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Alternatives to the Conventional Litigation System –
Designing and Administering
the Gulf Coast Claims Facility
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[Editor's note: The following is a transcript of Mr. Feinberg’s presentation and the questions posed to him from the audience afterwards. The recording equipment failed to capture the first five minutes of the presentation.]

Ken Feinberg: Let’s ask Ken Feinberg. He did 9/11, he did Virginia Tech, he did Agent Orange. Let’s ask him to do it. Okay, they asked me to do it. So we’re doing it. We helped design the GCCF. I asked the administration their thoughts. I asked the public their thoughts. I asked the lawyers their thoughts. I asked BP its thoughts. And based on the agreement between the administration and BP to fund a program of up to $20 billion, we moved forward. And BP said if $20 billion isn’t enough we will honor our financial obligations above $20 billion. And out of the $20 billion will come the Gulf Coast Claims Facility (GCCF), private claims, anybody who wants claims brought by governments against BP, will come out of the $20 billion- not on my watch but it’ll come out of the $20 billion. Clean up costs associated or incurred by state and local governments come out of the $20 billion. So I’m one entity, the GCCF, drawing on that $20 billion. I’m not the only entity but I’m one entity drawing on the $20 billion.

My jurisdiction is private claims — private. Brought by individuals, suffered as a result of the spill, or businesses, who suffered as a result of the spill. I have no control over government claims. I have no control over claims arising out of the federal government’s imposition of the moratorium on deep water drilling in the Gulf. Those claims for damage caused by the government’s intervention is not part of my watch. I have enough problems with private claims.

BP started a claims program immediately after the spill last April and paid in 4 months almost $400 million dollars to about 80,000 people. The Gulf Coast Claims Facility took over last August 23rd, about seven months ago. And in seven months we have paid out about $3.6 billion to about 200,000 claimants. The money is going out the door. Now, the issues that arise are complex and they are difficult. Who’s eligible to file a claim? Its one thing if you have a hotel, on a beach, where oil is washing up on the beach. That hotel obviously has a claim. The fishermen who can’t fish because of closed Gulf waters has a claim. The oysterman who can’t harvest has a claim. The ship boat captain who
can't charter his fishing boat and go out on fishing waters or sightseeing has a claim. There is a group of direct victims of the oil spill that have claims. Death claims, eleven people have died. Physical injury claims arising out of the spill — Eligible. There's a whole group of claimants where eligibility is simply not a real issue. Then there's every body else, where we have to make findings about eligibility and document and proof.

Mr. Feinberg, I'm a dentist, 10 miles from the spill, there was no oil ever washed up on my house, my office. But half my patients are fishermen. They can't fish so they can't come to the dentist. I've lost half my patients. Pay me.

Mr. Feinberg, I'm a beer distributor, I distribute Bud, Budweiser. I'll show you I've got hotels and restaurants right along the beach. Because tourism is down, they've cancelled my beer deliveries and my beer deliveries are off 12 percent. Pay me.

Mr. Feinberg, I own a golf course 50 miles from the beach. There's no oil here, nothing, no oil. But, the newspapers every day "Oil's coming. Oil's coming." Now there's no way that oil is coming in 50 miles. But I got to tell you, as a direct result of that type of press, golfers go to Jamaica and Cancun this year. They're not coming to Florida. Pay me.

Mr. Feinberg I have a restaurant in Baton Rouge. We serve the best shrimp scampi in the state. We can't get gulf coast shrimp as a result of the spill. As a result, we don't serve shrimp scampi and we've lost eleven percent of our customers. Pay me.

And finally the restaurant not in Baton Rouge but in Boise, Idaho. Same thing, same thing. We serve shrimp scampi in Boise. We can't get the shrimp from the Gulf. There are customers that only come here in all of Idaho to get shrimp scampi in our shop, in our restaurant. Pay me.

