

ALTERNATIVE
COMPENSATION
SCHEMES OR TORT
REFORM?

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BP OIL SPILL RESPONSE PLAN

- The covers of the five response plans are 4 different colors, but the content is 90 percent identical. Like BP, three other companies include references to protecting walruss, which have not called the Gulf of Mexico home for 3 million years."



- "...the only technology [the oil companies] seem to be relying upon is a Xerox machine to put together [their] response plans..."

- Representative Edward J. Markey

"Drilling Down on America's Energy Future: Safety, Security, and Clean Energy"
Hearing before the Committee on Energy and Commerce

June 15, 2010

PURPOSE OF TRADITIONAL CIVIL JUSTICE SYSTEM

- Just Compensation
- Discovery
- Accountability
- Change Behavior/Deterrence
- Public Awareness



PURPOSE OF VICTIM COMPENSATION FUND

- Fast Compensation
- Release of Claims
- Stabilizing Industry



ACCESS TO COURTS V. GETTING RID OF CLAIMS

University of Southern California Law

From the Selected Works of Gillian K Hadfield

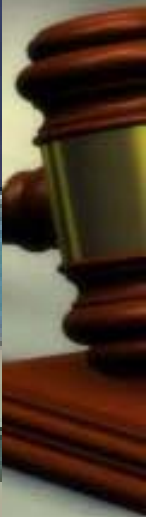
September 2008

Framing the Choice between Cash and
Courthouse: Experiences with the 9/11 Victim
Compensation Fund

HADFIELD 2008

Many legal commentators, while acknowledging non-monetary goals, discount them as unrealistic. Feinberg, for example responds to the 9/11 victims' desire to sue to pursue information and accountability with his legal assessment that litigation would not produce these outcomes and that the 9/11 Commission was the appropriate avenue for pursuing these non-monetary goals (Feinberg 2005: 165). Schneider (2003, 474-475) agrees that "for many discovery, imposing time limits, constraining the use of experts, and so on. Like the critique of ADR and public authority found in the attention to the framing of everyday troubles in the legal consciousness literature, the thoughtful and public-minded framing of these values by the 9/11 respondents in this study speaks to the cost of focusing only on how to get matters out of litigation and not how to afford access to the civic processes of litigation.

WHO'DA THUNK?



FLIGHT 77 DULLES



FLIGHT 77
DULLES-L.A.



