

BDO Consulting, a Division of BDO USA, LLP

**INDEPENDENT EVALUATION
OF THE
GULF COAST CLAIMS FACILITY
REPORT OF FINDINGS &
OBSERVATIONS
TO THE
U.S. DEPARTMENT OF JUSTICE**

June 5, 2012



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I. INTRODUCTION

At the request of the U.S. Department of Justice (the “DOJ”), BDO Consulting, a division of BDO USA, LLP (“BDO”), conducted an independent evaluation of the Gulf Coast Claims Facility (the “GCCF”). The GCCF was established to receive and process claims by individuals and businesses for costs and damages as a result of the oil discharges from the April 20, 2010 *Deepwater Horizon* incident (“the Spill”). On December 21, 2011, the DOJ publicly announced the selection of BDO to perform the independent evaluation and mandated that our work be fully independent,¹ be overseen and directed by the DOJ, and meet the highest professional standards. (See Exhibit A.)

In conducting our independent evaluation, we were at all times mindful of the unprecedented nature of the 2010 *Deepwater Horizon* explosion and the resulting Spill, and the acute financial distress endured by individuals and businesses in the region. We conducted our independent evaluation of the GCCF with the professional care commensurate with this task. At no point did we experience any pressure from any source to do anything other than conduct an objective review of the facts and make a presentation of our unbiased findings and observations.

Our approach included, among other things, the interview of over 40 professionals from the GCCF and subcontractors engaged to provide services to the GCCF, the testing of tens of thousands of claims that had been processed by the GCCF, the extensive use of data analytics to identify broader populations of claims affected by issues uncovered by our claims testing, the further review of the potentially affected claims to identify claimants who were negatively

¹ The December 21, 2011 letter of Associate U.S. Attorney General Thomas J. Perrelli stated, “Second, it is absolutely critical that your review be fully independent. While Mr. Feinberg has agreed that the GCCF will pay the costs associated with the review, *your work will be overseen and directed by the Department of Justice.* If at any time you are not receiving the cooperation or information you need for you review, please let me know immediately.” [Italics in original.] During the course of our engagement, BDO has not had any direct communications with BP, its management or its employees.

impacted, and the observation of the recalculations performed by the GCCF in preparing to make first-time or additional payments² or offers for payment to impacted claimants.

In this report, we set forth our findings and observations resulting from our independent evaluation of the GCCF's operations. The complexity of the GCCF process inevitably required development of specialized terminology, which we have used in this report where necessary. However, as we hope that our report will be useful to a wide range of audiences, particularly the hundreds of thousands of individuals and businesses affected by the Spill, we have set forth the results of our independent evaluation as simply and directly as possible.

BDO's findings and observations are only properly understood in the full context of our work. Citation of individual findings and observations without reference to the full context of our independent evaluation as set forth in this report may result in, among other things, misinterpretation of the nature, extent and scope of our work, the direction provided by the DOJ, the cooperation and materials provided by GCCF personnel, and our findings and observations.

II. AREAS OF FOCUS & APPROACH

A. Genesis of the Independent Evaluation

From its inception and throughout the GCCF's history, public officials, potential claimants and other interested parties expressed their expectations about the transparency and timeliness of its operations. In July 2011, following input from these parties, GCCF Administrator, Kenneth Feinberg, reached an agreement with U.S. Attorney General Eric Holder in which Mr. Feinberg agreed that the GCCF would undergo an independent evaluation of its operations and that the independent evaluation would begin before the end of the year. Congress passed legislation that required the DOJ "to identify an independent auditor to evaluate" the GCCF.³

After a process that included meetings with representatives of Attorneys General of the Gulf States, the DOJ selected BDO to conduct an independent evaluation, including claims testing, of

² "First-time payments" were made to claimants who had not received any payments from the GCCF either because their claim was incorrectly denied or found deficient due to errors identified through our procedures. "Additional payments" were made to claimants who had received payments from the GCCF, but had been underpaid as a result of the errors identified through our procedures.

³ The GCCF informed us that, from its inception, it contemplated having a third party conduct an independent evaluation at the conclusion of its operations.

the GCCF in a letter dated December 21, 2011. The DOJ publicly announced the selection of BDO to perform the independent evaluation and mandated that our work be fully independent and meet the highest professional standards.

B. Areas of Focus

Prior to our selection to perform this independent evaluation, we met with DOJ personnel and public officials from Gulf States who briefed us on concerns raised by interested parties regarding the operations of the GCCF. Once we were selected, the DOJ requested that our independent evaluation focus on certain concerns, which included, among others: the qualifications, number and oversight of GCCF resources; appropriate consideration of claimant documentation; communications with claimants; consistency of outcomes among claimants that may appear to have been similarly situated; and timely processing of claims.

With input from the DOJ, we designed our approach to develop an understanding of the potential bases for these concerns. Significantly, the DOJ emphasized the need to take appropriate steps, including the correction of errors and the improvement of GCCF processes, to ensure that victims of the Spill are fairly treated and properly compensated. During the selection process and in discussions after we were selected, the DOJ requested that we gain an understanding of and memorialize the GCCF's operations, protocols and methodologies; test claims to identify and correct errors and improve GCCF processes; and provide input to help determine the validity of certain concerns brought to our attention by the DOJ, as a result of its meetings with public officials and stakeholders in the Gulf States. We designed our approach to meet these objectives.

Based upon direction received from the DOJ, we undertook an objective assessment of certain aspects of the GCCF with the primary purpose of gaining a comprehensive understanding of how it operated and identifying issues in the GCCF's processing of claims to determine whether they were consistent with the concerns presented to us by the DOJ. We did not, however, set out to substitute our judgment for that of the GCCF, and we were not asked to reach an overarching conclusion concerning whether the GCCF succeeded (or failed) in its efforts. Additionally, we have not reached conclusions regarding whether the GCCF met the obligations of the BP subsidiaries, BP Exploration and Production and its guarantor, BP Corporation North America, Inc., as Responsible Parties under the Oil Pollution Act of 1990 ("OPA"), including, among

other things, whether it adopted the correct standard of legal causation. That determination is beyond the scope of our work and requires, among other things, legal expertise.

Our procedures were focused on the GCCF's handling of claims for lost earnings or profits, which constituted 90.3% of the claims received, 96.8% of the amounts paid and 99.8% of the claims paid by the GCCF.⁴

We also met with Mr. Feinberg, who, from the outset, pledged cooperation on the part of the GCCF, its subcontractors and expert advisors. We were granted access to GCCF subcontractors and advisors to conduct interviews and provided with access to GCCF databases, including claim files. We also worked with GCCF personnel to understand issues identified in our claims testing. When we determined that an issue might be an error, we worked with the GCCF to confirm whether it was an error, determine its likely cause and search the claims database for other claimants potentially affected by those errors. We also worked with the GCCF to identify errors that resulted in underpayments to claimants and to expedite the issuance of payments and/or offers of payment to those claimants.

During our work, we were able to reach senior GCCF personnel on a virtually uninterrupted basis throughout the work week, and on weekends and holidays. While the GCCF personnel continued to supervise the processing of claims and other tasks, they made themselves available for daily conference calls and responded to our various requests for clarification of the issues we observed during interviews and while testing specific claims. Additional staff was retained and assigned by BrownGreer PLC ("BrownGreer"), one of the entities engaged to assist the GCCF with reviewing claim files, for the purpose of making first-time and additional payments to claimants who were negatively impacted by errors identified through our work.

After the announcement of the independent evaluation to be conducted by BDO and during the course of our work, we received communications from claimants or their counsel directly requesting our attention to their specific claims or concerns. We received approximately a half dozen of these communications, some of which pertained to multiple claimants. As we received them, we confirmed with the DOJ that the concerns raised by these claimants were similar to

⁴ We have not addressed the processes used by the GCCF to receive and process claims for: removal and clean-up costs; damage to real or personal property; loss of subsistence use of natural resources; or economic damages sustained as a result of physical injury or death.

those identified by the DOJ, as a result of input from public officials and stakeholders in the Gulf States, and designed our approach to identify claimants generally who might have experienced the types of concerns raised by these specific claimants. While we did not address these specific claimants directly, we did consider the issues that these claimants raised as we performed our interviews and testing.

During the course of our independent evaluation, the GCCF continued to process claims and implement changes to its processes unrelated to our work. Subsequent to December 30, 2011 (which was the point at which data was “frozen” at our request to ensure that we would be able to work with a fixed data set) through March 8, 2012,⁵ the GCCF paid approximately 7,200 additional claims, totaling approximately \$261 million. Those additional claims were not subject to our claims-testing procedures.

Also during the course of our work, the GCCF responded to our inquiries and, as we made claims-specific findings and observations, met with us to address them, as discussed below. In connection with these meetings, BDO and BrownGreer developed database queries and other claims testing approaches to search for other claimants potentially affected by issues identified during our claims testing.

From our first meetings with the DOJ, it has emphasized that because the GCCF was an ongoing claims facility, we were to conduct our independent evaluation without any unnecessary delay so that the GCCF would have the benefit of our observations in its future processing of claims. We have conducted this engagement according to those instructions, even after the announcement of a settlement in the class action lawsuit, *In Re: Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico on April 20, 2010*, and the related court order providing for the transfer of claims processing from the GCCF to a court-supervised claims program (See Section III.E, below).

⁵ As described in Section III.E, below, on March 2, 2012, BP reached an agreement-in-principle with plaintiffs in the class action lawsuit, *In Re: Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico on April 20, 2010*, pending in the U.S. District Court for the Eastern District of Louisiana. On March 8, 2012, in the context of that litigation, U.S. District Court Judge Carl Barbier issued an order (the “Transition Order”) creating a process for transitioning from the GCCF claims process to the court-authorized claims process that would result from the settlement and setting forth the parameters by which claims currently pending with the GCCF would be handled in the Transition Process. That order effectively terminated the ongoing processing of new claims by the Kenneth Feinberg-administered GCCF.

We have remained mindful that our observations may provide useful guidance to those involved with administering and overseeing that process and for future purposes.

On April 19, 2012, we issued an Executive Summary of our Findings & Observations, which is attached hereto as Exhibit B.

C. The BDO Independent Evaluation Team

BDO is a national professional services firm with a more than 100-year history. Our professionals provide assurance, tax, financial advisory and consulting services to privately-held and publicly-traded companies through 41 offices nationwide. As a Member Firm of BDO International Limited (the fifth largest accountancy and consulting network in the world), BDO serves multi-national clients through a global network of more than 1,118 offices in 135 countries.

The technical abilities and varied backgrounds of our professionals and their experience in large and complex matters enabled us to respond rapidly and comprehensively to this assignment. Specifically, we have assisted government agencies, law firms and companies with large, complex investigations, evaluation of losses in the wake of natural and manmade disasters, administration of claims and compliance with government-mandated remediations.

We have worked on engagements that include: the independent examination of AOL Time Warner at the direction of the U.S. Securities and Exchange Commission (“SEC”); the evaluation of the accounting and business practices in mortgage-related litigation regarding New Century Financial Corporation, Countrywide Financial Corporation and American Home Mortgage; investigation of the accounting practices at Enron Corporation; calculation of distributions due to investors for the Independent Liquidating Trustee of the Lipper Hedge Funds; court-ordered tracing of funds in various Adelphia Communications Corporation entities; and assistance with anti-money laundering remediation efforts at major international banks undertaken as a result of enforcement actions instituted by various prosecutorial and enforcement agencies, including the DOJ, the Financial Crimes Enforcement Network, the Board of Governors of the Federal Reserve System, the U.S. Office of the Comptroller of the Currency and the New York State Banking Department.

Our engagement team included professionals with experience in claims evaluation, including providing assistance to numerous insured organizations with business interruption claims relating to damage from, among others, Hurricanes Katrina, Wilma, Ike and Gustav. We have also served as the claims administrator in class action settlements and have provided expert testimony regarding the appropriateness of claims payments in litigation among potentially liable parties.

Based on our unique structure of interrelated and complementary practices, we were able to efficiently field a multidisciplinary team of professionals with appropriate experience and credentials for this engagement. After discussing our qualifications with public officials from the Gulf States and the GCCF, the DOJ selected BDO to perform this independent evaluation. Our leadership group included partners and managing directors, each with between 15 and 35 years of forensic accounting, investigative, technology and/or auditing experience, who have handled a broad array of complex matters during their careers. (See Exhibit C for more background on our engagement leadership team.)

In total, our team included over 130 professionals with a diverse range of qualifications in the assurance, tax, risk advisory, investigative, claims evaluation and technology areas. The credentials held by members of our team include the following: Certified Public Accountant, Certified Fraud Examiner, Certified in Financial Forensics, Certified Anti-Money Laundering Specialist, Certified Internal Auditor, Oracle Certified Associate and Project Management Professional.

D. Approach to the Independent Evaluation

As our independent evaluation did not begin until late December 2011 and focused on transactions processed by the GCCF as of December 30, 2011, our approach was necessarily focused on developing a retrospective understanding of the first 17 months of the GCCF's formation, evolution and previously processed claims. While we developed an understanding of the challenges faced by the GCCF, claimants and others, we did not observe firsthand GCCF's daily decision-making process and, as a result, there are limitations in our ability to comment on the bases for those decisions, as well as on all the specific factors and considerations that resulted in the evolving GCCF processes.

Our approach involved developing a deeper understanding of the concerns presented to us by the DOJ, based on, among other things: discussions with DOJ personnel (who also conveyed information from Gulf State public officials and stakeholders); review of comment letters posted to the GCCF website; analysis of testimony before various legislative and regulatory entities; review of reports by the U.S. Government Accountability Office (“GAO”), the Coast Guard, the National Commission on the BP *Deepwater Horizon* Oil Spill and Offshore Drilling and others; and review of media and editorials discussing the GCCF, its processes and outcomes for claimants.

We approached our work with open minds and impartiality. Furthermore, we have done so with the awareness that some arguably negative outcomes were the inevitable consequences of the implementation of a complex process under tight time constraints.

We interviewed personnel of the subcontractors and experts engaged to assist the GCCF, reviewed documents, and visited claims processing locations (both in the Gulf Coast area and at the centralized operations centers of a number of the entities engaged to assist the GCCF) and regional site offices. We interviewed over 40 GCCF and subcontractor and advisor personnel at their offices, claims processing centers and claims offices in the Gulf States. (See Exhibit D for a list of persons whom BDO interviewed.) In addition to understanding the claims intake, evaluation and payment processes, we sought to understand events around the formation of the GCCF, including: the transition of data, processes and resources from the original claims facility operated by BP to the GCCF; the background and qualifications of the personnel working for various entities engaged to assist the GCCF; the reporting, reviewing and monitoring mechanisms and controls built into the GCCF processes; and where applicable, the GCCF’s reactions to some of the criticisms that have been leveled against it. We corroborated statements made by certain personnel with interviews of others and by obtaining relevant documents as additional support.

From the outset of our independent evaluation, Mr. Feinberg made clear that the GCCF’s priority was to compensate those claimants most likely to have been adversely affected by the Spill in as expeditious a manner as possible. In its effort to execute this priority, the GCCF’s approach to the development and implementation of its protocols and methodologies was, by necessity, a

dynamic one. The GCCF constantly made adjustments and improvements as it gained a greater understanding of the myriad challenges that emerged during its operations. Mr. Feinberg informed us that, throughout its tenure, the GCCF strived to apply its protocols and methodologies in a consistent manner and that while errors undoubtedly occurred in processing such a substantial number of claims in such a short period of time, the GCCF in the past had corrected any identified errors and was committed to doing so as part of the independent evaluation.

The analysis of specific claims and the assessment of the implications of this analysis for broader populations of claims were integral to our approach to identify and correct errors in the GCCF's implementation of its claims processing protocols and methodologies. Our experienced professionals were trained on the GCCF processes and collectively committed tens of thousands of hours to reviewing claim files. Our technology professionals developed a web-based claims review platform to facilitate our evaluation of the GCCF's processing of claims. We also evaluated aspects of tens of thousands of claim files and programmatically searched the entire database of over one million claims for those with attributes similar to claims found to contain errors. We supplemented our findings by requesting documents and information from the GCCF and undertook a process with the GCCF to develop an accurate understanding of the factual information required to complete our independent evaluation. As potential issues were identified, they were discussed with the GCCF until we were independently satisfied as to whether they were, in fact, issues that might affect a broader population of claims.

BDO professionals, both independently and in cooperation with the GCCF, made extensive efforts to search the claims data in the GCCF databases using a variety of sophisticated approaches to determine broader populations that may have been affected by the issues we identified. The claims testing and associated database searches were designed to find specific examples of the causes and symptoms of the concerns identified by the DOJ, and public officials and stakeholders from the Gulf States. To enhance the effectiveness of this approach, we sent teams of experienced BDO programmers and claims-testing professionals to BrownGreer's facilities in Richmond, Virginia for approximately six weeks to work side-by-side with BrownGreer professionals to gain an understanding of the issues identified and their impact on the entire universe of claimants, and to identify claimants to whom first-time or additional

payments and/or offers for payment should be made. While it was not possible to ensure that every claimant was treated fairly or in accordance with GCCF protocols and methodologies, these activities provided the GCCF with an opportunity to address issues negatively affecting specific claimants. They also permitted the GCCF to make enhancements to its processes to improve the processing of future claims during its tenure.

We also tested aspects of the mathematical accuracy of determined claims by comparing key inputs to the claim determination to the supporting financial documents provided by the claimant. In addition, the mathematical accuracy of the loss calculation contained in claim determination letters sent to claimants was tested through a review of the GCCF's computer code syntax across a broad population of claims.

Utilizing this comprehensive approach, we were able to identify possible causes of certain concerns brought to our attention by the DOJ and to work with the GCCF to correct errors that negatively impacted amounts paid to claimants. During our work, we identified instances (and the GCCF identified further instances) where claimants were paid amounts that were higher than those required by GCCF protocols and methodologies. No steps were taken with regard to those claims; rather, BDO and the GCCF focused on the identification of claimants that may have been underpaid based on GCCF protocols and methodologies. We were informed directly by Mr. Feinberg at the outset of our work, and by GCCF team members throughout the course of our work, that any error that was identified resulting in an underpayment of a claim would be corrected, and that the GCCF would not request any return of amounts found to have been overpaid. The GCCF has made or is in the process of making first-time and additional payments and/or offers for payment⁶ totaling more than \$64 million to almost 7,300 claimants who were negatively impacted by errors that were identified as a result of our independent evaluation.

Further, we anticipated when we began our work that changes would be made to the GCCF's processes to improve the processing of future claims and, in fact, certain claims processing changes had been made by the end of our work. Over 20 enhancements were made to the GCCF claims review platform and processes specifically as a result of observations that we made during the independent evaluation, including: new prompts to alert reviewers of information

⁶ The GCCF has informed us that corrective payments and offers for payment have been made subject to the terms of the Transition Order.

availability; daily metrics regarding potential human error when actions are taken that may have overlooked a GCCF process step; database requirements to complete certain previously missing fields; and process routing of certain claims for special handling.⁷ After the March 8, 2012 court order transitioning claims processing responsibilities, we continued our work with the understanding that these specific improvements and, more importantly, the awareness of potential issues may also be reflected in the work to be undertaken by current GCCF subcontractors who will be working on the Transition Process (see below) and by those who will be working for the new court-supervised claims program.

Our work was conducted pursuant to Statements on Standards for Consulting Services issued by the American Institute of Certified Public Accountants.

III. GCCF FORMATION & OPERATIONS

As a result of our work, we have become familiar with the formation and evolution of the GCCF, its internal processes and detailed information regarding the outcomes of specific claims. Our independent evaluation has afforded us a unique perspective on the GCCF's processes. We describe the GCCF's formation and operations in the following sections to provide the context for our findings and observations.

A. BP Response to the Spill & Origins of the GCCF

On April 20, 2010, an explosion occurred on the *Deepwater Horizon*, an offshore oil drilling rig owned by Transocean Ltd., which resulted in, among other things, the deaths of eleven crewmen and the discharge of oil into the Gulf of Mexico for several months. The Spill dwarfed the 1989 *Exxon Valdez* oil spill (which gave rise to the Oil Pollution Act of 1990) both in terms of the amount of oil discharged and the extent of the impact. As described by the GAO, among others, the U.S. Coast Guard's National Pollution Funds Center ("NPFC") designated two BP subsidiaries – BP Exploration and Production and its guarantor, BP Corporation North America, Inc. – and five other companies as "Responsible Parties" under OPA for Spill-related claims. Shortly after the Spill, at the direction of NPFC, BP established an initial facility ("the BP-

⁷ GCCF's adjustments to the claims review process were not limited to those made as the result of our independent evaluation. Rather, throughout the engagement, we observed many instances in which the GCCF initiated improvements to its claims review process.

operated facility”) to receive and process all claims against Responsible Parties and began paying emergency compensation to individuals and businesses on May 3, 2010, thirteen days after the explosion.

BP selected ESIS, Inc. (“ESIS”), a global risk management services firm, to act as the administrator of the facility. ESIS, in turn, engaged the services of claims adjusters from Worley Catastrophe Response (“Worley”), as well as forensic accountants from the accounting firms KPMG LLP, Cowheard and Associates (“Cowheard”) and Assurance Forensic Accounting CPAs, LLC (“AFA”) to review and process claims. Within the first month after the explosion, BP, through Worley, set up 35 field offices in the Gulf States and, during the period from May 3, 2010 through August 22, 2010, received more than 154,000 claims and made over 127,000 payments, totaling more than \$399 million, to more than 30,000 claimants.

Senior Worley professionals told BDO that, during its initial operations, the BP-operated facility accepted and processed claims only from claimants involved in the fishing industry, such as fishermen, dock workers and seafood processing businesses. As time went on, claims were also accepted from claimants in other industries, such as condominium owners, hotels and restaurants, though those claims ultimately were never processed by the BP-operated facility. The BP-operated facility compensated claimants only for past losses and did not devise a methodology for issuing final payments to claimants that would include an amount to cover future anticipated losses. According to Worley, the claims processed by the BP-operated facility were subject to an extensive review process by BP.

Shortly after the Spill, BP entered into negotiations with the U.S. Government that resulted in an announcement by President Obama, on June 16, 2010, that BP had agreed to: (a) establish a \$20 billion trust, funded over four years, that would be available to pay, among others, claims of individuals and businesses arising under OPA, as well as the claims of local and state governments and claims of Federal, state and tribal trustees for natural resource damages; and (b) create a new claims process to be administered by a neutral third party. Kenneth Feinberg, Managing Partner of the Washington, D.C.-based law firm, Feinberg Rozen, LLP (“Feinberg Rozen”), was appointed to administer this new claims process. The GCCF thereafter undertook to receive, process and, where it deemed appropriate, pay claims of losses resulting from: (1) lost

earnings or profits for individuals and businesses; (2) removal and clean-up costs; (3) damage to real or personal property; (4) loss of subsistence use of natural resources; and (5) physical injury or death.⁸

Mr. Feinberg and his firm served as the Special Master of the Federal September 11th Victim Compensation Fund of 2001 (the “9/11 Fund”) and as Fund Administrator for the Hokie Spirit Memorial Fund following the tragic shootings at Virginia Tech. He also has served as Special Master in Agent Orange, asbestos personal injury, wrongful death, Dalkon shield and DES (pregnancy mediation) cases.

In the commercial sector, Mr. Feinberg designed, implemented and administered ADR Settlement Programs involving various national insurance companies and Gulf hurricane claimants who suffered losses due to Hurricane Katrina and other Gulf hurricanes. Mr. Feinberg has also served as Distribution Agent for AIG Fair Fund claimants and has been the Fund Administrator for a variety of claimant funds totaling more than \$1 billion. In his capacity as an arbitrator, Mr. Feinberg helped determine the fair market value of the original Zapruder film of the Kennedy assassination and legal fees in Holocaust slave labor litigation. In 2009, Mr. Feinberg was appointed by the Obama administration to be Special Master for TARP Executive Compensation.

The daily execution of Feinberg Rozen’s involvement in the GCCF was overseen and supervised by Camille Biros. Ms. Biros, Feinberg Rozen’s Business Manager, has worked with Mr. Feinberg on claims administration and dispute resolution for over 30 years. Ms. Biros served as Deputy Special Master for the 9/11 Fund and the Hokie Spirit Memorial Fund as well as other funds created as part of settlements in class action personal injury, products liability and wrongful death cases. In addition, she has managed and administered the other projects described above taken on by Mr. Feinberg and Feinberg Rozen.

Jacqueline Zins, an attorney who has worked with Mr. Feinberg for over 17 years, served as lead senior counsel and consultant to the GCCF. In that capacity, Ms. Zins provided legal advice to

⁸ Other claims processes were available to address other costs associated with the Spill, such as losses by oil rig workers during the moratorium on deepwater drilling in 2010.

the GCCF on a daily basis and worked with Ms. Biros supervising the daily execution and supervision of the GCCF. Ms. Zins served as Deputy Special Master for the 9/11 Fund and the Hokie Spirit Memorial Fund, as well as other funds created as part of settlements in class action personal injury, products liability and wrongful death cases. In addition, Ms. Zins has provided legal advice on other projects described above taken on by Mr. Feinberg and Feinberg Rozen.⁹

Feinberg Rozen advised us that the GCCF is not a stand-alone legal entity, such as a corporation, partnership or unincorporated association; it is simply the name given to the facility, consisting of the above team of senior professionals from Feinberg Rozen with the support of a number of subcontractor firms and advisors, created to receive, process and pay claims of losses resulting from the Spill. During the period immediately following Mr. Feinberg's selection as administrator of the GCCF, he and his staff began the process of identifying and securing the services of other firms and advisors.

B. Entities Engaged to Assist or Advise the GCCF

The volume, urgency and diversity of claims faced by the GCCF required a large number of professionals with a wide range of skills. Immediately upon Mr. Feinberg's selection as Claims Administrator, Feinberg Rozen began the process of assembling a large team of experienced professionals, including claims processing firms, accounting firms, investigators, catastrophe response companies, economists, academics and other professionals, to assist it in the development and implementation of claims processing protocols and methodologies.

