After the BP Oil Spill: Kenneth Feinberg and the Gulf Coast Claims Fund

Case Study of Post-Disaster Compensation Programs

On April 20, 2010 the *Deepwater Horizon* oil rig exploded 40 miles off the Louisiana coast as operators were sealing an exploratory well. The blowout, caused by faulty procedures and poor risk management, triggered the world's worst accidental oil spill at sea. Over the next three months the well spewed more than 200 million gallons of oil into the Gulf of Mexico, fouling coastal marshes and beaches.

Many Gulf Coast communities were still recovering from Hurricanes Katrina and Rita, which had devastated the area five years earlier and displaced millions of people. This new disaster struck at three pillars of the region's economy: tourism, energy production and fishing. With fishing grounds closed, new drilling projects suspended and tourism bookings plunging, thousands of people were thrown out of work.

Multinational energy company BP, which held the lease on the rig, pledged to pay all "legitimate" damage claims, including economic losses. Within days of the spill BP hired contractors and started opening claims offices. The centers were flooded with applications, and soon with complaints about slow responses and too much paperwork. As oil washed ashore from Louisiana to the Florida panhandle, many residents feared that their livelihoods would disappear.

President Obama was under pressure to bring the disaster under control and deliver relief to the Gulf. On June 16 Obama took control of the claims process away from BP and ordered company leaders to place $20 billion in an escrow fund to pay for economic and other damages. The new Gulf Coast Claims Facility (GCCF) would be run independently by Kenneth Feinberg, a respected lawyer with extensive experience in litigating and mediating mass injury claims.

Feinberg was widely known for heading a similar program: the federally-funded compensation fund for victims and their families after the September 11, 2001 terrorist attacks. This unprecedented initiative was part of a law enacted by Congress just days after the attacks, designed to prevent mass lawsuits that would bankrupt U.S. airlines. In return for financial payments applicants were required to waive all rights to sue airlines, the World Trade Center, or other institutions involved in the attacks. Feinberg developed formulas for awarding compensation and spent several years meeting with families and victims and reviewing appeals. Ultimately some 5,300 families -- 97 percent of those eligible -- accepted settlement payments.

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As head of the GCCF Feinberg would have even more latitude. Who would be eligible for compensation? How would the GCCF quantify their losses? How much proof would it require? How long would the program run? Was $20 billion enough? “All of the design, all of the implementation, and all of the administration is basically a handshake between the Obama administration, BP and me,” Feinberg said when his role was announced.[1]

The well was still gushing oil when Feinberg took charge of the GCCF, so no one knew how long the disaster would last or the full scope of damages. Nonetheless, Feinberg needed to start making payments as quickly as possible for the GCCF to achieve its goal: compensating victims fairly so that they could recover quickly from the spill, instead of spending years seeking redress in court. As a target, Feinberg said that he aimed to persuade 90 percent of eligible spill victims – however many there might be -- to file claims instead of suing.

Avoiding Lawsuits

The Exxon Precedent

The worst oil spill in U.S. waters prior to the *Deepwater Horizon* blowout occurred in 1989 when the *Exxon Valdez* tanker ran aground in Alaska’s Prince William Sound, spilling 11 million gallons of oil along 1,300 miles of sensitive coastline and killing thousands of seabirds and marine mammals. *Exxon Valdez* was a virtual tutorial on how not to manage oil spills: Exxon was unprepared, the federal response was patchy, and only a small portion of the spilled oil was recovered. These failures catalyzed support for the Oil Pollution Act of 1990, which was designed to clarify responsibility for spills and ensure that oil companies and federal responders were ready to manage future accidents.

Exxon Valdez was also an economic disaster for south-central Alaska. Prices for fish from oiled zones dropped immediately, and four years after the spill Prince William Sound’s lucrative herring fishery collapsed. Nearly 40,000 fishermen, cannery workers and other residents filed suit against Exxon. In 1994 a jury found the company liable and awarded $507 million in compensation and $5 billion in punitive damages. But Exxon appealed, and litigation dragged on for fourteen more years. In 2008 the Supreme Court capped punitive damages at $507 million, matching the compensatory damages. At this point 6,000 of the original plaintiffs had died. The rest could expect to receive, on average, about $30,000 plus interest apiece – minus 22.4 percent in attorney fees. Many claimants had long since filed for bankruptcy.[2]

The lessons for BP spill victims weren’t encouraging. “Hire patient lawyers,” *Exxon Valdez* plaintiff attorney Brian O’Neill wrote in a May 2010 op-ed. Lawsuits against BP could also take years to resolve, O’Neill warned. Moreover, he observed, “no matter how outrageously spillers behave in court, trials are always risky . . . . Historically, U.S. courts have favored oil

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[1] Jackie Calmes, “For Gulf Victims, Mediator with Deep Pockets and Broad Power, *New York Times*, June 22, 2010.
[2] Kim Murphy, “Checks May Close Books on ’89 Oil Spill,” *Los Angeles Times*, December 6, 2008; Dirk Olin, “Exxon’s Endless Lawsuit,” Portfolio.com, March 23, 2009; Exxon Qualified Settlement Fund, “News and Information,” November 26, 2008, http://www.exspill.com/News/tabid/1901/Default.aspx.

spillers over those they hurt."[3] And early analyses predicted that the BP spill would have severe economic impacts. In July 2010 Moody's Analytics estimated that the disaster would cost the Gulf region nearly $1.2 billion in output and 17,000 jobs by the end of the year, with the heaviest impacts on fishing and oil production in Louisiana and tourism in Florida.[4] Another report projected that Gulf states could lose up to $22.7 billion in tourism revenues over three years.[5]

Many Gulf Coast residents were low-income workers with few resources to fall back on. According to 2008 data the average household income in counties closest to the spill zone was $46,335 and fifteen percent of residents lived below the poverty line. The population in this area was about 20 percent African-American and 4 percent Latino.[6] It also included approximately 20,000 Vietnamese fishermen, many of whom spoke no English, as well as Native American tribes who relied on fishing for their livelihoods.

Less than two weeks into the spill fishermen were out of work. Louisiana shut down fishing in state waters east of the Mississippi River on April 30, and the National Oceanic and Atmospheric Administration (NOAA) started closing off federal waters on May 2. Within a month one-third of the Gulf of Mexico was off-limits for fishing (Figure 1).