MAJED MOQED



KHALID ALMIHDHAR

00 : 00 : 00 : 00

20
NEWS

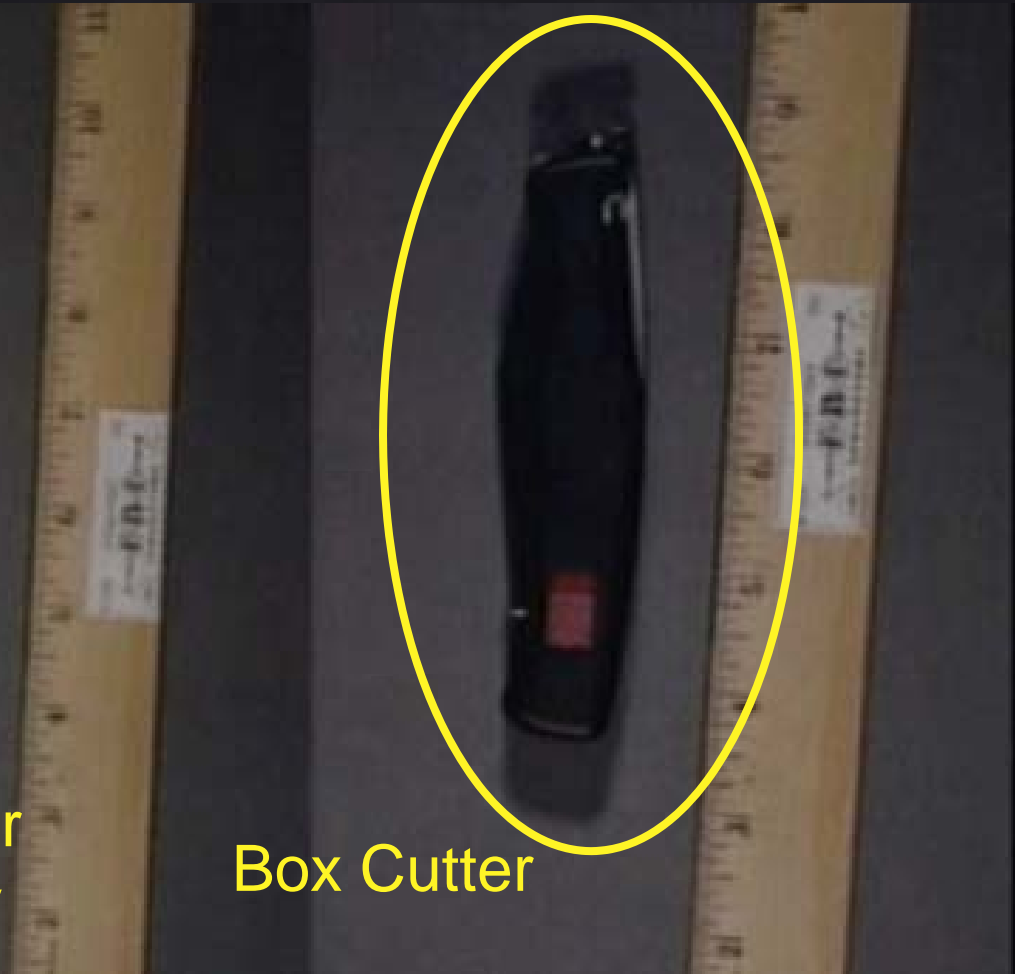
THE WEAPONS



PROHIBITED ITEMS



Pepper
Spray



Box Cutter

IN RE SEPTEMBER 11TH TORT LITIGATION FACTS

- 95 of 96 Claims Settled
- Bavis Trial October 2011
- Average Settlement > \$5,000,000.00
- 200 Fact Witness Depositions
- Millions of Documents Produced
- Archive Established
- Legislative Changes

SARA LOW



PURPOSE OF VICTIM COMPENSATION FUND

- Fast Compensation
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- Stabilizing Industry



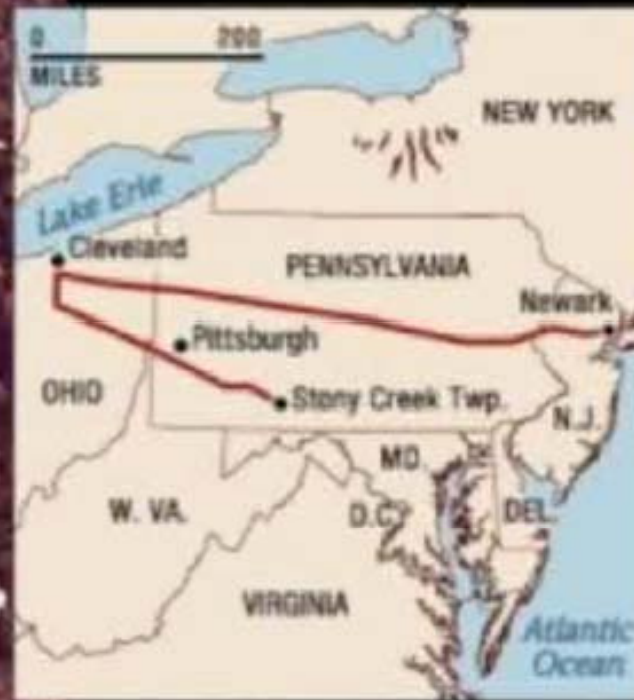
WORLD TRADE CENTER 911 CALL



PRE-IMPACT FEAR



CeeCee Lyles



Flight 93



LOSS OF SOCIETY/CONSORTIUM



The Pain is Real

The loss cannot be "Presumed"