Eligibility is point number one that we have to address. Just like you have to judge eligibility everyday in the courtroom. Who is eligible to file a claim? Unless everybody in the Gulf can file a claim and frankly anyone beyond the Gulf can file a claim if its “but-for” direct causation. What about proximate cause? What about the standards in the Oil Pollution Control Act? When it comes to physical injury and death what does the law of Louisiana have to say? That's a big issue for the GCCF.

Secondly, let's say that you are eligible. Let's say that you can file a claim. Can you prove your damage? This is not an insignificant problem in the Gulf. Can people prove damage caused by the spill? Not by the recession. Not by poor management of your business. Not by wishful thinking. Can you document or demonstrate damage caused by the spill? Even if you're eligible, that's a big issue we're finding.
Mr. Feinberg I couldn’t fish. I lost $30,000 in wages. Pay me. And here’s proof, my fishing license. Well you may have a fishing license but how do you document that you lost $30,000? “Well, we do things by a handshake here.” That’s all right. There’s nothing illegal about taking $30,000 in cash but how do you prove it’s $30,000? “Well that’s, uh, you know…trust me.” It’s a problem. Where’s your tax return? “Lost it.” Oh well you lost your tax return. But somehow prove your loss. Otherwise I’m not going to pay the claim. I’ve had people say “Here’s my damage and here’s my proof and here’s my tax return.” Great. Looks good. We’re gonna send you a check and a 1099. “I waive the 1099!” You can’t waive a 1099. (laughs) “Then I withdraw my application.” See.

So let’s say you are eligible. Let’s say you can document your damages. And some have documented. We’ve paid claims as high as $42 million. $28 million. $11 million. We’ve paid some very large claims.

Then there’s the question, if you can document your damage, of the methodology we will use to calculate damage. Well, the methodology that we use is largely a methodology that can be used in court too. What did you earn before the Spill? What did you earn after the Spill? What is a reasonable projection of an ongoing business of what you would have earned, but for the Spill? We’ll look at various methodologies to calculate damage.

Those are the issues.

Now we have received about 750,000 claims. The difference between this program and any other program I’ve ever been involved in is, first, volume. In the 9/11 Fund, enacted by congress, in 33 months, I received 7,300 claims, for death and physical injury arising out of the terrorist attacks. I get 7,300 claims a day in this program. I never anticipated. Remember in four months, BP got about 80,000 claims. In seven months we have received 750,000 claims. I never anticipated the volume. It’s a huge problem. It’s a huge problem not only in absolute terms, 750,00 individuals and businesses clamoring for money. But also compounding the problem is that this is not something that can be alleviated through rough justice. You can’t say, “Every fishermen will get X. Every oysterman will get Y. Every hotel will get Z.” You have to hire, not lawyers, but accountants to examine the claim. To look at the documentation. Being as generous as we can possibly be in favor of the claimant, you still have to find proof, and come up with credible arguments. Now those are some of the problems. Now those aren’t all the problems.

Then you have got the problem of the future. The future. Mr. Fisherman, Mr. Hotel-owner, Mrs. Hotel-owner: We will give you a choice. Voluntary choice. If you want we will pay you your documented damage for 2010. But we will also add to that, damage that is anticipated in bringing the Gulf back to some degree of normal.
Now we have to talked to everybody; the experts, the biologists, the tourism experts. We have concluded that the Gulf will reasonably return to normal by the end of 2012. The fishing grounds are open. You can now oyster. You can now shrimp. You can fish. Hotel bookings are coming back. Sales tax revenue is up. We think gradual recovery through the end of 2012 is reasonable. It’s not guaranteed. It’s not certain. Some say it’ll take a generation to know for sure. Maybe. But based on what we have learned out there from chatting with everybody, the GCCF will offer you 2010 documented damage times two. Unless you’re an oysterman, or in the oyster business. Then its time four because of the oysterbeds and the future of oysters is more problematic in terms of recovery period. Now if you want a final payment, check off the box, document your damage for 2010, we’ll double it or quadruple it if your oysters and cut you a check but if you take that check, don’t come back. That’s it. You take the risk. Talk to your lawyers. We encourage you to talk to your lawyers. And then if you want that check, we’ll send it to you. Release everybody involved in the spill. You’re not gonna sue that’s the end of your lawsuit. Can’t sue BP, Transocean, Halliburton or anybody else. Let’s bring closure. Good for you, good for the system, good for everybody. But it’s your voluntary choice.