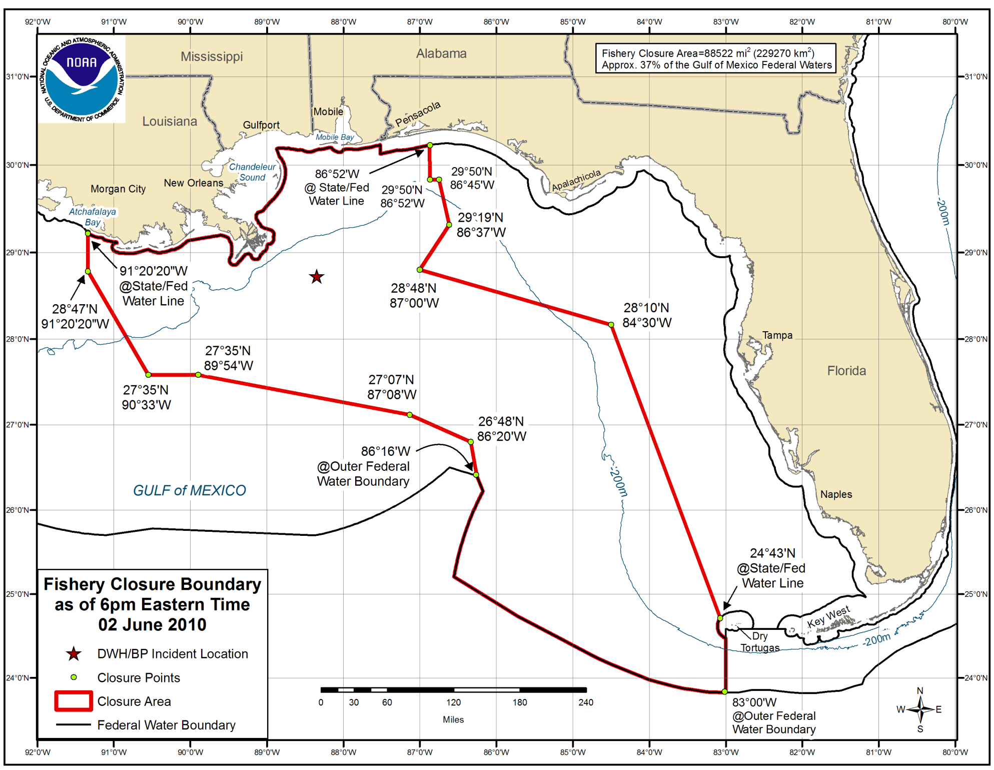

Figure 1

[3] Brian O'Neill, "Lessons for the Gulf From 'Exxon Valdez,'" *Washington Post*, May 17, 2010.
[4] Marisa Di Natale, "The Economic Impact of the Gulf Oil Spill,"http://www.economy.com/dismal/article_free.asp?cid=191641&src=moodys.
[5] Oxford Economics, "Potential Impact of the Gulf Oil Spill on Tourism," released July 22, 2010, http://www.ustravel.org/sites/default/files/page/2009/11/Gulf_Oil_Spill_Analysis_Oxford_Economics_710.pdf.
[6] Louisiana State University, "LSU Group Develops Maps Charting Demographics of the Oil Spill Region," April 30, 2010, http://www.lsu.edu/pa/mediacenter/nr/2010/maps/.

On May 7 the Obama administration froze permitting for new offshore drilling projects, idling many oil and gas workers.[7] As oil started washing up onto beaches, travelers canceled bookings along the Gulf coast, even in unoiled areas. Business plunged at charter fishing companies, marinas, seafood processing plants and waterside hotels, except for those lucky enough to rent rooms to cleanup workers.

BP's Response

Federal officials quickly identified BP as the primary responsible party for the spill under the Oil Pollution Act (OPA). The law held BP liable for all oil removal and cleanup costs, and for specific categories of damages, including property damage; subsistence use of natural resources; and lost profits or earnings due to injury, or to destruction or loss of property or natural resources. It required BP to advertise procedures for presenting claims within 15 days of its official designation as a responsible party.[8]

BP hired two contractors to handle claims: Worley Catastrophe Response, based in Louisiana, and ESIS, a global recovery management firm. The companies opened a toll-free call center on April 25, and within a month had over 400 claims adjusters working at 24 walk-in offices in Alabama, Florida, Louisiana and Mississippi. Adjusters reviewed cases and issued interim payments, each of which was intended to replace roughly one month's lost income. BP pledged that claimants would receive income replacement payments as long as the spill prevented them from working, and would not have to waive their rights to sue.[9]

At the same time, however, BP was talking privately with Kenneth Feinberg about creating a 9/11-style compensation fund. Thomas Milch, an attorney in Washington, DC and outside counsel to BP, suggested the idea to the company days after the blowout and called Feinberg to see whether he would consider running the program. Feinberg said yes, and a few weeks later started meeting with company officials to discuss how a fund might work.

"President Obama was leaning on BP to do something other than just litigate," Feinberg says. No major corporation had ever voluntarily funded a compensation program on this scale, but BP had good reason to consider the idea. The company had paid out roughly $40 million by June 1, but numerous claimants said BP's system was slow, disorganized, and did not cover their actual losses.[10] Critics pointed out that ESIS's web site advertised "superior recovery management services with the goal of reducing our clients' loss dollar pay-outs" – evidence, in

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[7] The moratorium was lifted in October 2010.

[8] Oil Pollution Act, 33 U.S.C., sections 2702 (elements of liability) and 2714 (designation of source and advertisement). For spills from offshore facilities the OPA capped liability for natural resource and economic damages at $75 million. However, in May senior BP officials said publicly that the cap was "not relevant" and the company would pay all legitimate damage claims. See letter from Interior Secretary Salazar and Homeland Security Secretary Napolitano to BP CEO Tony Hayward, May 14, 2010, http://www.doi.gov/news/pressreleases/upload/Salazar-Napolitano-BP-Final.pdf.

[9] Testimony of BP America Vice President Darryl Willis before the House Judiciary Committee, May 27, 2010, http://judiciary.house.gov/hearings/pdf/Willis100527.pdf, pages 4-6.

[10] BP press release, June 1, 2010; Craig Pittman, "Florida Paid $3M By BP," *St. Petersburg Times*, May 31, 2010; Peter Spotts, "BP: We've Been Too Slow To Pay Gulf Oil Spill Claims," *Christian Science Monitor*," June 10, 2010; Julie Schmidt, "Gulf Businesses Say BP Aid on Oil Spill too Slow," *USA Today*," June 11, 2010.

their view, that BP was not serious about making spill victims whole.[11] Many claims from small business owners and seasonal workers were rejected because the claimants could not provide enough evidence to document their income losses.[12]

"It was totally chaotic, and the results were pretty random," says Martha Bergmark, president of the Mississippi Center for Justice, a public-interest law firm that advocates for low-income and ethnic communities. "If you knew how to make a lot of noise and demand a check, you could get one, but many people didn't know how to do that." The Center and other legal aid organizations worked with vulnerable Gulf Coast residents throughout the spill and lobbied to make it easier for low-income claimants to receive compensation.[13]

