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BP Makes Amends

By [JOE NOCERA](#) (January 9, 2012)

Today, I'm going to say some nice things about BP and some not so nice things about the lawyers who are suing BP. Please don't spill your coffee.

As horrific as the [Deepwater Horizon accident](#) was in April 2010 — killing 11 rig employees, while pouring millions of gallons of oil into the Gulf of Mexico — BP has performed quite admirably in its aftermath. It has spared no expense in cleaning up the oil. [It has set aside \\$1 billion](#) to restore the environment and coastal ecosystem. It underwrote an advertising campaign to lure tourists back to the Gulf Coast. Today, less than two years after the spill, the beaches are sparkling, most fishermen are working and many of the hotels are full.

At the urging of President Obama, BP also agreed to [set up a \\$20 billion fund](#) to compensate anyone who could show that they'd been economically harmed by the accident. Ken Feinberg, the former administrator of the Sept. 11 victim compensation fund, was put in charge the [Gulf Coast Claims Facility](#), as it was named. Feinberg has since paid out \$6.3 billion to nearly 200,000 claimants. [Daniel Becnel](#), an attorney who has settled thousands of claims, says that his clients often receive more money from Feinberg than they would have if they had gone to court. "You couldn't have done a better job than Feinberg did," says Becnel.

To put it another way, the Gulf Coast Claims Facility has been a remarkably effective alternative to the cumbersome way damages are usually meted out after a corporate accident: through the tort system. Compare it, for instance, with [the 1989 Exxon Valdez disaster](#) in Alaska, which took nearly two decades of court battles for the plaintiffs to finally get around \$1.3 billion.

Indeed, the whole point of the gulf coast fund is to keep cases out of court; in return for compensation, the claimants have to agree not to sue for further damages. There is much that is right with this approach. Victims don't have to wait years — or decades — to get their money. The uncertainty of litigation is eliminated. The victims get monetary damages, just as they would if they won a court case, but without the expense of a lawsuit. They also pay less in legal fees. And if they don't like what is being offered, well, they can still sue. It is, as they say, a win-win.

Except, it turns out, for a certain group of plaintiffs' lawyers who, despite the relative ease of using the claims facility, is insisting on pursuing litigation against BP. They say they have more than 100,000 cases, though none are for big money, like the injured workers' cases; Feinberg has even settled most of those. For months, these lawyers have been preparing for a "[liability trial](#)," currently set for late February.

However that trial turns out, it's largely pointless: BP has already conceded liability, which it has backed with \$20 billion. The lawyers' motive can't be to get more money than that; it's far more than any court would ever award. Punitive damages can't be the reason either: federal law prevents most of the claimants from getting punitive damages. No, there is only one reason this litigation is taking place. The lawyers want the kind of big fees that only come with big lawsuits. Yet Feinberg's approach is proving so popular with claimants that many of their cases are evaporating.

So here's what they did. They went to the federal judge handling the BP litigation and asked him to establish a "reserve" that would be made up of 6 percent of any future claims settled by Feinberg. (They also want 4 percent from any damages Alabama and Louisiana get.) The judge, Carl Barbier — a former plaintiffs' lawyer himself — agreed to do so without even holding a hearing. Eventually, some or all of that reserve would be used to pay the lawyers. That's right: They are trying to [grab fees from clients](#) they've never represented. Amazing. (Judge Barbier [recently backed away a bit](#) from his ruling and is allowing both sides to file briefs that are due on Thursday.)

When I asked how they could possibly justify this fee grab, I was told that their lawsuit was the main reason Feinberg was willing to be so generous with BP's money. But [Tony Buzbee](#), another lawyer who has settled many claims through the fund, blew a gasket when I told him that. "They have not done one thing so far that has benefitted my clients," he said. "My clients have chosen not to be a part of their litigation. Why in the world should they have to pay them?"

It's a good question. The Gulf Coast Claims Facility has the potential to serve as a model for handling future industrial accidents. It has proved that it can compensate victims quickly and fairly without the ordeal and cost of litigation. But, for that to happen, it's not just companies that have to put aside their greed. So do the lawyers.