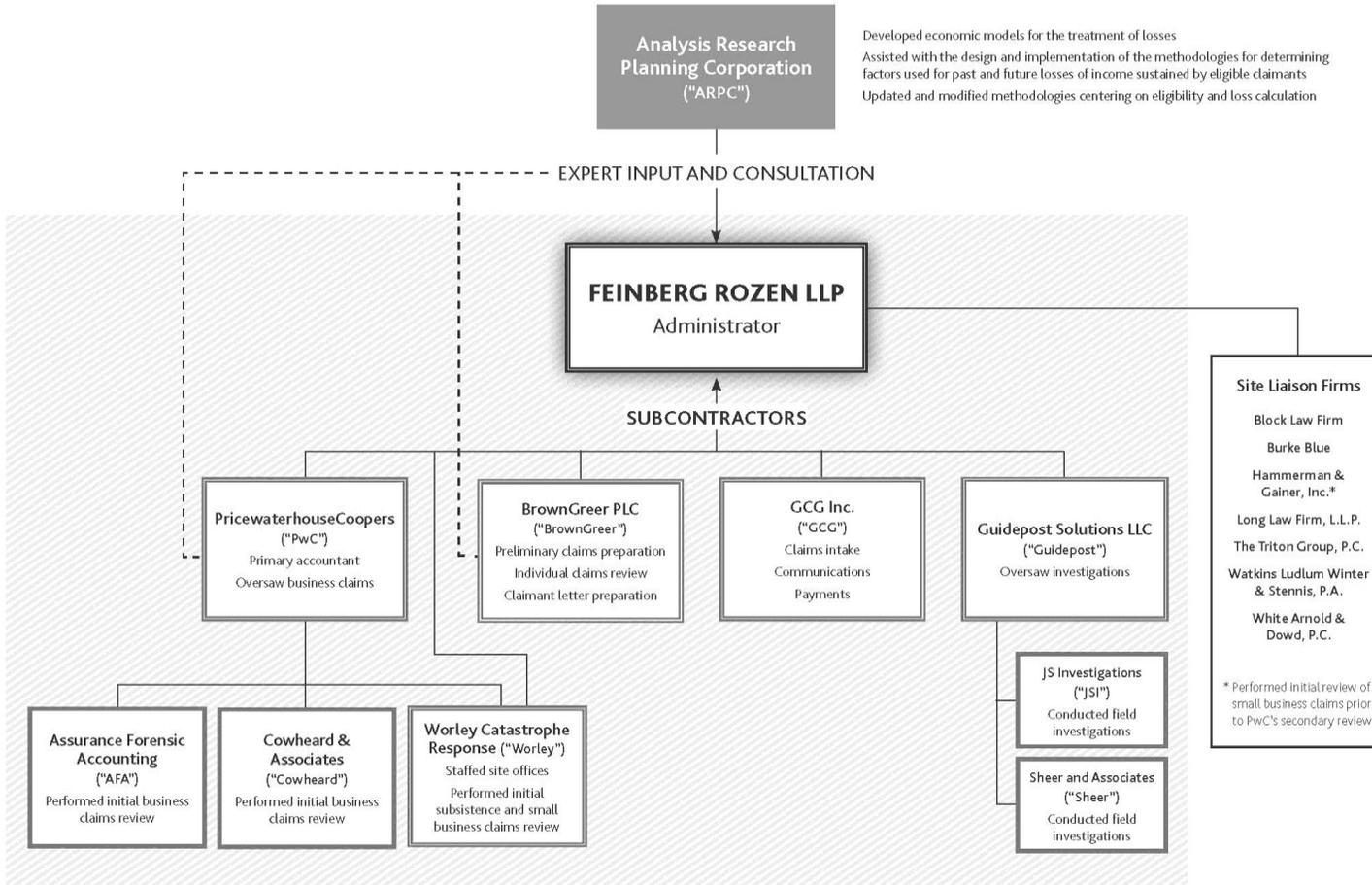
Prior to discussing these entities in the context of their work assisting the GCCF, we have set forth below some background information on each entity to assist readers with an understanding of their role and qualifications. The chart on the following page provides a pictorial overview of the subcontractors and advisors ultimately involved in the GCCF, as well as a simplified synopsis of their roles.

⁹ Additionally, Feinberg Rozen partner, Michael Rozen, and two attorneys retained on a temporary basis, William Mulvey and Krista Friedrich, also were part of Feinberg Rozen's GCCF engagement team.

Figure 1: Overview of the GCCF



GCCF Organizational Chart



These entities, their roles and leadership are summarized as follows:

Feinberg Rozen LLP (“Feinberg Rozen”)

- Law firm headquartered in Washington, D.C.
- Team Leaders: Kenneth Feinberg, Camille Biros and Jacqueline Zins
- Team Size: Six professionals assigned to work on GCCF
- Responsibility was that of an Administrator with overall management responsibility for activities of the GCCF, including the development and implementation of GCCF policies and methodologies and oversight of the GCCF subcontractors.

The Garden City Group, Inc. (“GCG”)

- Settlement Administration Company headquartered in Lake Success, NY
- Team Leaders: Karen Shaer and Jennifer Keough
- Team Size: Over 2,400 professionals assigned to GCCF at its peak
- Responsibilities included the intake and processing of claim forms and supporting documentation; the creation and maintenance of GCCF’s centralized database and online claims filing and claims status operation; the creation and maintenance of GCCF’s website; the staffing of a toll-free call center; communications with claimants, law enforcement agencies and various state agencies; payment processing and distribution; interaction with Citibank; Quick Payment Final Claim processing; and the preparation of daily reports requested by Feinberg Rozen and all publicly available reports issued by the GCCF.

BrownGreer PLC (“BrownGreer”)

- Law firm, headquartered in Richmond, VA., dedicated to mass claims resolution, litigation management and support, and claims administration
- Team Leader: Orran Brown
- Team Size: Over 1,000 professionals assigned to GCCF at its peak
- Responsibilities included the design, construction and operation of the computerized claims review process; tracking of the progress of claims; implementation of the policies and methodologies established by the GCCF for the determination of eligibility, sufficiency of supporting documentation, and whether the claimant had sustained a compensable loss for claims filed by individuals; implementation of the policies and methodologies established by the GCCF for the determination of eligibility and sufficiency of supporting documentation for business claims; the preparation of letters notifying claimants of a claim resolution or status; implementation of an audit process; staffing of the claimant communications center; and the creation of customized reports as requested by Feinberg Rozen.

PricewaterhouseCoopers LLP (“PwC”)

- Global accounting firm with U.S. headquarters in New York, NY
- Team Leader: Charles Hacker
- Team Size: 62 professionals assigned to GCCF at its peak
- Responsibilities included the review and approval of calculations and resolutions for all business claims, and second level review of all business claims processed by Cowheard, AFA, Worley and Hammerman and Gainer, Inc.

Worley Catastrophe Response (“Worley”)

- Risk management company headquartered in Hammond, LA
- Team Leaders: Allen Carpenter and Charles Bilbe
- Team Size: 1,319 claims evaluators assigned to GCCF at its peak
- Responsibilities included the collection and shipping of documents from the site offices to GCG; the providing of basic information to claimants; the monitoring of traffic volume at the site offices; the evaluation of Emergency Advance Payment claims under BrownGreer’s supervision; and implementation of policies and methodologies established by the GCCF for the evaluation of subsistence claims and small business claims under PwC’s supervision.

Cowheard and Associates (“Cowheard”)

- Forensic accounting firm headquartered in Miami, Fla.; participated in the GCCF as a subcontractor to Worley
- Team Leader: David Cowheard, based in Miami, FL
- Team Size: 73 professionals assigned to GCCF at its peak
- Responsibilities included assistance with first-level review and analyses of business claims.

Assurance Forensic Accounting CPAs, LLC (“AFA”)

- Forensic accounting firm headquartered in Alpharetta, GA; participated in GCCF as a subcontractor to Worley
- Team Leader: Chad Thompson
- Team Size: 28 professionals assigned to GCCF at its peak
- Responsibilities included assistance with first-level review and analyses of business claims.

Guidepost Solutions LLC (“Guidepost”)

- Global investigations and security company headquartered in New York, NY
- Team Leaders: Andrew O’Connell and Kenneth Citarella
- Team Size: 291 personnel assigned to GCCF at its peak
- Responsibilities included the investigations of claims identified as potentially fraudulent during the claims review process.

Claimant Liaisons¹⁰

- Included the following entities:
 1. Block Law Firm, a law firm based in Thibodaux, LA. The team leader is Jerald Block.
 2. Burke Blue, a law firm headquartered in Panama City, FL. The team leader is Lisa Walters.
 3. Hammerman & Gainer, Inc. (“HGI”), a third-party program and claims administration firm headquartered in Lutcher, LA. The team leader is Tim Temple.
 4. Long Law Firm, LLP, a law firm based in Baton Rouge, LA. The team leader is Kris Kirkpatrick.
 5. The Triton Group P.C., a consulting firm operated by former Alabama Homeland Security Director James Walker.
 6. Watkins Ludlum Winter & Stennis, P.A., a Jackson, Mississippi law firm.
 7. White Arnold & Dowd, P.C., a law firm based in Birmingham, AL. The team leader is Greg Hawley.
- Responsibilities included serving as liaison between the GCCF and the claimants, claimants’ counsel, public officials and other interested parties in various site offices; assistance with regards to helping claimants and claimants’ counsel understand the claims processing steps; the facilitation of community outreach and government affairs services; provision of feedback to Feinberg Rozen as to potential regional, state, or Gulf-wide issues and proposed solutions for any issues arising out of the claims process; and evaluation of small business claims under PwC’s supervision (HGI only).

Analysis Research Planning Corporation (“ARPC”)

- Consulting firm headquartered in Washington, DC
- Team Leader: Thomas Vasquez
- Team Size: Three individuals assigned to GCCF
- Responsibilities included research and assistance with the development of economic models for the treatment of losses; and assistance with the design and implementation of the methodologies for determining factors used for past and future losses of income sustained by eligible claimants.

Other Experts

- Professor John Wes Tunnell, Jr. was responsible for providing an expert opinion of when the Gulf of Mexico will return to pre-Spill harvest status.
- Professor John C.P. Goldberg provided an expert opinion regarding the scope of liability under OPA.
- Other experts, as needed, to address issues relating to specific claims.

Feinberg Rozen decided that they would not utilize the services of ESIS; rather, Feinberg Rozen secured the services of two firms with extensive experience in the administration of class action settlements, GCG and BrownGreer, to play a significant role in the GCCF. Feinberg Rozen utilized these two firms to perform significant aspects of claims intake and processing because Feinberg Rozen anticipated, based upon their experience and the experience of the BP-operated facility, that the GCCF would receive a large number of complex claims and would be expected

¹⁰ Although five of the claimant liaison firms were law firms, they were not retained to provide legal advice to the GCCF or any other party.

to process these claims very quickly. Additionally, Feinberg Rozen had worked with both GCG and BrownGreer previously and believed that each would bring unique and necessary strengths to the GCCF.

GCG and BrownGreer, through mutual agreement, and after consultation with and approval by Feinberg Rozen, divided their claims administration responsibilities. GCG undertook responsibility for, among other things: tasks relating to the intake and processing of claim forms and supporting documentation; the creation and maintenance of GCCF's databases and online claims filing and claims status operation; the creation and maintenance of the GCCF website, including the daily updating of statistics on the website; the staffing of a toll-free call center; communications with claimants; the processing and distribution of payments to claimants; interaction with Citibank (the Corporate Trustee for the *Deepwater Horizon* Oil Spill Trust); communications with law enforcement agencies; communications with various state agencies regarding child support liens and garnishments; and the preparation of daily reports requested by Feinberg Rozen, as well as the reports that the GCCF made available to the general public. GCG was also responsible for all aspects of the processing of a type of claim instituted in the second phase of the GCCF, known as a Quick Payment Final Claim. (See Section III.D.1, below, for a discussion of Quick Payment Final Claims.)

GCG's engagement team was led by Karen Shaer and Jennifer Keough. Ms. Shaer currently is the Executive Vice President and General Counsel of GCG. She is a former federal prosecutor who, immediately prior to joining GCG, served as General Counsel of a company that was undergoing reorganization pursuant to Chapter 11 of the U.S. Bankruptcy Code. In 2001, Ms. Shaer joined GCG and began its bankruptcy practice. Ms. Keough is an Executive Vice President and Chief Operating Officer of GCG, operating out of its Seattle, Washington location. She is an attorney who, prior to joining GCG, worked as a Class Action Business Analyst at Perkins & Coie, the largest Washington State-based law firm. GCG's staff consisted of both full-time employees and subcontractors. The size of the GCCF engagement required GCG to recruit a large number of persons specifically to work on it. The total number of GCG employees and subcontractors working on the engagement exceeded 2,400 in November 2010, mainly as a result of the large volume of claims that was being received and a substantial increase in calls to the call center which required the GCG to assign over 2,000 persons to

answer the calls.¹¹ While the number of staff members decreased over time through December 30, 2011, it never dropped below 500. (See Exhibit E for a listing of GCG monthly staffing levels.)

BrownGreer's responsibilities focused more directly on the substantive review and analysis of the claims filed with the GCCF. BrownGreer designed, constructed and operated the extensive, computerized claims review platform by which all claims reviewers accessed claim files and analyzed the claim forms and materials submitted in support of a claim. With regard to a claim filed by an individual (other than Quick Payment Final Claims), BrownGreer was responsible for implementing the policies and methodologies established by the GCCF leadership team led by Feinberg Rozen for determining whether the claimant was eligible, whether the claimant had presented sufficient supporting documentation for the claim and whether the claimant had sustained a compensable loss. For claims filed by businesses, BrownGreer's role was limited, generally, to implementing the policies and methodologies established by the GCCF leadership team led by Feinberg Rozen for determining the eligibility of the claimant and the sufficiency of the documentation filed by the claimant.¹² In addition, BrownGreer was responsible for: the preparation of the letters through which the GCCF would notify a claimant regarding the resolution or status of a claim; implementation of a process designed to investigate suspect or potentially fraudulent claims; staffing of a claimant communication center; and preparation of custom reports as requested by Feinberg Rozen.

The BrownGreer team was led by Orran Brown, one of BrownGreer's partners. Mr. Brown started BrownGreer in 2002 with Lynn Greer. Prior to founding BrownGreer, Mr. Brown was a litigator who specialized in securities class action defense in Houston, Texas and Richmond, Virginia. He and Ms. Greer met when he served as external counsel and she as in-house counsel for the \$3.5 billion Dalkon Shield Trust fund, which closed in April 2000.

¹¹ According to statistics supplied by the GCCF, the call center received over 4.5 million calls in October and November 2010, including over 360,000 calls in one day. The GCCF told us that the high-volume and emotional nature of these calls (according to the GCCF's statistics, the call center received approximately 90 suicide threats, as well as instances in which the caller threatened to harm others) took a toll on its call center staff, resulting in high turnover.

¹² As described below, the substantive review and calculation of loss for business claims was undertaken by forensic accountants and claims adjusters selected by Feinberg Rozen.

Similar to GCG, BrownGreer staff consisted of both full-time employees and subcontractors. It had to recruit a large number of workers to meet the needs of the GCCF. The number of BrownGreer's staff assigned to the GCCF peaked at 1,135 in May 2011. At that time, the staff included between 650 and 675 first-level claims reviewers, 286 supervisors and senior reviewers, 25 analysts, 38 computer programmers and 22 administrative support staff. Mr. Brown stated to us that the characteristic BrownGreer most looked for in its claims reviewers was an attention to detail. Most of the claims reviewers had attended college and some had either a legal background or a claims adjuster background. (See Exhibit F for a listing of BrownGreer monthly staffing levels.)

BrownGreer told us that its claims reviewers were given between 7 and 10 days of training on the GCCF protocols and methodologies. This training included both classroom training, as well as practice claims review on "dummy" claims. In addition to educating potential staff members, the training process provided BrownGreer with an opportunity beyond the interview process to evaluate potential claims reviewers. Trainees who did not perform well during the training process were removed from the project. After the training process, new claims reviewers worked on live claims under very close supervision. When there were significant changes in the claims review methodology or there were recurring issues identified in the claims review process, BrownGreer provided additional training to its claims reviewers. Additionally, it administered tests on a periodic basis to the claims reviewers in order to identify issues that would be addressed in individual or group training.

BrownGreer also provided training on its claims review platform to those staff members from the other firms engaged to assist the GCCF whose responsibilities required them to use it. In this context, BrownGreer staff members spent time in the Gulf region training Worley and liaison firm staff (see below) working in GCCF site offices.

Feinberg Rozen informed us that when it first undertook the process of assembling the various entities that would be engaged to assist the GCCF, its goal was to have a centralized, web-based claims receipt and review process. As a result, it initially intended to close the 35 site offices established during the BP-operated facility. As Feinberg Rozen became more familiar with the issues that would likely arise during the tenure of the GCCF, it decided that it would keep the

site offices open and engaged Worley to provide claims adjusters to staff them. Whereas Worley's role during the BP-operated facility had been to interact with claimants at the site offices, review and evaluate claims and often issue payments to claimants, its main role during the tenure of the GCCF was to receive documents from claimants who came to the site offices and provide basic information to claimants regarding the GCCF processes and the status of specific claims. Additionally, a team of Worley adjusters, under the supervision of accountants from PwC, were primarily responsible for implementing the policies and methodologies established by the GCCF for the review and analysis of subsistence claims. Beginning in Spring 2011, Worley adjusters were assigned to implement the policies and methodologies established by the GCCF for the review and analysis of claims filed by small businesses.

Worley's GCCF engagement team was led by its Chief Administrative Officer, Allen Carpenter, and its Environmental Division Director, Charlie Bilbe. Mr. Carpenter joined Worley in 2009. Prior to that, he was a Louisiana State Police Officer for over twenty years, the last ten of which he spent as its Fraud Director. In that capacity, he oversaw the investigation of insurance fraud allegations arising in the wake of Hurricane Katrina. Mr. Bilbe has been at Worley for 26 years and has extensive experience with OPA-related matters having overseen several prior engagements in which Worley adjusted claims arising from oil spills both before and after OPA's passage, including the 1988 Shell oil spill in Martinez, California; the 1997 Texaco oil spill in Lake Barre, Louisiana; and the 2006 CITGO oil spill in Lake Charles, Louisiana. Mr. Bilbe told us that all of these matters were much smaller than the Spill in terms of number of claims (for example, the Shell oil spill, which predated OPA, was the largest matter handled by Worley with approximately 30,000 claims).

Mr. Carpenter told us that Worley has a database of between 6,000 and 7,000 claims adjusters throughout the U.S. whom they retain as employees as needed. They utilized this approach to identify and employ the claims adjusters who worked, first, on the BP-operated claims facility and then on the GCCF. Unlike that of GCG and BrownGreer, the size of Worley's staff assigned to the GCCF decreased steadily, beginning at over 1,300 in August 2010 and falling to 90 in December 2011. This was largely due to the fact that the GCCF claims review process was more centralized than the BP-operated facility, the addition of the liaison firms and the closing of site

offices as the GCCF determined that they were no longer needed. (See Exhibit G for a listing of Worley monthly staffing levels.)

Feinberg Rozen also assembled a team of forensic accountants from the global accounting firm, PwC, and the local accounting firms, Cowheard and AFA, to review and calculate any loss amounts for claims filed by businesses. PwC, which had worked with Feinberg Rozen on the 9/11 Fund, was primarily responsible for assisting with the design and implementation of calculator tools and templates; providing input regarding the implementation of the methodologies established by the GCCF; reviewing accountant templates; reviewing and approving calculations and determinations for all business claims; assigning claims to various accountant/evaluator teams; monitoring the volume and progress of business claims being reviewed; reviewing other claims as requested by Feinberg Rozen; reviewing calculated loss amounts and identifying claims for follow-up; and staffing an accountant callback center. Cowheard and AFA helped develop a calculator tool to be used during the first phase of the GCCF; created and fine-tuned the accountant review template/workbook; and calculated loss amounts prior to PwC's secondary review.

PwC's engagement team was led by Charles Hacker, a partner in PwC's Forensics practice. Mr. Hacker is a Certified Public Accountant and Certified Fraud Examiner, who started his career in 1984 in the audit practice of Coopers & Lybrand ("C&L"), which merged with Price Waterhouse in 1998. In 1990, Mr. Hacker was transferred to C&L's newly established Forensics practice. Mr. Hacker's areas of expertise include damage quantification, lost profit claims and internal investigations of fraud and corruption, including those involving the Foreign Corrupt Practices Act. According to Mr. Hacker, PwC's engagement team was comprised mainly of manager- and director-level staff members, including many from its Insurance practice. The size of the team grew over the course of time, particularly in the Spring of 2011, when there was a backlog of business claims; at its peak, the PwC team consisted of approximately 60 professionals. (See Exhibit H for a listing of PwC monthly staffing levels.)

The Cowheard team was led by David Cowheard, who has 20 years' experience in forensic accounting. He started with the accounting and consulting firm, Campos & Stratis, working mainly in the insurance sector calculating damages on behalf of insurance companies. Mr.

Cowheard started his own firm in late 1999. He had been involved in claims evaluation engagements involving a number of catastrophes, including many of the hurricanes that struck the southeastern portion of the United States between 1992 and 2005.

In the early months of the GCCF, Cowheard had between 35 and 40 staff members working on the engagement. In the Spring of 2011, Cowheard increased the number of staff assigned to the engagement and eventually had approximately 75 persons reviewing business claims. (See Exhibit I for a listing of Cowheard weekly staffing levels.) Most of Cowheard's staff members are Certified Public Accountants, although there are some who are not and have either economics or finance undergraduate degrees.

The AFA team was led by Chad Thompson, one of its founding partners and a Certified Public Accountant, who also possesses Certified Fraud Examiner and Certified in Financial Forensics designations. Like Mr. Cowheard, Mr. Thompson began his career at Campos & Stratis. After he became a Certified Public Accountant, Mr. Thompson joined a full-service accounting firm where he worked on audit and tax engagements before becoming involved in forensic accounting matters in 2001. In 2004, Mr. Thompson founded AFA with Dennis Neas. The firm typically performs economic damage calculations for insurance carriers and has worked on several major environmental and other disaster engagements, including those arising out of Hurricanes Katrina, Irene and Ike, as well as forest fires and the 2007 steam pipe explosion in New York City. During the GCCF, AFA had between 15 and 27 accountants working on the engagement each week. (See Exhibit J for a listing of AFA weekly staffing levels.)

In addition to assembling a team of experienced professionals from these firms to assist in various aspects of the claims review process, Feinberg Rozen engaged the assistance of experts as it developed the foundations for its approach to receiving and processing claims. One of these experts was Analysis Research Planning Corporation ("ARPC"), a firm of economists retained in July 2010 to assist the GCCF in the development of economic models for the treatment of losses and to assist in the design, drafting and implementation of the methodologies for determining past and future losses of income sustained by eligible claimants. ARPC would play a significant role throughout the existence of the GCCF as it updated and modified those methodologies centering on eligibility and loss calculation.

ARPC's team was led by Thomas Vazquez, who has a PhD in Economics and over 20 years' experience developing economic models for determining compensable losses in mass tort cases. After obtaining his PhD, Dr. Vasquez worked for the U.S. Department of the Treasury ("U.S. Treasury"), performing tax and financial analysis review for 10 years. During his tenure with the U.S. Treasury, Dr. Vasquez prepared budget and economic analyses based on tax regulation changes and built the economic simulation model for the U.S. Treasury. Dr. Vasquez left the U.S. Treasury in 1983 as Deputy Director of Tax Analysis and started his own firm, Policy Economic Group, which focused on building micro-economic simulation models for U.S. states and foreign governments. Dr. Vasquez joined KPMG when it purchased the Policy Economic Group in 1987 and became the head of KPMG's Corporate Transactions practice in 1993. While at KPMG, Dr. Vasquez started to work on mass tort cases for which he built economic models. In 1998, Dr. Vasquez left KPMG to become CEO of Yankelovich Partners, a Connecticut-based market research firm. He left Yankelovich Partners and joined ARPC in 1999.

Since joining ARPC, Dr. Vasquez has worked almost exclusively on mass tort matters in which he is engaged to forecast liability and the number of claims that may be filed in a specific matter, and determine how to calculate the amounts to be paid to claimants. When interviewed, Dr. Vasquez explained to us that, in the context of mass tort cases, he has designed algorithms and alternative dispute resolution procedures designed to facilitate the settlement of cases. Through this process, he would attempt to design a model which would efficiently distribute money to deserving claimants and, at the same time, limit the number of claimants opting out of the settlement.

The GCCF engaged other experts to assist with a variety of different issues. These other experts included Professor John C.P. Goldberg, who provided an expert opinion regarding the scope of liability under OPA; Dr. John W. Tunnell, who provided an expert opinion of when the Gulf of Mexico would return to pre-Spill harvest status for shrimp, crabs, oysters and finfish; and others, as needed, to address issues relating to specific claims.¹³

¹³ During its early stages, the GCCF also received input concerning the requirements of OPA from the U.S. Coast Guard, and met with U.S. Homeland Security, U.S. Coast Guard and DOJ personnel.

Feinberg Rozen informed us that, because of its prior claims administration experience combined with the reported size of BP's financial commitment to the GCCF, it thought it was important to include a fraud investigation process as part of the GCCF. Feinberg Rozen also had discussions with the DOJ regarding the fraud risks which the GCCF could be expected to face. As a result, the GCCF engaged a New York-based investigative consulting firm, Guidepost, to conduct investigations of claims identified as potentially fraudulent during the claims review process. Guidepost, in turn, engaged two Gulf Coast-based firms, JS Investigations ("JSI") and Sheer and Associates ("Sheer"), which provided former federal, state and local law enforcement officers to conduct field investigations under Guidepost's supervision. As a result of these investigations, the GCCF referred cases of potential fraud to the DOJ for further action. These referrals have, to date, resulted in a number of successful prosecutions.

Kenneth Citarella was the Guidepost staff member with daily oversight responsibility of its involvement in the GCCF.¹⁴ From 1981 until 2008, Mr. Citarella was an Assistant District Attorney in the Westchester County District Attorney's Office in New York, where he spent most of his tenure in the Investigations Division and focused on computer crime, environmental crime and public corruption cases. He left the District Attorney's Office as Deputy Chief of the Investigations Division and joined a law firm in White Plains, New York, where his practice consisted of commercial litigation and medical malpractice cases. Immediately prior to joining Guidepost in September 2010, Mr. Citarella worked in the Corporate Investigations Division of the Prudential Insurance Company of America.

Michelle Horn, a former Assistant U.S. Attorney in the Eastern District of Louisiana, and Susan Brailey, a former Westchester County Assistant District Attorney, served as Mr. Citarella's deputies. Below them, the Guidepost staff was divided into six investigative teams, each with between two and seven case managers, and an editing team, responsible for reviewing the reports of Guidepost's findings. Guidepost investigative team case managers prepared investigative plans for each case referred to them and oversaw the field investigation that was conducted,

¹⁴ Guidepost's Chief Executive Officer, Andrew J. O'Connell, had overall responsibility for Guidepost's role in the GCCF. In that capacity, he was responsible for coordinating Guidepost's initial retention and for other engagement administration matters, such as billing. Mr. O'Connell is a former federal prosecutor and Special Agent with the U.S. Secret Service.

depending upon location, by investigators from JSI and Sheer. (See Exhibit K for Guidepost's monthly staffing levels.)

The GCCF informed us that, in December 2010, it selected seven professional services firms from the Gulf States to serve as liaisons in an effort to increase transparency and facilitate communications with claimants. The responsibilities of the liaison firms included the following:

- Acting as liaisons between the GCCF and claimants, claimants' counsel, public officials and other interested parties to coordinate the processing of claims;
- Providing assistance to claimants and claimants' counsel in understanding the steps involved in the processing of claims;
- Facilitating community outreach and government affairs services; and
- Informing Feinberg Rozen as to potential regional, state or Gulf-wide issues arising out of the claims process and providing consulting services regarding proposed solutions for any ongoing and/or potential issues arising out of the claims process.

