan to do something like that.

Chairwoman VELAZQUEZ. Very good.

For many small businesses, compensation received from the claims fund is going to be tied to economic losses. Similarly, the Small Business Administration is now making loans for economic damages as well. Depending on how the claims fund classifies its assistance, the Small Business Administration could recognize assistance from the claims fund as duplicative and reduce its loan amounts to affected business owners. Are you going to take steps to ensure that the BP fund assistance is not classified as duplicative?

tive or other assistance like SBA disaster loans, which will then result in a reduction of loans to businesses?

Mr. FEINBERG. This is the first I have heard of this problem. I will look into this problem.

Under the program that I am establishing—I want to note the flip side of that. I will look into that issue, Madam Chairwoman, but under the program I am deciding, like the 9/11 fund, if a small business receives insurance or other collateral sources of payment tied to the spill, that money would be—we would offset that amount—it has already been received—against whatever ultimate, long-term award we would give. But I will look into that issue for you.

Chairwoman VELÁZQUEZ. The Small Business Administration has approved less than 20 percent of the disaster loans it has received from the Gulf's small businesses, very low. Given this low percentage, Louisiana's economic development secretary, Stephen Moret, requested that the Small Business Administration consider the promise of future BP payments in assessing loans requests. So it is very important that you have a process in place to get this information to the Small Business Administration so that they can fully understand the financial standing of loan applicants.

Mr. FEINBERG. I completely agree with that.

One of the hurdles I confront—and I must say Governor Jindal, when I met with him in Baton Rouge, made this point repeatedly—that the data that is available to date is so inadequate in advising other governmental agencies and State officials that that is one of my top priorities, to make sure that credible data is made available to regulators at the Federal and State level for precisely those reasons.

Chairwoman VELÁZQUEZ. Very good.

Many of the claims coming from Florida may relate to lost tourism dollars. In some cases, the decline in value could be based on the public misperception of tarballs on beaches. Will these claims be considered valid even if there is no physical damage to real estate or surrounding beaches?

Mr. FEINBERG. Now that is a tough question.

Chairwoman VELÁZQUEZ. I know.

Mr. FEINBERG. Clearly, under Florida law, I think it is fair to say it is not compensable. If there is no physical damage to the beaches and it is public perception, I venture to say that it is not compensable.

How we deal with that problem is something I have got to address. That is in this area where some discretion is going to have to be exercised, but, at the same time, I have to appreciate what the governing law of Florida and the other States is in that regard. But it is a fair question, and you posed it, so we will look into it.

Chairwoman VELÁZQUEZ. Thank you.

Mr. Graves.

Mr. GRAVES. Thank you, Madam Chair.

One of our members has another obligation, so I am going to let Mr. Buchanan go.

Chairwoman VELÁZQUEZ. Thank you.

Mr. Buchanan.

Mr. BUCHANAN. Thank you, Madam Chair.

Mr. Feinberg, I appreciate you being here today. It is nice that this is first Committee that you are coming to.

I have also read and talked to colleagues that you are outstanding, that you get on this quick, and there is a lot of people hurting.

But I also just want to mention, when we talk about jobs, let's make sure we can focus big time on small businesses, because they create the jobs, and the more we can help with them—but let me go right back to the one point.

We had a briefing—I represent Sarasota-Bradenton, which is about a—and this is where I think things are going to get complicated and there is a lot of confusion—we have 60, 70 miles of pristine beaches, additional water lines. We probably have, you know, another 70, 80 miles. So we have got a lot of frontage, a big part of who we are. And our business is tourism. Maybe it is a third.

So what are we going to do about—they are saying that where the tarballs roll up on the beaches, let's say in Pensacola, the business is off 70, 80 percent. This is a briefing we had last week, our staff. In our area, they are claiming where you don't have tarballs but you are on the Gulf, because of the press, it is going to be as much as 50 percent. And then you are talking about Florida law and all of these other things.

What are we going to do for these motel, restaurant owners? We have all of these barrier islands that come down there. They count on tourism in the summer. What are we going to do with them because of the perception? We might get the tarballs for a year, but, in the meantime, a lot of these people are going to go out of business.

I get phone calls every day talking about, oh, god, we have got a \$20 billion fund. But we have to clearly define that.

Before you answer that question, I do want to invite you down to our community. I would love to host you there—we have a little town hall—because it is nice to go to Pensacola, and you need to do that, but also Tampa Bay, which we are part of that community. We need to talk about what's going on there and figure out what we are going to do.

Because I don't want to just keep telling people that, you know, I don't know. I am not sure. Check with Florida law. We need answers to these questions because people aren't going to survive long enough to ever get a check.

So let me maybe let you comment on that initially, just in terms of we are going to have to somehow define what we are going to do with these—where there is not tarballs, there might be someday, but it is affecting their business 50 percent. What are we going to do?

Mr. FEINBERG. First, I can answer the easy part of your question. If you invite me down to your district to have a few town hall meetings, I accept. It is the only way to do this job. I invite you—I would welcome that invitation. I will be there.

Mr. BUCHANAN. You are invited, and I will have you down as soon as I can get you. I want you to come down. But it will be a very positive thing, and I am sure people want to hear from you.

So count on that. And if the Governor wants to come, he can join us. So as soon as you have got some time, we want you down.

Go ahead.

Mr. FEINBERG. Now you are posing, as the chairwoman posed—this is a very tough issue. I mean, there is not enough money in the world to pay every single small business that claims injury, no matter where or when. I use that famous example of a restaurant in Boston that says I can't get shrimp from Louisiana and my menu suffers and my business is off. Well, no law is going to recognize that claim.

On the other hand, you pose the problematic, not hypo, the real-world problem of beach-front small businesses that, even though the water is pristine, nevertheless, the public fear or concern or misinformation leads to a drop in customers, in guests. We have got to deal with this.

Now, 9/11, 9/11 dealt with it in an interesting way. 9/11 carved out a small geographic area where the 9/11 fund said, if you claim that you have physical injury, respiratory problems because of the World Trade Center dust and debris, well, we will recognize that claim but only in the immediate vicinity of the World Trade Center. If you are uptown or over across the Hudson in Jersey City, we can't recognize that claim.

Maybe, maybe—I am just throwing out some ideas. Maybe, even though Florida law would never recognize that claim, maybe beach-front property or some sort of delineation of special situation or what have you, maybe. Because you are absolutely right. People are suffering.

Mr. BUCHANAN. Well, let me go back. Madam Chair is going to cut me off in 5 minutes. I want to get a couple of questions.

Mr. FEINBERG. Go ahead.

Mr. BUCHANAN. It is one thing to say a restaurant can't get shrimp in the Northeast. It's another thing where people are losing 50 percent of their business.

