

Plaintiffs' Lawyers in a Bitter Dispute Over Fees in Gulf Oil Spill Cases



Derick E. Hingle/Bloomberg News

Kenneth R. Feinberg runs the Gulf Coast Claims Facility, from which a steering committee for plaintiffs' lawyers is seeking a share of the settlements.

By JOHN SCHWARTZ
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Lawyers routinely battle each other, representing the conflicting interests of plaintiffs and defendants. But lately in the vast tangle of federal litigation over last year's Deepwater Horizon oil spill, lawyers on the same side — for the plaintiffs — are fighting one another.

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The current conflict pits members of the steering committee and their allies against a dissident faction of lawyers, many of whom are looking to settle their cases before trial.

The steering committee of plaintiffs' lawyers was appointed last year by Judge Carl J. Barbier of United States District Court in New Orleans from more than 100 applicants to manage their side of the litigation.

In the sprawling form of lawsuit known as multidistrict litigation, members of steering committees tend to gain

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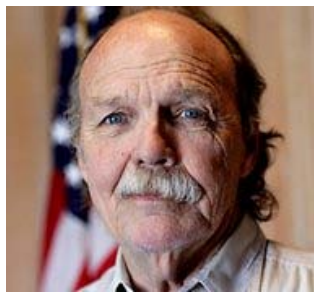
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Ernest H. Cannon, a lawyer who is not on the steering panel, called the request "a money grab."

large fees, and this fact alone often creates tensions between those on the inside and those on the outside.

But the [litigation involving BP](#) has become especially bitter because of a request to the judge last month by the [17-member leadership](#) asking to create a fund that could be used to cover litigation costs. They asked for 6 percent of all judgments and settlements after Nov. 7, the date of the filing, including those for people who have dropped out of the lawsuits and negotiated their own recoveries

from the \$20 billion [Gulf Coast Claims Facility](#) administered by Kenneth R. Feinberg.

It does not apply to damages already paid out by the Feinberg fund, more than \$5.7 billion in claims to hundreds of thousands of individuals and businesses. But many more settlements are expected before trial, and the 6 percent could amount to tens of millions of dollars.

In their filing, the steering committee lawyers argued that 340 lawyers from many firms had worked more than 230,000 hours on the case, at a cost of \$11.54 million.

The steering committee lawyers left it to Judge Barbier to say how the money would be extracted, whether by requiring BP to pay an additional amount equivalent to 6 percent of settlements to the fund, which would give plaintiffs their full recovery, or have it come out of the settlement — preferably, they wrote, out of the portion of the plaintiffs' recovery that would be paid to their lawyers.

The outside lawyers responded angrily. "It's an abomination. It's an abuse. It's a money grab," said Ernest H. Cannon, a lawyer from Texas. "They want attorney's fees from people they've never heard of, for work they've never done."

One lawyer, Lance H. Lubel, also of Texas, wrote that the plaintiffs' committee "has focused its efforts largely on matters that cannot and will not yield a benefit" to clients like his.

Creating a reserve account from so-called holdbacks is a common way to finance large multidistrict suits, and plaintiffs' lawyers who are not on the steering panels always hate them, said Samuel Issacharoff, an expert on complex litigation at New York University. "The people who don't get the plum assignments and don't get to head the case are always displeased," he said.

Those opposing the plan, however, argue that this case is unusual because the Oil Pollution Act requires BP to pay for all proven damages. Fault is not an issue in the settlements, they say, so the \$11.54 million in legal work, much of which is for investigating the accident and assigning blame, does nothing to benefit clients who go to the Feinberg fund.

"Not one lawyer had anything to do with creating that fund," said Daniel E. Becnel Jr., a Louisiana lawyer who opposes the creation of the reserve.

Stuart H. Smith, a lawyer in New Orleans, said that many of his clients had not sued BP and that they wanted a settlement through the Feinberg fund.

"They have received no benefit from these lawyers, who are strangers to them," he said.

The steering committee, in court filings, argued that it had worked directly with Mr.



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Feinberg “to make the claims process and methodologies more fair,” and filed motions with the court to press Mr. Feinberg to modify his claims about the fund’s independence from BP. They also “exerted an enormous litigation pressure, risk, leverage and incentive for BP, through the G.C.C.F., to try to settle its liabilities, in advance of trial,” they wrote. Their work has “common benefit” for all plaintiffs.

In court filings, the steering committee lawyers said that they had centralized operations at a depository near the federal courthouse, and that it had “created an esprit de corps and positive morale.”

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