

The Virgin Islands Consortium

Senate Committee Approves \$1 Million For GVI/HOVENSA Court Battle

Business / **Published On March 04, 2015 01:46 PM /**

Ernice Gilbert **March 04, 2015**



The Senate Committee on Finance, chaired by Sen. Clifford Graham, Tuesday approved \$1 million for the Government of the Virgin Islands to battle HOVENSA in court for the \$40 million the refinery owes the government from a previous court settlement. Furthermore, the money is expected to be used for litigation pertaining to the government's intent to foreclose on the refinery and other environmental issues at the site.

Gov. Mapp has proposed that funds to fight HOVENSA be taken from the government's Insurance Guaranty Fund, which exists to cover Virgin Islanders against insurance companies that fail. The Fund pays the remaining length of eligible residents' insurance

terms if an insurance company becomes insolvent.

The Fund, which originally had a threshold of \$50 million before 2011, is supplied by monies collected through a five percent gross receipt tax paid on all insurance policies in the territory -- with \$15 - \$20 million being collected each year. In 2011, the threshold had been cut down to \$10 million by the 29th Legislature. That threshold is expected to expire in September of this year.

Sen. Marvin Blyden along with Senate President Neville James proposed an alternative measure, however. One that would allow funds for the litigation to be taken from any government source, once those funds were available. That measure was discussed before the Committee.

In his testimony before the Committee, Department of Finance Commissioner-designee Valdamier O. Collens said the Mapp administration has the authority, by law, to use the money made available in the Fund, as long as it does not dip under \$10 million. Currently, there is \$14.9 million in the Fund, leaving about \$4.9 million available for the administration to use.

Nonetheless, Collens said that in an effort to remain transparent through the process, the administration was requesting the Legislature's approval to access the funds and also because the current budget shortfall would increase by \$1 million if the funds are appropriated.

Mapp Administration Pushes Back Against HOVENSA

Gov. Mapp pushed back against the stance HOVENSA took in a meeting he and senior staff members conducted with the owners of the shuttered refinery earlier this year, and in a Jan. 14 press conference, the governor revealed he had ordered then-Attorney General Soraya Diase-Coffelt to file suit against HOVENSA in the District Court of the Virgin Islands. Mapp's Chief Legal Counsel Emile Henderson III took up the case when Diase-Coffelt resigned.

According to the governor, Timothy Goodell, senior vice president of Hess Corp., made clear that the only way the V.I. Government would receive the \$40 million owed it by HOVENSA is if HOVENSA is able to sell the refinery.

"During the conversation, in response to our position, Mr. Timothy Goodell presented pretty much three options — one, that the plant be sold and the government enter into an operating agreement with it so that we could move forward. [However], if they were unable to sell, or if the government was unable to find an operating agreement, then they would move to close the plant by the end of February," Mapp said.

He continued, "What seemed strange in Mr. Goodell's comments to me was he indicated that if they were unable to sell the plant, for which proceeds of the sale would be used to pay the government its \$40 million that were due on December 31st, 2014, they would use those sums to bring the refinery plant to a mothball close, and then seek to file bankruptcy.

"I was a bit dismayed by the comment and asked for some clarification, and it was restated. And so, in short, and in layman's terms, what Mr. Goodell said was that, 'I have

your \$40 million and if we are unable to get a buyer who will provide \$40 million to pay for it, the \$40 million that is due and owing to you, we would use that money to mothball the plant and shut it down.'

"I've loaned folks money, so I know what that meant," the governor said.

The \$40 million in settlement claims Mapp is referring to derived from an oil leak HOVENSA reported back in 1982 -- one of the largest oil spills in U.S. history with over 43 million gallons, according to the [EPA](#). To compare, the largest oil spill in U.S. history occurred on April 20, 2010 with the explosion and sinking of the Deepwater Horizon oil rig in the Gulf of Mexico that killed 11 people. According to the [Smithsonian website](#), "underwater cameras revealed the BP pipe was leaking oil and gas on the ocean floor about 42 miles off the coast of Louisiana. By the time the well was capped on July 15, 2010 (87 days later), an estimated 3.19 million barrels of oil had leaked into the Gulf" -- over 130 million gallons.

Of the \$800 million assessed in environmental damages from the oil spill, the government settled with HOVENSA for \$43.5 million, of which \$3.5 million was paid to the government as part of the settlement signing. The remaining \$40 million was due the government upon the sale of the refinery or on December 31, 2014, whichever came first. Neither has happened.

The Mapp administration moved to swiftly issue a notice of breach of contract to HESS Oil and to PDVSA, HOVENSA's owners, "letting them know that the \$40 million that were due and owing is a breach of the Settlement Arrangement, to advise the District Court of a breach of a Settlement Arrangement, and to file a motion for the reopening of the litigation on the contamination issues," Mapp said.

After questioning by Committee members on Tuesday, Atty. Henderson revealed that although the \$3.5 million had been issued since May 2014, the funds had not been deposited into the government's treasury. He said the money currently sits in an escrow account for Jack Dema, the attorney handling the National Resource Damage lawsuits against HOVENSA that began under the de Jongh administration.

"The \$3.5 million was paid by HOVENSA. It did not come through any accounts for the government's treasury and so that's as much as I can say at this point," Henderson said. "My understanding is that the \$3.5 million was paid to the escrow account of the attorney handling the NRD lawsuits."

Henderson, who testified at the Committee hearing in the absence of Acting Attorney General Terri Griffiths, said the governor's office is currently looking into how it could transfer the funds to the government's treasury.

Members of the Committee on Finance who voted on the measure to appropriate \$1 million for litigation against HOVENSA from any government funding source available are as follows:

Sen. Kurt Vialet ? **Yes**

Sen. Marvin Blyden ? **Yes**

Sen. Terrence "Positive" Nelson -- **Yes**

Sen. Myron Jackson ? *Absent*

Sen. Sammuel Sanes ? **Yes**

Sen. Clifford Graham ? **Yes**

The bill now heads to the full Senate body for approval.

Correction: March 5, 2015

A previous version of this story said that the HOVENSA oil spill discovered in 1982 was the largest spill in U.S. history. That's incorrect. The largest oil spill in U.S. history was the 2010 Deep Horizon oil rig explosion in the Gulf of Mexico, [leaking an estimated 130 million barrels](#) into the ocean, [compared to HOVENSA's 43 million](#). The story has been updated to reflect the correct information.