

**GULF COAST RECOVERY:
PRESIDENT OBAMA'S BP
COMPENSATION FUND:
HOW IS IT WORKING?**

OVERSIGHT HEARING

BEFORE THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

Thursday, October 27, 2011

Serial No. 112-77

Printed for the use of the Committee on Natural Resources



Available via the World Wide Web: <http://www.gpoaccess.gov/congress/index.html>
or

Committee address: <http://naturalresources.house.gov>

U.S. GOVERNMENT PRINTING OFFICE

70-955 PDF

WASHINGTON : 2012

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 NATURAL RESOURCES

DOC HASTINGS, WA, *Chairman*
EDWARD J. MARKEY, MA, *Ranking Democrat Member*

Don Young, AK
John J. Duncan, Jr., TN
Louie Gohmert, TX
Rob Bishop, UT
Doug Lamborn, CO
Robert J. Wittman, VA
Paul C. Broun, GA
John Fleming, LA
Mike Coffman, CO
Tom McClintock, CA
Glenn Thompson, PA
Jeff Denham, CA
Dan Benishek, MI
David Rivera, FL
Jeff Duncan, SC
Scott R. Tipton, CO
Paul A. Gosar, AZ
Raúl R. Labrador, ID
Kristi L. Noem, SD
Steve Southerland II, FL
Bill Flores, TX
Andy Harris, MD
Jeffrey M. Landry, LA
PJon Runyan, NJ
Bill Johnson, OH
Mark Amodei, NV

Dale E. Kildee, MI
Peter A. DeFazio, OR
Eni F.H. Faleomavaega, AS
Frank Pallone, Jr., NJ
Grace F. Napolitano, CA
Rush D. Holt, NJ
Raúl M. Grijalva, AZ
Madeleine Z. Bordallo, GU
Jim Costa, CA
Dan Boren, OK
Gregorio Kilili Camacho Sablan, CNMI
Martin Heinrich, NM
Ben Ray Lujan, NM
John P. Sarbanes, MD
Betty Sutton, OH
Niki Tsongas, MA
Pedro R. Pierluisi, PR
John Garamendi, CA
Colleen W. Hanabusa, HI
Vacancy

Todd Young, *Chief of Staff*
Lisa Pittman, *Chief Counsel*
Jeffrey Duncan, *Democrat Staff Director*
David Watkins, *Democrat Chief Counsel*

CONTENTS

	Page
Hearing held on Thursday, October 27, 2011	1
Statement of Members:	
Hastings, Hon. Doc, a Representative in Congress from the State of Washington	1
Prepared statement of	3
Markey, Hon. Edward J., a Representative in Congress from the State of Massachusetts	3
Prepared statement of	5
Statement of Witnesses:	
Feinberg, Kenneth R., Gulf Coast Claims Facility Administrator	6
Prepared statement of	8
Response to questions submitted for the record	13

OVERSIGHT HEARING TITLED “GULF COAST RECOVERY: PRESIDENT OBAMA’S BP COMPENSATION FUND: HOW IS IT WORKING?”

**Thursday, October 27, 2011
U.S. House of Representatives
Committee on Natural Resources
Washington, D.C.**

The Committee met, pursuant to call, at 9:30 a.m. in Room 1324, Longworth House Office Building, Hon. Doc Hastings [Chairman of the Committee] presiding.

Present: Representatives Hastings, Thompson, Wittman, Fleming, Flores, Runyan, Duncan of South Carolina, Lamborn, Landry, McClintock, Southerland, Markey, Holt and Grijalva.

Also present: Representatives Bonner, Miller of Florida, Palazzo, Scalise and Jackson Lee.

Mr. HASTINGS. The Committee will come to order, and the Chairman notes the presence of a quorum, which under Rule 3[e] is two Members.

The Committee on Natural Resources is meeting today to hold an oversight hearing on “Gulf Coast Recovery: President Obama’s BP Compensation Fund, How Is It Working?” Under Committee Rule 4[f], opening statements are limited to the Chairman and the Ranking Member of the Committee. However, I ask unanimous consent that any Member that wished to have an opening statement inserted into the record do so before the close of business today, and without objection so ordered.

I also note that several Members of the Gulf Coast that are not members of this Committee have requested an opportunity to sit on the dais, and ask questions during that timeframe. We have requests from Mr. Bonner of Alabama, Mr. Miller of Florida and Mr. Palazzo of Mississippi, Mr. Scalise of Louisiana, Ms. Jackson Lee of Texas, and without objection those Members will be able to sit on the dais and ask questions at the appropriate time. Without objection, so ordered.

I will now recognize myself for my opening statement, and hopefully the Ranking Member will be here in a very timely manner, and I am sure that his staff is frantically emailing him right now in that regard.

STATEMENT OF HON. DOC HASTINGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. HASTINGS. Nearly a year and a half ago, President Obama called BP to the White House for a meeting that resulted in the President personally announcing an agreement to establish a \$20 billion Presidential-BP Compensation Fund. At the time, the President assured those affected by the *Deepwater Horizon* disaster and oil spill that legitimate damages would be paid, and I quote, “quickly, fairly and transparently.”

When President Obama announced the appointment of Mr. Ken Feinberg as Administrator of the Compensation Fund, there was no doubt Mr. Feinberg had a difficult task ahead. The impact to the Gulf's local economy, as well as the environment, was very real and there are certainly many moving pieces involved in evaluating real damage to victims filing claims.

To date, nearly one million claims have been filed by over 500,000 claimants, while roughly 95 percent of all the claims have been processed. Processed means rejected, accepted or turned back to the claimant for more information. Processed does not mean paid.

Of the over half a million claimants that have filed claims with the Gulf Coast Claims Facility, just a little over 200,000 have been paid, or around 39 percent. Quite frankly, I have heard from many of my colleagues on both sides of the aisle from the Gulf states that the number is simply unacceptable to the people whose livelihood was disrupted by this disaster.

During the aftermath of the *Deepwater Horizon*, we constantly heard from President Obama that BP would be held fully responsible for the damages in the Gulf, yet that does not appear to be the case with the claims filed with the Compensation Fund. Under the terms of the agreement agreed to and announced at the White House, BP appears to have no responsibility further than simply writing a check.

When President Obama announced the creation of the Compensation Fund, he accepted BP's \$20 billion, held a press conference and exempted the company of responsibility to make certain Gulf families and small businesses whole. In announcing this Fund, the President specifically heralded that it was an independent body accountable to no one, the sole responsibility of Mr. Feinberg.

However, the Congress has an obligation to ensure that this Fund is operating properly and fairly so that the people of the Gulf are made whole for the harm caused to them and that the economy of the Gulf is to get back up and running again. I want to note it is not absolutely clear if the Fund is actually under the jurisdiction of this or any other Congressional Committee, and I as Chairman appreciate the willingness of Mr. Feinberg to come and to sit before this Committee today.

Today there is a large hole in proper oversight and accountability to ensure legitimate claims are getting the attention they deserve and that the process of administering payments is conducted in a timely manner. There is an appropriate effort in Congress to direct an open, transparent audit of the Fund, and I certainly hope and expect that the Fund will comply. And it can be expected that the Committee will continue to appropriately conduct oversight into the process, payments and operation of the Fund in order to ensure that there is a transparent and fair pay system.

So this hearing then is an opportunity to peer into that process that, for the most part, has flown under the radar of proper public oversight. We are pleased to have Mr. Feinberg, as I stated earlier, as our witness, and I look forward to hearing his comments and discovering if there is anything Congress can do to help make his

job easier and get deserving, legitimate claimants their due compensation.

And with that I yield to the distinguished Ranking Member, Mr. Markey.

[The prepared statement of Mr. Hastings follows:]

**Statement of The Honorable Doc Hastings, Chairman,
Committee on Natural Resources**

Nearly a year and a half ago, President Obama called BP to the White House for a meeting that resulted in the President personally announcing an agreement to establish the \$20 billion Presidential—BP Compensation Fund. At the time the President assured those affected by the Deepwater Horizon disaster and oil spill that legitimate damages would be paid “quickly, fairly, and transparently.”

When President Obama announced the appointment of Mr. Ken Feinberg as Administrator of the Compensation Fund, there was no doubt Mr. Feinberg had a difficult task ahead. The impact to the Gulf’s local economy, as well as the environment, was very real extensive and there are certainly many moving pieces involved in evaluating legitimate damage to victims filing claims.

To date, nearly one million claims have been filed by over 500,000 claimants and while roughly 95 percent of all claims have been processed—which means rejected, accepted, or turned back to the claimant for more information—processed does not mean paid.

Of the over half a million claimants that have filed claims with the Gulf Coast Claims Facility, just a little over 200,000 have been paid—or almost 39 percent. Quite frankly, I’ve heard from many of my colleagues, on both sides of the aisle, from Gulf states that this number is simply unacceptable to the people whose livelihoods were disrupted by this disaster.

During the aftermath of the Deepwater Horizon, we constantly heard from President Obama that BP would be held ‘fully responsible’ for the damages in the Gulf. Yet, that is not the case with the claims filed with the Compensation Fund. Under the terms of the agreement agreed to and announced at the White House, BP appears to have no responsibility further than writing a check. When President Obama announced creation of the Compensation Fund, he accepted BP’s \$20 billion, held a press conference, and exempted the company of responsibility to make certain Gulf families and small business were made whole.

In announcing this Fund, the President specifically heralded that it was to be an independent body, accountable to no one—the sole responsibility of Mr. Feinberg. However, the Congress has an obligation to ensure that this fund is operating properly and fairly so that the people of the Gulf are made whole for the harm caused to them and that the economy of the Gulf is back up and running.

It’s not absolutely clear if the Fund is actually under the jurisdiction of this or any Congressional Committee and as Chairman I appreciate the willingness of Mr. Feinberg to come and sit before the Committee today.

Today there is a large hole in proper oversight and accountability to ensure legitimate claims are getting the attention they deserve and that the process of administering payments is conducted in a timely manner. There is an appropriate effort in Congress to direct an open and transparent audit of the fund and I certainly hope and expect that the Fund will comply. And it can be expected that the Committee will continue to appropriately conduct oversight into the process, payments and operations of the Fund in order to ensure that there is a transparent and fair payment system.

This hearing is an opportunity to peer into a process that, for the most part, has flown under the radar of proper public oversight. We are pleased to have Mr. Feinberg as our witness and I look forward to hearing his comments and discovering if there is anything Congress can do to help make his job easier and get deserving, legitimate claimants their due compensation.

**STATEMENT OF HON. EDWARD MARKEY, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF MASSACHUSETTS**

Mr. MARKEY. Thank you, Mr. Chairman, very much. The focus of today’s hearing is to examine the Compensation Fund set up for the residents of the Gulf Coast who were harmed by the BP spill. However we address that question, I think it would be instructive

to consider what doesn't work when it comes to compensating people affected by an oil spill.

The 1989 Exxon Valdez ran aground in Prince William Sound off of Alaska. The ruptured single hull tanker belched up to 750,000 barrels of oil into the frigid waters, killing wildlife and harming the fishing industry. For the citizens of Alaska who lived near the spill, the event itself was just the first part of an ongoing nightmare. Commercial fishing businesses shuttered. Recreation and tourism dollars were lost.

Exxon meanwhile immediately entered into a position of aggressive litigation rather than financial mitigation for the people affected. Exxon fought the initial \$5 billion judgment by Alaska's courts for years, all the way to the United States Supreme Court. In 2008, nearly two decades after the spill, the Supreme Court finally held Exxon accountable for about \$500 million in punitive damages to the victims and an additional \$500 million of interest on those damages.

The litigation went on for so long that nearly 20 percent of the 32,000 victims seeking compensation had passed away before the final ruling against Exxon. And to top it all off, the first credit default swap ever created stemmed out of the Exxon Valdez spill. JPMorgan Chase bankers created the now infamous financial mechanism to hedge their own liability after staking nearly \$5 billion in credit to Exxon to credit the company's potential payouts. Subsequent credit default swaps went on to play a critical role in igniting the financial crisis of 2008.

Now let us take a look at the BP Compensation Fund. Within two months of the start of the spill, President Obama secured a commitment from BP to set aside \$20 billion to begin immediately compensating the American people and businesses affected by the spill. Ken Feinberg, who managed the victim funds following the September 11, 2001, attacks and the Virginia Tech shootings, was asked to take charge of the Fund, and he was given complete independence to run it.

By late August of last year, Mr. Feinberg and his team were accepting claims and soon paying for lost wages and other economic impacts. Through this Fund, people were compensated in timeframes closer to days rather than decades. The Exxon Valdez led to the invention of the credit default swaps, but with the BP Compensation Fund the only question is how quickly could Mr. Feinberg find a way to deal with these issues.

Unfortunately, there were some who said that this Fund accounted to Chicago-style shakedown politics, but at a pivotal time in our nation's history when an oil rig sank to the bottom of the ocean and oil washed up on our shores, this Fund kept families and businesses afloat. More than 200,000 residents and businesses have been paid roughly \$5.5 billion so far this year. Thousands of new claims are still coming in every week as people see their neighbors being made whole.

I have been quite critical of BP for many things associated with this spill, but here I believe the company did the right thing. And I really would like to thank the work done by Ken Feinberg. I think it is a model for how tragedies basically bring out the best in people, and, Mr. Feinberg, you demonstrated that as you did in

creating a climate that brought out the best of the people in the Gulf of Mexico in trying to resolve these issues as well.

And finally, I would like to thank the Chairman for scheduling the additional day of testimony that I and my fellow Democratic Members on the Committee requested on the BP spill and the government's Joint Investigative Team Report. The Minority has requested that the Committee invite the CEOs of the companies involved in the *Deepwater Horizon* disaster—BP, Halliburton, Transocean and Cameron.

It is imperative that we receive testimony from the top executives at these companies as this Committee evaluates the findings and recommendations in the government's report, and I thank you for working with us, Mr. Chairman.

[The prepared statement of Mr. Markey follows:]

**Statement of The Honorable Edward J. Markey, Ranking Member,
Committee on Natural Resources**

The focus of today's hearing is to examine the compensation fund set up for the residents of the Gulf Coast who were harmed by the BP spill. However, before we address that question, I think it would be instructive to consider what doesn't work when it comes to compensating people affected by an oil spill.

In 1989, the Exxon Valdez ran aground in Prince William Sound off of Alaska. The ruptured, single-hull tanker belched up to 750,000 barrels of oil into the frigid waters, killing wildlife and harming the fishing industry.

For the citizens of Alaska who lived near the spill, the event itself was just the first part of an ongoing nightmare. Commercial fishing businesses shuttered. Recreation and tourism dollars were lost.

Exxon, meanwhile, immediately entered into a position of aggressive litigation, rather than financial mitigation for the people affected.

Exxon fought the initial \$5 billion judgment by Alaska's courts for years all the way to the United States Supreme Court. In 2008—nearly two decades after the spill—the Supreme Court finally held Exxon accountable for about \$500 million in punitive damages to the victims and an additional \$500 million of interest on those damages. The litigation went on for so long that nearly twenty percent of the 32,000 victims seeking compensation had passed away before that final ruling against Exxon.

And to top it all off, the first credit default swap ever created stemmed out of the Exxon Valdez spill. JP Morgan Chase bankers created the now-infamous financial mechanism to hedge their own liability after staking nearly \$5 billion in credit to Exxon to cover the company's potential payouts. Subsequent credit default swaps went on to play a critical role in igniting the financial crisis of 2008.

Now, let's take a look at the BP compensation fund.

Within two months of the start of the spill, President Obama secured a commitment from BP to set aside \$20 billion to begin immediately compensating the American people and businesses affected by the spill.

Ken Feinberg, who managed the victim funds following the 9–11 attacks and the Virginia Tech shootings, was asked to take charge of the fund. He was given complete independence to run it.

By late August of last year, Mr. Feinberg and his team were accepting claims, and soon paying for lost wages and other economic impacts.

Through this fund, people were compensated in timeframes closer to days rather than decades.

The Exxon Valdez led to the invention of the credit default swap. But it is Ken Feinberg who should be given due credit for the work he has done with compensating the victims of the BP spill.

After all, there were some who said last year that the creation of this fund amounted to "Chicago-style shakedown politics."

But at a pivotal time in our nation's history, when an oil rig sank to the bottom of the ocean, and oil washed up on our shores, this fund kept families and businesses afloat.

More than 200,000 residents and businesses have been paid roughly \$5.5 billion dollars thus far. Thousands of new claims are still coming in every week as people see their neighbors being made whole. I have been quite critical of BP for many things associated with this spill, but here I believe the company did the right thing.

Finally, I'd like to thank the Chairman for promptly scheduling the additional day of testimony that I and my fellow Democratic Members on the committee requested on the BP spill and the government's Joint Investigative Team report. The Minority has requested that the Committee invite the CEOs of the companies involved in the Deepwater Horizon disaster—BP, Halliburton, Transocean and Cameron. It is imperative that we receive testimony from the top executives at these companies as this Committee evaluates the findings and recommendations in the government's report. I look forward to working with you, Mr. Chairman, to ensure that this Committee can hear this important testimony from these witnesses.

And with that, I yield back.

Mr. HASTINGS. I thank the gentleman for his opening statement. We have only one witness today. We have Mr. Ken Feinberg here. Mr. Feinberg, you are the Administrator of the Gulf Coast Claims Facility. As both of us noted, you have a very difficult task, and we look forward to your testimony.

You have been here before, and you know all of them work about the same way. Your full statement will appear in the record, but if you could hold your oral arguments to five minutes because I know you want to get out of here no later than noon. We will probably have votes before then. But the green light means you are doing fine. The yellow light means that you have one minute. The red light means that the five minutes are up.

Mr. Feinberg, you are recognized for five minutes.

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

Mr. FEINBERG. Mr. Chairman, thank you, and I thank the Ranking Minority Member. I very much appreciate the invitation. It took me about two seconds to agree to appear. I think it is important that these issues be explored by the Congress and by this Committee. So it is about my sixth visit to the House and the Senate, and I am glad to be here to talk about the Fund.

Let me give a few statistics, which I think are very, very telling. In the 14 months that we have administered this Fund, we have received just about one million claims from 50 states and 38 foreign countries. Build it, and they will come. There are some very creative claims.

We have processed 95 percent. You are correct, Mr. Chairman. Not paid, but we have processed. We are current. We have processed 95 percent of the claims. It takes the initial contact to the claimant about 10 days to two weeks in almost all cases. We have distributed over \$5.5 billion—if you include outstanding offers we are waiting to hear from claimants, it is closer to \$6 billion—in just over one year. We have paid over 200,000 people, and we have honored 380,000 claims from all over the Gulf of Mexico.

As evidence of the success of this program, we receive still every week over 2,000 claims per week still rolling in to the Gulf Coast Claims Facility. This on average demonstrates I think there is a lot of support in the Gulf by residents who see that the program is working and are filing claims.

In the first three months, and this is important, we paid over \$2.5 billion in interim emergency claims, no release required, no waiver of any rights, a gift—a gift where the claimant received compensation and in return could sue, could come back to the Fund

again and again. This was in the first three months during the critical emergency period.

Since then we have paid another \$3 billion to claimants in the form of quick payments, interim payments, final payments. We give the claimant a choice. One hundred and thirty thousand people have chosen a quick payment, 63,000 people a final payment, 40,000 an interim payment with no obligation. They can keep coming back as long as they can document their damage.

Any praise about this program or any criticism about this program really should be directed at me and me alone. The Administration has largely taken a complete hands-off attitude, as the Ranking Member points out. BP has in no way interfered with my processing of these claims. I am out there on a limb, and if it works thank you, and if it fails I bear the brunt of that criticism.

The claims not only in terms of volume, but in terms of complexity, are apparent I think to anybody who examines the program. Now, why don't we pay every claim? There is an absence of documentation with many claims. Never mind no tax returns. Not much of anything. We receive thousands of claims, Mr. Chairman, with no proof; just a request to be paid.

Sometimes claims come in from Massachusetts or Minnesota or Sweden where there is simply no eligibility. I don't care what people attach. They are simply so far removed from the spill that the claim is too tangential.

We cannot pay by agreement with not me; agreement between the Administration and BP. We can't pay government claims. I have no jurisdiction over government claims. Unfortunately, I can't pay moratorium claims. Now, this is unfortunate. We have 1,600 moratorium claims. I have to send them to a special moratorium fund in New Orleans set up by BP. I have nothing to do with that, and it is unfortunate, but I can't pay those claims.

In terms of transparency, 1,500 people unhappy with my decisions either as to eligibility or damage have gone to the United States Coast Guard under the Oil Pollution Control Act and asked the Coast Guard to review my claim and make an independent determination. In every single case—every one—the Coast Guard has agreed with my determination, so I think we are doing something right.

In conclusion, the program is not perfect. Congressman Bonner is here, my most constructive, admired critic, and Congressman Bonner knows better than most the program is not perfect. We are doing our best.

My final point, and I am done. I want to reiterate what Congressman Markey said. There has never been a program like the Gulf Coast Claims Facility. I know in my experience of no example. President Bush did get the 9/11 Victim Compensation Fund enacted, to his credit, but that was public taxpayer money. This is the only program I know of in history where an Administration succeeded in convincing a corporation to admit wrongdoing and put up \$20 billion.

It isn't perfect, but I think overall we are doing our job, we are delivering on the President's promise, and I am proud to be here today.

[The prepared statement of Mr. Feinberg follows:]

**Statement of Kenneth R. Feinberg, Administrator,
Gulf Coast Claims Facility**

Mr. Chairman:

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

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

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

Even though the oil spill occurred some 18 months ago, the GCCF continues to receive on average about 2,270 new claims each week, convincing statistical evidence that the GCCF is accomplishing its mission in providing efficient, fair and generous compensation to the victims of the environmental disaster in the Gulf. Whatever constructive criticism may be directed at the GCCF, the current filing rate is proof positive that we are doing something right. Individuals and businesses victimized by the spill clearly are not hesitating in filing claims in unprecedented numbers with the GCCF.

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

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

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

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

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

All claim determinations are made by the GCCF without any interference from either the Administration, BP or any other interested parties. My work is monitored by the Department of Justice and BP, but, again, there has been absolutely no inter-

ference with the discretion of the GCCF in the processing of individual claims and making individual determinations of eligibility and damage.

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

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

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

The GCCF has received an incredibly diverse and complex number of claims from both individuals and businesses: death and physical injury claims; lost income and lost profit claims; subsistence claims; real and personal property damage claims; and removal and cleanup cost claims. We have received claims not only from fishermen, shrimpers, oyster harvesters, hotels, restaurants, real estate agents and developers and retail businesses, but also from builders, contractors, developers, dentists, veterinarians, chiropractors, and restaurants and businesses located thousands of miles from the site of the spill. All are being processed. As already indicated, the GCCF is generally current when it comes to notifying claimants about the status of their claim: the calculated amount to be paid and why; reasons why the claim is denied; or reasons why the claim may yet be eligible for payment but lacks the minimum documentation necessary for the GCCF to pay the claim. If a claim is deemed deficient, the claimant is invited to work with the GCCF in supplementing the individual file in order to make the claim payable.

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

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

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

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

- a. We have retained the services of seven local professional organizations, including lawyers and claims processing experts in each impacted Gulf state, to as-

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

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

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

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

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

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

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

Attachment A

GCCF		Gulf Coast Claims Facility	
		www.GulfCoastClaimsFacility.com	
Overall Program Statistics			
(Status Report as of October 21, 2011)			
All Claimants		No. of Claimants	
Total All Claimants		(Claims: 993,217)	
(This is a unique count that includes all Emergency Advance Payment Claimants)		549,503	
1. Individual		435,797	
2. Business		113,706	
Claimants Represented by Counsel: 68,132			
Current Claimant Status		No. of Claimants	
Interim and Final Claimants - Phase II (This report reflects Claimants' current status as of the report date; therefore each Claimant is only represented in one category below.)		350,318	
Reviewed - Phase II Only		333,233	
1. Final Payment Issued		180,206	
a. Quick Payment		124,901	
b. Full Review		55,305	
2. Final Release Accepted/Pending Payment		864	
3. Final Offer Acknowledged/Pending Accepted Release		4,654	
4. Final Offer Made		11,326	
With Interim Payment (5,032 out of these 11,326 Final Offers)			
5. Other Claim Determinations:		136,183	
a. Claimants Without an Established Loss		12,710	
b. Withdrawal Requested		485	
c. Claimants Notified Additional Information Required		17,698	
d. Claimant Denied		105,290	
Under Review		17,302	
1. Phase II - Interim & Final		17,085	
2. Phase I - EAP Unresolved / Under Review (Claims Subject to Liens, Audit Holds, etc.)		217	
Claimants with Resolved EAP Submissions		448,266	
(Many EAP Claimants have re-filed in the Phase II Interim and Final Claim Stage)			
Paid Claimants		Total Amount Paid	
Total Unique Claimants		213,068	
1. Quick Pay / Full Review / Interim Payment		\$ 5,423,651,963.19	
a. Individual		\$ 2,840,087,475.31	
b. Business		\$ 1,080,575,412.87	
2. Emergency Advance Payment (EAP)		\$ 1,759,512,062.44	
a. Individual		\$ 2,583,564,487.88	
b. Business		\$ 1,020,765,083.50	
Separate Fund for Real Estate Brokers and Agents		\$ 1,562,789,404.38	
		\$ 54,434,574.75	
		Total Paid: \$ 5,478,086,537.94	
Quick Pay Final Payments		Claimants with Filed Claims	
Total Quick Pay Final Payments		127,313	
1. Individual		94,741	
2. Business		32,572	
Interim Payments		Reviewed Claimants	
Total Interim Payments		126,358	
1. Individual		94,128	
2. Business		32,270	
Full Review Final Payments		Paid Claimants	
Total Full Review Final Payments		124,901	
1. Individual		93,120	
2. Business		31,781	
Amount Paid		Amount Paid	
Total Quick Pay Final Payments		\$ 1,259,515,000.00	
1. Individual		\$ 465,865,000.00	
2. Business		\$ 793,650,000.00	
Amount Paid		Amount Paid	
Total Interim Payments		\$ 378,192,732.74	
1. Individual		\$ 133,230,648.10	
2. Business		\$ 244,962,084.64	
* Details on Interim Claimants, including Status are reflected on Page 10 of this report			
Full Review Final Payments		Claimants with Filed Claims	
Total Full Review Final Payments		143,571	
1. Individual		111,163	
2. Business		32,408	
Amount Paid		Amount Paid	
Total Full Review Final Payments		\$ 1,202,379,742.57	
1. Individual		\$ 481,679,764.77	
2. Business		\$ 720,699,977.80	
Full Review Final Payment Offers		Offers Made	
(Includes all Offers with Release Accepted and Final Payment Issued)		Amount Offered	
Total Final Offers		63,133	
1. Final Offers: Individual		\$ 1,308,038,852.89	
2. Final Offers: Business		\$ 524,440,175.89	
		43,852	
		\$ 1,167,710,326.05	
		19,271	
		\$ 866,625,535.37	
Overall Program Statistics (1 of 10)			

Attachment B

GCCCF

Gulf Coast Claims Facility
GULF COAST CLAIMS FACILITY**GCCF - Overall Statistics**
(as of October 21, 2011)

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

**Response to questions submitted for the record by Kenneth R. Feinberg,
Administrator, Gulf Coast Claims Facility**

QUESTIONS FROM REPRESENTATIVE LAMBORN (CO-05)

Q. 01: There have been many complaints by claimants that their supporting paperwork has been lost by GCCF or that claims have been unfairly denied or the processing has been unreasonably delayed. Paragraph 63 of the FAQs on the GCCF website states as follows:

“63. What if my claim is missing any documents needed to prove my Interim Payment Claim?

If you fail to submit the required documents to prove your losses or injuries, you will not be paid for them in an Interim Payment. *The GCCF will not send any deficiency notices to you to notify you of any documents missing from your file.* Instead, your losses will be determined solely on the basis of the documents you have submitted.” (Emphasis in original).

- a.) How is a claimant supposed to know that a ‘required document’ is missing from his claim if the GCCF policy is to refuse to notify the claimant of the deficiency?
- b.) Doesn’t Paragraph 63 violate **Section 15 Claimant Bill of Rights**, Paragraph 134 which states: ” If the GCCF needs additional information in order to decide your claim, the GCCF will notify you in a timely manner of the request for additional information” and otherwise run counter to your goal to “maximize compensation” as you stated at the hearing?

A. 01: The assertion that the GCCF has lost “supporting paperwork” submitted by claimants is overblown and exaggerated. With over one million claims having been filed with the GCCF, there may be some isolated instances of lost paperwork. Even in such cases, this most likely occurred during the months of June, July, August and September 2010, when multiple data transfers occurred during the transition from the BP claims process to the GCCF. As a general rule, there is not an ongoing problem of lost “supporting paperwork.”