Each liaison firm focused on one or more states where the firm conducted business. The liaison firm then designated members of its staff to work at the site offices within its assigned state. The participating liaison firms were:

- *Alabama*: The Triton Group, P.C., a consulting firm operated by former Alabama Homeland Security Director James Walker; and White Arnold & Dowd P.C., a law firm based in Birmingham, Alabama.
- *Florida*: Burke Blue, a law firm based in Panama City, Florida; and Hammerman & Gainer, a third-party program and claims administration firm, based in Litcher, Louisiana.¹⁵
- *Louisiana*: Block Law Firm of Thibodaux, Louisiana; Hammerman & Gainer (see above); and Long Law Firm of Baton Rouge, Louisiana.
- *Mississippi*: Watkins Ludlum Winter & Stennis, P.A. ("Watkins Ludlum"), a Jackson, Mississippi law firm.¹⁶

¹⁵ In addition to assuming the responsibilities of liaison firms noted above, claims adjusters provided by Hammerman & Gainer served as members of the Small Business Claim team organized in the Spring of 2011.

¹⁶ In September 2011, Watkins Ludlum resigned from serving as a liaison firm as a result of its merger with the law firm, Jones, Walker, Waechter, Poitevent, Carrère & Denègre L.L.P., a New Orleans-based law firm with a significant number of clients operating in the oil and gas industry in the Gulf of Mexico. Upon Watkins Ludlum's resignation, the Triton Group became the liaison for Mississippi.

At the time these liaison firms were retained, they received training from Feinberg Rozen regarding the GCCF's operations and from BrownGreer regarding the operation of its claims review platform.

The GCCF told us that it publicized the involvement of the liaison firms in a press release and on the GCCF website. In addition, the GCCF advised us that these notices contained statements that the liaison firms were agents of the GCCF and were not providing legal advice to the claimants.

The GCCF informed us that, from its inception, it attempted to arrange for a process by which claimants would be able to receive free legal assistance. Initially, it attempted to do this by approaching law firms in the Gulf region to provide this legal assistance on a *pro bono* basis. Because most law firms in the region had some sort of conflict of interest, this approach was not feasible. On December 15, 2010, with the support of several state Attorneys General, the GCCF entered into an agreement with the Mississippi Center for Justice, a nonprofit, public interest law firm, to oversee a consortium of legal services providers in the Gulf region that provided legal assistance to all claimants who sought it, regardless of income level. By its terms, the agreement stated that it was not imposing "any limitations on the professional judgment of legal services providers, including the ability to advise clients that they should reject a GCCF settlement offer and instead seek compensation from the NPFC or other oil spill fund, commence litigation, or take any other actions." The GCCF publicized the availability of free legal assistance through determination letters sent to the claimants, posters in site offices, pamphlets, press releases and the GCCF website. Representatives of the Mississippi Center for Justice also attended various Town Hall meetings organized by the GCCF. The initial agreement between the GCCF and the Mississippi Center of Justice was for one year, for which it received a grant that was funded by the *Deepwater Horizon* Oil Spill Trust. In January 2012, this initial period was extended for an additional six months and a commensurate increase in the grant was awarded.

C. GCCF Phase I

While assembling the various components of the GCCF and developing its approach to the handling of claims, the GCCF also publicized its existence to potential claimants and created methods through which it communicated with claimants during the tenure of the GCCF. Shortly

after the GCCF was created, a mass mailing was sent to all claimants who had filed claims during the tenure of the BP-operated facility to inform them of the GCCF's creation, and copies of claims packets were made available at each of the GCCF site offices. The GCCF also prepared a draft protocol for Phase I which it circulated on July 12, 2010 to a variety of stakeholders, including Federal government officials; the Governors and Attorneys General of Louisiana, Florida, Mississippi and Alabama; and members of the plaintiffs' bar. The GCCF also prepared and circulated to the same stakeholders second and third drafts of the protocol. Each draft and the final version of the Phase I protocol incorporated some of the recommendations that the GCCF had received in response to the circulation of the prior draft protocol. The GCCF also created a website that went live on August 23, 2010, the date the GCCF began its initial phase, known as Phase I.

In addition, Mr. Feinberg appeared at Town Hall meetings throughout the Gulf Coast region and appeared on regional television programs. GCCF staff members accompanied Mr. Feinberg to the Town Hall meetings and answered questions from the audience. In total, Mr. Feinberg participated in 37 of these Town Halls meetings between June 18, 2010 and January 19, 2011.

During Phase I, the GCCF implemented a claims process by which eligible claimants would receive compensation for the loss of earnings or profits, removal and clean-up costs, real or personal property damage, loss of subsistence use of natural resources and physical injury or death caused by the Spill by submitting a lesser level of documentation than would be required in later stages of the GCCF. This was known as the "Emergency Advance Payment" or "EAP" claims process.

The GCCF published the protocol for Phase I, which was a high-level document setting forth, among other things, the claim submission process, the types of claims it would compensate during this phase and the general types of documentation it would require of claimants, and began accepting EAP claims on August 23, 2010. During Phase I, the GCCF processed claims for documented losses sustained during the first six months following the Spill.¹⁷ A claimant who received a payment during Phase I was not required to execute a release and covenant not to

¹⁷ During Phase I, the GCCF also accepted Final Payment Claims, but did not process these claims until Phase II (see below). Final Payment claim forms were included in packages sent to all persons and businesses that filed claims with the BP-operated facility and were available online.

sue BP or any other party; and loss calculations were not decreased by any amounts received from the BP-operated facility. In its protocol for Phase I (See Exhibit L), the GCCF stated:

A claim for an Emergency Advance Payment is an interim claim under OPA. To the extent that the claimant incurs additional compensable damages that are not reflected in the Emergency Advance Payment, receipt of an Emergency Advance Payment shall not preclude a claimant from seeking additional damages not reflected in the Emergency Advance Payment.

As its name suggested, an EAP claim was intended to provide a quick emergency payment to qualifying claimants. Senior personnel from Feinberg Rozen, BrownGreer, GCG and PwC all told us during interviews that the GCCF's priority in Phase I was to make payments to eligible claimants as quickly as possible. This priority was reflected in the Phase I protocol which stated, in pertinent part, that:

2. Each Emergency Advance Payment application will be evaluated preliminarily within 24 hours of receipt of the completed [claim] form and supporting documentation to determine whether an Emergency Advance Payment is appropriate based on the information submitted by the Claimant. Complex business claims submitted for an Emergency Advance Payment will be evaluated within 7 days of receipt of the completed [claim] form and supporting documentation to determine whether an Emergency Advance Payment is appropriate based on the information submitted by the Claimant.
3. Upon determination that the Claimant is eligible for an Emergency Advance Payment, a payment will be authorized within 24 hours.¹⁸

On September 7, 2010, the GCCF published a document on its website setting forth its methodology for calculating losses during Phase I.

According to the GCCF, it relied heavily upon input from ARPC in developing its approach to determining claimant eligibility and calculating losses during the development of Phase I. In order to determine the eligibility of a claimant, the GCCF placed the claimant in one of six

¹⁸ In public statements he made in September 2010, Mr. Feinberg acknowledged that the process of determining eligibility during Phase I was more complex and time-consuming than initially contemplated and that the GCCF had not been able to process claims in the timeframe set forth in the Phase I protocol.

categories based upon the claimant's business type (as an owner or employee) and categorized the location of the claimant's loss as being either inside or outside the "zone of impact" from the Spill. The GCCF then determined the claimant's eligibility based upon the combination of the category in which the claimant was placed and the claimant's loss location. The calculated losses, if any, of a claimant found eligible through this process were presumed to have been caused by the Spill and the claimant did not have to demonstrate further that any post-Spill reduction in earnings or profits was the result of the Spill.

Once an individual claimant was found eligible, the GCCF claims reviewer utilized a calculator tool to calculate the claimant's losses. That calculator tool determined the claimant's projected 2010 earnings by choosing the highest of the claimant's earnings for 2008, 2009 or annualized 2010 prior to the Spill. The calculator multiplied the projected 2010 earnings by a "seasonality percentage,"¹⁹ depending upon the month(s) covered by the claim, to get an amount from which the claimant's actual earnings for the claim period were subtracted.

For an eligible business claimant, the claims reviewer utilized one of several different calculators based upon the claimant's industry. Depending upon the financial information provided by the claimant, the selected calculator tool determined the claimant's projected 2010 revenue based upon one of a series of formulas and rules. The projected 2010 revenue was multiplied by the applicable seasonality percentage for the month(s) covered by the claim, resulting in an amount

¹⁹ A seasonality percentage was assigned to each month based upon an estimation of the proportion of annual earnings that the claimant would receive in that month. Because the economy of the Gulf was heavily dependent upon the fishing and tourism industries, the highest seasonality percentages were applied in June, July and August. During Phase I, a seasonality percentage was used in the calculation of all business and individual claims. With regard to individual claims calculations during Phase II, a seasonality percentage was applied only when the employee was an hourly employee; the seasonality percentage was not applied to salaried employees because it was presumed that their monthly earnings did not vary from month to month. With some exceptions, seasonality percentages were not applied when the GCCF calculated business claim losses during Phase II. The most common circumstances when seasonality percentages were used in a loss calculation for business claims in Phase II were (1) claims for which the claimant did not submit pre-Spill monthly revenue data; and (2) claims submitted by start-up businesses that did not have complete annual financial data.

According to Feinberg Rozen, ARPC recommended the use of seasonality percentages in the calculation of losses sustained by eligible individual claimants. Cowheard developed the seasonality percentages that were used. Initially, Cowheard developed seasonality percentages for each county and parish using sales tax data received from business claimants. Starting in September 2010 and through the rest of Phase I, the GCCF applied the seasonality percentages for Gulf Shores, Alabama to all loss calculations except those for claims in the commercial and charter fishing industries, which had an individualized seasonality percentage. Feinberg Rozen informed us that the GCCF utilized the Gulf Shores, Alabama seasonality percentages because this approach was most favorable to claimants.

from which the claimant's actual 2010 revenue would be subtracted. The resulting amount was multiplied by a Loss of Income percentage ("LOI"), which adjusted the loss revenue amount for expenses avoided or discontinued as a result of the reduction in revenue. The product of this calculation was the amount of the business claimants' EAP payment. During Phase I, for each business loss calculation, the GCCF used an industry-based LOI.

During Phase I, the GCCF adopted a "\$1,000 floor" policy pursuant to which, the GCCF paid all eligible claimants at least \$1,000 even if the claimant had requested and/or the GCCF's calculation of the claimant's loss resulted in an amount less than \$1,000.

After analyzing an EAP claim, the GCCF typically issued one of several types of letters informing the claimant of the resolution of the claim. These included:

- Determination Letter: The GCCF sent a determination letter to a claimant after it had determined that the claimant was eligible for compensation from the GCCF and calculated the amount of the compensation. Depending upon the payment option chosen by the claimant, the GCCF either included a check for the amount of the approved compensation or wired the compensation amount to the claimant's account. (See Exhibit M.)
- Zero Loss Determination Letter: The GCCF issued a Zero Loss Determination Letter to an eligible claimant when the loss calculation resulted in a finding that the claimant had not sustained any losses during the claim period.
- Denial Letter: The GCCF issued a denial letter to a claimant that failed to demonstrate a loss caused by the Spill. As an explanation for the denial, these letters would contain the statement, "The documents and information you submitted did not show any lost earnings or profits due to the Spill." The denial letter, however, did state explicitly that the denial of the claimant's EAP claim did not preclude the claimant from making a future final payment claim. Specifically, a Phase I denial letter contained the following language:

This decision is based on criteria that apply to all claimants seeking payment from the GCCF. This denial applies to your request for an Emergency Advance Payment and does not affect your right to submit a Final Claim for any damages or losses you have sustained. However, in preparing any Final Claim, you should review the reasons set forth above for the denial of your claim for an Emergency Advance Payment.²⁰

(See Exhibit N.)

²⁰ More than 74,000 unique claimants received denial letters during Phase I, of which over 32,000 filed claims during Phase II as of February 23, 2012.

- Deficiency Letter: The GCCF issued a deficiency letter to a claimant who failed to provide sufficient documentation for the GCCF to determine the claimant's eligibility and/or to calculate the amount of the claimant's loss. During Phase I, the deficiency letters issued by the GCCF contained general language that informed the claimant the documentation submitted in support of the claim was deficient, but did not contain a specific statement regarding the types of documents that would cure the deficiency. For example, a deficiency letter issued in reference to an individual claim seeking payment for lost earnings or profits would typically contain the statement:

When we reviewed your claim, we did not have certain documents or information that we needed to be able to evaluate your claim. We cannot take further action on your claim until you provide us with the following: . . . Documents sufficient to determine the total gross amount the Claimant earned as wages or salary from May 1, 2010, until the present, or proof that the Claimant has earned no income during this time.

(See Exhibit O.)

The GCCF Phase I protocols did not include a process by which a claimant could appeal an adverse resolution or have its claim re-reviewed by the GCCF.

According to the GCCF, approximately 1.8% of all GCCF claimants indicated a preference that the GCCF communicate with them in a language other than English. Of those claimants, 83.2% indicated a Spanish language preference, 16.1% indicated a Vietnamese language preference and 0.7% indicated a Khmer language preference. The GCCF undertook several steps during Phase I to meet the language needs of claimants. These included, but were not limited to, staffing of the GCG-operated call center with persons fluent in Spanish, Vietnamese and French and creation of a process by which a telephone translation service would be used for callers who spoke other languages; staffing of certain site offices with people who were fluent in Spanish, Vietnamese, Laotian, Khmer, French and Croatian; making all claim forms available in hardcopy in Spanish, Vietnamese and Khmer; posting all website content in Spanish, Vietnamese and Khmer; sending all correspondence that did not require the inclusion of claimant specific claims information in Spanish, Vietnamese or Khmer for all claimants who had notified the GCCF of a preference for one of these languages; providing claimants with an opportunity for a special appointment with a translator present; and creating an online claims filing process, accessible through the GCCF website, through which claimants could file claims in Spanish and Vietnamese.

During Phase I, letters to claimants containing claim-specific information were not, as a matter of course, sent to non-English speaking claimants in their chosen language. Rather, these letters would contain an insert, which the GCCF called a “buck slip,” that, in Spanish, Vietnamese and Khmer, informed claimants that they may call the GCCF’s toll-free number to request a translation of any GCCF correspondence.

As Phase I progressed, the GCCF received a very large volume of claims—over 475,000 claims were filed from August 23, 2010 through November 2010. BrownGreer and GCG substantially increased their staffing in reaction to the claim volume. At times during October and November 2010, BrownGreer had over 1,000 and GCG had over 2,400 professionals working on the GCCF engagement. In addition, adjusters from Worley assisted with the processing of individual claims and forensic accountants from PwC, Cowheard and AFA all assisted with the processing of business claims during Phase I.

The GCCF continued to accept EAP claims through November 23, 2010 and in total, paid in excess of \$2.5 billion to more than 169,000 Phase I claimants.

D. GCCF Phase II

1. Types of Claims Available During Phase II

While accepting and processing claims during Phase I, the GCCF, based upon the economic analysis provided by ARPC and input from other experts, continued to develop a process for Phase II. During Phase II (the “Interim Payment/Final Payment” or “IP/FP” claims process), the GCCF received the following three types of claims:

- ***Quick Payment Final Claim:*** A claimant who had received a prior EAP or Interim Payment (see below) from the GCCF or a prior payment from the Real Estate Fund set up by the GCCF during Phase I to pay real estate brokers and agents harmed by the Spill (“the Real Estate Fund”) could file for a Quick Payment Final Claim and receive, without further documentation of losses caused by the Spill, a one-time final payment of \$5,000 for individuals and \$25,000 for businesses. Prior amounts received by the claimant from the BP-operated facility and/or the GCCF were not subtracted from this payment amount. Claimants seeking a Quick Payment were required to submit with their claim form a release and covenant not to sue in which the claimant agreed not to sue BP and all other potentially liable parties.

- Interim Payment Claim: An eligible claimant could elect to file an Interim Payment Claim to receive compensation for documented past losses or damages caused by the Spill for which the claimant previously had not been compensated by the BP-operated facility, the GCCF or the Real Estate Fund. A claimant seeking an Interim Payment was not required to sign a release and covenant not to sue and, therefore, was able to file future Interim Payment, Quick Pay Final Payment and Full Review Final Payment (see below) Claims. According to the protocol, absent exigent circumstances, a claimant was permitted to file only one Interim Payment Claim per quarter. Any Interim Payment awarded to a claimant was decreased by the amount of any payments received from the GCCF, the BP-operated facility or the Real Estate Fund.
- Full Review Final Payment Claim: An eligible claimant could also file a Full Review Final Payment (“Final Payment”) Claim to receive payment for documented past and future losses resulting from the Spill for which the claimant previously had not been compensated by the GCCF, the BP-operated facility or the Real Estate Fund. Claimants wishing to accept a Final Payment were required to sign and submit a release and covenant not to sue in which the claimant agreed not to sue BP and all other potentially liable parties. Additionally, any Full Review Final Payment awarded to a claimant was decreased by the amount of any previous payments received from the GCCF, the BP-operated facility or the Real Estate Fund.

As a general matter, the GCCF subjected Interim Payment and Final Payment Claims filed during Phase II to more stringent documentation requirements than those applied to claims filed during Phase I, while, at the same time, it expanded the types of businesses that potentially would be eligible for compensation and granted automatic eligibility to claimants located on the Gulf shore who were involved in businesses that were particularly reliant upon Gulf resources and, therefore, more likely to be negatively impacted by the Spill. The protocol for Phase II was published on November 22, 2010 (See Exhibit P) and then again as amended on February 8, 2011 (See Exhibit Q).²¹

Claim forms for Phase II became available to the public in site offices and on the GCCF website on December 18, 2010, and packets containing the forms were sent to persons and businesses that had filed claims during Phase I and those who had received a payment during the BP-operated facility. The GCCF began receiving Interim Payment and Final Payment Claims shortly thereafter; however, the assessment of claimant eligibility and calculation of losses for those claims did not begin until February 18, 2011 when the Final Rules Governing Payment

²¹ The amended version of the protocol dated February 8, 2011 was issued to conform with Judge Carl Barbier’s ruling in *re Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico, on April 20, 2010*, No. 2179, 2011 WL 323866 (E.D.La. Feb. 2, 2011).

Options, Eligibility and Substantiation Criteria, and Final Payment Methodology (“Final Rules”) were published. (See Exhibit R.) In the meantime, the GCCF continued to process EAP claims, paying more than \$602 million to over 42,000 claimants from November 23, 2010 through February 18, 2011. Additionally, claims reviewers from BrownGreer and Worley prepared Phase II claims for review by naming documents and capturing claimant financial data in the claims review platform to ready claims for eligibility determination and loss calculation.

2. Development of Methodology for Interim Payment and Final Payment Claims

The process undertaken by the GCCF to resolve Quick Payment Final Claims was relatively simple. The GCCF needed to determine:

- the claimant type (individual or business);
- whether the claimant had received a prior EAP, Interim Payment or Payment from the Real Estate Fund; and
- whether the claimant previously signed a release.

The methodology utilized for the review and analysis of claims for Interim Payments and Final Payments was necessarily more complex than that utilized for Quick Payment claims. In developing that methodology, the GCCF retained ARPC to conduct research and provide expert advice and recommendations. The GCCF worked collaboratively with ARPC in evaluating and modifying ARPC’s recommendations to arrive at the methodologies that were actually implemented.

a. Role of ARPC

As mentioned above, ARPC’s engagement team leader, Dr. Vasquez, told us that when he developed economic models for determining compensable losses in mass tort cases, he attempted to design a model that would efficiently distribute money to deserving claimants and limit the number of claimants opting out of the settlement. ARPC brought this mass tort perspective in developing a methodology that it recommended to the GCCF for determining eligibility. The methodology separated claimants, other than seafood harvesters and their employees, into three groups—Safe Harbor Businesses, Potentially Compensable Businesses and All Other Businesses—based upon geographic location and business type. Safe Harbor Businesses were

located in the immediate vicinity of the Gulf shore. Claimants in this group were presumed eligible and, therefore, did not have to demonstrate that any losses they sustained were due to the Spill.²² Potentially Compensable Businesses were located in the “Gulf Alliance Counties,”²³ but not within the immediate Gulf Shore vicinity. Based upon the research conducted by ARPC, the GCCF determined that claimants who fell within Potentially Compensable Businesses group, in order to be eligible for compensation, would need to pass a financial test to demonstrate that its business revenue was trending more positively in the months leading up to the Spill than it was in the period after the Spill. The remaining claimants fell into the All Other Businesses category and were required to both pass the financial test mentioned above and “provide detailed direct evidence to demonstrate a significant connection between the loss and the [Spill].”

This methodology to determine claimant eligibility provided the basis for the approach to eligibility that the GCCF ultimately adopted in Phase II. ARPC told us that the above model was specifically designed so that the Safe Harbor Businesses category would be more inclusive than necessary, resulting in the compensation of some businesses and individuals that did not actually lose earnings due to the Spill. On the other extreme, ARPC anticipated that very few claimants in the All Other Businesses category would be able to demonstrate that their losses resulted from the Spill. Additionally, the requirement that certain claimants “provide detailed direct evidence to demonstrate a significant connection between the loss and the Spill” contributed to the GCCF’s creation of the requirement that certain claimants provide a specific causation document (“SCD”) linking their losses to the Spill.

The methodology also provided the underpinning for the “coattails eligibility” rule which was adopted by the GCCF and is described below. Specifically, under the methodology, an individual claimant employed by a business in the Potentially Compensable Businesses or All Other Businesses category would be deemed eligible automatically, without further

²² Under the ARPC-recommended methodology, construction businesses and certain retail businesses would never be categorized as Safe Harbor Businesses.

²³ According to the GCCF, the concept of the “Gulf Alliance Counties” was derived from the Gulf of Mexico Alliance (“GOMA”). On its website, www.gulfofmexicoalliance.org, GOMA describes itself as “a partnership of the states of Alabama, Florida, Louisiana, Mississippi, and Texas, with the goal of significantly increasing regional collaboration to enhance the ecological and economic health of the Gulf of Mexico.” GOMA has identified 141 counties as being part of the Gulf of Mexico Region. The GCCF included in its definition of “Gulf Alliance Counties” any non-coastal Zip Code that was wholly or partially within one of these 141 counties.

documentation, if the claimant's employer previously had been declared eligible. All other individual claimants in the Potentially Compensable Businesses and All Other Businesses categories would not be eligible unless they provided detailed direct evidence to demonstrate a significant connection between the loss and the Spill.

The GCCF also instructed ARPC to perform research and, from that, the GCCF developed the model for compensating claimants for future losses of earnings or profits. In this model, a claimant's future losses would be calculated by multiplying the claimant's demonstrated loss in post-Spill 2010 by a factor. Initially, the GCCF applied a Future Recovery Factor of two, except for oyster harvesters and processors, to which the GCCF applied a factor of four. At a later date, based upon research done by ARPC, the GCCF would extend the factor of four to crab and shrimp harvesters and processors. In its document, "Response to Comments on the Derivation and Calculation of Future Damages," which was appended to the Final Rules (See Exhibit R), ARPC stated that it developed the Future Recovery Factor "based on the analysis of the economic recovery experience of individuals and businesses subjected to other unanticipated and catastrophic events. Experts have studied many of these events from the past and recorded estimated rates of economic recovery."²⁴ ARPC continued to consult with the GCCF throughout its tenure.

b. Causation

One of the issues that Feinberg Rozen needed to resolve early in the tenure of the GCCF was the standard of legal causation to apply to the evaluation of the claims submitted to the facility. They informed us that they decided to require that, in order to be eligible to receive compensation from the GCCF, claimants had to demonstrate more than simply that the loss they were claiming would not have occurred "but for" the Spill. Rather, the GCCF informed us that they adopted the more demanding common law "proximate cause" standard of causation. Under

²⁴ Based upon research conducted by ARPC, in October 2011, the GCCF modified its methodology as relates to calculating losses sustained by eligible oyster leaseholders. As a result of this modification, in addition to being compensated for lost earnings or profits, eligible oyster leaseholders would receive a special allowance "to compensate [them] for the risk of as yet undetected and possibly ongoing damage to oyster-producing areas in the Gulf and the possibility of significant delay before affected oyster beds are repaired." This special allowance was calculated by multiplying the claimant's net income in a comparison year (generally based upon either the average of the claimant's net income for 2008 and 2009 or the claimant's 2009 net income, whichever is higher) by a "Future Risk Multiple," which, depending upon the location of the claimant's oyster bed, could be 1, 2, 3.5 or 7.

this standard, the claimant had to demonstrate that the Spill was the proximate cause of the loss for which the claimant was seeking compensation. As stated above, we have not reached any conclusions regarding the appropriateness of this determination.²⁵

3. Implementation of the Final Rules and Claims Evaluation Methodology

On February 2, 2011, the GCCF published a draft Announcement of Payment Options, Eligibility and Substantiation Criteria and Final Methodology that, among other things, set forth the GCCF's intended methodology for determining claimant eligibility and calculating losses, and established the documentation requirements that eligible claimants needed to meet in order to be compensated. After a two-week public comment period, during which the GCCF received over 1,400 comments from individuals, companies, government officials and public interest groups, as well as BP, the GCCF published the Final Rules on February 18, 2011.

a. Claimant Eligibility

The Final Rules set forth the GCCF's methodology for determining claimant eligibility and calculating losses, as well as its documentation requirements. While the GCCF stated in the Final Rules that "[n]either physical proximity to the Spill nor a particular type of work or business engaged in by the claimant is a prerequisite for payment of a claim," the combination of location of loss and business type played a crucial role in the GCCF's assessment of a claimant's eligibility that defined the steps the claimant would need to undertake to demonstrate that claimed losses were the result of the Spill. Specifically, to assess whether a claimant was eligible to receive a payment offer from the GCCF, the GCCF first placed the claimant into one of four groups:

- *Group 1:* Group 1 consisted mainly of individuals and businesses that were heavily dependent on Gulf resources and tourism and were located in zip codes that bordered the Gulf shore,²⁶ as well as claimants that had already received prior payments from the GCCF

²⁵ The GCCF informed us that, subsequent to its decision to adopt the proximate cause standard of causation, it sought an expert opinion from Professor John C.P. Goldberg of Harvard Law School, to be used as a benchmark, regarding the scope of liability that BP or any other party would face as a result of the Spill. Feinberg Rozen viewed Professor Goldberg's approach to be more demanding and, therefore, less favorable to claimants than the approach to causation adopted by the GCCF.

²⁶ Individuals and businesses that are heavily dependent on Gulf resources and tourism and were located in New Orleans were also included in Group 1, even though New Orleans did not border the Gulf shore, because New Orleans relied heavily upon tourism in the Gulf.

and/or Real Estate Fund. Any demonstrated loss sustained by a claimant in Group 1 was presumed to have resulted from the Spill and, therefore, the GCCF would deem the claimant eligible even if the claimant had not submitted any other evidence linking the claimant's loss to the Spill.

- *Group 2:* Group 2 consisted of individuals and businesses that were located in the Gulf Alliance counties, but were not in zip codes that bordered the Gulf shore, as well as businesses that, while located in zip codes that bordered the Gulf shore, were not heavily reliant on Gulf resources and tourism. Based upon input from ARPC and using the approaches described below, the GCCF analyzed the documentation presented by a claimant in Group 2 to ascertain whether any loss sustained by the claimant was due to the Spill.

