

ENSURING JUSTICE FOR VICTIMS OF THE GULF COAST OIL DISASTER

HEARING BEFORE THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES ONE HUNDRED ELEVENTH CONGRESS SECOND SESSION

—————
JULY 21, 2010
—————

Serial No. 111-142
—————

Printed for the use of the Committee on the Judiciary



Available via the World Wide Web: <http://judiciary.house.gov>

—————
U.S. GOVERNMENT PRINTING OFFICE

57-558 PDF

WASHINGTON : 2010

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON THE JUDICIARY

JOHN CONYERS, JR., Michigan, *Chairman*

HOWARD L. BERMAN, California	LAMAR SMITH, Texas
RICK BOUCHER, Virginia	F. JAMES SENSENBRENNER, JR., Wisconsin
JERROLD NADLER, New York	HOWARD COBLE, North Carolina
ROBERT C. "BOBBY" SCOTT, Virginia	ELTON GALLEGLY, California
MELVIN L. WATT, North Carolina	BOB GOODLATTE, Virginia
ZOE LOFGREN, California	DANIEL E. LUNGREN, California
SHEILA JACKSON LEE, Texas	DARRELL E. ISSA, California
MAXINE WATERS, California	J. RANDY FORBES, Virginia
WILLIAM D. DELAHUNT, Massachusetts	STEVE KING, Iowa
STEVE COHEN, Tennessee	TRENT FRANKS, Arizona
HENRY C. "HANK" JOHNSON, JR., Georgia	LOUIE GOHMERT, Texas
PEDRO PIERLUISI, Puerto Rico	JIM JORDAN, Ohio
MIKE QUIGLEY, Illinois	TED POE, Texas
JUDY CHU, California	JASON CHAFFETZ, Utah
TED DEUTCH, Florida	TOM ROONEY, Florida
LUIS V. GUTIERREZ, Illinois	GREGG HARPER, Mississippi
TAMMY BALDWIN, Wisconsin	
CHARLES A. GONZALEZ, Texas	
ANTHONY D. WEINER, New York	
ADAM B. SCHIFF, California	
LINDA T. SANCHEZ, California	
DANIEL MAFFEI, New York	
JARED POLIS, Colorado	

PERRY APELBAUM, *Majority Staff Director and Chief Counsel*
SEAN MCLAUGHLIN, *Minority Chief of Staff and General Counsel*

CONTENTS

JULY 21, 2010

	Page
OPENING STATEMENTS	
The Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Chairman, Committee on the Judiciary	1
The Honorable Lamar Smith, a Representative in Congress from the State of Texas, and Ranking Member, Committee on the Judiciary	2
The Honorable Jerrold Nadler, a Representative in Congress from the State of New York, and Member, Committee on the Judiciary	3
The Honorable Bob Goodlatte, a Representative in Congress from the State of Virginia, and Member, Committee on the Judiciary	5
The Honorable William D. Delahunt, a Representative in Congress from the State of Massachusetts, and Member, Committee on the Judiciary	5
The Honorable Howard C. Coble, a Representative in Congress from the State of North Carolina, and Member, Committee on the Judiciary	6
The Honorable Robert C. "Bobby" Scott, a Representative in Congress from the State of Virginia, and Member, Committee on the Judiciary	6
The Honorable Steve Cohen, a Representative in Congress from the State of Tennessee, and Member, Committee on the Judiciary	6
The Honorable Tom Rooney, a Representative in Congress from the State of Florida, and Member, Committee on the Judiciary	7
WITNESS	
Mr. Kenneth R. Feinberg, Administrator, Gulf Coast Claims Facility	
Oral Testimony	8
Prepared Statement	13

ENSURING JUSTICE FOR VICTIMS OF THE GULF COAST OIL DISASTER

WEDNESDAY, JULY 21, 2010

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:10 a.m., in room 2141, Rayburn House Office Building, the Honorable John Conyers, Jr. (Chairman of the Committee) presiding.

Present: Representatives Conyers, Nadler, Scott, Lofgren, Jackson Lee, Waters, Delahunt, Quigley, Chu, Deutch, Gonzalez, Schiff, Sánchez, Maffei, Polis, Smith, Sensenbrenner, Coble, Gallegly, Goodlatte, Issa, Franks, Gohmert, Poe, and Rooney.

Staff Present: (Majority) Stephanie Moore, Counsel; Eric Tamarkin, Counsel; Demeka Baer, Counsel; Susan Jensen, Counsel; Reuben Goetzl, Clerk; and Zachary Somers, Minority Counsel.

Mr. CONYERS. Good morning. The Committee will come to order. Today's hearing is on "Ensuring Justice for Victims of the Gulf Coast Oil Disaster." We are very pleased to have with us Ken Feinberg, who is no stranger to the Hill or to the government. We are very delighted that he has eagerly agreed to join us today and this discussion in terms of some of the many challenges that are before us.

The British Petroleum claims process has been plagued by problems up until now, mostly concerning the inadequate compensation and the lack of the remedies being brought forth in a timely fashion. There are troubling issues about the details of the escrow account and the independent claims facility. British Petroleum has repeatedly stated the promise to pay all legitimate claims and to ignore statutory caps of \$75 million, which this Committee has already taken steps to remove. The process has not only been not transparent, but it does not seem to be fair, accessible or fast.

For example, British Petroleum was slow to accommodate the large population of Vietnamese American fishermen in the Gulf Coast States who have lost their livelihoods because of the spill. In addition, they faced language barriers, as the forms were posted only in English, and translators were scarce. Minority Gulf Coast workers who have testified before this Committee have been virtually ignored in the process of making them whole.

So Attorney Ken Feinberg, with his long and distinguished record in government and in the private sector, has been mutually agreed by the parties to help adjudicate this process. We welcome you. We are glad that you are here.

And I would like now to yield to the distinguished Ranking Member of this Committee, Mr. Smith of Texas, for his opening comments.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. Chairman, Americans have watched helplessly as more than 100 million gallons of oil spewed into the Gulf of Mexico over 90 protracted days. A sizable portion of that black pollution will make its way onto the beaches and into the Atlantic Ocean.

Why did it take so long to stanch the open wound? Why didn't the Administration show more initiative and become more engaged early on?

The oil that has spilled has created an environmental and economic disaster that has paralyzed local economies throughout the Gulf Coast region. The human, environmental, and economic cost of the spill will continue to increase until the cleanup is complete. BP and the other responsible parties must pay all costs associated with the spill. They must be held fully accountable for this catastrophe and for the 11 lives tragically lost in the explosion on the Deepwater Horizon.

The creation of the independent Gulf Coast Claims Facility and the appointment of Mr. Feinberg to administer that facility are important steps toward ensuring that the victims of this tragedy are compensated for their losses. Hopefully, with Mr. Feinberg's leadership, those affected can get their claims paid without having to resort to litigation.

As we learned with the Exxon Valdez spill, lawsuits involving oil spills take years to reach final resolution, and awards to the victims are significantly reduced by attorneys' fees.

Also, steps must be taken to prevent waste, fraud and abuse from seeping into the claims process. Paying the fraudulent claims will not only destroy the credibility of the program, but also will take money away from legitimate claims. I am interested to hear the steps that the claims facility plans to take to prevent fraud.

I would also like to know what can be done to maximize compensation to the victims rather than to the attorneys they may hire. For the 9/11 Fund, attorneys stepped up to offer their services pro bono. And Mr. Feinberg, I hope there would be an effective pro bono program for this claims process as well.

However, I am concerned that the relief and compensation provided by the claims facility may be offset by the economic costs of the Administration's moratorium on offshore drilling.

According to experts such as Louisiana State University economist Joseph Mason, the economic impact of the drilling moratorium could be much bigger than that of the oil spill itself. The energy industry contributes about \$65 billion to Louisiana's \$210 billion economy compared to about \$10 billion from fishing and tourism. Dr. Mason projects that a 6-month moratorium will trigger a loss of thousands of jobs, \$500 million in wages, and over \$2 billion in economic activity in the Gulf region alone.

These numbers would be significantly higher if the moratorium becomes a permanent ban. The moratorium has already caused oil drillers to cancel contracts and move their rigs overseas, taking American jobs with them. While we need to ensure drilling safety, the moratorium appears to be another example of Obama adminis-

tration policy costing American jobs rather than creating them. From cap-and-trade to the costly stimulus bill to the health care law that imposes higher taxes to this drilling moratorium, the Obama administration continues to push policies that harm American workers and the economy.

Mr. Feinberg, I have mentioned a couple of questions in my opening statement and look forward to hearing your answers to those questions, and thank you for being here. Mr. Chairman, I yield back.

Mr. CONYERS. Thank you very much. I turn now to Jerry Nadler of New York, Chairman of the Constitution Subcommittee.

Mr. NADLER. Thank you, Mr. Chairman. The leak resulting from the disaster on the Deepwater Horizon created the most massive environmental disaster in our Nation's history, killing wildlife, destroying critical wetlands and fisheries, and wreaking economic havoc in the Gulf of Mexico. Eleven people died, and the cost to human health will probably not be known for years. Even more disturbing, the response to the spill, including the use of toxic dispersants, and the secrecy and dissembling by BP may have compounded the damage of the spill itself.

On May 27, the Judiciary Committee held a hearing on the legal liabilities issues surrounding the Gulf Coast oil disaster. At that hearing, the Committee received testimony from victims, from the responsible companies, and from experts about the outdated and unfair maritime liability regime that is denying justice to the victims of the disaster.

After the hearing, the distinguished Chairman of the full Committee and I introduced H.R. 5503, the SPILL Act, to fix those laws so that the victims could be fairly compensated. The Committee favorably reported the bill on June 23, and the bill passed the House on July 1 by voice vote. I hope the SPILL Act will soon become law so that BP and the other corporations responsible for the Deepwater Horizon explosion and the resulting oil spill will be held accountable under the law for all of the harm their reckless behavior has caused.

Today, however, we turn our attention to ensuring justice for those trying to navigate the claims process set up by BP. The BP claims process so far has been plagued by problems, and many of those who have been harmed have not received adequate compensation in a timely fashion. Given the many problems with the BP claims process, it was very encouraging to hear on June 16 that the Administration and BP had agreed to create the Gulf Coast Claims Facility, an independent claims process that will be administered by Ken Feinberg, our witness today. BP has promised that the new independent claims facility will be "fairer, faster and more transparent in paying damage claims by individuals and businesses."

Mr. Feinberg has distinguished himself as the administrator of the victims compensation fund set up by Congress to aid the victims of the 9/11 attacks. Thanks to his good work, many of my constituents were able to avail themselves of an administrative process that was fair and expeditious. Mr. Feinberg is an excellent choice.

Furthermore, the Administration and BP announced that BP will establish a \$20 billion escrow account which will be funded over a 4-year period at the rate of \$5 billion a year. They also announced that BP will contribute \$100 million to a foundation to support unemployed oil rig workers. While these announcements sound promising, there remain troubling issues about the details of the escrow account, the Gulf Coast Claims Facility, and the claims process.

Despite the fact that it has been over a month since the announcement of the \$20 billion escrow account and the new claims facility, we have yet to see either the agreement setting up the escrow account or the final protocols that will be used to process claims.

Among the concerns I have that I hope will be addressed in today's hearing are: To what extent will the escrow fund be bankruptcy remote, and what guarantee can we have that the fund will also be protected from becoming a part of the bankruptcy estate should BP seek bankruptcy protection?

Second, will the Gulf Coast Claims Facility recognize claims relating to use of dispersants, not of the original oil?

Third, given that the long-term effect of the oil spill and use of dispersants could be at least a 10- or 20-year event, what provisions will be made for claimants who may, for example, seek compensation for economic loss but whose medical conditions resulting from exposure may not become manifest for 5 or 10 or 20 years? Will claimants have to waive the opportunity to seek compensation for latent injuries from BP or from other parties in order to get initial damages for economic damages? Will injuries caused by dispersants be covered by the compensation fund? Will the Gulf Coast Claims Facility be willing to reopen the resolved claims in the event that, for example, nonpecuniary damages under the SPILL Act become available for the victims of the explosion and their families?

As we pass the 3-month mark since this disaster began, the continuing efforts to stop the leak and clean the spill are paramount. But as the damage to natural resources, local economies and daily lives continues to grow, we must be sure that the victims of this disaster can be made whole. As Mr. Feinberg certainly knows, perhaps better than anyone else, the full impact of a catastrophe of this magnitude may not become evident for many years, and it is likely that these cases will have to be revisited at some point in the future.

I do not want to see the taxpayers on the hook for this damage, and I do not want to see people with serious but not yet evident injuries have their rights and legitimate claims nullified in the future. How will this process account for latent claims so that the injured will not be left high and dry or have to resort to the Federal Government to pay costs that rightly should be paid by BP?

I am especially concerned because the information we have received from BP and, quite frankly, from some of the Federal and State agencies charged with protecting the environment and public health has not flowed as freely as the oil has flowed from this rupture. We now know that some of the information, such as the purported safety of the dispersants being used, was demonstrably false. It is *deja vu* all over again.

Less than a decade ago, EPA Administrator Christine Todd Whitman falsely assured the public that the air near Ground Zero was safe. We are still paying the price for that deception. Some people are paying with their lives.

I hope today's hearing will guide the creation of an independent, fair and transparent victims' compensation program. I look forward to hearing from our witness today as he helps us understand these important issues.

I thank you, Mr. Chairman. I yield back.

Mr. CONYERS. Thank you, sir. I now turn to a senior Member of the Committee and the former Chair of the Agriculture Committee, Bob Goodlatte of Virginia.

Mr. GOODLATTE. Well, thank you, Mr. Chairman. Mr. Feinberg, we welcome you. You come with a track record and a reputation for addressing difficult issues like this, and we know this is going to be a significant challenge for you.