- a) Deficiency letters sent to claimants by the GCCF beginning February 2011 do inform all claimants as to any documentation that might be missing in order to afford the claimant an opportunity to submit such additional documentation.
- b) Let me clarify the GCCF policy. If the GCCF needs additional information to determine eligibility for an interim payment, the claimant will receive a deficiency letter. In regard to any missing financial data, the GCCF identifies such missing data in the Attachments to the Determination Letters and calculates the offer on the information provided.

Q. 02: During your opening remarks, you were emphatic in stating that compensation awarded to victims of the BP oil spill under the Emergency Advance Payment Program was “a gift..a gift” from BP. How can you possibly characterize these compensatory payments to those who suffered so greatly from the oil spill as “a gift” both as a matter law and policy?

A. 02: The Emergency Advance Payment Program constitutes a “gift” only in the sense that it does not impose on any claimant the obligation to relinquish any right to sue or return to the GCCF for additional compensation. It carries with it no obligation whatsoever. Only if a claimant returns to the GCCF for a Quick Payment or a Final Payment, must the claimant agree not to sue or return to the GCCF for additional compensation.

Q. 03: Claimants who elect to receive a final payment from the GCCF are required to sign a release and covenant not to sue not only BP companies, but also approximately 100 other companies that may also be liable to the claimants for their injuries and damages. These companies have not contributed to the BP Settlement Fund, nor have they been found to be “responsible parties” under the Oil Pollution Act (OPA) like BP has. Why should claimants forego any claims they may have against these other companies which have not given any consideration to the claimants for agreeing to release them from liability; what is the legal basis for you requiring them to do so; and did BP or the White House approve this release form?

A. 03: A GCCF Final Payment does require that the claimant release not only BP, but all other codefendant companies, from suit. First, the claimant’s Final Payment is in full satisfaction of all damages, not just damages attributable to BP. The pur-

pose of the Final Payment Program is to make the claimant “whole” when it comes to alleged damage. Second, there is no point in providing BP a partial release, if other companies can be sued only to then cross claim against BP seeking additional compensation. Since the claimant has received 100% of his/her damage in compensation from the GCCF, a full release is required. Neither BP nor the White House had any final authority in approving or rejecting the release form.

Q. 04: During the hearing, you stated that your goal is to “maximize compensation” to the victims of the oil spill. If that is so, why are claimants required to forego either initiating new or continuing their current litigation against BP and the other companies under federal and state law for compensatory and punitive damages if they elect to receive a final payment from the GCCF? After all, any award by a court greater than the amount you determined the claimant should receive would be reduced or offset by the amount of your award, and thus, a claimant would be in a position to “maximize” the compensation.

A. 04: See my answer in 3 above. Since the claimant has received 100% of the compensation he/she is entitled, there is no reason to continue to permit litigation to recover additional amounts. Also, there is no obligation whatsoever that a claimant be required to accept a Final Payment. Interim Payments, like Emergency Advance Payments, are an alternative, requiring no release and permit the claimant to return to the GCCF for additional compensation. Finally, any claimant who is dissatisfied with an offer from the GCCF may reject that offer, submit their claim to the United States Coast Guard or elect to sue. The choice is up to the claimant.

Q. 05: In response to questions from several State Attorneys General regarding your independence from BP, you posted on the GCCF website a letter dated December 28, 2010 from Professor Stephen Gillers from NYU Law School that you requested, which concludes on page 8 that you are not BP’s lawyer “nor are you its agent.”

a.) If you are not an agent of BP as Professor Gillers concludes, how does that square with the opening paragraph of the GCCF Release and Covenant Not to Sue form that the *“GCCF and its Claims Administrator, Kenneth R. Feinberg, are acting for and on behalf of BP Exploration & Production, Inc. in fulfilling BP’s statutory obligations as a “responsible party” under the OPA.”* (Emphasis added)?

A. 05: a) The language referenced in your question refers to the obligation of the GCCF to stand in the shoes of BP when it comes to the legal procedures required by the Federal Oil Pollution Control Act. Under that Act, claimants must first come to the GCCF before seeking independent review of their claims from either the United States Coast Guard Liability Trust Fund or the courts. Professor Gillers’s reference makes clear that BP has no control or input into my independent decision making when it comes to individual claims. The federal court overseeing the OPA litigation against BP has confirmed this.

Q. 06: Considering the \$20 billion size of the GCCF, the public notoriety of the BP spill, and the unprecedented nature of the fund, can you explain why your law firm’s website Feinberg Rozen fails to mention your work on the GCCF but mentions other projects and cases that you and your firm handled as mediator? Do you have any idea why GCG similarly does not mention its work as a claims processor for the BP fund in its press releases or listing of other cases that it has worked on?

A. 06: The website of Feinberg Rozen, LLP will be made current by referencing—with pride—its work in designing, implementing and administering the GCCF.

Q. 07: Mr. Feinberg, I understand that you met with a group of clergymen within the Gulf Coast Region at the Windsor Court hotel over 8 months ago. Members of this group say that you have met, admirably, with its leadership over 15 times within the past year; telling them several times that you would pay the claims within a certain time. Can you provide an update on what the group describes as “underserved claims”?

A. 07: The GCCF has paid a few of the claims submitted by claimants working with “a group of clergymen within the Gulf Coast Region.” But, thousands of other claims cannot be paid at this time until and unless they are accompanied by the minimal proof necessary to prove the claim. The GCCF continues to work with representatives of this group in an effort to secure this minimal proof.

Q. 08: The GCCF website has a menu bar that includes a link for “Appeals Process.” That link informs claimants that they can appeal any interim or final payment, but only if the claim exceeds \$250,000.

- i. How many and what percentage of all claims that have been filed exceed \$250,000, how many have been appealed under this “Appeal Process” to a judicial panel, and what were the results.
- ii. During the hearing and in your testimony you stated that 1,486 payment determinations were appealed to the Coast Guard under the Oil Pollution Act, and that every one that has been reviewed were upheld. However, the “Appeals Process” link does not provide claimants with information on how to submit such appeals. Will you modify your website to make it clear how claimants, regardless of the amount of their claim, can appeal your determinations to the Coast Guard? Does the Coast Guard review the claims *de novo* or do they defer to the GCCF’s determinations?

A. 08: i) The “Appeals Process” referenced in your question is not required by federal law and was included in the protocol of the Gulf Coast Claims Facility as an additional option for claimants and BP to consider. Federal law (OPA) already provides an option for another type of appeal of the GCCF decision by providing dissatisfied claimants with the opportunity to submit their claims to the United States Coast Guard and approximately 1,700 claimants have exercised that right. The GCCF’s public reports reflect numbers of claims paid in ranges of amounts of payment determinations. To date 1,089 claimants were paid \$250,000 or more constituting 0.19% of all claimants who submitted claims to the GCCF. The amount requested by claimants is not a meaningful statistic since the GCCF has received claimant requests for \$246 billion, \$20 billion and more than one claim for \$10 billion.

Only 27 claimants have requested access to the “Appeals Process.” Of the 27 claims that have been appealed by claimants, all but six have been resolved. As to the 1,640 claimants who have sought independent review from the Coast Guard, after review the Coast Guard has agreed in every single case with the GCCF’s determinations.

ii) The Appeals Process link on the GCCF website that you reference explains how claimants can file an appeal of a final determination with the GCCF. In addition, the Frequently Asked Questions on the website as well as every letter sent to a claimant explains that if a claimant disagrees with the GCCF’s decision on an Interim Payment or Final Payment claim, the claimant has the right to submit the claim to the National Pollution Funds Center (“NPFC”) or alternatively to a court. The GCCF website as well as all letters to claimants provides claimants with the address of the NPFC as well as the NPFC website for further information regarding the procedure for filing a claim with the NPFC. The Coast Guard reviews the claims *de novo*.

Q. 09: Attached is also a letter with questions submitted to the Committee on Natural Resources.

November 1, 2011

Mr. Feinberg,

Our claim # with the GCCF is/was 1185881. We would like a definitive answer as to why the GCCF has denied our claim stating that there was not a connection between our losses and the BP oil spill. This company was founded in 1986 and incorporated in 1995. All we manufacture pertains to salt water fishing and to be more specific, blue water saltwater fishing. To be clear, blue water is the area off shore that is not normally stained from tidal currents. All of the products we manufacture are specifically for the blue water fisherman.

We are a manufacturer. We are not a wholesale or retail store. Our business is linked 100% to the Gulf of Mexico and the fishing tackle shops and the fishermen therein. We cannot remotely comprehend that the GCCF has stated that there is no connection between this company’s financial losses and the BP oil spill. Nothing could be further from the truth.

Every coastwise fishing tackle store in the Gulf of Mexico sells our Patented “Bandit Buoy, our chum baskets, our chums or our Patented “Quick Change” lead. To make matters even worse, The GCCF has settled claims with many of the tackle shops that carry our products. How can they say that our losses are not connected when they have settled with the very people that sell our products?

This business is seasonal and temperamental at best with all the fluctuations in weather, fuel prices and fishing regulations. It is imperative that we make our sales in due season. In 2010 that due season was taken from us.

Our first question to Mr. Feinberg is: How can you state that there is no connection to our losses and the BP oil spill when all that we do and have done for over 20 years is directly and emphatically tied to the Gulf of Mexico? Secondly, question is: Have you even looked at anything pertaining to this company? Finally, Can you tell the committee just exactly what the business function of the American Bandit Corp. is? (claim # 1185881).

During these already hard times B.P. and the GCCF has driven a nail straight into the heart of this company.

John T. Sims
American Bandit Inc.
PO Box 251
Bainbridge, GA 39818
229-248-1010
<http://www.americanbandit.com/>

A. 09: American Bandit Inc.—Claim # 1185881

This claimant—from Bainbridge, Georgia—requests “a definitive answer as to why the GCCF has denied our claim stating that there was not a connection between our losses and the BP Oil Spill.” It also inquires as to whether I have “looked at anything pertaining to this Company and whether I know “exactly what the business function of the American Bandit Corp. is?” As required by the Final Rules Governing Payment Options, Eligibility and Substantiation Criteria and Final Payment Methodology dated February 18, 2011: Section IV.3.c states the following:

“The GCCF has received claims from claimants residing outside of the Gulf States, claims from businesses located many miles from the Oil Spill, and claims from businesses that do not appear directly dependent on Gulf resources such as dentists, veterinarians, and chiropractors. Many of these claims comprise business activities that are more dependent on general economic conditions than on tourism or seafood harvesting on the Gulf Coast. In these cases (numbering in the thousands), the most exacting type of proof demonstrating an identifiable link between the asserted damage and the Oil Spill will be required. Claimants in this category may receive compensation by establishing loss, by passing the financial test that analyzes relative financial performance in the immediate pre-Oil Spill and post-Oil Spill periods, and by providing evidence that establishes the link between losses and the Oil Spill. For example, the claimant might provide documentation of cancelled orders for goods or services sold to a Gulf business; consistent sales in the past two years or more to a Gulf business that failed to recur due to the Oil Spill; bad debt written off and associated with failure to pay by a Gulf business; failure of a contractual arrangement involving a Gulf business that results in demonstrable lost sales or income; higher expenses or cost of goods due to having to obtain them from another vendor other than the traditional Gulf business; a specific termination of employment or reduction in wages that an employer confirms was as a result of the Oil Spill, etc. Examples of the type of evidence that may link a claimant’s loss to the Oil Spill are described in Attachment A. **Providing general financial information about losses sustained in 2010 after the Oil Spill will not be sufficient documentation for claimants in this category. Instead, proof will be required specifically linking the sustained loss to the Oil Spill.**”

This claimant was asked to provide the GCCF with the necessary documentation demonstrating his customer base was primarily in the Gulf area by providing a list of his dealers/customers in the Gulf. The claimant did not provide the necessary documentation and consequently the claim was denied. On October 28, 2011 we sent the claimant a follow-up letter to the denial (a letter the GCCF sends to all claimants who were denied payment of an interim or final claim) reminding the claimant that if it disagreed with the denial decision it could re-file its claim and provide the necessary documentation to allow the GCCF to evaluate and determine the claim to be eligible.

Questions submitted on behalf of Gulf Coast constituents by Representative Jo Bonner (AL-01)

I appreciate the willingness of Chairman Hastings and the Committee to allow these questions to be inserted in the official hearing record. Additionally, I appreciate Mr. Feinberg’s willingness to answer them in what I hope will be an honest and straight forward manner. These narratives and questions come from constituents along the Gulf Coast who have directly experienced the failings of the GCCF, and get at many of the systemic problems that have existed since its inception. In the past, Mr. Feinberg has attempted to deflect efforts to address these problems,

and instead has tried to focus on the specifics of an individual case saying, "Get me that information and I'll look into it personally."

In this case, Mr. Feinberg, I would ask instead that you read and absorb what follows, and formulate concrete and truthful answers to the questions posed. The people of the Gulf Coast deserve nothing less.

Q. 10: The facts surrounding this situation are really not that complex, but the response and lack of resolution that this situation illustrates clearly demonstrate problems with the operations of the GCCF at all levels. The questions raised by my experience are many and profound when taken in the light of the mandate to the GCCF, the protocol established by the GCCF, and the public impression that Mr. Feinberg continues to communicate on a regular basis about the effective and efficient job the GCCF is doing.

The story begins with my ownership of three separate businesses that were impacted by the Oil Spill. One is an RV Park located on Mobile Bay and the other two are rental condominiums at the beach. All three businesses are appropriately licensed and are owned by separate LLCs. All three businesses suffered significant losses from the oil spill, have appropriate documentation that was submitted to the GCCF, and all were paid compensation during the emergency payment time frame with BP and with GCCF. Although the emergency payment process was slow, ineffective, and inefficient, the results did finally deliver payment of initial emergency compensation for a portion of my losses for all three businesses by December 2010. In early January 2011, following the protocol established by the GCCF, I filed for final payments for all three businesses. Since that time, my experience has been horrendous, and despite the efforts of myself, Congressman Bonner's office, and Greg Hawley (GCCF), no resolution has been provided by the GCCF. Questions about my claims started to be raised by me in May 2011, and have escalated from the ineffective local GCCF office to your office. I have made over 10 phone calls to the GCCF or its supposed representatives and have sent emails numbering over 12 from June 2011 to October 2011. It is my understanding that the highest levels within the GCCF are aware of my claims, and despite agreeing with the solution to my claims, the GCCF has elected to take no action as of today. Based on my experience with the GCCF, and the comparable experiences of many along the Gulf Coast, do you still believe your claims process is effective and efficient?

A. 10: Yes, I do believe that the GCCF claims process is effective and efficient. With over 1 million claims received in just 16 months, and payment of \$5.9 billion to over 219,000 claimants, and offers outstanding to claimants in the amount of \$364,191,573 we are doing something right. There may be some mistakes made when it comes to individual claims, inevitable in light of claims volume. I cannot speak to the facts of the individual claims submitted in this question without knowing first the name of the claimant and the claim number. But I believe there is a ready explanation for the issues posed in this question.

Q. 11: My question concerns disparity in your claims process. Why is an individual condo owner offered a Final Payment offer of \$25,000 as one business, while we own three condos in the same complex, suffered three times the monetary loss, are required to have three separate business licenses, and are offered a Final Payment offer of \$25,000 because we "filed under one social security number"? This process is flawed and makes no sense. The Quick Pay and the Final Payment are the same, minus the reams of paperwork you required to be filed for a full "Final Payment Review." We were told by the GCCF in Gulf Shores, AL, to file all of our condo units under one social security number. I would like an explanation regarding the justification for how three individual condo owners can be offered \$25,000 each for their loss, while we, who own three condos, are offered the same compensation.

A. 11: There is no deliberate disparity in the claims process. A business claim is distinguished from an individual claim based on a decision of the claimant to treat the businesses as one or as three separate entities. Generally it is dependent upon the tax structure of the entity determines whether the claimant is a business, which files a Schedule C and deducts the expenses of the business. The quick pay and the final payment are not the same, require different proof, and are calculated differently. Three individual condo owners have established three different businesses

while this claimant has decided to own three condos under one business and tax filing entity. We follow the decision of the owner.

Q. 12: The main question we have is how can one person be paid a claim for a loss and two others with the exact same loss be denied? I would like to give you a little background as to why we feel certain we should be paid by the GCCF. My wife and I, my son, and my daughter and son-in-law all own rental homes at the exact same address. We all have the exact same business renting homes and we all suffered the exact same type of loss. My son and I were turned down for Interim Payments and for a Final Payment by the GCCF; however, my daughter and son-in-law were approved and did indeed receive an Interim Payment and a Final Payment from GCCF.

We do not see how GCCF/BP can approve one person for a claim and deny two others, doing the exact same business at the exact same location. Can you explain this lack of consistency?

A. 12: Similarly situated individuals are treated differently based upon their documented submissions and the arguments they make about eligibility. If we make a mistake in treating similar claimants, we will acknowledge the error and true up the claims. I cannot speak to the facts of the individual claims submitted in this question without knowing first the name of the claimants and the claim numbers. But apparent inconsistency may have a ready explanation tied to the nature of the proof.

Q. 13: My wife and I own 2 beachfront rental properties on Dauphin Island, AL. The homes are nearly identical in size, location, etc. and have been professionally-managed rental properties for quite a few years. We submitted identical applications to the GCCF on the first day it opened, August 23, 2010. Each claim had the appropriate documentation, including rental history, rental bookings, and rental cancellations, 1099s from previous years, and our income tax returns. Of these two identical claims, one was paid in full, without difficulty or question; the other one, again, nearly identical in all respects, has never been paid. You have been asked to address this discrepancy/failure by my wife and me at numerous public meetings, most recently on February 15, 2011, in Bayou La Batre, AL. You were also asked by a Mobile County Commissioner to meet with us about this. You told us that Jim Walker in your office would "look into it." We have left messages for Mr. Walker, but he has never returned our call.

I am still waiting for someone in your organization to "square up" my claim. Despite your public statements to me that you will "personally look into this," we have yet to hear from you. We have been waiting since February 15, 2011. If two identical claims are handled in such completely opposite ways, what does this say about your organizational and procedural consistency and your organization's ability to process claims generally?

A. 13: I cannot speak to the facts of the individual claims submitted in this question without knowing first the name of the claimants and the claim numbers. It may be a mistake or there may be a ready explanation which simply does not sit well with the claimant.

Q. 14: I first filed a claim with BP then with the GCCF and have received compensation during the emergency claim process that was established for my losses. This claim was for a beach rental home that I own individually. Subsequently, I submitted a final claim request on 1/6/2011 for final losses including my rental home losses and income losses that I suffered. On 3/22/2011, I was contacted by the GCCF and asked to submit additional documents which I completed at that time. No action occurred on my claim. I was contacted on 9/23/2011 again requesting further documentation. This request was specifically for my 2010 tax return and my 2011 rental experience. I once again submitted these documents and have not received any further communication from the GCCF. Why was my claim not paid in the time frame advertised on the GCCF website? If the claim was processed and paid by the standards the GCCF established, there would not have been a need for an additional request for information. Why did my claim not get processed per the GCCF protocol? It is now 11 months since my claim was initiated and almost a year and half since the disaster. Why has the GCCF not

performed as they were mandated to provide relief to those affected by the disaster in a timely manner? Why is the information regarding my claim not accurate and up to date on the GCCF website?

A. 14: I cannot speak to the facts of the individual claims submitted in this question without knowing first the name of the claimants and the claim numbers. The way this claimant describes the situation, the GCCF has clearly erred. But in my experience over the past year there is usually a ready explanation for the apparent discrepancy and delay.

Q. 15: Our Chamber of Commerce has lost sponsorship and advertising investments due to the economic disaster caused by the oil spill along the Alabama Gulf Coast. Our organization holds an annual fund-raising campaign and our claim reflected the amount of funds we were down from the previous year. We have received three letters of denial because we were not considered eligible. Our chamber does not have the resources (manpower or funds for CPA's) to pursue the claim. We continue to work extremely hard to recover from the financial loss by cutting back personnel which places additional demands and stress on an already overworked staff. My question is—Where does a not-for-profit (501 C6) business development and advocacy organization turn for help?

A. 15: A not for profit can seek compensation from BP itself, not the GCCF. Indeed, BP has just recently provided grants to various non-profits such as Catholic charities and United Way to assist in oil spill recovery efforts. In addition, BP has provided millions of dollars in grants throughout the Gulf region to help bring tourism back to the Gulf.

Q. 16: I was told to submit my job search and other, spill-related, minor out-of-pocket expenses. Your staff at the time told me, "No receipts please, just itemize them." They overlooked these payments on the first and second interim payments. Yesterday, I was told, "We now need all the receipts." I have lost my home and many of my smaller records are lost. I am on the verge of bankruptcy and living with a friend now because I could not pay the rent since my second quarter interim payment was 4 months overdue. Why have you and your staff lied about weekly changes to your methodologies? Do you believe the GCCF has operated in a consistent and open manner regarding its methodologies and procedures?

A. 16: Yes, I do believe the GCCF has operated in a consistent and transparent manner regarding its methodologies and procedures. I cannot speak to the facts of the individual claims submitted in this question without knowing first the name of the claimants and the claim numbers.

Q. 17: Your current protocols state that within 90 days of a valid claim being filed for interim payment the interim payment will be made. How many interim claims do you currently have under review beyond the 90-day payment timeframe? What does the claimant do if GCCF does not meet the 90-day payment schedule established by GCCF?

A. 17: It is a rare case that the GCCF has not responded within 90 days to an interim claim request. Most interim claims are processed within a few weeks. A processed claim is a claim that results in a payment, a request for additional information, a denial or a calculation of no loss. However, if a claim has been found deficient, the GCCF will seek additional documentation or other proof from the claimant before denying a claim. This final decision may be delayed beyond 90 days if, in fact, the claim remains deficient and we await additional proof from the claimant.

Q. 18: If the GCCF has completed its due diligence and fully evaluated a claim for an emergency advance payment, how long will it take GCCF to process and pay his interim payment after it has been filed?

A. 18: Payments for emergency advance payments have been made to 169,208 claimants by the GCCF. The EAP program ended last November 23, 2010. However, a pending claim for "interim payment" will be treated as an interim claim; payment usually occurs within two weeks after it has been processed and found eligible with appropriate documentation. The issue is not when the claim is "filed" but, rather, when it is deemed ready for payment or denial.

Q. 19: Why did it take the direct intervention of the United States Attorney General to get you to agree to an independent audit of the GCCF?

A. 19: On December 21, 2011, the Department of Justice selected the independent auditing firm of BDO to perform an independent evaluation of the GCCF.

Q. 20: What compensation is available to property owners that lost their rental properties to foreclosure because they could not rent them during the oil contamination and clean-up periods?

A. 20: The GCCF will pay compensation to property owners who can demonstrate realized losses from the sale of a property by providing documentation of pre and post spill contracts. The GCCF reviews all received claims and will review any and all documents regarding the circumstances of a foreclosure. We will review these on a case by case basis.

Q. 21: Why does the GCCF arbitrarily disqualify entire industries from participation in compensation from the GCCF? My business and many other professional businesses have been denied payment from the GCCF based on nothing other than an arbitrary designation of ineligibility due to our area of business. Medical, dental, financial services, insurance services, accounting services, and legal services have all been denied. In Gulf Shores, all businesses were impacted from the oil spill including my business. I submitted claims for emergency as well as final payments and was denied with no explanation. The documents that I submitted included all financial support for my loss and all tax returns. I even applied the financial test referred to in Appendix C of the GCCF final payment protocol that confirmed that my business qualified for reimbursement of losses and was eligible. Despite these documents, multiple meetings with the GCCF and its representatives including Mr. Feinberg, and passing the financial eligibility test referenced in Appendix C, I have been denied compensation from the GCCF. Why?

A. 21: The GCCF does not arbitrarily disqualify any claimant from GCCF compensation. But the critical issue remains—can the claimant demonstrate damage due to the oil spill? There are many industries and businesses that would never be able to demonstrate such a causal link in the courtroom; nevertheless, the GCCF has paid numerous such claims in situations where the industry or profession can provide such a link.

Q. 22: How do you measure claims “processed” and what does this term mean? In the GCCF process, what does the term “under review” mean? What is the total number of claims that have not been paid, and how do you account for the high number? How many claims have been awarded quick payment and how many final payment? Why are there so few payments (other than quick pay)? Why have there been so many refused payments? I have heard that there have been a lot of fraudulent claims. If this is true, how many of these fraudulent claims have been turned over for prosecution and how do these numbers relate back to the total number of claims not paid? Why have your claims left to process numbers risen from around 10,000 at the end of July to now over 17,000? How many claims has the GCCF paid in full (at the full requested amount)?

A. 22: “Processed” means that the claim has been filed, has been reviewed by the GCCF and is now ready for payment or, alternatively, has either been denied as ineligible or deemed deficient as lacking the necessary documentation to support the claim. When a claim is being considered it is “under review.” To date some 13,000 claims have not yet been processed; those that have not been paid have been determined to be either ineligible for lack of a link to the spill or lack of minimal proof to corroborate the requested damage. The GCCF has issued 129,453 quick payments and 63,585 final payments. Quick payments are preferred by some claimants either because they have already been sufficiently compensated through the Emergency Payment Program or the claimant can no longer provide minimal proof for further payments. The GCCF cannot pay claims that lack the bare minimum of proof required. There have been approximately 17,000 claims that were determined to be potentially fraudulent; after careful review internally by the GCCF investigative team, we have forwarded approximately 3,500 of these to the Department of Justice for further investigation and, where appropriate, formal prosecution. Although the number of claims to be processed remains steady, this is directly attributable to the advantages of filing with the GCCF. None of these claims currently in the queue in recent weeks have been delayed or slowed in processing. They will be processed within the 90 day period, probably sooner. Finally, the GCCF does not report how many claims are paid at the full requested amount (the requested amount is often meaningless; see my response to Question 8 above).

Q. 23: Deducting the small amount of claims that GCCF questions that may be fraudulent, what is the total amount of money claimants have requested for their interim payments to date? What was the total amount of money requested for emergency advance payments? What was the total amount of money actually paid to those claimants? What is the total amount of money to date GCCF has paid those claimants? Subtracting all payments made to claimants that have signed releases and those you think might be fraudulent, how much would the GCCF have to pay out if you were to pay in-full the balance of the claimants that have not been paid or signed releases?

A. 23: The GCCF does not report what claimants request, either in interim, full or emergency payment submissions. To date, the GCCF has paid \$2,583,962, 010 in emergency payments; \$1,293 735,000 in quick payments; \$ 450,838,713 in interim payments; and \$1,538,634,927 in final payments. The GCCF currently has \$385,362,000 outstanding in final payment offers.

Q. 24: At what point in this debacle was it determined that if a claimant filed an Interim Claim they could not file a Full Review Final Claim? Where on the website or in the documentation is this explained? In addition, on several occasions representatives at your call center have stated that if we did not want to continue receiving Interim Claims, we could file a Full Review Final Claim. Whether this is or is not the case, representatives are misinforming claimants, which is inevitably affecting their decisions regarding the claims process.

A. 24: A claimant may file both an interim claim and a final claim. Thousands have done so. The information can be found on the GCCF's website: www.gulfcoastclaimsfacility.com

Q. 25: I was recently told by the GCCF that you cannot submit another claim until the Determination Letter offer expires. Nowhere in any documentation is this listed as being the case. Was the representative who stated this lying?

A. 25: A claimant can reject a GCCF determination letter and then submit another claim. The claimant, not the GCCF, controls this decision.

Q. 26: How many claims have been paid to individuals who were not working at the time of the oil spill?

A. 26: The GCCF does not track how many individuals who received GCCF payments were unemployed at the time of the oil spill.

Q. 27: I am a major claimant and have been as frustrated as everyone else in their process. You have stated previously that if a large claimant wishes to meet with the accountant that is handling his claim, he can request a meeting and the accountant will be glad to meet with the claimant and review his claim and explain to him how his claim will be paid according to your current protocols. Once a request has been made, how long will it take for the claimant to have this meeting with your accountants or auditor?

A. 27: "Everyone else" has not been frustrated by the GCCF process. Once a claimant meets with GCCF accountants for tailored consideration of the claim, the claim will be paid depending upon how long it takes the claimant and the accountant to review the claim and provide the necessary information. I cannot speak to the facts of the individual claims submitted in this question without knowing first the name of the claimants and the claim numbers.

Q. 28: When GCCF has hired an expert to visit a claimant's site and review his operation and provides a report to GCCF, why does GCCF refuse to supply a copy of that report to the claimant? Do you have a procedure for a claimant to obtain a copy of an expert report that was made of his business? If so, please describe that procedure.

A. 28: A claimant is always entitled to examine any part of his/her own claimant file unless, of course, the report pertains to evidence of fraud and is part of an ongoing criminal investigation. In such cases, the investigative report is sealed unless it is forwarded to the Department of Justice. In all other situations, the claimant has complete access to the file.

Q. 29: After receiving a report and evaluation of the claimant's business by a GCCF expert and the GCCF paying an emergency advance payment, why does the GCCF not pay the claimant's interim payment within the GCCF 90 day protocol?

