

No. 14-123

IN THE
Supreme Court of the United States

BP EXPLORATION & PRODUCTION INC., ET AL.,
Petitioners,

v.

LAKE EUGENIE LAND & DEVELOPMENT, INC., ET AL.,
Respondents.

**On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Fifth Circuit**

**BRIEF IN RESPONSE TO PETITION FOR A
WRIT OF CERTIORARI**

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No outside authorities are cited in this Response.

STATEMENT

The Claims Administrator and the DEEPWATER HORIZON Court Supervised Settlement Program (CSSP), through their undersigned counsel, respectfully submit this limited Response to BP's Petition for a Writ of Certiorari seeking review of the judgments of the United States Court of Appeals for the Fifth Circuit.

I. INTRODUCTION

The question presented to this Court by the Petition begins with the premise that the appellate court wrongfully upheld a class action settlement “notwithstanding the district court’s determination that the agreement requires BP to compensate claimants who have not suffered any injury as a result of the spill.” Pet. at i. This premise leads in turn to the argument that such claimants can recover without proof of an injury “caused by the defendant.” *Id.* at 21. The claim also is made that this result flowed from the manner in which “the Claims Administrator was interpreting the settlement agreement,” Pet. at 6, leading to the natural, but erroneous, conclusion that either the Settlement Agreement had no standards to establish causation for claimants or that these standards somehow were misapplied by the Claims Administrator after the settlement was approved.¹ Neither point is true.

¹ See, e.g., Pet. at 11 quoting Judge Garza’s dissent, where Judge Garza erroneously wrote that a “modification” in interpretation after the class was certified and the settlement was approved

In fact: (1) the Settlement Agreement contains a comprehensive and elaborate set of objective tests to establish causation for Business Economic Loss (“BEL”) claims, which the Claims Administrator and the court-appointed vendors apply to each and every claim that is submitted; (2) the Claims Administrator inquired, before the settlement was approved by the district court, whether he should (in addition to applying the objective causation tests) also look subjectively at possible alternative causes of the economic loss—he was twice told “no”; and, (3) a written policy statement reflecting that response and mutual understanding was issued by the Claims Administrator and approved by BP before the district court approved the Settlement Agreement. In the light of these facts, there is no room for an argument that the parties to the Settlement Agreement did not know or understand that causation would be judged for each and every claim—but only by those objective standards set forth plainly in the Settlement Agreement.

II. THE CAUSATION PROCESS IN THE COURT-SUPERVISED SETTLEMENT PROGRAM.

A. All claims must satisfy the comprehensive causation standards set forth in Exhibit 4B of the Settlement Agreement.

The Claims Administrator has faithfully processed settlement awards according to the causation requirements in the Settlement

rendered the class invalid under Article III. That is simply not so, as will be shown in this Response.

Agreement. At no time has the Claims Administrator “interpreted” the Settlement Agreement to include a more or less stringent test regarding causation than the standards set forth by the Agreement’s terms—nor would he have any authority to do so, as he is bound to implement the terms of the Settlement Agreement as drafted by the Parties.²

The Petitioner’s Appendix does not include the text of the Settlement Agreement or Exhibits 4A-4C by which the Claims Administrator determines causation and compensation for each claimant under the BEL program. This causation framework has not been disregarded or abandoned. *Contra*, Pet. at 6. Precisely the opposite is true. It is applied to every claim; and, thousands of claims have been denied by the CSSP for failing to meet the Agreement’s causation standards.³

Through a series of attestations, formulae, and documentary evidence, claimants applying to the CSSP for recovery under the BEL settlement program must submit evidence that conforms to the terms of

² *Contra* Pet. at 8 (describing the alleged causation issue as arising from “the Claims Administrator’s refusal to limit class membership to claimants that were injured by the spill”).

³ As of the Claims Administrator’s October 2013 status report to the district court, 2,840 BEL claims were denied specifically for failing the causation tests. Many more claims have been denied for other reasons. *See* Appellees’ Opposition to Emergency Motion for Injunction, No. 13-30315 (Nov. 22, 2013) [5th Circuit Doc. 00512450441] at p. 11 fn. 19 (citing Exhibit A to Claims Administrator’s Status Report at p.3 (Oct. 11, 2013) [Rec. Doc. 11646-1]).

the Settlement Agreement—including the element of causation. While the Petition suggests that the implementation of the standards in the Settlement Agreement allows class proponents to satisfy their status through mere “conclusory allegations,” this is not so. Pet. at 3, 23-24.

Every claim submitted to the CSSP is subject to a five-step verification process, consisting of:

1. Identity Verification,
2. Employer Verification Review,
3. Identification of Excluded Claims,
4. Claimant Accounting Support Review, and
5. Quality Assurance Review—using data metrics to target anomalous claims for further review.

Throughout this claims review process, evidence submitted to the CSSP is verified for accuracy, completeness, and compliance with the Settlement Agreement. The CSSP provides the district court with monthly status reports on the progress of claims in the review process, including identifying those claims where the necessary documentation has not been submitted and those where the claim has been delayed (or denied) for that reason. After BEL awards are determined, BP and the claimants may review the causation determination and further may take advantage of a claims appeal process where neutral third party appeal panelists working under the supervision of the district court review the award.

To address causation more specifically, Section 5.3.2.3 of the Settlement Agreement sets forth the “Causation Requirements For Business Economic Loss Claims Generally” as follows:

Business Economic Loss Claimants, unless causation is presumed, must establish that their loss was due to or resulting from the Deepwater Horizon Incident. The causation requirements for such Claims are set forth in Exhibit 4B.⁴

Exhibit 4B of the Settlement Agreement, entitled “Causation Requirements for Businesses [sic] Economic Loss Claims,” is divided into three parts: (I) “Business Claimants for Which There is No Causation Requirement,” (II) “Causation Requirement for Zone B and Zone C,” and (III) “Causation Requirements for Zone D.”⁵ *Infra* pp. 8a-31a.

Part I of Exhibit 4B provides that the Zone A entities, because of their geographic proximity to the Gulf of Mexico and/or the type of business they conduct, “are not required to provide any evidence of causation.”⁶ *Infra* p. 8a. Part II states, “If you are not

⁴ Settlement Agreement § 5.3.2.3, Rec. Doc. 6430-1. The entire Settlement Agreement was filed into the district court record as Rec. Docs. 6430-1 through 6430-46. Exhibits 4A-4C are included in the Appendix to this Response for the Court’s reference. The framework for compensating BEL Claims within Exhibit 4A-C appears in the record as Rec. Docs. 6430-8, 6430-9, and 6430-10.

⁵ A map from Exhibit 1A of the Settlement Agreement depicting Zones A-D is also included in the Appendix. *Infra* p. 43a.

⁶ BP Counsel advised the district court that the Zone A presumption was intended to be “irrebuttable.” PA at 322a. “PA” refers to the Petitioner’s Appendix. It is important to note that BP’s complaints about causation are not limited to those Zone A claimants where causation has been presumed under the express terms of the Settlement Agreement. Rather, the clear thrust of the argument extends to claims from Zones B through

entitled to a presumption as set forth in (I) above and you are located in Zone B or Zone C then you must satisfy the requirements of one of the following sections A-E below.” *Infra* p. 9a. The five requirements are (A) “V-Shaped Revenue Pattern,” (B) “Modified V-Shaped Revenue Pattern,” (C) “Decline-Only Revenue Pattern” (D) “Proof of Spill-Related Cancellations,” (E) “Causation Proxy Claimant.” *Infra* pp. 9a-15a. Part III applies to Zone D claimants and requires claimants to meet one of six causation tests, five of which are the same or similar to the tests in Part II. *Infra* pp. 15a-22a.

Before a claimant can reach the 4B causation analysis stage, Exhibit 4A requires each claimant to execute a Claim Form verified under penalty of perjury and submit the documentation required for the type of causation analysis the claimant will be using.⁷ *Infra* pp. 4a-6a. If a claimant can satisfy the causation analysis of Exhibit 4B, only then will its compensation be determined under Exhibit 4C by using “benchmark” periods to measure economic loss for the purposes of the settlement. If a different

D, where claimants must satisfy objective causation tests set forth in Exhibit 4B.

⁷ For example, the “Decline-Only Revenue Pattern” test requires claimants to submit “Specific documentation identifying factors outside the control of the claimant that prevented the recovery of revenues in 2011, such as: i. The entry of a competitor in 2011; ii. Bankruptcy of a significant customer; iii. Nearby road closures affecting the business; iv. Unanticipated interruption resulting in the closure of the business; v. Product/service replacement by customer; or vi. Loss of financing and/or reasonable terms of renewal.” *Infra* pp. 11a-14a.

allowable benchmark time period would create a higher compensation amount, the Settlement Agreement directs the Claims Administrator to compensate the claimant using “whichever [method] provides the highest compensation.” *Infra* pp. 30a-31a, 41a-42a. This multi-step process ensures that each and every claim is reviewed and verified to meet the Agreement’s causation standards.⁸

B. The Claims Administrator inquired whether an additional causation analysis should be required, and was told “No.”

The Agreement does not permit the Claims Administrator to add an additional level of subjective inquiry into causation beyond the objective terms and conditions of Exhibit 4B. If there was ever any doubt on this point, the Parties reconfirmed the Claims Administrator’s understanding that causation was to be assessed solely by applying the terms of Exhibit 4B, and not with regard to any additional subjective analysis.