But, regardless of what Florida law is, I hear what you are saying. But we have never had anything like this. We have got 2.5 million gallons of oil pouring out into the Gulf every day, 60,000 barrels.

With all of this coverage worldwide—people come from around the world, different parts of the country, come to our beaches. They are not coming. So it is different. This is a completely different thing.

So, regardless of what the Florida law is, we have to clearly take a look at communities. I think Tampa Bay and south, what we are going to do about it? Because we are on the Gulf. Again, it is one thing for the tarballs to roll on the beach. It is another thing if the business is down half.

And we have to get to that answer fairly quickly, because people are making mortgage payments, I can tell you, and they are getting cancellations, and they are going to have to give the properties back to the bank. They need to know that we are either going to step up and do something or give some kind of SBA preferred loan or something. But I have got to be able to tell them something. Just to say we will check on it, we will let you know—we have got to define these issues early on.

Mr. FEINBERG. And I have every intention of defining these issues in the next few weeks, not months.

One thing BP has done, as I understand it, not on my watch, they have funded some major public relations effort to convince people that the water is pristine and you should come back in areas where it is perfectly okay, promoting commerce and promoting, you know, positive signs that the tourism shouldn't suffer.

But, again, you are raising an absolutely legitimate, real question which we have got to address promptly.

Chairwoman VELÁZQUEZ. Time is expired.

Mr. BUCHANAN. Thank you, Madam Chair.

Mr. FEINBERG. Thank you.

Chairwoman VELÁZQUEZ. Mr. Schrader.

Mr. SCHRADER. Thank you, Mr. Feinberg, for being here. I really appreciate it. You have got your work cut out for you here, I am afraid, so good luck. And this Committee hopefully will be a resource. If you have issues and problems, legislation you need to make your job a little easier, I think the chair—

Mr. FEINBERG. Anything that will make my job easier, I welcome any and all resources.

Mr. SCHRADER. Thank you.

The Deepwater business impact analysis indicated that possibly 7 million businesses, 6 million small businesses with 10 or fewer employees might be affected here by what is going on in the Gulf. Do you have the resources to take care of those businesses?

Mr. FEINBERG. We certainly will have the resources necessary to process any and all business claims, individual claims, small business, large business. We will have those resources, yes.

Mr. SCHRADER. And how do you anticipate calculating the lost profits or earning power and over what timeframe, to your comment a moment ago, that there is not enough money in the world to take care of all the likely claims coming in? What geography do you anticipate taking claims from and consider them legitimate and, you know, up to what level of reimbursement can people expect?

Mr. FEINBERG. Again, you are raising the critical—the critical true questions. What constitutes an eligible claim? Who is eligible to even file? Congressman Buchanan points out the Boston restaurant can't file, but beach-front properties will file.

So the first issue is going to be under your question. The first issue is going to be, how will you determine what is an eligible claim for compensation? And there I am inclined to begin with the same analysis I did in 9/11. Well, what does local law say about the eligibility of that claim? How attenuated can a claim be and still be subject to compensation, proximate cause, as they say in the law? That is one question.

Your other question you pose, Congressman, is, well, even if a business is eligible, it has had a loss. How do you calculate the economic loss? Now there, there are time-honored methodologies from, let's say, the date the spill began, up until a projected—a projected—oh, it will take you, we estimate, 2 years to recover, 3 years to recover, 4 years to recover. So we will—

Mr. SCHRADER. Which of those years are you going to use?

Mr. FEINBERG. I don't know, and it may vary. It may vary whether you are a motel, a fisherman, a shrimper, an oyster harvester. It may vary from profession to profession how long it would take fishing charters or sight boats.

Mr. SCHRADER. The real world will be that some of these will actually—some of these claims, frankly, won't be for the total amount. The reimbursement won't be for the total amount of the loss. Some of these fishermen may be out of work for a decade.

I am worried about the floor of the ocean, and it is going to be—you know, the shrimp are going to be in big trouble. I have fishermen in my coast. I am from Oregon, and my coastal fishermen are very concerned about our friends in the Gulf.

We actually have researchers from Oregon State University checking the migratory patterns of a lot of the species down there to see what sort of effects they are going to have on Congressman Buchanan's area. So we are very concerned. We want to make sure that there is adequate compensation, that this industry continues to persist in the Gulf of Mexico.

Mr. FEINBERG. Let me respond. Here is what I think we will do, as with the 9/11 fund. Here is what I think we will do this time.

Oyster harvester, in your business, we think, once the oil starts, so we know how pervasive it is, we think that your oyster harvesting will only be impacted for—and I am just giving this as an example—2 years.

First, you are getting emergency payments without any obligation just to get you by. And as the chairwoman has suggested, it won't be month to month. It will be more of a lump sum.

Now, let's sit down, oyster harvester. We anticipate that for 2 years, another profession 3 years, another profession 8 years, whatever it might be, we think, based on our internal review, that you will suffer total loss over that period of X dollars. Here, here is a check. Now, that check—not emergency payment, that is long-term, lump-sum payment. That check is in full satisfaction of your claim.

You have two choices, accept the check and release BP and everybody else from any future litigation. This is a check designed to make you whole and to end your uncertainty about going forward. You don't have to take it.

If you think that our analysis is faulty, if you think it is incorrect, we have shortchanged you, you think it is a trick, don't take it. You can leave the facility and go litigate or do whatever else you would otherwise do in an effort to be made whole.

My goal is to minimize the number of people who won't take the check. Because that is the whole point of this fund.

Chairwoman VELÁZQUEZ. Time has expired.

Mr. Graves.

Mr. GRAVES. Thank you, Madam Chair.

And you answered the biggest part of my question, which is kind of the timeline and, you know, how long are businesses—how are they going to know how much they are impacted?

But as kind of a follow-up to that, when does a business, I guess, waive the right to claim? How long does it go? I mean, in some cases, they may not realize they may be trying to make it work and don't realize the impact until some time later. I mean, when do they have to waive their right to be able to come back?

Mr. FEINBERG. They don't have to waive their rights, Congressman, when they take any emergency assistance. We are going to get that money out right away to these companies and these small businesses.

There will come a time, probably in the next year or 18 months or 2 years, when I will present them an opportunity. We have examined your individual business. We think that you will be impacted by the spill for X period of time. Here is a check in full satisfaction of your loss.

Now, if you don't think that the check accurately corroborates the loss, if you think that your loss is going to be much greater, well, we will listen to you. But, ultimately, here is a check. And you have to make a voluntary choice. Take the check and release your right to sue; or, Mr. Feinberg, thank you very much. I think you are being unfair. You are short-changing my business. I don't know how long it is going to take, and I don't think your check is adequate. I am going to go to court to try and get more.

