The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

AGRICULTURE
Senator Siplin, Chair
Senator Bullard, Vice Chair

MEETING DATE: Monday, February 21, 2011
TIME: 1:45 —3:45 p.m.
PLACE: *Mallory Horne Committee Room,* 37 Senate Office Building

MEMBERS: Senator Siplin, Chair; Senator Bullard, Vice Chair; Senators Alexander, Garcia, Hays, Montford, and Simmons

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	Reports from representatives of Florida government agencies regarding the Deepwater Horizon oil spill claims process, assistance available, and proposed potential state and local government claims - Chief Financial Officer: - Attorney General: - Governor's Office of Tourism, Trade and Economic Development: - The National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling:		
2	Report from representative of BP		

CHIEF FINANCIAL OFFICER
JEFF ATWATER
FLORIDA DEPARTMENT OF FINANCIAL SERVICES

Oil Spill Efforts

Presentation to the Senate Agriculture Committee
February 21, 2011

Ashley Mayer, Director of Legislative Affairs

The Department of Financial Services

• Within the Department is the Division of Consumer Services. It is charged with helping consumers make informed insurance and financial decisions.

• To effectuate this goal, we have a team of trained specialists who assist consumers with a panoply of insurance questions, problems, and issues.

• Many times, this involves intervening in the claims process to help a consumer advocate for proceeds owed pursuant to an insurance contract. Statutorily, insurance companies must respond to inquiries from the Division of Consumer Services. Once we receive necessary information, we are able to help the insurer and policyholder resolve any outstanding issues or problems and identify a successful, fair, and correct resolution.

• When the oil spill occurred, the Department met with affected parties, performed community outreach, assembled information for potential claimants, and provided that information to BP in an effort to advocate for Floridians.

• Since BP announced that it was creating the Gulf Coast Claims Facility and its $20 billion escrow fund in August, Floridians affected by the oil spill became eligible to submit four types of claims for compensation:

1. Emergency Claims: available August 23-November 23
2. Quick-pay Claims: available to those who have been paid an Emergency Claim; $5,000 for individual claimants and $25,000 for business claimants; requires consent to releasing any future compensation claims
3. Interim Claims: paid on a quarterly basis; covers all losses attributable to the spill in the previous quarter
4. Final Claims: lump sum payment for all documented losses and damages, past and future, caused by the spill; requires consent to releasing any future compensation claims

DEEPWATER HORIZON
PROTECTING FLORIDA'S BUSINESSES AND FAMILIES
JEFF ATWATER CHIEF FINANCIAL OFFICER DEPARTMENT OF FINANCIAL SERVICES

CHIEF FINANCIAL OFFICER
JEFF ATWATER
FLORIDA DEPARTMENT OF FINANCIAL SERVICES

Covered Claims: Federal Law

Claims required to be covered by a responsible party, by the federal Oil Pollution Act, include:

- Personal injury claims on behalf of families of persons suffering injury or death in the initial platform explosion;
- Products liability and/or negligence claims against equipment manufacturers, suppliers, etc.;
- Natural resource damage claims from states (water, air, seashore);
- Claims by businesses and individuals for lost earnings and/or property damage (e.g. fishermen, shrimpers, resort operators, excursion boat operators, casino operators, hotels, restaurateurs);
- Claims alleging revenues depletion due to the loss of taxes, royalties, rents, fees, or net profit;
- Environmental claims; and
- Health claims by workers assisting with cleanup (e.g. occupational injury due to the use of dispersants) and coastal residents.

Claimant Advocacy

• When it became apparent that many Floridians, affected by the oil spill, were unable to secure compensation for their losses or were overwhelmed with the complexity of the process, the Department saw an opportunity to translate our claims specialists' expertise into a resource for oil spill victims.

• For example, although thousands of Floridians received a billion dollars during the emergency claims process, over half of the claims filed were denied.

• Currently, 73,411 individual claimants from Florida have been paid $510 million, an average of $6,900 for emergency and quick claims that were supposed to cover approximately six months of lost revenue. For business claims, 27,891 claimants have been paid an average of $28,000 for that same six-month time period of lost revenue.

[redacted]
PENSACOLA, FL 32514-9568

Today's Date: December 21, 2010

Re: GCCF Claimant Identification Number: [redacted]

Dear Claimant:

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. Your submission did not provide sufficient documentation to support your claim and consequently, your request for an Emergency Advance Payment has been denied.

