

Expert Opinion on BP's Challenge to the Settlement Program: Uncertainty Will Discourage Businesses from Filing, But it Shouldn't

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March 18, 2013 -- On Friday, BP filed a lawsuit seeking to block payments made to some businesses under the Deepwater Horizon Settlement Program. In the lawsuit, BP says that Claims Administrator Patrick Juneau "is processing Business Economic Loss claims ("BEL Claims") in a manner that is contrary to the terms of the Agreement."

BP argues that, under the way in which the Settlement Program is currently being administered, "many business claimants are receiving substantial awards for fictitious losses not contemplated by the Agreement." It is not arguing the validity of the Program itself, but rather is questioning how certain claims are being calculated, which is leading to overstated losses.

"This lawsuit, in my opinion, represents a tactic by BP to discourage businesses from filing claims," said Hank Didier, founding partner of Economic Recovery Group, a statewide law firm that represents businesses with valid economic loss claims. "The Court has upheld the strict enforcement of the Settlement Program once, and will likely hold BP to the terms it initially agreed to again."

"BP had more than two years of claims data when it agreed to the terms of the Settlement Program, therefore it should have been able to anticipate the size and scope of the business economic loss claims it would receive, and how they would be calculated," Didier continued. "BP wants a return to the old days of the GCCF where they ran the program and arbitrarily decided who got paid and who did not. This is exactly why the Courts and BP reached this new settlement - to provide objectivity and consistency, and to define the process so that all valid claimants would be fairly compensated for their losses."

On March 5th, the Court ruled on the issue of whether the Claims Administrator was correctly interpreting the terms of the Settlement Agreement as it applies to the calculation of "variable profit" for business economic loss claims. Through this ruling, U.S. District Judge Carl Barbier affirmed the Claims Administrator's interpretation as set forth in the January 15, 2013 Announcement of Policy Decisions, and said BP must keep paying certain types of claims.

-Continued on next page -

Through the lawsuit, BP seeks preliminary and permanent injunctive relief ordering the Claims Administrator to process BEL claims and to distribute funds only in conformity with the terms of the Settlement Agreement. Specifically, it is asking for an injunction to stop payments to all claimants, or at least to claimants in the agriculture, construction, professional services, real estate, wholesale trade, manufacturing, and retail trade industries.

BP is not only dealing with claims approved through the Settlement Program, but is also currently in trial to determine its liability under the Clean Water Act, which could cost as much as \$17.5 billion in fines. BP settled with the Department of Justice in November for \$4.5 billion in fines and pled guilty to 14 criminal charges. And, more recently, several cities have filed revenue loss claims of their own.

BP's total estimated payout so far is roughly \$42 billion including response and clean-up costs, claims and fines. BP has told its shareholders that the total cost of the specific Deepwater Horizon Settlement Program will exceed \$8.5 billion. Claims must be filed by April 22, 2014.

Economic Recovery Group, LLC is a statewide law firm exclusively representing businesses that suffered direct or indirect economic losses after the April 20, 2010 BP oil spill.

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