

## Review of Business Economic Loss Claims in Response to the 5<sup>th</sup> Circuit Court of Appeals Ruling, the District Court Orders, and the Claims Administrator's Declaration

1. Introduction. BP appealed the District Court's order on March 5, 2013, that affirmed the Claims Administrator's interpretation of the Settlement Agreement concerning the review of Business Economic Loss claims that involve the issue of matching revenues and expenses. On October 2, 2013, the Fifth Circuit Court of Appeals reversed the District Court's ruling and sent the case back to the District Court for further consideration. On October 3, 2013, the District Court ordered the Claims Administrator to place a hold that will prevent the Settlement Program from issuing payments, Eligibility Notices and Denial Notices for Business Economic Loss claims that involve the issue of matching revenues and expenses.

The District Court issued a Preliminary Injunction on October 18, 2013, instructing the Claims Administrator to continue the temporary hold on Business Economic Loss and Individual Economic Loss claims that present an issue of revenue and expense matching. The District Court further instructed the Claims Administrator to process all Business Economic Loss and Individual Economic Loss claims for which revenue and expense matching is not an issue.

Pursuant to this Preliminary Injunction, the Claims Administrator issued a declaration on October 25, 2013, outlining the criteria that the Claims Administrator's Office will use to determine whether a claim presents an issue of revenue and expense matching. The Claims Administrator's Office will continue to process all claims that are determined to be "sufficiently matched" according to this declaration.

Additionally, according to the District Court October 18, 2013 Preliminary Injunction and the November 5, 2013 Clarifying Order, claims under appeal as of October 18, 2013, will be reviewed to determine whether any party raised the matching of revenues and expenses as an issue on appeal. As per these Orders, if that issue is raised, the appeal process is to be suspended with regard to that claim; if that issue is not raised, the claims appeal process with regard to that claim is to proceed. Conversely, claims for which an appeal is timely filed after October 18, 2013, shall be processed in accordance with Paragraph 5 of the Preliminary Injunction.

Further, on December 2, 2013, the panel of the Fifth Circuit Court of Appeals found that the District Court was required to consider the issue of causation on remand. Pursuant to this Order, on December 5, 2013, the District Court ordered the Claims Administrator to temporarily suspend the issuance of final determination notices and payments of BEL claims, pending resolution of these BEL issues on remand. This suspension also applies to claims currently in the claims appeal process.

You can access a copy of the 5<sup>th</sup> Circuit Court of Appeals ruling, the District Court orders, and the Claims Administrator's declaration under the Court Documents section of the Deepwater Horizon Economic and Property Damages Settlement website (www.deepwaterhorizoneconomicsettlement.com).

**2.** How this Affects Pending Business Economic Loss Claims. The Claims Administrator is reviewing all potentially affected Business Economic Loss claims, including those claims

12/17/13



currently under Appeal or Discretionary Review, to identify all pending claims that involve matching revenues and expenses. We cannot issue payments, Eligibility Notices or Denial Notices on any potentially affected claims until this analysis is complete.

- **3.** How this Affects Pending Non-Business Economic Loss Claims. We are issuing payments and determination notices on all non-Business Economic Loss claims, with the exception of a small population of Individual Economic Loss claims that may be affected based on the causation analysis of their employer's Business Economic Loss claim.
- **4.** *Questions.* If you have any questions regarding the information in this Alert, please email us at <a href="Questions@dhecc.com">Questions@dhecc.com</a>, call us at 1-800-353-1262, or visit a Claimant Assistance Center. Law firms should contact their Law Firm Contacts for assistance.