This decision is based on criteria that apply to all claimants seeking payments from the GCCF. This denial applies to your request for an Emergency Advance Payment only and does not affect your right to submit claims for Interim or Final Payments. Specific information and instructions related to the Interim and Final Payment claim submission processes will be made available on the GCCF website and claim forms will be mailed to you. You will not have to resubmit any of the documentation previously provided to the GCCF. You may be required, however, to submit additional documentation to support your claim for an Interim or Final Payment.

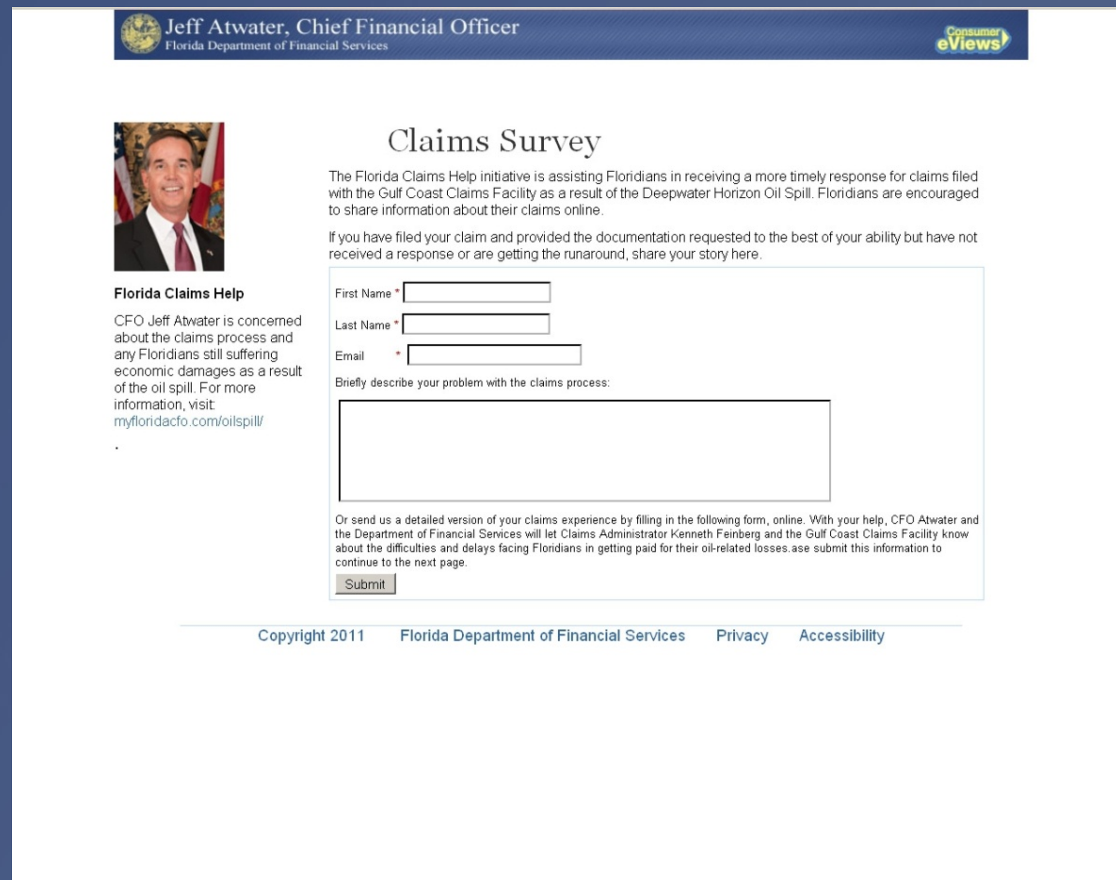
If you have any questions about the denial of your claim, or about how to submit a claim for an Interim or Final Payment, contact the GCCF toll-free at 1-800-916-4893 (you will be prompted for multilingual telephone assistance), or visit www.GulfCoastClaimsFacility.com. For TTY assistance call 1-866-682-1758. Please be sure to provide your Claimant Identification Number, as well as your full name, your address and the last four digits of your Social Security Number or Taxpayer ID in all correspondence with the GCCF.

