

To: AICPA Members

From: AICPA Professional Ethics Division Staff

Date: September 8, 2012

Re: Staff Position on Fee Arrangements for Deepwater Horizon Oil Spill (BP Oil Spill) Claims

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## Background

Beginning June 4, 2012, individuals and businesses harmed by the BP Oil Spill may submit claims to receive payments and other benefits from two legal settlements. Some members are assisting clients with filing their claims under the “Deepwater Horizon Economic and Property Damages Settlement Agreement” (“Settlement Agreement”). Based on Staff’s research and discussions with members, the following facts have been presented:

- The Settlement Agreement has been approved by the United States District Court for the Eastern District of Louisiana and that court retains ongoing and exclusive jurisdiction over the settlement program until the consideration and determination of all claims are complete and the settlement program is terminated.
- The Court has established a Court-Supervised Settlement Program (“Program”) to review and pay qualified claims made by individuals and businesses. A Claims Administrator has been appointed by the Court to provide oversight of the Program, which is responsible for implementing and administering the Settlement Agreement, and reports to the Court regarding the Program. The Claims Administrator is also responsible for overseeing the Claims Administration Vendors.
- The Claims Administration Vendors are appointed by the Court (Court Appointee) to evaluate and process claims in accordance with the Settlement Agreement, under the supervision of the Claims Administrator. They are involved in the processing and payment of claims submitted to the Settlement Program, determine whether claims are eligible for payment and, if so, calculate the amount of the settlement payment according to the claims processes described in the Settlement Agreement.
- Under certain circumstances, individuals and businesses may be eligible for reimbursement of accounting services. The Accounting Services Reimbursement [Form](#) that accountants must sign and submit on behalf of claimants in order to get reimbursed requires accountants to “swear and affirm” as to the accuracy of what is submitted. The statement also includes language that requires the accountant to acknowledge that if they have a contingency fee arrangement with the claimant, any payment received by the claimant for accounting support will reduce the contingent fee. The Program indicates that the reimbursement will be limited to the accounting services necessary to complete the claim form or prepare documentation.
- The Program requires that reimbursement requests must be itemized by date and person, and specify the work being performed on behalf of the claimant. The Program indicates that it has the right to request and review any work papers (whether historical or specific

to the Claim), time sheets or other supporting documentation related to the Claim or request for accounting support reimbursement and the reasonableness of the fees.

- The Program will only reimburse eligible claimants for reasonable and necessary accounting fees as set forth in the Settlement. In addition, the total amount of reimbursable accounting fees are subject to specific limits based on the type of claim submitted. As a result, if a claimant hires an accountant who charges an hourly rate or other fees that are greater than what is provided under the Settlement Agreement, the claimant will be responsible for the difference.

### Issue

As part of the services provided to clients under the Settlement Program, members conduct an initial assessment as to whether the client would qualify to receive such payments under the Program; if the client qualifies, members assist the client with preparing the required forms to file with the Court appointee. Members have questioned whether or not they would be in compliance with Rule 302, Contingent Fees if they were to enter into a fee arrangement with an attest client whereby the fee charged is a percentage of the amount approved by the Court appointee for reimbursement for economic loss.

### Analysis and Conclusion

*Under Rule 302, "...a contingent fee is a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. Solely for purposes of this rule, fees are not regarded as being contingent if fixed by courts or other public authorities..."*

Staff has considered whether a fee arrangement whereby the fee is based on a percentage of the reimbursement received as determined by the Court's appointee would be considered "fixed by courts or other public authorities" and therefore exempt from the definition of a contingent fee. In considering this issue, Staff obtained input from five members of the Professional Ethics Executive Committee (PEEC). Based on the facts presented above and input received from the PEEC members, Staff believes that provided the percentage is pre-determined by the firm and the final reimbursement payment is determined by the Court or its appointee, the fee arrangement would meet the intent of the exception in Rule 302 as being "fixed by courts." Accordingly, if a member could demonstrate that the following criteria and safeguards are in place, such a fee arrangement would not be considered contingent under AICPA Rule 302 – *Contingent Fees*:

1. The percentage of the claim amount representing the member's fee is predetermined and agreed upon by the member and the client prior to submission of the claim;
2. The Court or its appointee reviews the client's request for reimbursement for economic loss; and
3. The claim amount awarded the client is determined by the Court or its appointee.

Staff believes that provided the above conditions are in place, the fee would be considered "fixed by courts" and any threats to the member's objectivity would be reduced to an acceptable level.

While Staff has discussed this position with members of the PEEC, this does not represent an official position of the PEEC nor should it be considered authoritative.

Members are cautioned that state boards of accountancy and the Securities and Exchange Commission (SEC) may have more restrictive requirements than AICPA Rule 302 or may take a different position than that taken by AICPA staff. Accordingly, members should contact their state board(s) of accountancy or SEC (if applicable) before entering into such fee arrangements with clients.