By mid-June BP faced nearly 200 lawsuits for deaths and injuries on the rig, economic damages, environmental impacts, and shareholder suits over its falling stock value.[14] The company's $180 billion market capitalization made it an attractive legal target, and the number of potential plaintiffs across five Gulf states was enormous. And BP was under heavy fire for repeatedly failing to plug the well.[15] When BP chairman Carl-Henric Svanberg met with Obama at the White House on June 16 and agreed to set up a $20 billion escrow fund, BP and the administration had already agreed that Feinberg would head the claims process. "Very few people could get a compensation program on that scale up and running quickly," says former Assistant Attorney General Thomas Perrelli, who was Feinberg's main administration contact. "We were highly certain that something independent would function more effectively than BP and engender more public confidence. Everyone was operating under tremendous time pressure, and we could all agree to [Feinberg] quickly."[16]

Announcing the plan, Obama sympathized with Gulf Coast residents' frustrations. The new system, he promised, would be run by "an impartial, independent third party . . . . And I'm confident that [Feinberg] will ensure that claims are administered as quickly, as fairly, and as transparently as possible." One key measurement, Obama said, was whether small businessmen, fishermen, and "communities that are vulnerable" received the help they needed. "That's who we're doing this work for," he concluded.[17]

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[11] Jonathan Tilove, "BP Trying To Limit Its Payouts, Lawyers Say," *New Orleans Times-Picayune*, June 10, 2010;
[12] Robbie Brown and Michael Cooper, "BP Pays Out Claims, but Satisfaction Is Not Included," *New York Times* June 6, 2010.
[13] Deborah Barfield Berry, "Don't Ignore Low-Income Spill Victims, Advocates Urge BP," *USA Today*, June 28, 2010; "Legal Help for the Gulf's Vietnamese Fishermen," *The American Lawyer*, July 2, 2010.
[14] John Schwartz, "First the Spill, Then the Lawsuits," *New York Times*, June 10, 2010.
[15] "Embattled BP Chief: I Want My Life Back," *The Times* (London), May 31, 2010.
[16] Obama had appointed Feinberg a year earlier as "Special Master for Compensation" for the Troubled Asset Relief Program (TARP), a $700 billion fund established in 2008 to stem a national financial crisis. TARP authorized the Treasury Department to use federal funds to stabilize financial markets, mainly by bailing out banks. Feinberg's job was to ensure that companies receiving payments met federal restrictions on executive pay and compensation.
[17] Statement by the President after Meeting with BP Executives, June 18, 2010, http://www.whitehouse.gov/the-press-office/statement-president-after-meeting-with-bp-executives.

Reinventing the System

Based on his experience with other compensation initiatives, Feinberg anticipated many questions that the GCCF would confront. First, how many claimants would apply? Feinberg thought there might be millions -- far more than he had ever handled before. "This oil spill captivated the public, and BP was promising to do something about it. Why wouldn't anybody file a claim asserting that they had been victimized, whether they were a bather, a fisherman, a hotel, a shrimper -- whether they lived in Louisiana, Texas, Canada, the world?" he says.

Moreover, claimants could have grandiose hopes for massive awards. BP was widely viewed as a greedy company that had caused the spill by cutting corners, and now was under pressure to make things right. The administration was working to show that it was committed to helping the Gulf Coast recover. Feinberg's reputation as a go-to guy for compensation programs, which was amplified in media coverage of his appointment, reinforced expectations that he would fix BP's faulty system and deliver justice to spill victims.[18]

Oil was still spewing from the broken rig as Feinberg assumed control of the claims process, and official estimates of how much oil and gas had spilled were rising steadily. The ultimate extent of damages depended largely on how much oil was released and where it spread, so not knowing the total spill volume made it very hard to write rules and policies.

Feinberg also knew the key operational issues that would have to be addressed in designing an improved claims system:

- **Who would be eligible to file a claim?** Proving economic harm would be relatively straightforward for Gulf Coast workers and businesses in oiled areas, but what about inland seafood processors, or hotels in non-oiled areas that lost business?
- **How would the GCCF calculate economic losses?** What was the right baseline for businesses that made most of their income during a few months of the year?
- **How much proof would claimants have to provide?** How should the program treat claimants who worked in the region's sizeable cash economy and did not pay taxes?
- **What were claimants' obligations?** Should they have to waive rights to sue BP, or all of the companies designated as responsible parties?[19]
- **Should the GCCF retain BP's infrastructure and staff, or start over?** Who would design new elements like databases and call scripts? Who would train the staff?

Feinberg and his staff had to resolve these issues quickly to start up the new system by the administration's target date of August 23. According to Camille Biros, the business manager at Feinberg's law firm and a lead administrator of both the 9/11 fund and the GCCF, they quickly

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[18] For example, Sheryl Gay Stolberg, "Administering Fund, A Master Mediator," *New York Times*, June 16, 2010, and Andrea Stone, "'Master of Disaster' Ken Feinberg: From 9/11 to BP," Aol.com, September 10, 2010.

[19] In early 2012 the judge presiding over BP spill litigation ruled that Anadarko, which owned 25 percent of the ruptured well, was responsible for the subsurface oil discharge along with BP. The judge ruled that Transocean, owner of the Deepwater Horizon rig, was not liable for damages from oil released from the well, but could be liable for cleanup costs as an "owner or operator of a vessel." Rebecca Mowbray, "Gulf of Mexico Oil Spill Liability Rulings Filed," *New Orleans Times-Picayune*, February 22, 2012. Early in the spill, however, the Coast Guard directed BP to create a single claims process for all responsible parties to avoid confusion among claimants.

decided to create a new infrastructure. Under BP's system claimants came to walk-in offices to document their losses, and adjusters were authorized to write checks on the spot. The offices were using two different, non-compatible databases to house data and track payments. "We said we would need contractors who could create one master database, and that we would not sanction any local authority for making payments from site offices," says Biros.

Feinberg and Biros opted to use two companies they had worked with on other projects and that were expert at housing data: Garden City, a New York-based claims administrator, and Brown Greer, a smaller company with extensive experience on mass tort cases. Garden City was assigned to develop a website and electronic claims submission process, including documentation requirements. Brown Greer would handle the process of calculating claimants' lost earnings, aided by a small staff of accountants from Price Waterhouse who were detailed to Brown Greer's headquarters in Richmond.

Feinberg and his staff worked closely with the Justice Department and the Coast Guard in drafting protocols for the claims process.[20] To monitor the system, the Department of Homeland Security hosted weekly conference calls with GCCF staff, Justice Department representatives and state government officials after the GCCF opened for business. BP was kept informed but not included in the conference calls. "When they disagreed with our policy, they would write and explain what they were unhappy about, just like any other constituent. They would express their positions, and we would say thanks very much and do what we wanted to do," says Biros.

