

“Independent claims czar” on BP payroll

Tom Eley
3 August 2010

Gulf disaster “independent claims czar” Kenneth Feinberg is on the payroll of BP, he has admitted. The administrator of the escrow account set up by the Obama administration to compensate victims of the BP blowout has so far refused to reveal how much the oil giant pays him.

Nothing could more clearly expose Feinberg’s pretensions of neutrality and objectivity in the distribution of funds from the \$20 billion Independent Claims Facility (ICF) established by the Obama administration on June 16. Feinberg is in fact an attorney in the employ of BP. He cannot, by definition, be a neutral arbiter.

In a July 19 web chat, Feinberg said he would not say how much BP pays him, declaring “that’s between me and BP.” Last week he backtracked somewhat, saying he would reveal his pay package within “weeks.” “I don’t want to just announce what my estimated salary is for the next few months, I want to give a budget that will include that salary,” he said in explaining the delay.

When a writer on the web discussion asked why he did not work pro bono, Feinberg flippantly replied, “I’ve spent my career doing pro bono, thank you very much.” Feinberg is in fact a multimillionaire who has for decades negotiated legal settlements beneficial to powerful corporate and government interests. As one commentator notes, “his firm has grown rich processing claims for asbestos and other mass torts.” (See “Who is Kenneth Feinberg?”)

In a hearing last week before a subcommittee of the House Energy and Commerce Committee, two right-wing Texas Congressmen—representatives Michael Burgess and Joe Barton—pressed Feinberg, who is a donor to the Democratic Party, on his pay from BP.

“I don’t see any difficulty in maintaining my independence,” Feinberg told the subcommittee, later adding the following revealing comment: “Both the

administration and BP, frankly, don’t want to get near me once this program is up and running, and they want to—they want to reinforce the notion I’m totally independent.”

Indeed, the notion that the claims czar is independent has been relentlessly promoted by the Obama administration, BP, the media, and Feinberg himself, who has traveled up and down the Gulf Coast urging victims of the oil blowout not to sue BP—his employer—assuring them they can do much better through his claims facility.

Feinberg has told spill victims they would be “crazy” to file lawsuits against BP. “Because under this program, you will receive, if you’re eligible, compensation without having to go to court for years, without the uncertainty of going to court, since I’ll be much more generous than any court will be,” he said. “And at the same time, you won’t need to pay lawyers and costs.”

In these appeals Feinberg “sounded like a TV pitchman,” according to an Associated Press analysis, “reminding [victims] they were under ‘no obligation’ to waive their rights to sue, unless and until they decide to accept a lump sum for all present and future injury.” Once victims accept this lump sum payment they waive their right to sue BP now and in the future.

Some legal experts say that Feinberg has violated ethics rules by dispensing such legal advice even though he is not licensed in any of the Gulf states.

Feinberg hides his dubious legal counsel behind a facade of disinterest. “This is an independent, private program,” Feinberg declared soon after the creation of the ICF. “I’m not beholden to the Obama administration. I’m not beholden to BP. I’m an independent administrator calling the shots as I see them.”

Attorneys representing victims and legal experts disagree.

“This is gross negligence bordering on criminality from a business enterprise trying to get away from paying the full damages that they caused,” Ervin Gonzalez told the *Daily Business Review*. “[The ICF] is a calculated plan to minimize the damages on the backs of the people that they hurt.”

Attorney and tort law expert Byron G. Stier of the Southwestern Law School in Los Angeles has also criticized the presentation of Feinberg as neutral.

“A fair process at a minimum requires that both the amount of his compensation, and the method of compensation be disclosed publicly,” Stier wrote on the *Mass Tort Litigation Blog*. “We would never approve of a judge being paid confidentially by only one litigant—and we shouldn’t here either, especially when the claims structure could be seen as quasi-public in light of the President’s central involvement.”

According to one New Orleans attorney, in Louisiana the “local bar is up in arms.” Lawyers for Feinberg and Rozen (Feinberg’s law firm) are “traveling by BP-funded (or BP-owned) private jets, being paid by BP and refusing to disclose how they’re paid, what their incentives are, etc.,” he wrote to a blog. “Feinberg’s a BP-paid lawyer, pretending to be neutral, acting with authority granted by the President, talking to spill victims and suggesting that they deal directly with him and not their own lawyers. At best, he’s on very thin ethical ice.

“For cover, I’m sure he’s doing the work through a special-purpose company and not wearing his lawyer hat. But that hat-changing game doesn’t get you around the ethical rules.”

Some victims of the spill are planning to bypass Feinberg’s claims facility. “When you have a medical problem, you go to the doctor. When you are fighting a big corporation, you get a good lawyer,” said Florida fisherman Nilo Hernandez. “They got all the money in the world, they hire the best attorneys and the best experts, and they are going to mess us all up.”

The whole purpose of the ICF fund is to protect BP from a feared avalanche of lawsuits and maintain the company’s share values. “Investors in BP should know that there’s now an alternative to the litigation system in place,” Feinberg told CNBC in June. “I think that’s a really helpful sign if you’re an investor.”

The plan requires BP to provide \$20 billion over a four-year period—or not; the White House has declared

that the figure is “neither a floor nor a ceiling.” Against this total, BP can count all expenses related to its cleanup and response—which it alone calculates. It has already written off \$10 billion in taxes over cleanup costs in the US and an as yet undisclosed amount in the Britain, where it is headquartered.

Six weeks after its inception, BP has yet to put any money in the fund, Feinberg has admitted. No claims have been paid.

Yet even if the \$20 billion were paid in full, it would meet only a fraction of the financial cost of BP’s devastation of the Gulf. Since the fund’s creation, Feinberg has made clear that only a small fraction of those suffering from the disaster will receive any compensation.

Feinberg has all but ruled out paying fishermen who operated on a cash-only basis. Fishermen engaged in cleanup will see their earnings subtracted from any settlement they eventually receive. Those suffering mental health problems will receive no compensation—“You have to draw the line somewhere,” Feinberg says. Those who emerge with chronic ailments later, but have already accepted a payout from Feinberg, will also likely receive no further compensation.

Feinberg has also declared that small businesses and homeowners affected only by the “perception” of the oil spill—and not physical contact with oil—will be unlikely to receive compensation.

A real program for redressing the victims of the catastrophe would require the seizure of hundreds of billions of dollars in assets from BP and oil industry executives and shareholders without compensation.

This requires the political mobilization of the working class against both the Democrats and Republicans and all those who defend the capitalist profit system that created the disaster in the Gulf.



To contact the WSWS and the
Socialist Equality Party visit:

wsws.org/contact