I share the concerns raised by my colleagues in making sure that justice is done expeditiously. I am also concerned, as the Ranking Member is, that it be done efficiently and that it be done in a way that we don't feel that people are defrauding this process, because while we hope that the private entity, British Petroleum, will be able to carry all this burden, it is still nonetheless important that we do it in a fair and efficient manner. I also want to make sure that British Petroleum is held fully accountable, and you are going to be in a key position to make sure that anybody who has a valid claim against them does receive the compensation that they deserve, and hopefully the American taxpayers won't be liable for any of this cost.

So I look very much forward to your testimony and you telling us how you envision this will work. Thank you, Mr. Chairman.

Mr. CONYERS. Thank you. Bill Delahunt, a former State prosecutor, a Member of the Foreign Affairs Committee, and a distinguished Member of this Committee, is recognized now.

Mr. DELAHUNT. Well, thank you, Mr. Chairman. First, let me congratulate the President for such an outstanding appointment and welcome Mr. Feinberg. Not only does he have a spectacular record in terms of addressing issues such as this, but he also comes from a community that I once represented. That is the City of Brockton in Massachusetts. And for those of you that are unaware, Brockton is the city of champions. Brockton was the home of the Rock; that is, Rocky Marciano, undefeated heavyweight champion of the world. And then of course there was Marvelous Marvin Hagler, and now we have another champion in Ken Feinberg whose success is extraordinary. It is a great community.

As I said, this is an outstanding appointment. The President should be congratulated. He has a litany of accomplishments in addressing issues ranging from 9/11 compensation to overseeing executive compensation pursuant to the TARP legislation. And I am confident that, given his leadership and his talent, that the concerns that have been expressed by members of the panel will be addressed by this young man from that hardscrabble community in Massachusetts, the City of Brockton.

And with that, I yield back.

Mr. CONYERS. I thank you. Mr. Coble is recognized.

Mr. COBLE. Thank you, Mr. Chairman. Mr. Delahunt, I am advanced in age far enough that I remember the heavyweight champion from Massachusetts.

Mr. Feinberg, it is good to have you with us. Mr. Feinberg, as you know, BP's oil spill has affected all aspects of the Gulf economy, and this morning I was contacted by my colleague, Mr. Spencer Bachus, who is the Ranking Member of the Financial Services Committee, and he is concerned about an issue that you may want to address in your comments. If not, we will get to it later.

But according to Mr. Bachus, when the oil reached the beaches in Alabama, it resulted in lost sales for many realtors in Alabama. And he asked me if I would ask you what the status of these Alabama real estate claims are and for those in greatest financial need regarding emergency payments that may be forthcoming.

He furthermore indicated that there may be a hold on the real estate claims resulting from the spill; and if so, what will the decision involved in implementing that hold and when do you anticipate that those claims will be paid? If you could address that in your statement.

I thank you for being here with us, and I yield back, Mr. Chairman.

Mr. NADLER. [Presiding.] I thank you. I will now recognize the distinguished gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman. And thank you, Mr. Feinberg, for being with us again. You have stepped up to the plate again, and we appreciate your hard work.

I just had a couple of questions that I had hoped you would address. And that is whether you think you have enough money to respond to the claims and whether you have enough staff to respond in a timely fashion.

Second, as the gentleman from North Carolina mentioned, part of the damage done by the oil spill is a general collapse in the economy. He mentioned real estate. But you have also got other department stores, tourism and everything else where people are losing money as a result—not a direct result but an indirect result of the spill.

And third, how do you deal with people who, as we say, work off the books and may not have the appropriate records? They are suffering significant losses, and how do you deal with that?

With that, Mr. Chairman, I thank Mr. Feinberg for being with us again, and I yield back.

Mr. NADLER. I thank you. And the final opening statement, I gather, is Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chair. I am still trying to figure out—Marvelous Marvin, I always thought it was Hagler. I think it was. But Delahunt doesn't know much about sports, among other things.

It is good to have you in this position. I think it gives the entire American public confidence that it will be done in an appropriate manner. You have a very difficult job. And I don't know the parameters in which you are operating. But the damages go to several different levels. And how do you determine, you know, the effect on a restaurant in some city or a restaurant worker or tourist businesses? But I would like to hear how you are going to determine

that and how far you think you can go. I presume—and I think that your responsibility is only to individuals or businesses filing claims, not to State governments. Because State governments obviously suffer greatly from losses to revenues. And if that is at all within your purview.

Well, I don't know how \$20 billion, as large a sum as it is, could cover the entire damages caused by BP. I had recommended that we put them into receivership to make sure that their assets were sufficient to cover all the damages. I would like your thoughts from this perspective, if you could make such. While \$20 billion is commendable, and the President did a good job getting the commitment, assuming it comes in these \$5 billion increments, if that is going to be adequate to compensate all the different losses. They are somewhat remote sometimes. You have to cut them off somewhere, but there are losses that go a long way and all through the Gulf.

So I thank you for being here and being the third great champion that Mr. Delahunt recognizes. And it is nice to know that you have got Marvelous Marvin's hairstyle, and I get closer to it as I get older, and hopefully you have got Rocky Marciano's endurance and ability to take a punch. Thank you.

Mr. NADLER. Thank you. I was incorrect. I will now recognize Mr. Rooney.

Mr. ROONEY. Thank you, Mr. Chairman. I would just like to remind Mr. Delahunt that Sports Illustrated named the City of Pittsburgh the City of Champions. I don't know if Sports Illustrated ever did that for anywhere out in Massachusetts. But anyway.

Mr. DELAHUNT. We will have that conversation later, Mr. Rooney.

Mr. ROONEY. Okay. Mr. Chairman, and to our guest speaker, I just want to—as Mr. Coble sort of alluded to—and I apologize for having my opening statement sort of being in the broad sense of a question. But just generally speaking, I too am interested in the State of Florida and how it pertains to the realtors, specifically with how you subjectively or objectively look at claimants with regard to loss and, you know, this idea of what is a loss, whether it is one block or how many blocks from the beach and from the spill. And if you look at it in the context of specifically with the State of Florida, the real estate industry, whether it be rentals or sales or resales, is a huge part of our economy, obviously. And just to sort of, if possible, give some focus to how realtors will be able to assess what they can look forward to expecting from this claims process.

So with that, I yield back, and thank you very much.

Mr. NADLER. I thank you. I am now pleased to introduce the witness for today's hearing. Kenneth Feinberg is the Claims Administrator for the Gulf Coast Claims Facility. He is the managing partner of Feinberg Rozen LLP, where he has served as one of the Nation's leading experts in mediation and alternative dispute resolution.

Previously, Mr. Feinberg was appointed by the Secretary of the Treasury to serve as the Special Master for TARP executive compensation for 2009 to 2010. Mr. Feinberg seems to get appointed to one thankless job after another. He was responsible for review-

ing annual compensation packages for senior corporate officials at companies that receive the most taxpayer financial assistance.

Earlier he was appointed by the Attorney General to serve as a Special Master of the Federal September 11 Victim Compensation Fund of 2001.

He was also responsible for the design, implementation, and administration of the claims process for the Hokie Spirit Memorial Fund following the tragic shootings at Virginia Tech University.

Mr. Feinberg has also worked on an alternative dispute resolution program for insurance claims arising out of Hurricane Katrina and other hurricanes in the Gulf region.

Mr. Feinberg received his BA cum laude from the University of Massachusetts in 1967 and his JD from New York University School of Law in 1970.

Without objection, your written statement will be placed in the record. We would ask that you limit your oral marks to more or less 5 minutes. You will note that we have a lighting system that starts with a green light. At 4 minutes it turns yellow and red at 5 minutes.

Mr. Feinberg, we are glad to have you here, and please proceed with your testimony.

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

Mr. FEINBERG. Thank you very much, Congressman Nadler. I appreciate the opportunity to testify once again before this Committee. As expected, the opening statement questions that have been raised are what I expected in appearing before this Committee over and over again over the years, and I will try to address briefly in summary fashion what I am doing and answer some of these questions, and then whatever the Committee's pleasure, I will respond.

I am in charge of an independent Gulf Coast Claims Facility. Under the arrangement entered into between the Administration and BP, I am designing and administering an independent facility. I am beholden to neither the Administration nor BP. I am really beholden to the people who live in the Gulf and who are in desperate straits and seek financial assistance from this facility.

The facility will be up and running next month, in August. It will transition from BP—I give BP some credit. They have paid out already over \$200 million in claims. We can do better, the facility, quicker, more efficiently. But unlike 9/11 or some of these other tragedies, there is an infrastructure in place which I will modify.

I am accompanied by the people helping me modify this, Camille Biros, Deputy Administrator, Jackie Zins, Deputy Administrator, Amy Weiss, all from my staff who are working with me in transitioning from BP to this new facility which will completely replace BP in terms of the processing of claims. There are already 36 regional offices around the Gulf that are accepting claims, processing claims. Again, we can do it better. But there is an infrastructure in place to help deal with this issue, this tragedy.

Now I drafted and circulated a draft protocol—merely a draft—and received comments from State attorney generals, from the Department of Justice, from interested individuals. I received especially some very, very valuable input from the staff of this

Committee. And over the last week, I have been reviewing and evaluating the very comments raised by some Members which were sent to me by staff in reviewing the draft protocol that I circulated. I will have a new draft in the next few days which I will again send to the staff of this Committee and urge input from this Committee as we move forward.

The questions posed by the Committee Members today track in some degree the very questions—not surprisingly—posed by the staff in my ongoing communications with staff of this Committee. No staff of any Committee in the Congress has been more active in advising me than the House Judiciary Committee staff, and I am very grateful to Perry and the other members of the staff in that regard.

Finally, in summary fashion, a response to the questions posed by the Committee Members. Yes, the process has to be much quicker. We will accelerate it. It must be more transparent. The data that has been provided to date to the Members of this Committee is inadequate, does not provide sufficient sunshine on how BP has been processing claims. We will do a much better job.

I agree with the Chairman. I guarantee this Committee, we will have at every location in the Gulf interpreters, translators in Vietnamese, Cambodian, whatever is necessary, to make sure that eligible claimants understand their rights and their obligations if they decide voluntarily to file with the protocol.

We will, Congressman, guarantee to deal with the problem of fraud. In the 9/11 Fund—as Chairman Nadler will recall, in the 9/11 Fund, we had 7,300 applications; 35 were fraudulent. That is how careful we were in processing claims. The Department of Justice Criminal Fraud Division is working with us in this Gulf Coast Claims Facility to minimize the likelihood of fraud. We will have internally, the facility, a fraud consultant, a fraud audit, a fraud expertise. Nothing will undercut the credibility of this program more than fraud, and I am very mindful of that concern, and we will deal with it.

Attorneys, we had an unparalleled pro bono program of attorneys in 9/11. I am now working with the ABA, with the American Association of Trial Lawyers, with the attorneys general. The Attorney General of Florida, Attorney General McCollum, has been particularly interested in this pro bono program. We will—I assure this Committee—have a pro bono program up and running to help any claimant who believes that the claimant needs an attorney. That is up to the claimant. We will be able to help process claims without an attorney, but if they want an attorney or an accountant or a relative, anybody they want to help them access this program, we will help them and work with them. If they want a private attorney, that is up to them.

My calculations of the awards that are rendered will be for economic loss or for physical injury or loss of national resources. There will be no additional amount for attorneys. That is between the claimant and the attorney. That will not be part of my calculation, I assure this Committee.

On the moratorium, I have no jurisdiction over the moratorium. BP set aside \$100 million to deal just with rig worker lost employment arising out of the Administration's moratorium. That \$100

million, which is in addition to the \$20 billion, is not on my watch. BP and the Administration will decide where that \$100 million should be—what the custody of that, where the custody should be held. And right now at least I have no jurisdiction over the processing of rig worker claims arising out of the moratorium. Nor, as a Member raised earlier, do I have any jurisdiction yet over any government claims against BP. Federal, State, local government claims, lost taxes, lost real estate, sales taxes, cleanup costs, other extended costs brought by local government, State and Federal Government are not part of my jurisdiction by agreement between the Administration and BP. At least for the present, I am dealing only with individual and private business claims. No government claims. That may change. But right now, that is the limit of my jurisdiction.

The escrow account raised by, as I expected, some Members, I urge you to read the submitted written statement of Tom Milch, who represents BP, where he details in summary degree the status of the escrow account. I am not responsible for that escrow account. I am not administering that escrow account. I am drawing out of the escrow account to pay claims. I think the details of the escrow account—as one Member pointed out, there is not much detail available yet on the terms and conditions of that escrow account, where it will be deposited, how it will be guaranteed, who will administer the escrow account. I have got enough problems. That is not on my watch. And I think Mr. Milch has provided some answers. I think that the terms and conditions of that escrow account will be made more available in the next few weeks—certainly in the month of August—as the escrow account is finalized, as this Committee has a comfort level that is protected, that it is safe and secure.

Somebody raised the possibility of bankruptcy or receivership. I think it would be a monumental tragedy if BP was forced into bankruptcy as a result of this spill. It would help nobody. It would not help claimants. It would not help the payment of legitimate claims. It would delay everything. It would put a sizable workforce out of work in that region already suffering from unemployment.

So just an editorial comment by me, I will do what I can to make sure that that escrow account pays claims promptly, safely, without the necessity of a horrendous bankruptcy option, which I hope and trust will not be at all imminent.

As to Congressman Nadler's questions about dispersants and latent claims, he knows I think better than anybody the problem of latent physical injury claims. He is addressing it now in the 9/11 Fund 8 years later. I do believe that the final protocol that I will administer will cover physical injury claims. Fortunately so far—thank goodness—there are a modest number of physical injury claims, but nothing like what we confronted in 9/11. But the very definition of a latent claim means we may not know for a while.