Getting Money Out the Door

Tackling questions such as eligibility criteria and compensation formulas would require time and analysis. But Feinberg was under pressure to start making payments, especially since BP deferred decisions on thousands of pending claims after the change of leadership was announced. "The primary objective of any compensation program is getting money out the door," says Feinberg. "But we faced a tremendous tension between the urgency of cutting checks and the need to do it in a principled, consistent, and transparent way."

Feinberg's short-term solution was to announce that for three months, from August 23 through November 23, claimants could file for emergency advance payments covering up to six months of lost earnings without waiving their right to sue. Later they could return for interim or final payments, which would require more documentation and a waiver. But the emergency payments were designed to get money flowing. "BP howled. In their eyes, all we were doing was funding litigation," Feinberg recalls. "But I told them, 'You don't get it. Once claimants realize they can get money without litigating, they'll take it, but [ultimately] you'll get your release. They'll come back for supplemental payment for damage that isn't compensated yet. And when they want that money, they're going to have to sign a release."

[20] The Coast Guard administers the federal Oil Spill Liability Trust Fund, created by Congress to pay various oil spill-related costs, including uncompensated damage claims.

Ultimately the GCCF issued $2.6 billion in emergency advance payments to nearly 170,000 claimants.[21] ("Virtually all of them came back and signed a release for subsequent payment, as I knew they would," says Feinberg.) But it wasn't a smooth process. In town meetings across the region through the summer of 2010, Feinberg urged residents to file claims and pledged that documented emergency payment claims would be paid within 48 hours for individuals and 7 days for businesses. However, many applications came in with incomplete documentation or none at all. And even complete claims took longer than two days to process. "You can't have a principled review of someone's losses in that time, especially with the size of this program. So we came out of the box hindered by promises we couldn't keep," says Biros.

These delays generated a wave of critical news stories.[22] In mid-September Perelli sent a letter to Feinberg describing the pace of payments as "unacceptable" and directing the GCCF to speed up the process. (At this point the program had paid $477 million in emergency claims in one month, compared to $399 million paid by BP over three and a half months.)[23] Some state officials and advocates argued that claimants should have longer than three months to file for emergency payments. Others objected to the GCCF's policy of only paying for harm or damages that were "proximately caused" by the BP spill, and evaluating claims based partly on whether applicants were located near oiled areas.[24] As the GCCF's own website stated, the program had been created to fulfill BP's legal obligations under the OPA, which allowed claimants three years to file and did not impose geographic limits or require a waiver of rights to sue.[25]

Geographic proximity was a particular concern in Florida: the state suffered no direct oil damage beyond the Panhandle, but tourism business fell in many locations across the state, either because travelers did not understand that their destinations were far from the slick or worried that it would spread. In its first two months the GCCF received more claims from Florida (35,500) than from Louisiana, the state hit hardest by the spill (31,000).[26] After heavy lobbying from Florida officials, Feinberg announced in October 2010 that a geographic test was "unwarranted," as long as claimants showed that damage was in fact caused by the spill.[27]

One harsh critic, Alabama Attorney General Troy King, issued a "consumer alert" in November, warning state residents who were considering filing claims that Feinberg "works for BP," a charge that would be repeated frequently. BP was paying Feinberg's salary and all of the GCCF's salaries and operating costs, but Feinberg said repeatedly that BP had no role in evaluating claims and that he was operating independently. Responding to King, Feinberg called

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[21] Gulf Coast Claims Facility, "Overall Program Statistics," http://www.gulfcoastclaimsfacility.com/GCCF_Overall_Status_Report.pdf, accessed March 15, 2012.
[22] See Dan Murtaugh, "Ken Feinberg: 1,200 Oil Claims Checks in the First Week 'Not Acceptable," Al.com, August 30, 2010; "The Big Interview With Ken Feinberg," WSJ.com, September 10, 2010; and Campbell Robertson and John Schwartz, "Rethinking the Process for BP Spill Claims," *New York Times*, September 15, 2010.
[23] Sasha Chevkin, "Obama Administration Criticizes Slow Payments by Gulf Spill Claims Czar," ProPublica, September 27, 2010.
[24] Gulf Coast Claims Facility, "Protocol for Emergency Advance Payments," August 23, 1010, Section II F, http://www.gulfcoastclaimsfacility.com/proto_1; Alabama Appleseed Ctr for Law and Justice et al., July 28, 2010, http://www.mscenterforjustice.org/glomer/upload_repo/docs/Comment%20Letter%20re%20Feinberg%20Claims%20Protocol%207-28-10%20%282%29.pdf.
[25] James C. McKinley, Jr., "Details Faulted in Plan to Pay Oil Spill Claims," *New York Times*, August 20, 2010.
[26] David Segal, "Should BP's Money Go Where the Oil Didn't?" *New York Times*, October 23, 2010.
[27] Dara Kam, "BP Claims Czar Backs Off Proximity to Oil Spill in Paying Claims,' October 4, 2010, www.postonpolitics.com, October 4, 2010.

the consumer alert "a disservice to the citizens of Alabama," and the *New York Times* agreed. "This sort of grandstanding doesn't help anybody," the newspaper observed in an editorial, which Feinberg posted on the GCCF website.[28]

There also were complaints from GCCF staffers, whose jobs had changed in the transition from BP to Feinberg. "When we set up the system, we envisioned a centralized process that would make it as easy as possible to file claims, with [Garden City and Brown Greer] working with us on a daily basis," says Biros. "At first we didn't plan to keep the claims offices open, but the states wanted us to maintain a presence in the region. So we did an about-face, but we did not authorize claims adjusters to make judgments on the spot – we retrained them on our criteria, and on helping people get their claims through the system." Under the new process staffers in local offices helped claimants fill out applications, which then were mailed to reviewers in an office in Ohio.

Many claims adjusters were unhappy about the shift. "They went from using their own judgment to a very standardized system, and felt that they were being turned into administrative clerks," Biros acknowledges. Some staffers left the GCCF and went into business on their own helping applicants navigate the process, while criticizing it publicly as too slow and opaque. "It's criminal what is going on to these people," Olga Souders, a licensed claims adjuster and former GCCF employee, said in mid-2011.[29] In retrospect Feinberg calls the decision to retain BP's claims staffers a mistake, but Biros sees some benefits. "They were valuable to us, because they had developed relationships with people in their areas. Some claimants would go back to the offices just to schmooze with them," she says.

Forecasting Recovery

While the GCCF processed emergency claims, Feinberg and his senior aides were wrestling with a broader issue: How long might it take for the Gulf's natural resources and economy to recover? The longer people were out of work or losing income due to the spill, the longer they would expect compensation from BP. Conversely, BP was keenly interested in limiting payments for future damages (i.e., continued impacts after the well was capped and spilled oil was cleaned up), and in how the GCCF would estimate them.