And I will say to that claimant, that is entirely your right. But I warn you, if you go to court, you will litigate for years. You may not win. I think my analysis is accurate. I am trying to help you. I think it is right. You may not win in court. You will litigate for years. You will have to pay a lawyer and wait and wait. Are you sure that this check isn't adequate?

That is going to be the challenge. That is going to be the challenge, ultimately.

Mr. GRAVES. And kind of to follow up on top of that, too, when—I am sure there is going to be folks out there that are going to make, how long into the future is it before they can come back and make a claim? Because some may not realize just how much the impact is until some time later. I mean, I guess there has to be a point that they need to have made a claim sometime before then.

Mr. FEINBERG. Right now, with the 9/11 fund, Congress kept the facility open for 33 months. Maybe with this facility we better keep it open the same time, longer, or whatever. That will be up to BP and the administration as to how long they think the facility should remain in place.

I do think that it is important at some point to announce to the world that the facility is going to end. It is an amazing thing, Congressman. You see it all the time. Until people know that there is an end date, they procrastinate. They wait. They are not sure. I am uncertain. Meanwhile, the clock is ticking; and they need help.

So I would hope that there would be some end date. We haven't yet decided what that date will be. But I agree with you that there has got to be sufficient time for people to get a handle on what they think is the ultimate loss that they suffer.

Mr. GRAVES. Thanks.

Thanks, Madam Chair.

Chairwoman VELÁZQUEZ. Mr. Critz.

Mr. CRITZ. Thank you, Madam Chair, and thank you, Mr. Feinberg.

This is a huge undertaking. Do you feel comfortable with the staffing and the infrastructure that you have in place to be able to handle what you said was an emergency turnaround of 2 weeks for

someone to get a check? That is pretty incredible. Are you in a position where you feel comfortable right now?

Mr. FEINBERG. Yes. Let me just say the Deputy Administrator of the program, Camille Biros, is here today who is working on those very issues concerning staffing. I can say that we will supplement the existing staff that is already on the ground in the Gulf. It is about a thousand people. We will increase that staff. We will increase that staff with local people.

This cannot be administered from here. I have learned from 9/11 and other similar tragedies. I mean, you have got to have local people who are trusted in the Gulf. And if this Committee has ideas as to who some of those local people might be, I would appreciate names. But we think we will be able to do it.

Now, the 2-week turnaround, the emergency payments, already BP has distributed over \$130 million. I think the emergency payments will continue. We will accelerate them. We will make it even more efficient and transparent.

The longer-term, lump-sum payments that Congressman Graves—that have been raised by the Member from Oregon, that is going to take a little bit longer, but we want to get in place as soon as we can a facility to pay lump sum as well.

It sure would help if the oil would stop. It is very hard to come up with lump-sum payments in total satisfaction of your loss when you don't know if the oil is going to continue to spread and reach your business. So once the lump sum—the lump-sum payment program can't work until the oil stops.

Mr. CRITZ. I appreciate that, and you had mentioned keeping the facility open 33 months after 9/11. Obviously, we don't have an end date when the oil is going to stop, so it is impossible to predict.

I saw you on TV the other day, and you mentioned that a lot of the small businesses and folks don't even know how to file a claim, or even know if they are eligible. What's being done proactively to reach out to these people to let them know what the claims process is and how easy is the claims process? Will you tell us what the claims process actually is?

Mr. FEINBERG. That is a fundamental question, making sure people file. I can't help them if they don't file. I have got tremendous help from Governor Barbour, Governor Riley, Governor Jindal, and Governor Crist. All of them are working to spread the word, get it out on the Internet. Electronic filing is going to be permitted, including corroborating documents, all online, if you want to do it that way.

The Postal Service called me. They are willing to put claims forms in every post office in the Gulf. I heard from the Postmaster General on that.

We are going to reach out every way we can in community town hall meetings, various other ways to disseminate the news.

The claim form itself is relatively simple. It is not complicated. If you will go to one of 35 claims offices that are already set up in the Gulf, 14 alone in Louisiana, there are people there who will help you fill out a claim. If you want to make an appointment to come in when you are not working, there will be somebody there to help you fill out a claim. It is not that difficult, especially the emergency payments, when we will require much less corroboration

than we would otherwise require for a long-term, lump-sum payment. So we are working on that.

Mr. CRITZ. Good. Thank you.

With the 9/11 experience that you have, I am sure you are putting into place, or have put in place protections against fraud.

Going beyond that, you have industries that may be completely impacted and the people who are working in that industry aren't able to come back at all. Are there going to be opportunities for retraining and using funds to help people go into new industries?

Mr. FEINBERG. Not on my watch. I mean, it is a wonderful idea. Whether or not there will be opportunities for retraining or shift in job opportunity, I have got enough challenges with this claimant fund, as you have heard, without getting into that. But I think it is a fabulous idea if there are other State and Federal Government agencies interested in that.

Chairwoman VELÁZQUEZ. Time has expired.

Mr. Westmoreland.

Mr. WESTMORELAND. Thank you, Madam Chair.

Mr. Feinberg, I really appreciate you. I have listened to you on TV, also, and hearing you here today gives me a little confidence in the ability to answer some of these questions.

Mr. FEINBERG. Thank you.

Mr. WESTMORELAND. But, Mr. Feinberg, I know in 9/11 you probably had to deal with the real estate issue or property values and especially of some of the surrounding real estate that may have been damaged in the attack and possibly rental income or whatever from apartments or whatever.

If you are familiar with the Gulf Coast, you know that the real estate market down there has been depressed because of the economy that we have. I have a real estate background. In the case of the real estate, with this oil coming up, the real estate values are going to be diminished.

Now, how do you compensate for something like that? That has got to be a very difficult thing to do. Because, you know, there are different values depending on—you know, real estate is location, location and location. How are you going to go about—and is that an eligible claim for someone?

Mr. FEINBERG. You are the real estate expert.

Here, I am not sure. But let me give some guiding principles.

If your real estate is devalued because of physical injury to the real estate, that the oils on your property are contiguous, that is easy. That is an easy claim. You are obviously, I think—I am getting ahead of myself, but you will tell me. But I think you are obviously eligible.

The problem is going to be, just as you imply, what about the real estate—the condo or the co-op or the house—that is 5 blocks from the beach? That is why it is of less value than a house right on the beach. It is 5 blocks, so it is a 5-minute walk to the beach.

Now, two problems. One, what if the beach does have degradation, tarballs or what have you, oil balls? That is problem number one. It is not on your property, but it is 5 blocks away, and the beach is diminished, and your home value is diminished because it is right there, 5 blocks away. That is one problem.

