

Gulf of Mexico Victims Suing BP Disaster's Compensation Czar

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Theme: [Environment](#), [Oil and Energy](#)

In-depth Report: [THE BP OIL SLICK](#)

Shortly after BP's oil disaster in the Gulf of Mexico began on April 20, 2010, one of the most politically well-connected attorneys in the United States was appointed to administer the \$20 billion fund to, in theory, pay compensation to those harmed by BP's catastrophe.

President Obama and BP's chairman, Carl-Henric Svanberg, agreed that attorney Kenneth Feinberg should head the fund. Feinberg would later be chosen, also by Obama, to oversee the compensation of the top executives of the banks that were bailed out with US tax dollars in the wake of the 2008 financial crisis.

He has, almost needless to say, been accused of being a fox guarding a chicken house.

Feinberg's firm was paid \$1.25 million per month by BP – that we know of (Feinberg refused to disclose the full amount of his compensation and the details of his deal with BP) – to run the so-called Gulf Coast Claims Facility (GCCF).

In essence, BP paid Feinberg \$1.25 million a month to limit their liability in the wake of the single largest marine oil disaster in US history.

Outrage against Feinberg escalated enough, that by December 2010, the Center for Justice and Democracy sent a [letter](#) to BP CEO Bob Dudley expressing concern over “serious new issues raised about the lack of transparency and potential conflicts of interest related to the administration of the Gulf Coast Claims Facility,” and pointed out the obvious conflict of interest:

Mr. Feinberg, employed by BP, has decided on his own authority that all claims recipients must release all companies who caused this disaster from any and all legal responsibility, no matter how grossly negligent they were. This sweeping release, which assigns victims' claims to BP, benefits only one actor: BP – the company that happens to pay Mr. Feinberg's salary.

Countless numbers of people along the Gulf Coast with claims against BP became increasingly enraged in their accusations that Feinberg was little more than a BP shill, and demanded that Feinberg stop claiming he was on their side, and not BP's.

Shortly thereafter, in January 2011, the federal judge presiding over BP's oil disaster litigation ruled that Feinberg was not independent of BP and could no longer claim he was, as Feinberg had been promising victims that he was their lawyer and did not answer to BP.

And now he is being sued by people he claimed to have represented against BP.

“In the cases such as BP, Feinberg should be exposed for what he is, the defendant’s attorney protecting them at all costs to the detriment of the claimants,” Maurie Salvesen, who is suing Feinberg’s firm, told Truthout.

The Sham Agency

Salvesen, who has received no compensation from BP despite incurring major financial losses due to the oil disaster, explained that the option to receive compensation through the settlement agreement was not open to him due to “the onerous conditions therein which precluded me receiving any compensation under that agreement. My claim filed with GCCF was ignored and dismissed out of hand save for the ‘go away’ offer.”

The offer which Salvesen references was one the Gulf Coast Claims Facility (GCCF) offered claimants who were in economic distress. If an individual was willing to sign a “release” of all future claims and promised not to sue BP, they would receive a one-time payment of \$5,000. For companies, it was \$25,000.

“In no way was Feinberg ever fair to anyone save BP.”

“As stated by the District Court, Feinberg was declared to be a representative of BP and could not represent himself to be anything other (i.e. fair and impartial agent to settle claims),” Salvesen said. “No party I know of was ever dealt with fairly by him via the GCCF. This sham agency offered the payouts to any claimant that had a claim that appeared valid with a cursory examination. I was offered such payment. In no way was Feinberg ever fair to anyone save BP.”

New Orleans Attorney Daniel Becnel has been heavily involved in the Deepwater Horizon oil spill class action, which he now considers to be deeply flawed.

The self-proclaimed “King of Torts” has been a representative in several notable class actions including the Tobacco Master Settlement in 1998 that saw tobacco companies pay \$365 million to a class of smokers.

The litigation against BP is the largest class action lawsuit in history, with tens of billions of dollars in damages that is supposed to make whole hundreds of thousands of plaintiffs.