Early in the claims review process, the Claims Administrator explicitly asked BP and the Plaintiffs’ Steering Committee to clarify whether the Parties intended the CSSP to apply only the objective causation formulae set forth in Exhibit 4B of the Agreement to determine whether a claimant could

⁸ See Denial of Petition for Panel Rehearing in No. 13-30315, PA at 377a (5th Cir. May 27, 2014) (“In fact, there was substantial regard given to causation in the creation of the elaborate criteria that substituted for proof of factual causation as a separate element of the claim.”).

recover a loss, even when a further subjective analysis of causation might lead to the conclusion that losses were not spill-related. Specifically, the Claims Administrator sought clarification from the Parties as to whether, if the objective causation standards of Exhibit 4B were met, a further subjective analysis of causation should be required. On September 25, 2012 (three months before the district court approved the class settlement), the Claims Administrator sent this hypothetical question to the Parties:

As to BEL claims, once a claimant's financial records satisfy the causation standards set out in Exhibit 4B, does the Settlement Agreement mandate and/or allow the Claims Administrator to separate out losses attributable to the oil spill vs. those that are not? Stated another way, once a claimant passes the causation threshold, is the claimant entitled to recovery *of all* losses as per the formula set out in Exhibit 4C, or is some consideration to be given so as to exclude those losses clearly unrelated to the spill?

I will give a hypothetical situation to try to illustrate the question we are asking:

Hypo: A small accounting corporation / firm is located in Zone B. They meet the "V-shaped curve" causation test. The explanation for the drop in revenue is that one of the three partners went out on medical leave right around the time of the spill.

Their work output, and corresponding income, thus went down by about a third. The

income went back up 6 months later when the missing partner returned from medical leave. Applying the compensation formula under Exhibit 4C of the Settlement Agreement, the accounting firm can calculate a fairly substantial loss. Is that full loss recoverable?

PA at 356-57a (emphasis follows PA).

BP responded to this query in a letter dated September 28, 2012. BP's response made it clear that the claimant in the posed hypothetical would be entitled to full recovery. BP stated:

If the accurate financial data establish that the claimant satisfies the BEL causation requirement, then all losses calculated in accord with Exhibit 4C are presumed to be attributable to the Oil Spill.

Nothing in the BEL Causation Framework (Ex. 4B) or Compensation Framework (Ex. 4C) provides for an offset where the claimant's firm's revenue decline (and recovery, if applicable) satisfies the causation test but extraneous non-financial data indicates that the decline was attributable to a factor wholly unrelated to the Oil Spill. Such "false positives" are an inevitable concomitant of an objective quantitative, data-based test.

PA at 357-58a (emphasis follows PA).⁹

⁹ Another BP attorney confirmed BP's response to this hypothetical in an email dated September 28, 2012. See Claims

Based on the confirmed agreement of the Parties on this issue, the Claims Administrator took the further step of issuing a written Policy Announcement on October 10, 2012 (two months before the district court approved the class settlement) to memorialize this very point, which stated in part:

2. No Analysis of Alternative Causes of Economic Losses.

The Settlement Agreement represents the Parties' negotiated agreement on the criteria to be used in establishing causation. The Settlement Agreement sets out specific criteria that must be satisfied in order for a claimant to establish causation. Once causation is established, the Settlement Agreement further provides specific formulae by which compensation is to be measured. All such matters are negotiated terms that are an integral part of the Settlement Agreement. *The Settlement Agreement does not contemplate that the Claims Administrator will undertake additional analysis of causation issues beyond those criteria that are specifically set out in the Settlement Agreement. Both Class Counsel and BP have in response to the Claims Administrator's inquiry confirmed that*

Administrator's Response to BP's Petition for Rehearing En Banc at p.7, No. 13-30315 (March 26, 2014) [5th Circuit Doc. 00512574901] (citing Affidavit of Patrick A. Juneau, Ex. 3, 09/28/12 email from Keith Moskowitz, [Rec. Doc. 18310]).

this is in fact a correct statement of their intent and of the terms of the Settlement Agreement. The Claims Administrator will thus compensate eligible Business Economic Loss and Individual Economic Loss claimants for all losses payable under the terms of the Economic Loss frameworks in the Settlement Agreement, ***without regard to whether such losses resulted or may have resulted from a cause other than the Deepwater Horizon oil spill provided such claimants have satisfied the specific causation requirements set out in the Settlement Agreement.*** Further, the Claims Administrator ***will not evaluate potential alternative causes*** of the claimant's economic injury, other than the analysis required by Exhibit 8A of whether an Individual Economic Loss claimant was terminated from a Claiming Job for cause.

PA at 358-59a (emphasis follows PA). The Parties did not object to this Policy Announcement and never sought review of the policy in the district court.¹⁰ When denying BP's petition for rehearing, the Fifth

¹⁰ The Settlement Agreement provides a procedure for resolving any disagreements regarding the Claims Administrator's oversight and administration of the Settlement Agreement. First, the Claims Administrator and other members of the three-person Claims Administration Panel consisting of the Claims Administrator, a representative of BP, and a representative of Class Counsel shall attempt to resolve the disagreement unanimously. See Settlement Agreement § 4.3.4, Rec. Doc. 6430-1. If they are unable to do so, the issue or disagreement "will be referred to the Court for resolution." *Id.*

Circuit referred to this very statement as follows: “The Policy Statement expressed the agreement by all participants, including BP, on the answer to the Claims Administrator’s question.” PA at 371a.

C. The district court approved the settlement as proposed by the Parties with the understanding that causation would be measured solely by an objective analysis under the standards of Exhibit 4B of the Settlement Agreement.

The final fairness hearing for the class settlement was held on November 8, 2012, approximately one month *after* the Claims Administrator had issued his Policy Announcement. By the time of the fairness hearing, the CSSP had processed more than 79,000 claims and authorized payments of more than \$1.3 billion to claimants since the program’s commencement on June 4, 2012.¹¹ At the fairness hearing in the district court, BP’s counsel made the following comments regarding causation:

We have presumed causation in Zone A. We’ve presumed causation. ***It’s irrebuttable.*** You know as well as I do, Your Honor, how many people come in and think they have got a claim damage for economic loss; ***but, when the facts come out, they had a bad year because they lost their key manager, they had a bad year because the street was***

¹¹ Claims Administrator’s Response to BP’s Petition for Rehearing en Banc at 9 (citing Proposed Findings of Fact and Conclusions of Law at ¶¶ 67, 68, Rec. Doc. 7945).

being repaired in front of them, whatever reason.

We're presuming causation for whole sections of the settlement class depending on where you reside and the nature of your business. Our experts say, the joint experts, it exceeds the *Reed* factor.

PA at 322a (emphasis follows PA).

Shortly after the fairness hearing and before final approval of the settlement, BP and Class Counsel submitted joint proposed findings in support of approval that stated:

The Settlement reasonably requires that some business claimants demonstrate that their business was affected by the spill. In many other cases causation is presumed, which benefits class members. Where class members are required to prove causation, there are multiple reasonable options for doing so. *See* Settlement Agreement Ex. 4B.

. . . Where causation is presumed, the causation presumption applies to all losses established pursuant to the compensation methodology. . . .

Where causation is not presumed, the causation tests are reasonable and flexible; they use standardized and transparent approaches. The causation tests reflect rational expectations about the economic harm that the spill could have caused businesses. The first option is the V-shaped revenue test, which

requires proof of a downturn after the spill followed by a later upturn. Claimants with a less severe V (“Modified V-Shaped Revenue Pattern”) or whose business did not experience an upturn in 2011 (“Decline-Only Revenue Pattern”) may still recover provided that they can provide certain reasonable additional information. . . .

Once the causation tests are satisfied, all revenue and variable profit declines during the Compensation Period are presumed to be caused entirely by the spill, with no analysis of whether such declines were also traceable to other factors unrelated to the spill.

PA at 322-324a (emphasis follows PA).

The confirmed understanding of the Parties as to the Agreement’s multiple causation frameworks was addressed yet again in a conference with the district court on December 12, 2012 (also held before final approval of the class settlement), and was expressly noted in Judge Barbier’s email following that conference, which stated:

Counsel for BP and the PSC agree with the Claims Administrator's objective analysis of causation with respect to his evaluation of economic damages Claims, as previously set forth by Mr. Juneau in paragraph 2 of his October 10, 2012 policy announcement.

PA at 324a n.14.

Only then did the district court grant final approval to the settlement *nine days later*, on December 21, 2012. PA at 326a.

III. THE CLAIMS ADMINISTRATOR HAS FAITHFULLY IMPLEMENTED THE SETTLEMENT AGREEMENT.

As demonstrated by this factual chronology, the sole use of the Settlement Agreement's objective causation standards was not a result of the Claims Administrator's "interpretation" of the Settlement Agreement. Rather, the standards for analyzing causation were the result of both the express terms of the Settlement Agreement and the express clarification of the Parties after a specific inquiry by the Claims Administrator.

