



## **AG STRANGE COMMENTS ABOUT OIL SPILL CLAIMS PROCESS**

Attorney General Luther Strange today strongly expressed his concerns about proposed procedures and forms for compensation of losses due to the Deepwater Horizon oil spill. In a letter to Kenneth Feinberg, Administrator of the Gulf Coast Claims Facility, Attorney General Strange outlines his reasons for adamantly opposing the proposals that were put forth by the Administrator for a period of public comment. On behalf of the State of Alabama, Attorney General Strange sent the attached letter as a part of formal public comment process. He indicated that he will discuss these concerns in further detail in an upcoming filing to U.S. District Judge Carl Barbier in the Eastern District of Louisiana.

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February 16, 2011

Mr. Kenneth Feinberg  
Gulf Coast Claims Facility  
The Willard Office Building  
1455 Pennsylvania Avenue, Suite 390  
Washington, DC 20004-1008

Dear Mr. Feinberg:

Thank you for the opportunity to provide comments to the draft proposal of Payment Options, Eligibility and Substantiation Criteria, and Final Payment Methodology, dated February 2, 2011 (the "Proposed Rules"). Though my office requested an advance copy of the Proposed Rules to review, your office did not provide one.

As you and I have discussed previously, the Gulf Coast Claims Facility ("GCCCF") process must be transparent and responsive to the needs of those individuals and businesses harmed as a result of the Deepwater Horizon Oil Spill (the "Oil Spill"). After reviewing the Proposed Rules, I have several concerns to bring to your attention:

1. **Causation Standard:** The Proposed Rules do not use the Oil Pollution Act ("OPA") standard of causation for the determination of damages. Despite numerous face-to-face discussions with you and your staff regarding this issue, the Proposed Rules continue to require claimants to prove a "direct" link between the oil spill and the claimed losses. Under OPA, BP is required to compensate for damages that arise "as a result of" the Oil Spill a point recently reiterated to you by the United States Department of Justice. Yet, the GCCCF's standard for causation seems to be constantly evolving yet never explicitly defined. More importantly, your interpretation of "direct" causation has never matched what is required of BP under OPA in form and substance. The Proposed Rules should adhere to the OPA terminology, and the evaluation of claims by the CGGF must use the OPA "as a result of" standard, not a more stringent direct causation standard.

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Let me stress the importance of this issue. The causation standard for evaluating damage claims has been the number one topic of GCCF complaints directed to my office. We have heard instance after instance of claims being denied because the GCCF found no "direct" link between the Oil Spill and the damages incurred. Even entire industries, such as the title company industry, had claims denied outright based on the GCCF's use of a much too narrow causation standard—again, a standard the Justice Department has eschewed. The final rules adopted by the GCCF must address this problem by following the mandates set forth in OPA and working to compensate for damages instead of summarily denying claims.

2. **Transparency:** The Proposed Rules do not include provisions that ensure that the GCCF process is transparent and responsive to the individuals and businesses who file claims. The Proposed Rules should clearly state what information and documentation the GCCF requires from a claimant at the time a claim is filed. If required documentation is missing from a submitted claim, the GCCF should contact the claimant and request such missing items. Should the GCCF deny an Interim or Final Claim, the claimant must be provided detailed reasons for the denial. Denial of claims without providing a reason and without providing a claimant the opportunity to provide additional documentation needed to assess a claim is unacceptable.

3. **Releases:** I once again renew my objection to your requirement that claimants sign a waiver before receiving a Final Claim payment. As we discussed when you visited my office several weeks ago, the GCCF release form is overly broad, and you are under no obligation to require a release before paying a claim.

Finally, I would again urge you to work with, and be responsive to, the staffs of Congressman Bonner and Senators Shelby and Sessions. The caseworkers in those offices are on the front lines of the oil spill disaster and deal directly with the claimants. Our office has met with you and representatives from your office on several occasions to no avail, and the congressional staffs report similar results. Your promises of responsiveness and consideration are not matching the actions of you and your staff.

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My concerns outlined above will be more fully discussed in Alabama's filing this week with Judge Barbier, a filing that will include anecdotal examples illustrating the deficiencies of the current GCCF process. I would appreciate your careful consideration of my concerns and look forward to seeing their incorporation into the final guidelines forthcoming from the GCCF.

Sincerely,

A handwritten signature in black ink that reads "Luther Strange". The signature is written in a cursive style with a long, sweeping tail on the letter "g".

Luther Strange  
Attorney General  
State of Alabama