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Judge green-lights investor claims against BP

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A federal judge has signed off on a large portion of a class action brought on behalf of certain investors in BP PLC shares who sued the company and its senior executives for alleged securities fraud related to the Deepwater Horizon oil spill.

The February 6 ruling by U.S. District Judge Keith Ellison allows investors to go forward on claims that BP and former chief executive officer Anthony Hayward misled the public about the scope of BP's operating management system, or OMS—a safety program introduced before the 2010 disaster spread millions of gallons of oil throughout the Gulf of Mexico.

Ellison particularly focused on the role of Hayward, who led BP from 2007 to 2010, as the "public face" of the company.

"Viewed as a whole, Plaintiffs' factual allegations create a cogent and compelling case that Hayward, deliberately or with severe recklessness, engaged in a publicity campaign that vastly exaggerated the reach and efficacy of OMS," Ellison wrote. "Hayward did not make one or two stray comments about the scope of OMS. He repeatedly emphasized its expansiveness in his most important presentations to investors."

The securities case now goes forward against BP, Hayward and Douglas Suttles, the former chief operating officer of BP's exploration and production unit whose alleged misstatements were not subject to the recent motion to dismiss.

Matthew Edling, a principal at Cotchett, Pitre & McCarthy in Burlingame, Calif., who represents four California investors as named plaintiffs, said the ruling retained 19 of the 29 misrepresentations alleged in the case. "We kept in the chief individual defendant. More importantly, we have the company," he said. "Getting to this point, it's been a long battle. But where we are now is a good position."

Glen DeValerio of Berman DeValerio in Boston, lead counsel for two other named plaintiffs, the Ohio Public Employees Retirement System and Ohio Attorney General Mike DeWine, issued a statement: "We're pleased with the decision, and looking forward to proceeding as quickly as possible to trial."

Steven Toll, a partner at Cohen Milstein Sellers & Toll in Washington who represents named plaintiff New York Comptroller Thomas DiNapoli, did not return a call for comment.

Calls were not returned by lead defense counsel Thomas Taylor, co-chairman of the litigation section at Andrews Kurth in Houston, or Kathleen Goodhart, a partner at Cooley in San Francisco, who represents Andrew Inglis.

The securities case is part of multidistrict litigation pending before Ellison, including a derivative action, a case brought by

individuals seeking dividends, and a class action brought by employees who owned BP stock through their retirement plans.

The litigation is separate from a massive case pending before U.S. District Judge Carl Barbier in New Orleans, which involves economic, environmental and cleanup claims against BP and other companies. Barbier has approved a \$7.8 billion settlement between BP and private plaintiffs who alleged economic damages. Separately, U.S. District Judge Sarah Vance in New Orleans approved a deal with the U.S. Justice Department in which BP agreed to pay \$4 billion in penalties and pleaded guilty to 14 criminal charges.

Not all the statements at issue in the securities case survived. Ellison threw out some attributed to BP as well as all those made by Andrew Inglis, who was chief executive officer of BP's exploration and production business unit from 2007 to 2010.

But the ruling represented a turn-around for plaintiffs' attorneys, who were forced to scale back their proposed class after Ellison on February 13, 2012, dismissed all purchasers of BP's common shares from the case. He cited the U.S. Supreme Court's 2010 ruling in *Morrison v. National Australia Bank* that investors who purchased foreign stock on foreign stock exchanges could not bring claims in U.S. courts.

BP's common stock is traded in London and Frankfurt. The amended complaint, filed on April 2, was brought on behalf of purchasers of American depository receipts, or ADRs, sold on U.S. stock exchanges between January 16, 2007, and May 18, 2010.

Edling said the case still involves an "enormous class" asserting billions of dollars in lost shareholder value.

The amended complaint added new allegations relating to statements made by BP, Hayward, Inglis and Suttles regarding BP's safety program. It also included statements concerning BP's ability to respond to the disaster and the rate at which oil spilled.

The plaintiffs allege that BP "misled investors when it described OMS as a comprehensive, single framework that would govern safety protocols at each and every BP site and operation." In fact, the complaint alleges, the safety program did not apply to offshore drilling operations when BP didn't own the rig. Other statements allegedly misled investors into thinking the safety program had been implemented in the Gulf of Mexico by the end of 2008.

Ellison made a clear distinction between statements attributed to Hayward versus Inglis.

"Both were undeniably high in the corporate hierarchy; as Plaintiffs repeatedly point out, Inglis acknowledged at his deposition that he was second only to Hayward in terms of responsibility and authority for the safety of BP's drilling operations," Ellison wrote. "But only Hayward presented himself as the public face of BP's safety reform efforts. Only Hayward spoke often and at length about the steps BP was taking to improve its process safety record."

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