A. 29: The GCCF does pay interim payments within the GCCF 90 day protocol period unless, of course, the claim is deemed ineligible or deficient after initial "processing." There are other reasons for possible delays in payment, including potential fraud, inability to verify tax identification numbers, etc., but, as a general rule, it is rare for a claimant not to hear from the GCCF within the 90 day period.

Q. 30: As of November 1, 2011, how much money has been placed in your GCCF escrow account? How much of that money has been paid out for cleanup costs or to companies other than for lost wages for individuals and lost profit and income for businesses? How much accessible cash is left in the GCCF escrow account to pay lost wages for individuals and lost profit and income for business claimants as of November 1, 2011?

A. 30: The question asks the status of GCCF payments as of November 1, 2011. Included on the GCCF's website is the most current statistical information in response to the various questions regarding GCCF payments. As of January 18, 2011, \$5,925,749,856 has been paid to claimants. The bulk of this amount, approximately \$5.6 billion, has been paid for lost earnings or profits. The remainder has been paid to claimants for removal and clean-up costs and other related claims. Payments to government entities are also paid by BP from the escrow account. According to the latest BP public report, BP has paid out a total of \$7,843,227,405 (\$5,925,749,856 of that amount paid to business and individual claimants by the GCCF).

Q. 31: When are the responsible parties scheduled to place additional cash in your GCCF escrow account? How much do you anticipate will be deposited in your GCCF escrow account within the next 6 months and within the next year?

A. 31: Pursuant to the escrow agreement, BP is responsible for paying \$5 billion per year into the escrow account. BP has also agreed to honor any financial obligations imposed by GCCF claims determinations over and above the \$5 billion.

Q. 32: Do you have enough money in your GCCF escrow account to pay all outstanding claims from individuals for loss of earnings and businesses for lost earnings and profit if you paid them what they have requested? If the answer is no, how much money are you short?

A. 32: Yes, there are ample funds in the GCCF escrow account to pay any and all eligible claims. But, of course, there could not possibly be enough funds in the escrow account to pay claimants for "what they have requested." (See my response to Question No. 8.) It makes little sense to focus on claimant amounts that are "requested" when such amounts are often all out of proportion to damages actually suffered as a result of the oil spill.

Q. 33: Has the GCCF paid a claim in the amount of \$10 million without any documentation and at the request of BP?

A. 33: No. Last fall, the GCCF did pay \$10 million with documentation and at the request of BP.

Q. 34: Mr. Feinberg stated after claimant comments that every business has "unique" elements of damage; however, GCCF methodology does not allow small businesses without attorneys and under \$250,000.00 in claims any "unique" opportunity to prove their claims.

A. 34: Untrue. The GCCF Methodology permits small businesses (and all other claimants) to prove their individual claims based upon unique individual, often idiosyncratic, elements of damage. A large majority of business claimants engage in direct communications with the GCCF accounting staff during the course of review and evaluation of their claims. Any individual claimant is informed of the opportunity to ask for a tailored re-review of the claim to offer additional information unique to that claim.

Q. 35: We were told in the beginning by both BP claim adjusters and GCCF claim adjusters that utilizing 4 years of revenue would not only be more accurate but would ensure a quick payment turn-around. Further research into forensic accounting methods support the four years of data comparisons, discarding the highest and lowest years. If this is true, why does GCCF methodology utilize 2009 revenue as the primary source of projected revenue? In the case of our "unique" circumstances, our

2009 revenue was below normal because of eminent domain deadlines given to us from FDOT to relocate our business. Our attention to sales revenue had to be temporarily sacrificed in order to meet those deadlines, yet the GCCF continues to utilize projections based on 2009 revenue. What is the GCCF methodology regarding the use of revenue over a broader period than just 2009? Has the GCCF considered allowing claimants to use revenue from 2011 to justify their claim?

A. 35: The GCCF Methodology permits evaluation and analysis based upon other than 2009 revenue. Generally 2008, 2009 and pre-spill 2010 earnings and revenue are reviewed and evaluated. Depending upon the information available and provided by a claimant a "broader period than just 2009" is evaluated when it will benefit the claimant. The GCCF will also consider revenue from 2011 to justify a claim. I cannot speak to the facts of the individual claims submitted in this question without knowing first the name of the claimants and the claim numbers.

Q. 36: GCCF methodology does not allow for "unique" elements of small business income and expenses that are primarily fixed in reality. There is no labor to cut. We have no large sums of cash flows to support recent investments of expansion equipment, land and buildings. Small businesses operate differently than large publicly traded companies who have investors contributing to cash flow or who have large service areas. Our service areas are all local. Therefore, when utilizing a forensic approach in determining loss of income, percent damages should be calculated by using average gross profits added to the percent damage in gross revenue. The only opportunity that I will have to prove this reality is with a judge and jury because Mr. Feinberg is refusing to abide by his own stated words that every business has "unique" elements of damage.

A. 36: This statement fails to ask a question. I would reiterate that "every business has 'unique' elements of damage."

Q. 37: Failed start up of expansion within old or new businesses is not being given any considerations as damage—at least this is true for our claim. We invested about \$100,000.00 dollars in new equipment to expand our business. With zero help from our banking industry, we had no choice but to finance the start-up with cash flow from profits from the existing business operations. Our sales revenue for the first 4 months of 2010 was sufficient to support the start-up of this expansion equipment beginning in the summer of 2010. However, the economic damage of the spill created greatly reduced revenue, an inability to confidently project future revenue and insufficient cash flows, we could not start-up the expansion. This created a situation where we lost the client who was to operate the expansion and pay us a lease for the land, buildings and equipment recently purchased. Now we have no choice but to try and sell the equipment at a 65% loss. Why is the GCCF not allowing any consideration for these damages? Is there anyone at the GCCF that actually understands how businesses operate?

A. 37: The GCCF will allow consideration of any and all damage models advanced by individuals and businesses. The GCCF accountants are skilled in all areas of accounting including the expertise required in responding to claims submitted by startup companies or companies that were prepared to expand at the time of the oil spill. We will consider damages in these contexts.

Q. 38: I rent a condo in Panama City, Florida, where I work. I sell mobile home/manufactured housing. Our business was drastically affected by the oil spill for the simple reason that our customers were affected by the oil spill. Many customers and/or potential customers lost income, which affected their ability to purchase a home. The continued loss of income has affected their credit rating which in turn eliminates many from qualifying for a loan. When I and others in my line of work filed claims with the GCCF, we were told we had to apply to a special fund set up thru the real estate association of the state. When we contacted the real estate association we were told that the fund was only for licensed real estate agents. Mobile Home salespeople in Florida or Alabama are not real estate agents and as such we are not required to hold a real estate license. Even after sending the GCCF a letter from the real estate commission with the explanation why we were not eligible to file claims with them, we still received a denial from the GCCF stating that we were not eligible to file with the GCCF because we were real estate

agents. It is also my understanding that salespeople who sell time share condos were also similarly misclassified. Can you explain this discrepancy and what actions GCCF is taking to rectify this misclassification?

A. 38: Real estate agents and condo rental owners are all eligible to file a claim with the GCCF. Initially, all real estate agents were directed to special real estate funds that were established in each state to pay claims as deemed appropriate by the administrators of these local funds. However, at the conclusion of the emergency payment program, on November 23, 2010, the GCCF decided to invite all real estate agents, condo rental owners, and any other individual or business with a valid, eligible claim to file with the GCCF. These claims are evaluated under the same eligibility criteria as all other claims for lost earnings and profits. I cannot speak to the facts of the individual claims submitted in this question without knowing first the name of the claimants and the claim numbers.

Q. 39: My husband and I are musicians along the Gulf Coast. We lived in Orange Beach at the time of the oil spill and now reside in Loxley, Alabama. We suffered a major loss in income after the oil spill due to the loss in tourism in our area. We provided the Gulf Coast Claims Facility all information that was asked, including profit/loss statements, gig dates, venues that hired us, etc. We provided income information from previous years proving a clear drop in income after the oil spill. We personally know many other musicians and restaurant workers who were paid by GCCF for their losses. We, on the other hand, were denied.

We received a letter stating that GCCF could not see a correlation between our losses and the oil spill. This is ridiculous! There is absolutely a correlation. What in the world do we have to do to show a correlation? We make our living by playing music. We have no other jobs. It is what we do, and we are grounded in this area due to our home and family....it is not an option to move, nor would we want to or feel that we should have to. We want answers. We feel that you are holding onto money that should be given to people who were directly and negatively affected by the spill, including us. As far as the phone number to call on the GCCF website for questions regarding our claim, it is nothing but a run around. They could not tell me anymore about the status of my claim than I could find out for myself on the GCCF website. Even after speaking to a manager, no one knew anything.

This is an injustice to the people of the Gulf Coast. It is wrong and cannot be dismissed. We will not forget and will never give up in the fight for justice—it is imperative that you do what is right. We are not asking for anything more than what our actual loss was compared to other years. We were expecting a big summer in 2010 and instead we were barely able to feed ourselves.

A. 39: This statement fails to ask a question. I cannot speak to the facts of the individual claims submitted in this question without knowing first the name of the claimants and the claim numbers. However, if this claimant believes that she has proof demonstrating a link between her economic damage and the oil spill, she should present it to the GCCF and we will evaluate the claim.

Q. 40: The last Saturday of March 2011, I received a call from an accountant that was from the GCCF and was told that the amount I was to receive was \$600,000.00 plus for the interim payment and \$400,000.00 plus for the final payment. Then, suddenly, I was offered a "Quick Payment," though I did not submit one. I was told by a GCCF representative that the Quick Payment form was faxed in by me, though I sent it in later. After that, my interim payment stopped just as quickly as the Quick Payment form was received. Twice since April 5, 2011, this Quick Payment claim was looked at and denied.

Now some ninety days later, there is still no interim or final payment and my question is why? According to Mr. Feinberg, the shrimpers are now getting more money. Well, I sold the shrimp that these shrimpers caught—shouldn't I get be treated the same as these shrimpers? As least most, if not all of them, are back to shrimping, while I am sitting here having to live with a friend while awaiting my payment. Is the GCCF delaying my interim and final payment claim in the hopes that I will settle for much less than what I am owed through a Quick Payment?

A. 40: This statement fails to ask a question. I cannot speak to the facts of the individual claims submitted in this question without knowing first the name of the

claimants and the claim numbers. The GCCF does not delay Interim or Final payment requests in order to encourage the Quick payment option.

Q. 41: I have a pending claim before the GCCF, and I can tell you from personal experience GCCF's processing delays (deliberate or ineffective effort, it matters not) lead to desperation settlements by claimants, driving down BP's ultimate cost. GCCF never compensates for their delay which has wrecked many businesses' long-standing vendor relationships and individuals' credit. It will be a long time before our region can recover from these economic damages.

A. 41: This statement fails to ask a question. The GCCF strives to make any and all payments that are documented within 90 days. I cannot speak to the facts of the individual claims submitted in this question without knowing first the name of the claimants and the claim numbers.

Q. 42: I would like to take this opportunity to again ask why you use mixed-math methodology to lessen the claim amounts and to question why you stall claims for months on end to make sure claimants will accept any amount you offer so they can feed their children for a few days. I know your people are very competent and are following a well-orchestrated plan to save BP billions of dollars, which is why you are worth \$1.25 million a month to them.

The Deepwater Horizon oil spill was a disaster to the Gulf Coast states, but the Feinberg plan to make the people who lost their livelihoods "whole" has been catastrophic to hundreds of thousands of families in these states. They are not claim numbers to us. To us they are families—husbands, wives, children, mothers and fathers, and friends. The oil spill took their income, but you took their hope, their homes and properties. Some lost their families; all of us have lost our ability to start over because of your tactics to ensure we could never recover. You have declared each family worth a lifetime value of five thousand dollars, and each business that employed many families worth twenty five thousand dollars. My question to you is this, sir—How can you sleep at night, knowing that it is you, your methodology, your stalling tactics, your drive and tenacity that has brought millions of Americans to destitution?

My claim has been sitting in re-review since July 2011. In June you gave me a meager 1/3 payment for the first quarter interim claim. Ten days later I got a letter from you with no check but with a very low take it or leave it final claim offer. Then you posted 2 interim claim re-reviews on my GCCF web page and have now added my third quarter interim claim to the list as under review. Not a single word from GCCF since July. Incompetence? Five months to re-review is pathetically slow even for experts, or is it just your usual stall tactic to force me to take a pathetic offer and sign away any hope of recovering from the catastrophe that you initiated and orchestrated after the oil spill?

So many of us could have recovered if we had been able to keep our equipment, insurance, advertising, etc. I am only one of the 16 men that lost everything due to the GCCF's incompetent handling of the claims of a growing company that lost its customer base because of the oil spill.

Is your contract with BP fixed or incentivized? Do you make more money when you save BP money?

A. 42: I disagree with the substance and tone of the question. The GCCF has distributed about \$6 billion to well over 219,000 individuals and businesses in the Gulf in just the past fifteen months. There are no "stalling tactics" being imposed by the GCCF. If claims are delayed, there are legitimate reasons pertaining to eligibility and proof. My contract with BP is fixed. It does not depend at all on the number of claims paid or not paid. My compensation is in no way tied to claims rate or dollars distributed. I cannot speak to the facts of the individual claims submitted in this question without knowing first the name of the claimants and the claim numbers.

Q.43: I own a start-up that has been struggling to get back on track. We received a \$45,000 emergency payment which helped at the time but was not enough to become whole after so much time and effort. The problem has been the final offer. I spent over 5 years preparing to begin my company which I planned to expand across the southeast. We are a unique operation specializing in being the personal buyer for law firms, attorneys, physicians and business professionals in addition to serving the states farmers markets and as a wholesaler focused strictly on Fresh Gulf Shrimp and seafood.

I didn't just decide to start selling shrimp on the back of my truck, and I have extensive proof of our intent and affidavits for wholesale contracts as well as proof of the business model before and after the spill. We now operate out of a BP service station thru a sister company selling fresh Gulf shrimp cooked and uncooked in addition to their regular menu. We have a video of BP employees eating our seafood well after the spill when we tried to overcome the stigma to being building our business but the time just wasn't right as people were still afraid of the Gulf seafood.

Two BP employees were on video at my business making jokes about the oil spill while eating our product and it was very insensitive to our customers. We have struggled and tried since the spill to get this all going and will continue until we finally succeed even if it takes another decade. We may be a start-up, but we have built a solid following even with the negative reviews of the Gulf seafood. However, the recent media is starting to become like the Alaska spill and people are real concerned for the safety of Gulf seafood which may be worse now than in the past.

The problem has been the amount offered and the length of time it has taken to get a response. We finally got an offer far below the value of 1 single contract we had, and they have taken so long that I must take the offer or go completely out of business. I am frustrated we have to take an offer below what we wanted but if we don't I will have to just give up. If there are any options, could you please let us know as we do not want to sign a release as I feel we have been intentionally delayed so they could hope we got so desperate we would have to take their offer? When you do audits please look us up and hopefully this will all get overturned and we can claim the amount we should have received.

A. 43: I cannot speak to the facts of the individual claims submitted in this question without knowing first the name of the claimants and the claim numbers. But, the GCCF does offer Interim payments to any claimant who does not want to sign a release and would rather return to the GCCF for additional compensation until any future Gulf Region uncertainty is resolved. There is no reason for any claimant to sign a release if he/she would rather wait and accept Interim payments on a quarterly basis.

Q. 44: Do you believe GCCF's procedures and methodologies force claimants to accept low final payment offers out of desperation?

A. 44: No. GCCF procedures and methodologies do not compel claimants to accept low final payment offers out of desperation

Q. 45: The charge has often been levied that the GCCF hierarchy is oblivious to the culture and history of the Gulf Coast—it's people, history and industry—and is therefore incapable of adequately servicing their claims. How do you respond to that charge? Why did you not establish the GCCF headquarters on the Gulf Coast?

A. 45: I have made every effort to return again and again to the Gulf Coast—to local communities, town, and Parishes—to better understand Gulf Coast culture and the attitudes and values of Gulf Coast residents. I have participated in 37 Town Hall meetings throughout the Gulf region. In addition, the GCCF has retained a substantial number of local lawyers, claims administrators, accountants, and other citizens of the Gulf region to help claimants by staffing local claims offices. I do agree that there is a history and culture unique to the Gulf; but the GCCF has undertaken major strides to better understand the region and its citizens.

Q. 46: Can you describe your process for hiring and training auditors at GCCF locations? What are the minimum criteria required to perform that job? With how many outside auditing firms has the GCCF contracted, and where are they located?

A. 46: The GCCF has staffed local claims offices with claims adjusters who assist with the receipt and initial review of submitted claims. We have subcontracted with the Worley Company—a respected claims adjustment company in Louisiana to help with the claims intake process. Individuals employed by Worley and PricewaterhouseCoopers, have the necessary background and expertise to evaluate claims and calculate damages.

Q. 47: What is the process for adopting a methodology to calculate losses in the seafood industry? How is the process initiated and by whom?

A. 47: The GCCF only adopts a methodology to calculate losses in the seafood industry after it first hears from claimants in the Gulf, evaluates and analyzes all available seafood data and statistics, hires experts from a variety of related fields—biology, marine, environmental and economic—and thereafter develops methodologies designed with eligibility and minimal proof requirements in mind. I am responsible for initiating the process and overseeing the formulation of all methodologies. It is a detailed, carefully crafted process, designed to result in credible, convincing methodologies which are more generous than existing law when it comes to eligibility, amount of compensation and minimal proof requirements.

Q. 48: Are specific goals set with quantifiable metrics? For example, are methodologies evaluated on the basis of their anticipated ability to support the industry, are they evaluated on the basis of their anticipated ability to settle claims, or are they evaluated on the basis of their anticipated cost? If one or more of these (and other metrics) are considered and measured, how are they ranked in evaluating the methodology?

A. 48: The specific goals in developing our GCCF methodologies include: maximizing compensation to all eligible claimants with minimal (but necessary) proof requirements. The methodologies are specific to each individual claimant; they are not developed to subsidize a particular industry, to promote aggregate settlement of claims or with administrative costs in mind. All GCCF methodologies are individual specific, aimed at compensating all eligible claimants based on their own individual submissions and assumptions.

Q. 49: Who makes the final decision on a new methodology? Are representatives of BP involved in the evaluation and decision-making process?

A. 49: As the Administrator of the GCCF, I bear final responsibility for approving any GCCF methodology. Both BP (as signatory to the Trust Agreement establishing the GCCF) and the Department of Justice monitor the development of these methodologies and are invited to comment; but they have no authority over the ultimate decision making process. I also welcome input from other interested Gulf region associations—seafood associations, tourism boards, real estate associations, etc.—in order to develop and implement methodologies that are credible, generous and fair.

Q. 50: What research is conducted and by whom? Is research conducted in the field? What are the qualifications of the individuals conducting this research, including industry-specific prior experience? Is input solicited from GCCF adjusters and accountants in the field? What level of testing is conducted on a methodology with actual claimant data before its adoption?

A. 50: Extensive research is done by experts retained by the GCCF to determine appropriate methodologies. Research is conducted in the field by interviewing and consulting with individuals and industry representatives. GCCF experts also examine all available reports, statistics, data and other information. The individual experts are highly qualified. Input is also solicited by GCCF evaluators and accountants in the field. The GCCF reaches out to actual claimants to take into account their opinions concerning proposed methodologies.

Q. 51: When did the GCCF first become aware that the brown (spring) shrimp season was problematic in the Gulf of Mexico? What were the problems with the brown shrimp season?

A. 51: The GCCF continues to promote ongoing discussions with individuals and businesses involved in the shrimping industry. The scarcity of brown shrimp, the perception that such shrimp are not healthy to eat, and the impact of shrimp imports on the domestic shrimping industry are well known to the GCCF; representa-

tives of the shrimping industry have discussed these problems with the GCCF for the past year.

Q. 52: When did the GCCF first become aware that the white shrimp season was problematic in the Gulf of Mexico? What were the problems with the white shrimp season?

A. 52: See my answer to question 42 above. The same answer pertains to the white shrimp season.

Q. 53: When did the GCCF begin formulating a new methodology to compensate the shrimping industry for anticipated future losses? How long is it anticipated that it will take to formulate, test and implement a new methodology to compensate the shrimping industry for anticipated future losses?

A. 53: The GCCF began formulating a shrimp methodology immediately following the end of the Emergency Payment program in November of 2010. The 2X factor for future payments was designed at the time with the shrimping industry in mind, based upon all of the expert information received up to that point. We will announce a new methodology to compensate the shrimping industry for anticipated future losses. A 4X factor, rather than a 2X factor, will be used in compensating commercial shrimpers and processors as well as commercial crabbers and crab processors for damage through 2015 (the same as the oyster industry). This new shrimp methodology is being in place.

Q. 54: When did the GCCF become aware that 2011 losses in the shrimping industry may exceed those losses in 2010, thus rendering the methodology for calculating anticipated future losses ineffective and obsolete? How did the GCCF become aware of this? What are the channels of communication, beginning in the field offices and ending with Ken Feinberg, for this information to be transmitted?

A. 54: The new shrimp methodology to be put in place concerns itself not so much with 2011 damage versus 2010 damage, as much as the problem of "future risk," the concern that the shrimping industry may not return to normal as originally hoped for at the end of 2013; instead, based on all the expert input we have received, the risk is sufficiently problematic so as to extend our "futures factor" from 2X to 4X, or from 2013 to 2015. The GCCF has continuously monitored events in the Gulf, engaging in ongoing discussions with shrimpers and other industry representatives. This information has been communicated directly to me as Administrator of the GCCF. The GCCF is responding to these concerns with a new, more generous shrimp methodology.

Q. 55: Why was my claim denied for lost real estate value? I live in Gulf Shores only 25 yards from the Gulf of Mexico. My back yard is the beach that BP polluted. My property values have been permanently damaged from the spill. A purchaser of any of my Gulf properties will discount them due to the fact that a huge oil spill has happened in the past and will now more likely happen again in the future. You have paid the County and City for lost property tax revenues; does this not indicate that you in fact agree that property values have declined?

A. 55: I cannot speak to the facts of the individual claims submitted in this question without knowing first the name of the claimants and the claim numbers. However, the GCCF will not pay claims for lost property value in those cases in which the claimant continues to maintain ownership of the property. The property is a valuable asset which continues to be owned by the claimant. The GCCF will pay for "sunk costs" associated with maintenance of the property if such sunk costs constitute damage related to the oil spill. In regard to claims for County and City lost property tax revenues, those claims are not under the authority of the GCCF but are handled separately by BP.

Q. 56: Why was my claim denied for damaged property? I had a renter that walked outside of our beach house and got tar on their feet and tracked it into the house. This happened before the deep clean of the sand, and oil remained on the beach for a very long time. If someone steps into a spill at the grocery store and it causes them damage, the grocery store is required to pay for that damage. Why is property damage directly attributable to the oil spill not similarly treated by the GCCF?

A. 56: I cannot speak to the facts of the individual claims submitted in this question without knowing first the name of the claimants and the claim numbers. But

property damage directly attributable to the oil spill is compensable and will be paid by the GCCF. The GCCF has paid such claims.

Q. 57: Why was my claim denied for the cost of my fishing license and the fish I catch to eat, as I was not able to use my fishing license and I was not able to keep any fish to eat?

A. 57: I cannot speak to the facts of the individual claims submitted in this question without knowing first the name of the claimants and the claim numbers. However, subsistence claims involving fishing are compensable by the GCCF. But the claim must be documented; the claimant must demonstrate that, because of the closing of fishing grounds due to the oil spill, the claimant was unable to fish and live off the fish caught. Commercial fisherman and claimants who rely on fishing to provide the minimum necessities of life and survival are potentially eligible subsistence claimants. FAQ Nos. 108 through 111 posted on the GCCF website provides more information as to how the GCCF handles subsistence claims.

Q. 58: I owned a restaurant in Mobile that specialized in seafood and steaks. When the oil spill happened and seafood became sparse, I made a claim through the GCCF. I chose to do month to month claims, trying to be honest, not knowing what my business would do from one month to the next. I followed all of the rules. As the situation turned out, I should have just picked a figure out of the air for a six-month loss. I made monthly claims with actual losses compared to the previous two years income. My April claim was paid in full, which was a pleasant surprise.

This is when the bottom fell out. I had three months of claims that they considered all at once and the figure GCCF paid was nowhere near what I claimed: it was about \$34,000.00 short. I called asking for an explanation as to how they came up with the figure and no one could explain it to me. The following month I submitted my claim, and that payment was about \$21,000.00 short, and again, no one could explain how they arrived at the figure they paid me. Then the last claim I submitted was denied completely, which of course no one could explain. I have now closed my restaurant, because I could not overcome the losses I suffered. I was so disgusted with the whole process that I settled for the final claim, just to be done with them, which I now regret deeply. Mr. Feinberg has stated that people accepted the final settlement because they couldn't prove their losses any further. That statement couldn't be further from the truth. I understand there will be an independent audit of the GCCF. My question is whether we have any recourse on these situations? I am curious: what, if any, recourse I might have after an audit examines the GCCF and determines there were significant shortcomings in their processing of claims. I am still deeply in debt to vendors, etc., and have lost my business.

A. 58: I cannot speak to the facts of the individual claims submitted in this question without knowing first the name of the claimants and the claim numbers. Any claimant dissatisfied with his or her offer from the GCCF may seek an independent review of GCCF determinations by the United States Coast Guard or may submit a claim in court. I would note that such review by the Coast Guard has been sought by over 1,650 claimants during the past fifteen months; in every single instance, the United States Coast Guard—after conducting an independent review of GCCF determinations—has ultimately agreed with the GCCF.

Q. 59: My deckhand invested \$89 into making his living on my charter boat and makes between \$35k to \$45k a year. All he has invested is a pair of flip flops and a fillet knife. He was offered \$25,000 to settle because the GCCF considered him a business and he itemized his taxes. My deckhand has no risk in this business. I have \$220,000 invested along with monthly expenses in a Hatteras boat along with 9 years of blood, sweat and labor and I was offered the same \$25,000 to settle. This is fundamentally wrong, as I have assumed all the investment and all of the risks involved. Why all businesses are categorized this way? Why is there no formula for settlement based on who assumes the risks associated with the business?

Unlike the oyster men that operate in 6 to 8 feet of water, who can quickly see the damage to a bed of oysters, we offshore fishermen operate in waters that are up to 6,000 feet deep, and there is significant uncertainty for our future. What recourse do we have if the fish stocks col-

lapse in the next 4 or 5 years, long after the GCCF and BP have pulled up their stakes and left? Should charter and commercial fishermen be offered a settlement that takes into consideration the uncertainty of the long-term health of the fishery?

A. 59: I cannot speak to the facts of the individual claims submitted in this question without knowing first the name of the claimants and the claim numbers. However, in deciding whether a claim is submitted by an "individual" or a "business" the GCCF looks to the tax returns of the claimant and categorizes claims based upon such prior classification. In other words, the GCCF relies upon the claimants own decision as to how his/her livelihood should be classified. "Risks" associated with the business are factored into our damage calculations. Finally, no claimant is required to accept a Final Payment designed to make a "reasonable" estimate of how long it will take for the Gulf to return to normal; over 33,700 individuals and businesses have preferred an Interim Payment so they can continue to return to the GCCF for additional compensation until the claimant is more comfortable with predicting the future. By agreement, the GCCF remains in place to process claims until August 2013; thereafter, charter and commercial fisherman, as well as other claimants, can litigate in court if they believe they have a valid claim and have not accepted a Final Payment from the GCCF.

Q. 60: In my Full Review Final Claim documentation, I identified clear discrepancies with the amounts that were calculated by someone at the GCCF. Considering the Calculation Methodology explanations of the amounts offered by GCCF are provided in an approximately one inch by four inch area, it is clear why many wonder where the numbers are coming from. The yearly methodology area is slightly wider in size but still lacks the detail expected in this process. Furthermore, the LOI percentage is explained nowhere in the documentation. For businesses that have expenses whether they operate or not, LOI percentage is not cut and dry. Where are the spreadsheets and numbers similar to what we were asked to provide? I have provided numerous spreadsheets, tax forms, and other requested documentation for my claim and still nothing.

Being one of the few that has not excessively hounded the GCCF with questions, I feel that as I am trying to find a final resolution with this matter, it is time to demand a more expeditious response. It has been a year and a half since the Deepwater Horizon incident, and claims still are taking an excessive amount of time to process. Representatives in your call center give vague and scripted answers. This is not progress, this is a shame.

A. 60: I cannot speak to the facts of the individual claims submitted in this question without knowing first the name of the claimants and the claim numbers. The GCCF maintains files on each claimant who submits a claim. Accountant spreadsheets and work product are part of the file maintained by the GCCF. I urge this claimant to contact me personally to discuss the merits of the claim.

