



Center for Justice & Democracy
90 Broad Street, Suite 401
New York, NY 10004
Tel: 212.267.2801
centerjd@centerjd.org
<http://centerjd.org>

January 5, 2011

The Honorable Troy King, Attorney General
Office of the Attorney General
500 Dexter Avenue
Montgomery, AL 36130

The Honorable Jim Hood, Attorney General
Walter Sillers Building
550 High Street, Suite 1200
Jackson, MS 39201

The Honorable James D. "Buddy" Caldwell
Attorney General
1885 N. Third Street
Baton Rouge, LA 70802

Dear Attorneys General:

We are contacting you today to express our serious concern about two matters:

1. The December 28, 2010 letter from New York University School of Law professor Stephen Gillers to Kenneth R. Feinberg, clearing Mr. Feinberg of certain ethical concerns as he administers the Gulf Coast Claims Facility (GCCF). This letter was written in response to Attorney General Caldwell's letter about Mr. Feinberg's role in light of Louisiana's Rules of Professional Conduct and the "public perception of [Mr. Feinberg's] role as an attorney for BP."
2. Revelations in Mobile's *Press-Register* late yesterday that Mr. Feinberg has hired a BP defense firm, the Mississippi-based law firm Brunini, Grantham, Grower and Hewes, to advise victims filing damages claims through the Gulf Coast Claims Facility.

Stephen Gillers Letter

As you may know, on December 6, 2010, we requested from BP the release of all documents detailing the financial arrangements between BP and GCCF claims administrator Ken Feinberg, his firm Feinberg Rozen, which BP is paying \$850,000/month. We also asked for all documentation detailing the financial arrangements between Feinberg Rozen, BP and the subcontracted firms, which have been given substantial responsibility to adjudicate claims

and which, according to the October 7, 2010 Mukasey report, are being paid directly by BP. To date, we have received no response to our request.

On December 22, we expressed additional concerns about the integrity of the GCCF process, which in our view required a thorough and immediate investigation before individuals and businesses were pressured into accepting final settlements and permanently signing away their rights. Mr. Gillers' letter was certainly not that. In fact, it raised additional ethical concerns surrounding Mr. Feinberg and Mr. Gillers.

This comes as quite a shock since initially it seemed that Mr. Gillers had the public interest and full transparency in mind. On November 22, 2010, after learning that BP and Feinberg Rozen considered their arrangement "verbal," *i.e.*, they have not committed to writing the firm's compensation arrangement and therefore there can be no public examination of it, Gillers was quoted by *Reuters* suggesting that full transparency of the fee arrangements was critical. He told *Reuters*, "Although strictly speaking, claimants are private and BP is private and Feinberg Rozen is private, this situation has public interest and concern written all over it ... In fact, it's hard to imagine a private compensation scheme that is as imbued with the public interest as this one."

We now learn that Mr. Gillers was hired by Mr. Feinberg - and paid by BP - to issue a new ethical opinion about the relationship between BP and Mr. Feinberg. In his December 28, 2010 letter, he declared that Mr. Feinberg is neutral, independent and not subject to BP's direction or control despite his firm being paid \$850,000 per month to settle claims against BP and obtain liability releases. Moreover, he dropped any recommendation to fix the sizeable problems regarding the lack of transparency concerning this fee arrangement.

What changed? Perhaps the *Associated Press* uncovered some of the answer. The newswire reported on December 30:

- "Gillers was paid \$950 an hour with BP's money" to "declare[] that the czar of the \$20 billion claims fund for Gulf oil spill victims is independent of the oil giant. ... Feinberg said the Gulf Coast Claims Facility, created to administer payments from the fund to people and businesses, is billing BP for Gillers' services. ... Both Gillers and Feinberg said they don't believe there is anything wrong with using BP money to pay for the advice."
- Gillers and Feinberg "deny any past relationship," yet they both teach at the same law school - New York University School of Law.
- Gillers said his work for Feinberg included "reading the letter Caldwell sent Feinberg, reading court papers filed by lawyers suing BP, and researching rules governing lawyers in Gulf Coast states and in Washington, where Feinberg's law firm is located." Yet as to their actual arrangement, Gillers says in his December 28 letter that apparently, like the public, he has seen nothing in writing. He stated, "In addition, ***I am told*** that the written agreement between you and BP will contain the following language in substance, which explicitly recognizes the fact that you are not BP's lawyer or its agent." (emphasis added.)

Mr. Gillers' letter is the second report (the first being the October 7, 2010 Mukasey report) that attempts to clear Mr. Feinberg's ethical issues, yet none of the concerns have dissipated and only seems to be getting worse.

Brunini, Grantham, Grower and Hewes

If there was ever any doubt that Mr. Feinberg has been covering up information about his arrangements not only with BP but also with firms he has hired to advise victims or adjudicated claims, the *Press-Register* story yesterday should remove all doubt.

The paper obtained "several legal contracts drafted on behalf of BP by lawyers with the Brunini firm. Those contracts describe Brunini attorneys as 'BP attorneys.'" Of all firms that Mr. Feinberg could hire, he chose this one to offer "free legal advice" to victims filing damage claims against BP, asking them to release BP of all future liability.

That Mr. Feinberg sees no ethical problem here is stunning. The paper reports, "'Ken was aware that Brunini was doing some work for BP, but it is completely separate,' said Amy Weiss, a spokeswoman for Feinberg. 'There is a wall in between. Ken did vet it, and there is no conflict. Any lawyers at that firm that are working for BP are not working on anything related to the GCCF.'" Of course, others are shocked by this revelation:

"It is almost like there is a direct conflict. They were representing British Petroleum and now they are supposed to be advising people suing BP? That should raise a lot of red flags," said Robert Wiygul, a Mississippi-based environmental attorney not affiliated with the Brunini firm.

"It is one of our cardinal rules as an attorney, you can't represent people with opposing interests. That's No. 1 in the rule book," Wiygul said.

We cannot imagine that Mr. Gillers reviewed the propriety of Mr. Feinberg choosing a BP defense firm to advise claimants. Whether he did and found no problem with it, or did not because Mr. Feinberg failed to disclose this information to him, the validity of his letter seems even more questionable.

It is time for BP and Mr. Feinberg to stop commissioning reports and paying huge sums in an attempt to bury clear conflict of interest problems, while at the same time releasing no actual documents to the public. In fact, without the work of some determined journalists, we would know even less.

We hope that your office will call for the release of all documents concerning all arrangements and contracts between BP, Ken Feinberg, Feinberg Rozen and all subcontracting firms (which have enormous responsibility advising victims and adjudicating claims) so that the public, communities, local businesses and all of BP's victims - who are not being paid - can evaluate them on their own.

Thank you very much for your consideration. Please do not hesitate to contact me with any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joanne Doroshow", with a long horizontal flourish extending to the right.

Joanne Doroshow
Executive Director