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December 22, 2010

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The Honorable Bill McCollum  
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The Honorable Jim Hood  
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The Honorable James D. "Buddy" Caldwell  
Attorney General  
1885 N. Third Street  
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The Honorable Greg Abbott  
Attorney General  
PO Box 12548  
Austin, TX 78711-2548

Dear Attorneys General:

We are contacting you today about potential conflicts of interest related to the administration of the Gulf Coast Claims Facility (GCCF). We believe these conflicts of interest raise urgent concerns about the integrity of the GCCF process and require a thorough and immediate investigation before individuals and businesses are pressured into accepting final settlements and permanently signing away their rights.

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 are adjudicating claims. We asked for this information because of Mr. Feinberg's role as the acting attorney for BP, through which Mr. Feinberg is directly engaging unrepresented victims while receiving in excess of \$10 million a year from BP. To date, we have received no response to our request.

We noted in our letter that Mr. Feinberg, employed by BP, has decided on his own authority that all claims recipients must release all companies who caused this disaster from any and all legal responsibility, no matter how grossly negligent they were. This sweeping release, which assigns victims' claims to BP, benefits only one actor: BP – the company that pays Mr. Feinberg's salary. We understand that we are not alone in having these concerns. Alabama Governor Bob Riley recently called Feinberg's release requirements "over-broad and simply unconscionable." We also understand that this week, those pursuing litigation have officially asked the judge to order changes to the release form to, among other things, allow victims to pursue lawsuits against other culpable companies.

In our December 6 letter, we also noted that the long-term effects of the disaster on businesses and communities would not be known for several years. Yet potential claimants have been warned by Mr. Feinberg that the longer they wait to accept a lump sum final payment, the less money they may get. We noted that this will lead to undue pressure on businesses to settle low before they have any idea what they may need to survive, to the benefit of BP.

Now, according to a newspaper account published this week in *USA Today*, we learned that Mr. Feinberg has taken a decidedly biased view of the science as well, also to BP's benefit. According to the paper, Mr. Feinberg described the disaster's impact as "relatively minor," stating, "We're asking everybody right now, scientists, biologists, give us your best estimate ... of the status of the Gulf ... We're hearing right now, not much long-term adverse impact."

Given that BP is arguing that the government overestimated by about 50 percent the amount of oil that spilled in the Gulf, perhaps it is not surprising that the Mr. Feinberg would say this. However, it is flatly untrue, could significantly impact how the GCCF views victims' losses, and raises very serious conflict of interest concerns as Mr. Feinberg continues to pressure victims to settle.

In fact, many scientists strongly disagree with Mr. Feinberg's assessment. Just this week, a top aide to Louisiana Governor Bobby Jindal said that the environmental impact from the oil spill might take two decades to understand. (Nikki Buskey, "Oil-impact study may take 20 years; But states plan to request money from BP in advance for several recovery projects," *HoumaToday.com*, December 20, 2010.)

A recent scientific conference, covered in the November 17, 2010 *Houston Chronicle* ("Harm to Gulf from oil spill unclear; Environmental damage may not be known for years, panel says"), revealed tremendous concern within the scientific community about the long term damage. From the article:

“I caution anyone who says that we're on our way to recovery after a year or two,’ marine biologist Tom Shirley.”

“Irving Mendelsohn, a wetlands expert at Louisiana State University and adviser to BP ... said it won't be until spring - the time for rebirth in the natural cycle - before it's clear how much oil penetrated the soil below the marsh grasses.”

“Scientists still do not understand what devastated the herring population, which used to be harvested each year by the tens of thousands of tons but has not recovered and may never return.”

The *Orlando Sentinel* reported on August 20, 2010 (“Gauging BP oil spill's damage may take a decade”):

A Florida research vessel last week discovered polluted plankton on the floor of the Gulf of Mexico, an indication that toxic oil from the BP spill may be setting off a chain reaction of ecological damage.

This and other findings have prompted marine scientists to warn that determining the long-term damage to the Gulf and its marine life — and how to repair it — will require as much as 10 years of study at a cost of hundreds of millions of dollars....