I am less worried about that problem than the second problem, which Congressman Buchanan raises. I am on the beach, but there is no oil at all there. It is just the public perception that drives the values down.

I mean, on the one hand, those people are suffering. They deserve some help. On the other hand, there is not enough money in the world to pay every homeowner, wherever they live in the Gulf Coast, who says my property is down because of the oil spill.

How we—maybe you have an answer—how we define eligible, ineligible, I venture to say, if there is no physical damage, probably, I venture to say, the law of Florida doesn't give any of them compensation. But I am not sure. That is not the end of the discussion.

Mr. WESTMORELAND. Yes, and I can't help but agree with you. Because if you just go down and spend time with us in Mississippi, Alabama, Orange Beach, Florida, whatever, there are a number of listings there for sale. I promise you that people are not down there looking for vacation property right now with the oil spill.

There were probably a lot of people that were buying due to a depressed market, looking for a good deal. But finding a good deal and buying a piece of property that has got tarballs and oil in the Gulf is a different story.

So I hope that you will take that under consideration when you start looking at what's eligible and—with the real estate market.

Mr. FEINBERG. I mean, one way to look at it is to say, make an assumption, there is no question—I am making an assumption now—there is no question that the property value has diminished as a result of the spill. RPTS WALKERDCMN BURRELL[11:00 a.m.]

Mr. FEINBERG. [Continuing.] Let's assume that is right. That doesn't mean that every property is entitled to compensation. So various Members have raised this issue and we are going to have to sort it out in a way that will challenge my expertise and certainly challenge yours.

Mr. WESTMORELAND. I know you will do a good job. Thank you. I yield back.

Chairwoman VELÁZQUEZ. Thank you. Mr. Shuler.

Mr. SHULER. Thank you, Madam Chair. As Mr. Westmoreland has said, you have given all of us, I think, as we sat and listened to you give your testimony, a sense of confidence. Sometimes given the difficult tasks that you are in I might ask why on earth would anyone accept this responsibility, but I am so glad it is you—for what you have given us, the confidence here that things can be done. It is a very difficult task though.

Mr. FEINBERG. Thank you.

Mr. SHULER. One concern regarding the \$20 Billion fund is whether there will be enough money in the fund to cover small business claims, since federal, state and local claims are coming out of this same pool of money. What percentage do you feel is small business money of that \$20 billion versus the Federal, State, and the local government claims.

Mr. FEINBERG. Don't know yet. Don't know yet. I can give you two answers. So far loss of income, about 45—49 percent so far of the \$130 million that has been paid out roughly has gone to other than wage loss, loss of income—now that is individual small busi-

ness—loss of income, individual property, loss of profits, miscellaneous. So I don't know for sure how much will be small business, Congressman, but I can say this, which is important, very important. Under the arrangement entered into between the administration and BP in setting up this facility, if the \$20 billion proves to be insufficient, BP has agreed as part of this arrangement to replenish the fund.

So it is not as if BP's responsibility ends with \$20 billion. I hope, I hope \$20 billion is enough. But if it isn't, my understanding is that \$20 billion, that there be additional funds as needed.

Mr. SHULER. Regarding the \$20 billion currently set aside for emergency claims funds for the hold harmless agreement and the settlement come out of this pool of money, or are separate funds set aside?

Mr. FEINBERG. It is all within the \$20 billion so far, and then if that is insufficient then there will be additional funding provided. So all part of the \$20 billion. I think the \$130 million that has been paid out so far is not part of the \$20 billion. That has been paid by BP separately, independent of the escrow account. I think that is right. I think that is right.

Mr. SHULER. Madam Chair, I have one more question. Let's look at after claims are filed. When everything is finished, 5, 10, 15 years down the road, what are the lessons learned regarding filing claims. What are you hoping to get out of it so that if this ever happens again we can expedite it even more quickly than is presently being done?

Mr. FEINBERG. The lessons you learn from each of these disasters start with the answer to the following question: How many claimants decided to enter this program, this independent facility rather than litigate. There is no better test of the success of this program or other programs like it, like 9/11. In looking at the consumers who you are trying to help, have they trusted the system, the facility, have they entered it voluntarily, have they accepted the judgment of the Administrator. In the 9/11 fund, as the chairwoman knows, 97 percent of all eligible claimants entered the fund voluntarily. If we can do something like that here to avoid the lawsuits being filed and protracted litigation in the Gulf, I suspect that is the best litmus test of the success of the program.

Mr. SHULER. Thank you so much, and I yield back my time. Best of luck to you.

Chairwoman VELÁZQUEZ. Mr. Luetkemeyer.

Mr. LUETKEMEYER. Thank you, Madam Chair.

Mr. Feinberg, thank you for your testimony. I have heard you speak before. You are a very impressive individual, and I thank you for the hard work you are doing and the job you are doing. You are doing very well.

Congressman Shuler asked a number of questions I was going to ask, so I won't follow up on those. I was just kind of curious about the problems with BP because while they have obligated \$20 billion, my understanding is the company is worth about 9. If that is the case they have committed themselves to more than the value of the company, and I am concerned that while this is a nice settlement they won't be able to pay this in time. Have you looked at that at all? Is that a concern of yours? Are my figures wrong?

Mr. FEINBERG. I don't know if your figures are right or wrong. I trust your figures. All I know is I have got a claims process to design to administer and there is going to be \$20 billion available, in whole or in part, from EDUs in administering this program. I am confident from what I have read that BP is prepared. It has told the administration that if needed it will supplement the \$20 billion. So I would like to think that BP is prepared to pay what it takes to pay valid claims.

Mr. LUETKEMEYER. Okay. That is fine I yield back the balance of my time. Thank you, Mr. Feinberg.

Chairwoman VELÁZQUEZ. The committee will stand in recess subject to the call of the chair. We have four votes, so we will be back in 15 minutes. Thank you.

[Recess.]

Chairwoman VELÁZQUEZ. The committee is called back to order. And I will recognize the gentlelady from New York, Ms. Clarke.

Ms. CLARKE. Thank you very much, Madam Chair, and thank you, Mr. Feinberg, for your testimony here today. I concur with my colleagues in saying that you have brought a real uplifting moment to what has been such a downer for so many Americans, just watching this whole event unfold, and having you at the head of this brings a lot of comfort to those of us who have been on pins and needles about the livelihoods of those in the Gulf region.

As you know, there are a growing number of health complaints related to this spill and the cleanup. My New York colleagues and I think that this evokes memories of the health concerns faced by Ground Zero workers. In the weeks after 9/11 officials underestimated the negative health impact of the cleanup effort resulting in inadequate responses to citizens' health concerns. This is pertinent because small businesses could be on the hook for costs associated with health problems of their employees who may have been involved with this.

