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BP to Settle Oil Spill Claims for \$18.7B, Payout Over 18 Years

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After five long litigious years in the wake of the massive Deepwater Horizon oil spill in the Gulf of Mexico, the oil giant BP recently reached an agreement in principle to settle for up to \$18.7 billion all federal, state and local claims arising from the 2010 event.

BP announced that its U.S. upstream subsidiary, BP Exploration and Production Inc. (BPXP), has executed the agreements with the U.S. federal government and five Gulf Coast states. The agreement with the states of Alabama, Florida, Louisiana, Mississippi and Texas also includes settlement of claims made by more than 400 local government entities.

Carl-Henrik Svanberg, BP's chairman, commented about the settlement in a statement.

"Five years ago, we committed to restore the Gulf economy and environment, and we have worked ever since to deliver on that promise," Svanberg said. "We have made significant progress, and with this agreement we provide a path to closure for BP and the Gulf. It resolves the company's largest remaining legal exposures, provides clarity on costs and creates certainty of payment for all parties involved."

According to Svanberg, "In deciding to follow this path, the board has balanced the risks, timing and consequences associated with many years of litigation against its wish for the company to be able to set a clear course for the future."

The settlement is a "powerful incentive for companies to take seriously litigation threats from state and federal governments involving water pollution," said David Logan, a professor at Roger Williams University School of Law who is following the BP oil spill litigation. "It's an important symbolic victory that will influence future settlements of Clean Water Act violations."

Payout Plan

The principal payments are as follows, according to a BP press release:

- **BPXP is to pay the United States a civil penalty of \$5.5 billion under the Clean Water Act (CWA), payable over 15 years.**
- **BPXP will pay \$7.1 billion to the United States and the five Gulf states over 15 years for natural resource damages (NRD). This is in addition to the \$1 billion already committed for early restoration. BPXP will also set aside an additional amount of \$232 million to be added to the NRD interest payment at the end of the payment period to cover any further natural resource damages that are unknown at the time of the agreement.**
- **A total of \$4.9 billion will be paid over 18 years to settle economic and other claims made by the five Gulf Coast states.**
- **Up to \$1 billion will be paid to resolve claims made by more than 400 local government entities.**

The principal payments arising from the agreements will be made over a period of 18 years. NRD and CWA payments are scheduled to start 12 months after the agreements become final, according to the BP press release. Total payments for NRD, CWA and state claims will be made at a rate of around \$1.1 billion a year for the majority of the payment period.

The agreements in principle are subject to the execution of definitive agreements, according to the BP press release. These will comprise a consent decree with the United States and Gulf states with respect to the civil penalty and natural resources damages, a settlement agreement with five Gulf states with respect to state and local claims for economic and property losses, and release agreements with local government entities. The consent decree will be subject to public comment and final court approval. The consent decree and settlement agreement with the Gulf states are conditional upon each other, and neither will become effective unless: (1) there is final court approval for the consent decree and (2) local government entities execute releases to BP's satisfaction.

The agreements do not cover the remaining costs of the 2012 class action settlements with the plaintiffs' steering committee for economic and property damage and medical claims. They also do not cover claims by individuals and businesses that opted out of the 2012 settlements and/or whose claims were excluded from them. BP will continue to defend those claims vigorously. Today's agreements in principle also do not resolve pending private securities litigation.

Pending Ruling

The settlement resolves the uncertainty of a pending ruling by U.S. District Judge Carl Barbier on the damages that should be assessed against BP over the spill.

In a trial that ended on Feb. 2, the Justice Department had initially [demanded a Clean Water Act fine of \\$18 billion](#), but BP had argued that any fine should be offset by the \$14 billion it already spent on cleaning up the Gulf and a previous [\\$4 billion criminal plea agreement](#) it reached with the Justice Department.

Although Barbier on Feb. 19 had [lowered a potential fine under the U.S. Clean Water Act to \\$13.7 billion based on the number of gallons of oil left in the Gulf of Mexico. he also found last year that BP was grossly negligent, making it liable for the maximum allowable.](#)

"He was going to rule on it, and I think the writing was on the wall when he found gross negligence," said Blaine LeCesne, a professor at Loyola University New Orleans School of Law.

In reality, BP was likely facing at least \$25 billion, he said, given potential Clean Water Act fines of more than \$10 billion, a Natural Resource Damage Assessment of \$10 billion and economic loss claims by the states, counties and parishes that could have totaled \$5 billion.

"So they got quite a discount from that potential \$25 billion by settling all those claims for \$18 billion," he said.

The settlement also allows BP to pay over a period of 18 years—something that Barbier was unlikely to allow in the event of a large verdict. On March 27, BP filed court papers stating that its subsidiary, BP Exploration & Production Inc., would become insolvent if it were forced to pay anything more than [\\$2.3 billion in fines](#). Under the settlement, BP would make payments of less than \$2.3 billion each year.

"That's a significant benefit to BP and certainly was one of the things that motivated them to settle this case," LeCesne said.

BP also had appealed Barbier's Sept. 4 ruling on gross negligence to the U.S. Court of Appeals for the Fifth Circuit, heralding future legal fights that could have proven costly down the line.

"The longer litigation goes on, the most expensive it is, the more uncertainty it continues, and the harder it is to return attention to making profits and exploring and developing oil wells," said Logan.

Federal and state governments still have a pending case against subcontractor Anadarko Petroleum Corp., which co-owned the well where the Deepwater Horizon oil rig exploded.

The deal also is separate from an estimated \$9.9 billion settlement that BP reached in 2012 with individuals and businesses with economic losses tied to the spill. BP has challenged the interpretation of that settlement's terms, appealing various rulings to the Fifth Circuit. [The U.S. Supreme Court declined to hear its appeal on Dec. 8](#). But lawyers representing the plaintiffs have appealed to the Fifth Circuit in arguing that the settlement has [left out thousands of businesses and individuals](#). "It has been settled, but it's not over," said Jere Beasley, principal and founder of Montgomery's Beasley, Allen, Crow, Methvin, Portis & Miles, whose firm colleague, Rhon Jones, serves on the plaintiffs steering committee for that settlement.