

## **South Florida's 'proximity' to oil spill lies in tourist perceptions**

### **Commentary by Scott Topolski**

No one can seriously deny the impact of the BP oil spill on businesses located on Florida's Gulf Coast. Clearly, in many instances, there has been a direct correlation between the spill and what are undoubtedly staggering losses for certain businesses.

Few would suggest that these businesses should not be compensated. One of the primary factors that the Gulf Coast Claims Facility—commonly referred to as the GCCF— will look at is proximity to the spill. The entity was created to administer the \$20 billion fund established by BP to compensate oil spill victims.

Should businesses located inland, or on Florida's east coast perhaps, also be compensated for what may be equally significant and otherwise unexplainable losses when they are located hundreds of miles from oil-soaked beaches? In other words, should proximity to the oil spill, in and of itself, govern the day?

Here is what the GCCF's own Final Rules Governing Payment Options, Eligibility and Substantiation Criteria, and Final Payment Methodology, dated February 18, 2011 had to say on the issue: "Neither physical proximity to the Oil Spill nor a particular type of work or business engaged in by the claimant is a prerequisite to eligibility for payment of a claim. But adequate documentation of damage attributable to the Oil Spill is required. Physical proximity to the Oil Spill, and the nature of the business or work engaged in by the claimant, are important factors when it comes to the proof needed to document a claim that the damage was caused by the Oil Spill."

As someone who represents numerous businesses with claims before the GCCF, in all candor, I remain skeptical.

### **ALL ABOUT PERCEPTION**

The question is really one of perception because of the industry that is often considered synonymous with Florida economic life, namely tourism. Tourism is all about perception, whether a business is located in Pensacola, Florida whose beaches were touched by oil or Miami Beach, which is far, far away from the outer reaches of the spill.

Someone from Wisconsin, looking to get away from January's snow and ice and vacation in a warm and sunny Florida environment may not appreciate or understand the fact that Pensacola and Miami Beach are so far apart they're in different times zones. The person simply may conclude, "I see that oil has hit beaches in Florida; I am not going there for my vacation."

The phenomenon is similar to a hurricane hitting, for example, the Daytona Beach area. How many people in southeast Florida will get calls or emails from friends or relatives in the northeast asking them if everything is OK? The reason is simple. Those who live a thousand miles away "perceive" the impact of a storm that hits Florida, not really knowing that a majority of the state may be relatively unaffected, at least directly, by the storm.

Kenneth Feinberg, the head of the GCCF, testified before Congress, last July that "perception is compensable." Mr. Feinberg has, in the past, specifically indicated that those in

the tourism industry did not necessarily have to be located at or near a beach where oil washed up in order to receive compensation for damages suffered as a result of the oil spill. That can, potentially, be welcome news for the owner of vacation property in Naples, whose rental revenues have plummeted since the oil spill.

It is all about perception. Perception is what drives tourism. For those whose livelihood is tourism, great perception routinely means great revenue. Poor reception just as frequently translates to poor sales. If I thought tar balls were washing up on beaches where I was contemplating a relaxing springtime or winter vacation, I would probably choose to vacation elsewhere, regardless of the fact that those tar balls may not have come within 500 miles of my planned vacation destination.

Again, it comes down to perception.

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