

December 12th 2014 Newsletter

Supreme Court Denies BP's Appeal

On December 8th the Supreme Court of the United States ("SCOTUS") unanimously decided not to hear BP's appeal of the Settlement Agreement. SCOTUS handed down a one-sentence ruling stating, "the petition for a writ of certiorari is denied."

This is a big development, as SCOTUS was BP's last avenue of appeal. It was gratifying to see the United States justice system refuse to allow BP to renege on the Settlement it authored, executed, and asked to be approved by Judge Barbier.

Legally this means BP can't decertify the Class Action. Practically this means BP will have to abide by the Settlement's terms, including the obligation to pay all eligible class claims.

Claim Submission Deadline: June 5, 2015

The Settlement stipulates that the claim submission deadline is 180 days after the date SCOTUS denied BP's appeal, or Saturday June 6, 2015. Because the deadline falls on a Saturday we are using Friday June 5, 2015 as our claim submission deadline.

There is still plenty of time to have claims evaluated for eligibility. MySpillClaim.com is still the only free, real-time eligibility calculator available. This website determines whether the claimants monthly revenues satisfy the Settlement's various indirect-impact tests.

New Audit Debunks BP's PR Campaign

By now you've undoubtedly seen or heard BP's various complaints that BP is the victim of rampant fraud in the Settlement Program. We have opined in earlier newsletters that the true goal of BP's PR campaign was to intimidate claimants, all with the aim of saving BP money. Since BP had no evidence to support these claims it has aggressively sought audits and investigation of the Settlement Program.

Minneapolis-based Clifton Larson Allen previously audited the Settlement Program and issued a written report concluding it was well managed and running properly. Additionally, Judge Barbier appointed former FBI director Louis J. Freeh to conduct an independent investigation to determine whether there had been any fraudulent activity in the Settlement Program. To date, we are unaware of any

evidence demonstrating that the Settlement Program has ever paid a single fraudulent claim, notwithstanding BP's claims to the contrary.

Even so, BP continued to make public accusation of fraud, waste, mismanagement, and launched an aggressive and intensely personal attack against Patrick Juneau (including filing an unsuccessful motion to remove Juneau as Claims Administrator).

Judge Barbier ultimately acceded to BP's request, and ordered another independent audit of the Settlement Program, which concluded in October. BP, prior to seeing the audit, accused Juneau of suppressing it to hide the supposed "rampant fraud" that had occurred under his leadership. It appears BP hoped the new audit would finally unearth at least some evidence of fraud to help persuade SCOTUS to hear BP's appeal. We are very happy to report BP's scheme backfired spectacularly, as the audit conclusively proves that BP's entire PR campaign was completely baseless.

Chicago-based McGladrey LLP performed the audit, and found that the Settlement Program had an astounding **99.5% claim calculation accuracy rate**. The entire McGladrey audit is available here: <http://www.laed.uscourts.gov/oilspill/11252014McGladreyReport.pdf>

Juneau issued a statement encouraging the public to review the audit and educate itself on the actual performance of the Settlement Program. "I am very grateful to all of those people who worked so hard to make this happen. It speaks volumes as to what has been accomplished to date," Juneau said.

McGladrey, following generally accepted auditing standards promulgated by the American Institute of Certified Public Accountants, randomly selected a statistically significant audit sample of 1,852 claims out of 53,512 submitted to the Settlement Program since June 2012. McGladrey's sample included claims in each claim category (e.g. Business Economic Loss, Seafood Compensation, Individual Economic Loss, etc.) McGladrey reviewed every aspect of the sample claims, including whether they were eligible claims, and whether the Settlement Program had calculated and paid the correct claim amount. McGladrey then extrapolated those findings to all claims (with a 95% confidence level).

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The following table is from the McGladrey audit, and summarizes its findings as to claim calculation and payment accuracy:

Claim category	Reviewed claims		
	Total pre-appeal dollar value	Net over-(under-) determination of pre-appeal award amounts	%
Seafood Compensation	\$197,392,181	\$ 1,323,029	0.7%
Business Economic Loss	344,681,281	115,715	0.0%
Failed Business Economic Loss	1,443,904	(17,695)	(1.2%)
Start-Up Business Economic Loss	69,143,213	475,054	0.7%
Individual Economic Loss	7,771,559	22,169	0.3%
Individual Periodic / Festival Vendor	40,280	0	0.0%
Subsistence	1,917,396	5,684	0.3%
Vessel of Opportunity	10,773,831	0	0.0%
Vessel Physical Damage	4,871,844	125,672	2.6%
Coastal Real Property Damage	6,679,482	6,506	0.1%
Wetlands Real Property Damage	61,595,928	0	0.0%
Real Property Sales	11,949,994	47,438	0.4%
40% Request	22,786,198	0	0.0%
Total	\$741,047,091	\$ 2,103,572	0.3%

We'd like to highlight the 0.0% error rate for Business Economic Loss claims, which completely debunks BP's relentless complaints of supposedly "fraudulent, fictitious, and bogus" BEL claim payments. You may recall BP even cited specific examples, such as with Emeril Lagasse. We note the BEL claims represented over 45% of the sampled claims (in terms of dollars). Here are McGladrey's key findings:

- Only 0.3% of the sample claims had any calculation errors;
- The extrapolated error rate was 0.5%; or
- The Settlement Program's overall accuracy rate was **99.5%**.