When ascertaining the eligibility of a Group 2 business claimant, the GCCF first subjected the claimant's financial history to the "Financial Test" in which, in essence, the GCCF determined whether the business's decline in its 2010 post-Spill revenue as compared to the same period in 2008 and 2009 was greater than any decline in revenue it might have experienced in the four months leading up to the Spill as compared to the same period in 2008 and 2009.²⁷ If a Group 2 business claimant failed to pass the Financial Test, the GCCF still considered it eligible if it had submitted an SCD, such as a cancelled or modified contract or cancelled order for goods or services sold, which demonstrated that a loss sustained by the business was more likely than not the result of the Spill.

A Group 2 individual claimant was deemed eligible if the claimant were claiming losses as a result of working at a business that had been deemed eligible or if the individual had submitted an SCD, such as a termination letter or an affidavit, which demonstrated the individual's loss was more likely than not due to the Spill.

The GCCF required that, with some exception,²⁸ an SCD, in order to be sufficient, had to be prepared contemporaneously with the event it was reporting. For example, to be sufficient, a letter from an employer explaining that the employer had terminated the claimant or reduced the working hours of the claimant because of a downturn in business caused by the Spill had to bear a date near the time of the termination or reduction of hours. The GCCF deemed as insufficient letters or sworn affidavits that were not prepared at or near the time of the termination or reduction in hours.

²⁷ For certain start-up companies, because of the absence of historical financial data, the GCCF looked at business plans, market comparables, pre-and post-loss financial data, industry trends, and other relevant information to assess whether they had sustained losses as a result of the Spill.

²⁸ Two examples of SCDs that would be sufficient to establish a claimant's eligibility even if they were not prepared contemporaneously were:

- (1) List of customers or suppliers within the Gulf Region. This type of document could have been prepared at any time, but must have reflected customers or suppliers of the business before or at the time of the Spill.
- (2) Records of sales reflecting the percentage of sales to out-of-state/town purchasers. This type of document could have been prepared at any time, but must have reflected the percentage of sales of the business before or at the time of the Spill. While this was one of the conditions, BDO was advised that it was never used.

- Group 3: Group 3 consisted of claimants who either were not located on the Gulf shore or Gulf Alliance counties, or were businesses or the employees of businesses that were not heavily reliant on Gulf resources and tourism. To be eligible, a Group 3 business claimant had to pass both the Financial Test and provide an SCD that demonstrated that the business had sustained a loss that was more likely than not caused by the Spill. As with Group 2, a Group 3 individual claimant would be deemed eligible if the claimant were claiming losses as a result of working at a business that had been deemed eligible or had provided a contemporaneously dated SCD, such as a termination letter or an affidavit, demonstrating that the individual's loss was more likely than not due to the Spill.
- Group 4: Group 4 consisted of claimants in business types that were deemed ineligible for compensation at various times by the GCCF. This group included, for example, government entities, which could be eligible to make claims against funds being maintained by BP; oil rig support businesses, which might be eligible to make claims to the oil moratorium fund created by BP; Spill clean-up workers; freshwater seafood processors and distributors; recreational fishermen; GCCF workers; and recreational divers.

Beginning on March 31, 2011, the GCCF implemented the "coattails eligibility" policy.

Pursuant to that policy, the GCCF applied a business claimant's eligibility group determination to a subsequent claim filed by the business's employee and deem automatically eligible, without an SCD, an individual claimant in Group 2 or Group 3 if the claimant's employer had been paid during Phase I or had previously been deemed eligible in Phase II. This policy change made it easier for individual claimants to prove eligibility.

b. Loss Calculation

Once a claimant was determined to be eligible for potential compensation, the GCCF calculated the amount of the claimant's compensable loss. For Interim Payment claims, the analysis was limited to a calculation of the amount of past losses sustained by the claimant from May 1, 2010 (or the date of any prior Interim Payment) through the date of the claim; for Final Payment claims, the analysis included both a calculation of past losses as well as a "Future Recovery Factor," based upon a multiple of the claimant's documented 2010 loss amount. To calculate the Final Payment offer, the documented 2010 loss amount was multiplied by two. In the case of claims by oyster harvesters and processors (from the inception of the GCCF) and claims by shrimp and crab harvesters and processors (under review on or received after November 30, 2011), the Final Payment offer was calculated by multiplying the documented 2010 loss by four.

Until the publication of the Second Modification of the Final Rules (see below) on November 30, 2011, for most individual Interim Payment claims,²⁹ the loss amount was calculated as follows: The reviewer determined the claimant's Comparison Year income by selecting the highest of the claimant's 2008, 2009 or annualized pre-Spill 2010 earnings³⁰ for the same months of the year as those included in the claim³¹ and subtracting from that amount the actual income the claimant earned during the claim period. For example, if a claimant had post-Spill paycheck records for each month in 2010 with the exception of August, the loss calculation excluded August 2010 and calculated the claimant losses for each of the other months in 2010. From the resulting sum, the GCCF subtracted any prior payments by BP, the GCCF and the Real Estate Fund, as well as the amount of any applicable liens and garnishments, to arrive at the amount to be paid to the claimant.

For business claims, the first step in the calculation of losses for Interim Payment Claims was similar to that for individuals: The reviewer determined the claimant's Comparison Year income by selecting the highest of the claimant's 2008, 2009 and annualized pre-Spill 2010 revenue³² for the same months of the year as those included in the claim and subtracting from that amount the claimant's actual revenue during the claim period. This amount was then multiplied by an LOI percentage³³ to arrive at the amount of lost profits, if any, sustained by the claimant during the claim period. The GCCF then subtracted any prior payments by the BP-operated facility, the GCCF and the Real Estate Fund, as well as the amount of any applicable liens and garnishments, to arrive at the amount to be paid to the claimant.

²⁹ As described in Section III.D.3.i (a), below, the Comparison Year used in the calculation of Interim Payment amounts for individual claimants in the casino industry was derived by averaging the claimant's 2008 and 2009 earnings.

³⁰ As described in Section III.D.3.i (c), below, prior to April 7, 2011, the GCCF selected the higher of 2008 or 2009 earnings to serve as a benchmark for 2010 projected earnings.

³¹ In the case of a claimant who was paid on an hourly basis, this amount for each month would also be multiplied by the applicable seasonality percentage. During Phase II, the GCCF used the seasonality percentages for Gulf Shores, Alabama. They informed us that they took this course because it is most favorable to claimants.

³² As described in Section III.D.3.i (c), prior to April 7, 2011, the GCCF selected the higher of 2008 or 2009 earnings to serve as a benchmark for 2010 projected earnings.

³³ Unlike the process utilized in Phase I, where possible, the GCCF calculated the LOI percentage to be applied based upon the claimant's own pre-Spill financial documents (such as an annual Profit and Loss statement or tax return). In those cases, such as a start-up business, where there was insufficient information to create such a claimant-specific LOI percentage, the GCCF had the option of utilizing an industry-based LOI percentage.

Because of the complexity of some business claims, the GCCF forensic accountants were able to exercise some discretion when calculating the losses sustained by eligible business claimants. Specifically, in calculating the losses sustained by a business claimant, a GCCF forensic accountant typically would utilize several different business trend analyses to determine the claimant's historical earnings and then utilize the most favorable of these approaches to forecast future revenue. The GCCF accountants' models varied slightly among industries and the size of the businesses; however, during our testing of business claims, we observed that the most common historical revenue trends utilized to forecast a claimant's post-Spill earnings were: (1) the average of the claimant's revenue for 2008 and 2009; (2) the claimant's revenue for the 12 months prior to May 2010; (3) the claimant's revenue for the 8 months prior to May 2010; and (4) the claimant's revenue for the 4 months prior to May 2010. The GCCF would select one of the historical trends to forecast the revenue the claimant could be expected to have achieved in the time period following May 2010 were it not for the Spill. We observed that, in most instances, the GCCF accountant chose the historical trend that would result in the highest loss calculation.

The GCCF calculated the Final Payment amount to be offered to a claimant by first calculating, in the manner described above with regard to Interim Payment Claims, the claimant's actual loss amount for the period from the date of the Spill through December 31, 2010 and multiplied that amount by the applicable Future Recovery Factor.³⁴

c. Interest Calculation

OPA requires that, with some exceptions, the responsible party pay interest to a claimant "beginning on the 30th day following the date on which the claim is presented to the responsible party or guarantor and ending on the date on which the claim is paid."³⁵ As a result, the GCCF adopted a policy pursuant to which it would calculate and pay interest on all types of OPA

³⁴ With regard to claimants with documented 2010 losses of \$500,000 or more, the GCCF did not automatically apply a Future Recovery Factor. Rather, the Final Rules stated that, for these claimants, the "Final Payment calculation . . . will be determined on an individualized basis after analyzing input from the claimant as well as the experts. The Final Payment offer will be the actual documented losses in 2010 and an additional amount to compensate for the recovery and risk of possible future losses."

³⁵ See 33 U.S.C. §§ 2705(a) and (b).

claims (EAP, Interim and Final) seeking payment for past losses³⁶ from the 30th day after the claim was “submitted” until the date the claim was “paid.” The GCCF deemed a claim “submitted” for purposes of calculating interest on the date the claim form was received by the GCCF or BP.³⁷ It did, however, reserve the discretion, in limited cases, to consider a claim to be “submitted” at a later date for purposes of the interest calculation. The GCCF noted in the GCCF Interest Policy that it would exercise this discretion, for example, with regard to a claim that “was submitted with such plainly deficient supporting documentation as to render it impossible for the GCCF to meaningfully review the claim.”

The GCCF deemed a claim “paid” for purposes of calculating interest on the date a check or wire transfer was sent to a claimant. Where a check or wire transfer had to be reissued, the GCCF deemed a claim “paid” on the date of the reissued check or wire transfer. While the GCCF Interest Policy provided for an exception that permitted the GCCF to determine that a claim was “paid” on the date of the original issuance of payment because (a) the cause for the reissuance was indisputably claimant error, and (b) paying additional interest from the date of the reissuance would not be, in the GCCF’s judgment, in the interest of justice, the GCCF never implemented that exception.

As required by OPA, the GCCF calculated the rate of interest applied by taking the average of the highest rate for commercial and finance company paper of maturities of 180 days or less for each of the days included within the period for which interest was to be paid to eligible claimants, as published in the Federal Reserve Bulletin. The GCCF paid interest twice a year, at the end of the first quarter and the end of the fourth quarter. The GCCF had a policy whereby it would only make an interest payment in cases where the amount due was above \$5.

³⁶ The GCCF did not pay interest on amounts paid for future losses through the application of the Future Recovery Factor.

³⁷ In its April 5, 2011 “Summary of GCCF Interest Policy” (“GCCF Interest Policy”), which was published on its website, the GCCF noted that “[c]ases interpreting the term ‘presented’ have concluded that to present a claim, a claimant must provide information that is sufficient to enable the responsible party to make an informed offer and to engage in meaningful substantive negotiations.” It went on to state that it adopted the approach described above, because the presentment standard “is qualitative and does not provide a bright line that can be administratively applied in a uniform manner that will give claimants clear notice of the date that interest begins to accrue.”

We performed sample testing on interest payment calculations and, in all instances, found the GCCF to have accurately applied their interest policy to the payments made to claimants.

d. Communication of Claim Status and Resolution to Claimants

After analyzing a Final Payment or Interim Payment claim, the GCCF typically issued one of several types of letters informing the claimant of the resolution of the claim. These included:

- *Determination Letter*: The GCCF sent a determination letter to a claimant after it had determined that the claimant was eligible for compensation from the GCCF and calculated the amount of the compensation. In the case of a determination letter awarding an Interim Payment, depending upon the payment option chosen by the claimant, the GCCF either included a check for the amount of the approved compensation or wired the compensation amount to the claimant's account.³⁸ A Final Payment determination letter contained only an offer of payment; it did not include a payment. In order to receive a Final Payment that had been awarded, a claimant had to send back to the GCCF a form indicating the claimant's acceptance of the award. (See Exhibit S.) After the GCCF received this form, it would send the claimant a release and covenant not to sue BP and all other potentially liable parties, which the claimant would be required to execute and return to the GCCF before the GCCF would issue the Final Payment.
- *Zero Loss Determination Letter*: The GCCF issued a Zero Loss Determination Letter to an eligible claimant when the loss calculation resulted in a finding that the claimant had not sustained any losses during the claim period. (See Exhibit T.)
- *Denial Letter*: The GCCF issued a denial letter to a claimant that failed to demonstrate a loss caused by the Spill. Denial letters issued during Phase II provided more detail regarding the reason the subject claim was being denied than had been provided in Phase I denial letters. For example, a denial letter issued to a claimant that had failed to demonstrate that claimed losses were caused by the Spill would typically contain the following language:

To receive an Interim Payment or a Final Payment, each claimant must demonstrate both actual financial loss and a connection between that loss and the Oil Spill. Under the Final Rules Governing Eligibility and Substantiation Criteria followed by the GCCF (available on the GCCF website, www.gulfcoastclaimsfacility.com), the GCCF reviews each claim to determine whether the claimant has established financial losses caused by the Oil Spill. Attachment A to the Final Rules

³⁸ Additionally, all determination letters issued in response to an Interim Payment Claim included a Final Payment offer that the claimant could accept by sending back to the GCCF a form indicating the claimant's acceptance of the Final Payment offer. After the GCCF received this form, it would send the claimant a release and covenant not to sue BP and all other potentially liable parties, which the claimant would be required to execute and return to the GCCF before the GCCF would issue the Final Payment.

Governing Eligibility and Substantiation Criteria provides guidance to assist claimants with formulating the basis of a claim and providing sufficient supporting documentation. We have reviewed all the materials that you submitted and determined that you have not provided documents sufficient to establish that your financial loss occurred as a result of the Oil Spill. If you have documents that support your claim that your income losses were caused by the Oil Spill, you may submit them to the GCCF and we will review them. The documents must have been created at the time of the events described in them to be acceptable proof.

(See Exhibit U.)

- *Deficiency Letter:* The GCCF issued a deficiency letter to a claimant who failed to provide sufficient documentation for the GCCF to determine the claimant's eligibility and/or to calculate the amount of the claimant's loss. Unlike the deficiency letters issued in Phase I, Phase II deficiency letters, as a general rule, provided detailed information regarding the specific issues for which the GCCF was seeking information and the types of documents that would provide this information. (See Exhibit V.) By its terms, a deficiency letter gave the claimant 30 days to respond with the requested documents. The GCCF sent a deficiency denial letter to any claimant who failed to respond within 45 days of the date of the deficiency letter.

Initially, as in Phase I, only letters that did not contain claim-specific information were sent to Spanish-, Vietnamese- or Khmer-speaking claimants in their preferred language during Phase II. As a result, determination letters were sent in English and contained a "buck slip" that, in Spanish, Vietnamese and Khmer, informed the claimant that a translation could be requested by calling the GCCF's toll-free number. In October 2011, the GCCF ended this practice and began, as a matter of course, to send letters containing claim-specific information to claimants in their preferred language.

e. Claim Reconsideration Methods

A claimant who was dissatisfied after receiving any of the above resolutions could challenge the result by: (1) requesting that the GCCF re-review³⁹ the claim; (2) in limited circumstances, filing

³⁹ A claimant could seek to have the GCCF re-review a claim on which a Determination Letter, Zero Loss Determination Letter, Denial Letter or Deficiency Letter had been issued within thirty days of the date of the letter. Prior to July 2011, a claimant could request the re-review (1) in writing; (2) by calling BrownGreer's Claimant Communication Center; (3) in person at one of the GCCF's site offices; or (4) by submitting additional documentation. Beginning in July 2011, the GCCF required a claimant seeking a re-review of a claim on which a Determination Letter or Zero Loss Determination letter had been issued to complete a form on which the claimant was to provide the reason for the request. Claimants were only permitted one re-review per claim.

an appeal with the GCCF Appeal Board;⁴⁰ (3) seeking a review by the U.S. Coast Guard;⁴¹ and/or (4) seeking redress in the court system either by joining the multi-district class action lawsuit already pending in the U.S. District Court for Eastern District of Louisiana or filing a new lawsuit. In addition, claimants were also free to file new claims for an Interim or Final Payment with the caveat that, in accordance with the Phase II protocol, only one Interim Payment claim could be considered per quarter.⁴²

f. Diversity of Claimants

During its tenure, the GCCF received claims from a diverse range of individuals and businesses. These included, among others:

- A diverse range of businesses, including fishermen, seafood harvesters and processors, hotels, restaurants, real estate agents and developers, retail businesses, builders, contractors, dentists, veterinarians, chiropractors, childcare services, garbage removal services, taxi drivers and plumbers;
- Start-up businesses with limited historical financial documentation;
- Companies with annual revenues in the billions of dollars;
- Individuals who were living paycheck-to-paycheck and were unable to rely upon savings to get by while waiting for their claims to be processed;
- Individuals and businesses who operated on a cash-basis and were able to provide little or no documentation of earnings;
- Individuals who needed access to the GCCF and explanations of the claims process through a language other than English (particularly Spanish, Vietnamese and Khmer);

⁴⁰ Under the Phase II protocol, a claimant had the right to appeal if the result was a Final Payment determination and the Claimant had been offered a total monetary award in excess of \$250,000; and BP had the right to appeal a Final Payment determination in cases where the claimant had been offered a total monetary award in excess of \$500,000. In addition, Mr. Feinberg, in his discretion, could grant either a claimant or BP the right to appeal if the appealing party asserted that (a) a Final Claim determination “present[ed] an issue of first impression under OPA” or (b) a Final Claim determination was inconsistent with prior legal precedent under OPA; and that the claim involved was representative of a larger category of claims to be considered by the GCCF.

⁴¹ The U.S. Coast Guard only compensates claimants for past losses caused by an oil spill. It does not compensate claimants for future anticipated losses.

⁴² The Phase II protocol specifically contained the provision limiting claimants to the filing of only one Interim Payment Claim per quarter. The GCCF informed BDO that, as a result of a processing error, this rule was not enforced in practice until November 2011, when the error was identified and corrected.

- Individuals and businesses whose claims needed to be directed to other funds (for example, the fund to compensate those affected by the moratorium on certain drilling operations); and
- Individuals submitting claims for types of compensation outside the scope of OPA, such as personal injury and death.

The volume and diversity of claimants necessitated significant complexity in the claims administration process and presented unique challenges to the GCCF.

g. Modifications to the GCCF Methodologies

In the last paragraph of the Final Rules, the GCCF stated explicitly that it would “continue to monitor and revise” these rules. In fact, throughout its tenure the GCCF made adjustments to its methodology for determining claimant eligibility and calculating loss amounts. Some of these changes were included in two modifications—dated August 16, 2011 and November 30, 2011—which the GCCF published on its website.⁴³ In addition to these published changes, the GCCF made many other adjustments to the methodology used to analyze claims and determine compensable losses. The GCCF made these changes for various reasons, including to integrate input from industry groups, to expand eligibility and to facilitate the faster processing of claims. Many of these changes—both those contained in the two modifications to the Final Rules and those that were not—had a direct impact on the GCCF’s determination of a claimant’s eligibility or calculation of any compensable losses. With some exceptions, however, the GCCF did not apply these changes retroactively. As discussed in greater detail below, this approach resulted in cases in which two claimants that may appear to have been similarly situated could have their claims resolved in different ways merely as a result of the timing of the GCCF’s review of their

⁴³ In its published August 16, 2011 modification to the Final Rules, the GCCF created a requirement that, beginning in the second quarter of 2011, business claimants demonstrate a 5% growth in revenue in 2011 when compared to 2010; created a requirement that, beginning in the third quarter of 2011, individual claimants demonstrate a 5% increase in 2011 earnings over their earnings in 2010; modified the Financial Test used to determine the eligibility of business claimants to allow for additional flexibility in determining the eligibility of claimants with limited financial history; created a methodology to compensate Oyster Leaseholders for projected future losses as a result of potential for prolonged damage to their oyster beds; and made adjustments regarding the calculation of Final Payments for claimants who did not have a documented loss in 2010. (See Exhibit W.)

In its published November 30, 2011 modification to the Final Rules, the GCCF changed from two to four the Future Recovery Factor to be applied when calculating Final Payment offers for commercial shrimp and crab harvesters and processors; made adjustments to the eligibility of claimants in the Florida Peninsula and Texas; and changed the methodology for calculating the Comparison Year income for individual claimants. (See Exhibit X.)

claims. During interviews with us, the GCCF stated on several occasions that it took this approach because the GCCF was focused on processing claims as they were received and because claimants were able to have their claims reconsidered by the GCCF process by requesting a re-review or submitting a new claim. The GCCF indicated that it expected that certain inconsistencies created by the methodology modifications would be corrected through this process.

i. Examples of Methodology Modifications

(a) Treatment of Individuals and Businesses in the Casino Industry and Other Businesses with Gaming Operations

The GCCF encountered various challenges processing individual and business claims in the casino industry. The GCCF attributed these challenges to conflicting information on whether casinos were actually affected by the Spill, as well as concerns expressed by officials in certain Gulf States where casinos are present. As the GCCF amended its methodologies to address these concerns, it adopted changes in policies that caused inconsistencies and delays in claims processing for casino workers and other workers employed by businesses with gaming operations, including changes in eligibility status and the adoption of unique rules for processing claims from casino workers.

In Phase I, casinos and individual claimants who worked in the casinos were not eligible for EAPs. According to the GCCF, it received information from a variety of sources, including casino experts, officials in the gaming industry and the general public, indicating that gaming was independent from tourism and that casinos had not been adversely affected by the Spill. Nevertheless, despite their non-eligibility, some casino workers were inadvertently paid during Phase I, making them automatically eligible for Phase II.

Early in Phase II, the Casino business type was put into eligibility groups that required claimants to provide SCD evidence demonstrating that their financial losses occurred as a result of the Spill. In response to concerns raised by casinos in Mississippi and their employees, the GCCF undertook to conduct more research into the issue of appropriate treatment of casino workers. As a result of that research, in March 2011, the GCCF adopted rules to process claims from individual casino workers. Pending finalization of these rules, claims from all casino workers

were put on “hold” in order to prevent further denial of these claims. In April 2011, the GCCF implemented the rules for processing claims from casino workers (the “Casino Worker Methodology”), including the following:

- Workers at casinos on the coast were considered eligible for payment without any SCDs;
- Casino claimants were required to provide complete financial documentation for 2008, 2009 and 2010; and
- The average of a casino worker’s 2008 and 2009 income was used to project earnings, which generally resulted in a different outcome than would be achieved by using the loss calculation methodology applied to non-casino workers.

In June 2011, the GCCF began to process claims for casino workers in 43 additional businesses located in Alabama, Florida, Louisiana and Mississippi that had some gaming operations on their sites using the Casino Worker Methodology. Many of these claims had been on “hold” since March 2011. At this time, the GCCF was classifying any business with a gaming operation as a Casino business type. For example, a restaurant with some gaming operations was classified as a casino. In September 2011, the GCCF placed all casino claims on “hold” again to further evaluate and accurately distinguish between the claims from casino workers and those from non-casino workers employed by businesses with gaming operations. Shortly thereafter, the GCCF began the task of reclassifying casino worker claimants into their correct eligibility groups.

In November 2011, the GCCF decided to reconsider the Casino business type that was assigned to the 43 additional businesses that had some gaming operations on their site to ensure they had been placed in a business type that represented the predominant nature of their operations. As a result, the GCCF reclassified 31 businesses formerly classified as casinos to a business type that better represented the predominant nature of their operations. By this time, however, the GCCF had already paid (or offered to pay) claimants working at 28 of the 43 businesses, 24 of which were newly classified in other business types.

As a result of the foregoing reclassification, all affected claimants with pending claims were re-reviewed under their new eligibility group determination. Claimants who had already received a determination letter under their previous eligibility group determination and who had not submitted a new claim form were not re-reviewed. The GCCF elected not to retract any outstanding final payment offers from claimants who were now required to provide an SCD, but

who had received a determination letter without providing an SCD. It also made additional payments to those claimants who may have received lower determination amounts as a result of being wrongly classified as casino workers.

(b) Inclusion of Prior Year Income for Similar Lines of Work Only

On March 11, 2011, the GCCF modified its rules for the types of income from 2008 and 2009 included in the loss calculation. Up to that time, the GCCF considered all of a claimant's historical income from 2008 and 2009 in the lost earnings calculation, regardless of whether the income was derived from the same or similar lines of work. Effective March 11, 2011, the GCCF changed its rules to include only 2008 and 2009 income from a line of work that was the same or similar to the claimant's line of work at the time of the Spill. As a result, claims evaluated before this policy change could have a higher calculated loss than claims reviewed subsequent to March 11, 2011.

(c) Use of Annualized January through April 2010 Earnings in Loss Calculations

Prior to April 7, 2011, the GCCF selected the higher of 2008 or 2009 earnings to serve as a benchmark for 2010 projected earnings (from which to subtract actual post-Spill 2010 earnings to arrive at post-Spill lost earnings). On April 7, 2011, the GCCF changed its policy to include the option of selecting the highest of 2008, 2009 earnings or January through April 2010 earnings multiplied by three to compute a projected 2010 earnings amount. The GCCF did not retroactively apply this policy to claimants who had previously presented documentation of January through April 2010 earnings to determine whether the annualized amount would have been higher than the greater of either 2008 or 2009 earnings.

(d) Use of Claimant Verified Amount Rule During Phase I

During Phase I, on September 18, 2010, the GCCF adopted a Claimant Verified Amount rule for both individual and business claimants. With the adoption of this rule, the GCCF paid the higher of the amount of losses claimed by the claimant (which the GCCF called the "Claimant Verified Amount" or "CVA") or the GCCF-calculated amount if pre-Spill financial information was provided. Originally this policy was in place for all claims where the CVA was less than or equal to \$10,000. Over the course of Phase I, the GCCF increased the CVA threshold amount

several times, including on September 25, 2010, when the GCCF capped the CVA amount at \$50,000 for individual claimants and \$200,000 for business claimants. Shortly thereafter, the GCCF adopted additional restrictions regarding the application of the CVA rule. The GCCF also issued true-up payments to claimants previously paid an amount less than the amount of losses stated by the claimant but within the cap amounts. On October 14, 2010, the GCCF eliminated the \$50,000 cap on individual claims and began to pay claimants the lesser of the CVA or the GCCF-calculated amount, if the claimant provided pre-Spill financial information.

(e) Use of Special Determination Letter During Phase II

During periods of high claim volume in Phase II, the GCCF, in an effort to expedite payments, intermittently implemented a policy pursuant to which it suspended its normal processing procedures with regard to eligible individual Final Payment claimants requesting less than \$5,000 for lost earnings only and business Final Payment claimants requesting less than \$25,000 for lost profits only. In these cases, the GCCF would calculate the claimant's loss by multiplying the CVA by the appropriate Future Recovery Factor and then subtracting any prior payments the claimant received from BP, the GCCF or the Real Estate Fund. For those claimants that had received a prior payment from the GCCF or the Real Estate Fund, this loss calculation had a floor of \$5,000 for individual claimants and \$25,000 for business claimants.

