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# ***Newsroom***

## **Logan on New Strings Attached to BP Awards**

Dean David Logan spoke to Reuters for a widely published article on the new strings attached to awards paid out of the BP oil-spill compensation fund.

This Reuters piece, "[New strings attached to BP oil spill awards](#)" by Moira Herbst, was picked up by numerous media outlets over the Thanksgiving holiday:

**NEW YORK, Nov 24 (Reuters Legal)** - The administrator of BP Plc's \$20-billion fund for victims of its U.S. offshore oil spill attached new strings on Wednesday to provisions for paying final awards.

Kenneth Feinberg's protocol largely matches an early draft circulated to attorneys and lawmakers. But a new section gives BP the right to appeal awards of more than \$500,000 to a judicial panel set up by the fund and bars victims from disputing any awards under \$250,000.

Feinberg's office did not immediately respond to messages seeking an explanation on how these dollar amounts were determined.



'I can see no basis for the choice of those numbers ... they're making up a system here,' said **David A. Logan, dean of Roger Williams University School of Law in Bristol, Rhode Island.**

All the same, **Logan said:** 'The numbers they chose may be arbitrary, but they're not unreasonable. The law is full of arbitrary dollar limits and cutoff points for determining jurisdiction in court. Above one dollar level you're treated one way; below it you're treated another.'

U.S. President Barack Obama announced the formation of the Gulf Coast Claims Facility (GCCF) in June as a possible alternative to litigation of victims' claims in what was to become the worst offshore oil spill in U.S. history.

Justice Department spokeswoman Jessica A. Smith said the department was reviewing the new process.

'As we have made clear, there are a number of changes that we believe Mr. Feinberg must make to the protocol and release that we hope will better provide relief to the people and communities of the Gulf Coast.'

The 14-page protocol also requires that claimants applying for final lump-sum payments after Nov. 23 give up the right to sue BP and other parties if they accept payment, whereas no such strings were attached for emergency payments.

### **'IMPARTIAL' JUDGES**

Appeals decisions are binding only on BP. Claimants have the right to reject the GCCF appeals judges' decision and pursue a claim in the courts or as otherwise allowed under the Oil Pollution Act of 1990.

The protocol says Feinberg will choose a 'distinguished member of the legal profession' who will identify individuals, 'e.g., retired federal or state judges, respected legal academics, professional mediators or arbitrators, to serve as impartial GCCF Appeals Judges.'

Once an appeal is certified, Feinberg will assign it to a panel made up of three appeals judges. The panel will make a decision within 14 days after receiving the claim file, the protocol says.

'The (appeals) setup shows that the Gulf Coast Claims Facility wants a lot of claims to be eligible for appeals but not all of them,' Logan said. 'Also I presume the appeals process is being paid by BP. They don't want to offer everyone at every level the ability to appeal.'

'There was talk over the summer, at least in academic circles, that BP wouldn't have any right of appeal. So obviously that's changed,' he added.

'On the face of it it's not unfair that BP has the right of appeal, unless you think the deck is stacked in their favor.'

BP spokesman Daren Beaudou referred questions about the appeals judges to Feinberg. Beaudou said the company had nothing to add.

### **FEINBERG CRITICIZED**

Attorneys representing claimants and some public interest groups were critical of the appeals process, noting that Feinberg was being paid by BP.

'Feinberg is acting in BP's interest in this situation and not the claimants', said Brian H. Barr, a partner at Pensacola, Florida's Levin Papantonio Thomas Mitchell Rafferty & Proctor who serves on the executive committee for plaintiffs in the multi-district litigation against BP before a judge in New Orleans. Barr said

he expected that the judges on the appeals panel would have a corporate-defense background and be friendlier to BP than to claimants. 'To me, the victims' best appeal process is going to court.'

In a conference call with reporters on Wednesday, Feinberg said the new appeals process was voluntary and that claimants could choose from multiple avenues to dispute the fund's decisions. 'If (claimants) don't like what GCCF is doing, if they haven't heard from GCCF, under law they can appeal to the U.S. Coast Guard,' Feinberg said. 'If they don't like that (response) they can go to federal court. They do have options.'

Jamie Court, president of Consumer Watchdog, a Santa Monica, California-based consumer advocacy group, said he was shocked that the new process allowed BP to dispute claim awards. 'I don't believe BP should have the right to appeal any award,' he said. 'Victims are turning their fortunes over to an employee of BP, Mr. Feinberg, and his judgments in large cases for the victim should not be allowed to be second-guessed by BP.'

For full story, click [here](#).