Q. 61: In early June 2011, I submitted a final claim providing or having already provided all documents we were requested to provide along with our analysis of the data and the amount of the claim. After three months I started to query GCCF about the status of the claim. I was told that all claims should be processed within 90 days. But all they could tell me is that it "was being processed." They told me nothing in addition to what I could find for myself on the GCCF website. They could provide no estimate of when your processing would be finished.

I continued to query GCCF over the next month and still was provided no case status update. After my claim submission surpassed 4 months, I finally called Feinberg's "office" at 1-800-916-4893 and still was provided no information on the claim. This may have triggered something as some time later I was contacted by "Will" at the GCCF who said he was processing the claim. At that time he came up with a new list of documents required (more than 4 months after the initial claim submission) including P&L's that were previously provided. One item he requested was tax returns for 2010. Your website says that tax returns for 2010 are required only for "claimants seeking compensation for lost earnings for any period after June 30, 2011." I informed "Will" that we were not making a claim for 2011 and asked "Will" where on the GCCF website was this required. He would only say that he needed the addi-

tional information to process the claim. Are your claims adjusters fully aware of the published protocols you have established for reviewing claims? Why is additional information requested four months after the initial submission? Why is information requested to be resubmitted after it has already been submitted?

A. 61: Our claims evaluators are fully aware of all published protocols and rules for reviewing claims. I cannot speak to the facts of the individual claims submitted in this question without knowing first the name of the claimants and the claim numbers. I can only surmise that additional information was requested four months after the initial submission in connection with new information brought to the attention of the GCCF by the claimant. Information need not be resubmitted if it has already been submitted to the GCCF.

Q. 62: Are your claims offices understaffed? If not, why are claims determinations taking in excess of six months in many cases? Why does documentation previously supplied go missing and need to be resubmitted? How many offices have you closed in the last four months? How many of your offices now operate only during limited hours? Why does the GCCF office in Key West, Florida, remain open while offices in Bayou La Batre, Dauphin Island and Foley are now closed and the offices in Mobile and Orange Beach set to close on November 15th?

A. 62: GCCF claims offices are not understaffed. In fact, because of the diminishing number of claims being submitted in recent months to the GCCF, I have concluded that it is now appropriate to close certain claims offices in the Gulf or reduce certain hours of operation. Claims determinations may take “in excess of six months” if claims are initially deemed deficient or ineligible, and additional documentation is requested from the claimant. In such cases, delay is attributable to the claimants’ inability to submit such additional documentation in a timely manner. Documentation that is submitted does not “go missing” and does not “need to be resubmitted.” The GCCF operates six full time offices and 9 offices that are open once a week and by appointment. There is no claims office open today in Key West, Florida. The other offices referenced in this question have been closed or are subject to reduced hours because of diminishing claims volume.

Q. 63: The downsizing and closing of several regional offices is a major concern. Many of these offices support claimants that have limited resources and are still incurring documented losses. To be forced to travel additional distance only further exacerbates their already dire situation. Please respond.

A. 63: The downsizing and closing of several regional claims offices is due to just one fact—diminishing claims volume. Over 77% of all claims filed (excluding quick pay claims which must be submitted in paper format) have been filed electronically through the GCCF website. Only a handful of new claims are now being filed as a result of claimants making “live visits” to certain local claims offices. Claims traffic simply cannot justify maintaining these offices on a full-time basis. There are a total of 15 claim site offices that remain open (6 with full time hours Monday through Friday and 9 open once weekly and by appointment).

Q. 64: Why are the best personnel (licensed insurance adjusters) who work in the regional offices, many of whom have “draft authority” granted by various insurance carriers, not allowed to process the claims? Does the GCCF adequately utilize the expertise of licensed insurance adjusters in its claims review process?

A. 64: I made a considered judgment at the outset of the GCCF claims process that local GCCF personnel residing in the claims offices not be afforded authority to process claims i.e., determine eligibility and the calculation of damages. In a program as vast as the GCCF—with over 1 million claims received to date—it would be a huge error for local personnel to be afforded check cutting authority. This would inevitably result in inconsistencies and disparate treatment of similar claimants. Nothing can undercut the credibility of the GCCF more than inconsistency and allegations of bias and unfairness. Accordingly, only a centralized system and authority, receiving claims from various claims office and deciding them on a consistent basis, makes sense. Fortunately, the GCCF has utilized the expertise of licensed insurance adjusters in local claims offices in reviewing claims.

Q. 65: What are the responsibilities of the GCCF's Attorney-Liaisons? What qualifications were evaluated in choosing the GCCF's Attorney-Liaisons? What were the results of those evaluations?

Why was a State Director appointed for the states of Alabama and Mississippi, and not for Louisiana and Florida? What qualifications were evaluated in choosing the State Director for the states of Alabama and Mississippi? What were the results of that evaluation? What are the qualifications of State Director for the states of Alabama and Mississippi with respect to his liaison responsibilities?

What metrics have been used to evaluate the performance of the GCCF's Attorney Liaisons and the State Director for the states of Alabama and Mississippi with respect to their liaison responsibilities?

From whom has input been sought with respect to the efficacy of the GCCF's Attorney Liaisons and the State Director for the states of Alabama and Mississippi? What are the results of those performance evaluations?

A. 65: The GCCF's attorney-liaisons provide local, face-to-face assistance to all claimants requesting a "live meeting" with GCCF personnel. These local liaisons are residents of Gulf region communities and deal with issues raised by claimants e.g. eligibility, calculation of damages, status of a claim submitted to the GCCF, etc. The liaisons also work with local elected officials in responding to various issues posed by such officials. I chose the liaisons based on their familiarity with local residents and their understanding of how local claimants will respond to the GCCF. I received recommendations from various individuals, local trade organizations and elected officials concerning who might act as local liaisons. From these recommendations, I chose the local liaisons. These local liaisons have the same responsibilities, and were evaluated in the same manner, in Alabama, Mississippi, Louisiana and Florida. They have been assigned to each state. Their performance is evaluated by senior GCCF personnel on a regular basis, based upon their credibility and work in assisting local claimants.

Q. 66: Does the GCCF solicit direct input from GCCF evaluators, or do you rely on determination from upper level managers who have not worked a claim during the entire process?

A. 66: The GCCF solicits direct input from GCCF evaluators in the field, as well as input from upper level managers.

Q. 67: Who is Camille Biros and what is her role in the GCCF hierarchy? Please provide her curriculum vitae for the record. What are her qualifications to review and issue determinations on claims? Does the GCCF process require her signature on all claims before they are approved? Does it require her approval on claims above a certain threshold? If so, what is that amount? What happens to claims pending her review if she is on vacation or otherwise indisposed? Since August 24, 2010, how many times has she been to the Gulf Coast to meet with claimants, or otherwise? Has she been anywhere on the Gulf Coast outside of New Orleans? If so, where and when?

A. 67: Ms. Camille Biros is a member of the senior team at Feinberg Rozen. She has worked with me since 1979 assisting me in the design administration and implementation of claims review programs including the: *September 11th Victim Compensation Fund*, November 2001 through June 2004 and the *Katrina Gulf Coast ADR Program*, December 2005—Present.

The GCCF process does not require her signature or any other individual's signature on claims before they are approved. Depending upon the complexity of the claim—including the amount—I, along with various other senior staff working for the GCCF, may review individual claims. The claims process does not depend on the day-to-day availability of anyone at my law firm.

Q. 68: How do you respond to frustration expressed by many in statements like the following, "I wish this was like the old BP days, when we could come into the office and sit down and get a check or even straight answers?"

A. 68: I recognize such frustration. Claimants from the Gulf Coast region are innocent victims of an unprecedented environmental tragedy. So their frustration is understandable. But the GCCF has worked more efficiently, effectively and fairly than the former BP claims process. About \$6 billion has been distributed to about 250,000 individuals in less than 18 months.

Q. 69: Why does the GCCF send claimants generic deficiency letters absent specifics regarding what additional information is required?

A. 69: The GCCF does not “send claimants’ generic deficiency letters...” Instead, the GCCF sends correspondence to individual claimants which include specific information regarding the reasons for the deficiency determination and the specific documentation required to cure the deficiency.

Q. 70: I am a charter fisherman and presented complete tax returns, general ledger, bank statements, all required licenses, appointment logs and clearly showed the cancellations in 2010, the receipt of Vessels of Opportunity (VOO) income and a personal loan to support my charter fishing business. I had zero charter income in 2010 but was calculated improperly as having no loss, as VOO income and personal loans are to be excluded from business income. Eventually, I had to sell my boat. I have requested a re-review of my claim and, to date, have not received any payment at all. Do you think I have been fairly treated by the GCCF, Mr. Feinberg?

A. 70: I cannot speak to the facts of the individual claims submitted in this question without knowing first the name of the claimants and the claim numbers. If what is stated in this question is true and verifiable, the claimant has not been “fairly treated.” But I would need to authorize a review of the file before agreeing with the claimant.

Q. 71: Given the events since the BP Oil Spill on 20 April 2010, and putting yourself in my position throughout the following events since the Oil Spill, what would you do in my current position, and what would you say to someone like yourself who repeatedly says that the GCCF claims process has been successful?

I will summarize the events over the past 18 months considering that I have provided hundreds of pages of detailed documentation regarding these events to the GCCF, U.S. Congressman Jo Bonner, U.S. Senator Jeff Sessions, U.S. Associate Attorney General Perrelli, Alabama Attorney General Luther Strange and other interested parties. Again, please put yourself in my shoes.

In late 2007 you commenced business planning for a unique construction company. The niche will be in building homes aimed at the high end market for second and third vacation homes and affluent retirees.

You commence business operations in March 2008 with yourself and 2 independent contractors. Considering the state of the economy and the housing market in general, you decide to keep all business operations as safe and simple as possible. You fund the start-up costs by taking a private mortgage on your personal property, which is used to tool up with the specialty tools and equipment required specific to the unique construction. You choose to operate on a strict time plus expense basis, billed weekly, collected weekly, and the employees paid weekly.

You decide that most of the future business expansion will have to be funded from cash flows of the business, an essential requirement following the financial meltdown and lack of funding availability. You consciously decide that you will market your business through word of mouth and referral. The unique building methodology of your projects generates a lot of buzz about your company, with sales leads generated from your ongoing projects.

Throughout 2008 you work on the business processes and procedures. You refine your workforce and end 2008 with 3 independent contractors. The business continues to grow substantially throughout 2009, and from April 2009 through November 2009, you increase your workforce from 3 to 13 men. You are one of the few construction companies in the area actually increasing their workforce and growing their business. 2009 gross revenues for the business grow by 185.9% compared to 2008 gross revenues. You have invested in equipment, equipment trailers, construction site trailers, tools and equipment required to support the work load and keep 13 men productive.

Your most challenging problem is the logistics of having enough trained men in the unique construction techniques and tools and equipment to keep growing the business. As your project numbers increase, so does your marketing exposure. You have to schedule the project starts and manage your resources (men and equipment) accordingly. In February 2010, you increase your workforce from 13 to 15 men in preparation for scheduled project starts commencing in May 2010.

By April 2010 the business has grown considerably:

1. From 3 to 15 men during the recession and housing crash.
2. Your Jan-April 2010 revenues grew by 262.79% from the same period in 2009.

3. You went from no equipment or tools in 2008 to 6 trailers, a fork lift, tractor, generators, saws and many required high end specialty tools.
4. You are finishing a \$875,000 custom home and scheduled to start a \$735,000 home on May 4, 2010, with three more custom homes scheduled to start throughout the summer of 2010.
5. Your core leadership is fully trained and ready to lead and supervise projects, along with men interviewed and ready for hire.
6. All of your projects have been earned by referrals generated from prior projects and with new projects starting during the summer to provide the marketing tools for the upcoming 2011 year.
7. Your clients have been from outside the Gulf Coast (states such as California, Hawaii, Washington, and New York) and discovered you during their summer vacation to the area in 2008 and 2009. They chose to build a home on the Gulf Coast for the high quality of life and abundant natural resources along the Gulf of Mexico.

Then on 20 April 2010, the Deepwater Horizon exploded. Your world, business and market changed overnight.

The project scheduled to start on May 4, 2010, was delayed and then cancelled outright by the client, causing a 100% loss of 8 to 10 months work for you and your men. You're forced to immediately let 12 men go with the intention of bringing them back on when the next project was scheduled to start in June 2010. Sadly, by the end of May 2010, this project is also cancelled by the clients due to the oil spill in the Gulf of Mexico. By the end of June 2010 the remaining 2 custom home projects have also been cancelled citing the oil spill as the one and only reason.

In early July 2010, you are down to 2 men working "at cost" finishing an existing custom home project, and as a result of the catastrophic loss of work, income and financial stability, you are unable to obtain the required performance bonding for a large project and forced to pull your otherwise winning bid from consideration. With this blow, you take the advice of your county commissioner and submit a claim with BP claims for lost profit suffered as a result of the Deepwater Horizon Incident.

As a result of the BP oil spill your business has lost over a year's worth of scheduled work. Each cancelled project also included a loss of 4 to 6 months worth of planning, engineering and sales time leading up to the project start date. The four projects combined totaled an estimated value of \$2 million, plus the loss of the panel job at \$1.1 million by itself.

Your claim for lost profits sits with BP claims until the GCCF takes over the claims process on August 24, 2010. In addition to your business claim, you are aware that 13 of your 15 former employees have also submitted claims to either BP Claims or the GCCF.

On August 24, 2010, one of my men is approved and issued a check from the GCCF for his 6 month Advance Emergency Payment, representing 54.72% of his requested \$31,800. He earned \$30.00 per hour from the company, or \$62,400 per year working 40 hours per week. On September 13, 2010, he receives a second check from the GCCF bringing his total compensation up to 82% of his 6 month request. The GCCF states with this check that the GCCF was making adjustments to compensation to more accurately reflect his projected losses.

On September 21, 2010, the GCCF denies your Business Claim for Lost Profits, telling U.S. Congressman Jo Bonner's Office, "The claim was ineligible because claimant is a building contractor."

Congressman Bonner asks the GCCF what that has to do with anything and why the employees claim was eligible but the employer's was not. Then-Governor Riley asks the GCCF the same thing, and the Press Register runs a front page article on September 25, 2010, asking the same question.

On September 27, 2010, the GCCF reevaluates and approves your business claim and issues you a check for 100% of the requested 6 month advance emergency payment of \$157,100. You were advised by a GCCF Claims adjuster to only include lost profit from labor on projects that had a start date between May 2010 and the time of submittal to the GCCF on August 2010, and you are told that you will file for all actual losses at a later date. During the next few weeks the GCCF reevaluates and approves your remaining men's claims, some of which had previously been denied by the GCCF for the same reason as yours.

At the end of September 2010, you are required to let your last 2 men go due to lack of work. You are unable to convince your clients to reconsider their projects. You have also lost the entire summer tourist sales opportunity as a result of the oil spill. The niche market is gone. You are unable to convince prospective clients to take the risk and build. You continue reaching out to every contact you have, such as architects, designers, builders, inspectors, manufacturers, realtors and oth-

ers to no avail. Everyone is going to wait until they feel confident in the condition of the Gulf of Mexico. If they cannot feel comfortable about the waters, they refuse to risk their money on a project.

On January 20, 2011, you submit your Interim Payment Claim request in full, with all substantiating documentation to the GCCF for losses suffered as a result of the oil spill from May 2010 to December 2010.

On January 29, 2011, the GCCF acknowledges receipt with a generic letter stating in part, "If you have not already done so, you must submit documents reflecting your gross earnings as an individual claimant or your total revenues and expenses as a business claimant from 1 May 2010, through 31 December 2010, or documents proving that you did not receive income or earn revenue for any part of that period." You verified with the GCCF that you had provided all the required and requested documentation after receipt of the letter and confirmed that the exact same letter was sent to ALL claimants who submitted an Interim or Full Review Claim with the GCCF. You are told you lack nothing and that you have provided more than enough documentation.

It has been almost 9 months since the first cancelled project when you had to let 12 men go. You had been out of work for 5 months prior to receiving the Advanced Emergency Payment. You still have no work and, worse yet, no prospects or current projects to use as sales tools for the upcoming visitor season. You are optimistic that with a timely and adequate Interim Payment, and IF the visitors come back for the summer season, you may have a chance at constructing an alternate sales tool such as a small model home in time for the tourist season in order to have a project under construction in the market in order to restart the business. Then you wait for the 90 day review period.

Towards the end of February 2011, you start receiving frantic calls from your former men saying they received letters of no loss from the GCCF with final offers for the Quick Payment amount of \$5,000. Your attempts to contact the GCCF and assist the men are fruitless until you request the assistance of your federal representatives and after a front page article in the Press Register.

You spend the next 7 months meeting with the GCCF and your former employees attempting to help them through the Claims Process. The GCCF uses sneaky and underhanded accounting practices to minimize the compensation to the men such as using their 1099 amounts from their partial 2009 annual earnings as the projected 2010 annual earnings amount. You hired 10 men during 2009. These 10 men had been out of work prior to being hired by you between April and November 2009. In most of the men's cases, their 1099s reflected less than half of a full year's earnings. You had provided all of the men with income statements detailed to the week as earnings history. The GCCF chose to ignore the income statements for the Interim and Full Review calculations. Then the GCCF applied an adopted "Seasonality" rule to apportion the men's "projected" earnings for the post oil spill period from May 2010 through December 2010, with the full knowledge that the men were not seasonal tourist workers who earned their money during the summer months at the beach, but instead, were 40 hour per week construction workers.

The GCCF would also take the actual earnings of the men from 2010 and apply the "Seasonality" rules to apportion the actual earnings to May through December 2010, regardless of the fact that the GCCF knew when the men earned the revenues according to the provided Income Statement. The GCCF Seasonality Rules apportion 80.43% of the annual earnings to the loss period May through December and 19.57% to January through April. Reality and accuracy are irrelevant to the GCCF "experts." The GCCF decided that everyone's earnings are based on the "Seasonality" rules that they conjured from thin air.

As an example: One of your men earned \$30.00 per hour worked with an average of 40 hours or more per week. From January—April 2010, he earned \$15,511 from the company according to his income statement. He earned \$18,298.50 for the entire year of 2010, pre and post oil spill periods. The GCCF "experts" applied the seasonality rules to his actual total 2010 earnings reflected on his 2010 1099 statement of \$18,298.50, and apportioned 80.43% of the total annual amount to the period from May-December 2010, or \$14,717.48, and declared that he earned this amount post oil spill, and then the GCCF deducted this fictitious amount from their projected post oil spill earnings. The GCCF experts were fully aware that he "actually" earned only \$2,787.50 from May—December 2010, a difference of \$11,929.98. With "convenient accounting" trickery such as this the GCCF was trimming claimant's compensation from the top (projected earnings) and from the bottom (actual earnings). And the GCCF experts are very, very good at covering up the tricky accounting so that most people know they are being scammed but cannot identify exactly how they are being scammed.

You continue trying to get the GCCF to correct their mistakes, but before the first meetings can be arranged, three of your men sign the release not to sue and accept the Quick Payment amount. They simply could not wait any longer; they had been out of work for over 9 months; they were losing their cars and homes and had to make the decision in order to feed their family now, not later. Five of the remaining men who called for assistance fought as long as they could but eventually settled for the re-review offer for the Business Quick Payment amount of \$25,000. The men were all independent contractors and as such should have been classified as businesses from the start but were not. The GCCF refuses to re-re-review the men's claims.

The GCCF says it does not matter if the GCCF made mistakes: they will not perform another review simply because their policy is to only re-review once. The GCCF tells the men that they can submit another quarterly Interim Claim if they are not "satisfied" with the current final offer and wait another 90 plus days for a new determination or they can file a suit in court. Take it or leave it. Unlike the lawyers at the GCCF, they did not have ANY current income—BP had taken that away, as well as all of their savings. They had to decide right now how they were going to feed their family this month, and the GCCF was fully aware of the plight that had resulted as a result of the oil spill. That knowledge was only used as a tool to leverage my men's decisions. They decided to feed their families by accepting the inadequate offer from the GCCF and not because they felt justly compensated for damages suffered as a result of the oil spill.

On April 4, 2011, you submit your first quarter 2011 Interim Payment Claim Request in full and completely documented to the GCCF. You are still waiting for the GCCF to process your 2010 Interim Claim submitted on 20 Jan 2011, and you are told by the GCCF that "larger claims take longer because there are fewer adjusters qualified to review them." So you wait.

As the 90 day window elapses, your first claim is still under review. You have verified weekly through your GCCF liaison that your claim is complete and not deficient in any documentation and that the GCCF does not need any further documentation. You are unable to get any further answers from the GCCF. U.S. Senator Jeff Sessions' office performs a congressional inquiry into the status of your claim with the GCCF. The GCCF responds with false information stating that the GCCF had sent you a Deficiency Notice on January 29, 2011, when they had not. The "Deficiency Letter" referred to is in fact the generic letter sent to all claimants who submitted an Interim or Final Review Payment Claim. You immediately have a meeting with your GCCF liaison who confirms that the letter reference is in fact the same generic letter sent to all claimants and that you have never been issued a Deficiency Letter or been deficient in documentation. So you wait.

In early June 2011, a reporter with the *Press Register* calls you for an update on how your business is doing. He is surprised to learn that you are still waiting for your first Determination to be issued by the GCCF after almost 6 months under review. The reporter inquires with Mr. Feinberg who tells him "off the record" that the GCCF had sent you a Deficiency Letter. And that you had responded to the letter by submitting a new Claim on April 4, 2011, thus concluding that the GCCF had "responded" to your claim within the 90 day time frame and that the real cause for the delay was, in fact, yours.

You immediately act to correct the false information with the reporter, the GCCF and the representatives who are working on your claim (Senator Sessions, Congressman Bonner and the Alabama Attorney General). The GCCF responds to Senator Sessions' inquiry by saying that your claim has now been assigned to a specific Accountant Review Team and that when it was pulled for Evaluation, it would be evaluated in its entirety with both claims being processed.

On June 28, 2011, the GCCF issues a Determination Letter on your 2010 Interim Claim. The methodology chosen by the GCCF to calculate your projected earnings from May—December 2010 is the average of your business revenues from the pre-oil spill period from January—April 2010 and is using this amount as your projected revenues for each month from May to December 2010 even though your business history of earnings shows that January—April is the slowest time of the year for your business and even though your growth from 2009 over the same period is over 262%.

Not only does the GCCF low-ball the earnings projections, they cancel your 2011 1st Quarter Interim Claim by saying that you did not provide any Financial Documentation when you submitted the Claim, which is also a lie.

You fight back and request a re-review. You meet with the GCCF accountants on July 22, 2011. The accountants admit that they failed to factor the steady growth of the business. They finish their calculations and submit the claim to Mr. Feinberg's office on August 4, 2011, for final approval.

The claim sits in Mr. Feinberg's office until September 7, 2011, after he has implemented new eligibility rules on August 16, 2011. The GCCF revises the projections and chooses to use the business revenue amount from December 2009 as the monthly earnings projection for your business. They still fail to factor any growth rate from the business history and determine that the business would have earned \$62,000 per month from May through December 2010, but none after that period, determining your business had no losses as a result of the oil spill from January 2011 forward.

You call foul, but the GCCF says they will not re-re-review the claim, even though the mistakes and delays were 100% caused by them because they had already re-reviewed the claim once already. They give you the offer to take their final payment of \$159,000, sue in court, or appeal to the Coast Guard. Take it or leave it.

So, in my position, what would you do? Your business has been destroyed by the oil spill and the unjustified delays imposed by the GCCF. You are out of work; in fact you have now been out of work for over a year. Your projects were cancelled over 16 months ago. And you have borrowed from every friend and family member you can in order to feed your family. Your home is entering foreclosure. Your truck has been defaulted on. And you have less than two week's worth of groceries in the house to feed your family with, much less the pay utility bills and health insurance.

You want to keep fighting for what was taken from you, your business, your family and you're men. But you have no other way to provide for your family now. What would you do Mr. Feinberg?

I signed your release and accepted your criminal offer. Not because I felt sufficiently compensated for my losses, but because I must provide for my family's shelter, food and basic needs now. I fully believe you intended to put me and many others in this position. I accepted your offer. But I can assure you I will not stop the fight for justice.

A. 71: I cannot speak to the facts of the individual claims submitted in this question without knowing first the name of the claimants and the claim numbers. However, if the claimant would personally contact me in Washington, DC with the name of the claim and the claim number I will review the claim. The claimant has gone to great lengths in this question detailing his/her frustration with the GCCF claims process. The claimant is entitled to a detailed personal response from me as Administrator of the GCCF. Although the claim he references has apparently been the subject of much public discussion in the press, I need authorization from the claimant before I can publicly respond to his inquiry. After I review the claim, I will be in a better position to answer the claimant's inquiry: "What would you do, Mr. Feinberg?" I disagree with the argument that the GCCF has made a "criminal offer" to the claimant and also disagree that the GCCF tries to "low-ball the earnings projections." Nor does the GCCF use "sneaky and underhanded accounting practices to minimize the compensation" of claimants. Nevertheless, I am prepared to review the claim giving rise to this question.

**QUESTIONS SUBMITTED FOR THE RECORD BY REP. STEVE SCALISE
(LA-01)**

For the purposes of these questions, "traffic" refers to the count of individuals utilizing a claims office that the GCCF considers in determining whether or not an office should remain open full time, part time, by appointment, or closed. Regarding GCCF claims offices:

Q. 72: Are there daily traffic reports submitted from each claims office?

i. If so, please provide daily traffic reports for claims offices in Louisiana, sorted by each office, for the past three (3) months.

A. 72: Yes, there are daily traffic reports submitted from each claims office. I attach these reports for claims offices in Louisiana for the past three months. (See Attachment A)

Q. 73: What do these daily traffic reports contain?

A. 73: These daily traffic reports contain information pertaining to the number of claimant visits.

Q. 74: What determines who GCCF considers as traffic for a claims office?

A. 74: "Traffic" is defined as the number of claimants visiting the GCCF Site Offices. Daily statistics are kept for each office and careful consideration was given to these numbers as well as consideration of the proximity of alternative Site Offices. The GCCF took steps to maintain office hours once each week and by appointment at 9 Site Offices initially slated for closure.

Q. 75: What are the criteria for an individual to be considered “traffic” for an office? Example: are individuals who come into the claims office who only file a new claim the only reported traffic for that office?

- i. Are individuals who are seeking clarification regarding GCCF claims documents, letters, offers, etc., considered traffic?
- ii. Are individuals who place a phone call to claims offices considered traffic?
- iii. Are individuals who come into a claims office but do not open a new claim considered traffic?
- iv. Are multiple individuals who come in together regarding one claim considered “one” individual for traffic purposes?

A. 75: Individual criteria considered as “traffic” include claims filings and the nature of the request.

- i. The GCCF tracks visits by Claimants visiting the site offices. Claimants are those individuals who either are visiting the site to file a new claim or visiting the site to “check the status of their claim.”
- ii. No
- iii. Individuals whose visit to the site is unrelated to the filing of a claim or to checking the status of a claim are not tracked
- iv. Friends and relatives who accompany claimants are not tracked

Q. 76: What are all of the criteria that GCCF uses to determine appropriateness of an office’s current operations status (open/closed/part-time/by appointment/etc.) and what is taken into consideration when a determination is made affecting the operations status of an office?

A. 76: The two criteria used to determine the appropriateness of a claim’s office current operations status are: volume (the frequency of claimant visits to a claims office for the purpose of filing a claim or requesting information concerning the status of a claim); and convenience (is there another claims office conveniently located to a claims office that has been closed or downsized). There are a total of 15 GCCF Gulf area offices that are operational today—six are open 5 days a week and 9 are open once a week and by appointment.

Q. 77: Are there established thresholds of traffic that determine whether or not an office’s operations status?

- i. If so, what are these thresholds?

A. 77: There are not fixed “established thresholds of traffic” that determine whether or not a claims office should remain open, be downsized or closed. Again, this depends upon not only claims volume, but also factors of convenience concerning the availability of other claims offices in the vicinity.

Q. 78: Is there a central GCCF computer system/server?

- i. If so does the GCCF monitor individual claims offices use of the GCCF claims system? In other words, is the GCCF determining how often the claims offices are utilizing claims offices’ computers/servers/etc?

A. 78: The GCCF reviews each region and considers location, volume of traffic and availability and distances of alternative site offices in making all decisions to close a site office. We have instituted a once weekly and by appointment process for 9 of the offices that do not now offer Monday-Friday daily hours

Q. 79: Is it the GCCF’s goal to eliminate in-person visits to claims offices in favor of an online process?

A. 79: No, it is not a goal of the GCCF “to eliminate in-person visits to claims offices in favor of an online process.” The GCCF welcomes both in-person visits and online filings. It does not prefer one over the other.

Q. 80: Has the GCCF received complaints about the online claims process?

- i. If so, what is the GCCF doing to resolve these complaints?