The Claims Administrator was not an author of the Settlement Agreement, and did not devise the criteria to be used in deciding whether a claimant does or does not have losses attributable to the Oil Spill. Those standards were negotiated by the Parties and set forth in Exhibit 4B. As BP told this Court in its Petition, the Claims Administrator, in his brief in the BEL Appeal before the Fifth Circuit, acknowledged that "he had paid claims 'for losses that a reasonable observer might conclude were not in any way related to the Oil Spill.'" Pet. at 6. In its next sentence, however, BP erroneously claims that it was "the Claims Administrator... interpreting the Settlement Agreement" that led to this result. *Id.* That is not true. The Claims Administrator has done nothing more than follow the express terms of Exhibit 4B of the Settlement Agreement and the

unambiguous instructions of the Parties not to consider potential alternative causes of economic loss.

To be sure, when this very issue was raised by the Claims Administrator, BP acknowledged that the formulae in Exhibits 4B-4C inevitably will produce some “false positives” where alternative causes for economic loss may have contributed to an otherwise qualifying claimant’s lost revenue. PA at 357-58a. When these unavoidable false positives occur, the terms of the Settlement Agreement still require the Claims Administrator to pay the claims, provided that the objective tests for causation have been met. This is because the Parties specifically confirmed that the Settlement Agreement does not allow the Claims Administrator to “interpret” any further causation requirements beyond those agreed upon by the Parties in Exhibit 4B.¹²

Under the terms of the Settlement Agreement, the Claims Administrator is charged with the duty to “faithfully implement and administer the Settlement, according to its terms and procedures, for the benefit of the Economic Class, consistent with *this Agreement*, and/or as agreed to by *the Parties*

¹² See Denial of Petition for Rehearing, No. 13-30315 (5th Cir. May 19, 2014) (corrected May 20, 2014), PA at 372a (“Through Exhibit 4B, the parties agreed that claims would be governed by an objective formulae. BP argues that an additional duty on the Claims Administrator exists to ensure that every claim contains a direct causal nexus to BP’s conduct. That requirement does not arise under the agreed terms of Exhibit 4B, and it does not arise under constitutional or other requirements for a class action.”).

and/or as approved by *the Court*.”¹³ With respect to the Agreement’s causation criteria set forth in Exhibit 4B, the Claims Administrator and the CSSP have done exactly that. The same causation standards have been applied consistently throughout the process to every claim, as dictated by the Agreement, confirmed by the Parties, and approved by the district court.

IV. Conclusion

Judge Southwick wrote that “the parties agreed by Exhibit 4B’s causation framework to ignore alternative explanations for actual losses that occurred to claimants during the proper time period.”¹⁴ As shown herein, the CSSP faithfully applies the causation analysis set forth in the Settlement Agreement to each and every claim.¹⁵ No claimant is able to recover from the CSSP by mere “conclusory pleadings.” Causation always has been and will continue to be an important element of processing claims under the terms of the Settlement Agreement.

The Claims Administrator takes no position on the merits of the dispute between the Parties. Rather, the

¹³ Settlement Agreement § 4.3.1, Rec. Doc. 6430-1 (emphasis added).

¹⁴ *In re Deepwater Horizon*, 732 F.3d 326, 346 (5th Cir. 2013), (Southwick, J., concurring in Parts I and III of the majority opinion). This Oct. 2, 2013 opinion is not included in Petitioner’s Appendix.

¹⁵ Accordingly, the arguments of the amici to the contrary are misplaced.

Claims Administrator submits this response solely to correct any misimpression of the record below, and to be certain that the Court, when making its decision on whether or not to grant a Writ of Certiorari, is informed on the historical implementation of causation standards by the CSSP in this complex and far-reaching settlement program.

Respectfully submitted,

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October 3, 2014

APPENDIX

**APPENDIX: SETTLEMENT AGREEMENT
EXCERPTS**

The entire Settlement Agreement was filed into the district court record as Rec. Docs. 6430-1 through 6430-46. The following excerpts specifically addressing the Settlement Agreement’s causation and compensation framework are provided herein for the Court’s reference.

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EXHIBIT 4A

Documentation Requirements for Business Economic Loss Claims¹

The framework detailed below describes the documentation requirements for business economic loss claims.

In order to be eligible for compensation, a business claimant must provide the following:

1. A Claim Form which the claimant (or claimant's representative) shall verify under penalties of perjury. The Claim Form shall direct the claimant to provide information, including the claimant's chosen Compensation Period and corresponding Benchmark Period² in the year(s) selected by the claimant. The claimant shall attach required documents supporting the claim. All statements made in and documents submitted with the Claim Form may be verified as judged necessary by the Claims Administrator.
2. Documents reflecting the business structure and ownership of the claimant, including but not limited to articles of incorporation, shareholder list(s), and

¹ These Documentation Requirements also apply generally to (i) start-up businesses and (ii) businesses claiming to have ceased operations due to and resulting from the DWH Spill, subject to such exclusions as may be noted in the frameworks governing compensation for such businesses. Other provisions of the settlement agreement might require additional documentation for specific business types.

² As used herein, Benchmark Period will have the meaning set forth in the Compensation Framework for Business Economic Loss Claims), and may include (i) 2009, (ii) 2008 and 2009, or (iii) 2007-2009. If the claimant selects a Benchmark Period including dates in years prior to 2009, the claimant shall provide the relevant documents for each of those years.

partnership or limited partnership agreements.

3. Federal tax returns (including all schedules and attachments) for the years included in the claimant-selected Benchmark Period, 2010, and, if applicable, 2011.³

a) Provide the complete federal tax return and the applicable supporting documentation.

b) For self employed individuals, provide Form 1040, pages 1 and 2, along with Schedules C, D, E, and F and Form 1099 if applicable.

4. Monthly and annual profit and loss statements (which identify individual expense line items and revenue categories), or alternate source documents establishing monthly revenues and expenses for the claimed Benchmark Period,⁴ 2010 and, if applicable, 2011.⁵ Profit and loss statements shall identify the dates on which they were created. The Claims Administrator may, in his discretion, request source documents for profit and loss statements. If there is a discrepancy between amounts reflected in a tax return and comparable items reflected in a profit and loss statement for the same period, the Claims Administrator may request the claimant to provide additional information or documentation.

³ Claimants who must satisfy the requirements of Sections II and III of the Causation Requirements for Business Economic Loss Claims are required to submit 2011 federal tax returns.

⁴ If the claimant's Benchmark Period includes dates in years prior to 2009, the claimant shall provide the relevant documents for the applicable years.

⁵ Claimants included in Sections II or III of the Causation Requirements for Business Economic Loss Claims are required to submit 2011 monthly profit and loss statements or alternate source documents.

5. If the claimant falls within any of the specific business types listed below, the following additional documents are required for the years included in the Benchmark Period, 2010, and, if applicable, 2011:

a) Retail

i. Monthly sales and use tax returns.

b) Lodging (including hotels, motels, and vacation rental properties):

i. Lodging tax returns;

ii. Occupancy reports or historical rental records, on a per unit basis if available;

iii. Documentation to identify how the rental property is managed, such as (i) a management contract from a third-party management company or (ii) a **Sworn Written Statement** from an owner that manages its own property.

6. Additional documents may be required depending on the causation provisions the claimant is seeking to satisfy, as reflected in “Causation Requirements for Business Economic Loss Claims”. These documents include, where applicable:

a) Documents used to satisfy the Customer Mix Tests accompanying the Modified V-Test and/or Down Only Revenue Pattern Test:

i. Credit card receipts, or other contemporaneously-maintained records of payment from customers;

ii. Customer registration logs, such as hotel registries;

iii. Documentation maintained in the ordinary course of business that lists

customers by location and monthly sales associated with those customers;

iv. Business documents reflecting contemporaneous recording of receipts or invoices listing customers by location.

b) Documents providing contemporaneous written evidence of the cancellation of a contract as the direct result of the DWH Spill, which the claimant was not able to replace, under the same terms, or a Sworn Written Statement from an individual third party affirming that the cancellation was Spill-related. A copy of all corresponding contracts shall also be provided.

c) Specific documentation identifying factors outside the control of the claimant that prevented the recovery of revenues in 2011, such as:

i. The entry of a competitor in 2011;

ii. Bankruptcy of a significant customer;

iii. Nearby road closures affecting the business;

iv. Unanticipated interruption resulting in the closure of the business;

v. Product/service replacement by customer; or

vi. Loss of financing and/or reasonable terms of renewal.

d) Documents created during the period April 21, 2010 - December 31, 2010, that evidence spill-related reservation cancellations during that period that the claimant was not able to rebook under the same terms, such as letters,

emails, hotel logs for the relevant time, or a Sworn Written Statement from an independent third party citing the DWH Spill as the reason for the cancellation. Written evidence of the original reservation shall also be provided.

e) Documents demonstrating expenses associated with purchases of seafood harvested in the Gulf of Mexico during 2009, such as historical purchase orders or invoices.

f) Other business documents the claimant believes establish causation pursuant to the terms of the Economic and Property Damages Settlement Agreement. Purchase orders or invoices documenting seafood purchase costs for the compensation period, and for the year 2010 or 2011 if applicable.