Sincerely,
Administrator
Gulf Coast Claims Facility

P.O. BOX 9658 | Dublin, OH 43017-4958 | Toll Free: 1-800-916-4893 | Fax: 1-866-682-1772 | info@gccf-claims.com

Claimant Advocacy

Accordingly, the Department made it consumer hotline available, and dedicated a website to those who may need help filing claims with the GCCF: http://www.myfloridacfo.com/FloridaClaimsHelp/



CHIEF FINANCIAL OFFICER
JEFF ATWATER
FLORIDA DEPARTMENT OF FINANCIAL SERVICES

OFFICE OF THE INSURANCE CONSUMER ADVOCATE

Claimant Advocacy

- In addition, the state's Insurance Consumer Advocate, who reports to the CFO, worked directly with many Florida citizens who sought help with their oil spill claims.

- The ICA contacted GCCF those officials in the Seattle, Washington, and Dublin, Ohio offices responsible for claims intake in order to seek assistance in determining why claims had not been paid or had been underpaid.

- The ICA also directly contacted and sought assistance from GCCF's administrator, Kenneth Feinberg, and his law firm.

- Although the ICA encountered the same lack of transparency that greeted claimants' questions about their claims, the ICA was able to obtain information in a number of cases that enabled claimants to supply additional documents to receive claims payments.

CHIEF FINANCIAL OFFICER
JEFF ATWATER
FLORIDA DEPARTMENT OF FINANCIAL SERVICES

- Further, the Department developed a financial accountability page for BP dollars related to the oil spill: http://flair.myfloridacfo.com/iwpapps/dwhoilsp.shtml

DEEPWATER HORIZON Financial Accountability

Since the Deepwater Horizon oil spill, information and assistance has been provided to Floridians on documenting expenses related to protecting their homes and businesses to enable them to be adequately compensated by BP. I am committed to ensuring that your state government is taking the same precautions. This web page allows Floridians to see in a transparent and accountable fashion how the grant money received from BP is being spent to protect our state. It also keeps a running tab of state government expenses so that we can file with BP to reimburse Florida's taxpayers for oil spill-related costs.

Jeff Atwater

State of Florida Totals	
BP Grant Dollars Received	$83,100,000.00
BP Grant Dollar Disbursements	$59,026,523.59
State Operation Expenditures	$9,540,693.75
Federal Dollars Received	$67,921.05

The "State Operation Expenditures" represent costs incurred by State Agencies in providing assistance for the oil spill that may not yet have been reimbursed.
The "BP Grant Dollar Disbursements" represent payments made to non-state agencies for protection and promotional services.
The financial data shown is representative of what the State of Florida agencies have received/spent in relation to the Deepwater Horizon Oil Spill. Any monies received/spent by non-state agencies are not reflected here.

State Operation Expenditures by Department	
DEPARTMENT OF ENVIRONMENTAL PROTECTION	$2,723,761.32
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES	$593,086.19
DEPARTMENT OF FINANCIAL SERVICES	$1,752.28
DEPARTMENT OF STATE	$714.98
DEPARTMENT OF COMMUNITY AFFAIRS	$1,110,494.35
DEPARTMENT OF TRANSPORTATION	$83,796.54
DEPARTMENT OF HEALTH	$117,151.06
DEPARTMENT OF MANAGEMENT SERVICES	$6,143.91
DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES	$66,837.22
FISH AND WILDLIFE CONSERVATION COMMISSION	$4,836,955.90

BP Grant Dollar Disbursements by Department	
EXECUTIVE OFFICE OF THE GOVERNOR	$5,000,000.00
DEPARTMENT OF ENVIRONMENTAL PROTECTION	$29,076,523.59
DEPARTMENT OF COMMUNITY AFFAIRS	$24,950,000.00

Deepwater Horizon Oil Recovery Dollars
Accountability. Responsibility. Transparency.

CHIEF FINANCIAL OFFICER
JEFF ATWATER
FLORIDA DEPARTMENT OF FINANCIAL SERVICES

Claimant Success Stories

Jeff E.: Owns five retail stores in Pensacola, four are along the beach. At one point, Jeff had seven different claims adjusters/point of contact in the claims office. After several months, Jeff finally received an Emergency Payment with the help of DFS.

Candi C.: Owns Candi's Creations in Naples. Candi submitted her Emergency Claim to GCCF in the amount of $25,000 to cover losses incurred by her plunge in sales. After months of waiting, her claim was denied. Candi was about to lose her business, her house and send her 16 year old son to live with his grandmother when she contacted DFS. We urged GCCF to re-examine her claim which they did and then paid Candi the full $25,000 which saved her store and kept her family together.