A. 80: The GCCF has not received many complaints “about the online claims process,” especially during the past nine months following the Emergency Payment period. In fact, 77% of all claims have been received electronically via the GCCF website. (This percentage excludes the Quickpay Claim forms since those must be submitted in paper form.) Complaints received by the GCCF basically relate to questions concerning payment and the need for a direct GCCF contact representative.

During the Interim and Final phase of the GCCF program, the GCCF has instituted a more direct line of communication by hiring local liaisons and by providing each claimant with a specific name and contact telephone number within each determination and deficiency letter.

Q. 81: What is the total number of unsettled claims filed with each Louisiana claims office, current or closed?

A. 81: The total number of unsettled claims filed with each Louisiana claims office is as follows (Note: I interpret “unsettled” to mean claims that are currently being processed, including claims deemed “deficient”; claims that have been paid or denied are assumed to be “settled.”): As of January 18, 2012:

Total Interim/Final Claims filed from the State of Louisiana: 126,589

Total Interim/Final Claims Paid: 64,746

Total Claims requiring additional information: 11,457

Total Claims with “0” Loss: 3,319

Total Claims Denied: 43,969

Total Claims Not yet processed: 3,152

QUESTIONS SUBMITTED FOR THE RECORD BY REP. STEVEN PALAZZO (MS-04)

Q. 82: Some Mississippi charter boat operations and commercial fisherman received up to 4 times their annual income as shown on their taxes as an emergency payment during 2010 while others was less than one years’ annual income. What is being done going forward to reconcile the difference for those receiving the lesser payment

A. 82: If the GCCF has erred in providing compensation to eligible claimants with documented losses due to the Oil Spill, we will correct the error and provide supplemental compensation to the claimant. But, it is usually unnecessary “to reconcile the difference for those [claimants] receiving the lesser payment”; this is because the “difference” is most likely attributable to varying degrees of documentation and other forms of proof.

Q. 83: The LOI (Loss of Income) percentage for the majority of the Mississippi charter operations is set at 35.05% while some boats have received an LOI of up to 66.14%. Since all the charter boats in Mississippi are nearly identical in their operations; how can this be?

A. 83: The LOI may vary from claimant to claimant based upon the individual documentation submitted by each claimant. The GCCF relies upon the proof submitted by each claimant in determining the individual LOI percentage.

Q. 84: Many Mississippi charter boat operations have attempted to present documentation supporting an increased LOI percentage but have been denied even though their numbers are very similar to those of other vessels whose LOI has been increased. What is the process used to calculate LOI, what defines fixed and variable expenses, and how was this calculation derived?

A. 84: The process used to calculate LOI is as follows:

A claimant’s LOI is routinely calculated based on pre-spill (e.g., 2009) financial information provided by the claimant, such as tax returns or Profit and Loss statements. Based on the expense description and the analysis of the information provided by the claimant, the GCCF determines whether the expense continued (typically fixed expenses such as rent, insurance, salaries) or was discontinued (typically variable expenses such as cost of goods sold, commissions, direct/hourly payroll) during the loss period. LOI is calculated as the sum of the claimant’s Net Income and continuing expenses, expressed as a percentage of historical gross revenues.

The LOI percentage calculates how much of the businesses’ lost revenue represents “out-of-pocket” loss to the claimant. For example, if the sale of a widget is lost (thus never happened), the cost to the business for the purchase or manufacture of that widget (i.e., cost of goods sold) is never incurred. In this example, the cost of goods sold would be considered discontinued or saved and excluded from the LOI percentage. Conversely, the claimant continues to incur rent expense whether it loses a widget sale or not, therefore this expense would be considered continuing and included in the LOI percentage.

Q. 85: Given your belief that the GCCF has been successful, do you think that the GCCF could do a better job than BP itself in settling claims with government jurisdictions?

A. 85: I believe that the GCCF could be effective and efficient in resolving claims submitted by government jurisdictions. I am not prepared to opine on whether the GCCF could do better than BP in this regard. But, in any event, the issue is moot; the GCCF simply has no authority to process government claims.

Q. 86: American Shrimp Processors Association members of Mississippi report that few, if any, have been reimbursed for 2011 losses by your interim claims process. Can you give me an update for complete handling of these interim claims?

A. 86: The GCCF continues to review claims for shrimp harvesters and processors for 2010 and 2011 losses.

The amounts paid to Mississippi Shrimper Claimants to date are shown below:

<u>Claims</u>	<u>Amount Paid</u>	<u>Payment Type</u>
411	\$16,237,500.00	Emergency
24	\$ 586,148.39	Final
13	\$ 297,368.03	Interim
<u>209</u>	<u>\$ 3,764,716.98</u>	<u>Quick</u>
657	\$20,885,733.40	Totals

**QUESTIONS FOR THE RECORD FROM MISSISSIPPI ATTORNEY GENERAL
JIM HOOD (and attachments)**

**STATE OF MISSISSIPPI
JIM HOOD
ATTORNEY GENERAL**

October 31, 2011

The Honorable Doc Hastings, Chair
The Honorable Edward J. Markey, Ranking Member
Committee on Natural Resources
United State House of Representatives
United States Capitol
1324 and 1329 Longworth House Office Building
Washington, DC 20001

Dear Chairman Hastings, Ranking Member Markey and Members of the Committee:

Pursuant to your request during the October 27, 2011, Hearing of the Natural Resources Committee, I am submitting additional questions to be directed to Kenneth Feinberg for your consideration and use. Of particular concern to me is that Mr. Feinberg, acting on BP's behalf, has established a claims process that fundamentally violates the express provisions of the Oil Pollution Act of 1990 ("OPA"), particularly as that Act was amended in 1996. In addition, by closing offices and preventing claimants' access to in-person claims assistance, Mr. Feinberg and BP are thwarting the ability of claimants to satisfy the requirement to first file claims with the responsible party (the OPA "presentment requirement").

OPA requires those that have suffered damages resulting from an oil spill to first present their claims to the responsible party for payment. The responsible party has ninety days to deny or pay the claim. If the claim is not fully paid to the satisfaction of the claimant within that time, the claimant is free to initiate litigation or to file a claim with the Coast Guard's Oil Spill Liability Trust Fund. Claimants cannot pursue claims in court or with the Coast Guard without first satisfying this presentment requirement.

Not long after OPA's enactment in 1990, it became apparent that the OPA-mandated claims process—with its emphasis on settlement without litigation—could be mis-used to exploit the economic duress of oil spill victims. Specifically, a responsible party could obtain releases from legitimate liability, especially future damages, in exchange for inadequate compensation. For this reason, Congress amended OPA in 1996.

The potential for abuse of the originally enacted OPA-mandated claims process was exposed in 1996, after an oil spill from a tanker off the coast of Rhode Island. In testimony before the Senate Environment and Public Works Committee, Bob Smith, President of the Rhode Island Lobstermen's Association, outlined a litany of abuses employed in the claims process by the responsible party's guarantor. The mistreatment of claimants included: demands for releases in exchange for inadequate consideration; denials of legitimate claims based on allegations of "inadequate documentation;" and refusal by the responsible party or its agents to compensate claimants for the costs of assessing damages. As a result of these abuses, Congress amended OPA in 1996 to provide claimants with protections against the potential for abuse by responsible parties through the claims process.

Perhaps more revealing in explaining the congressional intent and effect of the 1996 OPA amendments is the testimony of the insurance industry officials who opposed the amendments. The June 4, 1996, testimony of Richard H. Hobbie, III, President, Water Quality Insurance Syndicate, of the American Institute of Marine Underwriters, to the United States Senate Committee on Environment and Public Works, explained in vivid detail the basis for industry opposition to the 1996 amendments to OPA. Mr. Hobbie stated that the overhaul of OPA claims provisions—particularly the requirement of interim, partial claim payments under any OPA damage category and the prohibition against final settlements—would make claims handling "unwieldy," would make "virtually every claims payment interim," and would prohibit insurers from being able to settle claims and "close the books on a spill." Despite these objections from the insurance industry, Congress proceeded to shift the emphasis of OPA from settlement of claims to full compensation of victims' damages for as long as those damages continued to be incurred into the future.

Attached for your consideration are copies of the 1996 OPA amendments, and the referenced contemporaneous testimony. I believe this record demonstrates that the problems and complaints expressed by claimants today can be directly traced to the abject failure of BP and its agents, Mr. Feinberg and the Gulf Coast Claims Facility ("GCCF"), to conform the claims process to OPA mandates, as amended in 1996. The most damaging of these OPA violations is their disregard for the prohibition against use of an overly broad release of future claims in exchange for less than full compensation for losses incurred.

Although this ongoing infringement of existing law has been raised by my Office, as well as other interested parties, in the BP oil spill multidistrict litigation ("MDL") pending in Louisiana federal district court, no action has been taken by that court to date. As a consequence, Mr. Feinberg has been permitted to continue to extract releases of future damage claims from claimants in exchange for payments from the GCCF which may be wholly inadequate to fully compensate these individuals and businesses. Further, it is suspected that interim claim payments are being denied, delayed, or offered at less than true value, in an effort to compel financially desperate claimants into giving BP and other responsible parties a release of present and future damages to which they are entitled under OPA and other applicable laws. However, Mr. Feinberg has refused to provide access to the information needed to determine if this is in fact occurring, including his failure to comply with a subpoena issued to him by my Office under the Mississippi Consumer Protection Act.

In addition, Mr. Feinberg and BP are thwarting the ability of claimants in the Gulf to file claims in person by systematically closing claims offices. One of the three Mississippi claims offices has been closed and a second one is scheduled to close before the end of the year. Mr. Feinberg should not be permitted to unilaterally close these offices when damages continue to be incurred and claims continue to be filed. Early closure of these offices will impair the ability of the most needy Gulf residents harmed by this spill from filing claims to satisfy OPA's "presentment" requirement, and appears calculated to limit BP's liability for damage claims in court. BP has already repeatedly raised the alleged failure of litigants to satisfy the presentment requirement as ground to dismiss many of the suits now pending in the Louisiana MDL.

As the Committee noted last week, damages from the Deepwater Horizon oil spill and its aftermath will continue to be felt for years if not decades. The full measure of environmental and health effects from this spill and the exposure to these toxins is unknown, and the people of the Gulf should not have to gamble on their futures now by waiving their right to compensation for prospective damages. The law prohibits conditioning payments upon the release of future claims, and this practice by the GCCF should be exposed and halted. It is imperative that BP not be permitted to extinguish the legal rights of those harmed by this spill through the use of the GCCF's unlawful release.

Accordingly, the questions I would request the Committee submit to Mr. Feinberg are:

1. Doesn't the requirement of a release of future claims in exchange for payments from the GCCF violate the 1996 amendments to OPA? And, if not, why not?
2. Why are GCCF claims offices being closed when claims continue to be filed? Provide this Committee the data on how many claims have been and are being filed daily, weekly, and monthly at all claims offices—including those already closed.

Your continued attention and support to the people and businesses of the Gulf Region are greatly appreciated. Further, your assistance in exposing and curing the violations of existing federal law by the GCCF claims process would aid the recovery of this region tremendously. Only by making the claims process fairer, faster, more transparent, and in full compliance with OPA can the Gulf Region and its people fully recover from this man-made disaster. Please contact me if I can provide any additional information to the Committee on this matter.

Sincerely yours,

Jim Hood
Attorney General

The 1996 amendments to OPA, provide in relevant part as follows:

TITLE II—IMPROVEMENT OF RESPONSES TO OIL SPILLS

SEC. 201. ACCESS TO TIMELY SHORT-TERM FINANCIAL ASSISTANCE FOR PERSONS INJURED BY OIL SPILLS.

(a) **DAMAGES FOR LOSS OF PROFITS OR IMPAIRMENT OF EARNING CAPACITY.**—Section 1002(b)(2)(E) of the Oil Pollution Act of 1990 (33 U.S.C. 2702(b)(2)(E)) is amended by striking the period at the end and inserting the following: “, in part or in full. Payment or settlement of a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled under this subparagraph shall not preclude recovery by the claimant for damages not reflected in the paid or settled partial claim.”.

(b) **CLAIMS PROCEDURE.**—Section 1013(d) of the Oil Pollution Act of 1990 (33 U.S.C. 2713(d)) is amended by inserting after “unavailable” the following: “including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled.”.

(c) **ADVERTISEMENT.**—Section 1014(b) of the Oil Pollution Act of 1990 (33 U.S.C. 2714(b)) is amended—

- (1) by striking “If a responsible party” and inserting the following:

“(1) **IN GENERAL.**—If a responsible party”; and

- (2) by adding at the end the following:

“(2) **CLAIM FOR INTERIM DAMAGES.**—An advertisement under paragraph

(1) shall state that a claimant may present a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled and payment of such a claim shall not preclude recovery for damages not reflected in the paid or settled partial claim.”.

(d) **SUBROGATION.**—Section 1015(a) of the Oil Pollution Act of 1990 (33 U.S.C. 2715(a)) is amended—

- (1) by redesignating subsection (b) as subsection 6(c); and

- (2) by inserting after subsection (a) the following:

“(b) **INTERIM DAMAGES.**—

“(1) **IN GENERAL.**—If a responsible party, a guarantor, or the Fund has made payment to a claimant for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, subrogation under subsection (a) shall apply only with respect to the portion of the claim reflected in the paid interim claim.

“(2) **FINAL DAMAGES.**—Payment of such a claim shall not foreclose claimant's right to recovery of all damages to which a claimant otherwise is entitled under this title or any other law.”.

LENGTH: 5623 words

HEADLINE: PREPARED TESTIMONY OF BOB SMITH, PRESIDENT, RILA BEFORE THE SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE RE: THE RHODE ISLAND OIL SPILL AND IMPLEMENTATION OF THE OPA 90

BODY:

Mr. Chairman and Members of the Committee: Good morning. The Rhode Island Lobstermen's Association thanks you conducting this hearing, inviting us to testify, and for demonstrating your concern over how small businesses and individuals are faring after the devastating oil spill off Point Judith, Rhode Island, on January 19, 1996. Today's testimony is presented by Bob Smith, who has been a lobsterman in and around Point Judith for 49 years and is privileged to be President of the Rhode Island Lobstermen's Association (RILA), and by Barry M. Hartman, with the law firm of Kirkpatrick & Lockhart in Washington, and Counsel to RILA. Our association and over 100 businesses damaged by the spill have retained Mr. Hartman and his firm to make sure that our rights are protected and that we are properly compensated for our losses. Mr. Hartman served as Acting Assistant Attorney General for the Environment and Natural Resources Division at the United States Department of Justice during the Bush Administration, and is experienced in the legal consequences of oil spills, having prosecuted the Exxon Valdez case, and having participated in enforcement efforts in a number of other spills. He also was the Justice Department's representative in connection with the development of the Oil Pollution Act, which President Bush signed in 1990. Senator Chafee, you in particular have been quite helpful to us, and we know the personal anguish you must be going through after this spill, which occurred not only in our places of business, but in both of our back yards. For years you have been a champion for the environment. We know how important this issue is to you. You have spent a great deal of time at the site of the spill and we just want to take this opportunity to personally thank you for your countless hours of attention to this tragic and important issue. You certainly have been a good friend to Rhode Island's fishermen. And now, in your position as Chairman of the Committee on Environment and Public Works, we are confident you will again take the lead in breaking through the bureaucracy of the Federal Government to see that Rhode Island's fishermen are compensated for their losses as guaranteed under the law. RILA believes that it is both necessary and appropriate that the Committee not only consider, but propose, certain changes in the Oil Pollution Act, so that issues that exist today with respect to the damage compensation system, are not repeated the next time there is an oil spill. The problems we are outlining have been discovered through actual experience, and might not have been anticipated when this law was considered. By convening this hearing, you demonstrate your commitment that we all learn from our experience. Our concerns may be summarized as follows. We are pleased that OPA exists, however:

(1) it is being used by the barge owner's insurer to pay off claims at minimal rates and to effectively discourage claimants from seeking legitimate, long-term claims for damages;

(2) the barge owner's insurer, under the guise of OPA, is demanding inappropriate releases from claimants, does not explain what is being demanded, and instead waves a few dollars in front of people to force them to agree to limitations on their rights;

(3) claimants are not being allowed meaningful participation in the Natural Resource Damage Assessment process even though it could directly affect their rights; and

(4) it appears that the barge owner's insurer and the Coast Guard are setting up road blocks that prevent claimants from obtaining full recovery for their losses. Our testimony today will describe our Association, discuss how we have fared since the spill, and outline some of the problems and suggestions for improvement of OPA. The Rhode Island Lobstermen's Association (RILA) is a nonprofit association of people who are engaged primarily in the business of fishing for lobsters. We have almost 100 members, and our businesses represents a large portion of the lobstering industry off Point Judith, Rhode Island. Through the association, we have put together a group of over 100 businesses that are jointly developing their damage claims. These are not only lobster boat owners, but on-shore processing facilities, and other businesses that are part of the fishing industry in the Port of Galilee. As you know, Point Judith is the third largest fishing port on the East Coast. Until January 19, 1996, we were proud to say that our lobsters are world renowned for their quality. In fact—we think they were the best quality lobsters caught in this country. In fact the fishing industry has contributed greatly to the local and state-wide economy. Millions of dollars have been pumped back into the economy by way of direct and indirect business resulting from the successful harvesting of Rhode Island's pristine seafood beds. Many lobstermen have been fishing in this area for

years. In Bob Smith's case, his father started over a half century ago, and he has continued in his father's wake. Lobstermen are mostly small businesses—each owns a boat or two and each hires a couple of crewmen to help. They love what we do. They are independent, self-sufficient and our own bosses. They are successful because of their willingness to put in an honest day's hard work. On January 19, 1996 the unthinkable happened—a barge spilled over 800,000 gallons of home heating oil after running aground off of Moonstone Beach.

The place where Bob Smith has been catching lobsters was directly under the barge and the spill. We say this was unthinkable, since no one expected it to happen at all. But here is what made it even more shocking. We are sure you remember the World Prodigy spill of 1989, in Narragansett Bay, which is just a few miles from Point Judith. None of us thought this could ever happen again, at least not in our neighborhood. But it did. It's sort of like witnessing a horrible accident. Most of us never see one. But to be witness to two just outside our window is simply not something anyone expects. We are not here today to talk about whose fault this was, or how efficient and effective the response to the spill was, although quite frankly, the response teams basically shut out local efforts to help the cleanup. Our interest is simple: we want to get back to work, and we want to make sure we are compensated for the losses that we have suffered, are suffering, and sadly, are likely to suffer in the future because of this spill. The immediate impacts of this spill were incredible. Bob Smith walked on the beach where it happened, and saw literally hundreds of thousands of dead lobsters. Most were small—2, 3, or 4 years old. They were everywhere. At one point in a three square-foot area, he counted 730 dead lobsters. Some observers say that there were over a million lobsters killed. As a result of the spill, a 250 square-mile area has been closed off to fishing and lobstering since January 19. That included the entire area leading into the Port of Galilee, where many seafood processors are located. A map illustrating the closed-off area is provided as Attachment A to this testimony. Not only could we not catch lobsters in a prime area, but most shellfish catches upon which many on-shore facilities rely could not be brought into Point Judith to be sold. The buyers, processors, wholesalers and others were shut down because they use the waters that were closed down to supply feed tanks used to hold the lobsters. And the businesses that serve the industry—divers, electricians, plumbers, restaurants, operators, suppliers, and repairmen, were in turn shut down. In short, Point Judith, which is usually a hub of business activity, was turned into a ghost town. Fortunately, fishing areas are gradually being reopened. Fin fishing is now allowed in all areas. The shoreside facilities may again use the water of Point Judith Pond to handle the delivered catches. A very limited amount of lobster fishing is allowed off of Newport. But the main area off Point Judith remains closed. Please understand, we are not necessarily criticizing the decision to keep the area closed. We, like everyone, want to make sure that when it is opened, the lobsters are safe for eating. Sooner or later we expect lobster fishing to be permitted again. But what about long term effects? The hundreds of thousands of lobsters that were washed up dead on the beach were young—1, 2, 3, and 4 years old. We are not permitted to catch lobsters until they reach their legal size, which occurs around age 7. That means these million or more dead lobsters will not be available to be caught in 1999, 2000, and 2001, or 2002. In addition, many of the dead lobsters were or would have been egg bearing. It could be eight to ten years from the time a lobster bears eggs until those eggs hatch and grow to the legal size permitted to be caught. So there are more years in the future when we will be impacted. Further, the death of younger female lobsters, which will never reproduce, will reduce populations generally, which is very likely to impact lobstering in the future. And, that's where the real economic impact will be felt by future generations of Rhode Islanders. Unfortunately, we still do not know just how severe the damage has been because of the immense devastation of the egg bearing lobsters. And we can't just go somewhere else to fish, for a couple of reasons. First, in this area, most of the legal size population of lobsters are caught every year. The pie is only so big and now it is smaller. That is true even outside the closed area. So to move elsewhere would not eliminate our losses, it would just spread them around. Second, many of us can't just go somewhere else. Fishing in deeper and deeper waters requires different boats, additional and more expensive equipment, is much costlier in terms of fuel and insurance, and involves more significant risks. Many lobstermen can't afford it, or don't want to put themselves at greater personal risk, even if it might mean a greater price for our catch. We are just plain shut down, with no alternatives. As you consider this issue, remember that there are three very distinct types of harms that we are suffering:

(1) actual damage to our property caused by the spill; (2) actual losses we suffer because we cannot engage in our livelihood today; and (3) losses we are likely to suffer in the future because of the long term impact that this spill is likely to have

on the lobster population. All three types of damages are supposed to be fully compensated under OPA. Unfortunately, problems exist with compensation for all three. Now to the question at hand: is the Oil Pollution Act helping us get compensated for our losses? Yes and no. On the one hand, it might be better than what would be the case if there were no law. On the other, there are problems—serious problems—that you need to know about. Some you may be able to address. Others may be unavoidable because of the attitude that the barge owner and its insurer take. In some respects the law could result in damaged parties getting less than what they would be entitled to if they simply went to court. The Insurer Has Been Making Unreasonable Demands as a Condition of Making Interim Payments First, it must be understood that just because the law creates liability for the responsible party, it does not necessarily follow that Eklof Marine or its insurer is willing to accept that responsibility. Here is the attitude that the insurer has, as reflected in a statement apparently made by one of its adjusters: “They charge you for every little dinky lobster and the fish that could have eaten them.” The Providence Sunday Journal, March 24, 1996. With due respect, anyone who knows about the lobster industry knows that every so-called “dinky” lobster that we are allowed to catch puts food on our tables. To trivialize our claims in this way demonstrates the insensitivity of the insurer or our plight. The insurer’s insensitive attitude is also shown by how it has treated claims. When this first happened, and claims started being filed, the insurer tried to use the claims payment process to minimize what it had to pay not only now, but in the future. For example, one person who allowed his boat to be used in the clean up was required to sign a release of all claims he might ever have as a result of the spill. A copy of that release is attached to this testimony as Attachment B. Others were required to sign releases that contained technical legal language limiting their rights, but which was not explained to them at all. The claims adjuster’s answer? “We’re not your lawyer.” A copy of this language that is being forced on us is provided as Attachment C. In other instances, the claims examiners may have actually suggested to claimants that they are on our side. Nothing could be farther from the truth. Their duty is to the insurer, to pay only what they think they absolutely must pay. To suggest to claimants that they are on the claimant’s side is incorrect, and failing to make their positions clear to people having no experience in this process is disingenuous at best.

Regarding actual damages suffered by us, consider the following. Many of our members lost equipment such as lobster pots, because they were in the area where the spill occurred, and for weeks we could not remove them. The insurer is willing to pay something for these, and that something is generally the insurer’s depreciated value of the pot, not its really value—or cost—to us. For example, assume a pot is 5 years old, and according to the insurer it has a life of 8 to 10 years. A new pot costs \$40.00 to \$55.00. The insurer offers \$15.00 per pot. That means if a lobsterman lost 500 pots, he gets \$7,500 to cover an actual replacement cost to him of \$20,000. In the real world, lobstermen not only cannot afford to replace pots every 5 years, but using their own skill and time, often repair pots that have no “useful life” so that they last well beyond ten years. The insurer apparently gives no value for this skill and time. We can’t repair pots that are lost in the ocean because we aren’t permitted to recover them, since the area is closed. Now the insurer will probably say that we didn’t have new pots in the first place, so giving us new pots now puts us in a “better” position that we were in before the spill. To that we say the following: Which is fair? Making an injured party pay to put himself in the actual position he was in before he was injured, or making the responsible party pay a little more so that the injured party is in the actual position he was in before the injury occurred? In addition to not being fully compensated for actual losses, the insurer’s efforts to make interim payments for lost income, creates a more serious problem. Most of the claimants in our group have been completely out of work since January 19, 1996. The insurer has offered to pay some lost profits based on a calculation it developed. But to take this money, we must sign a release that could jeopardize our future claims. What’s more, a provision of OPA could result in our being denied the right to recover for future losses, even if we are lease tries to preserve those rights. Specifically, section 1015 of OPA provides: Any person, including the Fund, who pays compensation pursuant to this chapter to any claimant for removal costs or damages shall be subrogated to all rights, claims and causes of action that the claimant has under any other law. 33 U.S.C. 2715. For example, if I as a claimant accept an interim payment from the insurer under this law, this provision could be construed to require that I give the insurer all my rights to claim damages under any other law, even if I was not yet compensated for all my losses. That could mean that once I accept money from the insurer, I might lose my rights under state law to sue the insurer if I am unhappy with the payment I received under OPA, even though OPA would otherwise protect my ability to pursue such a claim. We don’t

think this section was intended to create a mandatory subrogation of rights by virtue of the words “shall be subrogated.” We don’t think this section was intended to require subrogation of all rights under all other laws except OPA, regardless of whether compensation was paid for the loss of that right.

We think it was intended to make sure that only rights to claims that have been compensated are subrogated to whoever pays. That is fair, and that makes sense. But the language of the statute is less than artfully drafted. That leaves our members with three choices. First, we can take an interim payment without any protection from this section of the law, and hope that the insurer, who says “trust me, that is not what the section means,” keeps its word and does not try to bar a future claim. And we have to hope that the Coast Guard, which administers the OPA Trust Fund when the insurer stops paying, agrees to do the same. Second, we can delay filing claims for interim payments now, and instead wait until we know whether long term claims exist, and file all claims at one time. The problem is, many lobstermen cannot afford to wait. Third, we can insist on written assurances from the Coast Guard and the insurer that they would never assert this subrogation provision as a defense to an uncompensated claim. We chose the third route, but getting those written assurances was not easy. The Coast Guard, after a number of meetings, Recently agreed in writing that it would not raise the subrogation as a defense except as to rights for which compensation is actually paid (Attachment D). The insurer says it will agree to language that recognizes that this section is not a bar to a future uncompensated claim.²To prevent this from happening in the future, Congress should simply add a phrase to section 1015 of the law, so that the section reads as follows: Any person, including the Fund, who pays compensation pursuant to this chapter to any claimant for removal costs or damages shall be subrogated to all rights, claims and causes of action that the claimant has under any other law, with respect to which compensation has been paid ³Access to Information in File Claims In times like these, the federal government needs to partner with the RILA and help rebuild what was destroyed. We are talking about hundreds of Rhode Island families being dramatically affected not over just the past two months, but well into the future. Lobstermen and their families are not looking for handouts. We are looking for what is provided to us under the law of this country. We are reaching out to our government to work with us and not shy away from a very traumatic event. As the Committee knows, thankfully there have been only three major spills since OPA was enacted—one in Tampa Bay, one in San Juan, and the one in Rhode Island. Because of where the North Cape spill occurred, it is likely to have the most devastating impact on natural resources and the economic well being of the area. As we understand it, although many small claims were processed immediately in Tampa Bay and San Juan, there were, and may still be, delays in determining claims for lost profits and impairment of income. To help our members understand what is expected when these claims are filed, and what kind of documentation is needed—particularly for impairment of income claims—we wanted to review past claims under OPA. Of course, the insurer does not make these available at all.