Becnel was the attorney who initially filed suit in federal court only eight days after the oil rig exploded in the Gulf of Mexico.

But now Becnel has nothing but criticism for the GCCF and the committee of lawyers that was orchestrated to supposedly make people “whole.”

That committee, the Plaintiff’s Steering Committee (PSC), engineered a settlement that BP accepted in August 2012, which included a \$660 million payout for the lawyers, as well as their receiving a percentage of each claim that was paid out.

“In the BP case, they were out to make money,” Becnel [said](#) of the PSC. “And not a little bit of money, a lot of money.”

Attorney Brian Donovan with the Donovan Law Group in Tampa, Florida, is representing several clients, including Salvesen, who have filed lawsuits against Feinberg.

“Daniel Becnel is correct,” Donovan told Truthout. “The goal of the PSC has been obvious in the way they have handled the case from the beginning. And just as the PSC was out to make a lot of money from the beginning, the same is true for Kenneth Feinberg.”

Truthout [reported](#) on an example of this in the immediate aftermath of the spill.

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Gulf Coast fishermen and others with lost income claims against BP are outraged by an announcement that the \$20 billion government-administered claim fund would subtract money they earn by working on the cleanup effort from any future damage claims against BP. The move, according to lawyers in Louisiana working on behalf of Louisiana fishermen and others affected by the BP oil disaster, contradicted an earlier BP statement in which the company promised it would do no such thing.

It was Feinberg who told cleanup workers, vast numbers of whom now have chronic health problems, that the wages earned working on BP’s cleanup would be deducted from their claims against BP.

“We are the only law firm to file suit against Kenneth R. Feinberg, et al. asserting claims for gross negligence, negligence, negligence per se, fraud, fraudulent inducement, promissory estoppel, and unjust enrichment,” Donovan told Truthout.

MDL 2179

Donovan’s lawsuit against Feinberg emphasizes what is known as the multi-district litigation (MDL) 2179.

MDLs promote judicial economy by consolidating large numbers of similar cases that are pending in the courts.

Donovan believes MDL 2179, which is comprised of thousands of claims against BP, is a “faux” MDL, and believe it limits BP’s liability, grants excessive compensation to the members of the PSC and grossly fails to compensate the plaintiffs themselves.

On August 10, 2010, the [US Judicial Panel on Multidistrict Litigation \(JPML\)](#) formally established MDL 2179. In its transfer order, the JPML states, “Centralization may also facilitate closer coordination with Kenneth Feinberg’s administration of the BP compensation fund.”

The entire compensation system is flawed in favor of BP and Feinberg.

“The JPML made it clear, from the very beginning, that the purpose of centralization was not merely to eliminate duplicative discovery, prevent inconsistent pre-trial rulings, and conserve the resources of the parties, their counsel and the judiciary; and serve the

convenience of the parties and witnesses and promote the more just and efficient conduct of the BP oil spill cases,” Donovan told Truthout. “Here, the purpose of centralization was to maximize judicial efficiency via the creation of a ‘faux’ class settlement wrapped in a ‘faux’ MDL.”

According to Donovan, on August 23, 2010, Feinberg’s firm, Feinberg Rozen LLP, doing business as the GCCF, replaced the claims process that BP had established to fulfill its obligations as a responsible party pursuant to the Oil Pollution Act of 1990 (OPA90).

Donovan described the precedent established by the JPML and the MDL 2179 to Truthout.

“A ‘Responsible Party’ under the OPA90 may now enter into a contract with a politically well-connected third party ‘Claims Administrator,’ (i.e. Kenneth R. Feinberg and Feinberg Rozen, LLP),” he said. “This third party ‘Administrator/Straw Person,’ directly and excessively compensated by the party responsible for the oil spill incident, may totally disregard OPA90, operate the claims process of the responsible party as fraudulently and negligently as it desires for the sole purpose of limiting the liability of, and providing closure to, the responsible party, and the third party ‘Administrator/Straw Person’ shall never be held accountable for its tortious acts.”