But dispersants—this is a point raised by the Judiciary Committee staff—yes, I do believe that the final protocol, unlike the current draft, will include physical injuries caused by the cleanup, not caused simply by the spill. We are working on that. Right now at least I am of the view that we need to get some expertise on the likelihood of latent claims.

As with the 9/11 Fund, my current thinking is that ultimately, although physical injuries can be paid immediately as emergency payments without any type of release whatsoever, the question posed by Chairman Nadler is a tough one. If 2 or 3 years from now there is an opportunity to settle once and for all a physical injury claim for respiratory injury, right now my current thinking is that we should get the best advice possible and require that claimant to voluntarily decide, as the 9/11 Fund, whether to take a lump sum settlement in full satisfaction of present and potential future illness, injury, or give that claimant an opportunity for physical injury to return to the fund later on, seeking additional money if the latent claim deteriorates.

I am inclined not to do that. There are strong reasons not to do it in terms of finality. But I must say Chairman Nadler has raised a very important public policy question about physical injuries and latent claims which we will have to address.

Now as to the realtors, we have got to do something about the realtors. The realtors and the real estate brokers are a major political force in Louisiana, Alabama, Mississippi, and Florida. I am hearing from them constantly. I am not sure whether or not legally they have a valid claim under my facility or, frankly, under existing law. My facility is purely voluntary. The realtors have every right, if they so desire, not to opt in and litigate. I am not sure that they can win if they litigate in terms of their perceived injury. Maybe, maybe not.

But I do think, Congressman Cohen and others, the more I visit the Gulf and listen to real estate owners, renters, homeowners, brokers, the more I become convinced that if I really am going to do justice here, we have got to do something. We have got to do something, and I will have a better handle on this in the next week, I think. But I am very cognizant of the concerns expressed by realtors and real estate brokers about the injuries they are suffering as a result of lost contracts, lost commissions, inability to sell a home, inability to rent. I am working for the people in the Gulf. I am not working for the Administration or BP. And those realtors and brokers make a credible argument that something ought to be done to help them. And I am aware of that.

Is \$20 billion enough? We will see. I hope so. It certainly is helpful that the oil has stopped so we can get a better handle on the pervasiveness of the spill and so we can start to sort of corral the likely number of claims. And I am hoping that \$20 billion will be enough. Fortunately, as you know, if \$20 billion proves insufficient, BP has agreed with the Administration to step up and pay any additional valid financial obligations that it may have. And that is a very, very important point to make.

We have the staff. Ms. Biros is here. She is in charge of the infrastructure, setting up the staff. BP has 1,500 people working in the Gulf right now on claims. We will supplement, we will reorganize, we will restructure, as necessary. I assure this Committee, we will have the staff to deliver the goods under this facility.

Two other final points. What about Congressman Scott's point? What about the number of people in the Gulf that work, as Chairman Scott put it or Chairman Nadler—I forget who—off the books? How are we going to deal with all cash lost wages, for example?

This is tough. I am told that everybody in the Gulf—you know, a cash business, there is nothing illegal about cash. And I have suggested—you have to corroborate, you have to prove your loss. I can't just take your word for it. So how are we going to demonstrate, corroborate, prove lost cash emergency payments? Well, I said, Well, show me your tax return. Well, some of the people in the Gulf say they lost their tax return. Okay. What about a profit-loss statement? What about a document? What about a letter from your ship captain vouching for the payments? I will bend over backwards to prove and help anybody who claims lost wages or lost business in an all-cash business. I have got to work out some criteria. They must receive a 1099 from the facility. I can't violate the Federal law. How we will work with that? I am very cognizant of that problem.

Finally, I am very cognizant of the problem raised by various Members about what constitutes an eligible claim. It is easy if you are a beach front restaurant. There is oil on the beach, and you have lost business. It is easy if you are a fisherman and you can't fish. There is oil there. You can't harvest shrimp. You can't harvest oysters. Those cases are easy cases. It is the tough case.

I own a motel 20 miles from the beach. Am I eligible? I have lost 30 percent of my guests because of the spill. I don't use the beach. I don't fish. But my tourism is down. Is that an eligible claim? I sell T-shirts on the beach. That is my job. I sell T-shirts to tourists. The beach is fine. The swimming is great. Nobody is coming to the beach. I can't sell T-shirts. Mr. Feinberg, I live in Knoxville, Tennessee, and I make the T-shirts that he sells to tourists on the beach. I mean, at some point you have to decide. It is a judgment call. This side of the line, eligible. This side of the line, ineligible. It is not rocket science. At some point, I must say, Well, if you are on this side of the line, you are eligible because if you brought a lawsuit in Alabama or Louisiana or Virginia or Florida, you would win. Well, I don't want you to have to litigate for 5 years. Come on in, and we will settle the case, and we will pay you.

On this side of the line, if you litigate, even under the Federal law, which is more lenient than State law, I don't think you are going to win. I think you are on a fool's mission if you litigate. But I want to do something. Various Members talk about justice and the right thing to do. How I draw that line between a valid claim, a maybe valid claim, an invalid claim—I mean, I am open to suggestions. At some point, this draft protocol will become a final protocol. And I am going to have to make some tough decisions. It goes with the territory. I am prepared to do it. The base point for me to make that determination is not just the starting point. If I wasn't around and there was no facility and people litigated causation, how far down the chain would it go before the courts would say as a matter of public policy, "Your claim cannot be recognized"? How much beyond that will I go in the interest of justice and fairness? Those are the questions I am grappling with right now.

So there is my extended opening statement. I tried to answer as many of the questions as I could. And now I am available for further questions, Mr. Chairman.

[The prepared statement of Mr. Feinberg follows:]

PREPARED STATEMENT OF KENNETH R. FEINBERG

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

United States House of Representatives
Committee on The Judiciary

July 21, 2010

Mr. Chairman:

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 few weeks. In the meantime, credit is due BP for its initial efforts in establishing an emergency claims process that has already paid over \$200

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 36 regional claims offices to handle claims, and over 1,500 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. I have already been coordinating with the staff of the Committee on a variety of issues: eligibility, calculation of damages, proving the submitted claim and the transparency of claims data. I have benefited from this staff input and look forward to working with this Committee as I move forward in administering the claims process.

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.

Mr. NADLER. I thank you, sir. I will now recognize myself for the first round of questioning. And you have addressed many of the questions I was going to ask you. You haven't answered them but you have listed them. So I want to explore in a little greater depth. And obviously where you draw the line—the first question is causa-

tion. Where you draw the line, this reminds me of my first week in tort class. I am sure the lawyers here will remember that. But this is a very serious question obviously. And obviously to some extent, there is going to be an arbitrary line. You can't avoid that.

But for example, I hope you are not going to do what BP did initially—and obviously you are not, I assume—and say that people only within a block of the beach can be damaged, which is absurd. But for example, a small business in Waveland, Mississippi, Steve's Burlap Sacks, has been devastated because so many oystermen are out of work and are not buying sacks to transport the oysters. Would the owner and his recently laid off employees qualify under the causation standard? What is your current thinking about how far to draw the line?

Mr. FEINBERG. First of all, in Mississippi that claimant who makes burlap bags would be well advised to rely on the Federal Oil Pollution Act and not Tort I in Mississippi. I think the Federal Pollution Control Act would extend liability under Federal law proximate causation, as you know, well beyond the law of Mississippi. That is point number one.

Whether or not I would recognize burlap bag manufacturing in Waveland, Mississippi, based on your hypothetical where that burlap bag manufacturer is dependent on fishing or shrimping in the Gulf, yes. Now whether that burlap bag manufacturer should get 100 percent of his loss or 80 percent of his loss or 30 percent of his loss, I would want to sort of look at that, figure out what would the law likely be under the Federal law? Would it extend to him? Is he a direct victim of the spill or an indirect victim? And come up with some way, under your hypothetical, to compensate him.

Mr. NADLER. Let me ask you this: You raised an intriguing question right now. Let's assume you decide that he was a direct victim, that in fact all the oystermen were not gathering the oysters. The facts show they all bought his burlap bags, and they are no longer buying his burlap bags. So he is victimized, and the causation is fairly direct. Why would you question whether he should get a recovery of 100 percent of the damage or 50 percent?

Mr. FEINBERG. If his causation is fairly direct, as you put it, he should get 100 percent. He may be in an industry totally dependent—burlap bags and fishing in the Gulf 100 percent. If he comes to me and says, You know, I do some work in the Gulf on fishing and I do some burlap for Greenwich Village, and I do some burlap bags—then it is a different question.

Mr. NADLER. Okay. Now let me go on to the question of latent industries. Now the big problem that you have, obviously, is someone comes to you and says, My beach was damaged. My beach front house was damaged X dollars, and I lost my job. I got it back but it has been 6 months of lost wages, and I want it covered. You figure it out and grant the recovery. Five years later, he comes down with a disease that is directly related—let's assume the facts are clear—directly related to his having inhaled—and he worked somewhat on the cleanup and he inhaled whatever he inhaled. And a few years later, he comes down with a disease directly related to that. Is he going to be foreclosed at that point for sicknesses which cannot possibly be diagnosed or known initially, but we know from experience that some number of people are going to come down

with this later. Is he going to be foreclosed from seeking recovery for that if he already got a recovery for the obvious immediate injuries, such as property injury, his broken arm, his lost wages? And if so, why?

Mr. FEINBERG. Right now he would be. In other words, right now, I would say—it is a tough call. You have given me a hypothetical which I haven't thought of. I was thinking you were getting ready for a hypothetical where someone knows they are sick at the time but they may get sicker. That is a different one. We will get to that next. But what you are saying is somebody settles under the fund and receives a check for the damage to their property arising out of oil on the beach.

Mr. NADLER. And lost wages or whatever else.

Mr. FEINBERG. But right now as a condition of taking that check, that individual would release the facility—would release BP, in effect, for any and all future injuries.

Mr. NADLER. Let me suggest that that is one point, as you finalize the protocol, that should be reconsidered because we have no idea how prevalent or common this is going to be. This may be rare, God willing, here. In 9/11, it wasn't rare. Here it may be much less. But certainly we know from experience that there are going to be people who have no symptom or passing symptoms. They didn't feel well. They went to the doctor. They gave him Pepto-Bismol. He was okay. But a few years later, they are going to come down with something which is going to be directly traceable, and we know that a certain number of people are going to get that. We don't know how many. There is no way that that person can anticipate it now. I cannot think of a reason, equity, why in order to get the recovery that he needs to get on with his life or her life right away because of lost wages, monetary or whatever, why they should have to sign away things that may become for some people extraordinarily, not just dangerous but difficult and even life threatening and very expensive. It seems to me that there ought to be some provision so that if a sickness that can be traced—I mean, the evidence is another question obviously. But assuming the evidence is there that can be traced back, becomes evident later, that that could be looked at then.

Mr. FEINBERG. Now, you pose a tough hypothetical. The other hypothetical you posited in your opening comments is a tough one but not as tough.

If somebody comes to the facility now with a respiratory injury, I am 20 percent disabled. And I offer a total release so that if you become 60 percent disabled you can't come back to the facility.

Now, that poses a difficult equitable argument on both sides, not just one side, because I found in the 9/11 file—

Mr. NADLER. Yeah, but then you say on that one, with proper guidance, the victim and the deciders can have some idea over what the likelihood is of a 20 percent disability becoming a 60 percent disability. When you have a latent claim, which no one has any idea is going to occur, you know statistically, let's say, that 15 percent of people are going to come down, but you don't know who. It is a very different question.

Mr. FEINBERG. You anticipated my answer. That is exactly the difference. The first hypo is a tough—I understand the equities there.

Mr. NADLER. And let me make it even worse. Let's assume that Joe Blow presents himself and has some sort of respiratory disease, and whatever settlement is made. Five years later, he comes down with blood cancer, having nothing to do with his respiratory disease, but that blood cancer is traceable back to this.

Mr. FEINBERG. That is nowhere near as difficult for me as your first hypothetical involving business damage with no symptoms at all. That last hypothetical, blood cancer or whatever, is a medical issue that—at least his physical health has at least been flagged by the respiratory injury. Your first hypo is a horror, because there I am settling an economic claim and getting a release from the facility and later on I get a physical injury. That one is the toughest of all. That is the toughest of all.

Mr. NADLER. Well, my time has expired, so I will just leave you with my adjuration to allow some leeway for these kinds of claims to be considered later as they arise.

I thank you.

And I recognize the distinguished gentleman from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. Feinberg, welcome. I very much appreciate your exposition on how you are tackling this.

This is quite different. This is maybe the mother of all claim funds, compared to your earlier ones, because the universe is so much greater. In fact, it is really unknown. With 9/11, you had a limited universe. With the Hokie Spirit Fund—which, by the way, I represent southwest Virginia, adjoining Virginia Tech, and we very much appreciated the work that you did there to help the victims of that tragedy. And, again, with the TARP compensation issues, a limited number of people you have to deal with.

Here, BP already has in excess of 100,000 claims, and that may just be the beginning. That generates a lot of questions, but let me start with one.

Given that it will take a large number of claims evaluators to evaluate all these claims, what will be done to ensure that there is consistency in the evaluation and payment of claims, so that the guy in one village says, "Well, my compensation from my fishing loss is nothing compared to what they did in the adjoining State where you got a whole bunch more money than I did"?

Mr. FEINBERG. Ms. Biros is here. She is the expert in dealing with that question for the last month.

The fact is, we are going to set up—we are setting up, not going to—we are currently setting up a centralized system that will have local claims evaluators submitting their claims to a centralized system. We are going to go down there in the next weeks, train our local people in each of 35 offices.

Congressman, you are on to something here. Nothing will undercut the credibility of the system more than inconsistent determinations. "My neighbor got a claim valid; I didn't." "He got X thousand; I didn't."