Projecting recovery was a multi-part problem. Key questions for the fishing industry were mainly scientific: Had exposure to oil and dispersants killed large numbers of fish and shellfish? Had these substances been taken up into the food chain, where they might harm living organisms for years? How severe was the physical damage to coastal wetlands, which were critical spawning grounds and nurseries for many marine species? In contrast, challenges for tourism businesses were primarily economic and psychological. How severely would media images of oiled beaches depress Gulf vacation travel? How long would it take to convince the public that most of the Gulf Coast was clean, and that waters were safe for swimming? How quickly would the Gulf's image as a desirable destination rebound?

[28] George Altman, "Troy King Issues 'Consumer Alert' On Spill Claims Process, Says Feinberg Works for BP," *Mobile Press-Register*, November 18, 2010; "Mr. Feinberg and the Spill," *New York Times*, November 25, 2010.
[29] Josh Bernstein, "Crude Treatment," TheDaily.com, July 19, 2011; see also "Adjuster Discusses Claims Process," Fox10TV.com, February 22, 2011, http://www.fox10tv.com/dpp/news/gulf_oil_spill/adjuster-discusses-flawed-claims-process;

As guidance Feinberg commissioned several reports from authorities he describes as "the very best people that all the literature says are the experts." On fisheries the GCCF requested an analysis from Dr. Wes Tunnell, a biologist and associate director of the Harte Research Institute for Gulf of Mexico Studies at Texas A&M University. Tunnell was not a fisheries biologist, as he pointed out when the GCCF first contacted him, but he had extensive experience studying the Gulf. He also had analyzed impacts of oil spills, including the 1979 Ixtoc I spill in the Gulf off of Mexico – the largest such spill prior to the Deepwater Horizon blowout.

Feinberg's staffers held a conference call with Tunnell on December 20 and asked him to write a report for them by January 3. "Not many people would take on something like that," Tunnell says wryly. Tunnell stipulated that the report should describe unique features of the Gulf of Mexico, such as natural oil seeps, and should review findings from other oil spills to provide some context about different conditions and outcomes. "They agreed. They wanted the report to be 'weighty' and 'neutral,' meaning believable to experts and not tilted in one direction or another," Tunnell recalls. He suggested commissioning a group of experts on various aspects of the topic, but most of the scientists that the GCCF had contacted were not willing to work over the holidays. Tunnell hesitated to ask the same of his staff, so he wrote the report himself.[30]

Tunnell's 39-page report acknowledged that impacts from major oil spills could be "chronic and/or sublethal and difficult to detect, even showing up months or years later," as with the *Exxon Valdez* spill. However, he concluded, the scientific literature showed that oil degraded more quickly in warm water than in cold water because heat broke oil down physically and chemically. He also noted that oil-eating microbes were abundant in the Gulf of Mexico, which has many natural oil seeps from undersea deposits. Tunnell projected that shrimp, crab and finfish fisheries would recover from the BP spill by the end of 2012. However, many oyster beds had been damaged during the spill when Louisiana diverted fresh water from the Mississippi River into coastal bays to push oil away from shore. Tunnell predicted that it would take several years longer to reseed oyster beds and for the oysters to grow to usable size.[31]

Tunnell's conclusions received mixed reviews from other marine scientists: some said he had relied on outdated studies and glossed over too many uncertainties, but others called it a sound assessment produced under demanding conditions.[32] "His analysis of fisheries was more experiential than analytic. He reviewed the literature and then made judgments, based on his own experience, of how long he thought recovery would take. His findings aren't easily reproducible – another expert might have reached different conclusions," says Dr. Donald Boesch, a biological oceanographer and president of the University of Maryland's Center for Environmental Science.

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[30] The Harte Institute added an organizational endorsement in January 2011 after Tunnell submitted it to the GCCF.
[31] John W. Tunnell, Jr., "An Expert Opinion of When the Gulf of Mexico Will Return to Pre-Spill Harvest Status Following the BP Deepwater Horizon MC 252 Oil Spill," January 31, 2011, http://www.gulfcoastclaimsfacility.com/exhibit_d.pdf.
[32] John Schwatrz and Mark Schrope, "Report Foresees Quick Gulf of Mexico Recovery," *New York Times*, February 2, 1011; Emily Nipps, "Experts Question Health of Gulf After Oil Spill," *Tampa Bay Times*, February 11, 2011.

Boesch served in 2010 on a presidential commission that reviewed the BP spill and made recommendations for improving oil spill responses and federal regulation of offshore energy production. The commission's report, released in January 2011, reviewed the many ways in which the spill could affect marine ecosystems in the Gulf and observed, "Scientists simply do not yet know how to predict the ecological consequences and effects on key species that might result from oil exposure in the water column, both far below and near the surface."[33] In Boesch's view, however, the Tunnell report served a purpose.

"Feinberg was asked to settle things quickly based on real losses, so he needed some metric for how much compensation to offer," Boesch says. "From a scientific perspective, it's unusual to turn to one individual – we usually like to form a commission and get some consensus. But from a legal perspective I can see why he sought out a particular expert instead of going through a more deliberative public process. When you get more people involved, the outcome is usually more equivocal."

Feinberg commissioned a separate report on economic recovery from the Analysis Research Planning Corporation (ARPC), an economic and business consulting firm based in Washington, DC. "We talked to colleagues and other law firms, and everyone said ARPC was the gold standard. They were well known and respected for economic forecasting in mass tort cases," says Biros. The study, released in January 2011, examined claims for economic losses through 2010 and found that most had come from claimants in the fishing and tourism industries in coastal Louisiana, Mississippi, Alabama and Florida. Analyzing pre- and post-spill revenues in these sectors, the study concluded that the Gulf economy was starting to recover by late 2010, and a full economic recovery was likely within 2 to 3 years of the spill.[34]

Rules for Full Payment

Based largely on these assessments, the GCCF developed three options for resolving economic damage claims. Claimants who documented their actual damages for 2010 could also request a sum equal to twice that amount as compensation for anticipated future damages in 2011 and 2012. The only exceptions were oyster harvesters and processors, who could request four times their documented 2010 losses, reflecting the slower outlook for oyster bed recovery. Payment options included:

- **"Quick Payment"**: Any claimant who had already received an emergency advance payment or an Interim Payment (see below), and wanted to close out the compensation process, could apply for a single payment of $5,000 for individuals or $25,000 for businesses without providing additional documentation. Quick payments required signing a full release waiving all rights to further compensation from the GCCF or the Coast Guard, or to sue BP or any other responsible parties in court.

[33] National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, *Deep Water: The Gulf Oil Disaster and the Future of Offshore Drilling* (2011), p. 174, http://www.oilspillcommission.gov/final-report.
[34] ARPC, "Measures of the Effects of the Gulf Oil Spill on Individuals and Businesses and Proposed Compensation Schema," January 24, 2011, http://www.gulfcoastclaimsfacility.com/exhibit_c.pdf.