McGladrey congratulated the Settlement Program for this "significant accomplishment," and adding that, "by any objective measure, these error rates are extremely low."

McGladrey also determined that roughly 8% of the sampled claims had document deficiencies, which McGladrey defined as any deviation from the Settlement Program's documentation requirements. The most pervasive document deficiency was the absence of a clearly indicated creation date on the claimant's P&Ls. McGladrey's report makes clear these deficiencies didn't produce payment errors: "the lack of a creation date on the face of the financial statement had no financial impact because the verification procedures employed by the [Settlement Program] worked."

Predictably, BP responded by ignoring the 99.5% accuracy rate, instead focusing solely on the 8% document deficiency statistic. BP even went so far as to say that these deficiencies could "result in or contribute to the risk of compensating fraudulent claims," apparently ignoring McGladrey's statements to the contrary. BP even intimated it might seek yet another audit when BP spokesperson Geoff Morrell stated the audit "does little to allay our concerns over the operation of the Settlement Program." Apparently 99.5% isn't good enough for BP.

We feel that a 99.5% calculation accuracy rate and a 92% document accuracy rate are excellent, especially given the complexity and volume of BP claims. We encourage our clients and readers to educate their friends, neighbors, and co-workers about the audit results. There are thousands of eligible claimants who have elected not to file claims because they don't want to be associated with a purportedly "fraudulent" system. This audit conclusively proves that claimants can and should have the utmost confidence in Patrick Juneau and the Settlement Program as a whole. Making BP pay what it agreed to pay isn't wrong or greedy; it is common sense and good business.

Our Experience with Policy 495

As our readers know, BP appealed Patrick Juneau's interpretation of the Settlement Agreement, which eventually resulted in a 5th Circuit appeal, Judge Barbier entering a new order on Christmas Eve, and

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Patrick Juneau issuing Policy 495. As we discussed in a prior newsletter, Juneau adopted BP's proposed matching protocol almost verbatim. Our personal feeling is that Juneau did this to stave off endless additional appeals by BP's army of lawyers.

Our first several months dealing with Policy 495 were frustrating and inefficient. We observed that many of the Settlement Program vendors didn't appear to be overly familiar with other Settlement Program policy decisions, and were often making improper requests. We began a dialogue with PSC liaison counsel and the Settlement Program vendors to provide them with examples, and are pleased to report that we have seen a significant improvement in the last 30 days.

As discussed previously, Policy 495 generally uses the Average Variable Margin (AVM) methodology, which applies the AVM to revenue to calculate damages. This is a very simple calculation that the Settlement Program has been performing since 2012. While each claim is different, implementation of the AVM methodology hasn't had a material impact on claim amounts.

However, application of the AVM methodology has increased the amount of incompleteness notices we've received since March 2014. We are now commonly asked for bank statements (or other source documentation) to prove-up the entries on the claimant's P&Ls. We are also commonly asked to provide explanations for certain expense items, or to explain why there are variances between the claimant's financial statements and tax returns. Fortunately, the requests are slowly ramping down, and by and large appear to be good-faith requests for records that most claimants can access online. Please rest assured that if we feel a request is improper we attempt to have that request withdrawn, or narrowed, prior to contacting you.

We feel it is very important to remind our readers that failure to respond to an incompleteness notice leads to the Settlement Program denying the claim. We have several examples of clients with large, eligible claims who've expressed a desire to abandon their claims rather than provide additional documentation. Many clients have expressed doubts that their claims will ever be paid anyway, etc.

First, we still have an excellent track record in getting eligible claims paid. Second, we continue to get eligibility notices and payments 2-3 times a week. Third, we continue to have a near-perfect record on claim appeals. Fourth, and most importantly, we have a ~95% success rate of getting AVM claims paid when the client has been able to get us the necessary items. **In short, we can and will get eligible claims paid if we have the required documents.**

My sincere personal opinion is the worst is behind us, and that the Settlement Program will ramp up to full capacity by late January of 2015. In our interaction with the Settlement Program's vendors it was clear they were concerned about making mistakes and getting in BP's crosshairs. The audit results coupled with SCOTUS' denial of BP's appeal paved the way for payments to move forward fairly and efficiently.

We wish all of our clients and readers a safe Holiday Season, and a prosperous 2015.