Lynne F.: Lynne opened her new business on Pensacola Beach in April, and then came the oil. With no tourist or customers coming to her BeachPops store, and with no savings to carry her, Lynne was preparing to close the doors to the business she worked so hard to build. After months of waiting to receive help from BP and GCCF, she contacted DFS. DFS advocated for her and kept pushing to ensure Lynne's claim was paid. Finally in October, BeachPops received a six month Emergency Claim for $75,000 which would be just enough to get them through the winter months. DFS is now assisting Lynne with her Interim Claim.

Criticism of the Methodology Process

GCCF Gulf Coast Claims Facility
www.GulfCoastClaimsFacility.com

In determining which claims to pay, the Gulf Coast Claims Facility posted proposed eligibility criteria and "methodology" that would be applied in reviewing requests for compensation. CFO Atwater requested that a Florida representative participate in the creation and establishment of that criterion—we received no response to that request.

CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

January 20, 2011

Mr. Kenneth Feinberg
Administrator, BP Claims Fund
Willard Office Building, Suite 390
1455 Pennsylvania Avenue, NW
Washington, DC 20004-1008

Dear Mr. Feinberg:

Yesterday you had the opportunity to meet with several hundred business owners and residents of North Florida who have been adversely affected by the Deepwater Horizon Oil Spill. They are very fearful not only for the future of their families and businesses, but for the survival of their communities and way of life.

At today's meeting, you announced your intention to establish and publicize the methodology the Gulf Coast Claims Facility will use to determine final and interim claims payments. I am writing to formally request that a member of the Florida Department of Financial Services participate in the creation of that methodology.

Our office has been working and is in regular contact with hundreds of business owners and families who have lost, or are on the verge of losing, their businesses or homes due to financial losses directly stemming from the oil spill. In some cases, we have helped dozens of claimants get full or partial payments. With others, we have helped get a re-evaluation of their claim. Direct feedback from the claimants we have worked with, or are currently working with, reveal that clear guidelines on documentation required to prove a claim are desperately needed, and that the claims process has been a nightmare to navigate and completely lacks transparency.

Moreover, many claimants have been waiting months for information on their claims. These are family, friends and neighbors losing not only the businesses they worked hard to build but also their homes and other assets. We have been on the phone with business owners facing eviction that same day, or who could not put food on their families' tables that night because their bank accounts had dwindled as they patiently waited for their promised claim payments.

DEPARTMENT OF FINANCIAL SERVICES
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Mr. Kenneth Feinberg
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January 20, 2011

As Florida's Chief Financial Officer, I am committed to ensuring that every business and every resident negatively impacted by the oil spill is immediately compensated for rightful losses and made whole. To that end, we want to offer our insight for improving and expediting the claims process. We must work together to get Florida's families and businesses back on their feet.

I look forward to your prompt response.

Sincerely,

Jeff Atwater
Chief Financial Officer

c: Governor Rick Scott, State of Florida
Attorney General Pam Bondi, State of Florida
Commissioner of Agriculture Adam Putnam, State of Florida
Members of the Florida Legislature

"At today's meeting [with business owners and residents of North Florida adversely affected by the Deepwater Horizon Oil Spill], you announced your intention to establish…the methodology the GCCF will use to determine…claims payments…I am writing to formally request that a member of the Department of Financial Services participate in the creation of that methodology."

CHIEF FINANCIAL OFFICER
JEFF ATWATER
FLORIDA DEPARTMENT OF FINANCIAL SERVICES

“Open” Comment Period

GCCF’s public comment period lasted from February 2nd through 16th. Only two days after this comment period closed, GCCF was ready to begin issuing payments using that methodology. Many, including CFO Atwater, believed that such a short time frame could not possibly include true consideration of those public comments.

CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

February 16, 2011

Mr. Kenneth Feinberg
Administrator, BP Claims Fund
Willard Office Building, Suite 390
1455 Pennsylvania Avenue, NW
Washington, DC 20004-1008

Dear Mr. Feinberg:

Over the past two weeks, we have received input from claimants on the proposed methodology your Gulf Coast Claims Facility (GCCF) is considering for use in calculating final and interim payments for Deepwater Horizon Oil Spill victims. In addition, the staff of the Department of Financial Services, which has extensive experience in handling claims, has also reviewed your proposed methodology.