7. Claimant must provide a copy of any applicable federal, state, or local governmental license required to operate its business. For example, claimants shall produce the following for the Benchmark Period, 2010 and, if applicable, 2011:

a) Real estate sales licenses

b) Occupancy licenses (lodging businesses, including hotels, motels, and vacation rental properties)

c) Business or occupational licenses

i. Restaurant licenses

ii. Bars (liquor) licenses

iii. Taxi/livery licenses

iv. Service licenses or permits

8. Claimants who have received any of the payments listed below must provide documentation of the

amount of payments received:

- a) VoO payments
- b) Payments from GCCF
- c) Payments from BP as part of its OPA claims process.

9. Additional documentation for claimants with annual revenue of \$75,000 or less which seek to establish causation on the basis of a Causation Proxy Claimant:

a) Sworn Written Statement from Claimant documenting the following:

i. Contact information and verification of status in MDL 2179 Settlement of the Causation Proxy Claimant to be used by the claimant to satisfy causation;

ii. Business linkage between the claimant and the Causation Proxy Claimant;

and

iii. Proximity of the claimant to the Causation Proxy Claimant (must be within 100 yards for urban claimants and within one-quarter mile for rural claimants).

b) Sworn Written Statement from Causation Proxy Claimant authorizing claimant's use of the Causation Proxy Claimant's documentation to satisfy causation.

10. Form affirming that the individual filing the claim on behalf of the business is an authorized representative of the claimant.

EXHIBIT 4B

**CAUSATION REQUIREMENTS FOR
BUSINESSES ECONOMIC LOSS CLAIMS¹**

I. Business Claimants for Which There is No Causation Requirement

1) If you are a business in Zone A, you are not required to provide any evidence of causation unless you fall into one of the exceptions agreed to by the parties, and listed in footnote (1).

2) If you are a “Landing Site,” or “Commercial Wholesale or Retail Dealer A,” or “Primary Seafood Processor,” as set forth in “Seafood Distribution Chain Definitions,” you are not required to provide any evidence of causation.

3) If you are in Zone A, B or C and you are a “Commercial or Wholesale or Retail Dealer B,” or a “Secondary Seafood Processor,” or a “Seafood Wholesaler or Distributor,” or a “Seafood Retailer,” as set forth in “Seafood Distribution Chain Definition,” you are not required to provide any evidence of causation.

4) If you are in Zone A or Zone B, and you meet the “Tourism Definition,” you are not required to provide any evidence of causation.

5) If you are in Zone A, B or C, and you meet the “Charter Fishing Definition” you are not required to provide any evidence of causation.

¹ This Causation Requirements for Business Economic Loss Claims does not apply to (i) Start-up Businesses; (ii) Failed Businesses; (iii) Entities, Individuals or Claims not included within the Economic Class definition; and (iv) Claims covered under the Seafood Program.

II. Causation Requirements for Zone B and Zone C

If you are not entitled to a presumption as set forth in (I) above and you are located in Zone B or Zone C then you must satisfy the requirements of one of the following sections A-E below:

A. V-Shaped Revenue Pattern:

Total business revenue shows the following pattern:

1. DOWNTURN: a decline of an aggregate of 8.5% or more in total revenues over a period of three consecutive months between May-December 2010 compared to the same months in the Benchmark Period selected by the claimant;² AND

2. LATER UPTURN: an increase of an aggregate of 5% or more in total revenues over the same period of three consecutive months in 2011 compared to 2010.³

OR

B. Modified V-Shaped Revenue Pattern:

Total business revenue shows the following pattern:

1. DOWNTURN: a decline of an aggregate of 5% or more in total revenues over a period of three consecutive months between May-December 2010 compared to the same months in the Benchmark Period selected by the claimant;⁴ AND

² See Compensation Framework for Business Economic Loss Claims.

³ See Exhibit A attached hereto for an example of how this calculation is performed.

⁴ See Compensation Framework for Business Economic Loss Claims.

2. LATER UPTURN: an increase of an aggregate of 5% or more in total revenues over the same period of three consecutive months in 2011 compared to 2010;

AND ONE OR MORE OF THE FOLLOWING:

a. The claimant demonstrates a decline of 10% in the share of total revenue generated by non-local customers over the same period of three consecutive months from May-December 2010 as selected by claimant for the Modified V-Shaped Revenue Pattern as identified in (II.B.1) compared to the same three consecutive month period in 2009, as reflected in:⁵

- customer credit card receipts or other contemporaneously maintained records of payment; or
- customer registration logs (e.g., hotel registries); or
- documentation maintained in the ordinary course of business that lists customers by location and monthly sales associated with those customers; or
- business documents reflecting contemporaneous recording of receipts or invoices listing customers by location.⁶

OR

b. For business claimants that have customers in Zones A-C, the claimant demonstrates a decline of 10% in the share of total revenue generated by customers located in Zones A-C over the same period of the three consecutive months from May-December

⁵ A Customer shall be considered a “non-local customer” if they reside more than 60 miles from a claimant business location.

⁶ See Exhibit B attached hereto for an example of how this calculation is performed.

2010 as selected by claimant for the Modified V-Shaped Revenue Pattern as identified in (II.B.1) compared to the same three consecutive month period in 2009, as reflected in:

- customer credit card receipts or other contemporaneously maintained records of payment; or
- customer registration logs (e.g., hotel registries); or
- documentation maintained in the ordinary course of business that lists customers by location and monthly sales associated with those customers; or
- business documents reflecting contemporaneous recording of receipts or invoices listing customers by location.⁷

OR

c. The claimant provides contemporaneous written evidence of the cancellation of a contract as the direct result of the spill that claimant was not able to replace. Proof of a spill-related contract cancellation only establishes causation for the specific contract substantiated by the claimant and may result in recovery only of damages solely associated with such contract.

OR

C. Decline-Only Revenue Pattern:

1. DOWNTURN: a decline of an aggregate of 8.5% or more in revenues over a period of three consecutive months between May-December 2010 compared to

⁷ See Exhibit C attached hereto for an example of how this calculation is performed.

the same months in the Benchmark Period selected by the claimant;⁸

AND

2. Specific documentation identifying factors outside the control of the claimant that prevented the recovery of revenues in 2011, such as:

- The entry of a competitor in 2011
- Bankruptcy of a significant customer in 2011
- Nearby road closures affecting the business
- Unanticipated interruption resulting in closure of the business
- Product/Service replacement by Customer
- Loss of financing and/or reasonable terms of renewal;

AND

3. ONE OF THE FOLLOWING:

- The claimant demonstrates proof of a decline of 10% in the share of total revenue generated by non-local customers over the same period of three consecutive months from May-December 2010 as selected by the claimant for the Decline-Only Revenue Pattern as identified in (II.C.1) compared to the same three consecutive month period in 2009, as reflected in:⁹
 - customer credit card receipts or other contemporaneously maintained records of payment; or

⁸ See Compensation Framework for Business Economic Loss Claims.

⁹ A Customer shall be considered a “non-local customer” if they reside more than 60 miles from a claimant business location.

- customer registration logs (e.g., hotel registries); or
 - documentation maintained in the ordinary course of business that lists customers by location and monthly sales associated with those customers; or
 - business documents reflecting contemporaneous recording of receipts or invoices listing customers by location.¹⁰
- For business claimants that have customers in Zones A-C, the claimant demonstrates proof of a decline of 10% in the share of total revenue generated by customers located in Zones A-C over the same period of three consecutive months from May-December 2010 as selected by the claimant for the Decline-Only Revenue Pattern as identified in (II.C.1) compared to the same three consecutive month period in 2009, as reflected in:
 - customer credit card receipts or other contemporaneously maintained records of payment; or
 - customer registration logs (e.g., hotel registries); or
 - documentation maintained in the ordinary course of business that lists customers by location and monthly sales associated with those customers; or
 - business documents reflecting contemporaneous recording of receipts

¹⁰ See Exhibit B attached hereto for an example of how this calculation is performed.

or invoices listing customers by location.¹¹

OR

D. Proof of Spill-Related Cancellations

- Claimant may establish causation by providing contemporaneous written evidence of spill-related reservation cancellations (*i.e.*, letters, emails, hotel logs for the relevant time, or an affidavit from an independent third party citing the spill as the reason for cancellation) that the claimant was unable to rebook. Proof of spill-related reservation cancellations only establishes causation for the specific cancellations substantiated by the claimant and may result in recovery only of damages solely associated with such cancellations established as causally resulting from the spill. However, if the lodging facility has food and/or beverage services on site, the evidence of cancellation shall satisfy causation for the specific losses corresponding to such cancellation in those service areas as well.
- The claimant provides contemporaneous written evidence of the cancellation of a contract as the direct result of the spill that claimant was not able to replace. In the absence of contemporaneous written evidence, the claimant must present an affidavit from an independent third party affirming that the cancellation was spill-related. Proof of a spill-related contract cancellation only establishes causation for the specific contract

¹¹ See Exhibit C attached hereto for an example of how this calculation is performed.

substantiated by the claimant and may result in recovery only of damages solely associated with such contract.

