

**FAQS: BASIC INFORMATION ON SUBMITTING CLAIMS
FOR LOSS AND DAMAGES ARISING FROM THE MACONDO OIL SPILL**

by Energy Litigation Committee
John W. Clay
Ajamie LLP
Houston, Texas

The material below is offered for members of the general public who seek basic information on submitting a claim for loss and damage resulting from the Macondo oil spill that followed the Deepwater Horizon incident on April 19, 2010. For more detailed information, please visit the Gulf Coast Claims Facility's website at <http://www.gulfcoastclaimsfacility.com>.

FAQ 1: Is there a fund in place to cover damages and loss caused by the Deepwater Horizon oil spill?

Yes. After the Deepwater Horizon incident on April 20, 2010 (the "oil spill"), the United States Coast Guard named BP Exploration & Production, Inc. ("BP") as a Responsible Party under the Oil Pollution Act of 1990 ("OPA").

The OPA requires that "Responsible Parties" create and fund a claims-handling process to compensate individuals and businesses for loss and damage covered under the provisions of the OPA. BP agreed to fund an escrow account that is now being used to compensate individuals and businesses loss and damage resulting from the oil spill

FAQ 2: Does BP control who gets paid under the fund?

No. BP turned over the claims-handling process for the fund to an independent claims facility called the Gulf Coast Claims Facility ("GCCF"). The GCCF is administered by a neutral fund administrator, Mr. Kenneth R. Feinberg.

As the neutral fund administrator, Mr. Feinberg is responsible for all decisions that relate to the administration and processing of claims by the GCCF. He does not answer to BP for decisions on individual claims.

FAQ 3: Who is entitled to make a claim for payment from the fund?

The GCCF's fund covers costs and damages that individuals and businesses have sustained because of the oil spill resulting from the Deepwater Horizon incident. In general terms, the kinds of claims the GCCF will consider include the following:

- **Removal and cleanup costs:** recovery for reasonable and necessary costs incurred to remove oil or to prevent and minimize oil pollution that arises from the oil spill.
- **Damage to real estate or personal property:** recovery for damage to, or destruction of, real or personal property as a result of the oil spill.

- **Loss in profits and lost earning capacity:** recovery for a loss in profits or a decrease in earning capacity, if the oil spill caused the loss or decrease by causing injury to, or the destruction or loss of, real property, personal property, or natural resources. An individual or business may recover for loss in profits or lost earning capacity without owning the property or resources that were damaged by the spill.
- **Interference with subsistence use of natural resources:** recovery for the injury to, or the destruction or loss of, natural resources that a person uses for food, shelter, clothing, medicine, or other subsistence use, without a purchase or sale. A person who depends on fishing for food, for example, may be able to recover for the cost of replacing fish that the person would have been able to catch if fishing waters had not been closed due to the oil spill.
- **Physical injury or death:** a injured person, or the representative of someone who has died, may be able to recover for economic and non-economic damages arising from physical injury or death that is proximately caused by the oil spill, the explosion and fire associated with the Deepwater Horizon incident, or the oil spill's clean-up.

FAQ 4: How do I submit a claim to the GCCF for payment from the fund?

Claimants can submit a claim to the GCCF one of four ways: (i) online (link); (ii) by paper application (link); (iii) by telephone (link); and (iv) in person.

How do I apply online?

- **Apply online:** Claimants may file an individual or business claim directly online at the GCCF's website, using the following link:

<https://cert.gulfcoastclaimsfacility.com/icf/fs/claim>

Additional information regarding the GCCF, with specific weblinks and resources dedicated to the fund handling process, is available at the GCCF's general website address: www.gulfcoastclaimsfacility.com.

How do I apply using a paper application?

- **Apply by paper application:** Claimants who prefer to use a paper application may download a copy electronically using the following link:

https://cert.tgcginc.com/gccf/online/request_online.php

How do I apply by telephone?