ECONOMIC VALUATION

**Presumed Economic and Non-Economic Loss For a Married Decedent With 1 Dependent Child
(Age 9 at Date of Death of Victim) Before Any Collateral Offset**

Age	Income									
	\$ 10,000	\$ 20,000	\$ 25,000	\$ 30,000	\$ 35,000	\$ 40,000	\$ 45,000	\$ 50,000	\$ 60,000	
25	\$ 880,886	\$ 1,190,971	\$ 1,354,792	\$ 1,500,064	\$ 1,666,008	\$ 1,847,691	\$ 2,039,312	\$ 2,235,997	\$ 2,558,103	
30	\$ 756,435	\$ 1,001,922	\$ 1,123,227	\$ 1,231,319	\$ 1,353,826	\$ 1,487,803	\$ 1,628,853	\$ 1,773,427	\$ 2,011,873	
35	\$ 688,508	\$ 879,008	\$ 972,723	\$ 1,056,650	\$ 1,150,997	\$ 1,254,057	\$ 1,362,353	\$ 1,473,188	\$ 1,657,351	
40	\$ 642,706	\$ 796,127	\$ 871,235	\$ 938,868	\$ 1,014,223	\$ 1,096,430	\$ 1,182,634	\$ 1,270,712	\$ 1,418,266	
45	\$ 599,924	\$ 718,758	\$ 776,544	\$ 828,974	\$ 886,670	\$ 949,500	\$ 1,015,189	\$ 1,082,150	\$ 1,195,625	
50	\$ 564,923	\$ 655,438	\$ 699,026	\$ 739,010	\$ 782,222	\$ 829,154	\$ 878,005	\$ 927,626	\$ 1,013,168	
55	\$ 535,148	\$ 601,707	\$ 633,382	\$ 662,825	\$ 693,952	\$ 727,644	\$ 762,519	\$ 797,784	\$ 859,898	
60	\$ 507,095	\$ 551,725	\$ 572,964	\$ 592,707	\$ 613,578	\$ 636,170	\$ 659,555	\$ 683,202	\$ 724,851	
65	\$ 500,000	\$ 518,079	\$ 532,293	\$ 545,506	\$ 559,474	\$ 574,594	\$ 590,244	\$ 606,070	\$ 633,943	

Age	Income									
	\$ 70,000	\$ 80,000	\$ 90,000	\$ 100,000	\$ 125,000	\$ 150,000	\$ 175,000	\$ 200,000	\$ 225,000	
25	\$ 2,866,135	\$ 3,248,888	\$ 3,612,021	\$ 3,908,518	\$ 4,570,353	X,XXX,XXX	X,XXX,XXX	X,XXX,XXX	X,XXX,XXX	
30	\$ 2,239,825	\$ 2,521,248	\$ 2,788,348	\$ 3,007,808	\$ 3,497,042	\$ 4,027,061	\$ 4,538,498	X,XXX,XXX	X,XXX,XXX	
35	\$ 1,833,347	\$ 2,049,162	\$ 2,254,072	\$ 2,423,237	\$ 2,800,843	\$ 3,209,762	\$ 3,604,344	\$ 3,982,928	\$ 4,346,044	
40	\$ 1,559,223	\$ 1,730,785	\$ 1,893,749	\$ 2,029,126	\$ 2,331,314	\$ 2,658,561	\$ 2,974,334	\$ 3,277,304	\$ 3,567,896	
45	\$ 1,303,970	\$ 1,434,460	\$ 1,558,467	\$ 1,662,428	\$ 1,894,443	\$ 2,145,697	\$ 2,388,142	\$ 2,620,758	\$ 2,843,870	
50	\$ 1,094,779	\$ 1,191,548	\$ 1,283,610	\$ 1,361,776	\$ 1,636,258	\$ 1,725,207	\$ 1,907,532	\$ 2,082,465	\$ 2,250,251	
55	\$ 919,101	\$ 987,938	\$ 1,053,508	\$ 1,110,096	\$ 1,236,414	\$ 1,373,207	\$ 1,505,205	\$ 1,631,850	\$ 1,753,321	
60	\$ 764,549	\$ 810,707	\$ 854,672	\$ 892,617	\$ 977,318	\$ 1,069,043	\$ 1,157,552	\$ 1,242,472	\$ 1,323,923	
65	\$ 680,511	\$ 691,402	\$ 720,826	\$ 746,220	\$ 802,906	\$ 864,293	\$ 923,527	\$ 980,360	\$ 1,034,870	