Hence, he believes the entire compensation system is flawed in favor of BP and Feinberg, whose operation of the GCCF has allowed BP to control, manage and settle its liabilities on highly preferential terms.

Interestingly, the MDL 2179 court has inexplicably refused to permit formal discovery on Feinberg, et al., and the PSC has also refused to conduct formal discovery on Feinberg.

As bad as this is for people seeking compensation from BP, Donovan said, “the collusive nature of MDL 2179 has resulted in America’s loss of faith in the entire federal judicial system.”

“A Travesty”

John Mavrogiannis owned a marine salvage business in Tarpon Springs, Florida.

“When the spill occurred my business dried up overnight,” he told Truthout.

Initially, he believed Feinberg’s promises that the GCCF was an independent program, and that Feinberg was not beholden to BP.

“This misrepresentation, above all the others, harmed my business and me personally.”

“Mr. Feinberg’s numerous statements of ‘I am not a government official; I am not a BP official’ have been now proven to be an intentional misrepresentation with intent to deceive,” said Mavrogiannis, who has also filed an individual lawsuit against Feinberg.

He believes, rightly, that courts and attorneys have a constitutional responsibility to be trustworthy, and any intentional misrepresentations should thus be considered a form of misconduct, as well as an ethical violation.

"This misrepresentation, above all the others, harmed my business and me personally the most, as all my business decisions immediately after the spill were formed on false promises that he [Feinberg] was looking out for my best interest - when in fact he was attempting to minimize BP's liability," Mavrogiannis said of why he decided to sue.

Having believed Feinberg, Mavrogiannis went on with business as usual, investing more money in his business as many of his clients, who also were expecting checks from the GCCF, expected to pay him, but then ultimately could not due to their lack of compensation.

Mavrogiannis explained what happened to him, which was common for people and businesses across the impact zone of BP's disaster.

"Had Mr. Feinberg kept his word of 'making us whole' we could have easily had \$250,000 or more in additional revenue for tax year 2010," he explained. "Instead, he kept the purse strings closed for most claimants which scared everyone from spending which snowballed into a decrease in revenue for most in the industry and region."

On a personal level, Mavrogiannis has spent all of his savings to live, is suffering physically from having to forego several medical procedures, has put his business up for sale, and his credit is ruined from his inability to pay his bills on time.

"I now see and understand that Feinberg's actions and words have been carefully crafted to ensure that the claimants' demise be hastened so that they would be forced to accept a low-ball offer and sign a release as quickly as possible before the truth of the extent of the damage done by the spill became known," Mavrogiannis said.

BP's disaster caused such a dramatic collapse of his business, Mavrogiannis was unable to take steps to prevent the total failure that was to come.

"Instead, I believed Feinberg and was buying when I should have been (albeit in vain) trying to sell inventory," he said. "I feel that it is a travesty that Mr. Feinberg, who is an officer of the courts, should be able to get away with misrepresenting himself and his motives in the way that he did."

Continuing to Suffer Damages

Donovan believes Feinberg, by making numerous false statements of material fact to plaintiffs, "Breached his legal duty to plaintiffs, failed to exercise reasonable care, and acted with reckless, willful, and wanton disregard for the business and livelihood of plaintiffs in his negligent operation of GCCF's claim intake, claim review, claim evaluation and claim settlement and payment services."

He even believes that Feinberg knew, or at least should have known, that his actions, which are commonly referred to as an "expedited EAP denial tactic" as well as a "delay, deny, defend" tactic, "would foreseeably result in the financial ruin of plaintiffs and cause irreversible damage to the economic interests of plaintiffs."

Thus, "As a direct and proximate result of Feinberg's conduct, plaintiffs have suffered legal injury and damages, in an amount to be proven at trial, including, but not limited to, loss of profit, loss of business reputation, loss of livelihood, loss of income, and other economic loss," he added.