In short, the proposed system lacks transparency, fails to provide clear guidelines, and continues to play with the emotions of victims who simply want to be compensated for their financial losses. You were chosen to administer this fund fairly and equitably, yet your actions have complicated the process by creating countless additional rules and regulations that increase the complexity of obtaining redress for those simply seeking rightful compensation.

Your current timeframe of closing public comment on February 16 and using the formula for issuing payments on February 18 begs the question of whether you intend to consider input from claimants and the requisite experts to adequately and properly compensate the victims of BP’s Deepwater Horizon Oil Spill.

Floridians deserve real compensation, not a two-week public relations campaign.

While I firmly believe that there are no limitations to the terms and availability of long-term compensation under the Oil Pollution Act, attached to this letter are suggested modifications to your proposals my office has prepared, many of which are based on the thoughts and comments of those most immediately affected by BP’s behavior. I am expecting you and your staff to review each one carefully and in its entirety, and to identify any other experts with whom you have conferred when you developed your models. While distinguished in his credentials, the

DEPARTMENT OF FINANCIAL SERVICES
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Mr. Kenneth Feinberg
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opinion and research from your sole source on the current proposed methodology, Dr. John S. Tunnell, has not been subject to peer review.

Until a compensation model can be developed that will assist victims for the long term, someone needs to speak up for Floridians who have been victimized and harmed through no fault of their own by this tragedy.

When you accepted this job, I believe you did so knowing fully what the anticipated issues and obstacles would be. That being said, you chose this undertaking and with that choice came the assumption that you would carry through with the commitment BP made from day one to “make this right.”

Ultimately, I believe your proposed payment scheme violates, at a minimum, the intent of OPA, which is to properly compensate individuals and businesses for losses incurred by an oil spill of this magnitude. However, to the extent that you apply your proposed methodology in the payment of any Floridian’s claim, it is my duty to ensure that the payment process is fair, transparent, responsive and fully compensates the victims of this tragedy.

I look forward to hearing back from you or your office.

Sincerely,

Jeff Atwater
Chief Financial Officer

Attachment

“Your current timeframe of closing public comment on February 16th and using the formula for issuing payments on February 18th begs the questions of whether you intend to consider input from claimants…”

CHIEF FINANCIAL OFFICER
JEFF ATWATER
FLORIDA DEPARTMENT OF FINANCIAL SERVICES

Economic Affects of Uncertainty

• CFO Atwater continues to be concerned about the transparency and uniformity of the claims process. As such, our Division of Consumer Services remains available as a resource to claimants who are filing claims with GCCF.

• Further, the CFO is actively engaged in continued outreach efforts to those affected by the spill.

• We continue to monitor the economic affects of this spill—Many small businesses are being forced to lay off employees, or worse, shut their doors. Additionally, when legitimate claims are denied, the burden to provide assistance, though temporary, shifts to Florida taxpayers.

CHIEF FINANCIAL OFFICER
JEFF ATWATER
FLORIDA DEPARTMENT OF FINANCIAL SERVICES

Most importantly, we are here to help consumers navigate the oft-confusing claims process, and we will continue to advocate for them.

THANK YOU

Questions?

CHIEF FINANCIAL OFFICER
JEFF ATWATER
FLORIDA DEPARTMENT OF FINANCIAL SERVICES

Deepwater Horizon:
The OPA Claims Process

Russell S. Kent
Special Counsel for Litigation
Office of the Attorney General

The Oil Pollution Act (OPA) of 1990

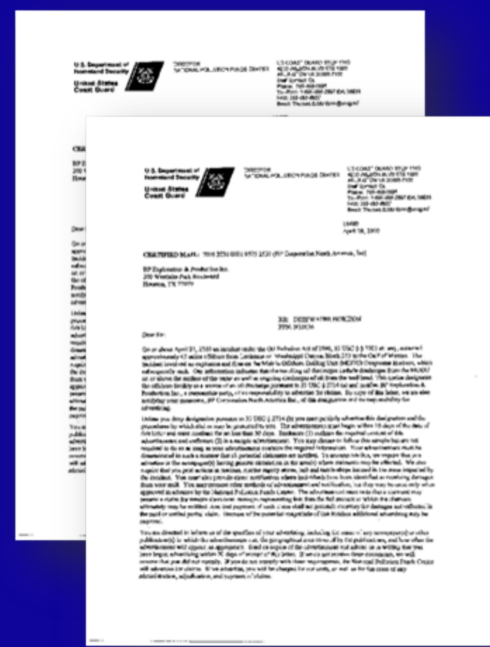
33 U.S.C. §§ 2701 et seq.