NON-ECONOMIC VALUATION



- Survival Claim:
\$250,000.00
- Spouse:
\$100,000.00
- Child:
\$100,000.00

VCF – 98% PARTICIPATION

Death Award Ranges Stated Are *After* Collateral Offsets

Class Size

7,408

Income Level	Age	Range
\$50,000 or less	35 or Under	\$250,000 to \$3.2 million
\$50,000 or less	Over 35	\$250,000 to \$4.1 million
\$50,000 to \$100,000	35 or Under	\$250,000 to \$4.2 million
\$50,000 to \$100,000	Over 35	\$250,000 to \$4.3 million
\$100,000 to \$200,000	All Ages	\$250,000 to \$5.5 million
Over \$200,000	All Ages	\$250,000 to \$7.1 million

Average Decedent's Assets After Collateral Offsets

\$208,212

Median Decedent's Assets After Collateral Offsets

\$167,363

BP FUND

Individual Claims by Amount

(Claimants may have more than one Claim Type)

Claims by Amount	No. of Claims Paid	Amount Paid
1. \$0.01 - \$5,000.00	18813	\$ 56,809,136.50
2. \$5,000.01 - \$10,000.00	19542	\$ 148,863,600.00
3. \$10,000.01 - \$25,000.00	20121	\$ 312,176,750.00
4. \$25,000.01 - \$100,000.00	3700	\$ 131,468,928.38
5. \$100,000.01 - \$500,000.00	21	\$ 2,669,100.00
6. Over \$500,000.00	0	\$ -
Total to Date	62,197	\$ 651,987,514.88

Business Claims by Amount

(Claimants may have more than one Claim Type)

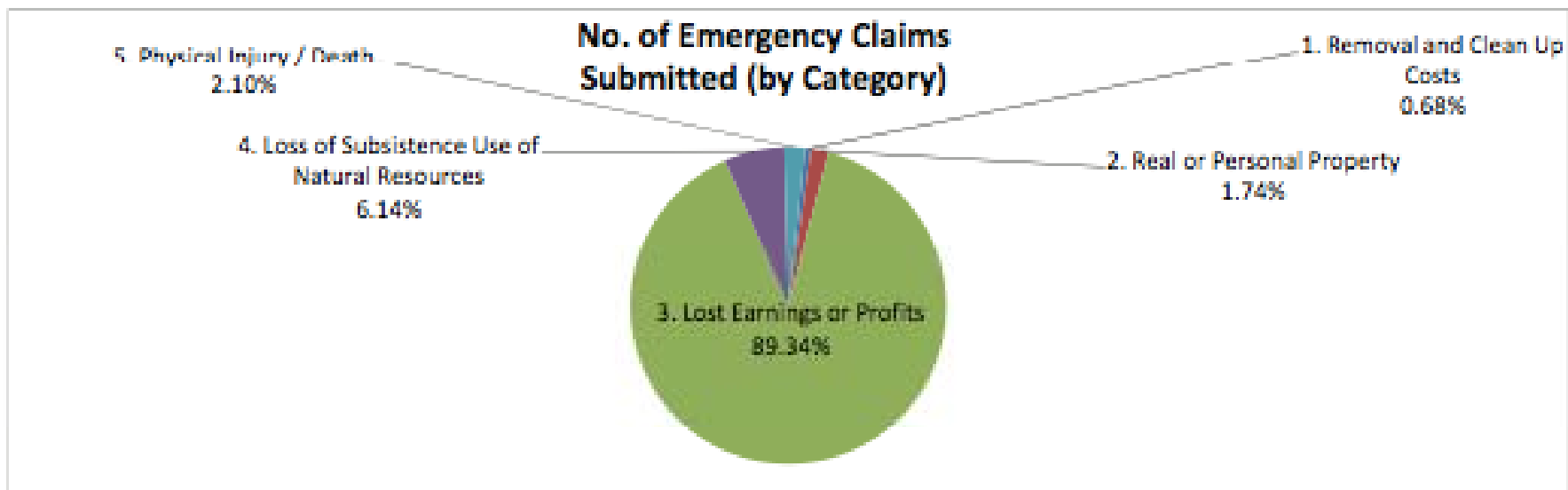
Claims by Amount	No. of Claims Paid	Amount Paid
1. \$0.01 - \$5,000.00	5122	\$ 14,315,100.00
2. \$5,000.01 - \$10,000.00	4483	\$ 34,053,800.00
3. \$10,000.01 - \$25,000.00	6991	\$ 118,535,600.00
4. \$25,000.01 - \$100,000.00	7714	\$ 394,651,400.00
5. \$100,000.01 - \$500,000.00	1664	\$ 305,388,500.00
6. Over \$500,000.00	37	\$ 67,743,176.00
Total to Date	26,011	\$ 934,687,576.00

