

Big Oil Spill Controversy Spills Over

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After BP's Deepwater Horizon oil rig spill, BP did the right thing and created the Gulf Coast Compensation Facility under the Oil Pollution Act of 1990. BP put \$20 billion in the GCCF to pay Gulf Coast residents and businesses for damages from the spill and named attorney Kenneth Feinberg to oversee the fund.

Now, it appears those funds are not arriving to their intended sources.

In what it described as a unique situation, BP asked Feinberg to make a \$ 10 million payment from the GCCF to a BP-associated business. Feinberg did so solely at BP's request and admits he never reviewed the claim. In comparison, Feinberg continues rejecting thousands of other damage claims because of a lack of documentation.

Neither Feinberg nor BP will reveal the identity of the BP associate who received the money, only saying it is a Texas company. Ironically, the BP oil spill damaged the Texas coast much less than those of other Gulf States.

The controversy finally got the attention of the U.S. Department of Justice. Associate Attorney General Thomas J. Perrelli wrote to Feinberg complaining about the delays in paying for oil-spill damages, saying that Feinberg had spent only \$3.5 billion of the GCCF fund.

Perrelli's letter revealed that under Feinberg's contract with BP, any money not spent would return to BP. He told Feinberg it was not his duty to save money for BP.

In town hall meetings with claimants, Feinberg repeatedly told crowds he acted independently of BP. He told claimants they did not need legal representation because they could depend on his fairness.

Angered by Feinberg's comments, plaintiffs asked U.S. District Judge Carl Barbier, presiding judge of the U.S. District Court for the Eastern District of Louisiana, for an order restricting Feinberg's comments. Barbier presides over hundreds of consolidated oil spill cases against BP with thousands of claims.

Plaintiffs contended that Feinberg's claim of independence from BP misled and confused claimants. They argued that Feinberg and the GCCF are indistinguishable from BP.

Plaintiffs also argued that Feinberg exceeded his authority by trying to settle claims of personal injury and wrongful death, as well as property damage.

BP responded that Feinberg developed settlement protocols independent of BP and did not report to the company. BP further argued that restricting Feinberg's speech violates his First Amendment right.

On Feb. 2 the court rejected BP's arguments and ruled in the plaintiffs' favor. The court noted that BP appointed Feinberg to oversee the GCCF without any input from a court, claimants, or the "plaintiffs' steering committee".

The court found the terms of the contract between Feinberg and BP prevented Feinberg from operating independently. The contract forbids Feinberg from revealing any confidential information about GCCF without giving BP notice and an opportunity to get a protective order. The contract requires that BP pay Feinberg's law firm a flat fee of \$850,000 a month indemnifies the firm against any legal action.

The court also found that Feinberg went beyond his duty of settling property claims and settled personal injury and wrongful death cases. BP clearly benefited from Feinberg's actions.

The court dismissed BP's argument that restricting Feinberg's speech violated his First Amendment right. It held Feinberg's comments to be commercial speech subject to reasonable limits.

The court held that Feinberg's claim of independence misled and confused claimants, especially those without attorneys. It ordered Feinberg to stop declaring his independence and to remind all claimants they had the right to consult with an attorney.

Finally, the court ordered a review of Feinberg's settlement methods in claims already settled.

Feinberg remains unfazed by all the criticism. He recently announced the claims process is working well. He declared complaints of a lack of transparency or inconsistency in paying claims insufficient to make any changes in the process.

On February 18, he announced his payment plan for commercial fishers. All commercial fishers, except oyster fishers, will get a lump-sum payment equal to twice their documented losses for 2010. Oyster fishers will get a lump sum equal to four times their 2010 losses.

Feinberg based the compensation limits on the Gulf Coast's complete recovery by 2012. A 39-page report prepared by Wes Tunnell, a marine biologist at Texas A&M's Harte Research Institute in Corpus Christi, Texas, makes the 2012 complete recovery prediction.

Tunnell's optimistic conclusion is shocking.

Even Tunnell and Feinberg admit that predicting the Gulf's recovery is not an exact science and that no one knows for sure when it will completely recover.

Regardless, Feinberg remains undeterred from his compensation plan. He is either arrogant, supremely confident, or both. Whatever he is, he seems determined to answer to no one except BP.