The GCCF would notify a claimant whose loss was calculated pursuant to this policy through the use of a Special Determination Letter, which differed from a regular Determination Letter in that it did not contain any attachments detailing payment calculations or the periods for which the claimant had or had not provided documentation. Additionally, every Special Determination Letter the GCCF mailed to a claimant also included a Release and Covenant Not to Sue, which the claimant could sign and return if the claimant elected to accept the Final Payment offer, thereby removing the intermediate step of claimant acceptance and a later mailing of the Release.

The Claimant Verified Special Determination Letter policy was first instituted on March 28, 2011 and initially was only applied to Group 1 claimants. From June 9, 2011 onwards, during the time periods in which it implemented the policy, the GCCF would also apply it to eligible Group 2 and Group 3 claimants, as well as to individual claimants who worked for an employer who had received a Phase I payment from the GCCF or a payment from the Real Estate Fund.

(f) Letters to Claimants Previously Denied During Phase II

In October and December 2011, the GCCF sent out letters to claimants that had been denied during Phase II of the GCCF process. (See Exhibit Y.) Specifically, those letters contained the following language:

You previously filed a claim with the GCCF seeking damages relating to the Oil Spill. The GCCF sent you a Denial Letter that denied your claim for the reasons explained in that letter. If you think you should have been paid and can provide supporting documentation to tie your losses to the Oil Spill, you may file a new Claim Form and any supporting documents you have. The GCCF will review that claim and send you a letter explaining the outcome of that review. If you have not signed a release and Covenant Not to Sue, you may file a new claim with the GCCF until the program ends in August of 2013.

The GCCF did not send this letter to the following types of previously denied claimants:

- Those who had filed a Final Payment or Interim Payment Claim subsequent to being denied.
- Claimants whose Interim Payment and/or Final Payment claims were denied for any of the following reasons:
 - The claimant was claiming lost earnings or profits resulting from the loss of BP clean-up work or contracts;
 - The GCCF determined that the claim constituted “double-dipping” because it was seeking compensation for losses covered by a related business or individual claim for loss of earnings or profits;
 - The GCCF had classified the claimant in Group 4.

The GCCF sent these letters to 89,361 claimants whose claims were denied earlier in Phase II. As of March 8, 2012, 5,252 or 5.9% of those claimants who received these letters subsequently filed new claims with the GCCF.

Starting on November 2, 2011, the GCCF also began to include similar language in all denial letters sent to claimants.⁴⁴

⁴⁴ The denial letters contained this language:

h. GCCF Quality Control Processes

During its tenure, the GCCF implemented a variety of Quality Control processes. These included manual reviews at the various stages of the claims intake, claims review, payment, and claimant communication processes, as well as a review of data analytical trends. GCG, BrownGreer, PwC, Cowheard and AFA all set up systems in which there were multiple levels of review and oversight of the actions taken by line level staff. Additionally, as mentioned above, BrownGreer periodically administered tests to its claims reviewers in order to identify issues that would be addressed in individual or group training. As a result of the various Quality Control measures it undertook, the GCCF periodically identified issues that resulted in adjustments to its claims review processes, in general, or to its evaluation of specific claims. For example, in July 2011, the GCCF conducted a review of claims that the claims reviewers had classified as being in the “Other” business type. As a result of this review, the business types of some claimants were re-classified, resulting in those claimants being moved into more favorable eligibility groups.

i. Centralization of Claims Process

The GCCF claims review process, by design, was more centralized than that implemented by the BP-operated facility. The BP-operated facility relied extensively upon Worley adjusters to staff site offices, intake claims, meet with claimants, review claims and, where they deemed appropriate, issue payments. Worley officials told us that during the operation of that facility, its adjusters interacted extensively with the claimants whose claims they were reviewing and were given some discretion in the claims resolution and payment process.

As the GCCF moved into Phase II, the role of the Worley adjusters who staffed the site offices changed as their main roles became the fielding of questions from claimants and providing them with basic information regarding the claims process and the status of their claims.⁴⁵ With the

If you think you should have been paid and can provide supporting documentation to tie your losses to the Oil Spill, you may file a new Claim Form and any supporting documents you have. The GCCF will review that claim and send you a letter explaining the outcome of that review. If you have not signed a release and Covenant Not to Sue, you may file a new claim with the GCCF until the program ends in August of 2013. (See Exhibit Z.)

⁴⁵ Worley staff told BDO during interviews that, for a period early in the tenure of the GCCF, Worley adjusters in its offices had access to no more information than the claimant could access through the GCCF online claims

exception of a limited number of adjusters who were assigned to the small business claims and subsistence claims teams, the Worley adjusters assigned to the site offices were not directly involved in the evaluation of claims.

The process for implementing the methodology for reviewing and evaluating individual claims was handled almost exclusively by BrownGreer claims reviewers located in Richmond, Virginia. Determination letters, denial letters and deficiency letters sent to an individual claimant during Phase II contained the telephone number to BrownGreer's Claimant Communication Center ("CCC") and the name of a particular BrownGreer staff member to whom the claimant could speak about the claim. While that staff member typically was not the person who handled the particular claimant's claim, it was an experienced claims reviewer or supervisor who was well-versed in the GCCF's protocols and methodologies.

The loss calculations for business claims in Phase II were mainly performed in Hammond, Louisiana by forensic accountants from Cowheard and AFA, under the supervision of PwC accountants in Washington, D.C. Unlike the process for individual claims, the business claims review process often involved direct communication between the claimant or the claimant's representative and the assigned GCCF forensic accountant, during which issues, such as missing documentation, were discussed. Additionally, there often was interaction between the GCCF forensic accountant reviewing the claim and the claimant or the claimant's representative through which a proposed agreed-upon resolution was reached, subject to the approval of Feinberg Rozen.

j. Feinberg Rozen Oversight and Discretion

Throughout our independent evaluation, we were told by Feinberg Rozen and the various entities that were engaged to assist the GCCF that while it sought input from a variety of different sources, Feinberg Rozen was responsible ultimately for the creation, maintenance and amendment of GCCF policies and methodologies. Throughout the history of the GCCF, Feinberg Rozen had regular contact with all of the entities that were engaged to assist the GCCF and required daily reports which were prepared by GCG and BrownGreer.

portal. Subsequently, the Worley adjusters were given access to the same claims review portal utilized to review and resolve claims.

The GCCF also was inundated with requests from claimants seeking to have the processing of their claims “escalated,” by which the GCCF meant the claimants were seeking to have their claims treated other than in the ordinary course of the claims review process. Often, these requests were initiated through the liaison firms, congressional offices or other government officials, or a claimant’s attorney. Feinberg Rozen recognized both that there were claimants who were suffering severe hardship caused by the economic consequences of the Spill and, as a result, deserved to have their claims escalated, and that the GCCF would not be able to give escalated treatment to every claimant seeking it. As a result, Feinberg Rozen tasked BrownGreer with the preparation of a daily report of requests for the escalation of claims. Feinberg Rozen would work with BrownGreer on individual claims and with PwC on business claims to investigate the merits of these requests. Feinberg Rozen ultimately had sole authority to determine that a claim deserved escalated treatment.

Feinberg Rozen informed us that its daily supervision of the claims process included meetings with attorneys or other advisors who represented groups of similarly situated claimants to ensure that these claims were resolved in a consistent and efficient manner. In addition, Feinberg Rozen, on a daily basis, reviewed and determined eligibility and payment questions regarding challenging claims or those that presented policy questions.

E. The Current Status of the GCCF

On March 2, 2012, BP reached an agreement-in-principle with plaintiffs in the class action lawsuit, *In Re: Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico on April 20, 2010*, pending in the U.S. District Court for the Eastern District of Louisiana. Pursuant to the agreement-in-principle, BP agreed to pay damages to those who suffered economic or medical harm as a result of the Spill.⁴⁶ As part of that litigation, on March 8, 2012, U.S. District Court Judge Carl Barbier issued an order (the “Transition Order”) creating a process (the “Transition Process”) for transitioning from the GCCF claims process to the court-authorized claims process that would result from the settlement; setting forth the parameters by which claims currently pending with the GCCF would be handled in the Transition Process; and appointing Lafayette-

⁴⁶ While the agreement-in-principle did not provide a cap on the amount that BP would be required to pay to claimants, BP estimated the cost of the settlement to be \$7.8 billion.

based attorney Patrick Juneau as the Claims Administrator and Lynn Greer, a partner at BrownGreer, as the Transition Coordinator of the Transition Process. (See Exhibit AA.)

The Transition Order also provided that the GCCF would not accept, process or pay claims submitted to it other than those claims for which the claimant had accepted a payment offer made by the GCCF and executed a release prior to February 26, 2012, at 11:59 p.m., and neither BP nor the claimant had filed an appeal. The Transition Order also terminated the GCCF appeals process for all claims except those then pending. With regard to the independent evaluation being conducted by BDO, the Transition Order stated:

In the event that the federal audit of the GCCF currently being performed by BDO Consulting identifies one or more errors in the application of the GCCF rules and methodologies to specific claims, the GCCF retains the right to correct the error(s) and to issue payments to the claimant(s) at issue in an amount necessary such that the Claimant(s) will have received from the GCCF the same amount as if the error had not occurred. Within 24 hours of the GCCF making such a payment, the GCCF shall provide written notice of the fact and amount of the payment to the Claims Administrator. Any amounts paid pursuant to this provision shall be offset against any payments made by the Transition Facility and the Court Supervised Claims Program, if such payments are made prior to final payment by the Court Supervised Claims Program.

Subsequent to the issuance of the Transition Order, BDO and the GCCF continued the process of identifying instances in which an identified error resulted in an underpayment to a claimant, and the GCCF has made first-time and additional payments and/or offers of payment to those claimants where sufficient information existed in the claim file to do so. As a result of this process, the GCCF has agreed to pay more than \$64 million to almost 7,300 claimants.

IV. FINDINGS & OBSERVATIONS

The GCCF was among the largest claims processing facilities in U.S. history and the most significant response to date by a Responsible Party under OPA. As the preceding discussion makes clear, the GCCF evolved over time and faced many challenges. Through our independent evaluation, we have been able to identify practices that led to consequences consistent with some of the concerns identified by the DOJ and public officials and stakeholders in the Gulf States, as well as set forth the context of the GCCF's mandate and its accomplishments. In the following pages, we set forth our findings and observations regarding the GCCF generally and claims processing specifically.

A. Findings & Observations Regarding Claims Processing

Our findings and observations regarding claims processing are based on our testing of claims selected from over one million claims filed with the GCCF, involving over 550,000 claimants. Our selection of individual and business claims from the five Gulf States as well as non-Gulf States included claims that were paid, denied and in-process. For paid claims, we reviewed claims paid during Phase I and Phase II, including Quick Payments, Interim Payments and Final Payments. We compared certain attributes of the claims and the methodology used to determine payment amounts for consistency with the GCCF protocols and methodologies. For certain categories of claimants, we assigned dedicated teams to focus on these claims specifically to determine whether they were processed pursuant to the GCCF protocols and methodologies.

In the following sections of our report, we set forth our findings and observations relating to our review of: (1) claims paid, denied and in-process; and (2) claims with identified errors where the GCCF determined there was sufficient information in the claimant's file to enable a calculation of a first-time or additional payment and/or an offer for payment to the claimant.

1. Claims Paid, Denied or In-Process

With respect to our testing of claims from the entire population of claims processed by the GCCF, while our independent evaluation did uncover instances in which errors were made in the claims evaluation process, in general, the GCCF appeared to have consistently applied its protocols and methodologies in processing claims. To the extent we identified potential

inconsistencies, we inquired about them and determined the basis (for example, guidance in the Operations Manual, Process Alerts, other GCCF directives) for the potential inconsistencies.

As described below, when we determined that a potential inconsistency may in fact be an error, we worked with the GCCF to confirm whether it was an error and determine its likely cause. Upon confirming the error, we worked cooperatively with the GCCF to develop Structured Query Language (“SQL”) programs to mine the claims databases and determine the extent to which an issue affecting a specific claim may be mirrored in a broader population of claims. We then worked with the GCCF to confirm our understanding of the GCCF’s redetermination of the claims negatively affected by the error and its calculation of any first-time or additional payment and/or an offer for payment due the impacted claimants.

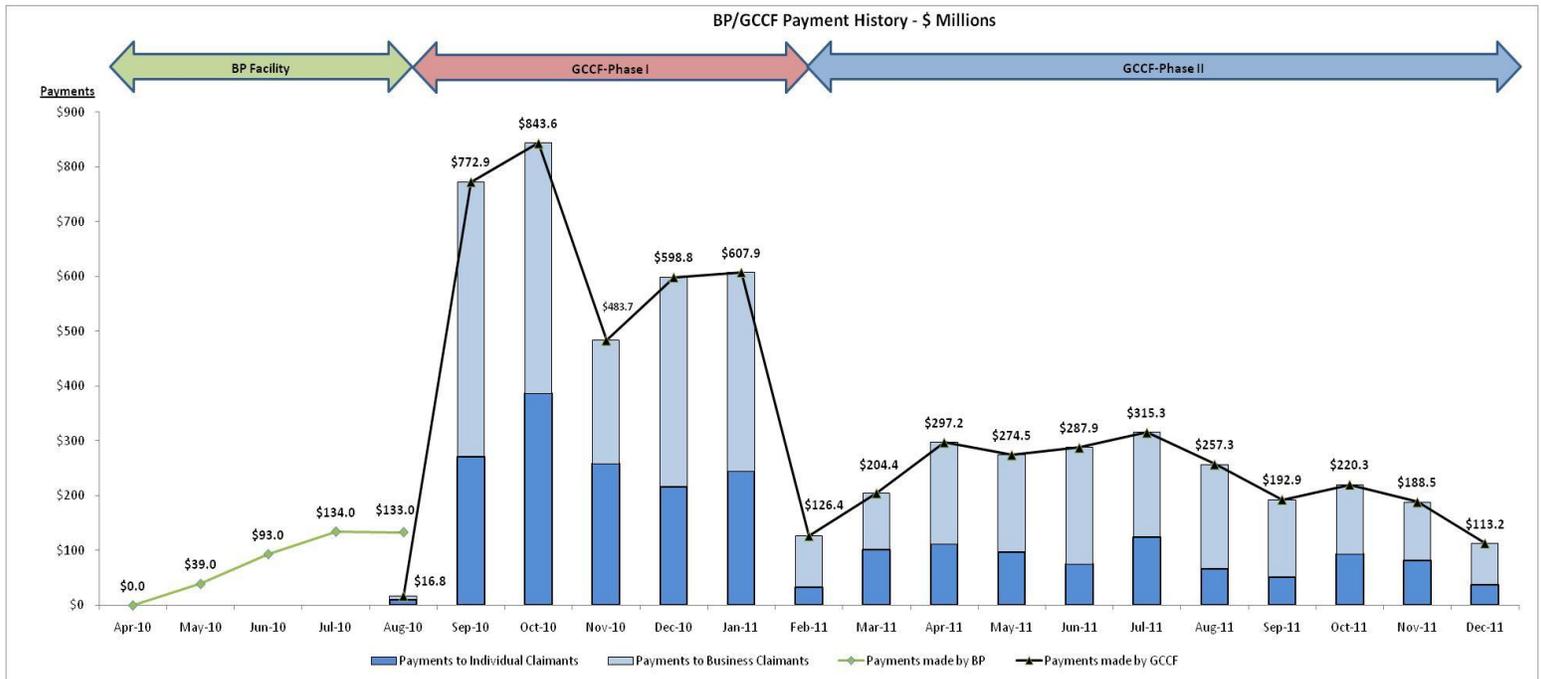
a. Claims Paid

During its one and one-half year tenure, the GCCF processed over one million claims and paid a total of more than \$6.2 billion to over 220,000 individual and business claimants (not including the first-time and additional payments and/or offers for payment made as a result of our independent evaluation). In its second full month of operation, the GCCF paid claimants over \$840 million – an average of more than \$27 million per day – in emergency advance payments.

The summary statistics cited below are based on our access to the GCCF database “frozen” as of December 30, 2011. Approximately 99.8% of the claims paid and 96.8% of the amounts paid related to claims for lost earnings or profits.

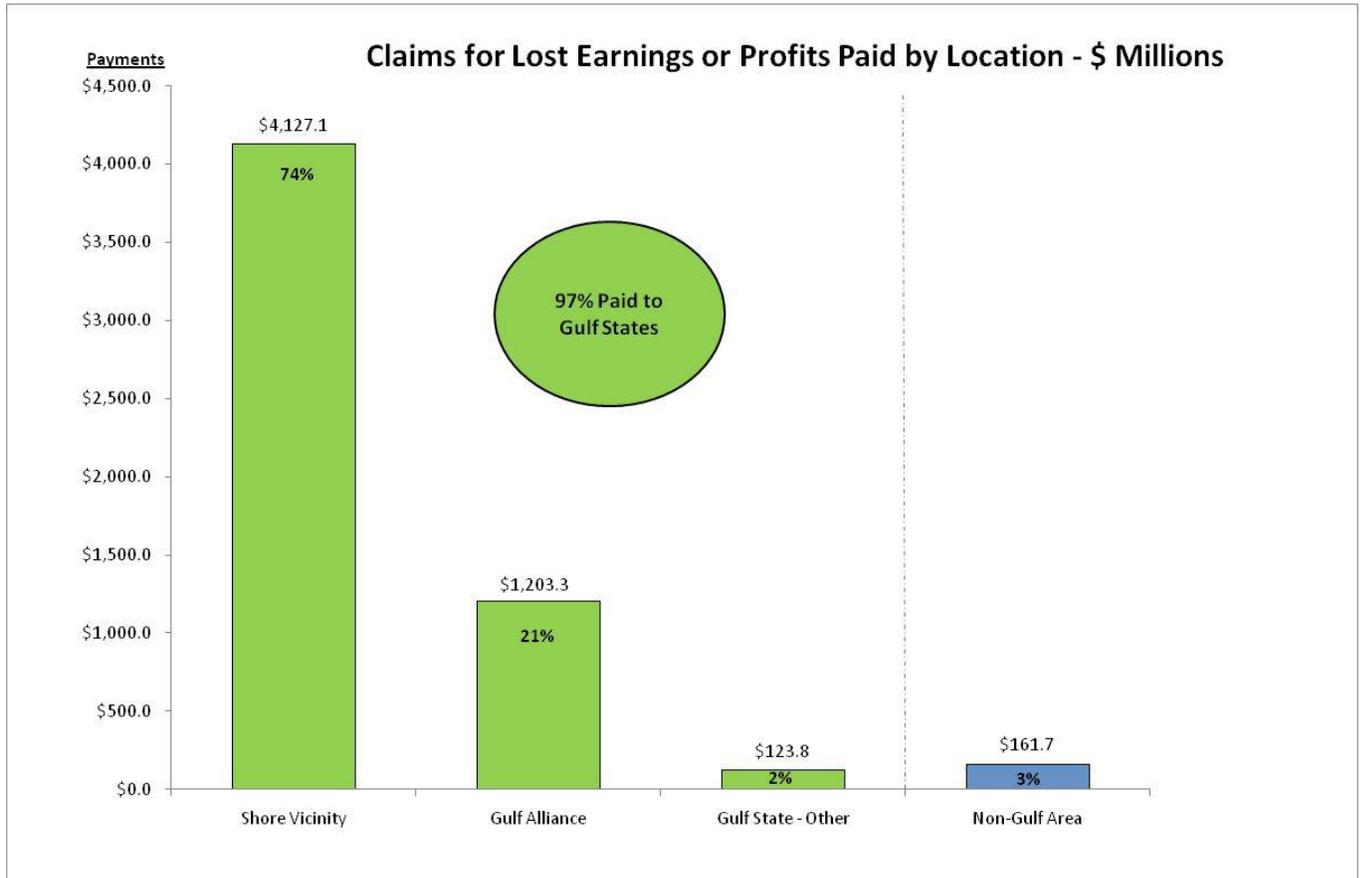
During the BP-operated facility and the GCCF’s Phase I and Phase II programs, the following amounts were paid to individuals and businesses each month from April 2010 through December 30, 2011:

Figure 2: BP/GCCF Payment History Chart



Consistent with the GCCF’s established methodology of basing claimant eligibility on a combination of loss location and business type, 97% of the payments made by the GCCF were made to claimants in the Gulf States, almost exclusively to individuals and businesses in the Gulf Coast Shore Vicinity and Gulf Alliance counties. As noted in the graph below, most of the lost earnings or profits (“LEP”) payments were made to claimants in the Shore Vicinity (74%) followed by payments to claimants in the Gulf Alliance counties (21%) and in other sections of Gulf States (2%). In contrast, payments to claimants from non-Gulf areas represented a much smaller portion (3%) of the payments made by the GCCF.

Figure 3: Claims Paid by Location



In addition to locations primarily impacted by the Spill, industries that were not precluded from filing a claim with the GCCF and had more favorable eligibility requirements (for example, retail, sales and service; food, beverage and lodging; fishing, seafood processing, tourism, rental properties) received most of the payments made by the GCCF while certain other industries (for example, legal, accounting and other professional services; banks and financial institutions; financial services and insurance) had higher eligibility requirements and, accordingly, received a smaller portion of the payments.

The foregoing payment distribution is consistent with the eligibility criteria that granted automatic eligibility to claimants closest to the Gulf. We did not identify any patterns with respect to paid claims that would suggest the GCCF departed from its protocols or methodologies in an attempt to minimize amounts paid generally or to specific types of claimants.

b. Claims Denied

The GCCF data indicate that it denied approximately 60% of the claimants who filed claims. During Phase I, a significant portion of the claims were denied because the GCCF determined that the claimants' business types were not compensable or the claimants failed to submit the required financial documentation. During Phase II, a majority of the claims denied were due to claimants not providing documentation sufficient, according to the GCCF's protocols and methodologies, to establish that their financial losses occurred as a result of the Spill. The remainder of the denied claims during Phase II was largely due to claimants: (1) failing to respond to Deficiency Letters requesting documents necessary for the GCCF to evaluate their claims or submitting insufficient additional information to evaluate their claims; or (2) submitting information that showed their losses were due to alternate causes.

The high incidence of denied claims is consistent with some of the concerns brought to our attention. Media reports concerning the GCCF include discussions of claimant dissatisfaction, including from those whose claims were denied. As described previously, during its early phases and, indeed, throughout its history, the GCCF undertook an outreach program in an effort to encourage potentially eligible claimants to submit claims to the facility. These efforts included, but were not limited to, a mass mailing sent to all claimants who had filed claims during the tenure of the BP-operated facility to inform them of the GCCF's creation; Mr. Feinberg's appearance at Town Hall meetings throughout the Gulf Coast region; the availability of claims forms at the various site offices which the GCCF maintained in the Gulf region; and the creation of a website. Undoubtedly, these outreach efforts, combined with the well-publicized fact that BP had agreed to set aside at least \$20 billion to pay claimants, attracted claims from persons who may not have sustained any losses from the Spill and, therefore, were not entitled to payment from the GCCF. Indeed, the GCCF received claims arising out of the Spill, which most directly affected the Gulf Region, from claimants from all 50 states in the United States and from 39 foreign countries, many of whom would have difficulty tying any losses that they sustained to the Spill. Had the GCCF only received claims from eligible claimants, there would have been a very substantial risk that an additional and significant number of claimants with compensable claims had not been reached by the GCCF's outreach efforts and, therefore, had not submitted claims.

While the GCCF's outreach is one potential factor leading to the high incidence of denied claims, it likely is not the only one. As noted above, a majority of the claims denied during Phase II were due to claimants not providing documentation sufficient to establish that their financial losses occurred as a result of the Spill. To a large degree, the GCCF's approach to determining claimant eligibility was driven by two factors: (1) loss location; and (2) claimant business type. As discussed in the section above on Paid Claims, 97% of the payments made by the GCCF were made to claimants in the Gulf States, almost exclusively to individuals and businesses with loss locations in the Gulf Coast Shore Vicinity and Gulf Alliance counties. Only 54% of the claims filed with loss locations in the Gulf Shore Vicinity were denied, whereas 70% of the claims with loss locations in the Gulf Alliance Counties and 76% of the claims with loss locations in other areas within the Gulf States were denied. Similarly, in terms of business type, over 92% of the claims paid by the GCCF were paid to claimants in the food, beverage and lodging; retail, sales and service; real estate; fishing; seafood processing and distribution; and tourism and recreation industries.

During Phase II, claimants (other than individual claimants who were deemed automatically eligible by operation of the GCCF's "coattails eligibility" policy) whose loss location and industry type placed them within Group 2 and Group 3 needed to demonstrate that claimed losses were caused by the Spill. For business claimants in Group 2, this requirement could be satisfied by passing the Financial Test. Individual claimants in Group 2 and all claimants in Group 3 were required to provide an SCD, prepared contemporaneously with the event described in the document. Only 2.8% of the individual claimants and 11.3% of the business claimants who, as a result of being in Group 2 or Group 3, were required to provide an SCD were able to actually do so. While we do not take a position on its appropriateness, the GCCF's adoption of the contemporaneous SCD requirement likely was another factor that contributed to the high incidence of claim denials, particularly in locations outside of the Gulf Shore Vicinity.

