



## STATE OF FLORIDA

**PAM BONDI  
ATTORNEY GENERAL**

October 6, 2011

### **VIA U.S. MAIL AND EMAIL**

Thomas J. Perrelli  
Associate Attorney General  
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United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

Re: Gulf Coast Claims Facility ("GCCF") Independent Audit

Dear Tom & Brian:

I write you to follow-up on my August 3<sup>rd</sup> letter to Attorney General Holder and my September 8<sup>th</sup> meeting with both of you. As you know, I am pleased that Mr. Kenneth Feinberg has finally agreed to an independent audit of the GCCF, fulfilling one of my repeated requests. I commend the Department of Justice ("DOJ") for obtaining this agreement, an important step towards transparency of the claims process for the individuals and businesses who have suffered economic losses due to the Deepwater Horizon oil spill.

A properly constructed and implemented audit will help answer the serious questions that exist about the claims process. Armed with these answers, it would then be incumbent on the GCCF to correct the identified problems. The end goal is to have a more transparent, responsive, and fair GCCF that compensates individual and business claimants in accordance with the law and enjoys the confidence of the public.

My office has spent the past several weeks formulating recommendations for the audit process. While we are still seeking input from Florida stakeholders, I would like to offer DOJ my recommendations on several issues, including the auditor selection process and the questions that the audit should seek to answer. I will

provide supplemental comments after we receive further input from affected Floridians.

It is critical that we expedite the selection of a qualified auditor. This could be accomplished in either of the following ways: a committee composed of individuals nominated by DOJ and the Gulf States could consider the auditor candidates or, alternatively, DOJ could assemble a short-list of the qualified auditors and then confer with the Gulf States as to the final selection. In either event, the examination of the GCCF process should begin by the end of this year.

It is also crucial that the auditing firm has no significant financial or business ties to BP or Mr. Feinberg—it must be entirely independent. I propose that the funds for the independent audit come from the interest on the \$20 billion trust fund, similar to the GCCF's financial arrangements. The auditor should have a deep familiarity with the business and economic culture of the Gulf Coast.

This audit should be comprehensive instead of merely forensic. The audit should answer more than where the money has gone; more importantly, it should answer if the proper amount of compensation has timely reached the correct claimant. The audit should also include an ongoing role for the Gulf States, with the independent auditor providing these states with regular reports and access to trend-level data so that we can monitor and offer input as the audit progresses.

The audit should look at the GCCF's documentation requirements for claimants. I have heard complaints from Floridians that the GCCF requests too much documentation or, more importantly, asks for duplicative documentation. The latter problem is particularly troubling because Floridians and their businesses are submitting personal and proprietary information to the GCCF. The review should examine whether the GCCF is asking for the appropriate amount of documentation to pay claims and whether adequate controls exist for the GCCF to track the submitted documentation.

Timeliness of payments is another area that should be examined by the auditor. Under the Oil Pollution Act of 1990 ("OPA"), the GCCF should resolve a claim seeking an amount certain within ninety (90) days of when it is filed. Based on the statistics released by the GCCF, final settlement and quick-pay claims appear to have been paid far more rapidly than interim settlement claims.

The delay in resolving interim claims is troubling because interim claims are the only type of claim that preserves a claimant's right to seek future damages. The auditor should determine what percentage of claims are paid within ninety (90) days of presentment and if the GCCF is paying claims that release future damage claims more quickly than the interim claims. I am very concerned that the serious delays in resolving interim claims have forced otherwise unwilling claimants to accept final or quick payments due to economic desperation.



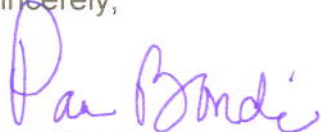
The audit should also look at the payment of claims. Floridians have complained to my office that similarly situated claimants receive very different payments for no apparent reason. The auditor should look into these concerns and determine whether the GCCF is fairly paying claims according to its procedure. It would be very troubling if the payment amounts depend on the individual GCCF employee reviewing the claims or on the timing of the claim review.

The audit should also evaluate whether certain industries have been treated more favorably than other industries. Another problem that has arisen is the GCCF's treatment of the monies earned by claimants from the Vessels of Opportunity ("VoO") program. We have been informed that the VoO offsets were arbitrarily applied in the context of final claims.

Lastly, the audit should examine the relationship between a claimant's geographic location and how claims are paid as well as the amount of the payment. OPA requires that the "responsible parties" make those damaged by the oil spill whole. Floridians believe that the GCCF's emphasis on geographic proximity to oil has led to the denial of claims that are similar to ones being paid just several miles away. This is contrary to the clear requirements of OPA, which mandate compensation for any economic damages resulting from an oil spill, without regard to geographic proximity. The auditor should look into the GCCF's application of any geographic proximity restriction, especially if the application of proximity concepts differed over time.

I look forward to continuing to work with you and the Gulf States on formulating the scope of this independent audit of the GCCF. I appreciate your consideration in this matter.

Sincerely,



Pam Bondi  
Attorney General