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Gulf Oil Spill

Legal Cleanup remains

■ Full compensation for damages from the oil spill appear years away

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One year has now passed since the tragedy in the Gulf struck on April 20, 2010. Although there has been some development with investigations into the disaster and massive litigation was spurred by the tragedy, many questions remain unanswered, and the economic and environmental recovery of the Gulf Coast region remains uncertain.

BP has accepted responsibility for the clean-up and has set up several funds to compensate those affected



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by the spill, including a \$20 billion escrow fund administered by Kenneth Feinberg and the Gulf Coast Claims Facility ("GCCF") for those wishing to avoid litigation.

Here is a brief overview of the current landscape of litigation related to the spill and the progress of compensation for the economic losses suf-

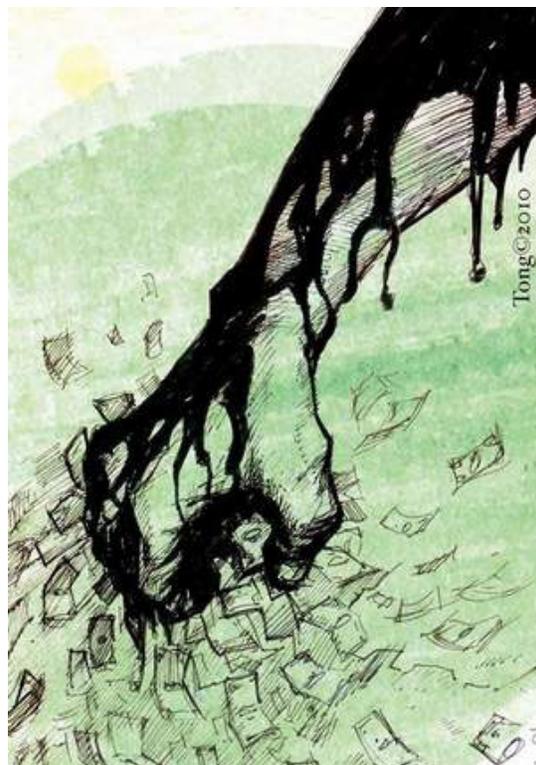
fered by Mississippians and the state of Mississippi.

Multi-District Litigation: The first lawsuit arising from this tragedy, a wrongful death claim, was filed less than one week after the explosion. Since that time, hundreds of state and federal lawsuits have been filed in at least 12 states against any combination of the key players - BP (65 percent interest owner in the well), Anadarko (25 percent non-operating interest), Mitsui (10 percent non-operating interest), Transocean (owned and operated the Deepwater Horizon), Hyundai (designed and manufactured the Deepwater Horizon), Halliburton (cementing operations of the well and well cap), and Cameron (manufactured the blow-out preventer).

In an effort to streamline the judicial proceedings in a cost-effective manner, plaintiffs from some of the individual lawsuits filed motions to take advantage of the legal mechanism in federal court called Multidistrict Litigation, or MDL. Cases subject to MDL are consolidated and sent from one court, known as the transferor, to another, known as the transferee, for all pretrial proceedings

and discovery. If a case goes to trial, it will be tried in the court it was filed in.

The MDL Panel, consisting of seven sitting federal judges appointed by the chief justice of the U.S. Supreme Court, heard arguments and allowed consolidation, choosing New Orleans as the forum for these proceedings (which was the plaintiffs' preference), and appointed Judge Carl Barbier to preside over the matter. This consolidation covers the following categories of claims: personal injury and death; private individuals and business loss claims, which include economic loss and property damage, RICO claims, post-explosion clean-up claims, and post-explosion emergency responder claims; public damage claims brought by governmental entities; and injunctive and regulatory claims.



