

BP attempts to dodge fines in connection with Gulf Coast oil disaster

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London-based oil giant BP is waging a new offensive on multiple fronts to evade culpability and reduce settlement payments in connection with the 2010 oil spill in the Gulf of Mexico that resulted in the deaths of 11 workers and the work environmental catastrophe in US history.

Two months after the end of the first phase of the oil spill trial, lawyers on both sides submitted legal briefs to US District Judge Carl Barbier last Friday. The documents, hundreds of pages long, are the final efforts of both the plaintiffs and defendants to influence Judge Barbier's ruling as to whether or not BP, Transocean and Halliburton acted with gross negligence or willful misconduct in the disaster. If found grossly negligent, the companies will face heavy fines of \$4,300 per spilled barrel of oil under the Clean Water Protection Act as well as punitive damages to private plaintiffs and the Gulf Coast states.

According to official estimates, the sum total of fines could amount to anywhere from \$4 billion to \$17.5 billion. The exact total is contingent upon the approximate amount of oil leaked into the Gulf. The second phase of the trial will focus on defining this amount. The presiding federal judge, however, is expected to lower the total amount in fines if he or she finds the companies made adequate efforts to limit the spill's effects.

Among such "efforts" to be considered by the judge could be BP's recent announcement of a \$594 million early settlement fund for the Gulf Coast states. The plan, announced last month, aims to "restore" the area to its "baseline condition." \$197 million of this sum is dedicated to various "human (recreational) use" projects aimed at boosting the tourism industry. In this context, it is evident the plan represents a move to buy off the Gulf Coast states and improve the company's

public image in the lead-up to the rulings of the first and second phases of the trial.

Attorneys for the Gulf Coast states and the plaintiffs maintain that the defendants should be considered guilty of both charges. They contend that BP and its partners—Transocean, which owned the Deepwater Horizon rig and employed the workers drilling in the Macondo well, and Halliburton, which BP called upon to provide cement to plug the well—bear full responsibility for the disaster.

BP continues to deny its culpability in the spill. The disaster, its lawyers claim, "resulted from a series of independent acts and omissions by multiple parties that had the effect, when combined, of overcoming the state-of-the-art safety systems in place." Their constant refrain of "multiple parties" is part of an effort to shift blame onto Transocean and Halliburton in order to further minimize the amount of fines and reparations it will have to pay.

At the same time, BP has been involved a bitter legal struggle in an effort to halt disputed compensation payments. The company recently sued to block the payment of billions of dollars in settlement claims. They accuse court-appointed attorney Patrick Juneau of rewriting the approved settlement deal. Juneau took over the claims processing of the \$20 billion settlement fund from Kenneth Feinberg last year.

BP officials allege that Juneau, in charge of cases for tens of thousands of local residents and businesses, has exposed the company to what they consider "fictitious" claims. Judge Barbier ruled that Juneau was fair in his calculation of settlement payments. BP has appealed the ruling, and the 5th Circuit Court of Appeals will hear their case in July.

What is more, BP has accused one of Juneau's attorneys of misconduct. The attorney, Lionel H. Sutton

III, allegedly collected portions of settlement payments from a New Orleans law firm to which he had once referred settlements. The company filed a formal claim against the attorney during a closed-door session with Judge Barbier last Thursday. Under pressure from the court, Juneau suspended Sutton that same day and has since opened an investigation into his activities.

A report leaked to the Associated Press outlines the allegations against Sutton. The report cites a series of email exchanges in which Sutton allegedly inquires about a sum of \$500,000 owed to him from settlement payments to an individual who filed several seafood-related claims. The email supposedly reads, “They sent you the check for my fee. The total fee on (the claimant) was 10k (+ or -). They sent you 5 for me and kept the other 5.” The legitimacy of the details in the report are currently being investigated.

Whether Sutton is guilty of misconduct or not, BP will undoubtedly use the investigation to strengthen their case to avoid paying out the full extent of their \$20 billion settlement fund. Even if he is guilty, such misconduct does not even begin to compare to the criminality of BP.

In 2011, it was reported that recipients receiving approximately \$2 billion worth of claims were required to waive their legal right to demand further compensation. These claimants accepted settlements, many times thousands of dollars less than their real losses, to forego multiple years of litigation. Under Feinberg, the notorious “5 percent rule” became a requirement. The rule required business claimants, most of whom were fishermen and small business owners ruined by the spill, to demonstrate a 5 percent growth in annual revenue in order to continue receiving interim payments.

BP has also denied responsibility in the unbridled use of the dispersant Corexit in the initial period of cleanup. Corexit, which had never been used in cleanup efforts before, has now been linked to very serious health problems among Gulf Coast residents and cleanup workers who were exposed to it.

Finally, BP is intensifying its efforts to renege upon its agreements concerning its role in cleanup efforts. Two weeks ago, BP announced that it has ended official “response” actions involving oil sightings in Mississippi, Alabama and Florida. Company officials have also repeatedly attempted to cease response

actions in Louisiana, despite the fact that oil still remains along the coast and that over 2.2 million pounds of oily materials were collected during the course of April and May.

Furthermore, BP and the US Coast Guard have both refused to establish any plans to inspect Louisiana beaches and wetlands for oil in the event of a hurricane or tropical storm. This is particularly significant. In the aftermath of Hurricane Isaac, which hit Louisiana last August, the high winds and storm surges unearthed large quantities of oily material across the state’s coast and wetlands.



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