If you don’t like that choice. If you believe that you’re risk averse. I don’t know about the future. I’m reading conflicting information. And I don’t want to release BP and everybody else from a suit. I want to keep my options open. Check off the box and take an interim payment. For your past quarter’s damage. Document it. Document your past quarter. You want to get a check for just your last quarter of gradual recovery-damage. You release nobody. You can come back every quarter, and watch and see what happens in the Gulf. Take an interim payment. Move on with your life and your business. Come back the next quarter, and the next quarter, and the next quarter. Document your damage. Keep taking checks without any release or any obligation on your part. Your choice.

There’s a third option. If you received money from the GCCF or BP, prior to November 23rd of 2010, an emergency payment. We paid 170,000 emergency payments. If you received an emergency payment, you are automatically eligible, if you want, to take a quick payment. Check off the box. You don’t have to send in any more documentation. None. Just check off the box and we’ll give you $5,000 if you’re an individual, $25,000 if you’re a business and you’ve already received an emergency payment. There’s a third choice: Full release. You won’t sue, you won’t come back. But that full release quickly is available within two weeks. There is no more documentation to review. Just check off the box. Those are your three choices.

Talk with your lawyers. They will advise you. If you need a lawyer and need pro bono legal assistance, the Mississippi Justice Center will...
provide you a lawyer pro bono. Consult with whoever. Here are your three options, ranging from a final payment to a quick payment, with an interim payment in between.

The GCCF is absolutely agnostic and neutral on which claim you wish to assert. We don’t care. We want the money to go to you and if you document your damage, or don’t in the case of a quick payment, we will cut the check. Now about 102,000 people have taken the quick payment, 5,000, 25,000, 102,000 people in the Gulf. They’ve taken that payment because in my opinion, either they have already been compensated under the emergency program in an amount that they think they’re going to get, that it satisfies them, so they check off the box and get an additional $5000 or $25000, or they can’t document any proof of any of the damage. So they take the quick payment. 102,000 have taken the payment. A huge number of people. Since February 18th, a month ago or so, 5 weeks ago, about 10,000 have taken the final payment. Full release. Send me my final payment check, I’m gone.

Since Feb 18th, 5 weeks ago, about 5,000 people have taken the interim payment. We’re not sure. We’re risk adverse, we want to retain our litigation rights. We don’t want to release. We want to be able to come back here while we observe what’s going on in the Gulf.

There may be oil still there. We’re not ready to commit. 5,000 have taken interim payments. It is a unique program that we are administering.

We have been approached by certain trial lawyers who represent a cluster of people in the GCCF. Ken, we represent 150 hotels. We want to resolve all 150. And we’re here to work with you. Fine. Let’s see if these claims are documented. We’ll tell you what we need. We’ll work through you. And we’ll try and settle your claims.

Mr. Feinberg, I represent 17 victims of the explosion who were physically injured on that day. Okay. We will try and sit down with you and settle all 17 of your physical injury claims.

Mr. Feinberg, I represent a Native American tribe in Louisiana. They’re filing a subsistence claim, loss of enjoyment of hallowed spiritual grounds in the Gulf where they hunt and eat off what they hunt and fish. It is their way of life. I represent them under the Federal Oil Pollution Control Act. And under your program, you will pay subsistence claims. Let’s sit down. Let’s figure out how to value. Calculate damage on a subsistence claims. Let’s figure it out with the Native American tribe.