Our counsel filed a Freedom of Information Act request with the Coast Guard to review their claims files. Again, the purpose was to have a full understanding of exactly what type of information is provided, and what will be accepted as sufficient. The Coast Guard, citing privacy concerns of claimants in other spills, has effectively denied our request, except for producing a single claim that it chose as “representative.” It gave us only its final decision, and declined to provide any of the foot thick stack of information that apparently led up to its decision, again claiming that to do so would be too burdensome for it, since it would have to redact confidential information. We did not seek any confidential information. It also told us that if we wanted this information, we would have to pay thousands of dollars, and wait several months while it reviewed the information. Apparently there is not a single claims file anywhere that it would not take months and thousands of our dollars to screen and provide to us. Again, we are not seeking any private or confidential information, just data that will give us insight into how the Coast Guard evaluates these claims, and how it reacts to information provided it.⁴Withholding important information from claimants benefits the Coast Guard, and the insurer, and again undermines the ability of claimants to obtain a full recovery. So the Coast Guard won’t give us important information without us paying for it, and no doubt will suggest that if we do pay it to give us this information, that payment will not be considered by it to be “reasonable costs incurred by the claimant in assessing the damages,” within the meaning of its regulations. The result: the Trust Fund—administered by the Coast Guard—is faced with lower claims. To our knowledge, no claimant has ever recovered lost future profits or impairment of income under OPA, even though section 1002(2)(E) of OPA clearly authorizes such recoveries. Withholding

this information from claimants will only serve to perpetuate that denial, except for those claimants willing to hire—and pay for experts to fight for them. Participating in the Natural Resource Damage Assessment Process in January of this year, just weeks before the spill, final regulations governing Natural Resource Damage Assessments (NRDA) were promulgated. See 61 Fed. Reg. 4 (Friday, January 5, 1996)(to be codified at 15 C.F.R. 990). They were to become effective on February 5, 1996, after the spill occurred. It is our understanding that the Federal Government contends that these regulations will govern NRDA process arising from this spill. Under OPA, the public is given the opportunity to comment on plans developed for NRDA process. Under the regulations, a similar opportunity for consultation exists. Our concern is a practical one. If there is a long term adverse impact on the lobster population, it could translate directly into an economic impact on the lobster industry. The natural resource damage assessment process will inevitably include studies that should demonstrate the extent of that impact. The methodology used for these studies will significantly influence the results, and it is crucially important that sound science be used. The long-term impact of this spill could mean the loss of scores of jobs and millions of dollars to the local and statewide economy. Job loss in this area could be permanent and that would be devastating to Rhode Island. We have retained an expert, and have requested the opportunity to participate in the development of the plans that will form the foundation for the NRDA process. Both the federal and state trustees have made this request too. So far we have not been permitted to participate in this process (it is claimed that the process has not yet started), but everyone is “thinking” about it. We have contacted some of the scientists at the University of Rhode Island who are supposed to conduct surveys, but so far none of these surveys have been shared with us. The point is, while the law currently calls for notice and opportunity to comment on NRDA plans, and the regulations do so as well, that opportunity must come at a meaningful time—before the plans are selected. In fact, to be meaningful, we should be permitted to attend all the meetings that are held about that planning process, to provide input and insights that might not otherwise be appreciated or known. Quite frankly, we think we are being stonewalled by the trustees who do not want to be “burdened” with claimants’ concerns. The trustees have many interests that will or could influence the NRDA planning process. Interest is sound science. We want to make sure that the paramount Taking the federal trustees’ word for it, “Trust us, we’re the government,” is not something that our members are comfortable doing, particularly when the Federal Trust Fund pays if lost income claims based on the NRDA process are filed. It would be expensive, unfair, unnecessary, and perhaps impossible to expect our members to conduct their own surveys and planning when a perfect opportunity exists for them to be involved in this process. We hope the Committee will not let this slip by. The Coast Guard is Creating Road Blocks to Claimants’ Ability to be Fully Compensated by Trying to Deny Them Costs Necessary to Prove Their Claim You have asked us to comment on how certain policy issues relating to compensation for losses are addressed under OPA. One such issue is whether OPA should give everyone the ability to recover the costs of proving a claim for damages so that they are made whole. Unfortunately, the Coast Guard seems to think that everyone except the claimants should recover these costs. This makes no sense. OPA does not prohibit the payment of the claimant’s costs of determining damages. The state and federal government can recover these costs, including attorneys’ fees. The responsible party gets them because its insurers’ pays. And as explained below, the only way claimants can be assured that they at least have a fighting chance to be fully compensated, is if they hire competent experts to help them prepare and pursue their claim. Yet the Coast Guard and insurer apparently do not want to pay these costs. We believe the law clearly does not prohibit, and indeed permits, the payment of claimants’ costs and fees needed to prove their claim for claimants. However, the Coast Guard in its regulations may be arbitrarily and illegally trying to exclude these costs and fees from the kinds of damages that a claimant may recover in connection with preparing a claim.⁵In order to avoid the fight that we are likely to have, OPA should be amended, or the Coast Guard regulations corrected to address this inequity.

The fact is, if those sections of the Act authorizing claims for impairment of income and lost profits are to have any real meaning, that claimants must be permitted, and, indeed, encouraged, to get expert help to ensure that they receive what they are entitled to by law. They are entitled to be and on a level playing field with the insurer and the Coast Guard, both of which have boatloads of lawyers and experts. And the responsible party’s insurer, or the Trust Fund, should pay for it. There are several reasons why these costs should be covered as damages. First, claims for lost future income require some consideration of long term effects on the lobster population. No single lobsterman can afford to undertake such studies, and

the insurer knows it. But without that backup, claims for lost income would be difficult to prove. Instead, the claimants must band together, and counsel and experts helps this happen. The government has attorneys and other experts develop its claims for natural resource damages, and those costs are paid by the insurer. Why shouldn't a small business person have the same benefit for its claims? Second, proving lost profits, and particularly proving impairment of future income, can be complicated. By way of example, we reviewed one lost profit claim processed by the Coast Guard in another spill. The Coast Guard tells us that there is over a foot of documentation to support a claim for about \$40,000. If this section of the law is to have any meaning, a claimant must be encouraged to hire competent experts to help him navigate through this morass and properly prepare a claim. Third, while the law suggests that claims are to be processed within 90 days by the insurer, and within 6 months by the Coast Guard, that time period can be delayed indefinitely by insurance and Coast Guard lawyers who will say that the time period does not run until the claim is fully documented. We think that is exactly what has happened in other spills. Claimants need help to fight such abuses. Finally, claimants must be advised of how this law works, so they do not unwittingly waive their rights. Few know that if you file a suit in court, you cannot pursue a claim with the Fund. More importantly, it was through counsel that our members were able to get written confirmation that they won't be waiving our rights if they accept interim payments. Until we hired counsel, no one advised us of the consequences of these releases. While promises were made, no one would put it in writing. Notwithstanding the policy reasons supporting the payment of claimants' costs of proving his damages, and the fact that law does not prohibit it, the Coast Guard regulations governing the claims process try to severely limit recovery of such costs. The regulations provide: (e)ach claim must include at least the following, as applicable: . . . (8) The reasonable costs incurred by the claimant in assessing the damages claimed. This includes the reasonable costs of estimating the damages claimed, but not attorney's fees or other administrative costs associated with preparation of the claim.³³ C.F.R. 136.105(e).-6/There is no explanation for allowing one kind of cost, but not another, and no justification either, except the desire to discourage use of experts to document a claim. It is ironic that the Coast Guard? It is particularly disconcerting that these regulations are so vague

Of course if and when an injured party seeks to challenge these regulations, the Coast Guard will no doubt say that such challenges are barred by section 1017 of OPA, which states that regulations must be challenged within 90 days of promulgation. Of course, until a spill occurs, no claimant would have a reason to challenge the regulations. appears to take this position that its own costs and attorneys' fees are recoverable, as are those of every other state and federal agency "damaged" as a result of the spill. See 61 Fed. Reg. 4 (Friday, January 5, 1996) (to be codified at 15 C.F.R.990).7-/And the responsible party's costs are paid for by the insurer. Without qualified experts studying the long-term effects of a spill, any claim might well be reduced below its true value. Not surprisingly, insurers who want to limit their payouts for claims in order to preserve their profits, and the Coast Guard, which wants to preserve the Trust Fund for future claims, have no problem with this. In sum, while we believe law and policy clearly support the payment of costs needed to prove a claim, and the insurer and Coast Guard have the ability to make such payments, we frankly expect both it and the Coast Guard to fight us as part of their broader strategy to limit claims in general. In summary, we offer the following observations about the OPA claims process.

(1) OPA is being used by insurer to pay off claims at minimal rates and to effectively discourage claimants from seeking legitimate long term claims for damages.

(2) The insurer, under the guise of OPA, is demanding inappropriate releases from claimants, does not explain what is being demanded, and instead waves a few dollars in front of people to force them to agree to limitations on their rights.

(3) Claimants are not being allowed meaningful participation in the Natural Resource Damage Assessment process. (4) It appears that the barge owner's insurer and the Coast Guard are setting up road blocks that prevent claimants from obtaining full recovery for their losses. We appreciate and thank you for the opportunity to testify before the Committee, and stand ready to answer any questions that you might have.

1/For example, lost profits from January 19 through today. 2/See Attachment E. Curiously, the insurer seems to have agreed to this language, but claims it does not understand it. 3/Other related and proposed changes are included as Attachment4/ There are a variety of theories and approaches that may be used to determine lost future profits and impairment of income. The OPA is silent regarding which may apply. Reviewing state common law with respect to those possible theories is helpful, but claimants can hardly be expected to do so without the benefit of counsel,

a benefit that the Coast Guard apparently wants to deny. 5/The insurer, who is plainly not bound by this arbitrary position of the Coast Guard, is free to pay costs as well. 6/regarding the kinds of costs of assessment of damages that are recoverable. They say costs are recoverable, but don't say what those costs are. This leaves a claimant in an untenable situation. I hire an expert? An accountant? An attorney 7-/In the single reported decision under OPA, a court allowed the Coast Guard and even private claimants to recover attorneys fees associated with removal costs, but with respect to damages, did not allow attorneys' fees to be recovered. This distinction, applicable to claimants but not to federal or state agencies, or to the insurer for that matter, is of questionable legal soundness. *Avitts v. Amoco Production Co.*, 840 F.Supp. 1116,1118 (S.D. Tex. 1994).END

LOAD-DATE: March 28, 1996

Copyright 1996 FDCHMedia, Inc. All Rights Reserved. Federal Document Clearing House Congressional Testimony June 4, 1996, Tuesday SECTION: CAPITOL HILL HEARING TESTIMONY

LENGTH: 2725 words HEADLINE: TESTIMONY June 04, 1996 RICHARD H. HOBBIE, III PRESIDENT WATER QUALITY INSURANCE SYNDICATE SENATE ENVIRONMENT OIL POLLUTION ACT REVISION
BODY:

STATEMENT OF THE AMERICAN INSTITUTE OF MARINE UNDERWRITERS AND THE WATER QUALITY INSURANCE SYNDICATE On S.1730, The Oil Spill Prevention And Response Improvement Act before The United States Senate Committee on Environment and Public Works Presented by Richard H. Hobbie, III President, Water Quality Insurance Syndicate

June 4, 1996

STATEMENT OF THE AMERICAN INSTITUTE OF MARINE UNDERWRITERS AND THE WATER QUALITY INSURANCE SYNDICATE BEFORE THE SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE

The American Institute of Marine Underwriters ("AIMU") is a non-profit trade association representing 100 marine insurers in the United States. AIMU members underwrite about 90% of the commercial marine insurance done in the United States. The American Marine Insurance Industry has insured federal statutory pollution liabilities for vessels for nearly a quarter of a century. I appear here today on behalf of AIMU and the Water Quality Insurance Syndicate ("WQIS"), where I serve as President. We are honored to have this opportunity to address the Committee on S.1730 and our experiences under the Oil Pollution Act of 1990 ("OPA '90"), particularly with respect to the NORTH CAPE oil spill.

The Water Quality Insurance Syndicate was founded in 1971 by members of the domestic marine insurance industry in order to provide a mechanism to insure liabilities under federal pollution statutes. Today, WQIS is a pool of 17 marine insurers from the American market. WQIS insures liabilities imposed on vessel owners and operators by OPA '90, as well as the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). We insure liabilities arising from oil or hazardous substance spills for over 39,000 vessels operating primarily in the inland and coastal waterways of the United States. As the largest domestic insurer of such marine pollution liabilities, WQIS provides about one third of the guarantees required for Certificates of Financial Responsibility issued by the Coast Guard under OPA '90 and under CERCLA. American marine insurers applaud the provisions in S. 1730 which would provide incentives to owners of single-hull barges to convert to double-hulls. The bill would award statutory incentives to encourage owners to replace single-hull vessels in their fleets with double-hull vessels. If the owner replaced a double-hull vessel at least five years prior to its required replacement date, he will be entitled to assert his OPA limit of liability even if a violation of an applicable federal safety, construction, or operating regulations has occurred. We commend the authors of the bill on this incentive approach. However, the incentives would be more effective if applied more broadly. The proposal does not address the situation where an owner wishes to expand his fleet. If the incentives were to become law as drafted, some owners might see an advantage to first buying single-hull barges which are scheduled to be scrapped and then replacing them with double-hulls. Such maneuvering would not result in an early, net reduction in the number of single hull vessels. As a practical matter, all new builds should be eligible for these special incentives.

The domestic marine insurance market supports safety and prevention measures which will contribute to the reduction in the severity and frequency of oil-spill incidents. As a practical matter, such measures must be commercially sound and tech-

nologically feasible. Any other approach would simply add more confusion to an already difficult situation. The requirement, proposed in S. 1730, that single-hull barges over 5,000 gross tons operating in open ocean or coastal waters have a crew member on board and an operable anchor is not a workable solution. It will not be possible for most tank barges to implement the crew provisions. In fact, implementation may put individual crew members' lives at risk. Crew quarters may not be placed safely above a tank filled with petroleum products. Most tank barges have no space which could be used for crew quarters because virtually all of the deck space on existing barges is above tank space. Failing to fill some of the tanks so as to provide such void space would not be a satisfactory solution. Empty tanks could result in serious stability problems and more casualties.

We are unaware of any proven emergency system for retrieval of a break-away barge, as provided for 101(b) of the bill, which is effective in all circumstances. We urge the Committee to continue to study this issue and adopt only those provisions which are both feasible and consistent with protecting the safety of the lives of those who go to sea, as well as with preventing oil spills and other casualties.

Dredging is a major issue in many U.S. ports today, including New York. The bill as drafted is too limited in this regard. Rhode Island is not the only state to have problems with dredging. The need for dredging is a national problem which can be addressed, in part, by assuring that navigational charts are accurate and up-to-date.

The same can be said of the provisions on under-keel clearances. Normally, the establishment of minimum under-keel clearances is based on local conditions. A federal attempt to regulate this issue would be far too unwieldy and costly. What agency on the federal level has the resources to undertake this responsibility effectively? We know of none. We suggest that a far better use of federal efforts to improve navigational safety will be to provide the National Oceanic and Atmospheric Administration ("NOAA") with sufficient staffing and funding so as to bring U.S. navigational charts up-to-date. This would contribute far more to the oil spill prevention effort.

We are very troubled by the drafting of 203(b), which gives the federal government the right to seek "any monies" paid out. This would appear to permit recoveries for any expenditures whatsoever, regardless of whether they are for damages as defined in 1002 of OPA. The provisions would promote irresponsible and unrelated expenditures and must be changed to require that only OPA defined damages may be recovered. The purpose of proposed 205 is unclear. Near-term ecological injury is not defined in OPA. We believe the existing statute and regulations address these issues and that this section is unnecessary.

Section 206 would impose unworkable restrictions on the cleanup process. A response plan can never anticipate every action which should be taken in every ecosystem. Experience has shown that each incident and spill response is unique. The On Scene Coordinator must retain the flexibility to direct the clean-up based on the needs in the local area. No response plan can foresee every eventuality. We urge that 1321 of the Federal Water Pollution Control Act not be amended as proposed. Spill response is certain to go awry if blind adherence to a pre-established plan is mandated. The flexibility permitted under current law is more likely to permit environmentally sound spill response activities.

In its 25 years of existence, WQIS has handled thousands of oil spills. The January spill in Rhode Island was our first experience with an extended closure of fishing grounds. Accordingly, it was the first time that a need for partial or interim claims payments arose. In the past, in the few spills where there has been closure of the fishing grounds, it was only for a day or two in order to allow free access for response vessels. As soon as it became apparent that Rhode Island lobstermen and fishermen would suffer ongoing loss of income due to the closing of the fishing grounds, a specialized team of adjusters was flown into Narragansett and Point Judith to respond to their needs. Over \$178,000 was paid out in claims payments during the first week alone. As a result of the program established voluntarily by WQIS, over 855 interim or partial payments now have been made.

In our experience, the NORTH CAPE spill was unique because of the number of affected lobstermen and fishermen. Underwriters are pleased to report again on the partial claims settlement process established in Rhode Island. Immediately following the incident, our Oil Spill Claims Center was set up along with our toll free telephone number (1-800-995-4045). Over 100 claims have been filed since then. Well over half of the claims are for fish catch loss or for loss of income. A specialized team of adjusters experienced in handling oil spill claims was flown into Rhode Island in order to respond immediately. Six to eight adjusters have been available on a daily basis to respond to citizens' needs and to assist them in getting together the documentation needed for their claims.

WQIS was particularly concerned about the needs of lobstermen and fishermen in view of the closure of the fishing grounds. Claims settling offices were opened

at convenient locations throughout the affected area. In addition to the 800 number, notices were published in the local newspapers and posted in strategic locations. Claims adjusters have conducted an extensive outreach program, visiting lobstermen and fishermen on the docks, as well as talking to wholesalers and others who can assist in getting the word out that partial payments are available to alleviate problems suffered by those who have been unable to work during the closure of the fishing grounds. Civic organizations have also been contacted and are cooperating with us in our efforts to reach all legitimate claimants.

Because of the special needs of those directly affected by the spill and the closure, the adjusters provided guidance on putting together documentation. A list of the kinds of documents which assist the claims adjusters in providing a basis for payment of a claim has been widely circulated. The National Pollution Funds Center, in testimony before this Committee, supported our approach. We made it clear that anyone who had trouble coming up with documents should not hesitate to call. Our adjusters are prepared to work with any and all claimants in an effort to put together a foundation for a claim. Our efforts to reach out and establish communication with the lobstermen and fishermen have resulted in a substantial number of partial claims being paid. Once a claim is documented, checks are handed to the fishermen and lobstermen, often on the same day.

As of May 30, 1996, 855 partial or interim claims have been paid. The vast majority of these have been partial payments to lobstermen and fishermen. Many of the claimants received their third and fourth checks as the closure of the fishing grounds continued. Underwriters have paid over \$2,500,000 in such third-party claims. This is a remarkable achievement for a field claims adjusting office. Attorneys representing claimants worked with our adjusters to devise a partial settlement form which met the needs of both sides. Unfortunately, there was one out-of-state plaintiffs' attorney who waged a campaign against the interim payments program. We believe that was an effort to increase the number of claimants they represented. The problem was laid to rest, as the success of the claims office became apparent.

The experience in Rhode Island shows that the massive overhaul of OPA claims provisions is not appropriate. The system worked in Rhode Island, but if the amendments proposed had been in effect it is unlikely the system would have worked. The proposal would make claims handling far more unwieldy. It is unnecessary and ill-advised to amend 1013 to require advertising about partial claims. The vast majority of spills do not give rise to a need for partial payments. The Coast Guard has the authority to require advertising regarding partial payments when appropriate.

We are particularly concerned about proposed new 1015(c)(2) (Final Damages) which would make virtually every claims payment interim. Insurers would never be able to close the books on a spill. This approach is counterproductive and will impede participation of guarantors in OPA financial responsibility programs.

As drafted, the provisions regarding partial payments in S. 1730 would throw the claims process under OPA into disarray. It is proposed that 1002(f) should be amended to define loss of profits and earning capacity to include specifically partial claims. In our view, if any amendment is made, this section should suffice. The proposed amendments to 1013, 1014 and 1015 are wholly unnecessary and create confusion. They appear to permit partial claims in any category of damage claims under OPA. If enacted, the claims settlement process would become a nightmare. Claims could never be settled. The proposed revisions to 1015 (Subrogation) appear to prohibit final settlements altogether. One of the purposes of OPA '90 was to encourage prompt settlement and payment of claims. The net effect of the proposal would make no settlement final, a situation no insurer can live with. The transactional costs will skyrocket and as a consequence the cost of providing financial security will inflate. Guarantors under OPA will be precluded from recovering for some partial claims in actions against negligent third parties.

The program developed in Rhode Island to meet the special needs of lobstermen and fishermen could serve as a guide in a future oil spill where the fishing grounds are closed. We believe that the NORTH CAPE claims experience proves that the process under OPA '90 is working well. In fact, we understand that the partial claims settlement procedures established in Rhode Island are being used as a model for the claims process in connection with the SEA EMPRESS spill in Wales. The unnecessary amendments proposed would be counter-productive. The provision has been drafted without a clear understanding of the claims process and of subrogation requirements. The "overkill" approach adopted in S.1730 could put the entire process at risk.

The response to the need for a partial claims settlement program in Rhode Island is an example of how industry and government can find workable solutions to new problems through cooperation. Unfortunately, not every problem that has arisen in

connection with the implementation of OPA '90 at the NORTH CAPE spill has been resolved so successfully. American marine insurers were particularly concerned about the delay in reopening the fishing grounds. Unnecessarily prolonging the closure of the fishing areas imposes undue economic burdens on the lobstermen, fishermen and related industries and added costs, borne by maritime commercial interests. Some estimated that each day of unnecessary closure costs as much as \$100,000 or more. The delay in reopening the fishing grounds was due to the inability of the various trustees, federal and state agencies, and other bureaucracies to agree on a protocol for testing.

Underwriters were frustrated by the bureaucratic morass we have encountered in trying to open even some of the fishing grounds. The various state and federal agencies are unable to agree on what the acceptable criteria should be for testing to permit the reopening of the fishing grounds. Even the recent partial reopening of the fishing grounds for fin fishing took far too long. The data showing the fishing grounds could be reopened for fin fishing was given to state officials on February 10, who acted on February 13. The federal government received the data on February 16, but it was not until over a month later that the area was reopened. When potentially grave financial damages are threatened, responsible officials should act expeditiously, but a response from federal officials on an expedited basis takes from, at a minimum, 10 days to 4 weeks. This is unacceptable. All of those involved on the federal and state levels must work cooperatively to expedite the reopening of a fishery when the financial implications are so substantial. We support the changes proposed in Section 202.

AIMU and WQIS are grateful for this opportunity to present their views on S. 1730. We would be pleased to provide any additional information which might be helpful to the Committee.

LOAD-DATE: June 4, 1996

Responses to Attorney General Jim Hood

1. A release of future claims in return for a Final payment does not violate the 1996 Amendments to OPA. As the Department of Justice has stated:

“ . . . the OPA does not specify any particular methodology for assessing future damages for final claims and does not address the issue of releases in any detail. From the perspective of the United States, it has been critical that claimants have a true choice: under the GCCF process they can either file interim claims, for which the OPA requires Responsible Parties to provide, receive payments for damages as they accrue, and not sign any release; or they can, with appropriate legal counsel available, finally settle their claims—past and future—by agreeing to an appropriate release. “

Statement of United States Regarding the Court's February 2, 2011 Order (February 18, 2011), *In Re: Oil Spill by the Oil Rig "Deepwater Horizon"* (MDL No. 2179), p. 6.

The GCCF's option to provide claimants a generous Final payment for future damage, as well as past and present damage, or the continued filing of interim claims, is precisely why the United States Coast Guard, in previous Senate testimony concerning the Gulf Coast Claims Facility ("GCCF") has opined that: "the GCCF is even more generous than the Coast Guard would be under OPA." The Final payment option—not part of the OPA statutory scheme—is an innovative way to provide claimants with additional compensation without having to return periodically to the GCCF. But it is not mandatory. Claimants who wish to abide by the OPA law, may voluntarily request Interim payments; no release is required.

2. Certain GCCF claims offices are being closed, or their operating hours are being reduced, because of diminishing claims volume over a year after the Oil Spill. Other claims offices in each Gulf state remain open. In the just the past sixteen months, the GCCF has processed over one million claims from fifty states and thirty-seven foreign countries. Claims continue to be filed but the GCCF can no longer justify maintaining the operation of certain claims offices when only a handful of new claims are filed each month. However, when a claims office is closed, or its operating hours reduced, the GCCF has made sure that other claims offices remain open in other locations to service claimants.

Mr. HASTINGS. Thank you very much, Mr. Feinberg, for your testimony. I know we are under some time, but we will try to get through these questions here.

I just have a couple of them, and you alluded to this fact, but I just want to make sure. There has been no oversight from the White House at any time since June 16 when this Fund was created and so forth. Is that correct?

Mr. FEINBERG. That is largely correct if you say the White House. Now, the Department of Justice monitors what I am doing, just like BP monitors it. The Department occasionally has suggestions, such as an independent audit and some other suggestions. But there is no oversight as to how I decide individual claims that appear before me for processing.

Mr. HASTINGS. In that regard, and this is probably more speculation, but it would be interesting to hear what your response is. In hindsight, since hindsight is 20/20 and you just said that this is absolutely a unique fund, and let us hope that we don't have to go through this with another disaster, but is this the proper model?

Mr. FEINBERG. That is for policymakers to decide. I would say that at least with the Gulf Coast Claims Facility, Mr. Chairman, the United States Coast Guard is at least there under the Federal Oil Pollution Control Act to review any one of my claims determinations.

But I think it is relative. This Congress 10 years ago—you will recall when it enacted the 9/11 Victim Compensation Fund and re-enacted it about six months ago during the lame duck session—expressly prohibited any oversight of that Fund, expressly said you cannot go to court to review 9/11 determinations.

So everything is relevant, but I must say it is problematic when one person is delegated this type of authority with limited oversight, so I share your concern, but I leave that to the policymakers.

Mr. HASTINGS. We always have a debate in this country on what the definition of a benevolent dictator is, and maybe this falls under that category.

Mr. FEINBERG. Maybe.

Mr. HASTINGS. You mentioned DOJ, Department of Justice, and some interaction. Part of that interaction has been an audit. When can we expect to have the results of that audit that you have agreed to be made public to us?

Mr. FEINBERG. That independent audit timing should be directed to the Department. The Department, not the Gulf Coast Claims Facility, is going to determine who that auditor should be and how quickly that process will begin.

But I will say one thing. You can't win on this independent audit. I know that on the one hand there is a request from Members of Congress and others to get that audit going. Correct. I welcome the audit, and we should do it as fast as possible.

On the other hand, as many of you know, there are interest groups, elected officials in the Gulf, lawyers, organizations, all clamoring for some input into the nature of the audit, the scope of the audit, and much of that input has just arrived at the Department of Justice this month.

So on the one hand, speed. On the other hand, a demand on the part of interest groups to participate. I think the Department is moving as fast as it can considering it doesn't want to be accused of delay. On the other hand, it doesn't want to be accused of high-

handedness. So I think that is something that ought to be addressed with the Department.

Mr. HASTINGS. Correct me. When exactly was the audit requested? Was that July of this year or last year?

Mr. FEINBERG. Oh, no. This year. I think the audit was requested for the first time I think around August, a few months ago.

Mr. HASTINGS. OK. Good. All right. Thank you very much. I will recognize the Ranking Member.

Mr. MARKEY. Thank you very much. Mr. Feinberg, can you just briefly lay out for us what the situation is with people who have decided that they would rather litigate than move through the Compensation Fund?

Mr. FEINBERG. Everybody has a right to litigate. In fact, claimants come to the Fund. If they don't like what they see in the way of my determinations or the determinations of the GCCF, they have a voluntary choice to opt out and head to court through the United States Coast Guard after the Coast Guard reviews if they want. They ultimately have a right to go to court.

Now, the first trial arising out of the explosion is scheduled for February of 2012. By that time, the GCCF would have distributed in the vicinity of slightly over \$6 billion. And I must say, a first trial in February of 2012 is miraculous. I think that what the judge has done in New Orleans and what the lawyers have done in accelerating the trial schedule is a real tribute to them, frankly. They have pulled it off.

Still, implicit in Congressman Markey's question, we will have distributed over \$6 billion between the explosion and the date of the first trial.

Mr. MARKEY. You will have distributed. So how long in contrast with going to court, and the first case doesn't begin until February of next year. How long does it take for a claimant to work through the process with you?

Mr. FEINBERG. On average, a claimant gets an initial determination, a response from us, within two weeks. Ten days to 14 days. It wasn't like that at the beginning, as Congressman Bonner I am sure will remind me, but we have greatly accelerated this process.

So a claimant gets a signal. We have your file. It seems in order. We can cut you a check. Here are your options. We need more information. But we have greatly shortened the time for an initial contact with the claimant.

Mr. MARKEY. OK. So earlier this week ABC News returned to the Gulf of Mexico to interview shrimpers affected by the BP oil spill. When asked about experiencing the worst season in 40 years in the Gulf, one shrimper said the quality of the shrimp isn't there. The abundance isn't there. And when asked about what happens to all the boats if there is no shrimp, another shrimper just responded there are going to be a lot of boats for sale.

What ability do shrimpers and fishermen who are experiencing lingering, ongoing effects from this bill have to compensation under the Fund?

Mr. FEINBERG. Assuming that a shrimper or any other fisherman can at least give us the minimal documentation that we need, those shrimpers and other fishermen will be paid.

They will have three options. One of those options is a hedge against the future. We better continue to take an interim payment. We will document our current quarterly damage, but we want to keep coming back. Thirty thousand people have taken that option. If a shrimper or anybody else wants a final payment for what we think will be future damage as best we can surmise it at the GCCF that is an option also. It is strictly up to the shrimper.