Additionally, as described earlier, we have observed instances, such as those relating to changes in eligibility requirements and the applicability of the "coattails eligibility," in which a denied claimant would have been deemed eligible for payment from the GCCF had the claimant filed the claim at a later date. Because the GCCF did not apply retroactively the changes that would have made these claimants eligible, unless they filed a new claim with the GCCF, these

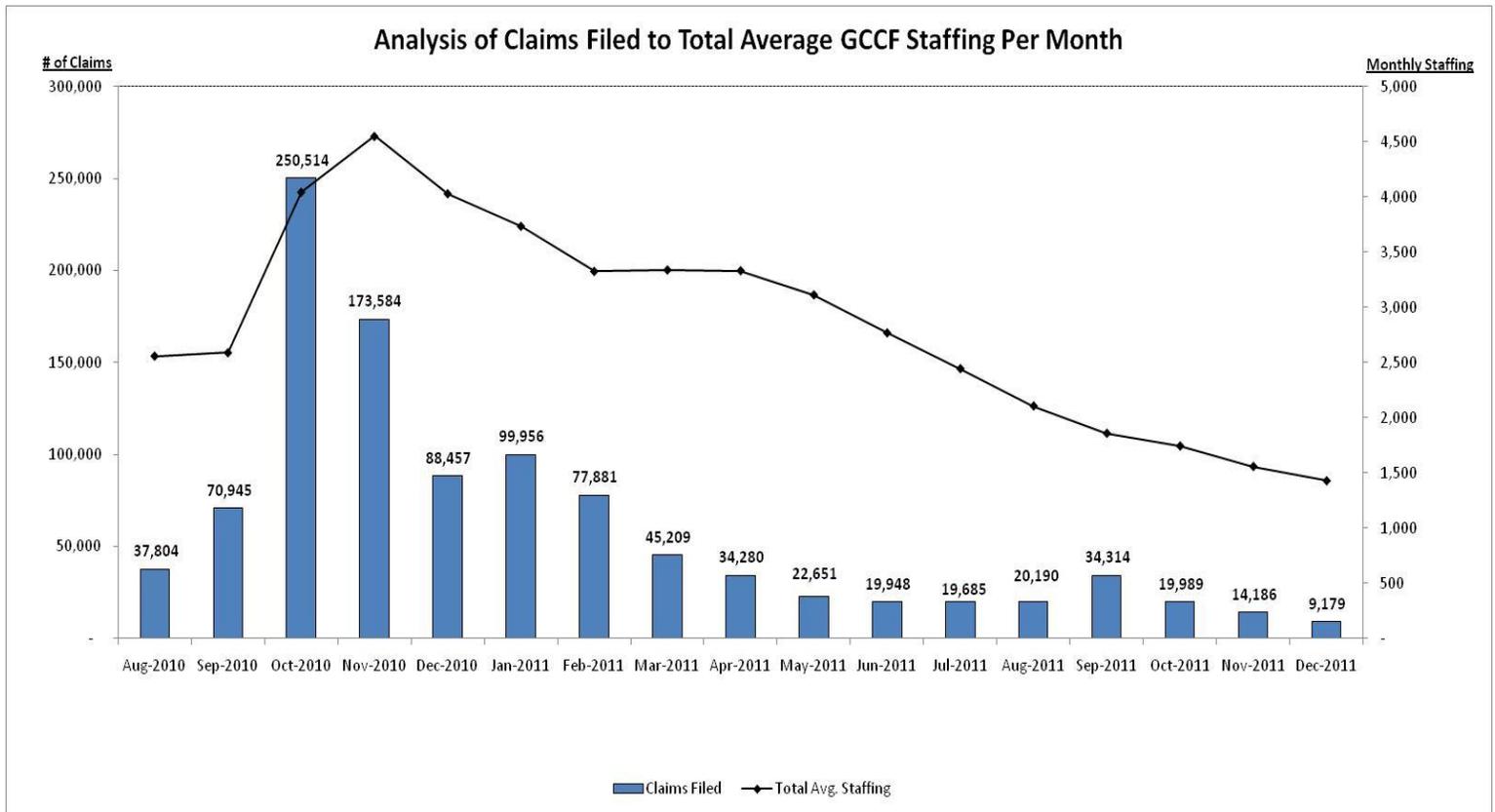
claimants would never receive a payment to which, by the GCCF's own protocols and methodologies, they may have been entitled.

c. Claims In-Process

The timing of processing individual and business claims was affected by a variety of factors, such as the availability of the information needed to process the claim; the quality (completeness, legibility) of the information provided by the claimant; the complexity of the claim, including whether accountants/attorneys were involved and whether there were ongoing negotiations with the claimant to settle the claim; the effectiveness and clarity of the GCCF's communications with the claimants advising them precisely which documents were needed to process and complete their claim; the timing of when the claim was filed (higher volume periods vs. lower volume periods); and whether the GCCF placed the claim on hold pending further refinement of the GCCF's policies and procedures.

In evaluating the timeliness of the GCCF's processing of claims, as the graph below shows, we observed that the GCCF committed significant resources to claims processing in response to fluctuations in claims volume.

Figure 4: GCCF Staffing Levels



In addition, significant other attempts were made by the GCCF to meet commitments for timely processing of claims and to expedite payment to claimants. For instance, at several points, the GCCF implemented the Special Determination Letter policy wherein it made the determination to suspend its normal processing procedures and calculate the losses of individual claimants that requested less than \$5,000 and business claimants that requested less than \$25,000 by multiplying the requested amount by the applicable Future Recovery Factor. Also, there were times when the GCCF adjusted its quality control process for a brief period of time in order to expedite payments to claimants. The Quick Payment option was another approach taken by the GCCF to expedite payments to claimants.

To further evaluate the GCCF’s timing of claims processing, using the date of the last document received from the claimant, we selected claims that had been in-process for an extended period of time and requested explanations from the GCCF. The majority of the claims that had been in-process for an extended period of time had extenuating circumstances, including:

- Claims that were referred for investigation of potential indicators of fraud;
- Claims for which the GCCF had requested additional information from the claimants; and
- Business claims in the process of being resolved through discussions between the GCCF and the claimants or their representatives.

As noted above, the GCCF also experienced “holds” on its process at various points for reasons both self-imposed and beyond its control. Furthermore, there were a very limited number of claims that did not appear to have extenuating circumstances or to have been placed on “hold.” We provided a list of these in-process claims to the GCCF and upon our inquiry they seemed to have been accelerated and processed.

Concerns regarding the timeliness of claims processing may have been amplified by the high expectations set by the GCCF initially. These high expectations were expressed by Mr. Feinberg in some of his earliest public statements concerning the GCCF’s claims evaluation process. Additionally, as mentioned above, the GCCF’s Phase I protocol set forth an ambitious timeframe for the processing of claims, a timeframe which Mr. Feinberg later acknowledged the GCCF was not able to meet. The high expectations created by Mr. Feinberg’s early statements and the Phase I protocol language concerning claims processing times, when combined with the fact that, for reasons both within and outside the GCCF’s control, the processing of certain claims was delayed, likely led to some of the concerns expressed by claimants and brought to our attention by the DOJ regarding the timely processing of claims.

2. Claims with Identified Errors Corrected by the GCCF

While our independent evaluation did uncover instances in which errors were made in the claims evaluation process, in general, the GCCF appeared to have consistently applied its protocols and methodologies in processing claims. During the course of our evaluation, we identified (and received cooperation from the GCCF in further identifying) claims that both BDO and the GCCF agreed were processed erroneously.

Overall, we evaluated aspects of tens of thousands of claims files and programmatically searched the entire database of over one million claims for those with attributes similar to claims found to contain errors. We then supplemented our findings by requesting documents and information from the GCCF and undertook a process with the GCCF to develop an accurate understanding of

the factual information required to complete our independent evaluation. Specifically, upon identifying a potential issue, our approach for resolution included:

- Discussing the factual bases of our findings, the applicable processes and the outcome with the GCCF to confirm that the outcome was the result of an error;
- Determining the likely cause(s) of the error (data input error, coding error or reviewer misapplication of GCCF policies);
- Working cooperatively with the GCCF to develop SQL programs to thoroughly search the entire database of over one million claims to determine whether the identified errors negatively affected other claimants; and
- Confirming our understanding of the GCCF's redetermination of the claim and the GCCF's calculation of any first-time or additional payment and/or an offer for payment due the claimant.

In this regard, approximately 30 GCCF professionals worked with a team of about 15 BDO professionals in Richmond, Virginia for several weeks to perform data mining techniques over the entire population of claims to identify other claims affected by the issues we identified through our claims testing. Roughly 80 SQL queries (averaging about 400 lines of coding syntax with the largest query approximating over 6,000 lines of coding syntax) were processed across the entire population of claims to identify claimants impacted by data input errors, coding errors and reviewer misapplication of GCCF policies.

The claims for these claimants were all re-reviewed either manually (full claims reviews and limited claims reviews) or programmatically to determine whether any claimants were negatively affected by identified errors and, if so, whether any first-time or additional payments and/or offers for payment were necessary. Upon completion of our evaluation, we determined that almost 7,300 claimants were negatively affected by the identified errors, requiring first-time and additional payments and/or offers for payment of more than \$64 million. Certain errors identified during our independent evaluation resulted in overpayments being made to claimants. In no instance did the GCCF request that claimants return any of these overpayments (regardless of the amount or circumstances).

The following example illustrates the approach taken when we identified a potential error. We presented a claim to the GCCF where it appeared that the final payment amount offered to a

claimant in the determination letter was incorrectly calculated. In this example, it appeared that the GCCF had failed to add the 2010 lost earnings of \$131.61 to the 2011 lost earnings of \$7,253.51 to arrive at the correct final payment calculation of \$7,385.12. Instead, the GCCF had taken the 2010 lost earnings of \$131.61, multiplied it by a Future Recovery Factor of two (2) and arrived at a total loss of \$263.22, which resulted in the claimant receiving a \$5,000 final payment offer (the GCCF's minimum final payment offer to individual claimants) rather than \$7,385.12.

The GCCF confirmed our finding and determined that this error was caused by a program coding error resident in the GCCF system for 3 days. We determined that this error might have affected other claims and worked with the GCCF to develop SQL queries to mine the database and identify claims that were potentially similarly affected. The GCCF identified, and we confirmed, that 7 claimants were potentially affected by this error, of which 4 were negatively affected and underpaid a total of \$15,650. The GCCF agreed to issue payments to these 4 claimants for the difference between the amount they received and the amount they should have received by adding their 2010 and 2011 losses.

At the conclusion of our testing, we determined that the identified errors where the GCCF concluded there was sufficient information in the claimant's file to enable a calculation of either a first-time and additional payment and/or an offer for payment to the claimant totaled more than \$64 million. In particular, we identified errors by the GCCF as follows (amounts shown reflect only those claimants for whom the GCCF has determined, according to its protocols and methodologies, that sufficient information was available to calculate a first-time or additional payment and/or an offer for payment):

Figure 5: Summary of First-time or Additional Payments and/or Offers for Payment⁴⁷

<u>Identified Error</u>	<u>Reference</u>	<u>Claimants Negatively Affected</u>	<u>Dollar Impact</u>
Selection and Use of Claimant's Financial Documents	A-1	3,155	\$25,716,201
Coattails Eligibility Policy	A-2	796	12,569,781
Selection of Pre-Spill Income	A-3	873	8,203,236
Selection of Loss Location Zip Code	A-4	221	5,485,150
Treatment of Individuals and Businesses in the Casino Industry and Other Businesses with Gaming Operations	A-5	560	4,011,124
System Issue Affecting Allocation of Year End Earnings to Multiple Periods	A-6	1,168	2,785,719
Alternate Cause Denials	A-7	82	1,384,060
Treatment of Claimants Linked in the Business Correlation Queue	A-8	69	1,178,512
Use of Non-Claimant Information to Determine Loss	A-9	67	760,461
Claimants Reclassified from "Other" Business Type Without Re-Review	A-10	29	669,434
Designation of Eligibility Group	A-11	42	503,359
Claimants Considered Deficient in the Presence of Complete Documentation	A-12	29	294,357
Claimants with Post-Spill Income Included Twice	A-13	142	279,141
Offsets Included as Post-Spill Earnings	A-14	19	219,545
Claim Preparation Fees	A-15	21	184,753
Selection of Business Type	A-16	10	122,988
Coding Issue Affecting Calculation of Lost Earnings	A-17	4	15,650
Miscellaneous Adjustments to Claimant's Lost Earnings or Profits	A-18	<u>5</u>	<u>102,504</u>
Totals		<u>7,292</u>	<u>\$64,485,975</u>

Further information about each of these errors is contained in Appendix A.

The distribution of errors by state (based on loss location) is as follows:⁴⁸

<u>State</u>	<u>Claimants</u>	<u>Dollar Impact</u>
Alabama	553	\$6,119,654
Florida	4,437	37,675,080
Louisiana	1,676	15,590,646
Mississippi	574	4,620,185
Texas	49	463,130
Other	<u>3</u>	<u>17,280</u>
Totals	<u>7,292</u>	<u>\$64,485,975</u>

⁴⁷ The GCCF has informed us that it will be making payments to each of these affected claimants subject to the caveat that it will not be making payments to claimants who have submitted claims which are determined to be fraudulent.

⁴⁸ See Exhibit BB for a breakdown of this data by county.

The distribution of errors by state of residence is as follows:⁴⁹

State	Claimants	Dollar Impact
Alabama	515	\$5,793,502
Florida	4,352	33,909,898
Louisiana	1,617	15,152,348
Mississippi	573	4,691,471
Texas	60	3,229,443
Other	<u>175</u>	<u>1,709,313</u>
Totals	<u>7,292</u>	<u>\$64,485,975</u>

We also identified more than 2,600 claimants whose claims were erroneously denied to whom payments or offers will not be issued by the GCCF. According to the GCCF, the claim files for these claimants do not contain sufficient information, as required by its protocols and methodologies, to determine whether the claimant sustained a financial loss and, therefore, the GCCF is unable to calculate a first-time or additional payment, or an offer for payment for these claimants. In light of Judge Barbier's March 8, 2012 First Amended Order, discussed above, the GCCF has determined that it cannot contact those claimants. As a result, the GCCF is not sending a communication to these claimants requesting the additional information needed to enable the GCCF to determine whether those claimants would be entitled to a first-time or additional payment and/or an offer for payment.⁵⁰

B. Observations Relating to Certain Concerns of Claimants, Public Officials and Other Stakeholders

The DOJ requested that our independent evaluation seek to identify the possible causes of certain concerns raised by claimants, public officials and other stakeholders. The presence of concerns is not surprising given the scope and scale of the GCCF's operations; the sensitive political, legal, economic and environmental context; and the unprecedented nature of the Spill and its impact on the economy in the Gulf. Further, the large number of claimants, their geographic proximity and the potential importance of the claimed amounts to individuals, businesses and the

⁴⁹ See Exhibit CC for a breakdown of this data by county.

⁵⁰ The GCCF noted that the denial letters it initially sent to these claimants contained language instructing them that, if they disagreed with the GCCF's denial, claimants could submit their claims to the U.S. Coast Guard's National Pollution Funds Center or could file claims in court, including in the MDL. Those claimants who are members of the class in the proposed MDL settlement will have the opportunity to submit their claims to the court-supervised claims process. Those claimants who are not members of the class in the proposed MDL settlement will be able to submit their claims to a new claims processing facility that BP will be operating pursuant to OPA.

entire region provided an opportunity and interest in comparing outcomes and addressing potential concerns. The concerns presented to BDO by the DOJ were also reflected in input from Gulf States public officials, media articles and commentary from public officials, trade associations and others posted by the GCCF on its website. The GCCF advised us that it was aware of these concerns, had taken steps to address them (and committed to address any errors we identified), and would provide us with information responsive to our requests to evaluate their potential bases.

The concerns brought to our attention by the DOJ included the following:

1. Why there seemed to be inconsistent outcomes among claimants that may appear to have been similarly situated;
2. Whether the GCCF gave appropriate consideration to documentation submitted by claimants; and
3. Whether communications with claimants were effective.

We were also asked to evaluate other concerns regarding: timely processing of claims; accuracy of inputs considered and formula/protocols applied; and quality and adequacy of resources.

We discuss each of these areas of inquiry in the following sections. The focus of our work was not on any one specific complaint raised by an individual or business, but rather on general aggregated concerns that were based on collective inputs from Gulf States public officials, as well as feedback that the DOJ received during the GCCF's tenure. It is not possible to determine the number of claimants who experienced these concerns or which specific claimants may have experienced each concern. As noted above, our approach included interviews and site visits, requests for documentation and selection of a broad range of claims for testing and data analytics of the GCCF databases to identify potential errors and, potentially, evaluate potential bases for the concerns brought to our attention. As we gained an understanding of the GCCF's processes and became familiar with the results of the application of the GCCF's protocols and methodologies in performing our detailed claims testing, we were better positioned to understand potential causes of these concerns. We cannot, however, identify with certainty the direct cause of one or more of those concerns. A confluence of factors, including those beyond the control of the GCCF, likely contributed to certain of these concerns.

1. Why There Seemed To Be Inconsistent Outcomes Among Claimants That May Appear To Have Been Similarly Situated

During our independent evaluation, we found that eligibility and loss calculations were based on a wide range of factors, in part due to the recognition by the GCCF that the Spill affected specific claimants differently and that each claimant's expected post-Spill earnings might be shaped by the claimant's particular prior earnings, occupation and other background factors. As the GCCF's protocols and methodologies were based on calculating specific claimants' lost earnings, the variation among outcomes is to be expected.

Claimants that may appear to have been similarly situated may have received different outcomes; however, "similarly situated," in many cases, is a subjective consideration and may not reflect differences among claimants that were not evident to observers (or understood to have implications to the outcomes). For purposes of our work, we sought to understand how the GCCF processed the claims submitted by specific claimants and, as a result, became familiar with the reasons that the GCCF arrived at specific outcomes. Since each claimant provided unique information, the extent to which two or more claimants are "similarly situated" is a matter of degree. The differences in the claims filed by two claimants, in terms of their respective earnings, circumstances and documentation, were often sufficient, by themselves, to result in different outcomes.

Claimants who may appear to have been similarly situated may have received different outcomes for a variety of reasons. These reasons include, among others: (1) the range of options for claimants to document pre-Spill earnings; (2) the timing of an individual's claim as compared to business claims by his employer; (3) the evolution of the GCCF's methodologies during its tenure; (4) the periodic implementation of processes to expedite payments; (5) the automatic eligibility in Phase II of claimants who may have been paid in error in Phase I; (6) human error by GCCF claims processors; and (7) the temporary differences in outcomes that were subsequently corrected. The following illustrative examples are drawn from our independent evaluation:

- GCCF protocols and methodologies included the option to select 2008 for pre-Spill earnings: Claimants who earned the same amounts from the same employer in 2009 and 2010 prior to the Spill might nonetheless have received different payment

amounts under accurate application of GCCF protocols and methodologies. As discussed in Section III.D.3.b, above, during Phase II, the GCCF calculated payment amounts based on the *highest* of a claimant's 2008, 2009 or annualized pre-Spill 2010 earnings. Even though two claimants earned the same amount from the same employer at the time of the Spill, one of them may have earned a higher amount in 2008 and, therefore, have received an Interim Payment and a Final Payment offer based on that higher amount rather than the claimant's 2009 or pre-Spill 2010 earnings. Thus, this example of accurate application of the GCCF's protocols and methodologies – that provided for use of the highest of three possible measures of pre-Spill earnings – resulted in different outcomes for claimants who may appear to have been similarly situated.

- GCCF protocols and methodologies included eligibility determinations affected by prior or subsequent claims by other claimants: Claimants who earned the same amounts from the same employer at the time of the Spill might nonetheless have received different outcomes under accurate application of GCCF protocols and methodologies depending upon whether the GCCF reviewed a business claim filed by their employer prior or subsequent to their claims as individuals. As discussed in Section III.D.3.a, above, beginning March 31, 2011, a claimant in Group 2 or Group 3 was deemed automatically eligible through the application of the GCCF's "coattails eligibility" policy if the GCCF previously deemed the claimant's employer eligible. As with the majority of the GCCF's protocols and methodologies, the GCCF did not search previously processed claims submitted by individual employees to determine if subsequent changes to their employers' eligibility as businesses would affect their payment eligibility as individuals (although claimants were entitled to resubmit previously denied claims). An individual employee may have been determined to be ineligible for calculation of possible payment based on accurate application of GCCF protocols and methodologies (for example, based on an absence of an SCD linking the claimant's lost earnings to the Spill). If, however, the GCCF subsequently determined that the individual claimant's employer were eligible, it would deem automatically eligible any employee of the business who thereafter filed a claim, even if that employee failed to provide a sufficient SCD linking the employee's losses to the Spill. If the first employee did not re-submit the previously denied claim, the GCCF's determination that this claimant was ineligible would remain in effect even though the claimant's co-workers who filed subsequently would be deemed automatically eligible. Thus, this example of accurate application of the GCCF's protocols and methodologies – that provided for automatic eligibility for individuals who filed claims after their employers were determined to be eligible – resulted in different outcomes for claimants who may appear to have been similarly situated.
- GCCF protocols and methodologies that changed during the GCCF's tenure to exclude pre-Spill earnings from different lines of work: Claimants who earned the same amounts from the same employer might nonetheless have received different payment amounts under accurate application of GCCF protocols and methodologies if they submitted their claims at different times. As discussed in Section III.D.3.g, above, the GCCF's protocols and methodologies changed during its tenure. As an example, the GCCF calculated payment amounts for individuals based on the highest

of a claimant's 2008, 2009 or annualized pre-Spill 2010 earnings; however, the GCCF changed its protocols and methodologies on March 11, 2011 such that individual claimants lost earnings were based on the highest of a claimant's 2008, 2009 or annualized pre-Spill 2010 earnings *provided that those earnings were from the same or similar line of work in which the individual was working at the time of the Spill*. Even though two claimants earned the same amount from the same employer at the time of the Spill and *both* earned a higher amount in 2008 from a different line of work, one of them may have submitted a claim prior to March 11, 2011 and, therefore, have received an Interim Payment and a Final Payment offer based on that higher 2008 amount rather than his 2009 or pre-Spill 2010 earnings. If the other individual submitted his claim after March 11, 2011, accurate application of the changed GCCF protocols and methodologies would have excluded consideration of the 2008 earnings from the different line of work. Therefore, the claimant who submitted a claim prior to March 11, 2011 would have received an Interim Payment and a Final Payment offer based on his higher 2008 earnings rather than his 2009 or pre-Spill 2010 earnings, but the second claimant who submitted the same information after March 11, 2011 would have received an Interim Payment and a Final Payment offer based on the higher of the earnings in 2009 and pre-Spill 2010 when the claimant was working in the same or similar line of work as at the time of the Spill (with no consideration of his 2008 earnings). Thus, this example of accurate application of the GCCF's protocols and methodologies – based on the highest of three possible measures of earnings if, after March 11, 2011, the employment was in the same or similar line of work – resulted in different outcomes for claimants who may appear to have been similarly situated.

- Periodic implementation by the GCCF of special measures designed to expedite claims processing: Claimants who earned the same amounts in the same or similar line of work from the same employer in 2008, 2009 and 2010 prior to the Spill might nonetheless have received different payment amounts under accurate application of GCCF protocols and methodologies based on periodic measures taken to expedite claims processing. As discussed in Section III.D.3.g.i (e), above, the GCCF advised us that, during Phase II, it periodically implemented a Special Determination Letter methodology intended to expedite claims processing. The GCCF issued Special Determination Letters – that paid eligible claimants amounts based on their claimed amounts if certain criteria were met – for periods lasting from one to several weeks, depending on when it viewed the process in need of expediting pending claims. For example, the GCCF would have calculated the losses of an eligible individual who submitted a claim prior to March 28, 2011 (when the Special Determination Letter policy was first implemented) based on a calculation drawing on the higher of the claimant's 2008, 2009 or pre-Spill 2010 earnings less actual post-Spill earnings and, if the resulting loss was less than \$1,000, would have made a minimum \$1,000 Initial Payment and a \$5,000 minimum Final Payment offer. However, an eligible individual who submitted identical documentation during, for example, the period beginning March 28, 2011, when the GCCF temporarily issued Special Determination Letters, would have received a Final Payment offer based on a multiple (two or four, depending on the relevant Future Recovery Factor) of the amount claimed by the claimant (with a minimum of \$5,000 if prior payments had been made). The result

might be: less than \$5,000 if the amount claimed by the claimant was less than \$2,500; \$5,000 if the minimum applied; or greater than \$5,000 if the amount claimed by the claimant was between \$2,501 and \$4,999 (and no minimum applied). The GCCF advised us that claimants who had received less than the minimum Final Payment offer under the Phase II protocols and methodologies as a result of the Special Determination Letters were subsequently identified and sent additional payments to reach the minimum that would have been offered if the Special Determination Letter process had not been temporarily in effect (claimants who received higher amounts were not asked to return the amounts of the overpayments). Thus, this example of accurate application of the GCCF's protocols and methodologies – that provided for use of Special Determination Letters to expedite claims processing – resulted in different outcomes for claimants who may appear to have been similarly situated. The impact was temporary for claimants who were paid less during the implementation of the Special Determination Letter policy than the amount that they would have otherwise received.

- GCCF protocols and methodologies that provided for payment to claimants in Phase II based on eligibility determinations made in Phase I, even if originally made in error: Claimants who earned the same amounts from the same employer in 2009 and 2010 prior to the Spill might nonetheless have received different outcomes under accurate application of GCCF protocols and methodologies since claimants who were determined to be eligible during Phase I received payments in Phase II, even if the original eligibility determination was made in error. As discussed in Section III. C, above, the GCCF deemed more than 169,000 claimants eligible during Phase I. As a result of the limited documentation requirements and the speed of processing, certain claimants were determined to be eligible in Phase I who did not meet the criteria. If a claimant working in a combination of a loss location and business type that should have resulted in a determination of no eligibility nonetheless received a payment during Phase I, the GCCF deemed that claimant automatically eligible for payment during Phase II. If a claimant from the same employer did not submit a claim in Phase I (or was correctly determined to be ineligible), the claimant's eligibility in Phase II would be based on the then existing GCCF protocols and methodologies that, although eligibility was expanded in Phase II, could have resulted in a determination of ineligibility (and thus no calculation of payment amounts). Thus, this example of accurate application of the GCCF's protocols and methodologies – that provided for calculation of payment amounts for claimants in Phase II based on eligibility determinations made in Phase I even if originally made in error – resulted in different outcomes for claimants who may appear to have been similarly situated.
- Human error in the selection of financial records of claimants' pre-Spill earnings: Claimants who earned the same amounts from the same employer in 2009 and 2010 prior to the Spill (or otherwise appear to have been similarly situated) might nonetheless have received different payment amounts due to human error in the application of GCCF protocols and methodologies. As discussed in more detail in Appendix A (A-1), the GCCF calculated payment amounts based on a claimant's pre- and post-Spill earnings as documented, based on a range of financial documents. We observed a number of instances where the GCCF reviewer selected an incorrect

financial document for use in calculating a claimant's 2010 post-Spill earnings, resulting in the underpayment of over 3,000 claimants based on this type of error.⁵¹ As a result of this error, claimants who submitted similar (or even identical) financial documentation might receive differing payments and offers of payment. Thus, human error in the application of the GCCF's protocols and methodologies – that provided for use of a wide range of documentation of earnings – may have resulted in different outcomes for claimants who may appear to have been similarly situated.

- Temporary differences in outcomes that were corrected by the GCCF: As noted in Section III.D.3.g.i (e), above with respect to Special Determination Letters, the GCCF periodically reviewed previously processed claims and corrected temporary differences in outcomes. Other issues that the GCCF corrected on a periodic basis included a July 2011 review of business types classified by GCCF claims processors as “Other” (and thus requiring additional steps to establish eligibility for calculation of a payment amount). Temporary issues in these areas may have resulted in different outcomes for several weeks or months for claimants that may appear to have been similarly situated.

A number of these illustrative examples (those related to inclusion of the highest of 2008, 2009 or pre-Spill earnings, “coattails eligibility,” Special Determination Letters and automatic eligibility during Phase II based on Phase I errors) result from protocols and methodologies that the GCCF informed us were intended to benefit claimants and expedite payments.