“It's going to take a decade or more,” said Steve Murawski, the lead scientist for the National Oceanic and Atmospheric Administration. “We are going to look at the residual effects of 5 million barrels of oil in the environment. That's a lot of carbon. We know there are going to be damages to turtles and fish and other populations.”

See also:

- David Ferrara, “Scientists to begin yearlong study of oil spill's impact on Gulf, *Press-Register*, December 12, 2010 (“Research conducted throughout the next year on this summer's record-setting oil spill will help scientists across Alabama better understand its immediate impact on the Gulf of Mexico, and help better prepare for similar catastrophes in the future.”) Note that this research is being funded by BP's own grant money!
- Jim Ash, “UWF economist: BP low-balling oil spill impact,” *Florida Capital News*, December 8, 2010 (“It's too early to calculate all the losses, but the BP oil spill was more damaging to Northwest Florida than the oil giant is so far willing to admit, a University of West Florida economist suggested to a Senate panel on Tuesday.”)
- Gerald Helguero, “Years needed to assess spill damage; BP takes \$32.2 billion charge,” *International Business Times*, July 28, 2010 (“Although the concept of assessing injuries may sound relatively straightforward, understanding complex ecosystems, the services these ecosystems provide, and the injuries caused by oil and hazardous substances takes time - often years,” said Tony Penn, a deputy chief

within the Office of Response and Restoration at the National Oceanic and Atmospheric Administration.”)

And just this month, Roffer's Ocean Fishing Forecasting Service, Inc., which has a strong interest in the recovery of the fishing industry, had these startling things to say:

[I]t is clear that a substantial amount of oil remains in the central Gulf of Mexico both in the ocean, on the sea floor, and along the coastal zone beaches and marshes. It is anticipated that this oil - dispersant mixture will continue to exist in many different chemical forms for many years and decades. The effects of this disaster remain to be determined and many of the effects may not be apparent for years to come. ...

The impacts are likely to be seen at the habitat, organism, population and ecosystem levels. The impacts probably will range from slight degradation to total loss of essential habitats. Changes in habitat connectivity as a result of oil spill responses by humans (e.g. new beach barriers, new islands, increased freshwater outflow from pumping, digging, etc.) are already obvious. At the organism level, effects are likely to be manifested in direct injury and death (already seen), external and internal deformities, cancer and other diseases, genetic defects, reduction of feeding efficiency, changes in benthic survival, as well as, changes in social and sexual behavior. ...

There is great concern whether the biological impacts at the individual and population level will have cascading impacts on food webs and ecosystems such as loss of prey species (menhaden, other herrings/sardines, jacks, shrimp, etc.) bases along with loss of large pelagic (mammals, tunas, billfishes, sharks, etc.) and benthic (e.g. snappers and groupers) species. Remember that snappers, groupers and other organisms burrow into the bottom where oil has been found and probably still occurs. ...

While there have been some reports in the media to the contrary, it is highly unlikely that depressed populations have increased their abundance significantly due to the relatively short-term stoppage of fishing. One needs to understand that some of the effects on the ecosystem are likely to be subtle at first, but significant over time. Apparent changes natural mortality and fishing mortality will have to be studied through fishery independent population assessments that produce size structured population estimates in space and time. ...

Some people have stated that the oil has degraded to the point that it is more like asphalt, i.e. rock-like in composition and no longer is a problem. We have asked these people if they would take freshly laid asphalt and put it in their vegetable gardens to grow food that they would want to eat.

As a national public interest organization concerned about the tremendous historic and public significance of the GCCF process, we are extremely alarmed by conflicts of interest that could significantly influence the outcome for thousand of individuals and businesses in the Gulf region. When Mr. Feinberg describes the damage in the Gulf as “minimal,” he is certainly not speaking for those in the scientific world. Rather, it appears that he is speaking for BP, which is paying him and has a financial interest in minimizing claims. His views raise significant conflict of interest concerns, of which there should be a thorough and immediate investigation before individuals and businesses are pressured by Mr. Feinberg into accepting final settlements and permanently signing away their rights. We hope that your office will consider pursuing such an investigation as quickly as possible.

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

Sincerely,



Joanne Doroshow  
Executive Director

cc:

Alabama State Bar  
Florida Bar Association  
Louisiana State Bar Association  
Mississippi Bar Association  
State Bar of Texas