



## STATE OF FLORIDA

**BILL McCOLLUM**  
**ATTORNEY GENERAL**

August 27, 2010

John E. (Jack) Lynch, Jr.  
U.S. General Counsel  
BP America, Inc.  
501 Westlake Park Boulevard  
Houston, Texas 77079

Re: Gulf Coast Claims Facility

Dear Mr. Lynch:

I am writing to express my deep concerns regarding the Gulf Coast Claims Facility ("GCCF") and to request a meeting to discuss how BP, as a "responsible party" under the Oil Pollution Act of 1990 ("OPA"), can assist in rectifying this situation. It remains BP's duty to provide a credible claims process, consistent with the requirements of OPA, for those individuals and businesses in Florida that have suffered damages as a result of the Deepwater Horizon blowout. As it currently stands, the emergency payment protocol and claims process provided by Ken Feinberg last Friday appear to fall far short of this goal and may well hamper injured parties as they seek to be made whole and lead to unnecessary litigation.

It is my understanding that the GCCF was proposed as a substitute for the BP claims process, which was seen as lacking credibility and efficiency. I also understand that BP was directly involved in the decision to select Mr. Feinberg as the administrator. I am certain that the GCCF was never contemplated as a means of reducing or changing the requirements for a claims process under OPA. To operate fairly and effectively, the GCCF process for individual and business claims instead must, *at a minimum*, comply with OPA.

Despite repeated attempts by my office and many others in the Gulf Coast to assist Mr. Feinberg in drafting a Protocol that conforms to the requirements of OPA, Mr. Feinberg has consistently ignored our suggestions. As outlined in my August 20<sup>th</sup> letter to Mr. Feinberg, the result is a claims process for emergency payments that provides Claimants with significantly fewer protections and rights than those conferred by OPA, leading to needless delays in obtaining compensation and continued uncertainty. As a consequence, even claims that have been paid under the BP claims process will apparently be rejected by the GCCF. Such an inequitable result is harmful to the public and not in BP's long-term interests.

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Over the past several weeks, BP has reassured the people of the Gulf Coast of its legal and moral commitment to "pay all legitimate claims" from the Deepwater Horizon blowout. It is now time for BP to honor that commitment by supporting the creation of a claims process that meets the requirements of OPA and allows the people of Florida to move forward. Such a process will provide those who have been injured by the blowout with needed relief in an expeditious manner while allowing BP to avoid the uncertainty and costs of litigation.

It appears that the GCCF is the *only* existing process for individuals and businesses to present their claims to BP for this environmental and economic disaster. While Mr. Feinberg has claimed that the GCCF process is "strictly voluntary," filing a claim with the GCCF is a condition precedent to seeking payment from the Oil Spill Liability Trust Fund ("OSLTF") or filing suit. Failure of an individual or business to comply with the presentment requirement would result in denial of their OSLTF claim and/or dismissal of their OPA lawsuit. *See, e.g.*, 33 U.S.C. § 2713(a); *Boca Ciega Hotel, Inc. v. Bouchard Transp. Co.*, 51 F.3d 235, 240 (11<sup>th</sup> Cir. 1995). Of course, please let me know if BP is willing to waive the presentment requirement under OPA, thus making the GCCF process truly voluntary. Please also advise me whether BP plans to establish a separate claims process for those business and individual claimants whose claims have been or would have been paid by BP under the prior claims process, but who now appear ineligible for relief under the GCCF process.

In order for the GCCF to perform its critical role in the recovery of the Gulf Coast, it must have the trust of the people. Gaining this trust will be impossible as long as the GCCF eliminates, restricts or minimizes the protections for business and individual claimants while increasing the burden of proof or filing obligations on such claimants. It would be a betrayal of BP's commitment to "pay all legitimate claims" if the GCCF provides less protections to and imposes greater burdens upon the victims of the blowout than OPA requires.

The legislative history establishes that the intent of Congress when it enacted OPA was "to eliminate, to the extent possible, the need for an injured person to seek recourse through the litigation process." By deviating from the requirements and language of OPA, Ken Feinberg appears to be frustrating this congressional intent through a process that encourages costly and protracted litigation, thereby delaying the economic recovery of the Gulf Coast.

I am committed to ensuring the implementation of a claims process that allows the people of the Gulf Coast to fairly and efficiently obtain compensation for their damages from the Deepwater Horizon blowout, an outcome required by OPA and in the interest of both the public and BP. I look forward to meeting with you in the near future to further discuss this matter.

Sincerely,



Bill McCollum

cc: Kenneth R. Feinberg, Esq.  
Douglas J. Suttles  
Raymond Dempsey