It’s a very complex problem. It is driven in part by volume and in part by the necessity of mechanically looking at these claims which are all over the Lot. And nevertheless, despite the criticism, we have I think in seven months performed exactly what was intended when that program was set up. $3.6 billion. In Louisiana alone we’ve paid out
about I think $1.7 billion in 7 months. The program is working. Now the program is not without flaws. And there has been constructive criticism, the attorney general of Louisiana, Buddy Caldwell, very constructive criticism, good man. He’s been a good man. He’s been constructively at my, nipping at my heels. But that’s all right. We have added a substantial of local people at these gulf claims offices. There are 35 Gulf Claims offices throughout the Gulf where you can go in and file a claim.

We’ve added local people, local accountants, lawyers if needed. We’ve tried to beef up the local claims offices so that people when they file a claim can have more one-on-one experience with a live body. The opportunity to be heard. Do no underestimate the opportunity to vent. And we’ve beefed up those offices. We’ve accelerated the payments. I am accused occasionally, every other day, of not being generous, of being miserly, processing claims in a way where people will be found ineligible and won’t be able to calculate loss.

Now as we know under the federal OPA, anybody who feels that they have been unfairly treated by the GCCF standing in the shoes of BP can bring their ineligibility claim or their miserly damage award to the Coast Guard Liability Trust Fund. And in fact about 425 people have brought their claims to the coast guard saying that the GCCF erred. They didn’t pay me enough or didn’t find me eligible. In every single case, every single case, the Coast guard has ultimately taken an independent look and has not awarded any additional money or found eligibility when we found ineligibility in any case. I mean this idea that I am in the tank for BP merely trying to save money, merely trying to preserve the $20 billion, that is sheer sophistry.

It’s not true. I’m doing the best I can. I think the program is working. It can be improved. Judge Barbier made some suggestions that we have followed to the letter. Francis has periodically been in touch with me and the GCCF with suggestions to make the program more transparent. Absolutely constructive, doable, acceptable. I’m certainly not closed to improving the program. But I want to finish my summary here by expressing the view that I did in the beginning which is if policy makers decide that the subject of compensation is worth the design and implementation of a specific program and they come to me and say Ken with your experience will you be willing to take on this assignment, I say what I think most of you would say: Of course I will. You don’t say no. How do you say no to the administration, to the president, and to BP. Can’t say no. You’re asked to do something for the good of the country, for the good of the Gulf. You do it.

There will be criticism, no one will be entirely happy when you’re dealing with $20 billion that’s out there and people say “Wasn’t my fault. I wasn’t to blame.” But when you take this on, you not only need a good spine, but you better have a pretty god feel for human nature.
Because when you’re the victim of a curve ball that’s not your fault and there is announced publicly $20 billion for something that wasn’t your fault, you are going to file a claim. And you are going to say in the upmost good faith “It was the spill’s fault. I really believe it.”

Mr. Feinberg, I can’t fish because they closed the fishing grounds. And I would have been out in my boat and I would have got $100,000 worth of fish. Well Mr. Jones, your boat on the time of the spill had been in drydock for 3 months. There are two tax liens on it. There is an involuntary bankruptcy filing. Your claim of $100,000 damage caused by the spill doesn’t comport with the facts. “Oh yes it does. Because I would, but for that spill, they would have let me put that boat on the water, they would have let me get that boat back in the water. And in a month, I would have been able to buy a second boat. I would have made $100,000. So I want my money.” Absolutely believable. That person believes that. So you run into human nature on these issues. And still the claims get out there, the money goes out in the hundreds of millions every month. And I think it’s in the policy interest, the policy makers have decided that this is the way to go. Rarely, it’s a rare aberration, but this is the way to go. I believe we are doing exactly what the policy makers intended when the program was set up. And the program runs through August of 2013, to give people time to file. And that is sort of the overview. Now we still have about 15 minutes, 17 minutes for questions and I welcome the questions.

(Announcement about questions order).