I want to just say one other thing, Congressman Markey. I think that we have to do better by the shrimpers. I was down in New Orleans last week, and we are now reviewing ways to make the program even more generous for the shrimping industry in Louisiana in particular.

Mr. MARKEY. OK. So the indications are that this is a real catastrophe hitting the shrimpers down there, and it seems to be related to the spill. Now, if this continues next year, the year after, what happens to these shrimpers? How many times can they come back in order to be compensated for what could be damage that goes on for years?

Mr. FEINBERG. The GCCF by agreement isn't around for years and years and years. It expires automatically in August of 2013.

A shrimper, if he wants, or a shrimp company or an individual shrimper, can decide, if it seems that the shrimp are not going to come back, as you put it, a shrimper can decide to file interim claims, take a check from the GCCF, waive no rights, keep coming back until the shrimper either has a sense that it is OK now or we want a final payment, or the shrimper can take a final payment or until the program expires and then the shrimper can of course go to court if the program isn't extended.

Mr. MARKEY. I see. Mr. Chairman, Mr. Feinberg is from Brockton, Massachusetts, the home of Rocky Marciano, and while he doesn't shy away from a fight, Mr. Feinberg, he actually tries his best to find a peaceful resolution for every one of the issues that he has been confronted with not just here, but in the 9/11 Fund and all of the other very difficult situations that he has been tasked with trying to resolve over the course of his career.

Mr. HASTINGS. Marciano was 49-0, so it sounds like he didn't back away from a fight either, as I recall.

I have been advised that we may have votes as early as 10:15 and so that being the case, just to kind of figure out how we will do this, we will recess and then come back immediately after the last series of votes because Mr. Feinberg has to leave by noon.

But I am advised we could have votes as early as 10:15, so with that I recognize Mr. Lamborn.

Mr. LAMBORN. Thank you, Mr. Chairman. Thank you for the work that you are doing. I will make this very quick because I am not from a Gulf Coast state, and I know that they have some burning questions.

Just a procedural question, Mr. Feinberg. I understand from your testimony that all claim determinations are made without any interference from the Administration or BP. I know the Department of Justice has sent several letters making suggestions on the administration of the Fund, but does this mean that the White House has not contacted you once about the Fund since President Obama announced its creation last June?

Mr. FEINBERG. That is correct.

Mr. LAMBORN. And as a follow-up, what do you do with suggestions when people send them to you such as from the Department of Justice or from whomever?

Mr. FEINBERG. We take very seriously any suggestions from the Department of Justice, from Members of Congress, from interested citizens. We have made changes based on constructive criticism. It is always constructive. We welcome it, and we do our best in this difficult assignment to move the process forward and improve it day to day to day.

Mr. LAMBORN. OK. Thank you. Mr. Chairman, I yield back.

Mr. HASTINGS. Mr. Holt is recognized for five minutes.

Mr. HOLT. Thank you, Mr. Chairman, and thank you, Mr. Feinberg. And I appreciate Mr. Markey for clarifying that you are from Massachusetts. Who would have guessed? And I thank you for doing work that I am sure many days seems thankless.

You know, we have heard from many that the six-month drilling moratorium economic impact was worse than the impact of the spill itself, but, Mr. Chairman, I would like to introduce in the record a letter from the Baton Rouge Area Foundation which administered the \$100 million Oil Rig Workers Assistance Fund over which Mr. Feinberg I believe has no control, no responsibility, no direct association. I would like to introduce this into the record.

Mr. HASTINGS. Without objection.

[NOTE: The letter from the Baton Rouge Area Foundation has been retained in the Committee's official files.]

Mr. HOLT. The Oil Rig Workers Assistance Fund was set up, as you will recall, to help individuals who worked on the Deepwater rigs that might have been affected by the moratorium and experienced financial losses. To receive the assistance under that Baton Rouge Fund, the rig workers had to submit some simple documentation: their W-2 forms, paystubs, unemployment forms and so forth.

At the time of the moratorium, the Fund expected that maybe 9,000 workers from the Deepwater rigs would apply for financial assistance. In reality, it was 357. Three hundred and fifty-seven applications were completed by the rig workers seeking financial assistance for a total of \$5.3 million in financial assistance.

You know, I am not saying that the oil rig workers' financial losses are unimportant. I am just saying that it doesn't appear that they are anything like the losses that Mr. Markey and others were documenting in the fishing industry and the other associated industries.

Because over \$90 million from the Fund was still available, the Fund's eligibility was expanded to individuals who were indirectly affected or might have been affected by the moratorium—support vessels, those that transport food or supply ice or supplies or whatever it is—and during this round an additional 428 applications for financial assistance were completed.

So if we just look at the numbers of people who have applied to Mr. Feinberg, people who have applied to the Baton Rouge Area Foundation, it looks pretty clear that the effects of the oil spill on tourism, on fisheries are well greater than the effect on the oil industry.

Mr. LANDRY. Would the gentleman yield?

Mr. HOLT. Am I characterizing this fairly, Mr. Feinberg?

Mr. FEINBERG. I think you are characterizing it fairly, Congressman. The problem is I don't know how that Foundation in Louisiana is treating non-rig workers, but these other vendors.

I have 1,600 claims that I am sending to that Foundation in New Orleans, and it is not clear to me that the Foundation is honoring all of those moratorium claims. Somebody should be honoring those claims, and I hope you are right that the Foundation is more receptive to claims that I am prohibited from paying, but I am not sure that that Foundation is doing as well as it should in honoring all those types of moratorium claims. I just don't know the answer.

Mr. LANDRY. Will the gentleman yield?

Mr. HOLT. Real quickly, Mr. Landry. Just a moment. Is there something that we should be doing to see whether that Foundation—I mean, I realize it is not a government foundation. It is not a government institution. Is there something we should be doing to see that they are giving sufficient attention to people who might be hurting?

Mr. FEINBERG. You might inquire and find out, as you are with the Gulf Coast Claims Facility, just exactly what the rules are, what the eligibility criteria area. All I know is I am hearing from businesses impacted by the moratorium that they can't get paid.

Mr. HOLT. Mr. Chairman, would you care to join me in a letter asking for that information? I realize we can't demand it. I suppose we could, but—

Mr. HASTINGS. Let us work. We are going to have a lot of questions that have come out of this hearing, I suspect, and I will say this right now instead of at the end of the hearing. We will continue to have oversight into this, and if that falls into that category I am more than happy to work with the gentleman.

Mr. HOLT. OK. Well, it just sounds as if the effect really has been on these other industries.

I am sorry, Mr. Landry.

Mr. LANDRY. No.

Mr. HOLT. I intended to yield to you—

Mr. LANDRY. Yes.

Mr. HOLT.—but I see my time has expired.

Mr. HASTINGS. Time has expired. I recognize the gentleman from Louisiana, Mr. Fleming.

Dr. FLEMING. Thank you, Mr. Feinberg. I appreciate your willingness to take either the credit or discredit, whichever. That is a model for us here in Washington. We generally have it 50 percent right here. We accept the credit, but not the discredit. So we thank you, sir, for being willing to take the heat on that.

Just a couple of quick questions before I get into something deeper. Do you have or will you have a metric for satisfaction among people compensated?

Mr. FEINBERG. I have said from day one, as with the 9/11 Victim Compensation Fund, I would hope that at the end of this program at least 90 percent of all eligible individuals and businesses opt into the program. I think that is sort of an objective measurement that I have used over the years in other contexts.

Dr. FLEMING. But, I mean, will you have a questionnaire or a survey? I mean, obviously somebody might agree to something, but not be satisfied. Do you have any way of measuring that?

Mr. FEINBERG. No. Maybe we should measure that at the end of the program. I am pretty confident that people who accept compensation aren't satisfied.

Dr. FLEMING. OK.

Mr. FEINBERG. I think that is human nature.

Dr. FLEMING. I would ask that you would consider that. Again, it is sounding like to me that there may be money left over at the end of the day, and that might be reason to go back and reopen just a little bit some of these cases.

You mentioned fraud. Is there any prosecution or do you plan to prosecute people who provide fraudulent claims?

Mr. FEINBERG. There certainly is, and it has been pretty effective. We have received, out of a million claims, about 10,000 claims that we think are fraudulent. After we do an investigation with our antifraud team if it still appears fraudulent, we send it to the Department of Justice, the Criminal Division, Lanny Breuer. They have been fabulous working with U.S. Attorneys in the Gulf. They have indicted people. There have been guilty pleas. There have been convictions, I believe.

I think fraud is an ever present concern. Nothing will undercut the credibility of this program more than fraudulent payments.

Dr. FLEMING. All right. Thank you sir. OK. What I want to turn to in my remaining time is you may well be aware that Louisiana has been the biggest oyster production state in the Union. Forty percent of the total yield has been from Louisiana.

Washington state is now overtaking us because it appears that it wasn't the spill itself, but the downstreaming of freshwater that has now changed the salination of the water in their beds, which was heretofore perfect for growing oysters.

And as I understand it, there is a multi-year rebuilding of that. You have to reseed the beds. I am not sure if I have all the terminology correct. Can you kind of walk through that and see where we are? I do think there are some special issues on compensation.

Mr. FEINBERG. There clearly are special issues. We treat oysters separately from any other industry. Oysters are different, and what we have decided is that an oyster claim, if somebody wants interim damage or can show their immediate damage, we will pay it.

If somebody wants a final payment, if someone says to us we are filing a claim, we want a final payment and we will be gone, we give them four times their 2010 damage, and if a claimant leases oyster beds—that is, not only harvests oysters, but has a lease involving the beds themselves—at the bottom of the Gulf, there is a special additional payment that we will make. We have tried with oysters to recognize the uniqueness that you reference in your question.

Dr. FLEMING. And the four times is a reference to the four years, I assume, it takes to build these beds back up and get them back.

This may be a little bit outside of your purview, but is there any evidence that the saline content of that area is beginning to return to normal?

Mr. FEINBERG. Outside of my bailiwick, I think the independent evidence, at least from what I am hearing in terms of the oysters being good to eat and urging people to come back to the Gulf and eat those oysters, I think the predictions are pretty positive.

But I agree. I agree. Nobody knows for sure. It is an uncertain biology, and people who want to wait it out and see have every right to do so.

Dr. FLEMING. All right. Just one final question in my time. How many lawsuits are out there, or how many do you expect at the end of the day?

Mr. FEINBERG. I really don't know. I think as a layman reading the newspaper, I think there are about 130,000 lawsuits that have been filed, but I haven't checked to see how many of those that have been filed have already been paid by us and are released. I could get you that information, but I don't have it at my fingertips.

Dr. FLEMING. OK. Thank you. I yield back, Mr. Chairman.

Mr. HASTINGS. Thank you very much. I recognize the gentleman from South Carolina, Mr. Duncan.

Mr. DUNCAN OF SOUTH CAROLINA. Thank you, Mr. Chairman. Mr. Feinberg, thanks for being here and answering these questions for us today.

It was interesting to hear that you can't pay moratorium claims because I think that has been a significant impact on the Gulf region. With the loss of businesses, the domino effect, not just the oil rigs, but the oil field servicing industries of welders and pipefitters and people haulers and food services, and it just goes on and on as you delve into it.

I do know that from talking with Mr. Landry, the Baton Rouge Foundation actually paid some moratorium claims, but is closed now, and the remaining money, because they didn't pay out 100 percent, went to another charitable organization versus paying folks that were hurt in the moratorium.

I don't have any specific questions for you, but I want to yield the balance of my time to someone that knows this issue, Mr. Landry from Louisiana.

Mr. LANDRY. Thank you, Mr. Duncan. Mr. Feinberg, how are you?

Mr. FEINBERG. Good. Thank you.

Mr. LANDRY. I am concerned about the moratorium fund because is it not correct, just very short because we have a limited amount of time, that the Fund that you administer you cannot pay out to companies who were affected by the moratorium? Is that not correct?

Mr. FEINBERG. That is correct.

Mr. LANDRY. OK. So they have to go to the \$100 million fund. You have a \$20 billion Fund. I think there is some disparity in there.

And I am going to visit with you, Mr. Holt, because I don't have a lot of time, but I will tell you how that is a disaster as well. I have a guy in a fab yard looking for that.

The problem I am having, do you know how many claims were settled in regard to the shrimping industry that were paid to shrimpers who were Louisiana certified commercial fishermen?

Mr. FEINBERG. I can probably get you that number.

Mr. LANDRY. OK. Because the concern I have is that once you all opened that Fund there was a blue light special on white boots, OK, down in Louisiana, and to me that allowed people to claim that they were shrimpers, but that were not shrimpers or were not traditional commercial shrimpers. Of course, I have heard stories where there are shrimpers that got paid very little and there are hobbying shrimpers I guess you would call them or tourism shrimpers that got paid a lot.

And to me it is very simple. Wildlife and Fisheries in Louisiana certifies our commercial fishermen, but you all are not using that in the matrix when you all are paying out, and that concerns me because it seems as though when I go back on the ground I continue to hear stories of people who really need this money, people who have been in the shrimping industry for generation after generation, that are not getting the help.

But the fly by-night people are getting a check, and maybe it is not as much as the actual traditional shrimper would be eligible for, but a \$5,000 and \$10,000 and \$15,000 check to a guy that just puts up a trawl on his boat. That is a concern of mine. Can you address that?

Mr. FEINBERG. Yes. I can address it a couple of ways. First, we are paying commercial shrimpers, large shrimp companies, individual shrimpers. We do not discriminate against commercial shrimpers.

But I want to agree with you, Congressman. I think that if there is one area where the Gulf Coast Claims Facility has to be more receptive and generous it is with the commercial shrimping industry in Louisiana.

Mr. LANDRY. OK. So you say that, and you have said that this is the second time. I appreciate that. The question is what are you going to do about it?

Mr. FEINBERG. Here is what we are doing about it. Within the next few weeks—weeks—we hope to announce rules, new rules to deal particularly with the Louisiana shrimpers.

I have been down to New Orleans in the past few weeks to meet with a whole group of shrimpers—one of them is here today in the audience—and I am listening exactly to the point you are making. I hear from them. “Mr. Feinberg, we don’t begrudge you are paying people who are shrimpers, but we are the real historical shrimping industry in the Gulf and we think that you are not paying sufficient attention to our parochial concerns.”

Mr. LANDRY. Well, let me make this suggestion in the 20 seconds that I have, because you are a very, very bright lawyer I know. You have a great reputation. It is simple. Go to Wildlife and Fisheries down in Louisiana. That is your client. They have the records.

You don’t need to visit with anyone else other than those that are Louisiana certified commercial fishermen. I would appreciate it if you took that and built that into your matrix.

Mr. FEINBERG. Will do.

Mr. LANDRY. Mr. Chairman, I yield back.

Mr. HASTINGS. Thank you very much. The Chair recognizes the gentleman from Arizona, Mr. Grijalva.

Mr. GRIJALVA. Thank you very much, Mr. Chairman. Mr. Feinberg, researchers discovered that there has been potentially

dangerous changes following the spill in one of the most abundant fish marshes of the Gulf, an indicator many believe of the health of the ecosystem, which may indicate the presence of a much larger problem.

In fact, researchers concluded that there may be some of the same early warning signs that we saw in the years following the Exxon Valdez oil spill in Alaska before species like the Pacific herring and pink salmon suffered severe population declines.

If in fact there are those ticking environmental time bombs in the Gulf that may lead to longer term impacts on fish and result in future losses by fishermen and shrimpers, can they be compensated in the years to come if this ticking clock goes off?

Mr. FEINBERG. Well, that is an excellent question. We are around, the Gulf Coast Claims Facility, until August of 2013, so alleged damage between now and then caused by this oil, by the Horizon explosion, we will compensate. Also, we are daily, weekly monitoring what the experts tell us about the impact of the spill, as you point out.

So when we make a final offer, and some 60,000 individuals and businesses have accepted the final offer, we are trying to factor in what the best experts tell us about the future. If somebody doesn't agree, Congressman, with our estimation of long-term damage, they don't need to accept a final payment. Thirty thousand people have accepted an interim payment for immediate damage, and they want to wait and see, as you point out, what the future holds and then they can come back at that time.

Once August 2013 expires, there is no more Gulf Coast Claims Facility. They will have to go to BP itself.

Mr. GRIJALVA. And so after 2013 if there are still impacts being felt or impacts that have developed in that interim the source of their making themselves whole in some way would be with the company?

Mr. FEINBERG. Or a courtroom, I guess.

Mr. GRIJALVA. OK. One other point if I may, sir. For those people that have been harmed by the spill, isn't it true that the documentation requirements in place to receive compensation from the Claims Fund are much more inclusive than it would be in a court proceeding?

Mr. FEINBERG. When you say inclusive, I think we are much more liberal, much more generous in recognizing a valid claim than would be the case in court, but that can be argued, I suppose.

I am confident that we are paying claims on a record that is much less rigorous than would be required in the courtroom.

Mr. GRIJALVA. I appreciate it and yield back.

Mr. HASTINGS. The gentleman yields back. Mr. Flores of Texas?

Mr. FLORES. Thank you, Mr. Chairman. Mr. Feinberg, thank you for joining us today. I am going to yield the first four minutes to Mr. Landry and ask him to—is he gone? Never mind. I am not going to yield to him.

In any event, I want to thank you for your candor in the buck stops here statements that you made. That is, in the words of Mr. Fleming, refreshing to see around Washington, D.C.

I have a couple of questions. I noticed in going through the statistics, the metrics that you included in your testimony, that there

were 17,000 claims that were final settlements that were offered, but weren't accepted. What happens with those, and can you tell me roughly? Does that mean that the offeree did not accept them or that you rejected them? What does that mean?

Mr. FEINBERG. Most of the 17,000 final claims that were not accepted they have 90 days to make a decision.

Mr. FLORES. OK.

Mr. FEINBERG. I will bet you the great bulk of those 17,000 claims are within the 90 day period and the claimant hasn't decided yet whether to accept the final offer or not. If they don't want the final offer, they don't have to take it. They can take in lieu of that an interim payment for their immediate damage and come back every quarter and seek additional compensation.

Ultimately, Congressman, if they just can't get satisfaction they ultimately always have the right eventually to get to court and file a lawsuit as if the GCCF had never been established.

Mr. FLORES. Right. And how many of those 17,000 have actually already gone to litigation? Do you have a feel for that?

Mr. FEINBERG. Very few.

Mr. FLORES. OK.

Mr. FEINBERG. I know that about 1,500 individuals were dissatisfied with what we decided and went to the Coast Guard. The Coast Guard independently reaffirmed what we have done.

Now, how many of those people who didn't get satisfaction from the Coast Guard then went on to file a lawsuit? I do not know the answer to that.

Mr. FLORES. It looks like the process is working, I mean, if 1,400 claims that they didn't like went to the Coast Guard and 1,300 of those the Coast Guard upheld, so it looks like you are doing right.

I am going to yield the balance of my time to Mr. Landry.

Mr. LANDRY. Thank you, Mr. Flores. I think this is important because this has come up twice. My question to you is if the claim process is dragged out there is a prescriptive period by which those claimants would have to file a suit in Federal court against BP. That is correct?

Mr. FEINBERG. Yes, but I think that that prescriptive period isn't a barrier. I mean, I think many, many people have made that filing in court.

Mr. LANDRY. How would they make it? I mean, are you saying that there are people who have made the application and still filed?

Mr. FEINBERG. Oh, I think there are many people, maybe thousands of people, who filed with the GCCF and filed in court as well.

Mr. LANDRY. When do you believe that prescriptive period actually ends, because in Louisiana that would be a one year—that would be a tort claim. Is that correct?

Mr. FEINBERG. Again, the statute of limitations. I don't know what the period is in Louisiana.

Mr. LANDRY. Well, in Louisiana the target would be one year, but my question to you would be in your legal analysis would that period have expired already?

Mr. FEINBERG. No.

Mr. LANDRY. No?

Mr. FEINBERG. No. I think anybody who comes to the Fund and presents their claim, I think under the Oil Pollution Control Act,

and I am not an expert in this, but I think ultimately they preserve their right to file a claim in Federal court.

Mr. LANDRY. And so the period when they come to you in the Fund, you are saying that the prescriptive period——

Mr. FEINBERG. Will be extended.

Mr. LANDRY. The timing is suspended?

Mr. FEINBERG. Either suspended or extended so that they are not going to be precluded from filing. But again I want to emphasize I am not an expert in how you litigate Federal Oil Pollution Control Act cases.

Mr. LANDRY. I mean, Mr. Chairman, that is the biggest concern is that there are people out there, and as they try to navigate their way through both a complex legal system and what I think is somewhat of a complex application through the BP fund that Mr. Feinberg administers is that there is timing. You know, time is moving against them.

I would hate to see that at the end of the day, and I know Mr. Feinberg wouldn't do this, wouldn't set up a system by which claimants would just drag on and on and on to a point where we get to the point where they lose their right to court, but only because they have done what he and BP and a lot of us have asked them is to go through that process, and so that is a concern of mine.

Mr. Chairman, I yield back.

Mr. HASTINGS. Mr. Flores, you have 22 seconds. Do you yield back your time?

Mr. FLORES. I yield the balance of my time.

Mr. HASTINGS. OK. When the gavel dropped we had a non-member of the Committee here, and I am going to recognize him, Mr. Bonner, for five minutes.

Mr. BONNER. Thank you, Chairman, for allowing me to be a member of the Committee. I have always wanted to be, and I am glad to fulfill that promise today.

For the record, I, as has already been noted, have had an opportunity to have a lot of experience with Mr. Feinberg, and while there has been effusive praise and at times even sympathy for the task he has been assigned, I would remind everyone that Mr. Feinberg's firm is paid \$1.4 million a month. I believe that is correct.

Mr. FEINBERG. No.

Mr. BONNER. How much?

Mr. FEINBERG. \$1.250.

Mr. BONNER. \$1.25. Thank you.

Mr. FEINBERG. I just lopped off \$150,000.

Mr. BONNER. Well, regardless, it is a generous amount of money to administer this, and while it is a complicated process, and I think Mr. Feinberg has realized that it is even more complicated than the 9/11 Fund in many ways with a million claimants, it is not a perfect system.

If anything, it is a very flawed system, and so many promises have been made by Mr. Feinberg himself to people who live along the Gulf Coast not just in Alabama, but in Louisiana and Mississippi and Florida and Texas. So many broken promises, unfortu-

nately. So I am grateful for the opportunity to be here, but I will obviously have more questions than there will be time for.

And I would like to ask. I mentioned this to the Chairman. If Mr. Feinberg has no objection, I would like to invite the people who live along the Gulf Coast to take advantage of this time where we traditionally have five days to submit additional questions for the record that Mr. Feinberg would respond to.

I would like to give the people who live in Alabama a chance who have met with you before at town meetings and who were promised certain things and they didn't get those promises fulfilled. Would you have any objection to letting us get those questions submitted to you?

Mr. FEINBERG. No objection. I would welcome it.

Mr. BONNER. Good. Thank you. A couple questions. Vice President Biden said that \$20 billion is a floor, not a ceiling. Is that correct?

Mr. FEINBERG. That is correct.

Mr. BONNER. Let us just round it up. \$6 billion. How much do you think you will actually before August of 2013, based on the trends you have seen thus far? How much do you think you will exhaust?

Mr. FEINBERG. I would be reluctant, Congressman, to take an estimate of that, but I remind you, as you know, that that \$20 billion is used for purposes other than the Gulf Coast Claims Facility. Local cleanup costs come out of the \$20 billion. Government claims that are being paid in Alabama by BP comes out of the \$20 billion.

So I can't venture a guess as to how much the total amount will be that will be spent. I would like to think that the \$20 billion would be adequate to compensate eligible claims, but BP has made it clear that if \$20 billion is not enough they will honor all additional financial obligations.

Mr. BONNER. You also indicated that you were independent of BP. Your quote in July in 2010, "I work for the people of the Gulf region. That is who I work for. I am totally independent," although the Federal judge has now questioned that. "I want to try and maximize as much compensation as I can do fairly and consistently to the people I am trying to serve down there." Do you still stand by that statement?

Mr. FEINBERG. I do indeed.

Mr. BONNER. But does BP not have the final say on these large settlement claims? Do they not have to approve or disallow those claims?

Mr. FEINBERG. Absolutely not. Absolutely not. What BP can do under the protocol if it so desires for claims that are overpaid by the GCCF in amounts in excess of \$500,000, they have the right to seek to appeal if they want to a three judge panel that was set up not by me. It was set up to review the claim. BP, to my knowledge, has exercised that right in one single case.

Mr. BONNER. Well, that is inconsistent with information we have received, but we will take that up separately.

You also indicated in answer to an earlier question that there is basically one percent of the claims that are fraudulent. Is that right?

Mr. FEINBERG. We have received—I think I have this. We have received what we think are 14,000 fraudulent claims, and we have sent 2,800 to the Department of Justice.

Mr. BONNER. OK. Regardless, data that we have from your own website that an auditor, an accountant, in my district has collected every day to compare shows that 116,000 of the 331,560 claims processed have been refused payment, which would mean 35 percent of the claims have been refused payment.

According to your data, are you stating that 35 percent of those that have been refused payment are because of fraud?

Mr. FEINBERG. No, not at all. If we have refused claims it can be for a number of reasons: no documentation, insufficient documentation, ineligible. It might be a claim from Idaho. I don't know. I am just throwing this out.

Government claims are ineligible. Moratorium claims unfortunately are ineligible. There are all sorts of reasons that we either deny claims or deem claims to be deficient.

Mr. BONNER. Thank you again, Mr. Chairman.

Mr. HASTINGS. Thank you. The votes have just been called, but we will try to get in some further questioning.

Mr. Thompson of Pennsylvania is recognized.

Mr. THOMPSON. Thank you, Chairman. Thank you, Mr. Feinberg.

My question is you mentioned that because there have been approximately one million claims submitted, and in your testimony you said that there may be certain inconsistencies in the treatment of similarly situated claimants who offer similar proof of damage.

My question is pretty straightforward. What have you been doing or what are your thoughts on how can you improve on that consistency? I recognize the sheer volume is a huge variable.

Mr. FEINBERG. You are correct. In some weeks we have more claims in a week, Congressman, than we received in the entire life of the 9/11 Victim Compensation Fund. The sheer magnitude of the claims will result in some inconsistency. It is inevitable.

What we do when we find inconsistency—either we find it on our own, or the claimant brings it to our attention, or the claimant's accountant or lawyers bring it to our attention—we will look at it. If we made a mistake, if it is inconsistent, we will true it up and pay the difference. We are not looking to promote inconsistency. It is a problem that we don't want to have magnified.

Mr. THOMPSON. Thank you. I would yield the balance of my time to Mr. Bonner from Alabama.

Mr. BONNER. Thank you. I have a few more questions.

According to data again collected from your website every day and analyzed independently by an accountant, medical doctor and also a city official in Gulf Shores, Alabama, 95 percent of the claims that have been processed and reviewed, 54 percent have been processed, issued for final payment, but 46 percent have not received final payment. Sixty-nine percent paid of the quick pay variety that require no additional documentation to process. Thirty percent paid for the final payment.

I throw those numbers out to you because basically you would lead us to believe that this has been a success because so many people have continued to apply. I think you said 2,000 people a week continue to apply.

And yet is it not true that the burden you have placed on many of these individuals and businesses for additional requests for information, even when they have submitted their claims with certified accountants who have shown the documentation, that there has been a great inconsistency in the payment process, and in fact that more people have not been paid than have been paid?

Mr. FEINBERG. I don't think there has been great inconsistency. I mean, that is one reason you are promoting, and rightfully so, the notion of the independent audit to get some answers to that question.

I think that people that take the quick payment take the quick payment because they don't have any additional documentation to show us or have already been adequately paid by an interim payment during the emergency payment period.

I point with pride, frankly, to the fact that overall there is almost \$6 billion that has gone out in one year, Congressman. I think we are doing something right. And when you say that people are applying at 2,200 new claims a week—

Mr. BONNER. Well, you said that.

Mr. FEINBERG.—because they are being tricked or deceived, I don't think that is the case at all. I think they see their next door neighbor getting paid and they are going to file a claim, and they are going to make the same argument and hope that they can get paid as well.

Mr. BONNER. You mentioned audit. I believe I contacted you in the spring of last year and asked for you to initiate an audit on your own, and I don't believe that the GCCF agreed to do that.

Mr. Chairman, we actually have a provision added to the CJS, Commerce, Justice, Science, appropriation bill demanding an audit and requiring the Justice Department to do it because the Assistant Attorney General, Mr. Perrelli, who came to our district, came to the Gulf Coast, realized that this was not adding up as it was intending to be, and even the Attorney General when he was along the Gulf Coast earlier this year then contacted Mr. Feinberg and said an audit is necessary.

So the Chairman asked you in his question where the audit is. The truth is the audit has not even begun yet. They have not even named a firm to do the audit. Is that correct?

