

## The Truth About the BP Settlement

On behalf of the businesses and families of the Gulf Coast, we would like to correct some of the misinformation surrounding BP's current media campaign. The undisputed factual record establishes that:

1. BP selected and proposed Patrick Juneau to be appointed as Claims Administrator for the Court-Supervised Settlement Program. Mr. Juneau is a long-time member of the corporate defense bar, who is universally respected, and has been appointed by courts all across the country to serve as special master or mediator in high profile litigation, including the Guidant MDL in Minnesota and the massive Toyota acceleration litigation in California. At no time did BP ever suggest, request or otherwise propose that Mr. Feinberg be considered as Claims Administrator for the Court-Supervised Settlement Program.
2. Judge Barbier was selected by a panel of respected trial and appellate court judges from across the country to preside over the BP Oil Spill Litigation, one of the largest, if not the largest, consolidated cases in history. He has been universally praised by BP and others for his ingenuity, commitment and dedication to the efficient and effective management of this vast and complex litigation. Judge Barbier has served on the Federal Bench for well over a decade, and his integrity and judicial excellence have never been called into question.
3. BP selected and proposed PricewaterhouseCoopers (PwC) as a Program Vendor for the Court-Supervised Settlement Program. PwC, one of the largest accounting firms in the world, had been previously hired by BP to assist Mr. Feinberg with the GCCF, and was therefore not only trusted by BP but also familiar with Oil Spill related claims. PwC, the accounting giant that BP selected, implemented the Settlement Agreement exactly the same way that it was interpreted by Mr. Juneau and Judge Barbier.
4. BP also selected and proposed Postlethwaite & Netterville (P&N), an independent accounting firm that had not done any work for either plaintiffs or BP/GCCF, to serve as a Program Vendor. P&N, the independent accounting firm that BP selected, also implemented the Settlement Agreement exactly the same way that it was interpreted by Mr. Juneau and Judge Barbier.
5. BP's own Accounting Expert, Holly Sharp, studied the Settlement Agreement and submitted a sworn declaration to the Court in August of 2012 confirming that: "Once a business meets the causation requirements, for purposes of quantifying compensation, all revenue and variable profit declines during the claimant-selected compensation period *are presumed to be caused by the spill*, with no analysis required to determine whether the declines might have been due, at least in part, to other causes."<sup>1</sup>
6. BP's Counsel, in a letter to the Claims Administrator dated September 28, 2012, reiterated that: "*One of the cornerstones of the Settlement Agreement is the use of*

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<sup>1</sup> Doc. 8963-62.

*transparent, objective, data-driven methodologies designed to apply clearly-defined standards to a claimant's contemporaneously-maintained financial data submitted in compliance with documentation requirements. These methodologies and requirements were carefully negotiated by the parties and are set forth in the Settlement Agreement as mandatory requirements. Among other reasons, these methodologies and requirements were negotiated in response to concerns voiced by some that the prior GCCF process was too dependent on accounting judgments that were not transparent.... The Settlement Agreement does not allow for the use of professional judgment or discretion as a substitute for expressly articulated standards or requirements....”<sup>2</sup>*

7. Around the same time, attorney Michael Juneau, on behalf of the Claims Administrator, posed the following inquiry to the parties: “As to BEL [Business Economic Loss] 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?”<sup>3</sup>

8. In response to the question and hypothetical, BP confirmed to the Claims Administrator that: “If proper application of the methodology with accurate financial data yields a determination that causation is satisfied, *BP agrees with Class Counsel that all losses calculated in accordance with ... Exhibits 4C ... of the Settlement Agreement are presumed to be attributable to the Oil Spill....* 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 [Business Economic Loss] Causation Framework (Ex. 4B) or Compensation Framework (Ex. 4C) provides for an offset where the claimant firm’s revenue decline (and recovery, if applicable) satisfies the causation test but extraneous non-fictional data indicate 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.*”<sup>4</sup>
9. In the Joint Proposed Findings submitted by BP in support of approval of the Settlement in November of 2012, BP again confirmed in a Court filing that: “Once the causation tests are satisfied, *all revenue and variable profit declines during the Compensation*

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<sup>2</sup> Doc. 8963-68.

<sup>3</sup> Doc. 8963-66.

<sup>4</sup> Doc. 8963-67.

*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.”*<sup>5</sup>

10. On December 12, 2012, the Parties appeared before the Court, and BP’s Counsel, Richard Godfrey, again confirmed, to the Claims Administrator, to the PwC and P&N accountants who were present, to Class Counsel, and to the Court, that BP “agreed with the Claims Administrator’s objective analysis of causation with respect to his evaluation of economic damage claims, as previously set forth by Mr. Juneau.”<sup>6</sup>

This is the factual record. It is clear. It is documented. And it cannot be disputed.

CLASS COUNSEL

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<sup>5</sup> Doc. 8963-73.

<sup>6</sup> Doc. 8963-75.