

## ■ WHAT IS THE DEEPWATER HORIZON BP OIL SETTLEMENT?

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On May 2, 2012, the federal court overseeing the litigation arising from the April 2010 Deepwater Horizon Oil Spill preliminarily approved a class settlement extending economic damages to businesses as a result of the oil spill. The total settlement package is valued at \$7.8 billion, but there is no cap on the amount that may be paid under the settlement. Although final approval by the court will not be issued until after a fairness hearing in November 2012, the court has issued preliminary approval and authorized the new settlement administrator to begin processing claims after June 4, 2012.

## ■ AM I ELIGIBLE?

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Almost any individual and any business located in a Florida Gulf Coast county, including all of the panhandle (as well as all of the counties in AL, MS, LA and select counties in TX), may be eligible. Income does not have to be tied to tourism, seafood or the Gulf in order to qualify. In fact, you need not show that the oil spill itself was associated with your economic circumstances. Simply put, if you made less money (for any reason) during any three-month period between May and December 2010 than you did during the same period in previous years, you should consider filing a claim.

## ■ IS EVERY TYPE OF INDUSTRY COVERED BY THE SETTLEMENT?

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Most industries are eligible under the terms of the settlement. However, there are some excluded industries, including certain financial institutions, gaming businesses (casinos, etc.), insurance entities, investment funds and financial vehicles, defense contractors, governmental entities, any entity selling or marketing BP-branded fuel, certain oil and gas concerns, and real estate developers.

## ■ BUT I'M NOT LOCATED ANYWHERE NEAR THE GULF OF MEXICO??

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Most businesses, even if they are located hundreds of miles inland, are eligible to participate.

## ■ MY BUSINESS WAS DOWN FOR ALL OR PART OF 2010, HOW DO I PROVE THE OIL SPILL WAS THE CAUSE?

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There is no requirement to show a direct connection between the April 20, 2010 BP Deepwater Horizon Oil Spill and your financial circumstances. The system was intentionally created this way, as accurately allocating the cause of a business downturn would be nearly impossible given the general economic malaise of the period.

## ■ SO IF I DON'T HAVE TO CONVENTIONALLY PROVE MY CASE, WHAT ARE THE REQUIREMENTS?

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Contained in the 1,200+ page settlement agreement are many ways to qualify, based largely on your geographic location and industry. In the most restrictive geographic zone (Zone D, generally located up to 325 miles inland), your 2010 revenue for a specific three-month period between May and December must be down at least 15% from the same three-month period in 2009 *or* an average of those same months in 2008 and 2009 *or* an average of those months in 2007, 2008 and 2009. The applicable three-month period, as well as the benchmark years, are chosen by the claimant. Subsequently, your 2011 revenue for the same three-month period must rebound at least 10% from the 2010 low.

The closer you move to the coast, the less stringent the financial test becomes. In Zone C for instance (anywhere from one mile to approximately 20 miles inland), your 2010 revenue for any three-month period between May and December must only be down 8.5% and up only 5% during the same months in 2011. Finally, in Zone A, largely comprised of barrier islands, there is no financial test to meet. Most businesses and individuals in Zone A automatically qualify.

The agreement is very nuanced and there are many exceptions (which typically benefit the claimant) to what is stated above. As such, it is important to consult with an attorney to maximize your options.

**■ I'VE LOOKED AT MY BOOKS, AND I DOUBT I QUALIFY. SHOULD I EVEN BOTHER?**

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Without a doubt! Because of the complexity of the agreement, we have met many people who give a cursory review of their financial statements and come to the conclusion that they cannot participate. Subsequently, our team of lawyers, CPAs and Chartered Financial Analysts review the same materials and often identify six and even seven-figure claims. The short answer is, "do not try this at home."

**■ IS IT TRUE THAT AN INITIAL CLAIM EVALUATION IS FREE?**

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Yes! As a client, once you provide us with monthly profit-and-loss statements and your related tax returns for the years 2007 through 2011, we will evaluate your information. If you do not have a valid claim, there will never be any fees or costs for doing your evaluation. If you do have a valid claim, then we will charge a 25% contingency fee. In other words, we are paid 25% of whatever amount we can recover for you. If we are unsuccessful in pursuing your claim, again, you owe us nothing.

**■ HOW LONG DOES THE ENTIRE PROCESS TAKE?**

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Once we determine that you have a valid claim, we will gather the final documents that the Settlement Program requires. For businesses, this usually includes your Articles of Incorporation and business licenses you hold. Based on your unique circumstances, some other documents may be required.

Once these documents have been delivered to us, we will submit your claim to the claims administrator. In general, you should expect a Letter of Determination regarding acceptance of your claim within one to two months, and then you should receive payment within four to six months.

It should be noted that the claims administrator expects more than 800,000 claims to be filed. We believe that the sooner you file (and take your place in line), the sooner payment will be made. While we cannot control the claims administrator's process, common sense dictates that as more claims are filed, the timeline for payment may extend. All things being equal, it is better to file now than later.

**■ DO I REALLY NEED A LAWYER? CAN I DO THIS ON MY OWN?**

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This settlement agreement is overseen by a United States Federal District Court in New Orleans. As with any legal proceeding, you are free to represent yourself. This is called "pro se." However, if you do not like to prepare your own annual tax returns, you will not enjoy trying to navigate this process. In addition, without the assistance of legal and financial professionals, you run the risk of failing to maximize the value of your claim.

