

BP “claims czar”: No compensation for most victims of oil spill

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Kenneth Feinberg, appointed by the Obama administration to oversee distribution of a BP-financed escrow account for victims of the Gulf oil spill, has made clear that there will be sharp limitations on those who can receive compensation.

Among those not entitled to compensation from the \$20 billion fund, according to Feinberg, are fishermen who operated on a cash basis and tourism and home owners “not directly affected” by the oil spill. These sweeping exclusions will likely bar the majority of the spill’s victims from any compensation.

These statements confirm that the main purpose of the escrow fund, known as the Independent Claims Facility, is to shield BP from costs associated with the spill, protect it from lawsuits, and guarantee its continued profitability. Feinberg, who was appointed to his new post with the support of BP, noted in a recent interview that the fund was a “really helpful sign if you’re an investor.”

Feinberg’s statements also concretize the meaning of repeated references by BP and Obama that all “legitimate” claims will be met by the fund. The aim is to restrict as much as possible the definition of “legitimate,” while placing the burden of proof on the victims of the spill.

Twenty billion dollars, even were it to be fully distributed—the account is “neither a floor nor a ceiling on liability” according to the White House—is a pittance compared to the economic and health damages caused by the blowout. The actual cost will run into the hundreds of billions of dollars at least.

In addition, the administration has expressly allowed BP to count the cost of cleanup against the escrow, “as well as judgments and settlements, natural resource damage costs, and state and local response costs,” according to a White House statement.

Feinberg said that he could not grant cash-based fishermen tax amnesty outside of Congressional action,

and all but ruled out assistance. “I just have to make sure the facility is complying with all applicable laws,” he was quoted as saying by National Public Radio (NPR).

Fishermen who operated on a partial or total cash basis may actually comprise the majority of Louisiana and Gulf Coast fishermen. This holds true for independent shrimping operators—many of them Vietnamese immigrants—and also a sizable share of the industry’s hourly-labor force, which is paid in large measure on a cash basis.

It is well known that much of the gulf fishing industry is part of what economists refer to as “the informal economy.” Small-scale fishermen labor in difficult conditions and operate with the tightest of margins. “Cash is king in the Gulf fishing industry,” NPR reporter Yuki Noguchi concluded. “It’s a segment of the economy that, for generations, has been kept in the shadows of the Internal Revenue Service.”

Even more sweeping were Feinberg’s comments Wednesday to a House Small Business Committee hearing in Washington. Feinberg told Congressmen that those “not directly affected” by the blowout would most likely have no right to compensation through the fund. Included among those who cannot claim compensatory damages, Feinberg said, are much of the Gulf tourism industry as well as homeowners who have seen their property values decline.

“Property value has diminished as a result of the spill,” Feinberg told the committee. “Let’s assume that’s right. That doesn’t mean that every property is entitled to compensation... I’m on the beach, but there’s no oil at all there. It’s just the public perception that drives the values down... There’s not enough money in the world to pay every homeowner, wherever they live in the Gulf Coast, who says, ‘My property is down because of the oil spill.’”

As for tourism, “If there’s no physical damage to the

beaches and it's a public perception, I venture to say that it is not compensable," Feinberg said. In fact, oil and tar balls have washed ashore on a stretch of the Gulf Coast from the Mississippi Delta to near Panama City, Florida, encompassing some of the most famous US beaches. And "public perception" can hardly be faulted for avoiding Gulf beaches even if oil is not visible. Travelers have little reason to believe that the water is not contaminated.

Feinberg's comments confirm that the escrow will operate with extremely rigid parameters based on the ability to prove, with paperwork, financial losses caused by physical contact with oil—and most likely heavy, visible, and permanent damage, as the comments on "perception" in the tourism industry suggest. Will resort owners and tourism workers, for example, be able to claim damages after beaches have supposedly been cleaned?

Obama's assertion in unveiling the claims facility that the \$20 billion fund did not represent a block to other lawsuits or a limit on BP's liabilities has also been exposed by comments from Feinberg, who has acted as a cheerleader for BP, absurdly claiming that the oil giant is "well-intentioned" and "trying to do the right thing."

"It's a way for BP to avoid lawsuits in the end," Feinberg said in a June 20 interview with CNBC. "And it's a way for a claimant voluntarily to get a check now. You don't have to litigate for years—with some uncertainty about whether you'd win—and you don't have to pay a lawyer thirty percent." (Feinberg's advice to victims to avoid consulting an attorney is an ethically dubious proposition.)

Feinberg also said that receiving any money from the claims facility would act as a legal waiver against future lawsuits. "You'll waive your right to sue," Feinberg said. "That's only fair." And he went so far as to directly reassure BP investors. "Investors in BP should know that there's now an alternative to the litigation system in place," he told CNBC. "I think that's a really helpful sign if you're an investor."

Essentially, Feinberg and BP will be exploiting the desperate situation faced by tens of thousands on the Gulf to get them to accept small payouts up front in exchange for giving up their right to receive anything close to adequate compensation in the future.

Not only will this save BP the costs of litigating tens of thousands of cases. The many thousands of applicants rejected by Feinberg's claims facility will enter the court system at a disadvantage, having been deemed undeserving of compensation by this supposedly

"independent" body.

In a separate interview, Feinberg made clear the primary purpose of his task. "[A]ny talk about BP going out of business or being bankrupt, that would be a horror," he told PBS.

There has been little discussion of compensation for damages to human health, which is in keeping with BP's and the Obama administration's shared posture that the massive spill poses no serious health risk to either cleanup workers or to the region's population.

Given its relatively small size, the Independent Claims Facility must inevitably be tasked with limiting payments for health damages caused by both the oil and the use of chemical dispersants to break it up. There are already dozens of reports of oil cleanup workers suffering from various symptoms associated with exposure to toxic chemicals. However, because BP exercises dictatorial control over the cleanup, enforcing a gag order on workers, there has been little independent observation of oil containment, removal, and burning.

Some health and environmental experts believe that the spill could create a public health disaster for the densely populated Gulf Coast, particularly southern Louisiana. The consequences for public health now emerge in glimpses—complaints of eye irritation and nausea in coastal towns and even New Orleans. The long-term consequences will emerge over the coming years and decades—for example, elevated cancer and birth defect rates—long after Feinberg has liquidated the \$20 billion escrow.

"We're just now beginning to see the ramifications," Nathalie Walker of Advocates for Environmental Human Rights told the *World Socialist Web Site*. "It's going to get bigger and bigger and bigger."



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