We have to make sure—and we are confident of this—that throughout the gulf we will have local people trained to apply the same standards of eligibility and calculation, standardized methodologies, if you are a shrimper or an oyster harvester or whatever, so that nobody will say there was bias or inconsistency or fraud, your other concern. We will address those problems.

Mr. GOODLATTE. For the 9/11 fund, you were able to prevent fraud, but that fund was less susceptible to fraud than this claim fund because the affected population was narrow and easier to determine.

What steps are you going to take to prevent fraudulent claims from being paid while, at the same time, quickly and fully compensating the legitimate claimants?

Mr. FEINBERG. Two steps. Summary: One, thank goodness for the Department of Justice career people in the Criminal Fraud Division. We are talking with them. We are coordinating with them as to how to highlight fraud: 1-800 whistleblower numbers if somebody suspects somebody of fraud; the Department has invited the facility to send any suspicious claim immediately to the Department for review. So we will have some very effective deterrents from the Criminal Division, the real experts downtown, on fraud.

We will also internally have a fraud audit. We will retain fraud experts to check the claims as they come in, verify them, make sure there aren't duplicate addresses, duplicate names, false information, the same description that we see time after time, which will immediately trigger segregating that claim.

We will do what is necessary to make sure that this Committee doesn't become a critic of the facility in terms of fraud.

Mr. GOODLATTE. With regard to your role, you mentioned that BP already has a lot of claims—I don't know if they are adjusters, but they are receiving claims. Are you going to fulfill the role of claims adjuster, or will you be a mediator? Will BP, in any instance, make any payments, or are they going to refer them all to you?

Mr. FEINBERG. BP, in another few weeks, is out of the claims business in terms of private, individual, and business claims.

Mr. GOODLATTE. Gotcha.

Mr. FEINBERG. It is all getting transitioned to me.

Mr. GOODLATTE. And one more question. The Wall Street Journal has reported that many affected businesses are concerned that it will be difficult, if not impossible, to forecast long-term recovery for some of the aquatic life that they are dependent upon—crabs and shrimp and fish populations.

What assurances can you give fishermen that you will be able to properly estimate what these damages are going to be as a part of the claims process?

Mr. FEINBERG. I have two, I think, definitive answers to those businesses.

One, we have done our best to estimate, before we make the offer, the long-term damage that you will suffer. We have done our best. We have talked to the experts. Here is a check, if you want it, that will compensate you for your long-term loss.

If you believe that that check is insufficient, don't accept it. It is a purely voluntary program. We have done our best to exercise

sound judgment as to what your ultimate loss will be. If you think we are incorrect, you are under no obligation whatsoever to accept that check. You can go about your business. You can go litigate. You can do whatever else you want.

But I suspect that that business, if I have done my job right, Congressman, will agree that it is a generous check that accurately reflects the likely long-term damage and then some. And here is the check, and I am hoping they will take that check. That is the challenge—one of the challenges.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. NADLER. Thank you.

The gentlelady from California is recognized.

Ms. LOFGREN. Thank you, Mr. Chairman.

And thank you, Mr. Feinberg.

I want to start by saying how glad I am that you were willing to take this assignment and how grateful I am to the President for asking you to do this. It is a tough job, but we know from your work in New York that you are up to tough jobs. And, as you know, nothing can be perfect when you have a disaster of this magnitude, but I have tremendous confidence in your diligence, your intelligence, your fairness, your ability to administer complex matters. And so, thank you for your service to our country and also for being here today.

I want to just touch on two quick things. I know other Members have questions, but I want to make sure I am understanding the framework here correctly, and I think I am.

This fund that you are administering really is the alternative to tort litigation. It is not a contract claim; really, it is tort litigation. Is that correct?

Mr. FEINBERG. That is correct.

Ms. LOFGREN. And so, really, when people come in, it is a way to avoid complex tort litigation for damages in this way.

Mr. FEINBERG. Exactly.

Ms. LOFGREN. And that is helpful. And I think if people know that who have been damaged, that will help them understand what is claimable and what isn't claimable.

I want to go to a second issue and just go back to—35 years ago, the United States withdrew from Vietnam. And after that, about a million refugees left the country of Vietnam. I am lucky that a substantial number of those refugees came and settled in San Jose, California. As a matter of fact, I think the largest Vietnamese-American population in the country is in San Jose.

And I was pleased to talk with a group of Vietnamese-American lawyers recently, and they heightened their concern about what is happening to fishermen in the gulf who are Vietnamese-American. It is interesting how developments occurred. The Vietnamese-American population in my district is so successful. You know, I was talking recently to the school district. There is no ESL for Vietnamese students because everybody speaks English. But I think there are slightly different development patterns in the gulf, because the refugees who came to the gulf are fishermen. They didn't become lawyers, for the most part. They are fishermen. And many don't speak English well.

What the lawyers have told me is that some of these fishermen—hardworking, simple people—have been already taken advantage of by lawyers who have misled them. As a matter of fact, a group of volunteers from the Vietnamese American Bar Association went down to the gulf to try and volunteer their services to the fishermen, but there was suspicion.

So I am looking to you. What efforts can we make in the Vietnamese language for these refugee fishermen, first to let them know about their claims, but also, if possible, to undo some of the damage that has already been done to them by people who have taken advantage of their limited English skills and extorted money from them and hurt them further after this disaster?

Mr. FEINBERG. Congresswoman, you are highlighting something we are well aware of. We are in the process, as we speak, of making sure that we have Vietnamese and Cambodian and other necessary translators. I have been going down to the Gulf Coast and holding meetings. We have already made sure that we have interpreters and that we are meeting privately with Vietnamese organizations. Some have come to see me already, at your urging.

And I am confident, as with the 9/11 fund, that we will make sure that language barriers, cultural barriers, you know, uncertainty—we will make sure that access to this facility is guaranteed through multilingual interpreters. We will help needed claimants fill out the forms.

We are fully aware of what you are highlighting. And no one is going to be misled or fail to file because they don't understand their rights under the program or what the benefits are. I assure you of that.

Ms. LOFGREN. Well, that is good news, indeed. And I thank you for that.

And let me say just say that the Vietnamese American Bar Association in California has already volunteered. They sent people out there. If they can help in any way, I know that they would like to.

Mr. FEINBERG. I would love to hear from them at your urging. I will meet with them. We can get on a conference call. We have already heard from various other Vietnamese associations who have offered their help pro bono.

Ms. LOFGREN. Very good.

Mr. FEINBERG. And I would welcome that opportunity.

Ms. LOFGREN. Thank you very much. And thank you for your efforts.

Mr. NADLER. Thank you.

I now recognize Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman.

Mr. Feinberg, good to have you with us.

Sir, you touched on this, but I want to revisit it. While many have been devastated by this crisis—and it is, indeed, a crisis—and are relying upon Federal benefits, do you foresee the claims process reimbursing the Federal Government for these said benefits?

Mr. FEINBERG. If I understand the question, I suppose the Federal Government will have a claim, just like a State government may have a claim for benefits that it has paid to—if I understand your question. That is a government claim. And it is not on my

watch, but I think the Federal Government, State governments, local governments will have a claim against BP.

Mr. COBLE. Now, you are in process, Mr. Feinberg, of formulating a final protocol as to how this is going to be done. Will the Administration and/or BP have to sign off on that, or will that be your sole decision?

Mr. FEINBERG. My total decision.

Mr. COBLE. That is what I figured. I think that is probably good. There is much to be said for independence in a situation like this.

Mr. FEINBERG. Thank you.

Mr. COBLE. Mr. Feinberg, when you agree with a claimant on his or her claim and he or she accepts the check, I assume at that point a release is effected, and that would bar that recipient from subsequent activity?

Mr. FEINBERG. Two answers. First, under the protocol, very, very generous, we will pay an eligible claimant up to 6 months' emergency payment—wage loss, business loss—without any release, up to 6 months, a lump-sum payment up to 6 months. You don't give up any right you may have.

After that, we will offer, if the person is eligible and can prove their claim, a lump-sum payment for any additional present or future injury. In return, yes, we want a release that will prevent that claimant, in return for receiving this lump-sum check, litigating later against BP.

Mr. COBLE. And during the formulation of this protocol, Mr. Feinberg, any idea when that will be finalized?

Mr. FEINBERG. Yes. I am confident that the protocol will be finalized in August. We are nearing the end of July.

Mr. COBLE. Oh, I believe you said that earlier.

Mr. FEINBERG. Yes. In August. And we will be up and running in August.

So the transition from BP, based on a final protocol, which this Committee staff has been very helpful with, will be finalized, up and running next month.

Mr. COBLE. Thank you, Mr. Feinberg.

I yield back, Mr. Chairman.

Mr. NADLER. Thank you.

Let me just follow up on what you said to Mr. Coble with one question. In the 9/11 situation, you offered the claimants the option of structured settlements instead of lump-sum checks to avoid very high taxes. Are you going to do the same thing here?

Mr. FEINBERG. I haven't thought about it. Why not? I suppose. I haven't really thought—once again, you are raising an issue, Chairman, as you usually do—I haven't thought of all these questions, but that is a very good one.

Mr. NADLER. If someone gets a very large lump-sum check for the next 5 years of lost earnings, the tax consequence would be—

Mr. FEINBERG. And it was amazing in 9/11 how few people took advantage of that offer—amazing.

Mr. NADLER. Well, but some people should be able to.

Mr. FEINBERG. I agree.

Mr. NADLER. Thank you.

I now recognize the gentlelady from California, Ms. Sánchez.

Ms. SÁNCHEZ. Thank you, Mr. Chairman.

Mr. NADLER. I am sorry. I am told I went in the wrong order. The gentleman from Illinois, Mr. Quigley.

Ms. SÁNCHEZ. I thought it was a little soon, Mr. Chairman. I will defer to Mr. Quigley.

Mr. QUIGLEY. Thank you.

And thank you, Mr. Chairman.

I know this is new territory, and I know you have touched upon the issue of people—the finality so that BP can have this and so forth. But—now, I think two Members, three Members may have touched upon it—when does one claim stop and another start?

If this is conceivably a 20-year event, a person who has ocean property—we are discussing now and scientists are disputing are there plumes elsewhere—things could take years to appear. Is that a new claim? Are we now going to create a whole new series of court cases in which people decide, well, you signed a waiver for getting wiped out the first month; when did the first month end and when did that damage get cleaned up?

What if, 16 years from now, they have lost what they had, just because this goes on longer? We have already seen so many unintended circumstances. We didn't know that they would happen. How do you take that into consideration and give finality?

Mr. FEINBERG. That is a tough question. I would make the following point. First, if I have done my job right, I will be able, the facility will be able to predict with some degree of certainty the long-term impact of the spill, so that when compensation is tendered, it will have some basis in fact as to the likely long-term impact.

Secondly, it is important, I think, to point out that finality is often important not only for the facility in BP but for the claimant. I have learned over the years that if you say to a claimant, "Mr. or Ms. Claimant, you have a choice: You can take money now for your current injury and come back later when the future is more known, or we can agree that the future damage is likely to be this and here is a much larger check—your call," very, very often the claimant wants the larger check.

So, in other words, "Mr. Feinberg, you are telling me, based on Mr. Quigley's valid question, I have a choice. I can either take a check now for \$1,000 or, based on your sound judgment, can take a check for \$30,000 but I can't come back later. Mr. Feinberg, I will take that \$30,000 check. I think that you have explained to me what you think is the likely outcome. I want finality, and I want the larger check."

I think it is important—I do not assume that finality only benefits BP. I am trying to help claimants who are trying to plan their future. And when you say to a claimant, "Well, you know, you can come back in 3 years from now, and depending on how it works and the oil samples and the water samples, you may get more; or, based on my judgment, talking to people at LSU and the University of Alabama or the University of Mississippi, I think that it is going to be 3 years, and it is up to you, but here is a check for \$30,000," in my judgment, trying to help individual claimants, more likely than not, they will see the wisdom of taking the \$30,000 as long as it is grounded in some degree of certainty.

No one knows for sure. But I am trying to help claimants, and helping claimants doesn't always mean "come back later."

Mr. QUIGLEY. And I appreciate what you are trying to do and how difficult it is. And I wish you the best for all involved. If it is ever tested, the ability to do this, this is the one.

Thank you. I yield back.

Mr. NADLER. I thank the gentleman.

And I now recognize the gentleman from California, Mr. Gallegly.

Mr. GALLEGLY. Thank you, Mr. Chairman.

And thank you for being here, Mr. Feinberg. I have been very impressed with the answers so far—very thorough and comprehensive. I have even been able to understand some of them. In any event, just a couple quick things.

Clearly, your job is to ensure that people that have been harmed have every opportunity to be dealt with fairly and made whole. In that process, is there any type of a safeguard that would ensure, through the claims facility, that payments made to claimants would not be reduced significantly as a result of attorney fees? Is there any kind of a cap, so they have kind of a free reign?

Mr. FEINBERG. This facility is not going to—as we did in 9/11, this facility is not going to get into this issue of attorneys' fees. Whatever the claimant's relationship to his or her attorney is a private, contractual relationship which is, frankly, not a priority for this facility.

Now, I have said, Congressman, over and over again, I do not believe it necessary for a claimant to this facility to even have an attorney. I can work with these claimants, as we did in 9/11, A; and, B, I am fully confident we will set up a pro bono program where claimants can come to the facility and we will offer them a free attorney.

Mr. GALLEGLY. Well, that being the case, Mr. Feinberg, I think it is reasonable to assume that many of these folks went out and retained an attorney for class action or whatever very early on before they knew of Mr. Feinberg, and now they are in a contract. And, you know, I have my own opinions about this, but I think it is nothing short of criminal that somebody that is really harmed ends up with 40 or 50 percent of what he is harmed for, and someone that comes in with their legal expertise—and you do all of the work and they get 50 percent of the action. That is an editorial comment.