OR

E. A non-rural business claimant on a property that is in close proximity (within 100 yards) to the property of a separate MDL 2179 business claimant that has established causation (“Causation Proxy Claimant”) may rely on the documentation submitted by such Causation Proxy Claimant to satisfy these Causation Requirements for Business Economic Loss Claims. A “Rural Business” claimant located within one quarter-mile of the property of the Causation Proxy Claimant may rely on the documentation submitted by the Causation Proxy Claimant to satisfy these causation requirement only if the claimant provides information sufficient for the Claims Administrator to determine that a causal relationship exists between the claimant’s financial performance and the financial performance of the Causation Proxy Claimant. A Rural Business shall be defined as one is located in area outside an Urban Area or Urban Cluster, as defined by the US Census Bureau’s classification. Only business claimants with annual revenue of \$75,000 or below are eligible to establish causation under this Subpart IIE.

III. Causation Requirements for Zone D

If you are not entitled to a presumption as set forth in (I) above and you are located outside of Zones A, B or C, then you must satisfy the requirements of one of the following sections A-F below:

A. V-Shaped Revenue Pattern:

Business revenue shows the following pattern:

1. DOWNTURN: a decline of an aggregate of 15% or more in total revenues over a period of three consecutive months between May-December 2010 compared to the same months in the Benchmark Period selected by the claimant;¹²

AND

2. LATER UPTURN: an increase of an aggregate of 10% or more in total revenues over the same period of three consecutive months in 2011 compared to 2010.¹³

OR

B. Modified V-Shaped Revenue Pattern:

Total business revenue shows the following pattern:

1. DOWNTURN: a decline of an aggregate of 10% or more in total revenues over the same period of three consecutive months between May-December 2010 compared to the same months in the Benchmark Period selected by the claimant;¹⁴

AND

2. LATER UPTURN: an increase of an aggregate of 7% or more in total revenues over the same period of three consecutive months in 2011 compared to 2010;

AND

3. ONE OF THE FOLLOWING:

- The claimant demonstrates proof of a decline of 10% in the share of total revenue generated by

¹² See Compensation Framework for Business Economic Loss Claims.

¹³ See Exhibit A attached hereto for an example of how this calculation is performed.

¹⁴ See Compensation Framework for Business Economic Loss Claims.

non-local customers over the same period of three consecutive months from May-December 2010 as selected by the claimant for the Modified V-Shaped Revenue Pattern identified in (III.B.1) compared to the same three consecutive month period in 2009, as reflected in:¹⁵

- customer credit card receipts or other contemporaneously maintained records of payment; or
 - customer registration logs (e.g., hotel registries); or
 - documentation maintained in the ordinary course of business that lists customers by location and monthly sales associated with those customers; or
 - business documents reflecting contemporaneous recording of receipts or invoices listing customers by location.¹⁶
- For business claimants that have customers in Zones A-C, the claimant demonstrates proof of a decline of 10% in the share of total revenue generated by customers located in Zones A-C over the same period of the three consecutive months from May-December 2010 as selected by the claimant for the Modified V-Shaped Revenue Pattern identified in (III.B.1) compared to the same three consecutive month period in 2009, as reflected in:

¹⁵ A Customer shall be considered a “non-local customer” if they reside more than 60 miles from a claimant business location.

¹⁶ See Exhibit B attached hereto for an example of how this calculation is performed.

- customer credit card receipts or other contemporaneously maintained records of payment; or
 - customer registration logs (e.g., hotel registries); or
 - documentation maintained in the ordinary course of business that lists customers by location and monthly sales associated with those customers; or
 - business documents reflecting contemporaneous recording of receipts or invoices listing customers by location.¹⁷
- The claimant provides contemporaneous written evidence of the cancellation of a contract as the direct result of the spill that claimant was not able to replace. Proof of a spill-related contract cancellation only establishes causation for the specific contract substantiated by the claimant and may result in recovery only of damages solely associated with such contract.

OR

C. Decline-Only Revenue Pattern:

1. DOWNTURN: a decline of an aggregate of 15% or more in total revenues over a period of three consecutive months between May-December 2010 compared to the same months in the Benchmark Period selected by the claimant without a recovery in the corresponding months of 2011;¹⁸

¹⁷ See Exhibit C attached hereto for an example of how this calculation is performed.

¹⁸ See Compensation Framework for Business Economic Loss Claims.

AND

2. Specific documentation identifying factors outside the control of the claimant that prevented the recovery of revenues in 2011:

- The entry of a competitor in 2011
- Bankruptcy of a significant customer in 2011
- Nearby road closures affecting the business
- Unanticipated interruption resulting in closure of the business
- Produce/Source replacement by Customer,
- Loss of financing and/or reasonable terms of renewal;

AND

3. ONE OR MORE OF THE FOLLOWING:

- The claimant demonstrates proof of a decline of 10% in the share of total revenue generated by non-local customers over the same period of three consecutive months from May-December 2010 as selected by the claimant for the Decline-Only Revenue Patter [sic] as identified in (III.C.1) compared to the same three consecutive month period in 2009, as reflected in:¹⁹
 - customer credit card receipts or other contemporaneously maintained records of payment; or
 - customer registration logs (e.g., hotel registries); or
 - documentation maintained in the ordinary course of business that lists

¹⁹ A Customer shall be considered a “non-local customer” if they reside more than 60 miles from a claimant business location.

- customers by location and monthly sales associated with those customers; or
- business documents reflecting contemporaneous recording of receipts or invoices listing customers by location.²⁰
- For business claimants that have customers in Zones A-C, the claimant demonstrates proof of a decline of a 10% in the share of total revenue generated by customers located in Zone A, Zone B, or Zone C over the same period of three consecutive months from May-December 2010 as selected by the claimant for the Decline-Only Revenue Pattern as identified in (III.C.1) compared to the same three consecutive month period in 2009, as reflected in:
 - customer credit card receipts or other contemporaneously maintained records of payment; or
 - customer registration logs (e.g., hotel registries); or
 - documentation maintained in the ordinary course of business that lists customers by location and monthly sales associated with those customers; or
 - business documents reflecting contemporaneous recording of receipts or invoices listing customers by location.²¹

OR

²⁰ See Exhibit B attached hereto for an example of how this calculation is performed.

²¹ See Exhibit C attached hereto for an example of how this calculation is performed.

D. Proof of Spill-Related Reservation Cancellations

- Claimant may establish causation by providing contemporaneous written evidence of spill-related reservation cancellations (*i.e.*, letters, emails, hotel logs for the relevant time) that the claimant was unable to rebook. Proof of spill-related reservation cancellations only establishes causation for the specific cancellations substantiated by the claimant and may result in recovery only of damages solely associated with such cancellations established as causally resulting from the spill. However, if the lodging facility has food and/or beverage services on site, the evidence of cancellation shall satisfy causation for the losses in those service areas as well.
- The claimant provides contemporaneous written evidence of the cancellation of a contract as the direct result of the spill that claimant was not able to replace. In the absence of contemporaneous written evidence, the claimant must present an affidavit from an independent third party affirming that the cancellation was spill-related. Proof of a spill-related contract cancellation only establishes causation for the specific contract substantiated by the claimant and may result in recovery of damages solely associated with such contract.

OR

E. For claimants defined as “Seafood Retailers” (including restaurants):

- Claimant demonstrates purchases of Gulf of Mexico harvested seafood from Zone A, Zone B or Zone C vendors

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represented at least 10% of food costs during 2009, as reflected in historical purchase orders and/or invoices.

AND

- o Claimant demonstrates a decline of 7.5% in gross profit (gross sales less cost of goods sold) over a period of three consecutive months between May-December 2010 compared to the same months in 2009.

OR

F. A non-rural business claimant on a property that is in close proximity (within 100 yards) to the property of a separate MDL 2179 business claimant that has established causation (“Causation Proxy Claimant”) may rely on the documentation submitted by such Causation Proxy Claimant to satisfy these Causation Requirements for Business Economic Loss Claims. A “Rural Business” claimant located within one quarter-mile of the property of the Causation Proxy Claimant may rely on the documentation submitted by the Causation Proxy Claimant to satisfy these causation requirement only if the claimant provides information sufficient for the Claims Administrator to determine that a causal relationship exists between the claimant’s financial performance and the financial performance of the Causation Proxy Claimant. A Rural Business shall be defined as one is located in area outside an urban area or urban cluster, as defined by the US Census Bureau’s classification. Only business claimants with annual revenue of \$75,000 or below are eligible to establish causation under this Subpart IIIF.

Exhibit A

Summary of Revenue Pattern Requirements for Causation Tests

Test	Zone A		Zone B (Non-Tourism and Non-Seafood)		Zone C (Non-Seafood)		Zone D	
	Down	Up	Down	Up	Down	Up	Down	Up
	V-Test	N/A		-8.5%	5%	-8.5%	5%	-15%
Modified V-Test *	N/A		-5%	5%	-5%	5%	-10%	7%
Down Only Test *	N/A		-8.50%	N/A	-8.50%	N/A	-15%	N/A

* = For the Modified V-Test and the Down Only Test, additional requirements apply, as described in Sections IIB, IIC, IIIB, and IIIC above.

Examples of Revenue Pattern Requirements for Causation Tests

In these examples, the claimant is located in Zone B or C, uses 2008-2009 average as Benchmark Period, and has selected June, July and August as its three consecutive months.

