

**Testimony of Kenneth R. Feinberg
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**United States Senate
Ad Hoc Subcommittee on Disaster Recovery**

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Madam Chairman:

I thank this Subcommittee 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 Oil Spill on April 20, 2010 (the “Spill”). I have been asked by both the Administration and BP to administer a totally independent Claims Facility, which will evaluate, process and decide any and all claims from individuals and businesses impacted by the Spill. I have been repeatedly assured by both the Department of Justice and BP that the Facility is, in fact, totally independent, and I have exercised my discretion since becoming Administrator last July, 2010, free from any undue interference by either BP, the Department of Justice or any other interested parties.

I believe that the objective statistics demonstrate the success of the GCCF. Since the GCCF assumed operation on August 23, 2010, the Facility has distributed approximately \$3,327,811,603 to some 168,542 claimants -- individuals and businesses located throughout the Gulf region. Madam Chairman, in your state of Louisiana alone, in just five months, the GCCF has distributed \$1,133,601,371 to 60,073 residents. The Facility is working as intended. It is paying eligible claimants, who, through no fault of their own, have been victimized by the worst environmental disaster in American history.

It should be pointed out that the GCCF received over 481,508 claims. In excess of 100,000 claims lacked adequate documentation; and, over 49,000 were submitted with no supporting documentation at all! These claims were denied with an offer being made to the

claimant that, if the claimant could secure sufficient documentation, the GCCF would reconsider its denial decision. In addition, over 7,575 submitted claims have been deemed by the GCCF to be multi-claimant scams or even efforts at criminal fraud. When appropriate, and after internal investigation by the antifraud unit of the GCCF, these questionable claims have been referred to the Department of Justice for further investigation.

Next week the GCCF will publicly announce a draft proposal governing 1) additional payment options to eligible claimants, 2) eligibility criteria and 3) payment methodologies to be used in calculating additional final payments. The GCCF will invite two weeks of public comment in an effort to secure the opinions of those citizens of the Gulf impacted by the Spill. Only after completion of the two week public comment period will the GCCF finalize the Rules and Regulations governing this next phase of the Payment Program. I anticipate that Final and Interim Payments will commence on or about February 18, 2011.

Meanwhile, I note that in less than two months, over 81,000 individuals and businesses located in the Gulf region, who previously received Emergency Advance Payments, have already accepted the additional “Quick Payment Option” of \$5,000 for individuals and \$25,000 for businesses. These payments total \$693,710,000.

The GCCF will remain in place to process any and all eligible claims until August 23, 2013. All claimants have until August, 2013 to decide whether to select a Final Payment, Interim Payment or Quick Payment. The choice resides with the claimant based upon his/her own particular circumstances and documented evidence of damage caused by the Spill.

Despite my opinion that the GCCF has been a success in helping to alleviate at least some of the financial hardship of so many individuals and businesses adversely impacted by the Spill, I acknowledge that the procedures and eligibility criteria used by the GCCF in implementing its mandate can and should be improved. Much of the problem stems from the huge volume of claims (over 481,508 claims to date), which is unprecedented in its scope and complexity. A

certain degree of inconsistency is inevitable when so many claims are processed and such vast amounts of money are distributed in such a relatively short period of time. Nevertheless, the concerns expressed by you and others – particularly from citizens of the Gulf region themselves – are recognized as constructive criticism aimed at trying to improve the efficiency and fairness of the GCCF process.

With this constructive criticism in mind, I offer the following modifications designed to improve how the GCCF operates, and how it will process all eligible claims governing a Final Payment, Interim Payment or Quick Payment:

- 1) *Transparency* – Much of the criticism directed at the GCCF concerns allegations that the procedures by which the GCCF determines both eligibility and the calculation of individual and business compensation are enveloped in mystery, leading to inconsistency and a perception that the process is too often arbitrary and capricious. The GCCF has taken two steps designed to deal with this criticism: a) at your request, as well as that of others, the GCCF has retained the services of local professionals, including lawyers and claims processing experts in each impacted Gulf state, to assist claimants in responding to individual inquiries about their respective claims and the reasons underlying GCCF eligibility and calculation determinations. These local individuals are now in place throughout the Gulf Region and are located in the most heavily visited GCCF Site Offices in the following locations: in Louisiana (Houma, Gretna, New Orleans East); in Florida (Panama City, Naples, Pensacola, Santa Rosa Beach, Ft. Walton Beach); in Alabama (Foley and Mobile); and in Mississippi (Biloxi, Pascagoula, and Bay St. Louis). 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. Claimants may visit a site office and meet with one of our local liaisons; claimants may call the call