Mr. Nadler, I just came in as he was asking a question, and I don't want to ask it again. But was there any clarification as to the settlement amount? For instance, if the settlement is for the purpose of compensating someone for loss of income, is that subject to Federal income tax?

Mr. FEINBERG. I am sure it is. I am not an income tax lawyer, but if you are compensated for lost income by substituting a check from the facility, I am confident it is subject to income tax.

Mr. GALLEGLY. The other last question I have, Mr. Chairman—and this may not really be something that you can answer directly. But I was involved years ago in the Exxon Valdez incident up in Alaska, so I saw firsthand many of the same issues that we are

dealing with here, with fishermen and with the issues that have impacted their livelihood up there.

One of the things we found up there was many of the fishermen got jobs working in the cleanup process. We are seeing that happen, of course, in the gulf, which is, I guess, a good thing.

Have you been involved in any of the process whereby folks have been compensated in the way of working in the cleanup? And has there been any comparison with what their income is as it related to fishing, and does that have an effect on the claim?

Mr. FEINBERG. It certainly has an effect on the claim. Right now, under the protocol, if somebody was earning \$5,000 a month as a fisherman and now can't fish but BP has put them to work on a "Vessel of Opportunity" to help clean up the oil at \$3,000 a month, then there is a \$2,000 difference in what they were earning before as to what they are earning now. I would deduct that \$3,000 from the \$5,000 and give them a check for \$2,000.

So I am not involved in the "Vessel of Opportunity" program or any effort by BP to hire these folks that are out of work. But I do say in the protocol that that separate wage that they are earning would be collaterally offset from my award.

Mr. GALLEGLY. In other words, there would be an offset for real damage?

Mr. FEINBERG. Yes.

Mr. GALLEGLY. You are really focusing on what real damage is, with a percentage factor in there for whatever as an incentive to settle?

Mr. FEINBERG. Exactly.

Mr. GALLEGLY. Thank you, Mr. Chairman.

Mr. NADLER. I thank the gentleman.

I will now recognize the gentelady from California, Ms. Chu.

Ms. CHU. Thank you, Mr. Chair.

I wanted to give you some feedback with regard to the Vietnamese fishermen in the Gulf Coast. I have been in touch with them, and they have some specific feedback with regard to how the process is going so far.

First of all, I mean, as you know, they represent a very significant part of the shrimping community there. The Vietnamese fishermen are about one-third of the shrimping community in the Gulf Coast. But they have raised very, very significant concerns.

First of all, in terms of the interpreter selection, it needs great improvement. At one of the initial safety trainings held by BP, they sent trainers who spoke communist diction to refugees who live in the gulf. So there are cultural subtleties that really have to be paid attention to.

Not every interpreter is competent, necessarily, or is sensitive to the particular population that is there in the Gulf Coast. And, for instance, an interpreter would need to be very specific about the language needed, particular vocabulary words pertaining to maritime claims and legal issues.

So my first question would have to do with how you are selecting the interpreters.

The second piece of feedback that I have gotten has been about the supporting documents that are required to submit a claim. Many of the fishermen have stated that they were denied claims

or turned away because the requirement for supporting documents has never been sufficiently defined.

Will you ensure that the requirements are clear so that all members of the community are able to access the claims process? And, more importantly, could you ensure that sample documents are given to provide individuals with the clarity about what is needed to complete the paperwork?

And then, thirdly, many of them have complained about the complicated process for filing claims involving a hotline, and they get a claim number before visiting a claims office, but even though they have followed these initial steps, they have never received any follow-up. And how could you ensure that they are able to get that kind of follow-up?

Mr. FEINBERG. Three questions.

Ms. CHU. Uh-huh.

Mr. FEINBERG. First, we are relying on the public interest, the Vietnamese organizations, to assist us—we have met with a couple of them already—in terms of providing us the best interpreters locally in the gulf that will guarantee qualification and making sure that they are qualified to act on behalf of the claimant. So we are working with those organizations. If there is an organization that we should be talking with that you are aware of, Congresswoman, by all means, let me know.

Secondly, the documentation issue—we will provide sample documentation. It is important that the claimant document the claim. But I don't care; I have told claimants in the gulf that if you don't have the one type of document, give us another document. Especially for the emergency payments, where people are desperate to receive this compensation. If you don't have any official documentation, give me a written letter from your ship captain or your priest or your mayor, so that we can at least get you these emergency payments.

And, finally, in terms of 1-800 numbers and more efficiency and less delay, as I said in my opening statement, that is absolutely essential. We are working on that now. I am confident that next month when we are up and running, we will have an accelerated program.

Ms. CHU. But will there be follow-up for these folks? That is what they are asking about.

Mr. FEINBERG. Absolutely. I assure you, Congresswoman, we will be processing emergency payments within 24 hours. We will be cutting checks within 2 days thereafter. We will make sure that the process is much more efficient and accelerated.

Ms. CHU. Now, you know, there are local leaders that are very much in touch with the community and know about these cultural sensitivities. I am wondering if you can have an advisor committee of those local leaders, the trusted leaders. Already you have said that people are skeptical, angry, dispirited, worried, and that it is going to be your job to sell this program. And so, I am wondering if you can have a group that can continuously give you this sort of feedback on an ongoing basis.

Mr. FEINBERG. We do. I agree 100 percent with you that this program can only be effective and successful by relying on local people.

This can't be done from Washington. I am spending a great deal of time in the gulf.

And relying on credible people—officials, neighbors, people that are trusted—is the only surefire way to get people to access this facility and take advantage of it. I can't help people if they don't sign up. And I think the only way to get people signed up who are inherently suspicious and skeptical is by relying on local leaders, yes.

Ms. CHU. Thank you.

Mr. NADLER. The gentlelady's time has expired.

I now recognize the gentleman from California, Mr. Issa.

Mr. ISSA. Thank you, Mr. Chairman.

Mr. Feinberg, it is good to see you, as always. You know, when we have go-to people that can be well-regarded by the press, well-regarded by both sides of the aisle, and then go to a very difficult area with a reputation for fairness, honesty, integrity, and competence—some of those are available in all the people we send, but that last one is seldom the one that has such a history as you have of competence.

You have done a good job of laying out, as you did in your opening statement, a lot of the parameters. Let me just go through a couple that I am particularly interested in.

One, I am going to ask you a question not in the form of a question. You said, "No lawyers are needed to file a claim. No one need share one penny of their loss with an outside lawyer, outside accountant, or outside preparation person." Is that correct?

Mr. FEINBERG. That is correct.

Mr. ISSA. And you said that you anticipate hiring attorneys and, I assume, some other clerical people to assist people in preparing their claims.

Mr. FEINBERG. Correct.

Mr. ISSA. That is great news, and I hope that that will be well-covered from today.

I have a couple of questions that are, sort of, down in the weeds a little bit. But there are a large amount of people who have lost their income because of the oil drilling ban. You are not compensating people who were laid off because the President had an arbitrary moratorium on drilling.

Mr. FEINBERG. Not on my watch.

Mr. ISSA. But if those people, those tens of billions of dollars of income, those people who work offshore for very high wages and then come ashore and eat in restaurants and, you know, stay in hotels or rent apartments and so on, if they are laid off and they head out of the area, isn't there a ripple effect, where you will be compensating people for loss, and, really, all you know is that hotel on the beach or that restaurant on the beach had its income lost, and you really won't know how much of it is from the loss of fishing versus the loss of oil drilling?

Mr. FEINBERG. Well, that is a tough evidentiary question. I mean, you are right, I am compensating for damage arising out of the spill, not the moratorium. Now, how you define that when you get the documents that says, "Here is what I made last year, and this is what I am making this year," I mean, that is a tough question.

Mr. ISSA. And, you know, I have absolutely no sympathy for BP. If your \$20 billion can compensate everybody, that is great. If they need to give more, that is great. But I do have that great question of, aren't we in a predicament in which we are tying your hands because the facts you are presented are an effect but there are multiple effects there, including the scare tactics where, in many cases, people can come down but are scared away? All of that is going to end up being directly in the proximity of the shoreline part of the loss.

Mr. FEINBERG. Congressman, as usual, I mean, you are raising issues here that are very, very challenging. The loss of income of a motel due to bad tourist press that the oil—the beaches happen to be perfect; there is no oil on the beach. How we are going to address some of these issues, evidentiary in deciding eligibility and amount—formidable, formidable.

Mr. ISSA. Now, I have one question I don't believe was asked earlier. You have the direct effect on the individuals, but we have the communities. When you make somebody whole that had a direct loss, the community hopefully, if it is salary-related, they are going to get some of that revenue. But, certainly, these communities have losses both because oil is not being drilled and because of the loss of fishing and so on.

How do you view your role relative to the various parishes and so on? I mean, these are the people we talk to who aren't even being allowed to protect their shoreline, and then on top of that they are saying, "Where do I make up for the lost revenue?"

Mr. FEINBERG. I have no jurisdiction, at the current time, over any governmental unit that files a claim for lost revenue, lost taxes, ad valorem. Real estate taxes are down. Sales taxes are off. Right now, this draft protocol and the new protocol that I am working on that I will share with this Committee completely exempts from my jurisdiction any governmental claim against BP.

Mr. ISSA. Well, let me ask you a follow-up question. Time is short. Because you are still in the process of negotiating, and perhaps it will take additional funds. But these communities, in many cases, are providing services similar to the ones that you said you are providing. They are providing counseling; they are providing, if you will, legal advice and so on.

Can you or will you consider trying to get authority to provide some funds so that you may contract these various parishes in related areas to perform some of these services, or to compensate them if they are performing services that benefit you?

Mr. FEINBERG. I will certainly pass on that constructive idea. Again, it is not part of my claims watch.

I just want to say one other thing about the lawyers, Congressman. You will recall, in 9/11, as a direct result—direct result—of questions that you posed, we set up this very successful pro bono lawyers program. And, as I said earlier, building on what we did with your help in 9/11 pro bono, I hope we can have a similar pro bono program here, and I plan to do so.

Mr. ISSA. Look forward to seeing that. Thank you.

Thank you, Mr. Chairman.

Mr. NADLER. I thank the gentleman.

I now recognize the gentleman from Florida, Mr. Deutch.

Mr. DEUTCH. Thank you, Mr. Chairman.

Good morning, Mr. Feinberg.

I have a few questions for you, Mr. Feinberg, about how some of these claims are calculated and the role that lawyers play. I mean, I know that, as you have just explained, on the one hand no one should need a lawyer; on the other, there will be this battery of pro bono attorneys willing to assist.

Their assistance, I would think, whether pro bono or otherwise, would extend beyond even this facility, given that State law provides other rights without caps—the Oil Pollution Act, et cetera. I mean, there is more that will come into play, correct?

Mr. FEINBERG. I completely agree with you. I want to emphasize: I am a lawyer. And the legal community stepped up in the 9/11 fund. It would never have been as successful as it was without the help of pro bono and paid legal counsel. And I in no way want to say anything other than the legal community has a very, very valuable role to play here, and I hope it will step up once again.

Mr. DEUTCH. Right. So I just wanted to set the record straight here, that, in fact, this facility that you are administering doesn't represent the sum total of every potential claim that might be filed under State law or other?

Mr. FEINBERG. You are absolutely right in that regard.

Mr. DEUTCH. Okay. Thank you.

I wanted to ask, then, about the way that the damages will be calculated. We have heard and I know you mentioned earlier that you have heard as well from realtors, and you are trying to figure out how to address the issues that realtors have. And I hear from real estate professionals who are losing contracts on a regular basis.

When will you have some information for us? This is in the revisions to the protocol that you are working on?

Mr. FEINBERG. Yes. In the next protocol, which I hope to have finished in the next few days, not weeks—time is important here—I have to come to grips with this issue of both the real estate owner and the real estate broker. There is a serious question—I don't attempt to resolve it now, Congressman—as to whether or not either of them would have a valid claim in court. You can make arguments on both sides.

But their concern and distress has been so pronounced everywhere I go that I am now, at your suggestion and others, trying to come up with some mechanism to deal with that concern that they have expressed.

Mr. DEUTCH. Thank you.

And as you calculate the impact that this spill has had on the business owners, there is a difficulty, obviously, from what I am told from business owners directly, and there is a concern that the focus will be on a comparison between this year and last year.

And if you could speak to that, because, as I have been told repeatedly, this was the year when they were going to see the great comeback; last year is not a great comparison. And if you could just speak to that a bit.

Mr. FEINBERG. As with the 9/11 fund, if last year was an aberration, give us 2 years or 3 years to look at pre-spill.

Frankly, when you mention, you know, this was going to be a great year, show me. I mean, I can't calculate compensation on the basis of speculation, but if you have a contract for this year, that you were going to be a charter boat or you had a rental that now was terminated, a valid contract, as a result of the spill, I don't even need, necessarily, to look at the past years.

As long as it is not speculative, as long as there is some basis for me to calculate the damage, I am more than willing to compensate.

Mr. DEUTCH. And then if you could also just speak to your jurisdiction—specifically as a representative of south Florida, if oil winds up in the loop current and we see oil on our shores in south Florida, either along the gulf or coming up along the Atlantic coast, are you charged with handling those claims, as well?

Mr. FEINBERG. I have jurisdiction over those claims. Understand—you do, but make sure your constituents understand—it is not necessary under this protocol for oil to show up. What is necessary is that the natural resources are harmed, you can't fish, tourism is hurt.

I mean, I have tried to spell out in even the draft protocol, but the staff of this Committee has reminded me on more than one occasion that there doesn't have to be actual physical destruction, if you have lost profits or you have lost income or what have you, and I will take a look at those claims.

Mr. DEUTCH. Thank you.

And then finally, very quickly, can you just confirm that the 90-day period for considering interim payments has not commenced simply because the cap is in place?

Mr. FEINBERG. That is correct.

Mr. DEUTCH. Thank you, Mr. Feinberg.

Thank you, Madam Chair.

