

DIGITAL DEBRIEF

## Miami lawyer Ervin Gonzalez tackles big cases like BP settlement

Miami lawyer Ervin Gonzalez, one of two Florida attorneys involved with the BP oil spill settlement, has a passion for cases that 'effect change'.



Ervin Gonzalez, in his office at Colson Hicks Eidson, has been appointed to serve on two national plaintiff steering committees — the multidistrict litigation for the Deepwater Horizon BP oil spill and the Chinese Drywall multi-district litigation. TESSA LIGHTY / MIAMI HERALD STAFF 

BY ROCHELLE KOFF  
RKOFF@MIAMIHERALD.COM

Miami lawyer Ervin Gonzalez has been on the forefront of many a controversial case, from medical malpractice to the desecration of graves in a Jewish cemetery. Whether he's fighting for a parent or thousands in a class action suit, like the recent \$7.8 billion Deepwater Horizon BP oil spill settlement, Gonzalez is "passionate" about making a difference.

"I'm a civil attorney," says Gonzalez, talking from New Orleans, where he was working on issues relating to the BP case. "I can't put people in jail or fine them. I have no political power.... But I have the power of what a jury can do" when a victim is wronged, he says.

In a 2005 case, for instance, a Miami jury awarded a \$65.1 million verdict against Eller Media Company for the electrocution death of his client's 12-year-old son. The jury found that the boy's death was caused by shoddy electrical work performed at one of its Miami bus shelters, where he had gone for cover during a storm. Problems were then discovered in other shelters, and today, most are lit by solar panels mounted on the roof rather than by electricity.

"My job is to do the right thing, and through that process, impact important change.," says Gonzalez. "I'm fortunate to be able to pursue a practice that allows me to do what I love the most."

Gonzalez answered questions about the BP settlement and how it differs from other similar suits.

## ERVIN GONZALEZ

**Current title or position:** Partner, Coral Gables-based Colson Hicks Eidson. Board-certified specialist in civil trial law and business litigation by The Florida Bar and The National Board of Trial Advocacy. Adjunct professor at the University of Miami School of Law.

**Education:** law degree, University of Miami School of Law; bachelor of arts from Biscayne College in Miami; Miami's La Salle High School.

**Career highlights:** Appointed to serve on two national plaintiff steering committees — the multidistrict litigation for the Deepwater Horizon BP oil spill and the Chinese Drywall multi-district litigation. Obtained 28 verdicts in excess of a million dollars, including a \$65.1 million verdict in a wrongful death case. Settled a \$100 million class action settlement (15,000 class members) against Menorah Gardens Cemeteries and its parent company Service Corporation International for the desecration of graves.

**Age:** 52

**Family:** Married to Janice B. Gonzalez

### **Q. What are the terms of the proposed Deepwater Horizon BP oil spill settlement?**

The basic goal and achievement of the settlement was to compensate all individuals and businesses affected by the BP oil spill for all economic losses. This settlement does exactly that, providing for incredible flexibility and transparency. The settlement not only provides various options for how actual losses are calculated, but importantly, provide for Risk Transfer Premium (RTP) value that serve as a multiplier to compensate for the risk for future losses and other damages.

### **Q. Who are the beneficiaries of the settlement?**

The settlement applies to a class based on geographic boundaries from Texas to

the Florida Keys. The settlement is limited to the Gulf Coast and West Coast of Florida, but includes all of Louisiana, Mississippi and Alabama. Anyone who worked and lived within these geographic limits that can prove a loss of income will be compensated as beneficiaries.

### **Q. How many people have been paid so far?**

The claims facility is up and running and is working to process the thousands of claims already pending. Payments are expected to start this summer. The most current estimates indicate that the first determinations will be made in August 2012.

### **Q. How did you get involved?**

I was appointed by Judge Carl Barbier to the National Plaintiffs' Steering Committee. The Court selected two attorneys from Florida on this 19-person committee out of hundreds of applicants and I was fortunate to have been selected to serve on the case. (The other Florida lawyer was Brian H. Barr of Pensacola.)

### **Q. What was your role in the settlement negotiations?**

I am a member of the Plaintiff's Steering Committee, and the PSC negotiated and ultimately signed the final settlement agreement that has been preliminarily approved by Judge Barbier.

### **Q. BP has estimated the value of the settlement at \$7.8 billion. Is that a fair estimate?**

The value of the settlement is estimated by BP to be \$7.8 billion, but the reality is that the agreement sets up a program where the actual amount is uncapped. Full damages will be paid. The final amount paid under this agreement will not be known for many years, though the goal of paying for any and all related losses may very well exceed the estimated amount.