Example 1:

Month	Revenue by Year				
	2008	2009	Average of 2008-2009	2010	2011
June	325,000	300,000	312,500	285,000	305,000
July	360,000	350,000	355,000	330,000	345,000
August	340,000	325,000	332,500	295,000	330,000
3-Month Aggregate: [Sum of June, July, August]	1,025,000	975,000	1,000,000	910,000	980,000
			Down Percentage:	-9.0% = (910,000 - 1,000,000)/1,000,000	
			Up Percentage:	7.7% = (980,000 - 910,000)/910,000	

Claimant passes V-Test. Note: A claimant that satisfies the revenue pattern requirements for the V-Test will always also satisfy the requirements for the Modified V-Test and Down Only Test.

Example 2:

Month	Revenue by Year				
	2008	2009	Average of 2008-2009	2010	2011
June	325,000	300,000	312,500	295,000	320,000
July	360,000	350,000	355,000	335,000	355,000
August	340,000	325,000	332,500	315,000	340,000
3-Month Aggregate: [Sum of June, July, August]	1,025,000	975,000	1,000,000	945,000	1,015,000
			Down Percentage:	-5.5% $= (945,000 - 1,000,000) / 1,000,000$	
			Up Percentage:	7.4% $= (1,015,000 - 945,000) / 945,000$	

*Claimant fails V Test and the Down Only Test.
Claimant has satisfied the revenue pattern requirement for the Modified V-Test and can establish causation if able to satisfy the additional requirements described in Section IIB above.*

Example 3:

Month	Revenue by Year				
	2008	2009	Average of 2008-2009	2010	2011
June	325,000	300,000	312,500	285,000	300,000
July	360,000	350,000	355,000	330,000	325,000
August	340,000	325,000	332,500	295,000	310,000
3-Month Aggregate: [Sum of June, July, August]	1,025,000	975,000	1,000,000	910,000	935,000
			Down Percentage:	-9.0% $= (910,000 - 1,000,000) / 1,000,000$	
			Up Percentage:	2.7% $= (935,000 - 910,000) / 910,000$	

*Claimant fails V Test and the Modified V-Test.
Claimant has satisfied the revenue pattern requirement for the Down Only Test and can establish causation if able to satisfy the additional requirements described in Section IIC above.*

Notes:

The causation tests would work in the same way for claimants in Zone D with higher thresholds for the tests. In Zone D, the V-Test thresholds are -15% decline, 10% upturn; the Modified V-Test thresholds are -10% decline, 7% upturn; the Down-Only Test threshold is -15%.

Examples of Revenue Pattern Requirements for Causation Tests

In these examples, the claimant is located in Zone B or C, uses 2008-2009 average as Benchmark Period, and has selected June, July and August as its three consecutive months.

Example 4 demonstrates that under an aggregate test, three months of revenues are summed. The individual months may be up or down, as long as the three month aggregate period passes the test.

Example 4A:

Month	Revenue by Year				
	2008	2009	Average of 2008-2009	2010	2011
June	325,000	300,000	312,500	285,000	305,000
July	360,000	350,000	355,000	330,000	345,000
August	340,000	325,000	332,500	295,000	330,000
3-Month Aggregate: [Sum of June, July, August]	1,025,000	975,000	1,000,000	910,000	980,000
			Down Percentage:	-9.0% = (910,000 - 1,000,000)/1,000,000	
			Up Percentage:	7.7% = (980,000 - 910,000)/910,000	

Claimant passes V-Test. Note: A claimant that satisfies the revenue pattern requirements for the V-Test will always also satisfy the requirements for the Modified V-Test and Down Only Test.

Example 4B:

Month	Revenue by Year				
	2008	2009	Average of 2008-2009	2010	2011
June	325,000	300,000	312,500	385,000	305,000
July	360,000	350,000	355,000	230,000	345,000
August	340,000	325,000	332,500	295,000	330,000
3-Month Aggregate: [Sum of June, July, August]	1,025,000	975,000	1,000,000	910,000	980,000
			Down Percentage:	-9.0% = (910,000 - 1,000,000)/1,000,000	
			Up Percentage:	7.7% = (980,000 - 910,000)/910,000	

Claimant passes V-Test.

Example 4C:

Month	Revenue by Year				
	2008	2009	Average of 2008-2009	2010	2011
June	325,000	300,000	312,500	385,000	305,000
July	360,000	350,000	355,000	430,000	345,000
August	340,000	325,000	332,500	95,000	330,000
3-Month Aggregate: [Sum of June, July, August]	1,025,000	975,000	1,000,000	910,000	980,000
			Down Percentage:	-9.0% = (910,000 - 1,000,000)/1,000,000	
			Up Percentage:	7.7% = (980,000 - 910,000)/910,000	

Claimant passes V-Test.

Notes:

The causation tests would work in the same way for claimants in Zone D with higher thresholds for the tests. In Zone D, the V-Test thresholds are -15% decline, 10% upturn; the Modified V-Test thresholds

are -10% decline, 7% upturn; the Down-Only Test threshold is -15%.

Exhibit B

Example of Customer Mix Test (Non-Local Customers)

The claimant in this Exhibit B uses the same three-month time period as the claimant in Exhibit A (June-July-August).

To pass the test, claimants must demonstrate proof of a decline of 10% or more in the share of total revenue generated by non-local customers over the same period of three consecutive months from May-December 2010 as selected by the claimant for the Modified V-Test or Down Only Tests compared to the same three consecutive months in 2009.

Example 1:	LT= Less than	GE=Greater than or equal to
Customer Residence	June-August '09	June-August '10
LT 60 miles from claimant	\$80,000	\$66,000
GE 60 miles from claimant	\$20,000	\$14,000
Total	\$100,000	\$80,000
% GE 60 miles	20%	17.5%
Claimant passes Customer Mix Test: Claimant has a 12.5 percent decline in share of total revenue from non-local customers [$12.5\% = .125 = (20-17.5)/20$].		

Example 2:		
Customer Residence	June-August '09	June-August '10
LT 60 miles from claimant	\$50,000	\$40,000
GE 60 miles from claimant	\$50,000	\$40,000
Total	\$100,000	\$80,000
% GE 60 miles	50%	50%
Claimant fails Customer Mix Test: No change in share of total revenue from non-local customers. [$0\% = 0 = (50-50)/50$].		

Example 3:

Customer Residence	June-August '09	June-August '10
LT 60 miles from claimant	\$50,000	\$48,000
GE 60 miles from claimant	\$50,000	\$40,000
Total	\$100,000	\$88,000
% GE 60 miles	50%	45.5%

Claimant fails Customer Mix Test: Claimant has a 9% decline in share of total revenue from non-local customers [9% = .09 = (50-45.5)/50].

Exhibit C

**Example of Customer Mix Test
(Customers in Zones A-C)**

The claimant in this Exhibit B uses the same three-month time period as the claimant in Exhibit A (June-July-August).

To pass the test, claimants must demonstrate proof of a decline of 10% or more in the share of total revenue generated by customers in Zones A-C over the same period of three consecutive months from May-December 2010 as selected by the claimant for the Modified V-Test or Down Only Tests compared to the same three consecutive months in 2009.

Example 1:

Customer Residence	June-August '09	June-August '10
Zone D	\$80,000	\$66,000
Zones A-C	\$20,000	\$14,000
Total	\$100,000	\$80,000
% Zones A-C	20%	17.5%

Claimant passes Customer Mix Test: Claimant has a 12.5 percent decline in share of total revenue from customers in Zones A-C [12.5% = .125 = (20-17.5)/20]

Example 2:

Customer Residence	June-August '09	June-August '10
Zone D	\$50,000	\$40,000
Zones A-C	\$50,000	\$40,000
Total	\$100,000	\$80,000
% Zones A-C	50%	50%

Claimant fails Customer Mix Test: No change in share of total revenue from customers in Zones A-C. $[0\% = 0 = (50 - 50)/50]$

Example 3:

Customer Residence	June-August '09	June-August '10
Zone D	\$50,000	\$48,000
Zones A-C	\$50,000	\$40,000
Total	\$100,000	\$88,000
% Zones A-C	50%	45.5%

Claimant fails Customer Mix Test: Claimant has a 9% decline in share of total revenue from customers in Zones A-C $[9\% = .09 = (50 - 45.5)/50]$

**Addendum To Causation Requirements For
Business Economic Loss Claims and
Compensation Framework for Business
Economic Loss Claims**

The term “Benchmark Period” is defined at pp. 1-2 in the **Compensation Framework for Business Economic Loss Claims** (Ex. 4C). That definition provides:

The Benchmark Period is the pre-DWH Spill time period which claimant chooses as the baseline for measuring its historical financial performance. The claimant can select among the following Benchmark Periods: 2009; the average of 2008-2009; or the average of 2007-2009, provided that the range of years selected by the claimant will be utilized for all Benchmark Period purposes.

Footnote 2 of the **Causation Requirements For Business Economic Loss Claims** (Ex. 4B) specifically incorporates that definition of Benchmark Period by reference.

Accordingly, once the claimant selects the Benchmark Period year(s) (2009, the average of 2008-2009, or the average of 2007-2009), the **same** Benchmark Period year(s) are used “for all Benchmark Period purposes” -- specifically, the same Benchmark Period year(s) are used for purposes of determining **both** causation and compensation.