- **Final Payment:** Claimants who could document past damage could apply for a final payment covering these damages plus two years of future damages (four years for oyster harvesters and processors). Final payments required signing a full release waiving all further compensation and rights to sue.

- **Interim Payment:** Claimants who did not believe that the Gulf would be fully recovered by the end of 2012 could file for quarterly interim payments covering their documented past damages without signing away litigation rights. Interim claims could be submitted through the GCCF's official ending date in 2013, after which claimants would have to go to court to seek further compensation.

The GCCF posted draft protocols for public comment on February 2, 2011 and finalized them on February 18. It received approximately 1,440 comments during that time.[35] Many doubted that the Gulf would recover by late 2012. This schedule was "based on exceedingly optimistic assumptions about unknown environmental and economic conditions and doesn't match the longer experiences with the *Exxon Valdez* and other major oil spills," Florida Attorney General Pam Bondi wrote. "There has been (and apparently will be) no independent peer review of these assumptions." Bondi viewed the Tunnell report as "one professor's hastily drawn opinion on when four fishery categories from the Gulf . . . may return to pre-harvest status."[36]

The Justice Department also weighed in. Perrelli pressed Feinberg to evaluate claims according to the standards set out in the OPA rather than applying more restrictive criteria. (The GCCF had used industry categories to classify emergency payment applicants, reportedly ranking applicants in sectors such as financial services, auto repair, and law as ineligible.)[37] "OPA does not create categories of eligible and ineligible claimants," Perrelli wrote. "Rather, in determining whether a particular damage resulted from the spill, the GCCF must examine the facts and circumstances of each claim and ascertain whether the harm asserted by the claimant occurred 'as a result of' the oil spill and is a type of harm, such as lost profits, covered by OPA."

Perrelli also directed Feinberg to pay claims more promptly. "When a small business files for its interim claim every three months, and then waits 90 days for the claim to be resolved, its cash flow is already running six months behind – at the very moment when it needs to be getting back on its feet and investing in its future," Perrelli wrote. And he asked for more transparency to help claimants understand decisions about their cases.[38]

"We weren't in the business of reviewing individual claims," Perrelli says. "Our measure was whether the people in the Gulf felt fairly treated. We were interested in process, outreach, and making sure that people were heard." The Justice Department's interventions fanned debate

[35] Gulf Coast Claims Facility, "Final Rules Governing Payment Options, Eligibility and Substantiation Criteria, and Final Payment Methodology," February 18, 2011, http://www.gulfcoastclaimsfacility.com/FINAL_RULES.pdf.
[36] Letter to Kenneth Feinberg, February 16, 2011, http://www.myfloridahouse.gov/sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2590&Session=2011&DocumentType=Action%20Packets&FileName=EFC%20ACTION%202_18_2011.pdf, pp. 7-11 of document.
[37] David Hammer, "Kenneth Feinberg's Use of Industry Categories in Scoring Claims is Criticized," *New Orleans Times-Picayune*, February 4, 2011.
[38] Letter from Associate Attorney General Thomas J. Perrelli to Kenneth Feinberg, February 4, 2011, http://www.justice.gov/asg/2011-2-4-perrelli-ltr-feinberg.pdf.

over how well the GCCF was performing, but Perelli says they should be viewed in context. “There will be problems with any effort like this. The issue isn’t whether you make mistakes – it’s whether you fix them once they’ve been identified,” he asserts. “Letters only went out when issues bubbled up to a high level. We resolved a lot of questions with phone calls” And the final protocols contained some changes in response to comments. For example, the GCCF agreed to consider applicants’ income in the four months leading up to the spill on April 20, 2010 -- a change requested by many start-up businesses – and agreed to cover reasonable costs to hire accountants for help in documenting claims.[39]

Responding to complaints about slow payments, Feinberg said that more than 100,000 applications from November and December 2010 did not include enough documentation (typically, paperwork such as tax returns, profit and loss statements, and fishing licenses) to prove claimants’ losses.[40] On April 18, as the one-year anniversary of the Deepwater Horizon explosion neared, the GCCF issued a summary of its work. Since August 23, 2010 the program had received approximately 857,000 claims from more than 504,000 individuals and businesses, and approved some 300,000 claims for payments totaling nearly $4 billion (Table 1).

Table 1
GCCF Claims Paid Through April 18, 2011[41]

Type of claim	Number approved	Aggregate Value
Emergency Advance Payments	169,000	$2.6 billion
Quick Payments	110,163	$998,680,000
Final Payments	16,281	$222,183,102
Interim Payments	6,902	$78,691,137

Claimants had the right to appeal GCCF determinations on eligibility and damages to the U.S. Coast Guard’s National Pollution Funds Center. The report pointed out that the Coast Guard had rendered decisions in 574 cases to date, and had upheld the GCCF in every case. It also rebutted some other criticisms, such as complaints that the program was paying out less in damages than claimants had requested -- an issue that the report termed “not a fruitful subject for debate” because the amounts requested by claimants often bore “no reasonable relationship to damages actually proven.”

[39] David Hammer, “Feinberg Responds to Oil Spill Claims Complaints With Some New Rules,” *New Orleans Times-Picayune*, February 11, 2011.
[40] David Hammer, “Kenneth Feinberg Says 80 Percent of Pending Oil Spill Claims Lack Sufficient Documentation,” *New Orleans Times-Picayune*, March 3, 2011.
[41] Source: Gulf Coast Claims Facility, http://www.gulfcoastclaimsfacility.com/GCCF_Exec_Summary_FINAL.pdf.

Challenges and Corrections

Even as he energetically rebutted criticisms of the GCCF, Feinberg continued to modify policies and procedures. Through most of 2010 Feinberg and his senior staff had controlled all of the GCCF's outreach efforts, including town hall meetings, radio and television ads, although community groups in the Gulf had recommended using local people with grassroots contacts. Finally, in December 2010, the GCCF hired a handful of attorneys from well-known law firms in the region to serve as community liaisons at claims offices. "They were our eyes and ears in the field, and helped us deal with local politicians," says Biros.

Feinberg was more responsive on another issue: providing legal counsel for claimants who could not afford lawyers. Legal aid groups recommended this step at the outset, but Feinberg initially rebuffed them. "He made clear that his system would provide enough assistance and claimants wouldn't need legal help," says Bergmark. Late in 2010, however, as the GCCF prepared to enter the final payment phase, Feinberg came back to the public-interest community and agreed to fund lawyers for low-income claimants. The Mississippi Center for Justice was hired to organize a free legal services program, staffed by a dozen groups across the Gulf States, which started up in January 2011. GCCF staff held monthly conference calls with the legal aid groups to receive reports from the field.