How is the independent claims fund taking into account the likely high levels of health incidents related to those working on this spill, and is the fund taking into account the impact on the long-term health and economy of those associated with the cleanup?

Mr. FEINBERG. Physical injury claims are subject to my jurisdiction in the facility. Anybody with a physical injury claim, mostly respiratory claims, but also germinological claims from handling the oil and the detergents, et cetera, should file a claim with the fund. They will have to corroborate their claim with sufficient medical documentation. They will have to corroborate their degree of disability and those claims are eligible.

You are absolutely right. The 9/11 fund processed about 5,000 physical injury claims. We paid about 2,300 that were eligible, and I suspect that we will see in this fund a fair number of physical injury claim, medical claims, which you know, assuming they are valid, all compensable, yes.

Ms. CLARKE. Very well. You said in your testimony that you anticipate a diverse number of claims, that each will be judged on their individual merits. I am pleased that you are committed to transparency and efficiency in the claims process, but I wonder will small businesses and families be able to make claims without a lot of red tape? Will they need to lawyer up simply to provide an ac-

ceptable claim that can receive prompt attention? I am concerned that more well to do businesses, business owners will have the means to furnish a claim that results from consulting with outside professionals, such as lawyers or accountants, will mom and pop be able to file timely and sufficient claims and will your staff be able to assist individuals who are having trouble filing or preparing a claim?

Mr. FEINBERG. Yes. We will make the claims process for small businesses relatively simple and straightforward. They will not need a lawyer. They are entitled to a lawyer if they would like one or an accountant or a statistician or whoever they would like to bring with them. That is perfectly okay. My goal is to make the process so transparent and simple that it will be efficient and that mom and pop will not be adversely impacted.

Let me say one other thing on that, which you will recall from the 9/11 fund. A rising tide raises all ships. If a very sophisticated business comes in to the fund and uses a lot of accountants and highly skilled experts to develop an award that is justifiable but is based on a lot of expertise, we will take that principal, that award and make sure we pass that principal through to everybody, including small businesses, like you say mom and pop. So if a large business benefits from expertise, we will see to it that small businesses also benefit from that result flowing from that expertise.

Ms. CLARKE. Well, thank you very much, Madam Chair. I yield back the balance of my time, but I just wanted to share with Mr. Feinberg, my colleagues and I have been remarking about the unique blend of Brooklyn and Boston you have in your accent. Thank you.

Mr. FEINBERG. Neither of which is particularly helpful south of the Mason-Dixon line.

Chairwoman VELÁZQUEZ. Mrs. Halvorson.

Mrs. HALVORSON. Thank you, Madam Chairman, and Mr. Feinberg, thank you for being here. This has been a major concern, as you know, for everybody and especially those of us on Small Business. You know, with unemployment the way it is and with things that are going on, we are very concerned about the cleanup and I have got a couple of questions. First of all, there are people that are unemployed all over the country. Are there opportunities for people to show up and help, because I am telling you we could hand everybody a skimmer, a shovel, just about anything to help cleanup? What are we doing for small businesses and people to help because obviously there is work to be done?

Mr. FEINBERG. I can say this, although that is a very good question which isn't part of my mandate in processing claims. It is my understanding that BP is hiring those workers laid off as a result of the spill and putting them back to work as part of cleanup, as part of special programs.

So I think your question is better directed at BP. My understanding is an effort is being made to hire those very local Gulf workers impacted by the spill.

Mrs. HALVORSON. Right, and obviously that isn't your issue, but my constituents, just that is all I hear from and they said next time you got anybody in front of you that you can bring that up too. But my concern for you is what kind of safeguards or what are

we doing with regard to safeguards or putting something in place for fraudulent claims or something that—what can we do to make sure that people aren't applying for help or doing something that may be fraudulent?

Mr. FEINBERG. Great question. Nothing will undercut the credibility of this program more than fraud. You have to expect it. Human nature, you just have to expect it.

Now, in the 9/11 fund we had 7,300 applications, only 35 fraudulent. The Department of Justice, Civil Fraud Division, second to none, second to none, enormously helpful to us in that Federal public program involving taxpayer money. I have asked the Department of Justice, Civil Fraud Division, to once again weigh in here and help monitor this program to avoid fraud. I am also considering hiring a private vendor with expertise in fraud investigation and audit to make sure that claims that are filed are legitimate claims because fraud could really undercut the credibility of this program, and we will be ever vigilant in that regard.

Mrs. HALVORSON. Absolutely, because if one person gets away with it everybody else will be at the trough, and so I am glad to hear that you might be hiring somebody because every dollar you spend in looking at how for fraud will be a dollar seventy-five or so saved.

So thank you and thank you for being here and doing this because this is something that is very important, but we also don't want to undercut the program for what we are doing. Thank you and, Madam Chair, I yield back.

Chairwoman VELÁZQUEZ. Mr. Altmire.

Mr. ALTMIRE. Thank you, Mr. Feinberg, for being here. I was wondering about the final decisions rest with the IFC but BP has the right to appeal claims above \$500,000 and if BP appeals an award for a small business in particular, will the funds be distributed while the award is being appealed or does the business have to wait for that to be done?

Mr. FEINBERG. The business would have to wait. But let me say that that \$500,000 rule is under advisement now. It may be modified, it may be eliminated. I also think that if there is one appeal from either a claimant or BP, I am not doing something right, because the whole purpose of this program is to get money out fast, get it out final, get it out efficiently, with people satisfied that they have been treated fairly, and every appeal that is taken from my decision is I failed.

So I think it is very, very important to state that I hope that whatever the appeals process ultimately is in the protocol, I hope that appeals will be de minimis, that we would have very few, if any, and that I will work to minimize those appeals because I think a small business that is not satisfied with my treatment of that business, I have failed and I would hope that that small business would get an efficient appeal, even under the protocol as I am thinking it is currently, we are working on it, the appeal process would only take 10 days. But 10 days is 10 days too long, I understand, and we will work on that. It is a very good point.

Mr. ALTMIRE. Are there any circumstances where you pay out some of the claims?

Mr. FEINBERG. We pay out all of the claims in an emergency way.

Mr. ALTMIRE. But if it is under the appeal challenge.

Mr. FEINBERG. Oh, yes. If a small business has filed a various types of claims, here is a loss profit claim, here is a business interruption claim, here is a third claim, and they are only appealing one of the three, let's say, the other two ought to be paid immediately. Absolutely. Absolutely.

Mr. ALTMIRE. When you oversaw the 9/11 victim compensation fund you offered the option of in-person claim submission for victims. Are you going to be offering a similar option for small businesses this time?

Mr. FEINBERG. I think we should. I think we should, yes. We have already said anybody can, any small business or individual can go into one of those claims offices and meet face-to-face with one of our local people. Yes.

