



STATE OF FLORIDA

BILL McCOLLUM
ATTORNEY GENERAL

August 27, 2010

The Honorable Eric H. Holder, Jr.
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Re: Gulf Coast Claims Facility

Dear Attorney General Holder:

Eric -

I am writing to express my deep concerns regarding the Gulf Coast Claims Facility ("GCCF") which was established through your negotiation with BP and to request a meeting to discuss possible solutions for this situation. It remains the federal government's duty to oversee the claims process established by BP as a "responsible party" under the Oil Pollution Act of 1990 ("OPA"). As Florida's chief legal officer, I must insist on a fair and efficient claims process, consistent with the requirements of OPA, for those individuals and businesses 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 am certain that the GCCF was never contemplated as a way to reduce or change the requirements for a claims process under OPA. To operate fairly and effectively, the GCCF process for individual and business claims must, *at a minimum*, comply with OPA's requirements.

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 20th letter to Mr. Feinberg, the result is a claims process for emergency payments that provides claimants with far 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 completely unacceptable as a matter of policy.

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President Obama has repeatedly stated that the people of the Gulf Coast will be "made whole" through payments from BP. Similarly, BP has recognized its legal and moral commitment to "pay all legitimate claims" from the Deepwater Horizon blowout. That commitment should be honored through 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 the victims of the blowout with needed relief in an expeditious manner.

It appears that the GCCF is the *only* existing process for individuals and businesses to present their claims to BP for this environmental 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 (11th Cir. 1995). Of course, please let me know if the federal government is willing to waive the presentment requirement under OPA for OSLTF claims, thus making the GCCF process truly voluntary.

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. The people of the Gulf Coast cannot be "made whole" through payments from BP if the GCCF provides fewer protections to and imposes greater burdens upon the victims of the Deepwater Horizon 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, Mr. 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, as I am sure you are, to ensuring the implementation of a claims process that allows the people of the Gulf Coast to fairly and efficiently obtain compensation for their economic losses, an outcome required by OPA and very much in the public interest. I look forward to meeting with you in the near future to further discuss this matter.

Sincerely,



Bill McCollum

cc: Admiral Thad Allen
Kenneth R. Feinberg, Esq.