"It was a very hands-on process with our claimants – we had access to high-level decision makers when we asked for it," says Bergmark. "Feinberg told us that we were the only people nagging him on behalf of the little guys." Initially the GCCF did little to publicize the availability of free legal counsel, and only about 6,000 claimants requested it through 2011. Late that year, however, the program issued a letter to all claimants reminding them they could reapply or reactivate any claim that had been denied or not been processed, and included the contact information for free counsel centers. After this announcement, requests for free counsel increased.

Many Asian and Native American claimants faced other compensation hurdles. Some were "subsistence" claimants who consumed or bartered large portions of their catches instead of selling it to processors, and so had trouble documenting how the spill had harmed them economically. The GCCF received more than 16,000 subsistence claims through January 2011, but paid only 15.[42] The program only started paying these claims in large numbers in April 2011, after working with legal and community advocates on methods for quantifying subsistence losses. In contrast to the centralized evaluation process for most claims, special local teams handled subsistence claims, interviewing claimants about their previous fish consumption and reviewing receipts that showed how much money applicants were spending for food they previously had caught for themselves.[43]

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[42] David Hammer, "Oil Spill Claim Calculations Depend on Estimates of Future Losses," *New Orleans Times-Picayune*, January 27, 2011.

[43] David Hammer, "Ken Feinberg Reaches Deal to Pay Subsistence Claims for Commercial Fishermen Who Consume a Portion of Their Catch," *New Orleans Times-Picayune*, April 12, 2011; Gulf Coast Claims Facility, "Frequently Asked Questions," Section 11, http://www.gulfcoastclaimsfacility.com/faq#Q11.

The issue of whether Feinberg was independent from BP resurfaced in February 2011. More than 100,000 individuals and businesses who claimed to have been harmed by the spill had opted to sue BP instead of seeking compensation through the GCCF; their cases had been consolidated into a multi-district litigation action in U.S. District Court in New Orleans, with fifteen law firms and two liaison counsels organizing and coordinating the plaintiffs.[44] Lawyers for the so-called Plaintiffs Steering Committee filed a motion arguing that the GCCF was indistinguishable from BP, and that Feinberg's claims of independence were misleading people who either had already joined the lawsuit or might join it. On February 2, the presiding judge issued an order that partially concurred with the plaintiffs' position.

"The Court recognizes and appreciates the enormity of the undertaking of Mr. Feinberg and does not intend to impede or interfere with his ability to fairly and efficiently process claims," Judge Carl Barbier wrote. Nonetheless, he concluded, Feinberg was not "a true third-party neutral such as a mediator, arbitrator, or court-appointed special master," since BP was paying Feinberg's salary and expenses, and the GCCF was settling claims on behalf of BP. "[W]hile Mr. Feinberg appears 'independent' in the sense that BP does not control Mr. Feinberg's evaluation of individual claims, Mr. Feinberg and the GCCF cannot be considered 'neutral' or totally 'independent' of BP," Barbier held. Accordingly, he ordered Feinberg and the GCCF to refrain from describing the claims process as independent from BP, and to disclose in all communications that they were acting for an on behalf of BP in meeting its legal obligations under the OPA.[45]

Feinberg altered GCCF statements accordingly, but emphasizes that BP played no role in evaluating individual claims. "I viewed my role as being totally independent when it came to how much should this person get, how much should that business get, should that claimant be deemed eligible. I viewed myself as making independent decisions that would not be subject to any formal check or balance from anybody else," he says. "The design of the program required input from both BP and the Obama administration. But when we were up and running, the Justice Department had no interest in any individual claim, and I gave very little credence to how BP would have decided it had they been in charge."

Scams and Fraud

Feinberg expected from the outset that the GCCF would be a magnet for fraud attempts. "Nothing can undercut the credibility of a program like this more than fraud," says Feinberg. "If you don't deal with it up front and very visibly, you run the risk that everybody will apply, because [in their eyes] you're paying people who are criminals." In 2005 the Justice Department had created a Hurricane Katrina Fraud Task Force and established a National Center for Disaster Fraud in Baton Rouge to investigate potential disaster-fraud crimes. Between 2005 and 2010 more than 1,300 people were prosecuted for various crimes related to the 2005 storms, including many cases of filing false claims for relief benefits or insurance payments.[46] "Anyone with

[44] For information and court documents see http://www.bpmdl2179.com/.
[45] Order filed February 2, 2011, MDL No. 2179, http://www.laed.uscourts.gov/OilSpill/Orders/222011OrderonRecDoc912.pdf.
[46] U.S. Department of Justice, Hurricane Katrina Fraud Task Force, Fifth Anniversary Report, September 2010, pp. I, 1-2, http://www.justice.gov/criminal/katrina/docs/09-13-10katrinaprogress-report.pdf.

experience in this kind of setting knows there are people who will take advantage of horrible tragedies to make a buck," says Perrelli.

Feinberg hired a global security company called Guidepost Solutions to review suspicious claims internally, and referred cases that were believed to be potentially fraudulent to the Justice Department for investigation. Federal prosecutors filed their first spill-related criminal case in September 2010, charging a North Carolina woman with using a false name to request $15,500 from the GCCF in lost wages after she claimed to have been laid off from a New Orleans seafood restaurant where she had never actually worked.[47] Over the next 18 months the GCCF would refer more than 1,000 cases to the Justice Department for investigation. A handful were prosecuted during that time, mostly involving people who filed false documents claiming that they had worked for existing businesses in the region. One Alabama woman invented a catering business and sought $804,000 in lost wages for people who claimed to have been her employees, although they received only $64,600 before the scheme was detected.[48]

Other scammers went after spill victims instead of seeking money directly from the GCCF. Vietnamese claimants, especially those who spoke little English, were a particular target: many were deceived by people who offered free legal help and tricked the claimants into hiring them as lawyers, then demanded a share of any settlements that the claimants received. These claimants' applications were delayed while the GCCF sorted out whether the lawyer actually represented the claimant.[49]

While fraud was a constant risk, Feinberg drew a distinction between claimants who knowingly submitted false or altered documents (thus committing criminal fraud) and those who requested inflated payments for actual losses. "There's a big distinction between wishful scamming of the system and a Federal offense that can send you to Leavenworth," he says. However, sorting out excessive claims from fraudulent ones took time, and the GCCF faced a constant tradeoff between evaluating claims in detail and getting payments out to people in need. Unusual cases received more review, but that meant that they took longer to resolve. "The price you pay for being an aberration is that we'll park your case over here and get to it when we can. But we can't slow down the overall processing. And nobody's getting a hearing, because there's just too many claims," Feinberg says.

Pushing Toward Recovery

The pace of GCCF payments accelerated through the spring and summer of 2011. On August 23 Feinberg issued a one-year anniversary report full of statistics which, he contended, demonstrated the success of the program. The GCCF had paid 359,441 claims from 204,434 claimants, totaling more than $5 billion, and had processed 97 percent of 947,892 claims received from all 50 states (Table 2).