- **Apply by telephone:** Claimants also may call one of the following GCCF toll free hotlines to ask the GCCF to mail a paper application:

- Toll Free Number: 1-800-916-4893
- Multilingual Telephone Line: 1-800-916-4893
- TTY Telephone Line: 1-866-682-1758

Once the paper application is complete, the GCCF will accept it:

- By regular U.S. mail, addressed to:

Gulf Coast Claims Facility ("GCCF")
Kenneth R. Feinberg, Administrator
P.O. Box 9658
Dublin, OH 43017-4958
- By overnight, certified, or registered mail, addressed to:

Gulf Coast Claims Facility ("GCCF")
Kenneth R. Feinberg, Administrator
5151 Blazer Pkwy., Suite A
Dublin, OH 43017
- By facsimile to the following number: 1-866-682-1772
- By email to the following address: info@gccf-claims.com

How do I apply in person?

- **Apply in person:** The GCCF also accepts applications in person at one of 35 claims site offices located throughout Alabama, Florida, Louisiana, Mississippi, and Texas. The list of GCCF the sites and their specific contact information are available at the following link:

<http://www.gulfcoastclaimsfacility.com/facility>

As noted on the linked webpage, some of the claims site offices are designated to offer translation services in Spanish, Vietnamese, and/or Khmer.

FAQ 5: What is the deadline to submit a claim to GCCF for payment from the fund?

A key date to keep in mind is the **August 23, 2013** cutoff for submitting interim and final claims directly to the GCCF:

- **Emergency Advance Payment:** An emergency advance payment is a claim for a short term emergency payment to be deducted from any final payment by the fund. The **November 23, 2010** deadline for such a claim has already passed. Nevertheless, claimants may still seek recovery from the GCCF for such loss by submitting a claim for an interim or a final payment by August 23, 2013.

- **Interim Payment:** Claimants may submit a claim for an interim payment to the GCCF through **August 23, 2013**. An interim payment covers loss or damage that the claimant already has sustained, but not loss or damage that may occur in the future because of the oil spill. As new loss or damage occurs, claimants may submit new claims for interim payment to the GCCF, on a quarterly basis (four times a year) through the final cutoff date of August 23, 2013. For an interim payment, a claimant does *not* have to release BP from liability or waive the right to seek relief in court.
- **Final Payment:** Claimants may submit a claim for final payment to the GCCF through **August 23, 2013**. A final payment works like a settlement in a civil lawsuit. To receive a final payment, the claimant must agree to sign a document releasing BP from any liability for past or future loss or damage that is caused by the oil spill. Previous emergency advance payments or interim payments are deducted from this final payment.

FAQ 6: What happens after August 23, 2013?

The GCCF will accept only claims submitted by August 23, 2013. After that date, claimants may submit claims directly to BP or may file an action direct against BP in federal court after that date, if the claimants meet the other requirements for recovery under the OPA.

FAQ 7: Is there a deadline for filing a lawsuit?

Claimants should be aware, however, that federal law imposes a three-year deadline for filing a lawsuit under the OPA. This date falls three years from when a claimant first knew (or reasonably should have known) of a loss or damage and its connection to the oil spill.

In addition, claimants may have causes of action arising under state law that are governed by a shorter deadline. Such deadlines are determined on a state-by-state basis.

FAQ 7: Are there any risks if a claimant submits a claim to the GCCF?

Claimants must be truthful and accurate when preparing and submitting a claim to the GCCF. Just as in any court proceeding, claimants face potential civil or criminal penalties if they intentionally provide false or misleading information in connection with a claim for payment from the GCCF fund.

The decision to submit a claim to the GCCF or accept a resulting offer of payment is entirely voluntary. The claimant's decision to reject a GCCF offer of final payment does not affect the claimant's right to pursue other remedies in court. Likewise, should the GCCF decide to refuse to pay the claimant, that decision does not affect the claimant's potential right to seek relief in court.

In contrast, the decision to accept a final payment extinguishes any right to additional payment. Before accepting a final payment, the claimant must release any right to recover from BP for past or future loss or damages arising from the oil spill. In addition, the fund's neutral administrator has announced that the GCCF will not cover attorney's fees when offering payment for claims.

Consequently, a claimant who wants to save money by eliminating legal fees may not have the benefit of legal advice when it comes time to decide between: (i) rejecting an offer of final payment to pursue other remedies, or (ii) accepting payment, thereby forever waiving the right to recover from BP for any damages that arise from the oil spill.

L:\MASTERLSVABA\Gulf Oil Task Force\Facts (Clay).docx