

OP-ED: JEFF REYNOLDS

### Taking BP's money is just one issue to be tackled

The Gulf tragedy on April 20, began spawning lawsuits just five days after the explosion. Over 400 civil lawsuits have been filed against any combination of the principal players, in at least 12 states, as a result of the disaster. Recently, new types of class-action lawsuits have included such plaintiffs as shareholders, owners of vessels involved in the cleanup and those claiming RICO violations, among many others. Lawsuits filed on behalf of states have also begun to enter the fray.

As residents of one of the coastal region states, Mississippians have a vested interest in many aspects of ensuing litigation and consequences of the spill. To recover financially, Mississippi must decide whether to file suit against BP and others or take advantage of the \$20-billion escrow fund set up by BP and independently managed by Mr. Kenneth Feinberg, who oversees the Gulf Coast Claims Facility. Also, recent developments with offshore drilling have allowed coastal offshore workers to resume work. These are but two of the many issues facing Mississippians in the wake of the spill.

Many states, including Mississippi, have been researching possible claims to pursue as a result of the spill, though there has been debate as to the best avenue to make those claims. One noteworthy example is the situation unfolding in Alabama. Alabama's Attorney General Troy King sued BP and others in two federal lawsuits in August seeking both economic and punitive damages. The suits accuse the defendants of damaging Alabama's Coast and economy through "negligent or wanton failure to adhere to recognized standards," and were filed, according to Mr. King, because BP had allegedly broken too many promises about accepting responsibility for the disaster.

These suits came much to the chagrin of Alabama Gov. Bob Riley, who had hoped to settle with BP and the other companies and was in the process of compiling a list of damages to submit to BP. Gov. Riley had hoped to avoid protracted litigation and recover from BP's \$20-billion escrow fund. Gov. Riley's fears were validated when BP recently turned down the state's claim for \$148 million in lost government revenue due to the existence of the state's lawsuits filed by Mr. King.

Mississippi Gov. Haley Barbour and Attorney Gen. Jim Hood seem to be working together, and all indications are they may have opted to file a claim with BP's escrow fund rather than filing a lawsuit. Mr. Hood has sought advice from state university researchers, economists and lawyers to assess the environmental and economic damage the spill has caused the State and says the process could take up to three years. In the meantime, Mississippi has already received over \$68 million from BP, over \$12 million of which has been spent by the Mississippi Department of Environmental Quality in combating the effects of the spill.

Another claim expected to be submitted by Mississippi will be for lost state tax revenue. It is too early to project what that ultimate claim will be, but a June 21 report issued by the University of Southern Mississippi begins to paint the picture. Dr. David Butler and Dr. Edward Sayre estimated tax revenue losses from just May-Aug. 2010 to be \$11 million, down 6.6 percent from the same period in 2009 in Mississippi's three coastal counties — Hancock, Harrison and Jackson. This estimate did not include the losses in the seafood industry such as shrimping. The sources of affected tax revenue were the restaurant industry (47 percent of the lost tax revenue), hotel-room tax (19 percent), hotel-sales tax (19 percent) and gaming (15 percent). Although gaming tax losses constituted 15 percent of the lost revenue, initial reports showed the gaming industry itself was only down 2 percent for the Gulf Coast casinos.<sup>1</sup> The casino industry is critical to Mississippi and annually generates over \$300 million for the state, or 4 percent of the state's general revenue.<sup>2</sup>

After months of judicial wrangling surrounding the White House's drilling moratorium, including the controversy in the moratorium lawsuit brought by Hornbeck Offshore Services, LLC (and joined by several other oil companies involved in deep water drilling) surrounding presiding U.S. District Judge Martin Feldman's alleged ownership of several deepwater-drilling oil companies' stocks, Interior Secretary Ken Salazar announced that the Obama administration lifted the moratorium on Oct. 12. Drilling may resume, and new permits are being considered, contingent on operators

complying with new rules and regulations. Mr. Michael Bromwich, the new head of the Bureau of Ocean Management, Regulation and Enforcement — the federal agency which oversees offshore drilling — says that under these new requirements, operators must prove that their proposed development and exploration plans can deal with potential blowouts and must undergo detailed inspections and design reviews of their blowout prevents by independent third parties. "We will not approve permits without vital supplemental information required by the rules," says Mr. Bromwich.

This move somewhat placates Gulf Coast residents who were directly affected by the moratorium, and who saw it as salt in the wound of the already downtrodden economy. On the other end of the spectrum, environmental groups questioned if enough has been done to prevent a catastrophe similar to the Deepwater Horizon incident. Secretary Salazar noted that one reason for the moratorium was the lack of resources to respond to a similar incident should it occur. But now that the leaking well has been sealed, those resources are again available to deploy as a response mechanism if any future problem occurs.

It will likely be many years before all of the lawsuits and claims arising out of this disaster are resolved.



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**FOOTNOTES** — [1] See "Economic Impact of the Deepwater Horizon Oil Spill on South Mississippi: Initial Findings on Tax Revenue," David L. Butler and Edward Sayre, [www.usm.edu/oilspill/white-paper-2.php](http://www.usm.edu/oilspill/white-paper-2.php) ... [2] Id.