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47 Donna Leinwand, "First Fraud Case Emerges from BP Oil Spill," *USA Today*, October 29, 2010.
48 Brendan Kirby, "Prichard Woman Imprisoned for Making $804k in Fraudulent Oil Fund Claims," *Mobile Press-Register*, January 8, 2012; for other cases, see U.S. Department of Justice, "Deepwater Horizon (BP) Oil-Spill Fraud," http://www.justice.gov/criminal/oilspill/pr/newstatement.html.
49 Campbell Robertson and John Schwartz, "Many Hit by Spill Now Feel Caught in Claims Process," *New York Times*, April 18, 2011.

Table 2 GCCF Claims Paid Through August 23, 2011[50]	
Type of claim	**Aggregate Value**
Emergency Advance Payments	$2.6 billion
Quick Payments	$1.2 billion
Final Payments	$901 million
Interim Payments	$297 million
Final Payment Offers Outstanding	$558 million

Feinberg "has gone from over promising on the speed of initial emergency payments to quietly working with oyster harvesters to address deficiencies in his payment methods; from fights over his independence from BP to accolades from fishing associations; from delays in settling final payment policies to a robust clip of about $300 million in settlements each months," the *New Orleans Times-Picayune* reported. Still, some claimants were unhappy – notably, shrimp fishermen, who contended they were receiving less-generous settlements than other industries. Feinberg "turned a $20 billion program . . . into a $5 billion program, and most of that $5 billion went to the wrong damn people," said Clint Guidry, president of the Louisiana Shrimpers Association.[51]

Testifying before the House Resources Committee in late October, Feinberg stated that the GCCF was still receiving more than 2,000 claims weekly, and was providing an initial determination to claimants on their request within 10 to 14 days on average. He also agreed with legislators from the Gulf region that the program needed to be "more receptive and generous" with shrimpers.[52] On November 30 the GCCF announced that shrimp and crab harvesters could apply for compensation equal to four times their documented 2010 losses (double the previous level), in recognition of "ongoing uncertainty" about the state of Gulf shrimp and crab fisheries. The program also tightened eligibility rules by stating that losses in the Florida Peninsula (south of the Panhandle) and Texas would no longer be presumed to be the results of the oil spill, based on revenue analyses which showed less impact on tourism in these areas than in Mississippi, Alabama and Louisiana.[53]

Throughout his tenure with the GCCF, Feinberg had promised Gulf residents and businesses that the claims process was the fastest and surest way to obtain compensation for economic damage from the Deepwater Horizon spill. At the same time, however, the multi-district lawsuit against BP was moving through pre-trial actions in New Orleans, generating more than 300 depositions and 72 million pages of documents. Early in 2012 these parallel tracks abruptly converged. ON March 2, with a trial date approaching, BP announced a settlement with the Plaintiffs Steering Committee (PSC) that would shut down the GCCF and absorb the money remaining in its escrow fund (roughly $14 billion) into a new, court-administered fund.

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[50] Source: Gulf Coast Claims Facility, http://www.gulfcoastclaimsfacility.com/GCCF_Exec_Summary_FINAL.pdf.
[51] David Hammer, "Gulf of Mexico Oil Spill Settlements Accelerate," *New Orleans Times-Picayune*, August 23, 2011.
[52] Kenneth Feinberg, testimony before the House Natural Resources Committee, October 27, 2011, http://naturalresources.house.gov/UploadedFiles/FeinbergTestimony10.27.11.pdf.
[53] Gulf Coast Claims Facility, Second Modification to Final Rules Governing Payment Options, November 30, 2011,

The settlement included two separate agreements, one covering economic loss claims and the other addressing medical claims from people who contended that they had been injured or made ill by the spill (for example, from exposure to oil or chemical dispersants). BP estimated that the total cost to resolve all of these claims would be about $7.8 billion, including $2.3 billion that the company committed to address economic losses for Gulf seafood industry claimants.[54]

Responses to the news were mixed. Throughout the pre-trial process, counsel for the PSC had argued that most plaintiffs would receive more money by filing suit than by pursuing claims through the GCCF, and they maintained that position when the deal with BP was announced. They also said that settlements would be paid according to court-approved formulas and the process would be more transparent than the GCCF. And the settlement extended the final deadline for filing claims from April 2013 to April 2014. Feinberg called the agreement good news because it would avoid a lengthy trial, and called for an orderly transition to the court-run claims program.[55] But some lawyers and claimants were skeptical. Payment formulas remained to be worked out, but one difference was clear: under the court-run settlement process, a portion of claims payments would go to lawyers. "The lawyers on that committee [the PSC] wanted to settle because it means huge fees," said Anthony Buzbee, a Texas attorney who represented 12,000 plaintiffs suing BP.[56] Others predicted that many plaintiffs would opt out of the settlement when they saw the terms.

On March 8, 2012 the court issued an order that created a transition process from the GCCF to the new claims process. Under the order, anyone with a pending offer from the GCCF would receive 60 percent of that amount from the new fund and then would have to join the lawsuit, where they could receive either the remaining 40 percent of their claim or the court-ordered class settlement payment.[57] Since more than half of the 110,299 private claimants who were part of the multi-district lawsuit had not filed claims with the GCCF, it was not immediately clear whether they would be eligible for compensation through the court-administered settlement process. Another 14,186 plaintiffs named in court records had accepted final settlements from the GCCF and waived their right to sue, presumably making them ineligible for further compensation.[58] As a result, it was not immediately clear whether Feinberg had achieved his goal of persuading 90 percent of eligible claimants to seek compensation through the GCCF instead of going to court, or which route would provide larger payments to claimants.

But Feinberg viewed the GCCF as a success, both for the 221,000 claimants who received more than $6 billion from it and for BP. "BP gambled that this claims facility would corral claims, get them out of an *Exxon Valdez* situation, and permit them to be a good corporate citizen, so they could continue to drill in the Gulf," he says. "It's a great example of bold corporate leadership leading to the right result.

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[54] BP press release, March 3, 2012, http://www.bp.com/genericarticle.do?categoryId=2012968&contentId=7073667; David Hammer, "Gulf Oil Spill Settlement Reached," *New Orleans Times-Picayune*, March 2, 2012.
[55] Rebecca Mowbray, "BP Spill Settlement Promises Fast Payouts," *New Orleans Times-Picayune*, March 4, 2012.
[56] Abraham Lustgarten, "BP Settlement Leaves Most Complex Claims Unresolved," ProPublica, March 3, 2012.
[57] First Amended Order Creating Transition Process, http://www.gulfcoastclaimsfacility.com/2012-03-08_First_Amended_Order_Creating_Transition_Process.pdf.
[58] David Hammer, "Most BP Plaintiffs May Be Ineligible for Compensation," *New Orleans Times-Picayune*, February 15, 2012.