Mr. ALTMIRE. You had a discussion with Mr. Buchanan earlier about visiting his district, and I know you just gotten back from the Gulf. I was wondering about the ongoing forums that you might have, what your plan is to get the word out with updates on the funds being available.

Mr. FEINBERG. My current plan is every week to go to the Gulf at least once or twice. You have to, you got to be there to get the word out, town hall meetings. We have got to—I think we have already got up the Internet. Do we have our Web site up yet? It will be up fairly soon. Within a couple of weeks we will have our own Web site up. We are maximizing every way we can to get the word out. There is no better way than to go down and meet with people word of mouth.

Mr. ALTMIRE. You mentioned earlier that the location of the claimant will be one of the bases for determining the rights and the damages. According to press reports, the tort laws of their State will be used in weighing the rights of action but what about when some small businesses operate in more than one State? How does that factor in?

Mr. FEINBERG. A couple of answers. First, the press is accurate that the tort laws of a State are a factor. I want to emphasize that I have made no decision yet on whether or not local law should govern in every case. There are examples of inequity and injustice where the local law may not be the best barometer of what to do. But I suppose if a company or a small business has residents or operates in several States, we ought to be looking at the State that is most convenient and helpful for that company.

Frankly, I am not sure there is going to be wide variations in local law when it comes to proximate cause. There are variations in local law, but I think when it comes to the question of the scope of recovery, based on an attenuated claim where there is no oil, I think the law is fairly consistent and the question is how do we improve on that. That is going to be the issue more than differences in local law.

Mr. ALTMIRE. Thank you, Mr. Feinberg.
Chairwoman VELÁZQUEZ. Mr. Thompson.

Mr. THOMPSON. Thank you, Madam Chairwoman, and thank you, Mr. Feinberg, for being here in front of the committee. I appreciate your testimony and your responses to our questions.

My first question is, can you explain, in a little more detail, how the oil spill liability trust fund fits into the independent claims facility?

Mr. FEINBERG. You mean the \$20 billion? The \$20 billion that has been set aside.

Mr. THOMPSON. Yes.

Mr. FEINBERG. There, as I understand it, because I am not—I was not one of the negotiators of that \$20 billion, but my understanding is that \$20 billion has been agreed upon between the administration and BP, that BP will put in an escrow account, requiring signatures from both BP and the administration, \$20 billion. That \$20 billion will encompass any and all claims arising out of the spill, not just my claims, not just my claims. Government claims, State claims, claims that are not part of my facility jurisdiction. In addition, BP has set aside, by agreement with the administration, \$100 million to recover rig worker moratorium claims, claims of rig workers put out of work as a result of the Gulf moratorium. That is separate from the \$20 billion and that is \$100 million reserved for rig workers. Whether I will process those claims or some charity or foundation will process those claims I don't think that has been finalized but hopefully that be finalized in the next day or two.

Mr. THOMPSON. All right. How about the role of private insurers in the process? Can you explain a little bit about how that dovetails and how this actually work?

Mr. FEINBERG. It dovetails two ways. Again, I don't know about any private insurers in this spill. My understanding is BP is self-insured. My understanding is there may be of course insurance among some of the claimants, small businesses have insurance. The way that insurance will most likely dovetail is that if a claimant files a claim with me for business interruption, lost profits, physical damage, and that claimant has some insurance, that insurance will be offset against any award that I would issue.

Now we haven't finalized this. That was the 9/11 fund of course. All 9/11 claims were paid, but we deducted before making those claims other sources of collateral sources of income. We would likely do that here as well.

Mr. THOMPSON. How many folks do you have working with you to process this massive amount of claims?

Mr. FEINBERG. Right now as we get ready to transition from what BP is doing to this Gulf Coast claims facility there are about a thousand people, roughly a thousand people already in the Gulf at roughly 35 different claims offices working to process claims. We will undoubtedly increase that number. We will streamline the process. We will go online and allow electronic processing of claims. We will increase our capacity with a 1-800 number. We will make sure that we have enough people to make sure that nobody is disadvantaged by delay or inefficiency.

Mr. THOMPSON. The judges who hear these appeals are obviously an important part of the workforce. Is there a specific set of quali-

fications that are sought in the individuals who have been designated to hear those appeals?

Mr. FEINBERG. No judges have yet been designated by me. I have authority to designate those judges. We have not yet begun the process of examining qualifications. I do think that one critical qualification is that those judges, whoever they may be, be local, that they be from the Gulf, that they have credibility with Gulf residents, that it be a diverse number. I think we will probably want five or six, that it be diverse in terms of gender and race, et cetera, and that they be recommended as of outstanding capability and integrity. I don't think they have to be judges frankly. Ex-judges are welcome, but there may be some very wise people living in the Gulf who everybody would agree that person should be one of those appellate judges.

Mr. THOMPSON. Thank you. Thank you, Madam Chairwoman.

Chairwoman VELÁZQUEZ. The gentleman's time has expired Ms. Bean.

Ms. BEAN. Thank you, Madam Chairwoman, and thank you, Mr. Feinberg, for being here today. It is very important to hear from you because this affects so many of our business communities around the country. My question has to do with how you are going to make sure that you can maintain independence? Given that you may be using BP claims personnel or field office, how do you then make sure that it is independent from the fund and will BP have an incentive to continue administering the claims process outside of the independent claims fund in an effort to minimize how much they ultimately pay out?

Mr. FEINBERG. No. BP is transitioning as we speak to get out of the claims business and turn all of that over to the Gulf Coast claims facility which I have been assured by both the administration and BP will be absolutely 100 percent independent from BP, or the administration for that point. The administration has made it very clear they want it independent. They do not want to be micromanaging this.

So I am not concerned about that. To the extent that the existing subcontractors who have been working in the claims offices are qualified and know the issues and can help process claims expeditiously, great. To the extent that we make an independent judgment that changes should be made or supplementing the existing workforce, we will do that. But clearly, this program will be independent and will not be beholden to either the administration or BP.

Ms. BEAN. Let me also ask since property values are the easiest to measure relative to, say, business claims, how are you going to balance the distribution of limited resources across different types of claims?

Mr. FEINBERG. I don't think there are limited resources, first of all. BP has made it clear in its agreement with the administration that if \$20 billion is insufficient it will replenish what is needed to pay all eligible claims.

The problem with the property claims is going to be eligibility, not compensation. How will we go about deciding when diminished property values are compensable and when they are not. That to me is more of a challenge than assuring adequate compensation.

Ms. BEAN. Okay. My final question has to do with sort of the recent reports that have indicated that the SBA has denied roughly 70 percent of claims, insurers have already paid out some \$400 million in claims.

