THE TIMES

BP’s rapid response hasn’t settled anything

Tony Hayward speaks to reporters on an oil-stained beach in Louisiana in May 2010. The consequences of the spill carry on with no end in sight

John Moore/Getty Images

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Last updated at 12:01AM, October 21 2014

After the Gulf of Mexico oil spill in 2010, BP sold $40 billion of prime assets to stay afloat and spent $42.5 billion on the cleanup, fines and provisions for future costs. It hoped that a quick response could put things right. It was wrong.

Initially, the company estimated that it would have to hand out $7.8 billion in economic damages, but soon it became apparent that the final sum could be billions more. Part of the problem was the terms of a settlement that it had agreed with spill victims and the way in which that agreement was interpreted by those doling out the cash. Money — millions of dollars — appeared to be going to people whose businesses were not affected by the spill. BP was furious.

A nursing home operator in central Louisiana was awarded $662,834, even though it had shut down nearly a year before the spill, BP claimed. A truck company in Alabama, 250 miles from the Gulf, received more than $1.7 million for loss of income, even though its income had declined because it had reduced the size of its fleet long before the disaster. A housebuilder in Florida, who was not even in business before or during the spill, received $273,006.

In a full-page advertisement in *The New York Times* last year, BP asked “Would you pay this claim?” as it outlined the story of an unnamed celebrity chef whose restaurant management company “was awarded more than $8 million” based on a “fictional loss” in the year of the spill.

BP’s anger at such payouts seemed understandable, but it emerged that not all the cases it complained about were quite as cut and dried as the company made them appear. The nursing home, it turned out, did not close down completely but continued some operations on its original site and had sufficient revenue in the year after the spill to pass the test laid out for inclusion in the settlement.

The celebrity chef turned out to be Emeril Lagasse, a popular television personality and the owner of 13 restaurants nationwide. His company hit back at BP, pointing out that the chef’s claim was legitimate under the terms of the settlement and that he had not received any money at that time.

Nevertheless, BP continued to complain about “entirely unwarranted awards” and lawyers representing the so-called phoney claimants were criticised as the worst sort of ambulance chasers, seeking compensation for anyone who cared to chance their luck, even if their losses were not related to the spill.

The company succeeded in obtaining a court order forcing Patrick Juneau, the court-appointed claims administrator, to tighten up the way claims were calculated. This was a victory for BP, but it did not go as far as the company wanted.

In June this year BP launched a lawsuit to claim back money from undeserving claimants, but it was rebuffed by an appeal court that is regarded as the most conservative and pro-business in America. A judge wrote: “There is nothing fundamentally unreasonable about what BP accepted but now wishes it had not.”

The company has taken the case to the US Supreme Court.

Stephen Herman and Jim Roy, the claimants’ lawyers who spearheaded the settlement, believe that BP is suffering from “buyer’s remorse”. They said: “BP co-authored and agreed to every word and formula in the contract that determines whether a business suffered a loss after the spill. BP’s own attorney described the settlement as ‘transparent, objective and data-driven’.

“BP is distorting the facts and trying to rewrite history as it disingenuously attempts to back out of the contract it signed.”

Tom Young, a Florida-based lawyer who represents several spill claimants, believes that BP is wrong to imply that it has handed out money freely to all those who do deserve it. “I have people several years in who haven’t received any money on their claims,” he said. In fact, nearly twice as many claims under the settlement have been denied as have been paid (28,771 to 15,028).

David Berg, a lawyer who has worked on environmental claims but is not representing anyone in the BP case, said that the company had “cut itself a bad deal . . . These situations inevitably arise from the chief executive on one side or the other saying to their lawyers: ‘I don’t give a damn, just get these papers signed.’ I think that in this case Tony Hayward and the other BP executives panicked. They told their lawyers to get the deal done and now we are all in uncharted waters with this settlement.”

Joseph Bruno, a claimants’ lawyer from New Orleans, agrees. “It was an idiotic settlement from BP’s point of view. No one held a gun to their head and made them sign it.”

If BP’s hope all along was that by being generous upfront it would limit the fallout from an epic public relations disaster and stave off more serious action from the US government, it did not work. Last month a court found the company guilty of “gross negligence” for causing the spill. Damages, to be decided in January, could be as high as $17.6 billion. BP has also rejected this finding and has asked for the case to be retried.

Meanwhile, it strenuously denies that it was guilty of signing up to a faulty settlement. It also warns that a “warped application of the settlement” isn’t only BP’s problem. The British government, the US Chamber of Commerce and other business bodies support BP.

The Supreme Court is expected to decide next month whether to take up the case.

In the meantime, genuine claimants wonder how much longer they will have to wait.

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