Questions? This is the 58th Mineral Annual Institute, there has to be a question. Go ahead, I think you have to walk up to the mike to ask a question. Am I gonna have to ask Francis or Linda to ask a question? Francis, what’s a good question?

Question: What do you anticipate by August the 15th, that is to say, how do you view the program working over time. I understand the emergency payments, I understand what’s happened in the last 5 weeks, but what would your prognostication, based on what happened in 9/11 be in so far as the future is concerned.

Feinberg: The question from Professor McGovern is what is the long term future goal for the GCCF, where do I see it evolving. And I think the answer is, if the GCCF does what is anticipated, we will over time resolve 303,000 claims, in addition to the 170,000 emergency payments. We should be able to, over time, to corral the claims, as the Gulf improves and as people become less uncertain and less risk averse I would hope over time that the program would result in corralling most of the claims, paying the claimant and ending litigation. Now there will always be litigation. There are going to be claims that are going to be before the MDL and the state courts. That’s guaranteed. We won’t get every claim. But I do think we will continue to see a spike in the number
of claimants that come into the fund, accept interim payments for a while, and then finally reach the conclusion that it's time to opt for a final payment.

Question: On the interim payment, how long does the person or business who accepted the interim payment but wants to see what's going to happen in the gulf, when is their date by which they have to say "OK I want the rest of it."

Feinberg: They can take interim payments to the end of the program if they want, August 2013. There is no requirement you take only two payments or three payments. Now, if the Gulf continues to improve there might come the day when you say "All right, I don’t want anymore interim payments, I’m ready for a final payment. Pay me two times my 2010 damage." Well first we’re deducting your interim payments that you got in the interim. And secondly, the Gulf’s in great shape. Maybe 2 times may be only have to be one and a half times. we will continue to revisit that. But in terms of your decision to take interim payments, as long as you can document that quarter’s damage, we will go on as long as the facility is in place.

Question: You mention proximate cause, and you mentioned but-for, what is the standard of causation that you are applying to the claims?

Feinberg: Well, you know, that’s the question I get all the time. We’re applying under the final protocol a proximate cause standard. That’s one way you look at the Federal Oil Pollution Act and talk in terms of proximate cause. There are some lawyers that say that is too restrictive a standard. That there’s no mention of proximate cause in the Oil Pollution Act which guides you at least. And that you should establish a more flexible, broader, pervasive standard than proximate cause.

Others would say, Professor Goldberg at Harvard Law School, "Gee, proximate cause is more liberal than the standards listed in the Oil Pollution Act." But the Oil Pollution Act guides our decision-making. If someone believes we’ve made a mistake, if somebody feels we are being too restrictive, that they can do better elsewhere, A. They can go to the Coast Guard. Which so far at least has not found us to be too restrictive. Or B. They can eventually go to court and make their claim. I think we’re doing the right thing in terms of broadening the standard that will maximize the number of people who would be eligible, but there are some who will disagree with that.

Question: What do you do with people, for example, that have a hotel in Houma, and they had oil field people that stayed there. So their 2010 damages are skewed because they had a different species of occupants than they would have normally. So when you say you compared their 2010 to their 2009 and take the difference and that’s the
damage, what do you do in the situation when they have a different species, how do you deal with that?

Feinberg: If they demonstrate that, we'll take that into account on an anecdotal basis. We will not ignore the hard facts as you have just said. We'll take that into account in trying to adjust the methodology.

Question: I have a dumb question.

Feinberg: I always worry when someone says I have a dumb question.

Question: I haven't heard it yet, Mr. Feinberg (laughs). I take it from your comments that filing an interim claim through your office suspends prescription or statute on limitations on a formal lawsuit, and if so, how long?

Feinberg: Ask that question to Francis in about 20 minutes. I'm not sure if that's right.