Ms. JACKSON LEE. [Presiding.] Thank you very much.

I now recognize the gentleman from Texas, Mr. Gohmert, for 5 minutes.

Mr. GOHMERT. Thank you, Madam Chairman.

And, Mr. Feinberg, I appreciate very much what you are taking on. As a district judge, I was asked to take over what was deemed the biggest, worst tort claim in Texas history that had been going on for 11 years, with over a hundred lawyers. And, anyway, I took that on, and so I have great sympathy for what you are doing.

But I have some questions. I am a little muddy on process. And pardon my muddiness. It is something I carry with me.

But I was wondering, do you know how you were chosen, out of all the people in the United States, to do this job, besides being crazy enough to take it on?

Mr. FEINBERG. Well, I was chosen by the Administration and BP by agreement. You will have to ask representatives of both as to why they are relying on me to act in this independent capacity. I suspect much of it has to do, as others have pointed out, with some of my prior work with 9/11.

Mr. GOHMERT. Right. But you don't know who selected you. You just knew the Administration—well, who called you, the President?

Mr. FEINBERG. No, I have never talked to the President about this. On the BP side, I had two meetings with BP officials in Hous-

ton. They asked me to come down and meet and talk about my experience and how I might go about doing this.

And on the Administration side, the contact person for me has been Associate Attorney General Tom Perrelli. He is the one I have been dealing with. I think I had one conversation with Carol Browner of the White House, but it has been Tom Perrelli on the Administration side.

Mr. GOHMERT. Okay. Well, today you weren't subpoenaed, you came voluntarily, correct?

Mr. FEINBERG. To this Committee?

Mr. GOHMERT. Right.

Mr. FEINBERG. I always come when the Chairman invites me.

Mr. GOHMERT. You know, you had said before in some other venues, and it seems clear, that you are really not accountable to anyone—British Petroleum, the Administration. So is there anyone who you do account to?

Mr. FEINBERG. I think I am accountable to the people in the gulf that I am trying to help. As with 9/11—

Mr. GOHMERT. Okay. But what do they do if they disagree with what your decision is?

Mr. FEINBERG. I think they would voice their objection to the Members of this Committee. If I lose confidence of this Committee—

Mr. GOHMERT. Well, then who could fire you?

Mr. FEINBERG. I guess I can be fired by BP or the Administration. They can decide that my services are no longer needed. I suppose they could agree consensually.

Mr. GOHMERT. Okay. Because generally you say you are accountable, you guess, to the people in the gulf, but, normally, accountability carries with it the possibility that those to whom you are accountable can do something if they disagree with you.

Mr. FEINBERG. Well, I suppose—

Mr. GOHMERT. So they would complain to our Committee, and then we would put pressure on BP and the Administration, and then somebody in that duo would fire you.

Mr. FEINBERG. I think that is right, or they would agree that my services are no longer needed.

Mr. GOHMERT. Okay.

Mr. FEINBERG. You know, in—

Mr. GOHMERT. But with the folks in the gulf, if they don't like your decision, did I understand there is an appellate review?

Mr. FEINBERG. Not only is there a review by a panel that has yet to be selected—

Mr. NADLER. Well, and who will select the panel?

Mr. FEINBERG. The panel will be selected by—names will be submitted to me. Right now, under the protocol, I select the panel. But understand, Congressman—

Mr. GOHMERT. Boy, I would love to, as a judge and as a chief justice of court of appeals, have gotten to choose those that were going to review my decisions, but—

Mr. FEINBERG. Let me just say two things about this.

If the claimants have lost confidence in what I am doing, there is no requirement that they sign up. There is no greater check on my ability to serve the people of the gulf than that people have lost

confidence in me and voluntarily don't apply. There is no requirement that they apply. If they are not applying to get the compensation—

Mr. GOHMERT. Well, so you would self-fire yourself?

Mr. FEINBERG. Well, if I have nothing to do because people aren't confident in me and no longer are signing up, no will is going to have to fire me, I will resign.

Mr. GOHMERT. Okay. And you have, obviously, a very able staff. Are they working pro bono?

Mr. FEINBERG. No.

Mr. GOHMERT. Who decides their salary?

Mr. FEINBERG. BP is paying for the entire cost of this facility. Who else?

Mr. GOHMERT. Okay. But who decided on what their salaries would be?

Mr. FEINBERG. I have submitted proposed salaries—or I will submit proposed salaries to BP. BP has already been paying about 1,500 people in the gulf. We will decide who should be continued and who shouldn't.

Mr. GOHMERT. Okay.

Mr. FEINBERG. But on the issue of who is paying for the cost of this facility, it is obvious to me that the only responsible party to pay for this facility has to be BP. You can't ask claimants to pay, and you can't ask the government to pay.

Mr. GOHMERT. But can they tell you they disagree with the salary you have set?

Mr. FEINBERG. I suppose they could say it, but—

Mr. GOHMERT. Okay. And one final thing. You mentioned jurisdiction. Who set your jurisdiction?

Mr. FEINBERG. The jurisdiction has been established by the government and BP.

Mr. GOHMERT. The government being us?

Mr. FEINBERG. The Administration.

Mr. GOHMERT. Oh, the Administration.

Mr. FEINBERG. The Administration and BP together, consensually, chose me and explained my jurisdiction to me orally. And that is my current jurisdiction.

Mr. GOHMERT. So there is nothing in writing?

Ms. JACKSON LEE. The gentleman's time is—

Mr. FEINBERG. Not that I have seen.

Mr. GOHMERT. Okay. Thank you.

Mr. FEINBERG. Thank you.

Ms. JACKSON LEE. The gentleman from California, Mr. Schiff, is recognized for 5 minutes.

Mr. SCHIFF. Thank you, Madam Chair.

Mr. Feinberg, thank you for joining us, and thank you for talking on this responsibility. It is good to have someone of your capability and dedication on the task.

I want to follow up on some of the questions my colleagues asked. And I apologize if you have to repeat some of the things you said earlier.

But I am interested at the outset in, when people submit a claim to you, is there ever a case where they—do they have to waive any kind of a court remedy when they do so?

Mr. FEINBERG. Yes. People who submit a claim to me seeking emergency payments—pay the mortgage, put food on the table, I am unemployed because of the spill—people who make such a claim can receive from the facility up to 6 months of lost wages or lost income without any obligation. They do not sign away any rights they may have to go to court, to sue, not sue. It is without obligation.

Subsequently, if they want to voluntarily request a lump-sum final payment for any additional present or future damage, we will calculate that damage and offer them, the claimant, here is a check for \$600,000 or whatever it might be. Only if the claimant decides that it is in her or his interest to take that check will they then sign a release.

Mr. SCHIFF. And that release would basically waive any kind of claim in the future?

Mr. FEINBERG. Against BP.

Mr. SCHIFF. Against BP. So even if there was some unanticipated economic cost down the road, they would waive that.

Mr. FEINBERG. They would waive that.

Mr. SCHIFF. Now, is it presumed that the 6-month emergency assistance, should they litigate later, would be deducted from the amount that BP would owe them?

Mr. FEINBERG. Yes. If they litigated later and if they won and if there was a damage award, then BP would be able to say, “You got damages of X, but we paid you 6 months, so deduct that.”

Mr. SCHIFF. And what you are trying to do in determining who is eligible and what is an eligible claim is use the same issues of causation and proximity that the courts would employ?

Mr. FEINBERG. That is the starting point. And the more I listen to the House Judiciary Committee staff and others, the starting point is probably, for most of these claims, involving business loss or wage loss, not State law but the Federal Pollution Control Act, which is more liberal in causation requirements.

But that is the starting point. Then what I would have to do is exercise my discretion, my judgment, in trying to decide whether a claim that might not even be eligible for compensation in court should nevertheless be paid as part of this facility.

Mr. SCHIFF. Does BP have to give you the okay to do that?

Mr. FEINBERG. No.

Mr. SCHIFF. Subject to the \$20 billion limit, they have given you basically the discretion, even if goes beyond what they would be obligated under law, they have given you the discretion to say, if, in your judgment, even under Federal or State law we wouldn't be obligated, you should go ahead and pay the claim?

Mr. FEINBERG. That is correct. And it is not limited to \$20 billion. BP has made it very clear that if \$20 billion—hopefully it is enough, but if it is not enough, they will honor any subsequent supplementary obligations, financially, they may have.

Mr. SCHIFF. Now, I assume, though, they will keep an eye on the degree to which you find claims eligible to determine how much above \$20 billion they are willing to go?

Mr. FEINBERG. Of course.

Mr. SCHIFF. I think, frankly, the ultimate cost of this is going beyond the capacity of any company, no matter how wealthy, to pay—the full costs.

At some point, will the government claims for reimbursement be in competition with the claims of private parties? I mean, if there is a finite amount of resources that BP has, how will that get adjudicated? Who will be the debtor that gets the priority, or the creditor, or—

Mr. FEINBERG. In one sense, they are already in competition. Under this \$20 billion that has been set aside, that \$20 billion is used not only for the private claims that I am administering but for the government claims, as well. So the \$20 billion is not targeted just for the claims that I am processing; the \$20 billion also includes cleanup costs, tax revenue lost from States or cities or what have you.

Now, BP has stated publicly and privately to the Administration, if \$20 billion is not enough to cover all of this, they promise to supplement the \$20 billion with additional money.

Mr. SCHIFF. But now you are not adjudicating—you, yourself—the government claims?

Mr. FEINBERG. That is right.

Mr. SCHIFF. So they submit those directly to BP, but they are paid out of the \$20 billion.

Mr. FEINBERG. That is correct.

Mr. SCHIFF. So that means that there is, you know, some urgency. Apart from the emergency funding that people are submitting claims for right now, people in the gulf need to feel some urgency, if they feel that the BP resources won't ultimately hold out, if they want to seek a lump-sum payment now rather than wait for litigation, and a BP that may or may not be able to pay all claims, there is some, you know, race for compensation?

Mr. FEINBERG. You could characterize it that way. I think there is an urgency for claimants to seek a lump sum quite apart from competition; they just need the funds. And they ought to get the funds for their own wellbeing.

I am not particularly concerned, although you raise a very valid argument, I am not particularly concerned that there has to be a race for funds because the money may dry up. I have no indication of that, from BP or the Administration, that that is likely.

Ms. JACKSON LEE. The gentleman's time has expired.

Mr. FEINBERG. I am concerned that people not delay, because they need the money, and they ought to be racing to try and enter the facility.

Mr. SCHIFF. Thank you, Madam Chair.

Ms. JACKSON LEE. Mr. Poe of Texas is recognized for 5 minutes.

Mr. POE. Thank you, Madam Chairman.

Mr. Feinberg, I will try to put this in perspective. And I appreciate your enthusiasm on this. It is great.

I represent southeast Texas, a district that borders Louisiana. And because of the Gulf Stream, we don't get oil spill; it goes to Louisiana.

However, the people in my district work in Louisiana, and there are two concerns: one, the direct injury by not being able to fish crawfish, shrimp, all of that. And the second problem is the mora-

torium. Now, I know you are not directly involved in that. But has BP put money into a fund to pay for losses based upon the moratorium?

Mr. FEINBERG. Yes.

Mr. POE. Who is administering that fund?

Mr. FEINBERG. That fund is being administered right now—I don't think they have chosen an administrator for that fund yet.

My understanding on the moratorium is as follows: You are correct, Congressman, it is not on my watch. \$100 million has been set aside, unrelated to the \$20 billion, for moratorium rig worker claims only—not businesses associated with the moratorium, rig workers. That \$100 million will be administered separately by some charity or nonprofit foundation in the gulf. I don't think they have selected anybody yet.

Mr. POE. Hopefully not FEMA.

Mr. FEINBERG. I don't know. I don't know.

Now, as to Texas residents in the gulf who are adjoining Louisiana who fish and shrimp and harvest oysters and, as you put it, are directly impacted, they should be filing a claim. There is no geographic limitation as to who can file a claim. I have talked to the attorney general of Texas—

Mr. POE. Greg Abbott.

Mr. FEINBERG [continuing]. About Galveston and what is going on around Galveston. And I urge those Texas residents in your district to file a claim if they are being directly impacted—

Mr. POE. How many claims centers do you have in Texas?

Mr. FEINBERG. Right now, BP set up 36 different claims centers around the gulf. And we will continue those claims centers—

Mr. POE. How many are in Texas? Do you know?

Mr. FEINBERG. I don't know. I don't think there are any yet in Texas. The attorney general has suggested we may need one in Galveston or that environ there. We may do that. I think right now there are only, thank goodness, 70 claims, I think, from the Galveston area. And, if needed, we will certainly set up a facility there.

Mr. POE. Another question regarding the same issue. Like Judge Gohmert, I am a former judge. I see a conflict in losses based upon the actual damages of the oil spill and the moratorium, kind of meddling together with claimants.

Are you going to make a decision that, "This is a claim based on the moratorium, so that goes somewhere else, and so this percentage is based upon the actual oil spill, and then we will compensate some way"?

Mr. FEINBERG. The direct claims are not a problem because, as I understand it, the moratorium claims are only for moratorium-impacted rig workers. Nothing to do with the spill directly. So those eligibility determinations will be relatively straightforward and will be made by somebody else.

The question posed earlier, which is problematic, is: Somebody who files a claim for lost revenue—"I have a motel on the beach, and I am down 30 percent, and some of that is attributable to the moratorium." That is going to be tough, evidentiary-wise, for me to distinguish. I am not sure I will be able to. That will be a more problematic issue.

Mr. POE. The last question regarding sort of the statute of limitations. Do you have a statute of limitations that you are looking at, from when the accident occurred to when, eventually, will all claimants be paid through your agents?

Mr. FEINBERG. My understanding is the current protocol urged a 3-year statute of limitations. In other words, the facility, once up and running, that I am administering, would be administered for 3 years, after which it would terminate on a date certain, and claims would have to be brought within that 3-year period.

