

# The Times-Picayune

## Gulf Coast Claims Facility creates tension as lawyers scramble to line up plaintiffs in BP litigation

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By **Rebecca Mowbray, The Times-Picayune**

The committee of plaintiff attorneys leading the fight against BP wants to make sure everyone knows that the deadline for filing claims against Deepwater Horizon rig owner Transocean Ltd. is April 20, so they've asked U.S. District Court Judge Carl Barbier for permission to run special advertisements instructing people what to do.

But the advertisement, which tells people they can fill out a special short form to file their grievance, also includes the sentence: "Filing this claim form will also join you in the master lawsuit that has been filed against BP and the other defendants."

It also tells people that they can participate in the federal lawsuit even if they have filed a claim with the Gulf Coast Claims Facility run by attorney Ken Feinberg, a statement which seems to run counter to the notion that settlements require a waiver of litigation rights.

The effort has met with resistance from corporate defendants and plaintiff attorneys alike, who charge that the effort is confusing, unnecessary, could jeopardize people's recovery rights under the Oil Pollution Act of 1990, and, most importantly, is a thinly veiled effort to recruit people for the litigation.

"The proposed notice sought by the PSC (Plaintiffs Steering Committee) appears simply to be a mechanism to encourage additional plaintiffs to prematurely join this Multi District Litigation -- there can be no legitimate reason for such at this stage, especially in light of the fact that it is still unclear whether the claims process will fairly and reasonably compensate claimants," an opposition statement filed in court by Houston attorney Anthony Buzbee says. "The notice fails to disclose the PSC's financial interest in that it will no doubt seek attorney's fees and expenses from the recovery of any plaintiff who submits the short form joinder....The only benefit from such notice is to the PSC, to the exclusion of other attorneys, and in contravention of private attorneys' contracts with their clients."

The skirmish is a sign of continued tension over the \$20 billion Gulf Coast Claims Facility created at the behest of President Barack Obama with BP money and what it will mean for the litigation if too many people settle their claims.

It comes as about 30 plaintiff attorneys from across the Gulf Coast with thousands of claims representing hundreds of millions of dollars of damages are working closely with Feinberg to settle their claims en masse. On Feb. 11, Louisiana attorneys Danny Becnel and **Richard Arsenault flew to Washington to meet with Feinberg and deliver spreadsheets with lists of**

claimants, their damage, the amounts, their attorneys and a checklist of documentation on behalf of the loosely organized group.

They're starting with what they believe are the easiest claims -- those of condominium owners -- and plan to work group by group until they get to the hardest type of claims.

Feinberg is optimistic about the approach. "We are reviewing thousands of claims submitted by Becnel, Arsenault and other lawyers who are part of their consortium. We are continuing to discuss the claims with them. No final date yet estimated for completing the review, but it will likely be sooner rather than later," Feinberg said in an e-mail.

Despite the questions that have been raised about the Feinberg process, Becnel said he believes it's a better deal for his clients than potentially waiting years in the litigation. He noted that after several test trials in the Chinese-manufactured drywall litigation finding in favor of plaintiffs, people are still waiting for money to repair their homes. With the Feinberg fund, money is available, and clients can settle for lower costs -- he's charging his clients a ten percent legal fee plus 2.5 percent to cover the cost of the experts he hired along the way.

"You can't wait. You can't do better than that," Becnel said.

Attorney Stuart Smith said that he believes that some of his toughest cases will end up in litigation, but that many can be resolved through the Feinberg process. "We think it's in our clients' best interests to try to resolve their cases at this stage."

The April 20 date that is the subject of the controversial advertisement is the deadline for anyone who has a grievance against Transocean to file a claim.

At Transocean's behest, a special trial called a Limitation of Shipowner's Liability Act proceeding will start on Feb. 27, 2012. It will be the first oil spill trial in Judge Barbier's court, and it is expected to last about two months.

Transocean invoked the 1851 maritime law to try to limit its personal injury, death and property damage liability in the accident to the \$26.8 million value of its sunken freight. In doing so, according to Tulane admiralty law professor Martin Davies, Transocean must prove that the accident occurred "without the privity or knowledge" of the corporate office, and to do so, it will point the finger at other companies involved in the incident.

As a practical matter, maritime attorneys say, answering the question about whether Transocean can limit its liability will determine the proportion of fault among the various companies involved in the disaster, which will be useful in later phases of the litigation.

Jim Roy and Steve Herman, the attorneys jointly in charge of the plaintiff's steering committee, say that people with gripes against Transocean need to get involved to stop Transocean from limiting its financial exposure to \$26.8 million.

They say the short form joinder will make it easy for people to sign up for the limitation of liability proceeding without paying fees, and having that double as a sign-up for the mass litigation against BP simply makes it easier for people to protect their rights.

"You may be able to recover some of your damages from the GCCF, but you're not going to get all of the damages, and you're not going to get punitive damages," Herman said. "The safest course of action, and the only way to guarantee that his or her rights are protected, is to file a claim in the litigation, using the short form joinder by April 20."

As for the language in the advertisement that people can participate in the federal lawsuit even if they have already filed a claim with the Feinberg fund, and doing so will not prevent them from recovering any money from that fund, Roy and Herman said that it's true. Until or unless people reach a final settlement with Feinberg, they can protect their rights by pursuing all options, and even if they do reach a final settlement with him, there's no guarantee that the waivers of any future litigation rights will stand up in court.

Cameron International, the manufacturer of the blowout preventer, said in a filing the advertisement "offers inaccurate and confusing statements." Transocean noted in a filing that it already filed public notice under the time-tested rules that have been on the books since 1872, and voluntarily re-published notice when the case was moved from Houston to New Orleans.

Buzbee, Becnel, and Peter Cambs, a Florida attorney for a charter boat company, say that the ad doesn't disclose that filing the short form joinder would automatically make the plaintiff's steering committee a person's lawyer and would require that person to pay the plaintiff's committee hefty fees from any eventual recovery.

The notice "consists of a veiled attempt to make all limitation claimants subject to the auspices of the PSC," Cambs wrote in a filing. Davies, the Tulane maritime law professor, said that the Transocean proceeding has nothing to do with the master lawsuit against BP or general economic losses.

Edward Sherman, a Tulane law professor who studies mass proceedings like the BP litigation, said any ultimate class action over the Deepwater Horizon disaster would probably be an "opt-out" class, meaning that anybody affected is automatically in unless they opt out of the litigation, so he's not sure what practical effect the automatic sign-ups would have, unless the PSC wants to identify the people who are potentially most interested in the litigation.

But, he said, there's no denying the unease over the Feinberg settlements, because the more people who stay with the litigation, the more leverage the attorneys will have in the case. "The PSC has an interest in seeing more people stay with the MDL (the litigation), and not bailing out by taking a claim settlement," Sherman said. "I think there's inevitable tension there."

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