

BP civil trial opens

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Nearly three years after the Deepwater Horizon oil rig explosion, which killed 11 workers and leaked more than 4 million barrels of oil into the Gulf of Mexico, the federal civil trial of oil giant BP began Monday. The total that would be paid out under the Clean Water Act could amount to \$17.6 billion.

This trial comes after BP settled last November for \$4.5 billion toward all criminal charges relating to the 2010 spill, where it pled guilty to 11 counts of manslaughter, one count of obstruction of Congress and two other misdemeanors. Settlement discussions for the civil charges are ongoing.

The defendants of the trial include rig operator BP, rig owner Transocean Ltd, cement services provider Halliburton Co., the blowout preventer manufacturer Cameron, and fluids, materials and services provider M-I. All will pay a percentage of the total amount levied, determined by the presiding judge, Carl Barbier.

The plaintiffs, or claimants, include the federal government, the states of Louisiana and Alabama, along with numerous other private individuals and entities who have not already settled with the defendants over claims related to the spill. The main charges against BP are being leveled under the Clean Water Act of 1972 and Oil Pollution Act of 1990.

The trial itself is split into two major parts. The first phase, expected to last three months, will determine whether BP acted with “gross negligence” under the Clean Water Act, defined as “wanton and reckless conduct.” If the charge holds the companies will be fined a collective \$4,300 per barrel of oil spilled into the Gulf. The lower violation of “negligence” would only amount to fines of \$1,100 per barrel.

BP in particular wants to avoid the charge of “gross negligence” because of the potential for punitive damages. These are awarded on top of general damages for civil lawsuits, the purpose being to deter similar misconduct in the future. However, since the 1970s, US

business and insurance groups have criticized such charges as driving up their costs. The US government has responded by limiting punitive damages as much as possible. This was notable in 2008, when the US Supreme Court reduced the punitive damages against Exxon for the 1989 Exxon Valdez oil spill to \$507.5 million, or just 1.25 percent of the company’s 2007 profits.

The second phase of the trial will determine precisely how much oil was spilled into the Gulf of Mexico. Already, the US government has revised downwards its estimate of how much oil was spilled into the Gulf of Mexico by 810,000 barrels, the amount BP claims was recovered by containment devices before the well was capped. This limits the amount of oil that will figure into the Clean Water Act fines to 4.1 million barrels. BP also claims that the currently accepted oil flow rate is 20 percent too high, though it has not issued its own values.

Although the trial has started, attempts to reach a settlement between BP and the federal government are ongoing. As the trial began, it emerged that federal and state officials offered a settlement to BP that would involve only \$6 billion in fines under the Clean Water Act and \$9 billion in penalties to cover damages to natural resources and the cost of restoration. A further \$1 billion would be for a fund for unanticipated environmental damages that develop related to the spill.

BP rejected the offer. Its general counsel Rupert Bondy called the offer “excessive and not based on reality.” This is under conditions where the total damages from the spill are in the several hundreds of billions of dollars. The Mississippi Delta region alone, which was ravaged by the spill, has a minimum estimated worth of \$330 billion, with higher estimates placing it at more than \$1 trillion.

The company is most likely hoping that something along the lines of the settlement finally approved by the

same Judge Barbier last December, in which BP agreed to pay approximately \$8.5 billion (up from a previous \$7.8 billion) to the 100,000 fishermen and small businesses in the Gulf region, will be determined. BP and the other companies involved are doing their utmost to get off with a financial slap on the wrist for causing one of the worst environmental disasters in US history.

In addition, BP has well placed confidence that the Obama administration will not see its assets impacted too severely. To date, only four people have been held accountable for the explosion, including only one BP executive, former vice president of Gulf of Mexico production David Rainey. His only charge is obstruction of Congress.

The Obama administration only asked for an escrow fund of \$20 billion to compensate the entire Gulf Coast, to be distributed by Kenneth Feinberg, well known in government and corporate circles for protecting the interests of the wealthy. To date, less than half of the fund has been distributed.

BP also acted in collaboration with the US Coast Guard to prevent any independent investigation of the spill. BP chartered the fleet of boats in the Gulf and forced them to stay in the docks, rather than assess the extent of the damages. Anyone attempting to circumvent this effort was turned away by armed Coast Guard officers.

Finally, BP has been allowed to resume and even expand operations in the Gulf. It is bringing two more rigs online in the Gulf this year, bringing its total operational rigs to nine.

As has been the case for the past three years, while BP and the other companies involved may pay token amounts for the restoration of the Gulf of Mexico, the entire process will ensure they remain as profitable as possible.



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