Mr. POE. Thank you, Madam Speaker.

Ms. JACKSON LEE. Thank you. The gentleman yields back. The gentlelady from California, Ms. Sánchez, is recognized for 5 minutes.

Ms. SÁNCHEZ. Thank you, Ms. Chairman. Mr. Feinberg, I want to express my appreciation for you being here today and answering our questions. And some of them may be a little bit duplicative, so I am going to apologize for that. But I want to start by asking you sort of some process questions and then some substance questions, if that is okay.

Who is helping you to develop the process under which claims are going to be guided?

Mr. FEINBERG. Have I developed a process?

Ms. SÁNCHEZ. Who is helping you establish the process under which claims will be processed?

Mr. FEINBERG. I am relying on, first and foremost, the deputy who has worked with me in all of these other claims, 9/11 and Virginia Tech and Agent Orange, Camille Biros. She is in my firm. She has been with me as a permanent employee. Then we are relying on outside consultants. Garden City, Brown Greer in Virginia. We are relying on people in the Gulf; the Worley Company from Hammond, Louisiana, which has been already processing claims, over \$200 million worth of claim.

Most of the help that I will be relying on will be local help. You can't do this from Washington. Somebody else mentioned this. You need trusted people from the community, and we will be using those vendors.

Ms. SÁNCHEZ. In any part of that process are there BP employees that are assisting in that claims process?

Mr. FEINBERG. Well, there won't be in a few more weeks. There may be one or two more consultants. But right now everybody is working for BP. In a few more weeks, when the facility replaces BP, we will be totally independent, without BP employees, other than maybe we want a few in transition as consultants.

Ms. SÁNCHEZ. Will you be, at that point when the facility opens, relying on any of the guidelines that BP previously established?

Mr. FEINBERG. No.

Ms. SÁNCHEZ. So completely independent?

Mr. FEINBERG. We will look at those guidelines, decide whether we independently verify and ratify them, but we will have our own system, our own criteria, our own procedures.

Ms. SÁNCHEZ. And you established earlier that BP is paying the salaries of staff that will be assisting you, is that correct?

Mr. FEINBERG. BP will be ongoing paying the staff.

Ms. SÁNCHEZ. So when the facility opens, BP will also be paying those salaries as well?

Mr. FEINBERG. Yes. And I guess who else? I mean, BP better be paying the salaries of everybody associated with this because when you try and think of who else might pay, it is a pretty short list, I must say.

Ms. SÁNCHEZ. I happen to be in agreement with you there. My question for you, though, is will the salaries that are being paid for the staff that are going to be assisting in the claims processing, will those salaries—will that payment come from the Gulf Coast Compensation Fund itself or that fund is simply for the claimants?

Mr. FEINBERG. Everybody associated with the facility that isn't a BP employee, all of our claims processors, once the facility takes over, all of that infrastructure payment will come out of the \$20 billion facility. It will be paid by the \$20 billion, which is, of course, indirectly BP also. I am pretty confident that the entire infrastructure, the entire salary of everybody associated with this facility, will be covered—more than covered by the interest on the \$20 billion.

Ms. SÁNCHEZ. Okay. That was what I was getting at, is who bears the ultimate cost of those salaries. You said that—I believe you said, or it might be in your written testimony, that there will be three-judge panels to hear appeals of awards, is that correct, or appeals of denied claims?

Mr. FEINBERG. That is right. It doesn't have to—it will be a three-member panel. I am not sure they have to be ex-judges or anything.

Ms. SÁNCHEZ. I meant three adjudicators.

Mr. FEINBERG. Yes, there will be three claims appeal neutrals, right.

Ms. SÁNCHEZ. Thank you. So claimants will have an opportunity then if they are denied claims to appeal if they don't agree with that decision to this three-member panel.

Mr. FEINBERG. Yes.

Ms. SÁNCHEZ. Will claimants also have the opportunity to appeal awards that they think are not fully compensating them?

Mr. FEINBERG. Yes.

Ms. SÁNCHEZ. And those will be heard by these three-member panels.

Mr. FEINBERG. Yes.

Ms. SÁNCHEZ. How long will claimants have to decide to appeal either their denials or the compensation?

Mr. FEINBERG. I don't recall. I think 10 days. I don't want to delay excessively getting money into the hands of claimants that are unhappy with their award.

Ms. SÁNCHEZ. I understand that, but my concern is that I feel that it is likely that many of those claimants may be representing themselves pro se because it is sort of set up in a way to try to keep you from litigation and attorneys, et cetera. And I think sort of the timeframe, although you don't want to delay too long, you also don't want it to be too brief for somebody to really take advantage of the appeals process.

Mr. FEINBERG. I agree with that. Let me also say this. I must say, if you want one obvious example of my failure in this process,

it is if people are appealing my—what I thought was sound judgment. If people start appealing to this three-member panel, that is a significant bit of evidence that I am not satisfying claimants. And I will view appeals, if they are necessary, as a sign of failure. And that is why I am hoping the number of appeals are pretty small.

Ms. SÁNCHEZ. Okay. Another question I have about the appeals process is, will BP have the opportunity to appeal a claim if they think that—

Mr. FEINBERG. The current protocol states that BP can request the right to appeal, but only I can grant or certify that right to appeal, which will not easily be permitted.

Ms. SÁNCHEZ. I appreciate the clarification.

The last question that I have for you is on the issue of undocumented workers who may have legitimate claims under the GCCF. I know that the 9/11 Victims Compensation Fund did allow undocumented workers to people regardless of their current immigration status to make claims.

What is your opinion regarding potential claims of folks in this scenario?

Mr. FEINBERG. I must say I will do whatever the law requires. Now in 9/11, Congresswoman, the Administration—the Bush administration—went to the Department of Immigration and received a ruling from the Department that permitted undocumented workers to be eligible, their families to receive full compensation just as if they were citizens of the United States. I have got to follow the law. I have got to follow the tax laws. I have got to follow the immigration laws. If this Committee or if whoever wants to include in compensation under this program undocumented workers, and we can get a ruling from Immigration that it is lawful, that it is appropriate, that it is the right thing to do, I will do whatever is agreed upon. I want to follow the law and I want to do whatever is permitted to maximize compensation.

Ms. SÁNCHEZ. Perfect. Thank you for your answer. And I thank the Chairwoman. I yield back.

Ms. JACKSON LEE. I thank the gentlelady. The gentleman from Virginia is recognized for 5 minutes, Mr. Scott.

Mr. SCOTT. Thank you. And thank you, Mr. Feinberg, for being with us again. You indicated something about your staff. Do you have any idea of the number of lawyers you are going to be hiring and paralegals and other staff persons?

Mr. FEINBERG. No. I don't think this is a job that will require a great many lawyers on my staff. Some. I am a lawyer. This is a job that will require expertise in claims processing, in claims evaluation, in evaluating the legitimacy of proof of claims. I don't think this is a big project for lawyers, myself.

Mr. SCOTT. Do you have an idea about the number of staff people?

Mr. FEINBERG. We are trying to develop that now. Now BP, Congressman, has hired 1,600 people that are currently employed throughout the Gulf—local people, primarily local people—who have been evaluating and processing claims. And they have paid out, as you know, over \$200 million in emergency payments. We will hire additional people as needed. We will reduce the size of

overhead as needed. We will know more about that, and I will be glad to notify your office within the next 30 days.

Mr. SCOTT. Language is a challenge. Will you be hiring people with appropriate language skills?

Mr. FEINBERG. Yes. We are already doing that. As I mentioned to Congresswoman Chu earlier, we have reached out to the Vietnam organizational community, Cambodian organizational community. We will hire as many experts as needed to make sure that whatever language barriers, cultural barriers, we have got to overcome that because we have got to get these people to file.

Mr. SCOTT. You mentioned you won't have that many lawyers and indicated in previous answers that you are working with the Trial Lawyers and the ABA and others to try to get volunteer lawyers. Is it your understanding that many of these will be eligible for Legal Services Corporation, Legal Aid Services?

Mr. FEINBERG. Yes. We are looking for any and all local or national organizations to help us with pro bono legal assistance for claimants.

Mr. SCOTT. The claim for injuries, will claims for injuries include pain and suffering or just medical expenses?

Mr. FEINBERG. Well, you know, I knew you would hit me with a good question. Under the 9/11 Fund, as you will recall, pain and suffering associated with a physical injury was included. And I have got to think about that. I think if you are going to be consistent with the 9/11 Fund, it should be.

Mr. SCOTT. You probably have some things that are probably more intense in this situation than 9/11. You will have psychological situations where it is my understanding that the requests for mental health services has gone up significantly in the Gulf. Would that be a compensable injury?

Mr. FEINBERG. I doubt it. I doubt it. We dealt with this in 9/11. If you start compensating purely mental anguish without a physical injury—*anxiety, stress*—we will be getting millions of claims from people watching television. I mean you have to draw the line somewhere. I think it highly unlikely that we would compensate mental damage—*alleged damage*—without a signature physical injury as well.

Mr. SCOTT. Will you be doing cleanup expenses?

Mr. FEINBERG. No, not on my watch.

Mr. SCOTT. Business losses?

Mr. FEINBERG. Yes.

Mr. SCOTT. You mentioned, I think in a previous answer, people working off the books, how indirect general business losses would be compensable. Because the economy has tanked, so everybody is losing.

Mr. FEINBERG. We have got to draw that line, what is eligible and not eligible. Direct cause, easy. Fishermen, shrimpers, oil on the beach. We are not going to pay a restaurant in Richmond that says its business is down because it can't get Gulf shrimp. I don't think any court would allow that. Even in Virginia they wouldn't allow that. So we are going to have to draw the line somewhere.

Mr. SCOTT. What about a department store in New Orleans?

Mr. FEINBERG. I am sorry?

Mr. SCOTT. What about a department store in New Orleans that has a significant diminution in sales because nobody is working?

Mr. FEINBERG. The question there is should we say to that department store in New Orleans, Your business is down in part certainly because of the spill. Tourists aren't coming and buying. Maybe one answer for that department store is, You are eligible. But we will give you whatever you prove is your loss, we will give you 20 percent or 40 percent. We have got to come up with a creative way—I haven't finalized it yet—to decide what is eligible, what is ineligible, and what might be eligible but a partial payment. And any ideas you have, Congressman, I welcome your thoughts.

Mr. SCOTT. I think your selection was as a result of the fact that you had been in this uncharted waters in other situations, so we are counting on you to come up with some fair resolutions.

How timely should people expect their compensation; how quickly should they expect to get paid?

Mr. FEINBERG. That is key. I think that once they are deemed eligible and they have corroborated or proven their loss, if it is an emergency payment, we should get that payment out within 2 days.

Mr. SCOTT. Two days.

Mr. FEINBERG. Once, here is the claim, now I have proven my claim. I need money for my mortgage, to put food on the table. I am out of work. Within 48 hours we should get them a check.

Ms. JACKSON LEE. The gentleman's time has expired. Let me thank you, Mr. Feinberg, for the generosity of your time. You have been very generous with your time and with us. I think of the Members that inquired, I may be the only one—and I know that I came in after some of the questions—who started with the Select Committee on Homeland Security before the Homeland Security Committees were designed and so was engaged with 9/11, as all Members were, but particularly in a jurisdictional manner, first as a Member of the Select Committee on Homeland Security and then as a Member of the Homeland Security Committee, which I continue today. So I know how we had to craft your unique position after a lot of frustration. And you recall a lot of lawyering, a lot of people without lawyers, a lot of heartache that still continues, the 9/11 families that were frustrated, and certainly many people with who were left in a very, very bad economic condition.

I remember specifically a series of latchkey children that were at home in apartments in New York that had to be addressed and were left without a parent or a major guardian. Many of these were single-parent homes. So you have gone through a lot.

I also am very much engaged with a legislative initiative that has gone through this particular Committee, which is the overdue payments to people who in New York and I guess specifically have indicated that they subsequently were ill and have never been compensated.

So if you would indulge me for a moment. And I am from the Gulf region, and so I am very concerned that we get this right. I am somewhat, without any diminishing of the hard work that you are doing, concerned that we are overwhelmed and that all that we are trying to do will not get done.

So my first question, with the backdrop of recognizing that there are still some people left behind in New York and the frustration we had with that claims process in some instances, what is your view of being able to take up, if you will, all of the claims that are within your jurisdiction in this region? It seems like claims can pop up over a series of days—next week, next month, next year—because the impact is just being generated.

Mr. FEINBERG. We will have the resources to make sure that any claimant in New Orleans or anywhere else in the Gulf who files a claim, we will have the resources, Congresswoman, to make sure that that claim can be processed promptly.

Ms. JACKSON LEE. And what is the comment that I heard that Texans cannot apply for any relief?

Mr. FEINBERG. That is incorrect.

Ms. JACKSON LEE. What about Texans whose product comes from their restaurant and their product comes from that area and they have literally been shut down?

Mr. FEINBERG. There is no geographic barrier to any claimant from any State applying to the claims facility.

Ms. JACKSON LEE. Then, in a meeting that you were captured on television and I think an oysterman, fisherman jumped up and indicated the potential of this being a very good year. Here is my concern. I have been down to that area and talked to oystermen. I am concerned about the Wall Street—and I only use that term—the business standards that you may place on an industry that has a different way of doing business. My concern is those little guys are going to be disadvantaged. If you are going to be using even some of the standards that the BP claims system used, you are not going to help these little guys. And they are the ones that are hurting so badly beyond those who tragically lost their loved ones and are still mourning.

How are you going to be fair to an industry that many Americans aren't familiar with and don't meet the standard accounting business procedures and they feel that they are being put upon?

Mr. FEINBERG. Congresswoman, I am determined to do right by those people and those businesses in the Gulf. I will rely on local people who know the culture, who know the community, who know how people live in that vicinity. I don't begin to claim here in Washington to have all that information. You have got to rely on local people with credibility to give you that information.

