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Newsroom

Dean Logan on BP Compensation Fund

Dean David Logan speaks to Reuters about the changing dynamics governing BP's oil spill compensation fund and its administrator, Kenneth Feinberg.

REUTERS: [*"BP claims process enters new, uncertain phase"*](#) by Moira Herbst



NEW YORK, Feb 10, 2011 (Reuters Legal) - Kenneth Feinberg, the formerly freewheeling administrator of BP Plc's fund to compensate victims of last year's oil spill, could be forced to revamp dramatically how he handles claims now that the fund has come under the jurisdiction of a federal judge in New Orleans.

A ruling last week by U.S. District Judge Carl Barbier that Feinberg stop telling potential claimants that he is "completely independent" of BP brings Feinberg and the fund -- created in the wake of the largest oil spill in U.S. history -- under judicial oversight for the first time.

Beyond the immediate directive about how the fund describes itself, Barbier's decision also opens the door for more changes to how the fund operates, according to experts in mass torts and legal ethics. Specifically, it could lead to the renegotiation or undoing of settled claims, ongoing court intervention in the fund's operations, and more claimants seeking legal representation.



"It's a significant assertion of oversight, if not control, of the claims process by the judge," said **David Logan, dean of Roger Williams University School of Law in Bristol, Rhode Island**. "There is now a question mark looming over the accuracy of the decisions made up to this point by the (fund) and over how it will work moving forward."

The unprecedented \$20 billion Gulf Coast Claims Facility (GCCF) was set up after a meeting between BP and President Barack Obama last June. The White House said at the time that the claims process would be independent and Obama tapped Feinberg, who ran the 9/11 victims' compensation fund, to administer it. BP pays \$850,000 a month to Feinberg's Washington, D.C., firm, Feinberg Rozen, for his services.

Feinberg, who has promoted his claims process as faster and less costly than litigation, has paid out more than 250,000 awards to individuals and businesses worth more than \$3.36 billion. Of those, more than 86,000 claimants signed releases saying they will not sue BP or its partners. Until last week's ruling by Barbier, who is overseeing hundreds of spill-related lawsuits against BP, Feinberg did not answer to any court or government agency.

To be sure, some scholars and practitioners are downplaying the potential impact of Barbier's order and say the court is unlikely to intervene further in the fund's operations. In his ruling, Barbier called his own order a "narrowly focused remedy" that "will not unduly burden BP's, Mr. Feinberg's and the GCCF's ability to speak on their own behalf."

But several academics and plaintiffs' attorneys said that, based on Barbier's ruling, settlements already made with the fund could be reevaluated. A court could invalidate the agreements or allow them to be renegotiated if claimants can prove there was deception on the part of the fund, said Monroe Freedman, a professor at Hofstra University School of Law and contributor to the Legal Ethics Forum, a popular legal blog.

The court's opinion makes it clear that Feinberg acted "misleadingly, at best," by saying he was independent of BP, Freedman said. "As a result, tens of thousands of claimants who were effectively defrauded will have the opportunity to open the settlements they entered into." In an e-mail, BP said, "We do not believe that there is any basis to undo or challenge the settlements that have been concluded." Feinberg declined to comment.

Kevin Dean, an attorney with the plaintiffs' firm Motley Rice in Mount Pleasant, South Carolina, said he has reached out to clients who had accepted settlements and given up the right to sue to inform them of the judge's ruling. He said his clients were forced to accept these settlements under financial duress and were not informed of their rights before they signed legal releases. If the court takes no further action in the next 30 to 60 days, Dean said he will confer again with his clients to explore their legal options. "My firm believes that clients were forced financially to take an ill-advised settlement, and that that's a violation of the Oil Pollution Act."

The Oil Pollution Act of 1990 requires the responsible party -- in this case, BP -- to set up a claims fund to compensate victims, but does not specify how the fund should resolve claims and makes no mention of claimants signing legal releases giving up the right to sue. Now that Barbier has brought the fund under his jurisdiction in the Eastern District of Louisiana, he could rule on whether the fund can ask claimants to sign away their legal rights. And he could appoint a special master to supervise the fund's oral and written communications, including release forms.

In addition, more claimants or would-be claimants could seek legal representation for their dealings with the fund. As of this week, fewer than 3 percent of those filing claims had their own lawyers. Plaintiffs' attorney Daniel Becnel, who heads a 21-lawyer firm based in Reserve, Louisiana, said his firm has taken on hundreds of new clients in the days following Barbier's ruling -- most of them looking for help bargaining with the claims fund.

Claimants now understand that the process is adversarial, according to Byron Stier, a professor of mass tort litigation at Southwestern Law School in Los Angeles. "It's much more one of haggling and negotiation than of processing paperwork and tendering contracts," Stier said. "It's now clear that claimants need counsel to determine if the fund is the right path for them."

Barbier has asked plaintiffs and defense in the consolidated case against BP to submit briefs by February 11 on the claim fund's compliance with the Oil Pollution Act.

(Reporting by Moira Herbst of Reuters Legal; Editing by Eddie Evans and Eric Effron)

(This article first appeared on [Westlaw News & Insight](#).)

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