- Passed in response to the 1989 Exxon Valdez disaster.

- Chapter 376, The Pollutant Discharge Prevention and Control Act, actually predated OPA.

Responsible Parties

- The Coast Guard initially notified Transocean and BP of their potential liability under OPA. Coast Guard directed BP to establish a claims process.



- OPA defines who the Responsible Parties are; also allows actions for contribution against others. (33 U.S.C. 2702)

Remedies

- Removal / response costs (33 U.S.C. 2702(b)(1))
- Damages "that result from" spill (33 U.S.C. 2702(b)(2))
  - Natural resources (compare to Fla. Stat. 376.121)
  - Real or personal property
  - Subsidence use
  - Governmental revenues (net loss of taxes, etc.)
  - Lost profits or earning capacity
  - Increased cost of providing public services

Interim Claims

- *A* responsible party (like BP) must provide interim payments for short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled. 33 U.S.C. § 2714(b)(2).

- Claims for interim or final payments must be made within 3 years of the damage. 33 U.S.C. § 2712(h)(2).

- No release required for interim claims. Backwards-looking. May be made at least quarterly.

- Concern because GCCF has not paid more than 21,000 pending interim claims. Promises of payment this week.

Final Claims

- All claimants who elect to accept a final payment are required to sign an extensive release that would bar them from any future recovery from BP or any other responsible party, even for future unanticipated economic losses.

- Claimants are also strongly encouraged to consult with counsel before signing any release paperwork. GCCF is now providing the assistance of pro bono counsel.

- Claimants considering a "quick pay" claim should also evaluate whether their total possible damages exceed the set amount offered - $5,000 for individuals or $25,000 for businesses. 36,000 quick pay claims paid, $355 million.

Final Claims Methodology

- GCCF has also not paid more than 28,000 pending final claims to date pending the release of a methodology.
- Attorney General Bondi commented on the draft methodology, indicating that it did not provide answers to the important issues surrounding the claims process – including the continuing lack of transparency. Moreover, the multiplier lacked scientific support and the proposed burden of proof for claimants was unduly restrictive.
- The Final Rules issued on Friday appear to be even worse than the draft methodology, especially given the emphasis on geographic proximity and business types.

MDL Filing

- Attorney General Bondi filed a brief, requesting: (a) the commencement of interim payments, with no further steering towards "quick pay" claims; (b) the creation of objective, transparent methodologies for evaluating claims along with the appointment of an independent auditor; (c) the establishment of a meaningful appellate process; and, (d) the revision of the release form. Hearing on Friday.

- Additional suggestions included hiring additional local claims adjusters with the authority to resolve claims on the spot, making claims procedures public so claimants understand how claim evaluations and payments are determined, and providing clear explanations to each claimant as to why a claim was reduced or denied.

Escrow Fund

- BP has agreed to fund a $20 billion escrow account to pay claims.
  - $3 billion will be added during this quarter
  - $2 billion in 4Q 2010
  - Then $1.25 billion in each subsequent quarter

- BP will set aside sufficient assets to secure the undeposited balance of the escrow fund.

- Governmental response and damage claims can be paid out of the $20 billion fund but not civil or criminal penalties, such as the Clean Water Act civil penalties.