Mr. FEINBERG. That is correct. Congressman, I just want to say I don't speak for the Department on this.

The Department is going to choose the auditor and move at your demand. I only want to point out about that independent audit it is my understanding, and I mentioned this earlier, that on the one hand there is a demand that the Department move forward with great speed to get this going. Overdue, you would say. Overdue.

On the other hand, the Department, as I understand it from letters, copies of which I get, there are various public interest groups, lawyers, elected officials in the Gulf who want input into that process, and some of them have just in the last few weeks got to the Department with their suggestions.

So I think the tension between speed and inclusiveness is partly the reason why there has been a delay in your view.

Mr. HASTINGS. Thank you. We have less than 10 minutes to vote if you look at the timing. If you look at the number that haven't voted, we have more time than that.

So I will recognize Mr. Wittman, and this will probably be the last question, and then we will recess. The time of getting back here is approximately 11:30. Mr. Feinberg at that point would only have a half hour, so for those of you that want to engage, please get back here after the last vote.

Mr. Wittman, you are recognized for five minutes.

Mr. WITTMAN. Thank you, Mr. Chairman. Mr. Feinberg, I wanted to follow up on Dr. Fleming's assertion about the oyster industry there in the State of Louisiana; as you know, the largest in the United States. They distribute shell oysters all around.

The oyster industry is interconnected. Processors in one state rely on harvesters and dealers in other states to have their market needs to be met in those areas. Obviously the Middle Atlantic is part of that, and you heard the synopsis about the West Coast also.

In that vein, there are processors out there that have these relationships with Gulf producers that have contracts that say listen, I have to deliver a certain number of oysters. In this realm of you considering claims, is it reasonable to consider a claim from somebody that processes oysters in the State of Virginia that relies on those oysters from the Gulf as a legitimate claim under your process?

Mr. FEINBERG. Absolutely. Absolutely. If there is a direct link in your hypothetical between a Virginia oyster processing company that depends for its livelihood on Gulf Coast shrimp, by all means. I can go back and see, but I am sure we have paid some of those claims. I know we have in Maryland.

Mr. WITTMAN. OK.

Mr. FEINBERG. In Maryland, we have paid I think there are a couple of oyster restaurants that we paid that were totally dependent on Gulf shrimp for their livelihood.

Mr. WITTMAN. And we see that obviously the seafood industry is interconnected both with shrimp and with oysters and in some instances even fish, so to make sure that you are keeping in mind the impacts, those secondary impacts on states and producers I think is absolutely critical.

Mr. Chairman, I would like to yield the balance of my time to Mr. Palazzo.

Mr. PALAZZO. Thank you, Congressman Wittman. Thank you, Chairman, for allowing me to sit in here today.

Mr. Feinberg, I have to share the same frustrations my other Gulf states colleagues have expressed from Congressman Bonner to Congressman Landry. Of course, I can't put it as eloquently as Congressman Landry, but I would have to say we are frustrated. We are tired. Many of us feel hopeless in the whole process, but we also feel insulted.

You know, we have some very smart people. We have accountants and lawyers that are trying to help people all along the Gulf Coast provide claims and support and documentation, and as they do it they feel like they are giving the best information. They are giving exactly what the Claim Center wants, and it is still rejected or there are delays in processing.

So the comment Congressman Landry made, it is like is this a stonewalling? Is this to drag it out, to not pay out the \$20 billion, which again was supposed to be the floor, not the ceiling, on making those affected by the worst manmade disaster in our nation's history whole again?

But people don't feel like it. They see inconsistencies. I mean, a perfect example is Omega Protein, a large company that got a \$45 million payout in their first year, and when you have shrimpers and charter boat captains and others who have made a living for generations off the Gulf Coast have yet to receive a first payment, or the payments that are being offered are insulting.

They are embarrassing, and it leaves them either with the option of take what they can, cut their losses or go to litigation. You know, quite honestly, to people in Mississippi litigation is the last thing we would really like to go to. So some people are adverse to it, but some people will go to it.

I guess the main thing is I am expressing what South Mississippians and probably my colleagues all up along the Gulf states, this is what we are seeing. This is what we are feeling. Going forward, look. You have \$14 billion left.

I noticed you sent out a mass mail out. If you have been denied pay, if you have your paperwork now, come in. Keep communicating that to the public. Keep letting people know that they can receive reimbursements or they have the right to come in and do a claim.

But also listen to the people who have made a living out of the Gulf, have made a living, the fifth and sixth and seventh generations of people in South Mississippi. If your methodology for reimbursement is not acceptable to them, try to come in and find some common ground, find that place, because these are the experts.

I mean, I don't expect you to know how to reimburse a shrimper. You probably have an idea now, but if that is not what you are doing, and especially in going to the cities and municipalities. I know that is supposedly not in your range, but you have been on ground zero for a long time. The methodologies that are being offered up to our cities and municipalities are insulting. The City of Gulfport has been offered \$79,000. You know, maybe \$79 million would be acceptable at \$1 per resident.

Again, I share the same concerns as my colleagues. I appreciate the Chairman for allowing me to come in. Please take that back home and make it right.

Mr. FEINBERG. Thank you.

Mr. PALAZZO. Thank you.

Mr. HASTINGS. I thank the gentleman. Yes?

Mr. MARKEY. If I may, Mr. Chairman?

Mr. HASTINGS. Yes.

Mr. MARKEY. I have just one quick question. I am sympathetic to Mr. Landry on this shrimping question, on the question of how we get with these fishermen. You know, this is a huge, unprecedented science experiment that took place at BP's hands dumping all the chemicals in with the oil, and now we are seeing the worst shrimping year in 40 years.

If it continues past 2013, my understanding in the law is that after 2013 all of this money goes back to BP. So do you have a rec-

ommendation to us in terms of how we should handle an issue like that, given the fact that the science might be pointing toward a much longer term economic catastrophe for the shrimpers and the funds in 2013 just dissolve? So do you have any words of wisdom to us how we should handle it?

Mr. FEINBERG. I would say two things. One is, what happens after August 2013? That is a subject the Congress should raise directly with BP and, I suppose, the Administration, which is part of that escrow agreement.

But as you pointed out, Congressman, this is a rather unprecedented situation. BP, as you pointed out, in putting up this \$20 billion, it is rather a unique contribution by a private corporation to try and create a system that is not required by existing law. I think BP deserves some credit, as you point out.

Mr. MARKEY. No, no. I am giving them credit.

Mr. FEINBERG. And I think—

Mr. MARKEY. I did that in the opening statement. It is only what happens, given the fact that there is a causal connection between what BP did and what could continue to be happening in the Gulf in 2013, 2014 and 2015 in terms of ensuring that there is some capacity to compensate people if the harm is still occurring in a significant way, especially for the fishermen.

Mr. FEINBERG. Again, one option would be if BP wants to extend the deadline of the program or whatever past August of 2013 into some foreseeable future, but that is something that Congress might raise directly with BP.

Mr. MARKEY. Thank you. Thank you, Mr. Feinberg.

Mr. HASTINGS. We are going to break, and I would just simply say, and I referenced this in my opening statement, very simply this is unprecedented. It has been repeated several times. But the fact that the initiative did come from this Administration without any semblance of oversight is somewhat problematic, and this is maybe an experience, something in progress, and we will have to see how it works.

We are getting very close to votes, so the Committee will be in recess. Mr. Feinberg, we anticipate the votes will be done approximately 11:30, and we will reconvene at that time.

The Committee stands in recess.

[Recess.]

Dr. FLEMING [presiding]. The Chairman notes we have a quorum, and we will resume. Thank you, Mr. Feinberg, for hanging with us.

So we are back in session, and I believe, Mr. Southerland, you are up next for five minutes.

Mr. SOUTHERLAND. All right, Mr. Chairman. Thank you. Mr. Feinberg, thank you for coming up, and I also want to thank you. I had some questions that I called you several months ago and you were kind enough to discuss my concerns on the phone, so really some follow-up on the dialogue that you and I—can you hear me OK? OK.

I want to ask. As far as the determining, how do you determine loss based on the documentation that you require and should require in order to pay a fair claim to restore the damage that small businesses have incurred? Talk to me a moment about what your examiners look at as far as historical, how far you go back.

If someone has already asked you this question I apologize, but address that for a moment for me.

Mr. FEINBERG. We will look, Congressman, to an income statement, a wage statement prespill. We will go back and look at before the spill, 2009. We will look at the beginning of 2010 in appropriate cases, 2008.

We will try and get a composite picture. What was this small business doing before the spill? What did the trend look like? How were they doing? And what does it look like postspill? Now, sometimes a business will say to us gee, be careful. That was during Katrina and that is a bad example.

Mr. SOUTHERLAND. Right. Right.

Mr. FEINBERG. And we will take that into account. We try to come up with a fair picture pre/post.

Mr. SOUTHERLAND. If I may, to address that a little deeper, in our community, and I live in Panama City, Florida, so Bay County, which is one of the larger coastal communities along the Gulf Coast. We had a significant event that occurred in the history of not just our county, but also our region. We opened our brand new airport in Bay County just a month or so prior to the oil spill.

And the reason I bring this up is because that was done in 2010. The 10 years preceding that was, as you can imagine, an incredible effort to get this project done. There has not been an airport built from scratch since Denver, so it was a pretty big deal.

Well, we have bounced back, and we have bounced back soundly. In 2011, bed taxes were great. Businesses were starting to recover, and they really had a wonderful year. So I could make an argument that you have to factor in 2009 and 2011 if you are going to determine what 2010 would have been like with that significant event.

And what we have done in securing other airlines into that airport—Delta and Southwest and airlines that we have never enjoyed—I can make a pretty good argument that if you just look backwards and not forwards then the small businesses that will file those claims will not have the benefit of the doubt of recovering a fair and equitable amount of money.

Mr. FEINBERG. Two answers. One, these small businesses ought to have you representing them. I mean, we welcome that type of dialogue.

Mr. SOUTHERLAND. I am representing them, by the way.

Mr. FEINBERG. Good. Before the GCCF.

Mr. SOUTHERLAND. I understand.

Mr. FEINBERG. To try and get a good, fair composite picture. Now, let me just say it sounds to me, and you will correct me, that is probably if it is an airport damage claim, that is probably a government claim.

Mr. SOUTHERLAND. Yes.

Mr. FEINBERG. If the airport can show that it has actually lost revenue because of the spill because people didn't fly in—

Mr. SOUTHERLAND. Right.

Mr. FEINBERG.—because they were in fear of the spill, that sounds like a government claim—

Mr. SOUTHERLAND. Right.

Mr. FEINBERG.—which I wouldn't handle anyway.

Mr. SOUTHERLAND. No. I understand. And we have been meeting with the BP representatives regarding governmental claims, and that is a whole other effort for our office.

But I just want to say that if our small businesses can have, especially around the geographical area of that airport because that airport serves multiple counties. You know, I have Walton, I have Okaloosa, and then I have Gulf. And so I am pleased to hear you say that.

Mr. FEINBERG. Congressman, if you want to convene that group or you want me to meet down there with a group that can explain the situation——

Mr. SOUTHERLAND. Sure.

Mr. FEINBERG.—make sure we do it the right way, I will of course respond immediately to your suggestion.

Mr. SOUTHERLAND. Very good. We will do our homework to try to gather them, those individuals that have that concern, and we will reach out to your office. You gave me your contact information, so you will hear from me.

Mr. Chair, I yield back. Thank you.

Dr. FLEMING. The gentleman yields back. Mr. Holt, you would be up next——

Mr. SOUTHERLAND. Here he is.

Dr. FLEMING.—if you have any more questions.

Mr. HOLT. Let me yield to Mr. Landry, but retain the——

Dr. FLEMING. OK.

Mr. HOLT.—space.

Dr. FLEMING. Very good. All right. Mr. Landry?

Mr. LANDRY. Sure.

Dr. FLEMING. You are up next for five minutes.

Mr. LANDRY. Thank you, Mr. Chairman. Mr. Feinberg, I want to go back and just clarify a couple of things. I know this isn't directly your responsibility, but going back to the moratorium fund. That fund has now been closed off. Is that correct? You have no——

Mr. FEINBERG. Until I heard this morning the representation that it was closed off, I didn't know it was closed off. I doubt that it is closed off, but I don't know. I have enough problems of my own with the GCCF.

Mr. LANDRY. Well, I know, but the problem I am having is that actually see, to me it concerns me because I believe that oil and gas companies, along with our fishermen and everyone else, the moratorium was a direct impact from the spill, you see.

And so there are a lot of businesses both directly tied to the oil and gas industry or indirectly tied to the oil and gas industry who have been impacted, that were impacted by the moratorium, and I am concerned that they are not getting paid as well. Recently I visited an oil and gas supply company. Their business is down 75 percent, and yet when they sent their information over, all of their accounting information, they were denied.

Of course, that folds into or dovetails into what I think is another problem that I think Mr. Bonner had alluded to is that I am hearing across the Gulf Coast from people who have applied to your Fund that when they check in, when a claimant checks in and says where are we, they will say listen, we lost some paperwork. Could you resubmit this? Could you resend this to us?

And what I am telling you, Mr. Feinberg, is it is just too coincidental that the person in Houma, Louisiana, is having the same problem as the person in Mobile or the person in Pensacola when it comes to the GCCF losing their paperwork. I mean, it just doesn't happen that coincidentally.

Now, I know that you have set up in Louisiana the Long law firm to assist people in trying to put their paperwork together, and I think that has helped as well, but it just seems like the process is taking way, way too long.

Mr. FEINBERG. Three answers. One, there is no misunderstanding here. I share your concern about the moratorium claims. I wish I could pay those claims. I have no jurisdiction over those claims from day one. You are preaching to the choir. I think I have 1,600 claims, Congressman, that I would like to pay and I can't.

Mr. LANDRY. Well, do you move those over to the other Fund?

Mr. FEINBERG. I move them over to the other Fund, but the other Fund, as far as I can tell, has shown no inclination in paying these claims because they are not rig worker claims or, as Congressman Holt pointed out an hour ago, even if the moratorium fund will pay some of those claims, as he cited some statistics, they haven't broadened it sufficiently.

Mr. LANDRY. OK.

Mr. FEINBERG. So I am sharing that view.

Mr. LANDRY. OK.

Mr. FEINBERG. Second, we are not losing any paper. Now, when we started, Congressman Landry, when we took over for BP last summer into the early fall paying the emergency payments, transitioning from BP paying the claims over to the GCCF taking over, then we did.

We have processed 95 percent of the claims, over a million claims, and the idea that we are losing paper, I just don't buy that idea.

Mr. LANDRY. Well, I will tell you what. I mean, look. I don't believe people down in the district are being disingenuous as well, and of course I have seen a lot of times where what we are being told up in Washington and maybe what you are being told up in Boston is different from what exactly goes on to the ground.

So, Mr. Chairman, I would just ask, put in a request that we look for both with Mr. Holt and with Mr. Markey and Chairman Hastings, that we try to look to maybe doing a field hearing down somewhere in between. Maybe we can go down to Biloxi. You know, we will split the difference between Florida and Louisiana.

Mr. Feinberg, if you would be so grateful as to come with us, and we could hear directly from—before we put you up, we will give you the benefit of the doubt. We will put them up to the table, and then we will listen to them and then we will bring you on and then somewhere in the middle I guess we will find what the truth is.

Mr. FEINBERG. Since we took over last August, I have received 60 million pieces of paper. It is conceivable. I would suggest, Congressman, if there are particular constituents who claim lost documents you just get me their name and their claim number. I will personally get back to you with a status report on those claimants who claim lost documentation.

The other thing I just want to mention before you depart. I checked during the break, and I have an answer for you. If somebody files their claim with the GCCF they are protected by the Federal statute of limitations.

Mr. LANDRY. Thank you so much. That makes me feel so good. Thank you. That is important. Thank you so much. Mr. Chairman, I yield back.

Dr. FLEMING. Yes. The gentleman yields back, and next is Mr. Holt. You have five minutes.

Mr. HOLT. Thank you, Mr. Chairman. I thank you again for the work you are doing, and I think no one here is surprised that you are a good witness and very forthcoming. We appreciate that.

To some extent following on what Mr. Landry was talking about, or at least a related point, if there is money remaining in the Fund that hasn't been expended by 2013 what happens to it, and do you happen to know, although it is not your responsibility, what about the moratorium relief fund, this Baton Rouge Foundation Fund? What happens to that money?

In your case, does it go back to BP? If so, what are the safeguards built into the system to prevent—what would you call it—an unintentional tendency not to give it out?

Mr. FEINBERG. Congressman Holt, you ask the same tough questions that you did when we were doing the 9/11 Fund, and I just want to thank you again for what you did 10 years ago—10 years ago—to get those New Jersey constituents to understand how the 9/11 Fund worked. I'm in your debt for that.

Now, during the break I checked on this because I wanted to make sure I am accurate. In August of 2013 when the GCCF is ready to close by agreement between the Administration and BP, there are three independent trustees in charge of the overall escrow \$20 billion. Remember, it is not just me drawing on the \$20 billion.

If those trustees conclude that there are more than \$1 billion worth of claims that appear to be outstanding, even though they are beyond 2013, they have the power to keep the Fund open, and every six months those trustees will review the state of the claims. Only if the total claims fall under \$1 billion will that money then revert back to BP. So the independent trustees—not me, but the independent trustees—have some say.

On the \$100 million moratorium fund, it is my understanding that money is forever gone from BP's dominion. They have no control over it whether \$100 million is used or \$80 million is used or \$20 million is used. That money is then going to be distributed by the Fund, by the trustees administering that Fund. That money will not go back to BP, as I understand it.

Finally, if anybody in my day-to-day administration, if anybody feels that I am not spending the money the way I should, that if claimants feel they are not being paid adequately, they have the right to take their claim to the United States Coast Guard and have the Coast Guard do an independent review of how I have ruled on their claim. Fifteen hundred people have done that, and the Coast Guard has agreed with the GCCF every single time so far.

Mr. HOLT. Yes. Thank you. So just to be clear, BP, to whom the money would return if there was money left over less than \$1 billion and fewer than \$1 billion of claims remaining, they have no say in how it is administered now, so there is no hidden bias for them to hold onto it. OK.

Mr. FEINBERG. That is absolutely correct.

Mr. HOLT. Apart from the trustees ruling on whether there are still outstanding billions of dollars of claims, could BP voluntarily keep alive your function?

Mr. FEINBERG. I think they could. I think BP would technically need the support of the U.S. Government, the Administration, to do it, but I think that is up to BP. I must say, as Congressman Markey pointed out earlier, whatever criticism one wants to level at BP, I know of no case in history—I can't think of one—where a company voluntarily put up \$20 billion to resolve claims.

I think the criticism ought to be tempered by the fact that this is a rather extraordinary step that BP took for whatever the reason, and I think the Administration frankly, just as the Bush Administration was able to promulgate this 9/11 Victim Compensation Fund 10 years ago, I think that the Administration in getting BP to do this I think was a major positive step.

Mr. HOLT. Well, thank you. And with the Chair's indulgence for 10 or 15 more seconds, the reason I am following this line of questions is, as Mr. Markey was saying earlier, the shrimping grounds, it looks as if there will be hard times for years to come and so we want to make sure that people aren't left out, so to speak, in the cold.

It is a fairly warm climate there, but you get my point. The shrimping industry and perhaps others look like they will be hard hit for a long, long time. Thank you.

Dr. FLEMING. The gentleman yields back. The Chair notes that we are up against a hard time, noon, and it is going to work out perfectly because we only have one other questioner, my colleague from Louisiana, Mr. Scalise. He has five minutes, and that should get us out right on time.

Mr. SCALISE. Thank you, Mr. Chairman. I appreciate the courtesy of the Committee to allow me to participate, and I thank Mr. Feinberg for coming and have a few questions in the five minutes.

When we talk about the trustees, who appointed the two trustees? How did they—

Mr. FEINBERG. Again, not part of my—I have enough problems, Congressman. I am not sure how those trustees were appointed pursuant to the escrow agreement. It was some agreement between the Administration and BP.

Mr. SCALISE. OK. We will continue to try to find out specifically how that came about.

When we talk about the agreement between the Administration and BP, I think in earlier questioning by Mr. Landry he was asking about the issues relating to the permitorium, the people that haven't been able to go back to work because of the lack of timely issuance of permits, and you said that you can't pay those. Is there something in the agreement between BP and the Administration that prohibits you from paying them?

Mr. FEINBERG. That is right. I think that when the Gulf Coast Claims Facility was established there was an understanding entered into.

I don't know if it is in writing in the escrow agreement or an agreement between the Administration and BP or that BP unilaterally declared this before bringing me on board, that the moratorium claims would not be part of my jurisdiction, nor would government claims, as you know, be part of my jurisdiction.

Mr. SCALISE. Thanks. A few months ago I had asked you for some detailed information broken down in metrics on claims paid out, as well as claims rejected. I was able to get some of the information on claims paid out, although I didn't get it broken down by state and region, and that was one of the things that I had requested.

I would like to ask you about that, and also we were not able to get any information on claims that have been rejected.

Mr. FEINBERG. Take a look after we adjourn or have your staff, I suggest, take a look at Attachment B of my testimony today. Attachment B breaks out the overall statistics by state, including Louisiana, and under Louisiana how much has been paid out, how much deficient, how many denied, how many accepted, how much paid out.

Mr. SCALISE. Do we have that by industry too so if we want to go into seafood, let us say, some of our seafood processors, because that is my next question I want to ask you about.

Mr. FEINBERG. That is not in Attachment B. I can get you that. You don't even have to send me a letter. Have you staff email me, and I will get you that information.

I do know that approximately as of the middle of this month \$1 billion in the aggregate has been paid to the seafood industry.

Mr. SCALISE. OK.

Mr. FEINBERG. But I can get you more information.

Mr. SCALISE. I am sure the email is going out from my staff right now. But the specific request that we want to know is within the seafood industry how is that broken down by region. If you can only give it at the state level, but if possible even at the more local level.

Mr. FEINBERG. I will try and get that for you.

Mr. SCALISE. Finally, the complaints that we are getting still seem to be some coming from, for example, some shrimpers that have processing facilities, some that just brought on more people right in advance of the Macondo Well explosion and have since had some severe layoffs, still dealing with severe problems from the industry not coming back, and yet I think you have met with a few of them individually, and they still haven't been able to get any kind of answer.

Can you tell me what the holdup is, especially with shrimp processors? Maybe it is just in Southeast Louisiana. Some of my other colleagues might be experiencing it along the Gulf Coast too.

Mr. FEINBERG. I have two answers. One, we have processed and paid plenty of—and I can get you the numbers as you have requested—shrimpers, shrimp processors, shrimp harvesters, the shrimp industry, but you are absolutely onto something here.

Earlier I mentioned this. I have been down in the Gulf, as you know, and to your district——

Mr. SCALISE. Yes.

Mr. FEINBERG.—on a number of occasions, and it is clear that the GCCF does have to be more responsive to the shrimpers.

Mr. SCALISE. Yes.

Mr. FEINBERG. There are a lot of shrimpers that haven't filed a claim yet with the GCCF because they are watching and waiting to see how the GCCF will treat the shrimp industry.

You have been very constructive and very vocal with me about the need to do something about those shrimpers. We will in a matter of weeks take another look at how we deal with the shrimpers, but I assure you, Congressman, that your concern about the shrimpers is not going unnoticed, and we are going to try and find a way to be more generous toward the shrimpers in Louisiana.

Mr. SCALISE. Well, thank you. I will continue to work with you because there are a few specific shrimp processors who I know have filed formal—not a complaint—they filed formal paperwork with the GCCF and haven't gotten any answer yet, so I will continue to push to make sure we can get those resolved, and then that may provoke some others to get involved.

I only have a couple seconds left. I will give a plug real quickly for the RESTORE Act because this is on a separate issue not in your shop, but all five Gulf Coast states have now come together in the House.

We filed legislation just a few weeks ago that would dedicate at least 80 percent of the fines BP will have to pay under Clean Water Act to allow us to restore specific environmental and economic damage that is not covered by your operation that we know we will have and may have for years to come.

Mr. FEINBERG. If you can get me the name of those shrimpers, I will look at those. Nobody has been a more constructive critic than you, Congressman. I hope to continue to work with you. Your people have been very forthright, and I appreciate your concerns.

Mr. SCALISE. I appreciate that. That will probably be included in the email. There might be a second email, because the other one probably already went out.

But I appreciate you coming before our Committee. I appreciate the Chairman and the Members for their discretion in allowing me to ask questions. I yield back.

Dr. FLEMING. The gentleman yields back. Mr. Feinberg, we have one more Member who has appeared, and in an effort to be as fair as possible to both sides if you would indulge us one more questioner I would appreciate that.

So I now recognize Ms. Lee, the gentlelady from Texas.

Ms. JACKSON LEE. I thank the gentleman and the Chairman for their indulgence and their kindness, and I will be pointed.

I thank my colleague. I am an interested neighbor and one who has worked with your constituents just because of my role on the Homeland Security Committee and my familiarity with the original work that Mr. Feinberg was assigned to. I want to thank him for that and, however, express that I am likewise a Boy Scout serving on the Boy Scout board, having a husband Boy Scout and a son Boy Scout, so I am an unhappy camper.

I would like to ask first how much of the money have you spent of the \$20 billion?

Mr. FEINBERG. With final offers outstanding, in 14 months we have authorized about \$6 billion.

Ms. JACKSON LEE. And the life of this Fund is until it is spent, or you have a period of time?

Mr. FEINBERG. August 2013.

Ms. JACKSON LEE. I am sort of disappointed at the pace. I am going to ask you whether or not you have heard the discussion of the shrimpers, and I did not know if I came in too late to listen about the oystermen. Have you engaged with the oystermen in that area?

Mr. FEINBERG. We certainly have, and we have created a methodology designed to take into account oystermen concerns.

Ms. JACKSON LEE. Well, as you well know, I have attempted to meet with you. It has been frustrating, and I would like to officially make a request to meet with you as soon as possible in my office and also in Houston. So who should we reach out to get that done?

Mr. FEINBERG. I will get in touch with you, Congressman, in the next day or so to set up a date to meet with you here.

I am going to be in Houston Monday, Tuesday, Wednesday—one of those dates—November 28 through 30. I am working with, I think, Congressman Green of Houston to try and get community leaders together in Houston, and I will be glad to meet with you in Houston as well.

Ms. JACKSON LEE. All right. If we can work on that? We happen to all be in the same area, but we have different jurisdictions.

There is a group led by, I believe, Dr. E. Faye Williams. I would like to ensure that you could meet with that group and meet with her. I may ask her to come in to Houston for the meeting or how we can arrange that meeting, and so we will work together on that.

Let me just proceed with some line of reasoning. One of the points, as you well know, that has maybe plagued the shrimpers—I am not sure—but the oyster persons and others is all of the documentation questions. That is a very challenging question about individuals working in a different kind of work and not having the documentation.

How are you responding to that? They still exist. I don't know whether they are restaurants. There is also the issue of collateral damage. How are you dealing with that?

Mr. FEINBERG. We work with these claimants to try and come up with proof, some proof that their claim is linked to the spill and they can show some damage.

Congresswoman, as you know from my 9/11 work, I don't need a full panoply of tax returns and profit and loss statements, but I need a minimal amount of documentation, and we will continue to work with claimants in trying to get the bare minimum that will allow us to pay a damage claim.

Ms. JACKSON LEE. Well, when we have this meeting we will meet with some of those who you may be able to give them courage or, excuse me, encouragement because you may say that what they already have.

The reason why I know that some communities, and I see Dick Gregory and want to acknowledge his presence here, have not

reached out is because they are intimidated by the process. You have \$15 billion left. We are talking about 2013. That is a long road for somebody to have their doors closed and never have hope ever again.

The reason why I came to this hearing is to indicate that my region is impacted by it as well. I have lived through not only the BP oil spill, but Hurricane Katrina and Rita. I know that is not your responsibility, but compounded there are those who can connect their present status to this incident that occurred. We want to put people back to work. We want to make sure these funds are utilized to rebuild communities.

So as I close and respect the time that you have to leave, I would simply say there are those out there that we need to reconstruct or have some of your staff work with these community organizations so they can legitimately present to you documentation to be compensated.

Mr. FEINBERG. I completely agree.

Ms. JACKSON LEE. Thank you. And I yield back, Mr. Chairman.

Dr. FLEMING. The gentlelady yields back. I thank the gentlelady and also thank you so much, Mr. Feinberg, for appearing. Thank you so much for holding over. You are obviously a very sincere person, very candid and attempting to do the best job possible. We certainly appreciate that in Louisiana, Texas, Mississippi, Florida, all the states, Alabama, that are affected.

With that, Members of the Committee may have additional questions for the record, and I ask that you respond to these in writing.

If there is no further business, without objection the Committee stands adjourned.

[Whereupon, at 12:10 p.m. the Committee was adjourned.]