“The GCCF denied payment to approximately 61.46 percent of the claimants.”

As far as his firm’s lawsuits against Feinberg, Donovan said that Feinberg retained the law firm Goodwin Procter, LLP of Washington, DC, and the suits have subsequently been transferred into the MDL 2179, or as Donovan puts it, the lawsuits against Feinberg have been “warehoused.”

If one looks at some GCCF statistics, it might be hard to argue against claims that Feinberg essentially acted as a defense attorney for BP, and served the oil giant well in limiting their liability.

GCCF status report data indicates that a total of 574,379 unique claimants filed claims with the GCCF during the period from approximately August 23, 2010, to March 7, 2012, and the GCCF paid 221,358 of these claimants only.

“In sum, the GCCF denied payment to approximately 61.46 percent of the claimants who filed claims,” Donovan said. “The average total amount paid per claimant was a paltry \$27,466.47.”

But that’s not the end of the statistics.

“The GCCF forced 84.68 percent of the claimants to sign a ‘Release and Covenant Not to Sue’ in which the claimant agreed not to sue BP and all other potentially liable parties,” Donovan said. “Only 15.31 percent of the claimants were not required to sign a ‘Release and Covenant Not to Sue’ in order to be paid.”

Donovan said that Feinberg’s “Release and Covenant Not to Sue” thus excluded approximately 200,000 BP oil disaster victims from the MDL 2179 settlement agreement.

He feels that nothing short of a complete overhaul of the current system by which compensation is being dispensed will suffice.

“At this point, Judge Barbier would have to admit he made a mistake by hearing the case under admiralty or maritime law rather than under the OPA,” Donovan said. “Alternatively, starting from scratch, which will never happen at this late date, would require that the JPML replace Barbier with a three-judge panel, replace all members of the MDL 2179 PSC, replace the ‘fund administrator’ and supporting accounting firms, and have all BP oil spill victims refile under OPA guidelines and not Feinberg’s protocols.”

Saving all of that, Donovan said, “At the very least, the truth about MDL 2179 must be told so the plaintiffs in future MDLs are offered settlements which are fair, reasonable and adequate, and which have been entered into without collusion between the parties.”

In the meantime, five years after BP’s disaster began, those suffering physically and financially from it continue to languish, and the disaster is far from over.

Donovan now refers to two kinds of victims left in the wake of BP’s disaster.

“BP oil spill victims and Feinberg victims continue to suffer damages from three separate sources,” he said. “Once from the oil spill, the environmental and economic damages of which have devastated their way of life, then again by being left in financial ruin as a direct

result of Feinberg's tortious acts, and a third time for daring to demand justice, which will consume their time, energy and hopes for years to come if they are held hostage by protracted litigation."

On June 1, 2010, BP board chairman Carl-Henric Svanberg stated, "[President Obama] is frustrated because he cares about the small people, and we care about the small people. I hear comments sometimes that large oil companies are greedy companies or don't care, but that is not the case in BP. We care about the small people."

Feinberg's firm headed the GCCF from June 16, 2010, until March 8, 2012, and was paid at least \$25 million for doing so by BP.

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Dahr Jamail, a Truthout staff reporter, is the author of [The Will to Resist: Soldiers Who Refuse to Fight in Iraq and Afghanistan](#), (Haymarket Books, 2009), and [Beyond the Green Zone: Dispatches From an Unembedded Journalist in Occupied Iraq](#), (Haymarket Books, 2007). Jamail reported from Iraq for more than a year, as well as from Lebanon, Syria, Jordan and Turkey over the last ten years, and has won the Martha Gellhorn Award for Investigative Journalism, among other awards.

His third book, [The Mass Destruction of Iraq: Why It Is Happening, and Who Is Responsible](#), co-written with [William Rivers Pitt](#), is available now on Amazon. He lives and works in Washington State.

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