center and ask for help from an “escalation team” that includes trained individuals with experience with claims in each Gulf State; claimants may email our information 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 continue to enhance the information regarding notices and other important information on the GCCF website in order to alert claimants about issues regarding the claims process. We continue to work to improve the process. I believe these steps will go a long way in alleviating much of the frustration and anger of claimants who cannot get answers to their claims questions.

b) As already indicated, the GCCF is becoming much more open and transparent in posting its rules and regulations governing eligibility criteria and the methodologies being used to calculate Final and Interim Payments. These postings will also include specific examples of how the rules governing eligibility and compensation will be applied in different circumstances. Upon the finalization of the Rules for Final Payments, the GCCF will post industry-specific samples of acceptable required documentation for eligible claims. The GCCF will, next week, announce a two week public comment period concerning these draft rules and intends to post all comments which are received on the GCCF website for the public to examine. Only thereafter, will the GCCF adopt its Final Rules and Regulations. Final Payments and Interim Payments will begin to be issued immediately thereafter next month.

- 2) *GCCF Appeals Process* – Under the existing Federal Oil Pollution Control Act, any GCCF claimant seeking lost income, who is dissatisfied with the GCCF’s determination of eligibility or the amount of compensation awarded, may appeal

directly to the United States Coast Guard within 90 days after presenting a claim to the GCCF. There is, therefore, an inherent appeal right automatically built into the GCCF process itself. Nevertheless, the GCCF decided to include an additional appeal right for those claimants who were awarded compensation in excess of \$250,000; in addition, the GCCF decided to give BP an appeal right (which it currently does not have under existing federal law) but only in those individual cases in which the GCCF awarded a claimant an amount in excess of \$500,000. This right to appeal will permit the claimant and BP – in a limited number of cases involving a limited number of claims – to seek review from the Administrator’s determination of compensation. The appeal will be before three “claims appeals neutrals” to be selected by a distinguished citizen recognized by all in the Gulf to be credible and above reproach. I will select this individual in the next few weeks; but I will have no role whatsoever in selecting the three “neutrals” who will review these limited appeals. Finally, it is very important that this additional right to appeal be restricted in both scope and amount. Since there is already a right by law to appeal to the Coast Guard, and since there is a real concern that the GCCF claims process be both efficient and timely in sending money to eligible claimants, the claims process must not become bogged down in excessive appeals involving potentially thousands of claimants. I believe the GCCF proposal is a sound compromise.

- 3) *Subsistence Claims* -- The GCCF Final Protocol recognizes the eligibility of subsistence claims – claimants who may bring claims to the GCCF alleging that their ability “to live off of Gulf Coast resources” e.g. fish, game, natural habitat, etc. has been adversely impacted as a result of the Spill. But although these claims are eligible for compensation, the GCCF has not yet concluded that mere statements of subsistence loss are sufficient to document these claims. We are working with

interested claimants in finding a way to assure that such subsistence claims can be proven so that compensation can be awarded. The GCCF has received thousands of individual subsistence claims (as opposed to claims submitted by Native American tribes) in which the claim is not documented at all. Instead, there is simply a written statement: "I live off the Gulf and can no longer fish in order to eat. So, now I must buy fish at the grocery store. Pay me." These claims must be denied. But I will be returning to Louisiana this week in an effort to meet with individuals and others interested in advancing the subsistence claim approach and am confident that some accommodation concerning documentation and proof of damage will be achieved.

- 4) *Technical Assistance Providers* – The GCCF welcomes the opportunity to coordinate with any of the community based non-profit technical assistance providers contracted by the State of Louisiana. Specifically, the GCCF has established a relationship with Catholic Charities. Our liaisons in the field -- the Long Law Firm, Hammerman and Gainer and others in the claim site offices -- have engaged in ongoing direct communications with Catholic Charities. It is my understanding that there is a network of twelve non-profit organizations operating in Louisiana that are making themselves available to claimants to help complete applications by offering technical assistance. I believe this network is funded by a grant from BP and it is my understanding that each of the twelve non-profits operates independently. Recently, liaisons from our site offices attended a meeting with members of the South Louisiana Economic Council located in Thibodaux, Louisiana. In addition, members of the GCCF staff have been invited and have participated in the most recent weekly update conference calls sponsored by this group.