BP FUND

Emergency Advance Claim Counts by Category

(Claimants may have more than one Claim Type)

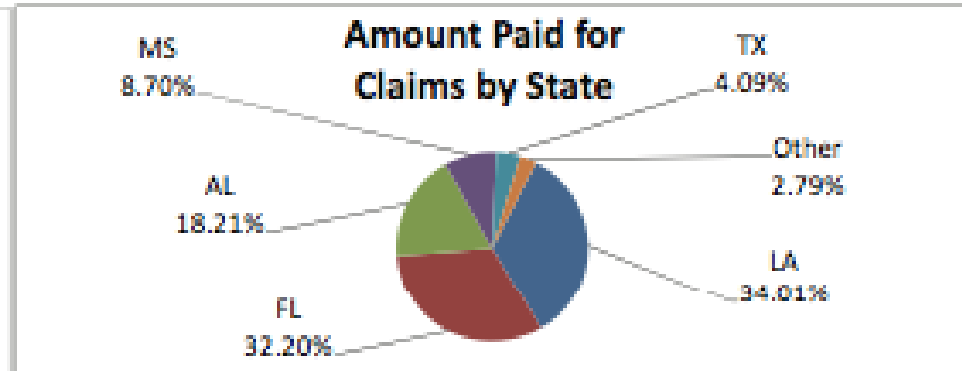
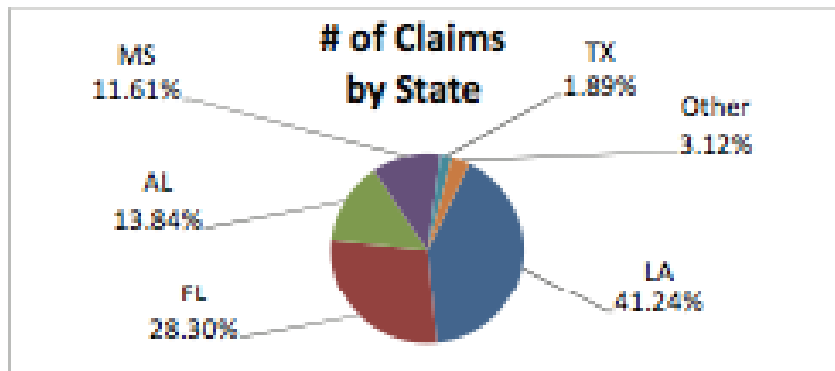
Claims for Emergency Advance Payment	Claims Submitted	No. of Claims Paid	Amount Paid
1. Removal and Clean Up Costs	2,183	0	\$ -
2. Real or Personal Property	5,582	54	\$ 297,863.38
3. Lost Earnings or Profits	287,245	88,145	\$ 1,586,380,491.00
4. Loss of Subsistence Use of Natural Resources	19,756	5	\$ 13,000.00
5. Physical Injury / Death	6,740	4	\$ 3,936.50
Total to Date	321,506	88,208	\$ 1,586,675,090.88