Question: I know in administering in the World Trade Center Victims Compensation (9/11) Fund you hired Price-Waterhouse basically as your staffers to process those claims, and the universe of claimants was much, much smaller than what you have here. And you just said that you anticipate about 300,000 claims. So my question is, who is staffing claims processing? That's first. And the second part is, at least in some publicly available media reports, there were some claimants who were complaining about the fact that in submitting claims, they were being processed claims by the Garden City Group in Ohio and they had difficulty communicating with them and had no idea who that was. And for those of us who work in the class action settlement universe, the Garden City Group in Ohio is a claims settlement group, so I'm just wondering at the granular level, who is staffing this? How are they being trained? Do they know what proximate causation is? What's going on?

Feinberg: These are good questions of course. Who's staffing it? There are 3,200 people. We inherited in August of 2003, from BP, 35 claims offices, with about 2,500 claims handlers from the Michael Worley company here in Houma, Louisiana. They were staffing those claims offices. We're not going to reinvent the wheel. The 35 claims offices remain along with the Walley group that continues primarily the responsibility of claims input, making sure that the claims are being filed appropriately with the correct documentation, hard copy, etc. The claims are electronically transferred to an electronic software database by the Garden City Group, that really has the job of inputting hard copy and inputting, and providing totally electronic transfer data so that anyone in the system whether it's in Washington or the 35 claims offices or anywhere else can access electronically the data on each claim.
The actual calculations are made by the most part by BrownGreer in Richmond Virginia. About 200 people, accountants and others, that actually take the electronic information and calculate damage based on the rules and the principles that are systematically applied and used by any of those individuals who are calculating the awards. If there are awards that are precedential, should we be paying a Native American tribe for a subsistence claim? Should this claim of $28 million be paid? Should this type of claim be honored? Is it eligible? The dentist? That claim will be somewhere on the line, flagged and sent to Washington, where I have got Price Waterhouse. About 25 accountants plus myself, a small group of three or four other people, sort of the hub or the center, where we finalize any policy decision that has to be made.

And I will review any claim that is particularly problematic in terms of its impact on the rest of the claims, in terms of its size, in terms of its importance. I’ll take a look at it. So that’s sort of the way it works, that’s the 3,200 people. It is a massive infrastructure. I don’t know if I started all over again from day one I would have such a massive infrastructure, but we inherited an effort by a company that assumed responsibility for the Spill, that isn’t in the claims processing business, but desperately in the months after April 20th, set up to its credit, set up an immediate program to compensate people. Well we inherited that and felt that it made some sense politically and substantively, to leave those offices open and leave them in place. So there’s about 3,200 people. With 9/11 we had a total as you know of about 450 people But in 9/11 we had 7,330 claims and here we have hundreds of thousands of claims.

Question: How do you determine which is a moratorium claim and which is not? I mean I have shallow water dive clients that were told they were moratorium people and others who are not. And how do you ensure consistency between what is a moratorium claim and which is not?

Feinberg: We have done a pretty good job of analyzing each claim and determining whether the damage asserted is based on the moratorium or the spill. We look at those pretty carefully. A lot of the time it’s not a big issue because the claimant will flat out say I got laid off because of the moratorium, or I’m a subcontractor who delivered catering to the rig and got laid off because of the moratorium. Most of the time not all of the time, but most of the time it’s fairly clear-cut and the moratorium claims go into the $100 million fund, separate, set up in New Orleans. That’s separate. If there’s a combination, moratorium and initial spill, we’ll try and sort that out as best we can.

Consistency is a problem. It’s a serious problem because you have so many claims and so many people handling the claims, that invariably, almost by definition, volume breeds inconsistency. Now we try and keep it to a minimum. If someone gets an award that was less than their next door neighbor based on the same facts, etc, it was just a different claims
handler, or a different calculator, we’ll try and re-look at it, take another review and true it up, if that’s the case. I think inconsistency is something we have to try and avoid at any cost.

Question: That’s a very big issue, I have submitted claims for guys working on a pogy boat, brothers, working next to each other. One got $200, and one got $18,000. How do you true that up?