In contrast, a claimant is not required to use the same **months** in the Benchmark Period for purposes of establishing causation pursuant to Ex. 4B and determining compensation pursuant to Ex. 4C.

For example, when evaluating whether a claimant can satisfy causation using the “V Test,” the claimant may select any consecutive 3-month period between May and December 2010 for comparison to a comparable period in the Benchmark Period (i.e., 2009, the average of 2008-2009, or the average of 2007-2009). After establishing causation, however, the claimant may select a different 3 or more consecutive months between May and December 2010 in determining compensation in accordance with the **Compensation Framework for Business Economic Loss Claims**, so long as the claimant uses the same Benchmark Period years as the basis for comparison. Thus, if the claimant selected for causation the three months of May - July in the Benchmark Period years of the average of 2008-2009, the claimant can select for compensation different months -- e.g., August - October -- but must use the same average of 2008-2009 Benchmark Period. The same Benchmark Period year(s) thus must be used

both for causation (Ex. 4B) and compensation (Ex. 4C).

The additional examples on the next page [sic] illustrate these rules:

Scenario 1:

1) Claimant selected the months of May-July 2010 for the purpose of determining causation, and the claimant, using these months, meets the causation test for the Benchmark period years of 2009, 2008-2009 and 2007-2009;

2) In determining Compensation, Claimant would be allowed to select the months of August through November 2010 as compared to the months of August through November in either 2009, 2008-2009 or 2007-2009 as the Benchmark years – whichever provides the highest compensation.

Scenario 2:

1) Claimant selected the months of October – December 2010 for the purpose of determining causation and the claimant, using these months, meets the causation test for the Benchmark period years of 2009, 2008-2009;

2) In determining compensation, Claimant could select the months of May-September 2010 as compared to the months of May-September in either 2009 or 2008-2009 – whichever provides the highest compensation.

Scenario 3:

1) Claimant selected the months of June – August 2010 for the purpose of determining causation and the claimant, using these months, meets the causation test for the Benchmark period year of 2009. In addition, Claimant selected the months of August –

October 2010 for the purpose of determining causation, and the claimant, using these months, meets the causation test for the Benchmark period years of 2007-2009;

2) In determining compensation, Claimant could select the months of May-December 2010 as compared to the months of May-December in either 2009 or 2007-2009 – whichever provides the highest compensation.

EXHIBIT 4C

Compensation Framework for Business Economic Loss Claims

The compensation framework for business claimants compares the actual profit of a business during a defined post-spill period in 2010 to the profit that the claimant might have expected to earn in the comparable post-spill period of 2010.¹ The calculation is divided into two steps:

Step 1 – Compensates claimants for any reduction in profit between the 2010 Compensation Period selected by the claimant and the comparable months of the Benchmark Period. Step 1 compensation reflects the reduction in Variable Profit (which reflects the claimant's revenue less its variable costs) over this period.

¹ This Compensation Framework for Business Claims does not apply to (i) start-up businesses and (ii) failed businesses. Compensation frameworks for these types of businesses will be presented separately.

Step 2 – Compensates claimants for incremental profits or losses the claimant might have been expected to generate in the absence of the spill relative to sales from the Benchmark Period. This calculation reflects a Claimant-Specific Factor that captures growth or decline in the pre-spill months of 2010 compared to the comparable months of the Benchmark Period and a General Adjustment Factor.

For purposes of the two step calculation, the parties have agreed to a defined list of fixed and variable expenses as reflected in Attachment A.

In order to allocate payroll expenses (including Salaries and Wages, Employee Benefits, and, where applicable, 401K Payments, but excluding Owner/Officer Compensation) into fixed and variable components, a minimum level of fixed payroll costs will be measured based on the average of the two months between May 2010 and December 2010 in which the claimant had its lowest payroll costs. Certain exceptions are identified below for identifying months with the claimant's lowest payroll costs.

For claimants that include Cost of Goods Sold (COGS) in their financial statements, COGS will be treated as a variable expense after excluding, to the extent possible, the following cost items which may be embedded in COGS and are likely to be fixed in nature: Fixed COGS Payroll, Amortization, Depreciation, Insurance Expense, Interest Expense, and Contract Services.

Based on these considerations, the resulting calculations are performed to determine compensation for claimants.

I. Definitions

For the purposes of this calculation, the following are defined terms:

Compensation Period: The Compensation Period is selected by the Claimant to include three or more consecutive months between May and December 2010.

Benchmark Period: The Benchmark Period is the pre-DWH Spill time period which claimant chooses as the baseline for measuring its historical financial performance. The claimant can select among the following Benchmark Periods: 2009; the average of 2008-2009; or the average of 2007-2009, provided that the range of years selected by the claimant will be utilized for all Benchmark Period purposes.

Claimant-Specific Factor: In order to capture the impact of pre-DWH Spill trends in the claimant's revenue performance that might have been expected in the post-DWH Spill Benchmark Period, revenue will be adjusted by a Claimant-Specific Factor. The following steps will be used to compute the Claimant-Specific Factor:

- A. Calculate the difference between claimant's total revenue for January through April 2010 and total revenue in January through April of the corresponding claimant – selected Benchmark Period.
- B. Divide the revenue change calculated in Step A by total revenue in January through April of the Benchmark Period to derive the Claimant-Specific Factor. If the calculated Claimant-Specific Factor falls below -2% or exceeds +10%, then it will be set at -2% or +10%, respectively.

General Adjustment Factor: In addition to the Claimant-Specific factor, all Claimants shall be entitled to a 2.0% General Adjustment Factor.

Variable Profit: This is calculated for both the Benchmark Period and the Compensation Period as follows:

1. Sum the monthly revenue over the period.
2. Subtract the corresponding variable expenses from revenue over the same time period.

Variable expenses include:

- a. Variable Costs as identified in Attachment A.
- b. Variable portion of salaries, calculated as described below in the definition of Fixed and Variable Payroll Expenses.
- c. Variable portion of COGS, calculated by excluding salary costs (which are discussed below in the definition of Fixed and Variable Payroll Expenses) and fixed expenses included within COGS, including Amortization, Depreciation, Insurance Expense, and Interest Expense and Contract Services.

Variable Margin: This is calculated only for the Benchmark Period and is calculated as follows:

1. Sum Variable Profit from May through December of the years selected by the claimant to be used for the Benchmark Period.
2. Sum total revenue from May through December of the years selected by the claimant to be used for the Benchmark Period.

3. Calculate Variable Margin percent as Variable Profit calculated in (1) divided by total revenue calculated in (2).

Fixed and Variable Payroll Expenses: Fixed and Variable Payroll Expenses are calculated based on the understanding that every business must operate with a minimum core staff and are defined using monthly profit and loss statements and/or those documents listed in the Documentation Requirements for Business Claims, for May through December 2010. Fixed and Variable Payroll expenses are calculated as follows:

1. Obtain monthly amounts for the following payroll expenses (excluding Owner/Officer Compensation): (a) Salaries & wages; (b) Payroll taxes (including FICA, workers compensation insurance, unemployment tax); (c) Employer costs for employee benefits. Calculations include components of salaries and related expenses included in both Selling, General & Administrative Expenses (“SG&A”) and COGS.
2. Sum these payroll expenses on a monthly basis to determine the Total Payroll Expense for each month.
3. Identify the two months between May and December 2010 with the lowest Total Payroll Expense.
 - Months in which the claimant has zero revenue, zero non-officer payroll expenses, or the business is closed, will be excluded from this calculation.
4. Define “Fixed Payroll Expenses” as the average payroll expense over the two months with the lowest Total Payroll Expense.

5. For any month with Total Payroll Expenses less than Fixed Payroll Expenses, all payroll costs will be considered fixed expenses.

6. For any month with Total Payroll Expenses greater than Fixed Payroll Expenses, the excess amount of Total Payroll Expenses will be considered variable expenses.

Incremental Revenue: Incremental revenue shall be calculated as (i) the claimant's revenue in a claimant-selected period of six, seven or eight consecutive months (as set forth in Step 2 below) between May and December of the years selected by the claimant to be included in the Benchmark Period, multiplied by (ii) the Claimant-Specific Factor and the General Adjustment Factor.

II. Description of Compensation Calculation

Step 1 Compensation

Step 1 of the compensation calculation is determined as the difference in Variable Profit between the 2010 Compensation Period selected by the claimant and the Variable Profit over the comparable months of the Benchmark Period.

As noted above, the Compensation Period is selected by the Claimant to include three or more consecutive months between May and December 2010.

For claimants that participated in the VoO program, Variable Profit in the Compensation Period will exclude revenue generated by or costs incurred in connection with VoO.²

² Claimants are required to report payments received under the VoO program. If claimants that received VoO payments fail separately to report costs incurred in VoO and non-VoO activities, then Step 1 Compensation for non-VoO activity alone

Step 2 Compensation

Step 2 of the Compensation Calculation for Business Economic Loss Claims is intended to compensate claimants for incremental profits the claimant might have been expected to generate in 2010 in the absence of the spill, based on the claimant's growth in revenue in January-April of 2010 relative to the claimant-selected Benchmark Period (2009 or (average of 2008 and 2009) or (average of 2007, 2008 and 2009)).