- 5) *GCCF Infrastructure and Employees* – The GCCF has a complex system in place to receive, review, maintain data and process claims, review the necessary accompanying documentation, calculate appropriate compensation, and issue checks. The success of this system is demonstrated by the statistics themselves and the fact that over \$3.3 billion has been distributed in just five months. Nevertheless, the GCCF remains open to any other suggestions that will improve the efficiency and integrity of the claims process. The GCCF employs, directly and indirectly some 3,600 individuals to help process hundreds of thousands of claims and inquiries. It is a huge undertaking. A general breakdown by employees by subcontractor and task is as follows:

Worley Company:

943 employees

The Worley team staff serves two functions: 1) staffing the various Gulf regional GCCF site offices and 2) during the Emergency Advance Payment stage, the Worley staff was responsible for performing the initial review of certain Emergency Advance Payment claims.

Garden City Group:

1,700 employees

Garden City Group is responsible for all claim intake, all supporting documentation, the maintenance and programming of data, and preparation of programming reports, operation of the call center, review of claims, payment of all claims, and many other tasks involved with the processing of almost 500,000 claims. Garden City has staff working for the GCCF project at their Dublin, Ohio; Melville, New York; and Seattle, Washington offices.

BrownGreer Firm:

715 employees

BrownGreer is responsible for the design and programming the claims evaluation system, reviewing claims and evaluating supporting documentation.

BrownGreer assists the GCCF in all of the evaluation and issue determinations for all claim types for approval by Feinberg Rozen . BrownGreer's offices are located in Richmond, VA.

Guidepost Investigations: 189 employees

Guidepost Investigations employs Gulf Coast residents to carry out it duties with regard to the investigation of potentially fraudulent claims submitted to the GCCF.

Cowheard and Assurance:

Accounting firms: 52 employees

Cowheard and Assurance Accounting firms work in the Worley Hammond Facility in Louisiana and perform accounting reviews of business claims for the GCCF.

Price Waterhouse Coopers: 20 employees

Price Waterhouse Coopers employees are forensic accountants working in the Washington, DC Office of Feinberg Rozen, working with me and my colleagues in the final review of pertinent individual and large business claims in which potential award amounts are of such precedential importance, they require review at the highest level of the program.

Madam Chairman, you and other members of Congress have recently learned that the GCCF plans to eliminate 150 jobs (of the 943 total mentioned above) from the Worley Hammond, Louisiana facility. These jobs were staffed by individuals on detail by the Worley Company who are residents of many states throughout the country, not just Louisiana. The next phase of the GCCF Program allows for the filing of Interim Payment, Full Review Final Payment and Quick Payment Final Claims. Quick Payment claims require no claims review. The first level of review by the Hammond staff is not necessary as part of this final process. The GCCF is

consolidating the initial review process performed by the Hammond Claims Evaluators into the review performed by existing staff at BrownGreer who are responsible for the second round of claims review and evaluation. Many on the Hammond staff will continue to be employed, but will be reassigned to the Site Offices in the Gulf to work with claimants. The jobs in Hammond will be eliminated. BP, and, thereafter, the GCCF, have been processing claims for some nine months; it is time to begin to downsize the massive infrastructure which has been part of the payment program since the oil rig explosion. We now know enough about the quality and quantity of the claims to deal with the claims process in a more efficient manner. I assure you that the downsizing will be done with care so as not to adversely impact the ability of the GCCF to process claims efficiently and effectively. There will be no employment reductions designed merely “to save costs.”

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Madam Chairman, I thank you for this opportunity to testify before your Subcommittee. I wish to assure you personally of my ongoing efforts to make the GCCF process work so as to benefit those individuals and businesses in Louisiana and the Gulf most in need. I appreciate the financial uncertainty that confronts thousands of citizens in the Gulf. This uncertainty breeds anger and frustration which I am trying to address. I believe that this unprecedented payment program – initially agreed to by both the Administration and BP – 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. And, I will always make myself available to you and your staff to address any aspects of the GCCF program.

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