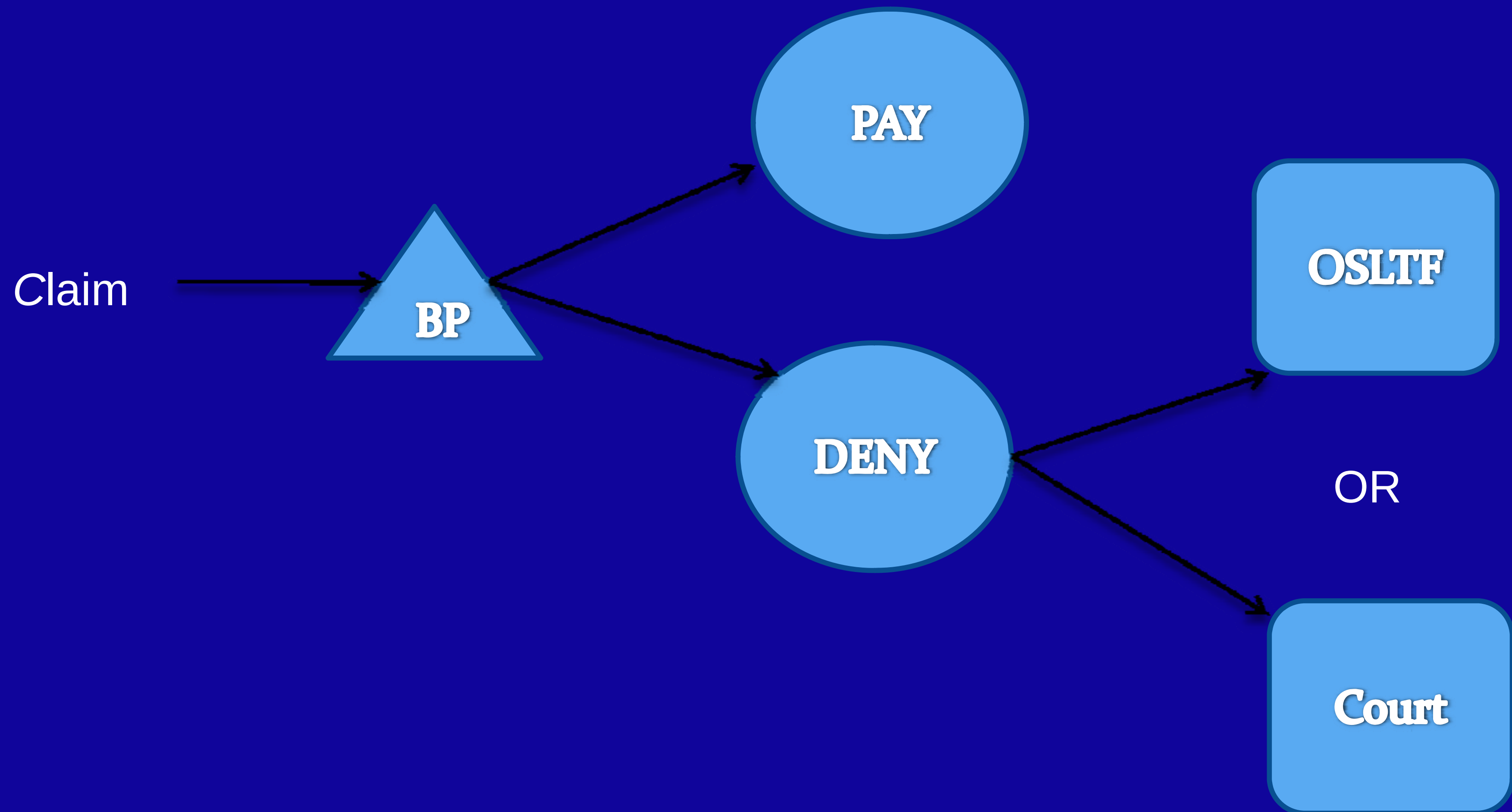
Presentation of Claims

- *OPA*: Presenting a claim is a **condition precedent** to filing the claim with the OSLTF or going to court.
- *Problem*: The GCCF is the **only** existing process to present individual or business claims to BP. The only "voluntary" claims are personal injury or death claims, which are not compensable under OPA, but may be paid by the GCCF.
- BP has not waived the presentation requirement.
- The Oil Spill Liability Trust Fund is limited to $1 billion per incident, with no more than $500 million for natural resource damages. First come, first served.

Governmental Claims

- BP handles state and local governmental claims, with the assistance of Witt Associates. There's a weekly report.
- There is a claims protocol for government claims.
- Local governments in Florida have requested roughly $43 million and received $22 million, with $18 million still outstanding. Only $3 million has been denied.
- Response and removal claims largely resolved.
- Just starting to see loss of revenue claims resolved.

Claims



NRDA

- Federal and state governments also participating in a Natural Resource Damage Assessment process, as is BP.
- Lead state agencies are DEP and FWC, with additional involvement by our office. Frequent trustee meetings.
- Process identifies the extent of resource injuries, the best methods for restoring those resources, and the type and amount of restoration required. Both scientific and legal.
- Historically, NRDA cases have been resolved through the implementation of restoration projects, not money.

Conclusion

QUESTIONS?