BP FUND

Claims by State of Residence (Claimants may have more than one Claim Type)

Claim State of Residence	Claims Submitted	No. of Claims Paid	Amount Paid
Louisiana	136,305	28,277	\$ 539,880,450.00
Florida	93,520	31,222	\$ 510,840,478.00
Alabama	45,751	15,136	\$ 288,978,828.38
Mississippi	38,363	7,795	\$ 137,996,136.50
Texas	6,261	1,826	\$ 64,831,700.00
Others	10,305	3,952	\$ 44,247,500.00
Total to Date	330,505	88,208	\$ 1,586,675,090.88



BP FUND

Individual Lost Earnings or Profits Claims Paid by Industry

(Claimants may have more than one Claim Type)

Claims by Amount	No. of Claims Paid	Amount Paid
Fishing	6,956	\$ 114,800,400.00
Food, Beverage and Lodging	35,153	\$ 313,131,400.00
Rental Property(ies)	1,470	\$ 14,807,600.00
Retail, Sales and Service	13,762	\$ 155,480,600.00
Seafood Processing and Distribution	3,866	\$ 43,569,815.00
Tourism and Recreation	945	\$ 10,040,100.00
Total to Date	62,152	\$ 651,829,915.00

Business Lost Earnings or Profits Claims Paid by Industry

(Claimants may have more than one Claim Type)

Claims by Amount	No. of Claims Paid	Amount Paid
Fishing	7,855	\$ 332,863,100.00
Food, Beverage and Lodging	2,022	\$ 136,873,900.00
Rental Property(ies)	8,804	\$ 130,759,776.00
Retail, Sales and Service	6,197	\$ 240,837,400.00
Seafood Processing and Distribution	684	\$ 68,707,800.00
Tourism and Recreation	431	\$ 24,488,600.00
Total to Date	25,993	\$ 934,530,576.00

STABILIZING THE INDUSTRY

- Lifting the Moratorium on Drilling October 2010
- Threats of Pulling out of Gulf
- 11% of BP's Revenue from the Gulf
- Administrator Paid by BP \$1.25m/month
- Are the rigs any safer?
- Is the fishing industry any more secure?
- Is the compensation just?
- Is the compensation expedient?



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March 21, 2011

Mr. Kenneth R. Feinberg, Esq.
Feinberg Rozen, LLP
The Willard Office Building
1455 Pennsylvania Avenue, NW, Suite 890
Washington, D.C. 20004-1008

Dear Mr. Feinberg,

Our anxiety has reached a boiling point. Nearly a year has passed since the Deepwater Horizon spewed oil into the Gulf and onto Alabama's beaches. In that year, little has changed. In the summer of 2010, thousands of Alabamians desperately awaited compensation. As the summer of 2011 approaches, most are still waiting, more desperate than ever. And to be blunt, the Gulf Coast Claims Facility is largely—if not primarily—to blame.



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March 21, 2011

1. **Quick-pay:** Of the claims reportedly paid, almost all—a whopping 98.9 percent (96,417 out of 97,429)—are of the express-line, quick-pay option that requires no actual processing by the GCCF. Just as disturbing, these quick-pay recipients were required to forfeit any and all other legal recourse for compensation. Simply put, almost no one is being paid when their claim is actually “processed”; they are just swiftly paid to go away. Why are you working so diligently, and so swiftly, to protect BP and secure releases for their liability?

2. **Meager Payments:** When payments are released, they do not amount to much. The average final full offer that has been accepted by claimants in Alabama averages approximately \$12,000. I find this both suspect and troublesome, seeing as though no one knows exactly how long the effects of the spill will impact our coastal community. It seems highly likely that many Alabamians—both citizens and businesses—lost much more, and will continue to lose much more, than the \$12,000 they have been paid as a final amount.