With regard to business claimants that may appear to have been similarly situated, we found differences in outcomes that were related to factors such as differing cost structures. As noted in Sections III.C and III.D.3.b, above, in general, the GCCF paid business claims based on their projected 2010 revenues multiplied by the applicable seasonality percentage for the month(s) covered by the claims, resulting in amounts from which the claimants' actual 2010 revenues would be subtracted. The resulting lost revenue amounts were multiplied by a Loss of Income percentage (“LOI”), which adjusted the lost revenue amounts for expenses avoided or discontinued as a result of the reduction in revenues. During Phase I, businesses were paid based on an LOI percentage for their industry as a whole. Therefore, two businesses located in the same geography with approximately similar historical revenues but in different industries would have received different payments since the estimates of their lost profits would vary based on the GCCF's use of industry-wide LOI's. During Phase II, in calculating a business claimant's lost

⁵¹ We did not identify the number of claimants who were overpaid based on this type of error as the GCCF did not correct errors by requesting the return of previously overpaid amounts; however, those claimants would also have experienced a difference in the outcome as compared to others who may appear to have been similarly situated.

profits, the GCCF generally applied the higher of the LOI percentage that were derived from the materials submitted by the specific business and the LOI percentage for the claimant's industry as a whole. The application of business-specific LOI's recognized that, even in the same industry, businesses may have different cost structures (for example, a greater use of subcontractors or a more capital-intensive manufacturing process). Therefore, businesses that may appear to have been similarly situated (for example, in the same geographic area, having approximately similar historical revenues and the same business type) may have submitted documentation showing different cost structures. As a result, accurate application of the GCCF's protocols and methodologies would result in different outcomes for business claimants that appeared to have been similarly situated.

2. Whether the GCCF Gave Appropriate Consideration to Documentation Submitted by Claimants

As discussed in Section IV.A.1, above, in general, the GCCF appeared to have consistently applied its protocols and methodologies, including the appropriate consideration of documentation submitted by claimants. The significant volume of claims, the wide range of documentation submitted by claimants and the necessary use of human claims reviewers led inevitably to some errors in the use of documentation submitted by claimants.

As set forth above in the illustrative example regarding human error as a possible cause of different outcomes for claimants that may appear to have been similarly situated, we identified 3,155 claims that were negatively affected by misapplication of available financial documentation (see Appendix A, A-1 for more detail). These errors have been corrected.

Based on our detailed claims testing, we identified, and confirmed with the GCCF, a very limited number of instances where the GCCF requested information from claimants that had already been provided. We were not able to search the GCCF's databases programmatically for similar errors since there were no consistent characteristics present in these claims. It is reasonable to conclude that other claims may have experienced this issue; however, based on our claims testing, this error did not appear to be pervasive.

Other errors that we noted during our claims testing include documents that were misfiled in an incorrect claimant's file and data entry errors from claimant financial documentation. In total,

we identified a very limited number of these errors. These errors have been corrected and we found no indication that human error in the use of documentation submitted by claimants affected significant numbers of claimants.

3. Whether Communications With Claimants Were Effective

As directed by the DOJ, we conducted our independent evaluation to include consideration of communications with claimants. As discussed in Section III.C, above, the GCCF conducted outreach to potential claimants, hosted a website in multiple languages, solicited comments on proposed protocols and methodologies, operated a call center, developed more than seventy different templates for letters sent directly to claimants and contacted previously denied claimants to suggest resubmission of claims.

The GCCF communications with claimants evolved both with regard to general public statements and claimant-specific letters. During our independent evaluation, we found – and the GCCF confirmed – that, as an initial matter, the early remarks during the design phase of the claims process regarding 48-hour turnaround time for individual claims and seven-day turnaround time for business claims were unrealistic. As early as September 2010, Mr. Feinberg acknowledged that claims processing was taking longer than anticipated.

With respect to claimant-specific communications, as discussed in Sections III.C and III.B.3.d, above, the GCCF modified the format and content of letters sent to claimants during its tenure. Letters sent to claimants during Phase I were less detailed (reflecting the urgent and initial nature of the Emergency Advance Payments being processed) and evolved during Phase II to be more specific.

For example, letters requesting additional information became more specific over time. In Phase I, letters requesting additional information included language such as:

You submitted a Claim Form to the Gulf Coast Claims Facility ("GCCF") relating to the Deepwater Horizon Incident on April 20, 2010. Your claim is missing information that is necessary to complete the review of your claim. No further action can be taken on your claim until you complete the missing information and return this letter to the GCCF.

When we reviewed your claim, we did not have certain documents or information that we needed to be able to evaluate your claim. We cannot take further action on your claim until you provide us with the following:

Claim No: [Redacted]; Lost Profits & Lost Earning Capacity – Individual

LEP-I-3: Documents sufficient to determine the total gross amount the Claimant earned as wages or salary from May 1, 2010, until the present, or proof that the Claimant has earned no income during this time.

(See Exhibit O.)

Subsequently, in Phase II, letters to claimants requesting additional information were modified to be more specific, and included language such as:

This Deficiency Letter (“Letter”) is an official notification from the GCCF. The GCCF has reviewed the Interim Payment and/or Full Review Final Payment Claim Form that you submitted and determined that your file is missing information that is necessary to the review of your claim. The GCCF cannot take any further action on your claim until you provide the following:

	Why We Need the Missing Information	What You Need to Submit
1.	We are unable to determine what kind of business your employer in 2009 did.	For all of your sources of employment in 2009, documents or information showing the type of business in which you worked or were engaged.
2.	We are unable to determine the location where you were working in 2009.	For all of your sources of employment in 2009, documents or information showing the location, including the Zip Code, where you worked or were doing business.
3.	We are unable to determine what kind of business your employer in 2008 did.	For all of your sources of employment in 2008, documents or information showing the type of business in which you worked or were engaged.

Why We Need the Missing Information	What You Need to Submit
<p>4. We are unable to determine the location where you were working in 2008.</p>	<p>For all of your sources of employment in 2008, documents or information showing the locations, including the Zip Code, where you worked or were doing business.</p>
<p>5. We are unable to determine your total earnings in 2008 or 2009.</p>	<p>Documents that establish your earnings for the entire year of 2008 or 2009, such as 1) a federal income tax return for 2008 or 2009, including all W-2 forms, 1099 forms, and other attachments or schedules to the return; 2) paycheck stubs or other payroll records from all employment demonstrating all earnings from 1/1/08 to 12/31/08 or 1/1/09 to 12/31/09; or 3) a letter or other records from an employer that describe when you were working in 2008 or 2009 and your rate of pay and total earnings. If your federal income tax return for 2008 or 2009 was jointly filed, you must submit proof of your salary, separate from your spouse's, in 2008 or 2009, such as a W-2 form, a 1099 form, copies of your paycheck stubs or direct deposit slips, or a personnel file.</p>

	Why We Need the Missing Information	What You Need to Submit
6.	We are unable to determine whether you were working at the time of the Spill on April 20, 2010.	Documents that establish your employment at the time of the Deepwater Horizon Incident on 4/20/10, such as 1) paycheck stubs or other payroll records from all employment on or around 4/20/10, or 2) a letter or other records from an employer that confirm your employment on or around 4/20/10 because the nature of your employment is seasonal, you must provide a letter or other records from your employer that describe when you were scheduled to work in 2010.
7.	We are unable to determine your income after the Spill.	Documents sufficient to determine the total gross amount you earned as wages or salary from all employers from May 1, 2010, until the present, or proof, such as a letter from your employer, that you have earned no income during this time.

(See Exhibit V.)

Other types of letters that were modified by the GCCF during its tenure included those sent to claimants communicating denial of eligibility for calculation of a payment amount. In Phase I, these letters included language such as:

You submitted a claim to the Gulf Coast Claims Facility ("GCCF") for an Emergency Advance Payment for damages relating to the Deepwater Horizon Incident on April 20, 2010 (the "Spill"). After review of your claim, we have determined that your claim does not meet the criteria established for Emergency Advance Payments from the GCCF.

Your claim was denied for the following reason(s):

The documents and information you submitted did not show any lost earnings or profits due to the Spill.

(See Exhibit N.)

Subsequently in Phase II, letters to claimants communicating denial of eligibility for calculation of a payment amount included language such as:

This Letter is an official notification from the GCCF. The GCCF has reviewed the Interim Payment and/or Full Review Final Payment claim that you submitted. To receive an Interim Payment or a Final Payment, each claimant must demonstrate both actual financial loss and a connection between that loss and the Oil Spill. The Final Rules Governing Eligibility and Substantiation Criteria followed by the GCCF (available on the GCCF website, **www.gulfcoastclaimsfacility.com**), provides that the GCCF will review claims to determine whether the claimant has established that a financial loss occurred as a result of the Oil Spill. Attachment A to the Final Rules Governing Eligibility and Substantiation Criteria provides guidance to assist claimants with formulating the basis of a claim and providing sufficient supporting documentation. We have reviewed all the materials that you submitted and determined that you have not provided documents sufficient to establish that your financial loss occurred as a result of the Oil Spill. Therefore, you do not qualify for an Interim Payment or a Final Payment and your claim has been denied. [Bold in original.]

(See Exhibit DD.)

During Phase II, letters to claimants communicating denial of eligibility for calculation of a payment amount evolved to contain additional detail as shown in this example:

The GCCF has reviewed the Interim Payment and/or Full Review Final Payment Claim Form that you submitted, and your claim is denied for the following reason(s):

<p>Lost Profits & Lost Earning Capacity – Individual</p>	<p>To receive an Interim Payment or a Final Payment, each claimant must demonstrate both actual financial loss and a connection between that loss and the Oil Spill. Under the Final Rules Governing Eligibility and Substantiation Criteria followed by the GCCF (available on the GCCF website, www.gulfcoastclaimsfacility.com), the GCCF reviews each claim to determine whether the claimant has established financial losses caused by the Oil Spill. Attachment A to the Final Rules Governing Eligibility and Substantiation Criteria provides guidance to assist claimants with formulating the basis of a claim and providing sufficient supporting documentation. We have reviewed all the materials that you submitted and determined that you have not provided documents sufficient to establish that your financial loss occurred as a result of the Oil Spill. If you have documents that support your claim that your income losses were caused by the Oil Spill, you may submit them to the GCCF and we will review them. The documents must have been created at the time of the events described in them to be acceptable proof.</p>
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(See Exhibit U.)

We found that – not surprisingly – communications with claimants during Phase I reflected less specific consideration of claimant-specific documentation; however, these communications were modified in Phase II to provide more detail, particularly in the important area of requesting additional documentation.

We were also apprised of concerns regarding communication in non-English languages. According to the GCCF, approximately 1.8 percent of all GCCF claimants indicated a preference that the GCCF communicate with them in a language other than English (of those claimants,

83.2 percent indicated a Spanish language preference, 16.1 percent indicated a Vietnamese language preference and 0.7 percent indicated a Khmer language preference). As noted in Section III.D.3.d., above, the GCCF took significant steps to communicate in these and other non-English languages. Claimants were initially required to take the additional step of requesting a translation to receive certain types of communications in their preferred language. The GCCF advised us that it would have preferred to have provided individualized correspondence to claimants in their selected language earlier, but was hindered by insufficient start-up time before the commencement of the program.

4. Other Concerns

The DOJ asked us to evaluate certain other concerns regarding: timely processing of claims; accuracy of inputs considered and formula/protocols applied; and the quality and adequacy of resources. We have discussed these concerns in the context of the GCCF's operations as well as our findings regarding claims-specific testing. With regard to the timely processing of claims, we have noted the GCCF recognition that its initial comments regarding 48-hour and seven-day processing were unrealistic given the volume of claims; however, we also found that significant efforts were made to expedite claims. We also addressed the timing and reasons for delays affecting "In-Process" claims in Section IV.A.1.c, above. As discussed in Section IV.A.2, above, regarding errors and in more detail in Appendix A, we identified human errors as well as certain temporary errors in coding that affected the accuracy of inputs considered and protocols and methodologies applied (in other cases, differing outcomes received by claimants who may appear to have been similarly situated may be classified more appropriately as the results of GCCF protocols and methodologies applied accurately to claims that were slightly different or submitted at different times). We address the quality and adequacy of resources in Section III.B, above. The GCCF leadership consisted of professionals with significant experience in large scale claims processing and further assembled a group of well-regarded subcontractors, including PwC (the world's largest professional services firm), BrownGreer, GCG, ARPC, and others. We also noted, as discussed above, the initial and on-going training of personnel as well as quality control efforts. As discussed in connection with our evaluation of "In-Process" claims, there were delays resulting from a variety of factors, many of which were outside the GCCF's control.

Throughout its tenure, the GCCF responded to the large volume and complexity of claims being filed by adding claims review personnel in an effort to expedite the processing of those claims.

5. Findings and Observations Regarding Concerns

As noted above, the GCCF appeared to have processed the majority of claims in accordance with its protocols and methodologies. Nonetheless, claimants had concerns, including those discussed above. During our independent evaluation, we identified potential bases for these concerns arising from the necessary functions of the GCCF mandate, the accurate application of the GCCF's protocols and methodologies and, potentially, certain errors.

Accurate application by the GCCF of its protocols and methodologies may have resulted in certain of the concerns, such as the concern regarding different outcomes for claimants who may appear to have been similarly situated. Further, outcomes as a result of human error or coding errors may also have contributed to certain concerns.

As discussed in the next sections, the GCCF and BDO recommend consideration of additional processes that may alleviate certain of these concerns in the event that a similar claims administration process becomes necessary to respond to a mass disaster. Many of these concerns were, however, inevitable in the context of the highly-charged operating environment, the uncertainty regarding the volume and type of claims and the necessary evolution of the GCCF's processes. These factors and the mandate for a rapid response are likely to recur in future claims processing settings.

C. Considerations for Future Claims Processing Facilities

1. GCCF's Suggestions for Future Claims Facilities

Because the GCCF was created amid unique and unprecedented circumstances, the insights of those who were involved in its daily operations and who experienced its challenges, achievements and frustrations, will likely prove useful to those seeking to address the compensation of a wide range of individuals and businesses immediately following future catastrophic events. We inquired of the GCCF regarding those aspects of its operations that, in hindsight, it would have addressed differently. Several of the GCCF's own suggestions for improvements dealt with communications and interactions with claimants, including,

fundamentally, not making statements that set unachievable expectations regarding the time needed to process claims.

Beyond this, the GCCF recommended staffing site offices with, and providing greater access to, GCCF representatives, such as the liaison firms, at an earlier phase in its tenure; providing more detailed and specific information for deficient or denied claims; immediately advising disgruntled claimants when their claims had been referred to law enforcement as being potentially fraudulent; and providing, from the outset, claimant-specific communications in the language of the claimant's choice, without the additional step of the claimant requesting a translation. The GCCF implemented most of these suggestions at some point during its operations; however, the GCCF acknowledged that, had it been able to do so earlier, the GCCF claims evaluation process would have been more efficient.

Further, during its tenure, the GCCF instituted the "coattails eligibility" policy whereby it treated as automatically eligible (without further documentation that claimed losses were caused by the Spill) any individual claimant who was employed by a business which the GCCF had deemed eligible. Potential inconsistencies arose in cases in which a business was deemed eligible after the claim of one of its employees was denied. The GCCF stated to us that, with the benefit of hindsight, it would have been preferable to have put into place procedures whereby it would have re-evaluated the claim of a denied individual claimant upon the subsequent determination that the claimant's employer was eligible.

The GCCF also informed us that, from its inception, it attempted to arrange for a process by which claimants would be able to receive free legal assistance. Its initial attempts to do this, by approaching law firms both in the Gulf region and nationally to provide this legal assistance on a *pro bono* basis, were frustrated because most law firms in the region had a conflict of interest. As described above, on December 15, 2010, the GCCF entered into an agreement with the Mississippi Center for Justice, a nonprofit, public interest law firm, to oversee a consortium of legal service entities in the Gulf region that provided legal assistance to all claimants who sought it, regardless of income level. The GCCF made clear that the provision of free legal assistance to individuals and businesses submitting claims to the GCCF was an important practice and

recommended that it be adopted by claims facilities addressing losses from future catastrophic events.

As future claims administrators may be able to build on the overall approach implemented by the GCCF or face smaller volumes of claims, they may be able to implement these recommendations at inception or earlier in their tenure.

2. Further Suggestions for Future Claims Facilities

In addition to the suggestions made by the GCCF, that are consistent with observations we have made during our independent evaluation, we suggest several additional approaches that future claims facilities may wish to consider adopting.

First, as mentioned above, one of the primary concerns raised by the DOJ at the beginning of our independent evaluation dealt with communications with claimants and, indeed, the GCCF's own suggestions for potential improvements focused upon communications. In this context, we recommend that future claims facilities dedicate time and resources upfront to the development of an integrated communications strategy incorporating the lessons learned by the GCCF's experiences.

Second, we recommend that, as resources and circumstances permit, future facilities include a function, independent of claims processing, dedicated to: identifying potential errors in processing; recommending claims processing improvements; and providing input to the facility regarding inquiries and criticisms. Importantly, this function would need to operate in a manner that does not interfere with the primary goal of compensating adversely impacted claimants as expeditiously as possible.

Third, with a few exceptions, the GCCF did not retroactively review previously processed claims in light of subsequent changes to its methodologies. This approach may have created instances in which the outcome of a claim would be dependent upon the timing of its submission and may have resulted in different outcomes for claimants that appeared to be similarly situated. We recommend that future facilities consider a process by which, in appropriate circumstances, previously processed claims will be re-evaluated periodically in the wake of changes to methodologies.

V. Conclusion

The GCCF was designed to respond, and did respond, with urgency to the economic difficulties of those most likely affected by the Spill. However, because of the complexity and unprecedented nature of the task undertaken by the GCCF, it was inevitable that some claimants and stakeholders would have concerns about its operations. While hundreds of thousands of individual and business claimants received payment without litigation over the two years immediately following the Spill, many others have sought an alternative to the GCCF. We hope that all those who have been genuinely affected by the Spill ultimately receive an appropriate resolution to their claims.

Very truly yours,

BDO USA, LLP

BDO USA, LLP

The BDO Project Leadership Team thanks the DOJ for the trust they placed in BDO to perform this independent evaluation of the GCCF. We have undertaken our responsibilities with the understanding that the events that precipitated the creation of the GCCF had a real and substantial negative impact on the quality of life of many persons living and working in the Gulf region.



By: Carl W. Pergola
Partner



By: Anthony M. Lendez
Partner



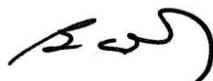
By: Lee M. Dewey
Partner



By: Kevin R. Hubbard
Partner



By: Stephanie Giammarco
Partner



By: Brian J. Mich
Managing Director



By: Clark Schweers
Managing Director

APPENDIX

APPENDIX

Claims with Identified Errors Corrected by the GCCF

A-1: Selection and Use of Claimant's Financial Documents

One component of the GCCF's calculation of an individual claimant's lost earnings was the claimant's earnings for the period in 2010 after the Spill. In determining a claimant's 2010 post-Spill earnings, the GCCF rules permitted the use of various financial documents. These included annual financial documents such as Forms W-2 and Forms 1099-MISC, as well as periodic financial documents such as Paycheck Stubs, payroll records and Trip Tickets (i.e., documentation of individual commercial fishing excursions that demonstrate the amount of seafood caught and sold).

GCCF rules required that, if both annual and periodic documentation were present in a claimant's file, then the annual document, in most cases, must be used to calculate the claimant's 2010 post-Spill earnings. An exception to this rule was if the claimant had submitted "complete Paycheck Stubs that cover 5/1/10 through the end of the claimant's tenure with the employer OR through 12/31/10, *then* the Paycheck entries trump the 2010 W-2 entry." To the extent one or two weeks of Paycheck Stubs were missing at the end of the year, the rules provided that Paycheck Stubs be used in the calculation of the claimant's 2010 post-Spill earnings. To the extent the Paycheck Stubs (or other periodic payroll records) were either not provided by the claimant or were considered incomplete, the GCCF rules required that the annual record be used in the calculation of the claimant's 2010 post-Spill earnings.

Calculation of a claimant's 2010 post-Spill earnings using an allocation from an annual financial document could inflate the GCCF's calculation of a claimant's post-Spill earnings for claimants who are hourly wage workers. The allocation methodology adopted by the GCCF assumed that claimants, if hourly wage workers, earned higher portions of their annual earnings in May through August which resulted in higher income being allocated to the post-Spill period. This could then understate the GCCF's determination of a claimant's lost earnings.

We observed a number of instances where the GCCF reviewer selected an incorrect financial document for use in calculating a claimant's 2010 post-Spill earnings. The GCCF confirmed our observation; recognized the likelihood that this type of error could have affected a larger group of claimants; worked with our programmers, data analysts and claims specialists to identify other instances of this error; and agreed to provide additional payments to all negatively affected claimants identified during our independent evaluation.

Specific instances of this error included:

- Using an annual financial document when complete (or substantially complete) periodic payroll records were available;
- Using a year-to-date paycheck or other full-year amounts when complete (or substantially complete) periodic payroll records were available;
- Using incomplete periodic payroll records when an annual financial document was available;
- Using incorrect payroll period start or end dates when entering a claimant's paycheck information into the review database, resulting in payroll records incorrectly appearing incomplete; and
- Using incorrect end dates of employment (year-end) instead of the actual employment termination dates when entering a claimant's annual financial document information into the review database, resulting in payroll records incorrectly appearing incomplete.

During the course of our work, BDO and the GCCF identified 3,155 claimants who were underpaid as a result of the reviewer selecting an incorrect financial document for use in calculating a claimant's 2010 post-Spill earnings. The GCCF then re-performed the loss calculation for each of these claimants using the correct financial document and made, or is in the process of making, additional payments to the affected claimants totaling \$25,716,201.

Instances where the GCCF reviewer selected an incorrect financial document for use in calculating a claimant's 2010 post-Spill earnings was the most common type of error identified during the course of our independent evaluation. This was due to human error that may have been caused by a combination of a misunderstanding of the instructions in the GCCF Operations Manual; the fact that the claimants' financial documents varied in formats, levels of

completeness, legibility and consistency over the periods; and the presence of substantial pressure to process claims quickly in order to expedite payments to claimants.

As part of its efforts to continuously improve its processes, the GCCF added warning screens and other control mechanisms to its system to prevent and educate reviewers regarding the correct financial documents (annual vs. periodic) to use when processing claims.

A-2: Coattails Eligibility Policy

To determine whether claimants might be deemed eligible for payment consideration, the GCCF established a policy, using a business's zip code of loss and business type, to categorize all claimants into eligibility group designations. These group designations determined whether documentation, known as an SCD, was required for a claimant to prove that losses were related to the Spill. Beginning on March 31, 2011, the GCCF implemented the "coattails eligibility" policy. Pursuant to that policy, the GCCF would apply a business claimant's eligibility group determination to a subsequent claim filed by the business's employee and deem automatically eligible, without an SCD, an individual claimant in Group 2 or Group 3 if the claimant's employer had been paid during Phase I or had previously been deemed eligible in Phase II. This policy change made it easier for individual claimants to prove eligibility.

During our testing of claim files, we observed instances where the GCCF had determined that individual claimants were ineligible even though employers had been determined to be eligible. We also identified instances where employers might have filed claims using a different Tax ID than that reflected in the employee claimant's files. As a result, these employee claimants may not have been properly linked to their employer's claim files. These errors were the result of data entry errors and claimant errors during the application process – for example, claimants completed their application with incorrect information. Such errors reduced the effectiveness of the GCCF's business correlation queue (see Appendix, A-8, below, for a discussion of the business correlation queue) and its ability to consistently apply eligibility among individual claimants and their employers.

The GCCF worked with our programmers, data analysts and claims specialists to identify instances in which an individual claimant was deemed ineligible where the claimant's employer

had been paid during Phase I or had been deemed eligible during Phase II, or where a different Tax ID number was used resulting in the failure to link an employee claimant with an employer claimant. The GCCF agreed to provide additional payments to all affected claimants identified during our independent evaluation, regardless of whether it was a GCCF error or a claimant error.

BDO and the GCCF identified 796 claimants that were negatively affected and were not appropriately found eligible for payment when their employers were found eligible. The GCCF re-reviewed the claims for these claimants and made, or is in the process of making, additional payments to the affected claimants totaling \$12,569,781.

A-3: Selection of Pre-Spill Income

When calculating a claimant's potential lost earnings, the GCCF projected the claimant's 2010 earnings by annualizing the claimant's 2010 pre-Spill earnings (January – April 2010 earnings multiplied by 3) and compared this amount to the claimant's 2008 and 2009 earnings, using the higher of these amounts for the projection. When various financial documents were provided as support for 2010 pre-Spill earnings, the GCCF reviewers were instructed to choose the financial document that presented the highest income for the period. Documents that might have been provided by claimants included:

- Annual Tax Documents, such as Forms W-2, Forms 1099-MISC and Individual Income Tax Forms 1040 and Forms 1040-C;
- Paycheck Stubs/payroll records dated between January 1, 2010 and April 30, 2010; and
- Paycheck year-to-date amounts at April 30, 2010.

The highest 2010 pre-Spill earnings determined from these documents was selected and annualized, if appropriate, by the reviewer. This amount was then compared to 2008 and 2009 earnings to determine the amount to use to project 2010 earnings.

During our testing of claim files, we observed instances in which incorrect amounts for 2010 pre-Spill earnings were selected by the reviewer. In some cases, this resulted in an incorrect amount being used to calculate projected 2010 earnings and a resulting incorrect determination of lost

earnings for 2010 and/or 2011. As a result, certain claimants were incorrectly paid. The GCCF confirmed our observations and worked with our programmers, data analysts and claims specialists to identify other instances where claimants were affected by this selection error. The GCCF agreed to provide additional payments to all negatively affected claimants identified during our independent evaluation.

BDO and the GCCF determined that 873 claimants were negatively affected by this error. The GCCF recalculated the lost earnings for each of these claimants using the correct methodology and made, or is in the process of making, additional payments to the affected claimants totaling \$8,203,236.

A-4: Selection of Loss Location Zip Code

In evaluating a claimant's eligibility for lost earnings during Phase II, the GCCF reviewers determined the claimant's eligibility based upon the business type and loss location zip code that related to the claimant's lost earnings. The GCCF's determination regarding eligibility dictated the nature and extent of the documentation that claimants were required to submit to prove their financial loss occurred as a result of the Spill and, therefore, potentially receive payment. In addition, under the GCCF's coattails eligibility policy, all individual claimants filing claims as employees of a business would have received the same eligibility group determination as the business itself. By assigning eligibility group determinations in this manner, business claimants and their employees received consistent eligibility treatment as businesses in similar industries and geographic regions.

The GCCF reviewers determined the predominant nature of the claimant's business and used it to select the correct business type. Reviewers were instructed by the GCCF to use the following sources to determine the claimant's business type and loss location zip code: (1) the claim form; (2) financial documentation; (3) a letter from the claimant; or (4) an Internet search.

The incorrect assignment of a loss location zip code could impact a claimant's eligibility group determination because eligibility group determinations for certain business types were dependent upon the loss location zip code.

During our review of claim files, we identified instances in which:

- Typographical errors were made resulting in erroneous zip codes being assigned to claimants;
- Claimants were assigned zip codes that related to the corporate headquarters of their employer rather than the actual location of their employment; and
- Claimants were assigned zip codes for the payroll service that processed their payroll check rather than the actual location of their employer.

The GCCF confirmed our observations and worked with our programmers, data analysts and claims specialists to identify other claimants potentially affected by these errors. The GCCF agreed to provide additional payments to all affected claimants identified during our independent evaluation.

BDO and the GCCF determined that 221 claimants were negatively affected as a result of not having their claim reviewed under a proper loss location zip code. The GCCF re-reviewed the claims for these claimants and made, or is in the process of making, additional payments to the affected claimants totaling \$5,485,150.

