



## U.S. Fifth Circuit Upholds Settlement in *Deepwater Horizon* Case Despite Absence of Signed Release, But Remands for Determination on Fraud

On May 15, 2015, the United States Court of Appeals for the Fifth Circuit held that BP formed a binding settlement agreement with a claimant despite the fact that the claimant never signed the release.

Pursuant to an agreement with the White House, certain personal injury claims against BP related to the *Deepwater Horizon* were previously settled through the Gulf Coast Claims Fund (GCCF).<sup>1</sup> If the GCCF determined that a claimant was entitled to a settlement offer, it sent the claimant a Determination Letter with an Election Form, which included the amount offered and stated that the amount “can be paid now if you decide to accept the Final Payment Offer and you sign a Release and Covenant Not to Sue.” The claimant was required to check a box indicating that he or she wished to accept the settlement and sign the form. Once an Election Form was signed and sent back to the GCCF, BP had 14 days to appeal the settlement award. If the award was not appealed, the GCCF sent a Release and Covenant Not to Sue to the claimant to be signed.

In this case, the claimant, Elton Johnson, submitted a claim for which the GCCF determined he was entitled \$2,698,095 and sent a Determination Letter outlining its decision. The claimant checked the box on the Election Form agreeing to the amount of the settlement, signed the form and sent it back to the GCCF. BP did not appeal the GCCF’s settlement offer within 14 days; however, after the fourteen-day period expired, the GCCF determined that Johnson’s claim was “unsubstantiated.” The GCCF then issued a denial letter to the claimant and never sent him a Release and Covenant Not to Sue. BP refused to pay the settlement due to the claim being unsubstantiated. As a result, the claimant filed a breach of contract claim (among others) against BP, claiming that he had a binding settlement contract with BP based on his acceptance of the settlement offer contained in the Determination Letter and Election Form.

The Fifth Circuit agreed. The court held that a reasonable person would construe the Determination Letter as an offer because it used the language of offer and acceptance. The court held that a settlement may be “valid and enforceable even if it contemplates the parties signing a release at a later date.” The court reasoned that by accepting the offer in the Determination Letter by its own terms, the claimant agreed to sign the Release and the parties had a mutual understanding of the terms of the contract. The court held that the signing of the Release was a prerequisite to payment of the settlement, not to formation of the contract, and that the claimant’s failure to sign the Release was excused because the GCCF refused to send it to him. Of note, the court rejected BP’s argument that there was not a valid contract because, as BP argued, if the roles were

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<sup>1</sup> The GCCF also handles the settlement of claims against BP under the Oil Pollution Act.

reversed, BP could not force the claimant to sign the release and accept the settlement amount. The court held the opposite to be true: if the roles were reversed, BP *could* force the claimant to sign the Release.

Based on this reasoning, the Fifth Circuit affirmed the district court's holding that a binding settlement agreement was formed. The court, however, also held that BP could assert fraudulent inducement as a defense to enforcement of the settlement, and remanded the case to the district court to hold an evidentiary hearing on whether the claimant fraudulently induced BP to enter the agreement based on a fabricated claim. In a strenuous dissent, Circuit Judge Owen opined that nothing the claimant signed obligated him to sign the Release. Moreover, the language of the Release expressly stated that a claimant could opt out of the settlement by not signing the agreement. Therefore, BP would not be able to enforce the settlement if the roles were reversed and there was no mutuality, which is required for the formation of a binding contract under federal contract law.

The Fifth Circuit's decision in *In re: Deepwater Horizon* will likely control, at least in part, future disputes over the enforceability of BP's settlement agreements reached through the GCCF. Due to the common use of centralized claims facilities in multi-district litigation, the Fifth Circuit's decision could have a lasting impact in similar cases as well as larger ramifications regarding execution of releases in other civil litigation. We will continue to keep you updated on any future developments in this and similar actions.

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