### **Q. What are some of the unique aspects of the settlement?**

Probably the most unique aspect of the settlement is the fact that BP will start paying claimants very soon, long before any final approval has been granted by the court. Additionally, the use of geographic zones to determine causation and certain aspects of compensation are also unique to this litigation. A claimant will have to look at more than financial records, but will also require a look at the industry in which they work and the specific location of their business. Geography plays a large role in this settlement, and I can state that these lines of demarcation are designed to compensate fairly all individuals and businesses harmed by the oil spill. Finally, this is one of the few times that a defendant has agreed to pay full damages with limits to all compensable claimants.

**Q. How does the settlement compare to Exxon Valdez?**

The Exxon Valdez oil spill was vastly different in terms of scope and harm than the BP Oil Spill. That litigation took nearly 20 years before payments were made to people harmed, and in fact, some aspects of that litigation continue today. In contrast, the PSC in this litigation has provided for compensation through settlement in less than 2 ½ years from the time the Deepwater Horizon exploded and sank. Beyond the speed of this resolution, the amount of money dwarfs the funds paid to claimants in the Exxon Valdez litigation. The BP settlement currently in operation will pay for all economic damages for all claimants.

**Q. What is your message for critics of the settlement?**

Some members of the class have indeed criticized the terms of the agreement. For any and all of those class members that believe they can obtain better results outside the terms of the agreement, they have the option of opting out of the agreement and pursuing their case in court. That being said, I stress the importance of this settlement agreement and the extensive benefits it provides to the vast majority of all potential claimants.

**Q. What is the status of the Gulf Coast Claims Facility established by BP?**

The GCCF no longer exists, as of Judge Barbier's Order establishing the transition to the settlement procedures. All of the data and documents previously submitted to the GCCF has already been transferred to the Court supervised claims process and will be used in calculating damages awards under the settlement. The GCCF run by Kenneth Feinberg has been closed since the settlement was agreed upon.

**Q. What are some of the other unique factors of the settlement?**

The most subtle and important aspect of this agreement is that every decision will be supervised by the Court. Any disputes will be decided by the Court itself... very much unlike the GCCF process. Further, this process will be transparent such that each claimant will see the precise formula used to determine the final compensation. If a claimant receives an offer less than expected, they will see why and how that number was determined, and if a challenge is required, they can appeal it first to the claims administrator and then to the Court itself.

**Q. Is this a final resolution for victims?**

For anyone affected by the oil spill that chooses to participate in the settlement, yes, this will be a final resolution. In order to recover under the settlement, a claimant must sign a full and final release and will not be able to pursue BP.

**Q. Is the settlement mandatory for plaintiffs?**

No. This settlement is not mandatory, though people and businesses that do not want to participate in the agreement must opt out before October 1, 2012. If a member of the class fails to opt out by that time, they will waive their right to opt out at a later date.

**Q. When will the settlement receive final court approval? Do you anticipate any challenges?**

Judge Barbier will consider final approval of the settlement in November 2012. While we expect approval to come shortly after the hearing on the subject, we also expect a number of challenges to come from a number of sources. Because this settlement gives any potential claimant the option of pursuing recovery outside of the settlement, the PSC expects full approval to come from Judge Barbier.

**Q. Where can people go to file a claim or to get more information on the terms of the settlement?**

A claimant may file a claim online, through the mail, or in person at a claims facility close to them. All information is available at [www.deepwaterhorizonsettlements.com](http://www.deepwaterhorizonsettlements.com) or by calling 1-866-992-6174.

**Q. Who are the beneficiaries of these settlements?**

The victims of the spill who suffered damages.

**Q. What is the benefit of class action lawsuits?**

To allow numerous victims to recover without having to actively pursue the claim so as to make the responsible party accountable for its acts.

**Q. What are some of the challenges of a class action suit?**

Gathering and organizing millions of documents. Taking hundreds of depositions and organizing billions in damage assessment evidence.

**Q. What do you hope oil companies will learn from this?**

Hopefully this multibillion dollar settlement will remind the oil companies that deep ocean drilling is an extremely dangerous activity that puts peoples' lives, health, businesses, work, the eco system and our precious environment at risk. Deepwater drilling must be done correctly and safely or not at all.

This must never happen again.

**On a more personal note:**

**Q. What was your first job?**

I worked as a bag boy and stock man at Winn Dixie while in High School at LaSalle high.

**Q. What advice would you give to today's law students?**

Find and pursue your passion.

**Q. What's the last book you read.**

"The last Boy," a biography about Mickey Mantle

<http://www.miamiherald.com/2012/07/23/v-fullstory/2907544/miami-lawyer-erwin-gonzalez-tackles.html>