Calculation:

Using monthly profit and loss statements and/or those documents listed in the Documentation Requirements for Business Claims:

1. Claimant may select from the following six-consecutive month periods for calculating Step 2 Compensation:

- a. May-October
- b. June-November
- c. July-December

Unless claimant chose a seven-consecutive-month or eight-consecutive-month period in Step 1, in which case that same period of identical consecutive months in 2010 shall be used for Step 2.

2. Calculate the Claimant-Specific Factor:

- a. Calculate the difference between claimant's total revenue for January through April 2010 and total revenue in January through April of the Benchmark Period.

can be determined through a pro-rata revenue based allocation of variable costs between VoO and non-VoO related activities.

b. Divide the revenue change calculated in [2.a] by total revenue in January through April of the Benchmark Period to derive the Claimant-Specific Factor. If the calculated Claimant-Specific Factor falls below -2% or exceeds +10%, then it will be set at -2% or +10%, respectively.

3. Calculate Incremental Revenue:

a. Calculate total revenue in the consecutive months of the Benchmark Period selected in [1] above.

b. Multiply total revenue by the sum of the Claimant-Specific Factor and the General Adjustment Factor of 2% to calculate Incremental Revenue.

4. Multiply Incremental Revenue by the Variable Margin in the Benchmark Period to calculate Step 2 Compensation.

Example 1:

In this example, the claimant selects June-November as the six-consecutive month period in the Benchmark Period to calculate Step 2 Compensation:

June-November Revenue		
in the Benchmark Period	[a]	\$200,000
Claimant-Specific Factor	[b]	8%
General Adjustment Factor	[c]	2%
Incremental Revenue	[d] = [a]*([b]+[c])	\$20,000
Variable Margin Percentage	[e]	50%
Step 2 Compensation	[f] = [d]*[e]	\$10,000

Example 2:

In this example, the claimant selected June-December as the seven-consecutive month

Compensation Period in Step 1 and therefore must use the same period of identical consecutive months in the Benchmark Period to calculate Step 2 Compensation:

June-December Revenue		
in the Benchmark Period	[a]	\$220,000
Claimant-Specific Factor	[b]	8%
General Adjustment Factor	[c]	2%
Incremental Revenue	[d] = [a]*([b]+[c])	\$22,000
Variable Margin Percentage	[e]	50%
Step 2 Compensation	[f] = [d]*[e]	\$11,000

Total Compensation

Total Compensation is calculated as follows:

- (1) Add Step 1 Compensation to Step 2 Compensation.
- (2) Apply the agreed-upon Risk Transfer Premium (RTP).
- (3) Where applicable, subtract from the sum of Step 1 Compensation and Step 2 Compensation any payments received by the claimant from BP or the GCCF pursuant to BP's OPA claims process, as well as any VoO Settlement Payment Offset and VoO Earned Income Offset.

Addendum To Causation Requirements For Business Economic Loss Claims and Compensation Framework for Business Economic Loss Claims

The term "Benchmark Period" is defined at pp. 1-2 in the **Compensation Framework for Business Economic Loss Claims** (Ex. 4C). That definition provides:

The Benchmark Period is the pre-DWH Spill time period which claimant chooses as the baseline for measuring its historical financial performance. The claimant can select among the following Benchmark Periods: 2009; the average of 2008-2009; or the average of 2007-2009, provided that the range of years selected by the claimant will be utilized for all Benchmark Period purposes.

Footnote 2 of the **Causation Requirements For Business Economic Loss Claims** (Ex. 4B) specifically incorporates that definition of Benchmark Period by reference.

Accordingly, once the claimant selects the Benchmark Period year(s) (2009, the average of 2008-2009, or the average of 2007-2009), the **same** Benchmark Period year(s) are used “for all Benchmark Period purposes” -- specifically, the same Benchmark Period year(s) are used for purposes of determining **both** causation and compensation.

In contrast, a claimant is not required to use the same **months** in the Benchmark Period for purposes of establishing causation pursuant to Ex. 4B and determining compensation pursuant to Ex. 4C.

For example, when evaluating whether a claimant can satisfy causation using the “V Test,” the claimant may select any consecutive 3-month period between May and December 2010 for comparison to a comparable period in the Benchmark Period (i.e., 2009, the average of 2008-2009, or the average of 2007-2009). After establishing causation, however, the claimant may select a different 3 or more consecutive months between May and December 2010 in determining compensation in accordance with the **Compensation Framework for Business**

Economic Loss Claims, so long as the claimant uses the same Benchmark Period years as the basis for comparison. Thus, if the claimant selected for causation the three months of May - July in the Benchmark Period years of the average of 2008-2009, the claimant can select for compensation different months -- e.g., August - October -- but must use the same average of 2008-2009 Benchmark Period. The same Benchmark Period year(s) thus must be used both for causation (Ex. 4B) and compensation (Ex. 4C).

The additional examples on the next page [sic] illustrate these rules:

Scenario 1:

- 1) Claimant selected the months of May-July 2010 for the purpose of determining causation, and the claimant, using these months, meets the causation test for the Benchmark period years of 2009, 2008-2009 and 2007-2009;
- 2) In determining Compensation, Claimant would be allowed to select the months of August through November 2010 as compared to the months of August through November in either 2009, 2008-2009 or 2007-2009 as the Benchmark years – whichever provides the highest compensation.

Scenario 2:

- 1) Claimant selected the months of October – December 2010 for the purpose of determining causation and the claimant, using these months, meets the causation test for the Benchmark period years of 2009, 2008-2009;
- 2) In determining compensation, Claimant could select the months of May-September 2010 as compared to the months of May-September in either

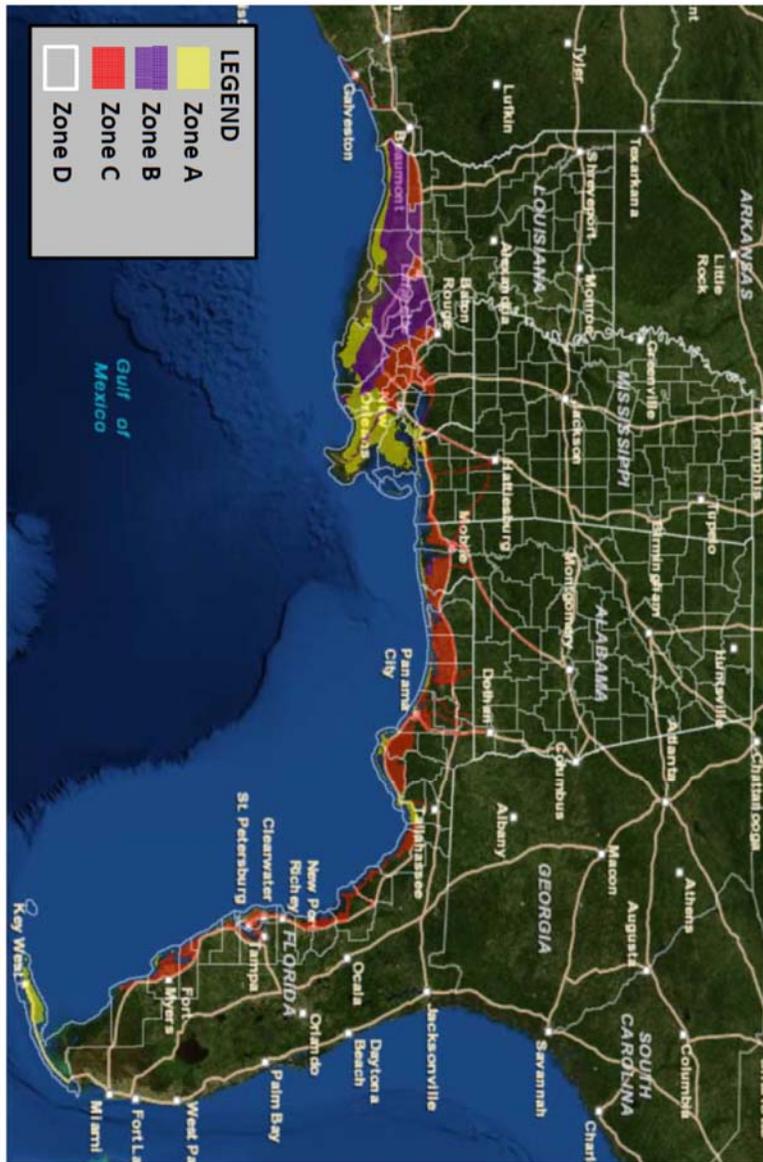
2009 or 2008-2009 – whichever provides the highest compensation.

Scenario 3:

1) Claimant selected the months of June – August 2010 for the purpose of determining causation and the claimant, using these months, meets the causation test for the Benchmark period year of 2009. In addition, Claimant selected the months of August – October 2010 for the purpose of determining causation, and the claimant, using these months, meets the causation test for the Benchmark period years of 2007-2009;

2) In determining compensation, Claimant could select the months of May-December 2010 as compared to the months of May-December in either 2009 or 2007-2009 – whichever provides the highest compensation.

EXHIBIT 1A
All Economic Loss Zones



[In the Settlement Agreement, thirteen close-up maps follow this first map depicting all economic loss zones]