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Gulf oil spill lawsuit primer

BP's next big gusher

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Since the tragedy in the Gulf struck on April 20, a veritable flood of litigation has ensued. As of the time of publication, over 250 civil lawsuits have been filed as a result of the disaster.

These lawsuits have been

filed against any combination of the principal players and have been filed in all the Gulf region states. Individual lawsuits have been filed by those injured in the initial explosion, and by the families of those killed.



Reynolds

Class-action lawsuits have been filed by property owners, commercial fishermen, restaurateurs and charter boat captains, among many other class of people and companies. Other types of lawsuits have also, or soon will be, filed such as shareholder suits against the principal players, for example.

Further, many states' attorneys general have coordinated investigative efforts

for probable suits, and the federal government is investigating the possibility of filing criminal actions against the parties involved.

While defense lawyers certainly stand to also make money on this litigation, plaintiffs' attorneys have infiltrated the area in search of massive payouts. Plaintiffs' attorneys stand to gain tens or even hundreds of millions of dollars in fees.

Billboards advertising lawsuits can be seen along the Gulf coast, as radio and television commercials run daily. Key plaintiffs' attorneys have been holding summits to discuss the lawsuits, while vying for control of the litigation.

Recent news that BP placed \$20 billion to pay legitimate claims into an escrow account they don't control sent shockwaves through the plaintiffs' attorney community. First, this action shows BP's willingness to settle legitimate claims in advance of protracted litigation.

Second, plaintiffs' attorneys are worried because claimants can avoid costly attorneys' fees by filing claims without a lawyer's help and



The April 20 Deepwater Horizon oil drilling rig explosion and subsequent oil spill in the northern Gulf is expected to attract multi-billion-dollar litigation. The accident killed 11 workers and sank the rig, unleashing untold environmental damage. (M. Ryder/Tribune Media Services)

must waive their rights to later sue BP in court. Plaintiffs' lawyers are scrambling to try to figure out how to protect their desired pay day.

The parties involved

Three companies own the mineral lease at the heart of the Gulf disaster - BP, PLC owned a 65 percent operating interest, Anadarko Petroleum Corporation owned a 25 percent non-operating interest, and Mitsui & Co. (U.S.A) owned a 10 percent non-operating interest.

Other principal companies include Transocean, LTD. (owned and operated the Deepwater Horizon vessel), Hyundai Heavy Industries Co., LTD. (designed and manufactured the Deepwater Horizon), Halliburton Energy Services, Inc. (conducted cementing operations of the well and blown-out well cap), and Cameron International Corp. (manufactured the blowout preventers).

While BP has acted quickly in accepting its responsibility

Litigation: Unlike Exxon Valdez, BP cases likely to go faster

under the Oil Pollution Act for the clean-up stemming from the initial explosion and setting up an escrow account to reimburse legitimate economic claims, it has blamed others for causing the explosion. Many of the parties thus far have blamed BP for allegedly being grossly negligent in conducting the drilling operations.

BP blames Transocean and Cameron for the failure of a big set of valves on the sea floor, the blow-out preventers, to halt the blowout once it started. Transocean has also blamed Halliburton, saying that the blowout was a result of a failure of the well's lining and was caused by a sudden catastrophic failure of the cement, the casing, or both.

Halliburton blames BP and Transocean, saying that it was simply following Transocean's instructions in conducting its cementing operations, and that BP made key decisions which ultimately didn't keep underground gas from coming up the pipe. At the heart of the tragedy was the failure of the blowout preventers, manufactured by Cameron. This is a huge fight.

Multi-district

For those claimants who opt for the judicial process to bring forth their claims rather than capitalize on BP's \$20 billion escrow fund, their lawsuits are expected to be consolidated due to the

magnitude and complexity of the impending litigation.

Multi-district litigation (MDL) refers to a special federal legal procedure designed to speed the process of handling complex cases such as disaster litigation. Cases subject to MDL (civil actions involving one or more common questions of fact) are sent from one court, known as the transferor, to another, known as the transferee, for all pretrial proceedings and discovery.

The cases retain their individual identities, and any cases not settled or dismissed in the transferee court are sent back to the transferor court for the actual trial.

MDL benefits all parties by providing an efficient, cost-effective. The MDL judicial panel will meet on July 29 to decide whether to consolidate the cases, and if so, which judicial district will be used as the forum.

Defense counsel would prefer this litigation to proceed in Houston where most defendants have their headquarters, where there are key witnesses and most of the documents are located, and where they feel they have the best shot.

Most plaintiffs' lawyers would prefer New Orleans where they argue that most of those injured or presumed dead are from, and which is the closest state to the accident site.

They feel New Orleans gives them the best shot and will move the cases quickly along. However, my projection is that it will be at least two years, under the best of circumstances, before any suits move forward to trial.

Mississippi cases

BP has already demonstrated a willingness to compensate legitimate claim holders by contributing \$20 billion to an escrow account, and entrusting the fund's facilitation to an independent third party.

To date, BP has already paid in excess of \$200 million to more than 32,000 claimants. Thus far, BP has also delivered on its promise to cover all clean-up costs, which is independent of the \$20 billion claims account.

Simply put, BP has not displayed any desire to aggressively litigate against most claims. By contrast, Exxon took a different approach in the wake of the Exxon Valdez spill.

As a result of the 1989 Valdez disaster, litigation was filed on behalf of 38,000 litigants. Exxon defended each claim, and appealed a 1994 jury verdict awarding the plaintiffs \$287 million in compensatory damages and \$5 billion in punitive damages.

The punitive damages were ultimately reduced to just over \$500 million by the Su-

preme Court, and it was not until 2008, 19 years after the Valdez spill, that a settlement was reached that included Exxon's paying 75 percent of the \$500-million-plus in punitive damages. Currently, Exxon is contesting a court's award of interest on its payment of punitive damages.

I believe that all the current federal suits, and all subsequently filed federal cases, will be consolidated to an MDL forum.

Like any company, BP will certainly use the judicial process to fight claims which lack merit.

But through its actions, BP has declared that it wishes to quickly reimburse all legitimate claimants. Because the legitimate claimants have a quick avenue to recover their losses, it is far less likely that most of the litigation will span two decades, as seen with the Exxon Valdez disaster.

Jeffrey P. Reynolds is a Jackson defense attorney who has represented oil and gas companies including BP, ExxonMobil, Marathon Oil Co., Murphy Oil Co., Conoco-Phillips Petroleum Co., Total Petrochemicals USA, Inc., and others in litigation. Contact him at jeff@jprpa.com.