How do you envision that this independent claims fund will interact with those both the insurance industry and the SBA and if an entity receives or is denied funding from either the insurance company or the SBA, how will that factor into your assessment of a claim?

Mr. FEINBERG. That is a very good question. I don't know the answer other than to say that we will make an independent judgment as to the legitimacy and eligibility of any claim quite apart from what SBA or an insurance company certainly has done. An insurance company's denial of a claim will be contractual. I mean it may not be that—it may be that the insured is very eligible. The reason that the insured was denied insurance is probably related to what the contract says between the insured and the insurer rather than any particular reason that I would deny the claim.

Ms. BEAN. I said it was my last question. I have one more since I have a little bit of time left. Given that you have already been paying 100 percent of claims up to now and that it is unlikely that all claims are legitimate, what will you do to weed out fraud?

Mr. FEINBERG. As I said earlier, we plan to get the—we hope—of the best fraud weeder out there is, the Department of Justice, Civil Fraud Division, and to the extent that they will help us wonderful, to the extent that we also have to retain some private investigative company to assist us in that task, we will do that as well.

Ms. BEAN. Thank you so much. I yield back.

Chairwoman VELÁZQUEZ. Mr. Feinberg, I still have some questions that I would like to ask. I know that I posed a number of questions on the relationship between the Small Business Administration—between claims and Small Business Administration assistance, many of which may be new to you. However, because of the problems that we saw with Katrina, I want to ensure that SBA is taking steps to coordinate their relief efforts and to this point have you been contacted by the Small Business Administration?

Mr. FEINBERG. I have not. I don't think my people have. I think to the extent that, Madam Chairwoman, that you can help facilitate that open line of communication with a letter to the SBA or to us or whatever and follow up, we will do that.

Chairwoman VELÁZQUEZ. Definitely. Mr. Feinberg, we are all watching the path of Hurricane Alex, wondering what its impact will be on the spill and containment efforts. I understand that the claims fund is not responsible for damages caused by natural disaster but the hurricane may affect certain claims against BP. Are you currently looking at ways to address the potential impact of a hurricane on claims?

Mr. FEINBERG. Yes. We are looking at what the law would say if as a result of a hurricane the oil is more pervasive and spreads to beaches or other areas where it might not otherwise have landed or come ashore but for the hurricane, and we will be able to handle those claims as well.

Chairwoman VELÁZQUEZ. My final question to you, Mr. Feinberg, is many Americans in the Gulf who fulfilled their dream of owning

a business are watching oil coming out of that area and simply do not know what the future holds. What would be your message to them?

Mr. FEINBERG. I would give the same message I think that I have given when I was asked to do a similar task in Agent Orange in Brooklyn and the 9/11 fund and the horrible massacre at Virginia Tech, the program I administered after Katrina in the Gulf in New Orleans. I would urge all of those people, take heart, take heart. I can't help in other areas, personal areas, other problems that you may have, but when it comes to financial uncertainty, take heart, there is a program in place. We are gearing up, and I would urge anybody in that region who is worried about the future, financial uncertainty, file a claim, at least get the ball rolling, so that we can evaluate your claim, provide what emergency assistance we can give, and try and help you through this difficult time. I wish I had the power to help you with nonfinancial issues. That I can't do. But on the financial side, if we can at least get your claim in and evaluate it, hopefully, at least as to that problem, we can come to your aid and provide you some certainty and relief.

Chairwoman VELÁZQUEZ. Mr. Graves, Mr. Thompson, do you have any other questions?

Well, I just want to take this opportunity on behalf of the members of the committee to really thank you for providing so much insight into this equation of the Gulf Coast. One of the biggest challenges that we face is how to restore the public trust, and I believe, truly believe based on past experiences with you that you are going to play a major role in that effort.

Mr. FEINBERG. Thank you, Madam Chairwoman. I will always be in your debt for what you did 7 or 8 years ago and I am at your beck and call at any time with this committee. If you would like me to come back, I will be back as often as you think it is necessary.

Chairwoman VELÁZQUEZ. Thank you.

Mr. FEINBERG. Thank you.

Chairwoman VELÁZQUEZ. I ask unanimous consent that members will have 5 days to submit a statement and supporting materials for the record. Without objection, so ordered.

This hearing is now adjourned.

[Whereupon, at 12:05 p.m., the committee was adjourned.]

NYDIA M. VELAZQUEZ, NEW YORK
CHAIRWOMAN

SAM GRAVES, MISSOURI
RANKING MEMBER

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2501 Rayburn House Office Building
Washington, DC 20515-6315

STATEMENT

Of the Honorable Nydia M. Velázquez, Chairwoman
United States House of Representatives, Committee on Small Business
Full Committee Hearing: *"Recovery in the Gulf: What the \$20 Billion BP Claims Fund Means for Small Businesses"*
Wednesday, June 30, 2010

For the last 72 days, the nation has watched anxiously as oil has spilled into the Gulf of Mexico. With estimates of up to 60,000 barrels per day, the spill has paralyzed the economy of this region during its normally most prosperous time of year. In fact, economists estimate that over 7 million businesses will be impacted by the oil spill. Almost 6 million of them will be small businesses with less than 10 employees. For entrepreneurs, this is a catastrophe of an unthinkable size and scale.

To compensate these small business owners and provide the local economies with the support they need, BP established the \$20 billion Gulf Spill Independent Claims fund. There is hope that the creation of this escrow account will avoid the situation created by the 1989 Exxon Valdez oil spill in Alaska.

That catastrophe took decades of litigation to assess damages. The roughly 32,000 claimants, primarily fishermen, received only about a quarter of the losses filed by each claimant after the Exxon Valdez spill. The hope is that this time, small businesses will be more fairly compensated for their losses.

During today's hearing we will examine how the claims fund will meet the needs on small firms. To date, 81,701 claims have been opened, from which more than \$128.4 million have been disbursed since the fund began operating on June 16th. We need to make sure that small businesses know how quickly they will receive payments and how these payment amounts are being calculated. The Committee looks forward to hearing Mr. Feinberg's thoughts on these matters today.

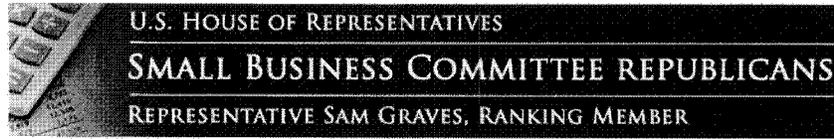
This is important to all businesses, but particularly those industries that have been directly affected by the spill and the resulting closure of nearly 40 percent of the Gulf. The commercial fishing industry – made up of independent shrimpers, crabbers, oyster farmers, and fisherman – accounts for over 200,000 jobs and \$5.5 billion in revenue. Not only has the closure of fishing areas limited their ability to operate, but many are finding that the public's confidence in Gulf products has been eroded, creating another obstacle for the local economy.

