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TURNAROUND ADVISORS

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BP Oil Spill Claims

How Banks Can Recover Lost Funds From Borrowers

It's no secret that the BP Oil Spill of 2010 created ripple effects—not just in the ecosystems of the Gulf of Mexico, but also in the industries that operate in and around the greater Gulf Coast area. It's estimated that British Petroleum (BP) will pay approximately \$7.8 billion in claims through the Deepwater Horizon Economic Settlement (DHES). As a bank or as bank counsel, it's important to understand the process of improving recovery from borrowers, through BP oil claims. Here's a step-by-step snapshot of the process.

- April 22, 2014 is the deadline for a company to file a claim with BP.
- Certain industries—including banks or financial institutions, insurance companies and defense contractors—are excluded from the settlement. However, a bank can still recover through the claims of its borrowers.
- To qualify, a business must have a business presence within the states of Alabama, Mississippi Louisiana as well as the upper panhandle of Florida and parts of the Texas gulf coast
- Then a business must determine whether or not it “passes causation.” In order to pass causation, revenue in monthly periods from 2007 through 2009 should reflect a 15% decline, when compared to 2010 revenue (the year of the disaster). In addition, the company's financials should demonstrate a 10% upturn in 2011 (as compared to 2010).
- There are other ways to pass causation, including business closure or revenue continually declining from 2007 through 2011. In general, companies with the largest drop in revenue will have the largest claims.
- If the business passes causation, it likely has a valid claim for some amount. The next step is to calculate it.
- One of the factors in the size of the claim, and thereby the payout, is the business' location. There are four zones with varying criteria for determining the claim. In general, the closer the business is to the Gulf, the easier it will be to pass causation and the larger the payout will be.
- Industries which tend to have substantial claims include construction and manufacturing.

What can a bank do to recover funds from borrowers affected by the BP oil spill?

- First, banks should look at their portfolios and determine the borrowers most likely to be located in the zones and determine which are likely to have revenue trends that would allow the borrower to pass causation.



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- Banks should be in contact with borrowers as soon as possible to find out if they've filed and begun the claims process.
- Moving forward in negotiations with a borrower, the bank should structure forbearance and other agreements in a way that gives them a security interest in the borrower's BP claim.
- Consideration should be given to structuring the timing of maturity dates to coincide with anticipated settlement payments.
- Likewise, covenants can be structured that would require the borrower to use the proceeds of the settlement to reduce its obligations to the bank.
- Since banks can't directly pursue a BP claim for a borrower, they should also consider pursuing guarantors on defaulted business loans, specifically those businesses likely to pass causation. This would be done to compel the business guarantor to pursue recovery of a claim under the settlement for the purpose of reducing the deficiency on the guaranteed loan. Borrowers that operated in the zones for several years before the spill, that survived the spill but ceased operations in 2012, would be prime targets for this approach.
- It's important to consult a financial advisor who is experienced with the BP settlement process and a trusted attorney on the structure so that the bank can properly recover from the BP settlement funds.

This explanation of the process is simplified, but we realize it can still seem overwhelming. Warren Averett Turnaround Advisors is on the forefront of helping banks respond appropriately to distressed business situations and are very experienced with the preparation of these claims. We strive to stay up-to-date on all of the rules, regulations and deadlines of the process and would be happy to assist you or your clients with garnering successful and fair settlements.