Now, in terms of it was going to be a very good year. Show me. Show me. I will bend over backwards to help these local businesses. I am trying to help them. Don't come to me and say, Trust me, it was going to be a great year. At the other end of the spectrum is the person who comes in and says, Look, Mr. Feinberg, I had this contract and I had this contract. This was going to be a great year. Look. Okay. That is the minimum proof. That is fine here. So I will work with you, Congresswoman, and the people down there to try and maximize the compensation.

Ms. JACKSON LEE. Well, I am going to reach out on some small businesses whose restaurants were named after Louisiana names and they are placed in Texas. And my understanding is that they have been treated poorly. But just, if I could, engaging you, how do you prove that you left your product that was thriving and

growing on the seabed, on the bottom of the ocean bed, that there is a mountain of oysters or a mountain of shrimp, a mountain of other fish that you could have caught. How do you prove that other than to say that you are an expert or you do some deepsea diving and you say look at all these oysters that are not usable now. Some of them have been soiled, if you will, and are not edible; that that would have been a good year. I work hard and I know I would have gotten 90 percent of those and been really having a thriving business. How do you do that?

Mr. FEINBERG. I will give you a couple of ways to do it. One, show me before the spill for the last not 1 year; Katrina year. Show me 3 years. Show me how successful you were in the past in harvesting those oysters. Two, if you can't do that, show me how—bring in evidence from your colleagues, from your other captains, from other people in that community that will vouch for your optimism in terms of going forward. I will work with you to try and come up with a credible formula that will allow you compensation without a lot of Wall Street or business methodologies and requirements. I am trying to help.

Ms. JACKSON LEE. So, capture it again. Show you what?

Mr. FEINBERG. Either show a contract. Show us what in the past what you have done that now you can't do. Claims facility, \$500,000 3 years ago, \$600,000 2 years ago, \$100,000 last year, Katrina. Whatever. This year, nothing. \$25,000. I have shown you the difference. Good enough.

Ms. JACKSON LEE. So if they can find or show past receipts or a statement from restaurant X that I bought \$55,000 worth of product, you would be able to use that kind of material to predict and to be able to provide for them.

Mr. FEINBERG. That is one way. Another way. Mr. Feinberg, I just started this company. I don't have past records. But I am bringing in Captain Jones and Captain Smith and Captain Brown and they will all vouch for the fact that but for the spill, this is what I would have done, this is where we would have harvested. Give me some credible argument that will allow me to pay the claim.

Ms. JACKSON LEE. Let me just ask this before I yield to the gentlelady from California. BP's obligations, are these claims binding on BP and could BP appeal every decision of the claims facility?

Mr. FEINBERG. No. Under my current protocol, which I am working on with the help of the Judiciary Committee staff, there could only be an appeal by BP in any case if I certify it. If I agree that it is an important enough issue, we will appeal it. Otherwise, BP has no right to appeal any claim.

Ms. JACKSON LEE. Thank you. The gentlelady from California is recognized.

Ms. WATERS. Thank you very much, Madam Chairwoman. I am pleased I was able to get here, even though a little bit late, because I wanted to certainly meet Mr. Feinberg and to tell him it gives me a level of comfort that you are now in a position to construct and implement this claims process. I appreciate the work that you did after 9/11 with New York and I am looking forward to your creating the kind of protocols that will get us into a claims system

that is fair and will compensate those who have been harmed in the right way.

I have a few questions I would like to ask you. And some of these questions may be a little bit premature, given that you are still working on these protocols. The first thing I would like to ask is about the \$20 billion. That amount was negotiated kind of by the Administration. And I am wondering if this includes a cap on liability. That somehow those persons that participate in getting compensated out of this \$20 billion, if they accept a settlement, they cannot sue. Is that correct?

Mr. FEINBERG. That is correct, if they accept, Congresswoman, the lump sum payment that I offer them. However, any claimant who is eligible and can prove the claim will receive up to 6 months emergency payment without any obligation of any type to release or promise not to sue. So it is only if a claimant comes to me and says voluntarily, Mr. Feinberg, I have already got my 6 months payment, and thank you, but I want now a lump sum payment for the remaining present damage. Only if they like that amount do they waive their right to sue BP.

Ms. WATERS. Was there a cap on liability in the 9/11 claims process?

Mr. FEINBERG. No, nor is there a cap on liability in this process.

Ms. WATERS. But in the New York process, if you accepted whatever amount and you discovered that there was a lingering health problem, for example, did you have the ability to sue?

Mr. FEINBERG. No. In the 9/11 Fund, which I administered, if you settled with the 9/11 Fund with full disclosure that it was a waiver of any future claim, you had to waive that claim. And if you didn't want to, don't come into the fund.

Ms. WATERS. You can sue.

Mr. FEINBERG. They have that choice.

Ms. WATERS. As an individual.

Mr. FEINBERG. I am sorry?

Ms. WATERS. You can sue as an individual.

Mr. FEINBERG. You can sue as an individual if you didn't want to take the payment. Same as this.

Ms. WATERS. That is right. Very good.

Now I am focused on New Orleans because they had something called the Road Home Program. It was a mess. And I am a little bit upset that there was money left over that we eventually reclaimed in this recent conference committee that we just did, and there are people who are left who still did not get their money or the right amount of money and they still have not rehabbed those homes, what have you. So I certainly want to see this claims process work a lot better than New Orleans.

Now, in this process here is what I think you are going to find. I have gotten to know the black oyster fishermen, for example; the African American oyster fishermen, with Mr. Byron Encalade, a wonderful man, who knows the history, four generations of fishermen down there in the area. When they first went into the claims process prior to the Administration getting involved and agreeing on this \$20 billion amount, the initial attempt by BP to get them to waive rights if they accepted small amounts was disturbing. And

I certainly did not want that to be the kind of thinking that would lead us into that overall claims process.

So you have got a handle on that. What I am worried about is this. We are going to have fishermen without receipts. We are going to have fishermen without IRS filings. We are going to have fishermen who maybe are not that literate. They have fished all of their lives. They earn a living for their families in the villages that they live in but they are not the kind of structured business people that you could say, I want your audited receipts in order to prove that you are eligible for this claim.

What alternatives do you have to help these people get some compensation, justly so, without all of that kind of documentation? What can you substitute for the kind of documentation that I just alluded to?

Mr. FEINBERG. Mr. Jones, you are a fishermen. Come in and have your ship captain tell me what he paid you. I don't need documentation. Have your ship captain come. Have your priest come in and verify. I need some corroboration, some proof. I don't need extensive business records. You have got to demonstrate that you have a valid claim. But I will bend over backwards to try and find—

Ms. WATERS. Will you define this in your protocols, how you have an alternative system of proof; that verification by legitimate folks; whatever, whatever, whatever. You will spell that out?

Mr. FEINBERG. Absolutely.

Ms. WATERS. Okay. That is very good.

Mr. FEINBERG. I do not need IRS returns and expensive business documentation. I do not need it.

Ms. WATERS. All right. Well, I thought I heard something, but I didn't. Unanimous consent for 1 minute.

Ms. JACKSON LEE. The gentlelady is recognized for 1 minute.

Ms. WATERS. Thank you. I am learning a lot about the oyster beds and I haven't figured out yet because I haven't had a chance to talk to Mr. Encalade about it so that he can really explain it to me, about these oyster beds. I was reading last night that the oysters are dying because the fresh water is getting into them and killing them. I couldn't determine whether or not these oyster beds are natural or they are designed; they belong to one entity or they belong to everybody. Have you gotten into that yet?

Mr. FEINBERG. No.

Ms. WATERS. Okay.

Mr. FEINBERG. You have anticipated, as you usually do, Congresswoman, you have anticipated another question or issue I haven't thought of. And I will look into it.

Ms. WATERS. That is real important because it seems to me that if everybody has got access to certain oyster beds, you have got to figure out what they have got coming to them.

Now having said all of that, will you print some kind of pamphlet or brochure that is instructive that people can at least use to say, Oh, this is how the process works?

Mr. FEINBERG. We will have all of that. We will have it at 35 claims offices, we will have it online, we will have it in different languages. We will have frequently asked questions. Here is how

you go about filling out the form. We will help you fill out the form. We will do all of that.

Ms. WATERS. Last, and I will just wrap this up, there are a number of organizations that are trying to help people down there, the nonprofits, et cetera. But, as you know, they survive on donations, et cetera. Have you got a little advocacy money in this \$20 billion that you can help pay some of these not-so-big organizations that are helping them?

Mr. FEINBERG. We will look into that. I must say, Congresswoman, most of those organizations have not asked for it. They are working pro bono. They are glad to help, regardless of funding from the \$20 billion. But I will look into it.

Ms. WATERS. Look into it, because they come to us later and say, We have been doing all this work and we can't get any money for it. If we get in front of it, we might be able to work with it. Thank you so much for being here today.

Ms. JACKSON LEE. Thank you very much. Mr. Feinberg, let me just wrap up with a few rapid-fire questions and build on what my colleague from California just asked you. Does that mean, and you are willing to say at this hearing, that the oystermen, shrimpers, and fishermen who may have engaged with the BP claims process and may not have gotten it right because of what you have just articulated, are you saying to them now—because one of the issues is for outreach. For them to get this information way off where they are, they may be on vessels of opportunity and doing some work and not getting all that they need. Are you saying to them now they can reach out to this claims process and you will take what they have already been given or not given and you will reassess it or assess it if it is a new start?

Mr. FEINBERG. Yes.

Ms. JACKSON LEE. Thank you.

Pending legislation. As you well know, your working with our Judiciary staff might impact what BP's liability would be. My question is in particular if, for example, laws are passed that suggest that pecuniary or nonpecuniary damages became available, would your rules of protocol change to assess those nonpecuniary damages, particularly mental health and others that are drastically needed?

Mr. FEINBERG. Yes.

Ms. JACKSON LEE. In the amount of staffing that I think my colleague inquired of, you said that you are using some familiar faces but you are also going to be looking in the region. Do you know when you really staff up how many you might be working with in your operation?

Mr. FEINBERG. No, Congresswoman, not yet. I will know in a few more weeks.

Ms. JACKSON LEE. You indicated to a Member. Would you get it to the Committee and would you get it to myself, please, as someone from that region?

Mr. FEINBERG. Yes. What I wanted to add is just that if you have—if you can vouch for vendors or individuals in the region who would be a wonderful addition to what I am doing, by all means, I welcome those names.

Ms. JACKSON LEE. I think it is important. As you well know, the economy is such that we hate to take advantage of a disaster and devastation. But one of the things I want to emphasize is small businesses, minority-owned businesses, women-owned businesses, and particularly as it relates to individuals, that you have a range of diversity. Is that something that you all will be looking at in terms of both employees and vendors?

Mr. FEINBERG. Yes. And the protocol itself will so state.

Ms. JACKSON LEE. I think I raised the question of nonphysical health claims. Because what you are saying is until you have that protocol, that the law is passed, you will be able to reassess what their status is.

The final point that I would like to raise is what I raised at the very beginning—the aftermath. The individuals who in 9/11 say they have been made sick or something happened to them pursuant to this disaster, what kind of range do we have with that potential, and do you believe that this fund is going to run out? And just as some instructive direction to many of us, after seeing these two disasters that you also handled at Virginia Tech—I think you said that—wouldn't it be effective to have at least a core structure in the Department of Homeland Security that could be activated quickly, using your protocol, not precluding your protocol, but having something so we didn't have what we have with BP, where it was an individual system? They tried, but many complaints.

Mr. FEINBERG. It is an interesting idea. After 9/11 there was some legislation considered that would put in place some sort of triggering mechanism in the event that there was another unanticipated disaster. That legislation, I think, went through the House. It died over in the Senate Judiciary Committee. Something like that sort of anticipating the next time might be—I will work with you if you would like on that.

Ms. JACKSON LEE. I would really like to do so. The question of aftermath sicknesses and illnesses and BP running out of money. Those two questions, the aftermath and BP running out of money. If you could comment on that.

Mr. FEINBERG. I doubt very much that BP is going to run out of money. BP has made it pretty clear that it will not run out of money, that it will honor any and all obligations even above the \$20 billion. And I think it would be a disaster if BP was unable to shoulder its obligations here and keep people working in the Gulf. In terms of the aftermath, one of the goals I have got over the next 3 years is to try and review the nature of the claim population and try and get handle on how likely or how broad that aftermath will be.

Ms. JACKSON LEE. You have been very kind. I think we respect the structure that the Administration has worked out. We respect that there are hardworking people at the company of BP. I think we should respect those workers who are just doing their work every day. But some people fear that they will run out of money. And they look to the past record. So I think it will be very important for your constant reaffirmation as you go through this process that your doors are open, that you are working, that if you just got the word August 10 or just got the word September 1, that you should hear that Mr. Feinberg's door is open, that you should

present your claim and I would argue vigorously, Mr. Feinberg, that you do a massive outreach. People live in all corners of Louisiana and Texas, and sometimes they are focused simply on getting bread on the table. And it is amazing, and I think you knew it, in Hurricane Katrina there are people still trying to organize a complaint. Maybe in the 9/11 you have some aftermath. I just want to make sure that is going to happen.

Mr. FEINBERG. Will do.

Ms. JACKSON LEE. Thank you for your testimony. Thank the witness for his generosity in his time. Without objection, Members will have 5 legislative days to submit any additional written questions for you, which we will forward and ask that you answer as promptly as you can to be part of the record. Additionally, let me thank you on behalf of the Members for your agreement to work with a number of us. We will reach out to you on legislative fixes and reviews.

Finally, the record will remain open for 5 legislative days for the submission of other additional materials.

The hearing is now adjourned.

[Whereupon, at 12:50 p.m., the Committee was adjourned.]