The problems faced by businesses in the fishing industry are matched by those in the tourism sector. Hotels and restaurants rely heavily on tourism, with some New Orleans restaurants reporting that they rely on non-locals for up to 70 percent of their business. Alabama – in the midst of what is normally its high season – has already experienced a 50 percent decline in tourism due to public fear of tar balls on local beaches. In Florida, economists predict a loss of 195,000 jobs and a cost of almost \$11 billion if just half of their tourism and leisure income goes away. Unfortunately, it is clear that small firms across the Gulf are in for a tough summer.

The claims fund that Mr. Feinberg administers is essential to the on-going recovery and eventual restoration of the Gulf Coast economy. As we have seen in the past, a little assistance to these businesses will enable them to innovate and begin anew. With oil continuing to flow, however, no one can foresee what the future holds. But, what we do know is that these Gulf Coast businesses have overcome similar challenges – like they did after Hurricane Katrina. These entrepreneurs are resilient and they should not be underestimated.

It has been projected that over 40 percent of business fail to recover following a disaster. In many cases, these businesses go under simply because they lack the financial resources necessary to restart their enterprises. In the case of the oil spill, however, it is different – and much more complicated. It is not just about the money, but making sure that the leak is stopped and the physical damage is mitigated. Then, we will need to restore the public's trust in the Gulf as a center for commerce and tourism.

I think I can speak for all of the Committee members here today in saying that we will do whatever it takes to help these small businesses overcome these challenges. Given this, I think it is appropriate that Mr. Feinberg's first appearance before Congress is before this Committee and I want to thank him for taking time out of your busy schedule to appear before our Committee this morning.



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**Opening Statement for Hearing:
"Recovery in the Gulf: What the \$20 Billion BP Claims Fund Means for Small Businesses"
Ranking Member Sam Graves (R-MO)
House Committee on Small Business
United States House of Representatives
Washington, D.C.
June 30, 2010**

Good morning. Thank you, Madam Chairwoman, for holding this timely hearing, and my thanks to Mr. Feinberg for joining us today. I'm looking forward to hearing your plans for managing BP's \$20 billion compensation fund.

The Deepwater Horizon oil rig explosion that cost eleven workers their lives on April 20th was a tragedy of enormous proportions. The seemingly unstoppable leak of millions of gallons of oil has created an environmental and economic disaster of unimaginable proportions, and I fear that the damage that is being reaped in the Gulf will take decades to repair.

Let us all remember that this catastrophe is not the first to befall this region in recent years - Hurricanes Katrina and Ike, the 2008 energy crisis, and the recession each brought new layers of devastation to the Gulf, devastation that families and businesses are still working to overcome. Just as the people in the Gulf began to recover, they've now been hit by a new disaster, one that has leveraged even more trauma on an already delicate economy.

The oil spill has put a halt on nearly every component of the economy in the Gulf region. Right now, Louisiana has been hardest hit by the oil spill. The state's economy relies heavily on oil and natural gas production, chemical and petrochemical production, commercial fishing, and tourism.

Louisiana contains about 10 percent of all known U.S. oil reserves. It is the country's third largest producer of petroleum and has impressive reserves of natural gas, producing approximately one-quarter of all U.S. supplies.

The state's commercial fishing industry is responsible for about 25 percent of all the seafood landed in America, and its tourism industry employs over 87,000 workers. Travelers spend an estimated \$5.2 billion in the state each year. Sadly, the oil spill has effectively shut down each of these segments of the state's economy.

As the spill spreads east, the economies in Alabama, Mississippi, and Florida will soon be under siege. Florida's tourism industry, which is responsible for 80 million visitors each year, could be particularly devastated by the oil spill. This industry brings more than \$60 billion in taxable sales revenue and employs in excess of 1 million Floridians.

The widespread implications of this spill become clearer every day. We must work together now to minimize the environmental and economic impact of the spill and determine how we can help rebuild the Gulf region.

On June 16th, BP agreed to create a \$20 billion escrow account to compensate affected business owners and other victims of the spill. As the independent authority on processing and administering payment of the hundreds, if not thousands, of claims that will soon come from Gulf businesses, Mr. Feinberg will be responsible for keeping the economy and small businesses in the Gulf region intact as we all work to recover from the spill's destruction.

Mr. Feinberg, I look forward to your testimony today, with a special interest in how you will ensure the claims process is orchestrated efficiently and fairly for small businesses. I'm sure you are already well-aware of the critical role such entrepreneurs play in America's economy, and I expect they will receive adequate compensation so they can survive yet another disaster in the Gulf and come out stronger on the other side.

Again, Madam Chairwoman, thank you for calling this important hearing. I yield back.

Testimony of Kenneth R. Feinberg
Administrator, Gulf Coast Claims Facility

United States House of Representatives
Committee on Small Business

June 30, 2010

Madam Chairwoman:

I thank this Committee for the opportunity to testify concerning the design, implementation and administration of the new Gulf Coast Claims Facility, 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 a totally independent Claims Facility, which will evaluate, process and decide any and all claims from individuals and businesses impacted by the spill. I have been assured by both the Department of Justice and BP that the Facility will be, in fact, totally independent.

As you know, \$20 billion has been set aside by BP in an escrow fund to pay all eligible claims that are submitted to the Claims Facility. Hopefully, this \$20 billion will be sufficient to pay such claims. If it is not, it is my understanding that 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 Gulf Coast Claims Facility will be borne by BP, without any cost to the taxpayers or the citizens of the Gulf region.

I am now in the process of establishing the Claims Facility and hope to complete this initial phase of my work within the next 30 days. In the meantime, credit is due BP for its initial efforts in establishing an emergency claims process that has already paid over \$130 million in

emergency payments to the victims of the spill living in Alabama, Florida, Louisiana, Mississippi and Texas. My job will be made much easier because of these preliminary efforts by BP. There are already in place over 30 regional claims offices to handle claims, and over 1,000 individuals currently working to process such claims. I believe the claims process can be accelerated and made more efficient and transparent; but BP has provided an important beginning on which to build a more effective Claims Facility.

I anticipate a diverse number of claims: removal and clean up costs by individuals or businesses; claims for damages due to physical injury to real or personal property; lost profits and lost earning capacity; loss of subsistence use of natural resources; and claims for physical injury/death. All of these claims will be considered on their individual merits and decisions concerning both eligibility and the calculation of awards will be made promptly, with maximum efficiency.

This written testimony is merely a summary of the work in which I am currently engaged. I will be pleased and honored to answer any questions from the members of this distinguished Committee.