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Discovery has now begun in the MDL litigation, and Judge Barbier has issued several orders dictating the schedule of the litigation in general. Of note, the court has recently set deadlines for answers of the defendants, cross-claims to be filed against co-defendants, and third-party complaints to bring in parties not already named in the lawsuit. The court holds monthly status conferences to keep all parties on track, and the Plaintiffs' Steering Committee provides potential claimants answers to all of their

Lawsuits: Mississippi may go to court to recover damages

commonly asked questions. The first case in this matter, which involves Transocean's lawsuit to significantly limit its liability under an antiquated and controversial maritime law, is currently scheduled to begin on Feb. 27, 2012. The first cases filed by individual plaintiffs will likely be tried in late 2012 at the very earliest.

Compensation for the state of Mississippi and affected Mississippians: BP says that it remains dedicated to compensate legitimate claim holders from its \$20 billion escrow account facilitated by Feinberg and the GCCF. After initial complaints regarding the lack of speed in processing claims, the GCCF recently announced that since the end of the emergency payment period ("Phase I," which ended on Nov. 23, 2010), it had processed more than 54 percent of the 256,000 individual and business claims seeking final payments, interim payments or quick payments. Feinberg has stated, "we are determined to continue to accelerate the processing of all individual and business claims submitted to the GCCF." He added, "we are determined to make the GCCF claims process more transparent."

Transparency has been a concern, especially in light of the fact that in order to obtain a "final payment" from the fund, one must give up the right to sue BP. Although claimants may seek "interim payments" and

retain their legal rights, the fund's purpose is to encourage final settlements - as in the 9-11 program - in order to provide an "expeditious alternative to drawn-out lawsuits."

BP originally touted Feinberg as "independent," but Judge Barbier recently ruled that even though Feinberg is not providing any legal advice to BP, he and the GCCF are not fully "independent" or "neutral." The significance of this finding is that Feinberg and the GCCF can no longer directly contact any claimant they know or should know is represented by counsel, whether or not the potential claimant has filed a lawsuit or a formal claim. Further, Feinberg and the GCCF may no longer refer to themselves as being "neutral" or "independent," each communication with a potential claimant must begin with the statement that the individual has the right to consult with an attorney, and they must refrain from giving any legal advice to unrepresented claimants.

As of April 15, 2011, the GCCF had received 55,026 claims from individuals and business in the state of Mississippi. The GCCF reports that it has paid 20,827 individual claims in Mississippi for a total of \$145.3 million and that it has paid 5,482 business claims for a total of \$183.2 million. This equals total payments to Mississippi claimants of \$328.5 million. These figures represent claims filed for removal and

clean-up costs, real or personal property damage, lost earning or profits, physical injury or death and other claims. For Mississippi businesses, the two most affected industries are "retail, sales and service" and "food, beverage and lodging," followed by fishing, seafood processing and distribution, tourism and recreation, and rental property.

The above stated figures, of course, do not represent losses and possible claims by the state of Mississippi. Mississippi has the option of filing a claim with the GCCF or pursuing its claim in court. Mississippi, along with several other states, has been researching possible claims, seeking advice from researchers, economists and lawyers, and has yet to file suit to recover its economic losses. Outside of the GCC claims process BP states that it has already made payments to the state totaling \$237.6 million through various programs. In addition, the state has already been paid \$1.1 million on government claims submitted to the GCCF, which includes reimbursements to the Commission for Volunteer Services, Mississippi Emergency Management Agency, the state Department of Health, the Governor's Office, the Mississippi Department of Wildlife, Fisheries and Parks and the Department of Finance & Administration. These payments have not been designated as final, which leaves the possibility of a future lawsuit.

The litigation option seems likely for Mississippi as its attorney general and Feinberg are at odds. Attorney General Jim Hood has entered the MDL arena making certain allegations and pushing for an audit of the GCCF's payment process to provide greater transparency. Feinberg has fired back, stating that the allegations are unfounded and defamatory. Full compensation to Mississippi's citizens and the state appears to be many years away.

Jeffrey P. Reynolds is a Jackson defense attorney who has represented oil and gas companies including BP, ExxonMobil, Marathon Oil Co., Murphy Oil Co., Conoco-Phillips Petroleum Co., Total Petrochemicals USA, Inc., and others in litigation. Contact him at jeff@jprpa.com.