A-5: Treatment of Individuals and Businesses in the Casino Industry and Other Businesses with Gaming Operations

The GCCF encountered various challenges processing individual and business claims in the casino industry. The GCCF attributed these challenges to conflicting information on whether casinos were actually affected by the Spill, as well as concerns expressed by officials in certain Gulf States where casinos are present. As the GCCF amended its methodologies to address these concerns, it adopted changes in policies that caused inconsistencies and delays in claims processing for casino workers and other workers employed by businesses with gaming operations, including changes in eligibility status and the adoption of unique rules for processing claims from casino workers.

In Phase I, casinos and individual claimants who worked in the casinos were not eligible for EAPs. According to the GCCF, it received information from a variety of sources, including casino experts, officials in the gaming industry and the general public, indicating that gaming was independent from tourism and that casinos had not been adversely affected by the Spill.

Nevertheless, despite their non-eligibility, some casino workers were inadvertently paid during Phase I, making them automatically eligible for Phase II.

Early in Phase II, the Casino business type was put into eligibility groups that required claimants to provide SCD evidence demonstrating their financial losses occurred as a result of the Spill. In response to concerns raised by casinos in Mississippi and their employees, the GCCF undertook to conduct more research into the issue of appropriate treatment of casino workers. As a result of that research, in March 2011, the GCCF adopted rules to process claims from individual casino workers. Pending finalization of these rules, claims from all casino workers were put on “hold” in order to prevent further denial of these claims. In April 2011, the GCCF implemented the rules for processing claims from casino workers (the “Casino Worker Methodology”), including the following:

- Workers at casinos on the coast were considered eligible for payment without any SCDs;
- Casino claimants were required to provide complete financial documentation for 2008, 2009 and 2010; and
- The average of a casino worker’s 2008 and 2009 income was used to project earnings, which generally resulted in a different outcome than would be achieved by using the loss calculation methodology applied to non-casino workers.

In June 2011, the GCCF began to process claims for casino workers in 43 additional businesses located in Alabama, Florida, Louisiana and Mississippi that had some gaming operations on their sites using the Casino Worker Methodology. Many of these claims had been on “hold” since March 2011. At this time, the GCCF was classifying any business with a gaming operation as a Casino business type. For example, a restaurant with some gaming operations was classified as a casino. In September 2011, the GCCF placed all casino claims on “hold” again to further evaluate and accurately distinguish between the claims from casino workers and those from non-casino workers employed by businesses with gaming operations. Shortly thereafter, the GCCF began the task of reclassifying casino worker claimants into their correct eligibility groups.

In November 2011, the GCCF decided to reconsider the Casino business type that was assigned to the 43 additional businesses that had some gaming operations on their site to ensure they had been placed in a business type that represented the predominant nature of their operations. As a result, the GCCF reclassified 31 businesses formerly classified as casinos to a business type that

better represented the predominant nature of their operations. By this time, however, the GCCF had already paid (or offered to pay) claimants working at 28 of the 43 businesses, 24 of which were newly classified in other business types.

As a result of the foregoing reclassification, all affected claimants with pending claims were re-reviewed under their new eligibility group determination. Claimants who had already received a determination letter under their previous eligibility group determination and who had not submitted a new claim form were not re-reviewed. The GCCF elected not to retract any outstanding final payment offers from claimants who were now required to provide an SCD, but who had received a determination letter without providing an SCD. It also made additional payments to those claimants who may have received lower determination amounts as a result of being wrongly classified as casino workers.

During our testing of claim files, we noted the following observations in certain claims we reviewed:

- There were claimants whose job was not in the gaming portion of the business's operation or who did not work at a casino who were treated like casino workers using the Casino Worker Methodology;
- Some claimants were inadvertently sent Zero Loss Determination Letters or Deficiency Denial Letters because the extent of the financial information required for casino workers was more stringent than for non-casino workers; and
- Certain claimants were sent letters denying them for a lack of specific causation even though they did not require an SCD.

The GCCF confirmed our observations and acknowledged that certain claimants may have been underpaid as a result of the foregoing issues. The GCCF worked with our programmers, data analysts and claims specialists to identify other instances of these issues and agreed to provide additional payments to all affected claimants identified during our independent evaluation. BDO and the GCCF identified 560 claimants who were negatively affected by these issues. The GCCF re-performed the loss calculation for each of these claimants and made, or is in the process of making, additional payments to the affected claimants totaling \$4,011,124.

A-6: System Issue Affecting Allocation of Year End Earnings to Multiple Periods

To determine an individual claimant's potential lost earnings, GCCF policy instructs reviewers to project a post-Spill earnings amount using the claimant's highest yearly wage amount earned in either 2008, 2009 or, in some cases, based on pre-Spill annualized 2010 earnings (January – April 2010 income multiplied by 3). This projected amount was multiplied by a seasonality percentage, 80.43% for hourly workers and 66.67% for salaried workers, to arrive at projected earnings for the May through December 2010 period. Projected post-Spill earnings were then compared to actual earnings for the same time period to determine 2010 lost earnings.

When a claimant submitted complete paycheck records as proof of actual 2010 post-Spill earnings, the reviewer added the May through December 2010 paychecks to calculate the total actual 2010 post-Spill earnings. If a paycheck spanned multiple time periods (contained income earned at the end of December 2010 and the beginning of January 2011), the reviewer allocated the total amount reported on the paycheck to each period according to the amount of days within each period. For example, a paycheck that spans December 22, 2010 through January 4, 2011 would have ten days of income applied to 2010 and 4 days of income applied to 2011. The selection of documentation used for calculations of projected and actual post-Spill earnings was performed systematically through computer coding that selected financial documentation based on programmed criteria and reviewer data input.

We determined that prior to August 22, 2011, a coding error caused the GCCF system to allocate the entire amount of wages reported on paychecks spanning multiple time periods to both 2010 and 2011. For example, if a claimant earned \$1,000 during the December 22, 2010 through January 4, 2011 pay period, the system would allocate \$1,000 to the December 22, 2010 through December 31, 2010 time period and include that amount in the 2010 post-Spill actual earnings calculation. The system would also apply \$1,000 to the January 1, 2011 through January 4, 2011 time period and include that amount in the post-Spill actual earnings calculation for 2011. As a result, this coding error increased the amount of income included in the post-Spill 2010 and 2011 earnings calculations, thereby overstating claimants' actual post-Spill earnings and reducing their calculated lost earnings. The GCCF confirmed our observation and worked with our programmers, data analysts and claims specialists to identify other claimants potentially affected

by this coding error. The GCCF agreed to provide additional payments to all affected claimants identified during our independent evaluation.

BDO and the GCCF determined that 1,168 claimants were negatively affected by this coding error. The GCCF recalculated the lost earnings for each of these claimants using the correct methodology and made, or is in the processing of making, additional payments to the affected claimants totaling \$2,785,719.

A-7: Alternate Cause Denials

To receive payment, claimants were required to prove they both suffered a financial loss of earnings and their financial loss occurred as a result of the Spill. A claimant's eligibility group determined the level of documentation required to prove their financial loss occurred as a result of the Spill. Claimants who provided evidence indicating that their financial losses were the result of events other than the Spill were denied under the GCCF's alternate causation policy.

When processing a claim, the GCCF reviewed the claimant's documentation to determine whether there was sufficient evidence to relate the claimant's financial losses to the Spill. For example, if the claimant submitted any documentation indicating that: (1) they voluntarily quit their job before the Spill; (2) they were terminated from their job before the Spill; (3) their employer closed for a reason unrelated to the Spill; or (4) they were in jail or prison at the time of the Spill, they were denied for alternate cause.

During our review of claims, we identified claims that were incorrectly denied under the GCCF's alternate causation policy. Specific instances of this error included:

- Claimants who were terminated after the Spill whose losses were not calculated through their date of termination;
- Seasonal workers who were improperly denied for alternate cause when appropriate documentation was in the file demonstrating they were seasonal workers and scheduled to work in 2010 but did not because of the Spill;
- Misinterpretation or misapplication of the GCCF's alternate causation policy; and
- Start-up businesses that were denied but had appropriate documentation in their file demonstrating they were a start-up business.

The GCCF confirmed our observations and worked with our programmers, data analysts and claims specialists to identify other claimants potentially affected by these errors. The GCCF agreed to provide additional payments to all affected claimants identified during our independent evaluation. During the course of our work, BDO and the GCCF identified 82 claimants who were underpaid as a result of the GCCF reviewer inappropriately denying them for alternate cause. The GCCF then performed the loss calculation for each of these claimants using the financial information in their file and made, or is in the process of making, additional payments to the affected claimants totaling \$1,384,060.

These instances were due to human error committed by GCCF reviewers, which may have been caused by a misunderstanding of the instructions in the GCCF Operations Manual and the presence of substantial pressure to process claims quickly to expedite payments to claimants.

As part of its efforts to continuously improve its processes, the GCCF implemented process improvements to reduce the number of improper alternate cause denials. Reviewers were subsequently required to obtain approval from a supervisor when they suspected a claimant's financial losses were the result of a cause other than the Spill. The reviewer had to include a specific comment in the claim file supporting the alternate cause denial determination.

A-8: Treatment of Claimants Linked in the Business Correlation Queue

During Phase II, the GCCF created a specialized business correlation queue ("BCQ") for the purpose of matching related businesses and their employees by Tax ID and location. For eligibility purposes, the GCCF created a unique entity ID for each business entity location and assigned a business type and loss location zip code to the entity ID in the BCQ. This process was designed to provide consistent eligibility group determinations to related businesses in the same geographic area. The BCQ also linked a business with individual claimants who filed as employees of that business. This link was intended to provide all individual claimants filing as employees of a business the same eligibility group determination as the business itself.

When reviewing a claim form during Phase II, the GCCF reviewer searched for the employer-business entity in the BCQ. If the search returned multiple matching entities, the reviewer selected the appropriate entity by matching the business name, Tax ID and loss location zip code

to the claimant's documentation. If no matching entity appeared in the BCQ, the reviewer created a new entity ID that included the business's Tax ID, loss location zip code and business type, name and address.

Periodically, the GCCF performed a "clean-up" in the BCQ by reviewing the entity information and linking the entity to any existing related entities within the GCCF system that shared the same Tax ID and location. Once an entity was linked to a group of related entities, it would no longer be available for selection in the BCQ search and all employee-claimants would be associated directly with the group of related entities.

While the GCCF provided guidelines to its reviewers for matching businesses and their employees in the BCQ, the process of creating a new entity and linking claimants to an existing entity ID was a manual process that could be subject to human error. Through our review of claims, we identified instances in which:

- New business entries created by the GCCF reviewers were linked to the wrong group of related entities;
- There were discrepancies between a claimant's employer Tax ID and the actual Tax ID of the claimant's employer due to a combination of GCCF reviewer and claimant human error;
- Claimants were inadvertently linked to incorrect entity IDs;
- Multiple entity IDs were created under the same Tax ID due to data entry errors such as misspellings in the business name or address; and
- Claimants were incorrectly linked to a payroll service or staffing agency rather than their actual employer.

In each of the foregoing situations, the potential existed for selecting an incorrect employer-business entity, thereby linking the claimant to an entity with an eligibility group determination that was inappropriate for the claimant. This created inconsistencies in eligibility between employers and their employees as well as among employees within the same business entity.

The GCCF confirmed our observations and worked in conjunction with our data analytics team, programmers and claims reviewers to identify claimants who were negatively affected by the selection of an inappropriate eligibility group determination. The GCCF agreed to provide

additional payments to all affected claimants identified during our independent evaluation. It was determined that 69 claimants were underpaid as a result of these errors. The GCCF re-reviewed the claims for these claimants and made, or is in the process of making, additional payments to these claimants totaling \$1,178,512.

A-9: Use of Non-Claimant Information to Determine Loss

According to the GCCF Operations Manual, individuals could not file joint claims with their spouse, co-worker or any other person. The calculation of a claimant's lost earnings was based only on the claimant's financial information and any documentation relating to a spouse or any other person should not have been considered.

Upon receipt by the GCCF, claimant documents were assigned to an individual claimant's file. When a claimant submitted documentation that related to another person, such as a Form W-2, the GCCF separated the documents and had the documentation moved to the appropriate claim file. Documents belonging to another person should not have been included in the claimant's file, with the exception of documents belonging to both the claimant and the claimant's spouse. During the review process, GCCF reviewers were responsible for selecting only financial documentation that specifically related to the claimant.

During our testing of claim files, we observed instances where a spouse's financial information was used in the claimant's lost earnings calculation. In addition, certain instances were noted in which a Form W-2 that did not belong to the claimant or the claimant's spouse was used in the claimant's lost earnings calculation. The inclusion of financial information that did not relate to the claimant could have a negative effect on the lost earnings calculations of certain claimants.

The GCCF confirmed our observations and worked with our programmers, data analysts and claims specialists to identify instances where non-claimant financial information was used in the claim determination and agreed to provide any additional payments to all affected claimants identified during our independent evaluation. The GCCF identified 67 claimants that were found to be negatively affected and made, or is in the process of making, additional payments to the affected claimants totaling \$760,461.

A-10: Claimants Reclassified from “Other” Business Type Without Re-Review

In evaluating a claim for lost earnings during Phase II, GCCF reviewers determined whether the claimant was eligible for payment based upon the business type and the loss location zip code that related to the claimant’s lost earnings. Frequently, the business type of the claimant’s employer and zip code of the claimant’s physical place of employment were used for this purpose. The eligibility group determined the nature and extent of documentation claimants were required to submit to prove their financial loss occurred as a result of the Spill and, therefore, potentially receive payment from the GCCF. By assigning eligibility group determinations to claimants in this manner, claimants who worked in similar industries and in similar geographic regions should have received consistent treatment.

The GCCF developed a system for categorizing businesses into business types. Early in the development of the GCCF system, certain businesses were classified and processed as “Other.” When the GCCF reclassified some of these “Other” businesses into more specific business types, some claimants were moved into business types with more favorable eligibility group determinations. This eligibility upgrade may have made it easier for claimants in certain business types to demonstrate their financial loss occurred as a result of the Spill and potentially receive payment from the GCCF.

When business types classified as “Other” were reclassified into more specific business types, some business types received eligibility group determination upgrades. The GCCF determined it would not re-review claimants under the changed eligibility group determination who were processed prior to the reclassification. As a result, some claimants who had applied for payment during Phase II prior to the change in eligibility were subjected to less favorable eligibility group determinations than claimants who may appear to have been similarly situated who had their claims reviewed after the business type reclassification and resulting upgrade in the eligibility group determination. This less favorable eligibility classification made it more difficult for claimants who filed first to demonstrate their financial loss occurred as a result of the Spill and receive an Interim or Final Payment.

Through our evaluation, we identified claimants who were reviewed before their employer’s business type classification was changed from “Other” to a more specific business type and who

would have received a more favorable eligibility group determination after the reclassification. In particular, we identified claimants who were denied under the original eligibility group determination based on the documentation they provided, but would have been considered eligible under the new business type classification without having to provide additional documentation. In addition, certain claimants who should have had their employer's business type changed from "Other" to a more specific business type were inadvertently not upgraded to the more favorable eligibility group determination.

The GCCF confirmed our observations and worked with our programmers, data analysts and claims specialists to identify other instances of these issues and agreed to provide additional payments to all affected claimants identified during our independent evaluation. BDO and the GCCF determined that 29 claimants were negatively affected as a result of not having their claim re-reviewed under the updated eligibility status. The GCCF re-reviewed the claims for these claimants and made, or is in the process of making, additional payments to the affected claimants totaling \$669,434.

A-11: Designation of Eligibility Group

When evaluating a claim for payment, GCCF reviewers determined whether a claimant was eligible based upon the business type and loss location zip code related to the claimant's lost earnings. The eligibility group determined the nature and extent of documentation that a claimant was required to submit to prove their financial loss occurred as a result of the Spill and, therefore, potentially receive payment. In addition, under the GCCF's coattails eligibility policy, all individual claimants filing claims as employees of a business would have received the same eligibility group determination as the business. The eligibility group determination of the claimant could affect whether the claimant received payment for lost earnings.

During our testing of claim files, we identified changes in policy and errors that affected claimants' eligibility group determinations. Specifically, our review identified:

- Errors that resulted in the assignment of incorrect eligibility group determinations to claimants whose business type and loss location zip code warranted a more favorable eligibility group determination;

- Errors that assigned claimants to an eligibility group determination that automatically denied them payment even though their business type and loss location zip code made them eligible for payment; and
- Changes in GCCF policy that resulted in business claimants being upgraded to more favorable eligibility group determinations after their employee-claimants were denied payment and the impacted employees were not re-reviewed for possible payment after the upgrade.

Implementation of these policy changes was carried out through system coding changes that resulted in errors when applying the policy changes prospectively. As a result, some claimants received less favorable eligibility group determinations and were improperly denied payment.

The GCCF confirmed our observations and acknowledged that some claimants may have been underpaid as a result of the foregoing issues. The GCCF worked with our programmers, data analysts and claims specialists to identify other instances of these issues and agreed to provide additional payments to all affected claimants identified during our independent evaluation.

BDO and the GCCF determined that 42 claimants were negatively affected as a result of not having their claims reviewed with the correct eligibility group designation. The GCCF re-reviewed the claims for these claimants and made, or is in the process of making, additional payments to the affected claimants totaling \$503,359.

A-12: Claimants Considered Deficient in the Presence of Complete Documentation

Claimants that applied for payment during Phase II were first reviewed by GCCF reviewers for claimant eligibility and then for actual financial loss. The GCCF assigned an eligibility group determination to claimants based on the loss location zip code of their physical work address and their business type. Claimants who did not provide sufficient information to determine their business type, loss location zip code, or financial losses were considered deficient.

Based on the documentation provided by the claimant, GCCF reviewers assigned a business type using the predominant nature of the claimant's business and loss location zip code. If the documentation provided by the claimant did not provide sufficient information to determine the business type or loss location zip code, reviewers were instructed by the GCCF to use the following sources to determine the claimant's business type or loss location zip code: (1) the claim form; (2) financial documentation; (3) a letter from the claimant; or (4) an Internet search.

In addition, GCCF reviewers determined the claimant's lost earnings based on the financial documents provided by the claimant. Claimants who did not provide sufficient documentation to prove their financial losses occurred as a result of the Spill were considered deficient.

During our evaluation, we identified instances where GCCF reviewers incorrectly classified claimants as deficient when all required information was present. The GCCF acknowledged that there was a possibility these errors could have affected other claimants. As a result, the GCCF worked with our programmers, data analysts and claims specialists to identify claimants who had sufficient documentation in their file to determine their business type, zip code or financial losses but were considered deficient due to human error. The GCCF agreed to provide additional payments to all affected claimants with sufficient information in their file to determine their correct business type, loss location zip code, or prove their financial losses.

BDO and the GCCF determined that 29 claimants were negatively affected by these issues. The GCCF has re-reviewed these claims and made, or is in the process of making, additional payments to the affected claimants totaling \$294,357.

A-13: Claimants with Post-Spill Income Included Twice

To calculate a claimant's lost earnings, the GCCF used the financial documents submitted by the claimant to compute the claimant's projected post-Spill earnings and compared this amount to the claimant's actual post-Spill earnings. The GCCF's Operations Manual states that only one document per employer, per year should be used. Furthermore, the Operations Manual stated that reviewers must "[b]e sure not to select duplicate entries for Post-Spill financial documentation to be used in calculating the claimant's LEP claim."

During our testing of claim files, we observed instances where more than one financial document per year for the same employer was used to compute the claimant's lost earnings. There were also instances in which the same paycheck or the same annual document was included twice in the claimant's post-Spill earnings calculation. As a result of the overstated post-Spill earnings, the claimant's lost earnings were understated.

The GCCF confirmed our observations and worked with our programmers, data analysts and claims specialists to identify other instances where post-Spill earnings were included twice in a

claimant's lost earnings calculation and agreed to provide additional payments to all affected claimants identified during our independent evaluation. The GCCF identified 142 claimants that were found to be negatively affected and made, or is in the process of making, additional payments to the affected claimants totaling \$279,141.

A-14: Offsets Included as Post-Spill Earnings

In determining a claimant's post-Spill earnings, GCCF policy excluded from a claimant's earnings payments related to Spill damages. These Spill-related payments included, among other things, payments from the BP-operated facility.

When GCCF reviewers entered information into the GCCF system for these payments, they should have designated the document type as an IRS Form 1099 issued for Spill damages, which designation prevented the financial information from being included as part of the claimant's post-Spill earnings. During our testing of claim files, we observed instances where the correct document type was not selected and certain Forms 1099 related to payments from the BP-operated facility were treated as independent contractor wages. As a result, amounts listed on these Forms 1099 were included in the claimant's post-Spill earnings.

The GCCF confirmed our observations and worked with our programmers, data analysts and claims specialists to identify other instances of these data entry errors and agreed to provide additional payments to all affected claimants identified during our independent evaluation. The GCCF identified 19 claimants that were affected negatively and re-performed the loss calculation for each of these claimants using the correct methodology and made, or is in the process of making, additional payments to the affected claimants totaling \$219,545.

A-15: Claim preparation Fees

Since inception of Phase II, the GCCF reimbursed claimants for claim preparation fees deemed reasonable. Initially, there were no limits on the amount a claimant could be reimbursed, and there were limited documentation requirements. However, due to perceived abuses, the GCCF modified its policy for reimbursement of claim preparation fees on August 26, 2011 to limit payment to \$2,500 for individuals and \$5,000 for businesses. The GCCF subsequently raised the thresholds for reimbursement of claim preparation fees as follows:

- For individual claimants, up to the higher of \$2,500 or 10% of the aggregate of the claim determination amount.
- For business claimants, up to the higher of \$5,000 or 10% of the aggregate of the claim determination amount.

The GCCF also required more extensive supporting documentation for reimbursement requests in excess of these thresholds.

During our evaluation, we identified a number of claimants who had requested reimbursement for claim preparation fees but were not paid. We determined that the GCCF had placed a hold on the reimbursement of claim preparation fees that exceeded the foregoing thresholds or where the claimant did not provide adequate supporting documentation while its policy was evolving. As a result, during the August 26, 2011 through January 13, 2012 period, claimants that had requested reimbursement of claim preparation fees that exceeded these thresholds or did not provide sufficient documentation to support the requested reimbursement amount were not reimbursed for any claim preparation fees.

The GCCF confirmed our observations and worked with our programmers, data analysts and claims specialists to identify other instances where claim preparation fees had not been paid. BDO and the GCCF identified 21 claimants who were not reimbursed for claim preparation fees. The GCCF re-evaluated the claim files for each of these claimants and made, or is in the process of making, additional payments to the affected claimants totaling \$184,753.

A-16: Selection of Business Type

In evaluating a claimant's eligibility for lost earnings during Phase II, GCCF reviewers determined the claimant's eligibility based upon the business type and loss location zip code that related to the claimant's lost earnings. The GCCF's determination regarding eligibility dictated the nature and extent of documentation claimants were required to submit to prove their financial loss occurred as a result of the Spill and, therefore, potentially receive payment. In addition, under the GCCF's coattails eligibility policy, all individual claimants filing claims as employees of a business would have received the same eligibility group determination as the business itself. By assigning eligibility group determinations in this manner, business claimants and their

employees received consistent eligibility treatment as businesses in similar industries and geographic regions.

The GCCF developed policies and procedures for classifying claimants into business types. GCCF reviewers determined the predominant nature of the claimant's business and used it to select the correct business type. Reviewers were instructed by the GCCF to use the following sources to determine the claimant's business type and loss location zip code: (1) the claim form; (2) financial documentation; (3) a letter from the claimant; or (4) an Internet search.

If the GCCF reviewer was unable to determine the claimant's business type at the time of the Spill, the claimant was classified under the business type of "Unknown Business" and a loss location zip code of zero was assigned to the claimant. However, these determinations could be subject to reviewer error, causing claimants to be classified under an incorrect business type. If a claimant was classified under an incorrect business type, they could have received an inappropriate eligibility group determination. Claimants who received a less favorable eligibility group determination ordinarily had more difficulty demonstrating their financial loss occurred as a result of the Spill.

During our evaluation, we identified several claimants that were classified under the wrong business type. The GCCF confirmed our observation and determined that this issue was caused by human error. The GCCF acknowledged that there was a possibility this error could have affected other business claimants and their employee-claimants. As a result, the GCCF worked with our programmers, data analysts and claims specialists to identify other instances where this error impacted the eligibility of claimants and agreed to provide additional payments to all affected claimants with sufficient information in their claim file to determine their lost earnings.

BDO and the GCCF determined that 10 claimants were negatively affected as a result of not being assigned the proper business type. The GCCF re-reviewed the claims for these claimants and made, or is in the process of making, additional payments to the affected claimants totaling \$122,988.

A-17: Coding Issue Affecting Calculation of Lost Earnings

To calculate an individual claimant's potential lost earnings, the GCCF considered the claimant's pre-Spill earnings for 2008, 2009, and, in some cases, 2010, and actual post-Spill earnings for 2010 and 2011. The pre-Spill earnings were used to project earnings for 2010 and 2011. The claimant's projected earnings for 2010 and 2011 were compared to actual 2010 and 2011 earnings based on the financial documents submitted by the claimant. If actual earnings for 2010 and 2011 exceeded projected earnings, the claimant would have had no lost earnings. If the claimant's projected earnings exceeded actual earnings, the GCCF rules stated that the total lost earnings amount was the higher of: (1) the sum of the lost earnings for 2010 and 2011, or (2) 2010 lost earnings multiplied by a Recovery Factor of two.

During our testing of claim files, we observed instances where the GCCF determined the individual claimant's final payment amount by multiplying the 2010 lost earnings by a Recovery Factor of two without considering whether the sum of the claimant's lost earnings for 2010 and 2011 resulted in a higher amount. As a result, certain claimants were underpaid. The GCCF confirmed our observation and determined this error was caused by a coding error resident in the GCCF system for three days. The GCCF acknowledged that there was a possibility this coding error could have affected other individual claimants. The GCCF worked with our programmers, data analysts and claims specialists to identify other instances where this coding error impacted calculated lost earnings and agreed to provide additional payments to all affected claimants identified during our independent evaluation.

BDO and the GCCF identified 4 claimants who were negatively affected by this coding error. The GCCF re-performed the loss calculation for each of these claimants using the correct methodology and made, or is in the process of making, additional payments to the affected claimants totaling \$15,650.

A-18: Miscellaneous Adjustments to Claimants' Lost Earnings or Profits

During BDO's testing of claim files, we observed other instances in which the GCCF reviewers improperly denied claimants or incorrectly calculated a claimant's lost earnings due to human error. Working cooperatively with the GCCF, BDO's programmers, data analysts and claims specialists searched the claims databases to determine the extent to which these errors affected a

broader population of claims. We determined that these errors were isolated to a small number of individual and business claimants.

BDO and the GCCF identified 5 claimants that were affected negatively by errors other than the ones described in A-1 through A-17, above. The GCCF re-performed the loss calculation for each of these claimants and made, or is in the process of making, additional payments to the affected claimants totaling \$102,504.

EXHIBITS

EXHIBIT A