Feinberg: You true it up because that inconsistency was clearly at the emergency payment stage. Now it’s final payment or interim payment. Your client, the one that got less, should come to us for interim or final payment. We’ll take another look at that emergency and if we were wrong, we’ll true it up and add it to any interim or final payment that would otherwise be due in 2008.

Question: I was wondering of your 750,000 initial claims, if you happen to know roughly how many have been denied for eligibility reasons and how many for failure to document their damages?

Feinberg: That’s a good question. I can tell you that of the emergency payments, we received through November 23rd, in the first three months we were in operation, we received about 480,000 claims. We paid 170,000 of them. The remaining claims were denied. They were either denied because they were ineligible, the Boise restaurant hypothetical, or even more likely, they were denied because of the total absence of documentation. In about 85,000 emergency claims there was zero documentation. Just a claim form, “Pay me,” and when you looked at the proof, it was blank. So I would say most claims, not all, most of the claims, were denied because of absence of documentation. Now since February 18th, the final payment and interim payment program I have gone everywhere and explained to people, we won’t declare you ineligible based on your physical proximity to the Gulf or the nature of your business. We will not assume that you are ineligible. This is one of the great things the trial lawyers brought to the table, you see. The trial lawyers came to me and explained. They felt it would be a mistake to simply deny people based on eligibility. And I accepted that. So everybody can file that claim even if they are in Boise Idaho, but the farther you are away or more tangential your business, the more exacting will be the proof requirement to demonstrate that it is somehow causally connected to the Spill.

Two more questions and that’s it, cause Francis is next.

Question: As an element of damages, did y’all make any consideration to the possible public perception of whether the seafood is consumable even if it could be harvested?

Feinberg: Well, I wouldn’t say we provided additional compensation based on public perception. We provided additional compensation based on the fact that public perception may drive down
the value of the shrimp and oyster even if they’re available. So that if anyone goes out, if an oyster harvester goes out and says to me “Mr. Feinberg, the oyster harvesting may be available, I can go out and gather oysters, but please take into account the fact that I can’t sell them. Or if I sell them I sell them at a loss, so that it doesn’t even pay to go out. That absolutely we have taken into account.

Last question

Question: Mr. Feinberg, The recent OSAT 2 (ed: Operational Science Advisory Team) reports that are given directly to the federal on scene coordinator for the U. S. Coast Guard, has indicated last month that many parts of the most heavily oiled parts of the Gulf of Mexico will not recover for many many years, particularly, on Grand Isle and west of the River. If you are using it to your standard, that really is the best case scenario, at least according to the Coast Guard, and if you do that are you putting reopener clauses in the final releases given the problem, the unfairness problem it would create. And also if you are using the best case scenario for recovery, don’t you think that that would be unfair to those who were hurt the most? You follow my question?

Feinberg: I understand your question exactly. You’re asking the $64 question. If the Gulf Coast Claim Facility knew or reasonably could anticipate that recovery would take longer than two years or four years for oystermen, we would say that it won’t be two time it will four times or six times or eight times. I have received all that information, I’ve talked to everyone I could get a hold of. I’ve asked people up and down. What is reasonable in terms of recovery? Most people tell me that my two years is, most people that have communicated publicly, said that my two years was too optimistic. BP filed a lengthy brief saying that two years is way too generous. That 6 months would more than ample. Everything’s open, it’s good now. I don’t know. I did the best I can. It’s not so much a reopener of being available but what I do say that if people think that two years, and maybe we’ll change it, to three years, as we get more information, or maybe we’ll reduce it to a half year, I don’t know. We’ve tried to do our best at two years.

If people believe that two years is too optimistic, they should not take the final payment, they should take the interim payment, document their damage, come back in three months, document their damage and see what actually unfolds in the Gulf. And that option is readily available and has been accepted so far by about 5,000 businesses and people.