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March 21, 2011

These five concerns with your recent report are just the tip of the iceberg. I could go on and on. Instead, I want to show you the effect the GCCF's failures have had on Alabamians. The Alabama Department of Mental Health has identified significant concerns regarding Alabamians' mental welfare in the wake of the oil spill, which flow from the following factors:

1. Frustration and uncertainty stemming from the claims process;
2. The demoralization, and often humiliation, of strong-willed, independent citizens who have been reduced to begging for handouts from an organization (the GCCF) whose primary mission seems to be turning them down;
3. The frustration and feeling of stress and hopelessness that arises from the repeated rejection of claims, often without any explanation as to why or how to correct any "problem";
4. The once-held feeling that a person or business' problems would be solved by now; only to be struck by the harsh reality that it has not—and likely will not be in the foreseeable future.

SAFETY VIOLATIONS

- 2000 – In February, BP crew in the Gulf of Mexico pushed the wrong button severing the rig from the blowout system causing an oil leak.

- Mineral Management Service Safety Alert No.186, March 3, 2000

- 2002 – California officials allege BP falsified inspections of fuel tanks at a Los Angeles refinery and more than 80% of the facilities didn't meet requirements to maintain storage tanks without leaks or damage. BP settled a lawsuit brought by the South Coast Air Quality Management District for more than \$100m.

- Reports at BP over years find history of problems,

The Washington Post, June 8, 2010,

by Abraham Lustgarten and Ryan Knutson

SAFETY VIOLATIONS

- 2005 – A BP Texas City refinery exploded, killing 15 people. The investigation uncovered that a warning system failed and that “significant process safety issues exist at all five U.S. refineries, not just Texas City.”
- 2006 – In March, more than 200,000 gallons of oil spilled from a corroded hole in the Prudhoe Bay pipeline in Alaska. Inspectors found that several miles of the steel pipe had corroded to dangerously thin levels. BP had received multiple warnings about their Alaskan pipelines since 2002.

- Reports at BP over years find history of problems,
The Washington Post, June 8, 2010,
by Abraham Lustgarten and Ryan Knutson

SAFETY VIOLATIONS

- October 25, 2007, the Justice Department settled with BP at \$20 million in penalties and three years' probation, \$12 million of criminal fine.
 - May 19, 2010 Panel I of a Hearing of the House and Transportation and Infrastructure Committee
- 2008 – In September, a section of gas pipeline on an Alaskan slope blew apart, flying nearly 1000 feet through the air before landing on the tundra.
- 2009 – Three separate accidents plagued the same Alaskan pipeline system, one of which was a near-catastrophic explosion. Congress sent a letter to BP stating these accidents were a result of malfunctioning safety and backup equipment.
 - Reports at BP over years find history of problems.
The Washington Post, June 8, 2010

SAFETY VIOLATIONS



The blowout preventer is BP's "key failsafe mechanism"

Testimony of Lamar McKay, President of BP
May 19, 2010, Panel I of a Hearing of the House and
Transportation and Infrastructure Committee

SAFETY VIOLATIONS



Deepwater Horizon seamen discovered a BOP leak two weeks before the blowout in early April of 2010.

On July 21, 2010 it was revealed that 45% of BOP's fail.

- Regulators Failed to Address Risks in Oil Rig Fail-Safe Device,
New York Times, June 20, 2010.

BP's Public Statements – Day 24



Tony Hayward, BP CEO

“The Gulf of Mexico is a very big ocean. The amount of volume of oil and dispersant we are putting into it is tiny in relation to the total water volume.”

- May 14, 2010



WILLFUL AND WANTON CONDUCT

"The oil is on the surface..."

"There aren't any plumes."

BP sampling showed "no evidence" that oil was suspended in large masses beneath the surface.



Meanwhile, a twenty-two mile long, six mile wide and more than a thousand feet deep plume was being reported by the University of South Florida and other Southeastern educational institutions.

BP CEO Tony Hayward
AP, May 30, 2010