Finally, we have encountered many CPAs and para-professionals (claims "adjusters" and "consultants") who simply do not understand the legal consequences and ramifications contained in the voluminous settlement agreement. A recent report issued by the Claims Administrator highlighted the significant number of claims that are being denied outright or returned for deficiencies because they were prepared by inexperienced and unqualified non-lawyer para-professionals. The old adage, "you get what you pay for" is apropos.

**■ THIS SOUNDS TOO GOOD TO BE TRUE. DO I REALLY DESERVE TO PARTICIPATE?**

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We sometimes encounter business owners and other individuals who are understandably reluctant. They wonder if by filing a claim will they be taking money out of a "more deserving" party's hands. The answer is no. This compensation fund is not capped. BP has agreed to pay all valid claims submitted between now and April 2014, no matter the amount.

We also run into those who believe they do not deserve compensation as they cannot show a correlation between the oil spill and their financial circumstances. The parties to this agreement were very intentional in designing the compensation criteria in a way that does not require what lawyers commonly refer to as "conventional causation." It would be nearly impossible to isolate the exact impact of the oil spill on Gulf area businesses. That said, after reviewing thousands of monthly profit-and-loss statements, we can report that even businesses located well inland with little or no exposure to tourism, seafood or hospitality were impacted. Only through a forensic accounting analysis will this be apparent. The trickle-down effect is clearly evident in almost every business' books.

**■ DID BP REALLY AGREE TO THIS?**

Yes. BP and the plaintiffs negotiated for several months before reaching this voluntary settlement agreement. Both parties concluded that settling under these terms was in their best interest and the best interest of individuals and businesses in Gulf Coast states. The company believes that it is good PR, and more fundamentally, the right thing to do. BP wants all valid claimants to participate in this program. In fact, an important component of the agreement is a separate fund supported by BP that will be used to get the word out about the compensation program. Maybe you've seen the TV ads?

**■ WHAT HAPPENS IF I DO NOT PARTICIPATE?**

If you are located in a geographic area covered by the agreement (the Florida Panhandle and all Gulf Coast counties in Florida, every county in AL, MS and LA and select counties in TX) and you are in a covered industry (almost every type of business is covered), then you are automatically eligible. However, if you do not file your claim by April 2014, you will be forever barred from taking any action against BP relating to the Deepwater Horizon Oil Spill.

The practical effect is that should the oil at some point wash onto our shores, or the disbursement chemicals cause some other ecological disaster, and you have not participated by April 2014, you will have no recourse. The only exception to this is if you proactively "opt out" by notifying the Court in writing by November 1, 2012.

**■ HOW MUCH MONEY IS CURRENTLY IN THE FUND?**

Approximately \$13 billion is currently on deposit. However, the Settlement Program is set to be funded to \$20 billion, and the fund is not capped. BP has agreed to pay all valid claims, no matter the total amount.

**■ WHAT IS THE AVERAGE CLAIM VALUE?**

While each claim is unique, of the thousands of businesses who have been evaluated, we are seeing an average business economic loss claim value that approaches \$200,000.

**■ MY BUSINESS HAS MULTIPLE OFFICE LOCATIONS. HOW DO I DETERMINE WHICH GEOGRAPHIC ZONE I'M IN?**

There is a specific provision in the settlement agreement for "multi-facility entities." Much will depend on whether you keep distinct financial records for each location. This is something we can advise you on.

**■ MY BUSINESS IS NEW. I NOTICE THAT YOU REQUIRE FINANCIAL RECORDS BACK TO 2007. I DIDN'T START MY COMPANY UNTIL 2009. WHAT CAN I DO?**

There is a provision for "start-up" businesses, which requires records for different time periods. Your performance in 2011 will be important in calculating your claim value. We are seeing many new businesses do very well under this framework.

**■ MY COMPANY WENT OUT OF BUSINESS IN 2010 AFTER THE SPILL. I SEE THAT YOU REQUIRE 2011 FINANCIAL PERFORMANCE NUMBERS. I DON'T HAVE THOSE. AM I OUT OF LUCK?**

No! Failed businesses, whether a start-up or a long-standing business, can participate in this process. If your business commenced operations prior to 11/01/08 and the business failed between 5/01/11 and 12/31/11, you may have a potential Failed Business Economic Loss Claim. If your business commenced operations after 11/01/08 and the business failed between 5/01/11 and 12/31/11, you may have a potential Failed Start-Up Business Economic Loss Claim.

■ **WHAT IF I ALREADY FILED A CLAIM WITH THE GULF COAST CLAIMS FACILITY?**

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We can still help you as long as you did not sign a final Gulf Coast Claims Facility (GCCF) release prior to February 27, 2012. Even if you have been previously denied by the GCCF, you can still participate in this process.

■ **I'M RELUCTANT TO DISCLOSE MY FINANCIAL DATA. WILL THIS BE KEPT CONFIDENTIAL?**

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Absolutely. We represent many business owners, both large and small, and a common concern is privacy. If you hire us, we will be bound by attorney- client privilege and confidentiality requirements. In addition, the Court recently issued an order mandating that financial information disclosed through this process be kept confidential. We are dedicated to maintaining the strict confidentiality of our clients' information, and shred and destroy materials upon completion of the claims process.

■ **WHEN DOES IT END?**

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The settlement processing facility opened its doors on June 4, 2012. The first opinion letters on the validity of filed claims were issued the week of July 15 and the first settlement checks were delivered in August. The correct deadline to file a claim is April 22, 2014. Any claim not filed by that date, barring an extension by the Court, will forever be barred.