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Newsroom

Logan on Simple v. Gross Negligence

Dean David Logan explains why BP's liability will likely hinge on how negligent the company's conduct was during the Gulf of Mexico oil spill two years ago.

FROM al.com: "BP conduct 'simple' or 'gross' negligence? Answer could mean billions of dollars" by

Brendan Kirby | bkirby@al.com



NEW ORLEANS, November 16, 2012: The difference between reaping a massive windfall from BP PLC and merely a large one likely will hinge on the question of how negligent the company's conduct was during the Gulf of Mexico oil spill two years ago.

The difference could amount to billions of dollars for the federal government – as well as Alabama and the other states suing the British oil giant – and experts said it is likely the sides will negotiate a settlement rather than allowing a jury to answer that question.



“I think most lawyers in high-stakes litigation look for a way to reach a settlement to keep it away from situations they can’t control,” **said David Logan, dean of the Roger Williams School of Law in Rhode Island.**

BP has worked hard to keep lawsuits out of court. It negotiated a settlement in March worth an estimated \$7.8 billion with lawyers representing 100,000 of people and businesses impacted by the oil spill that resulted from the explosion of the Deepwater Horizon well. And this week, it agreed to pay the federal government \$4.5 billion over five years to settle criminal charges.

The incentives for striking deals to keep the lawyers at bay are obvious, **Logan said.** Submitting to the jury risks explosive and unpredictable costs that could weigh on the company for years.

“This is a bet-your-company risk here for BP,” **Logan said.** “This is something approaching an existential threat to BP.”

But **Logan said** the governments involved in the litigation are not without risks, also. Losing or even obtaining a lesser damage award could create a black eye for the plaintiffs.

John Carroll, the dean of Samford University's Cumberland School of Law in Birmingham, said he also expects the litigation to end with settlements.

Legal experts generally speak of three levels of liability – simple or plain negligence, gross negligence and intentional conduct.

Intentional conduct, as it sounds, involves a willful act to cause a wrong – such as a driver pressing down on the gas pedal of a car in an attempt to run someone over.

That is not an issue in the oil spill. Instead, the issue revolves around simple vs. gross negligence.

“It’s not a simple issue at a couple of levels,” **Logan said.**

Simple negligence refers to a defendant ignoring risks, while gross negligence refers to a “substantial and unjustifiable risk,” Carroll said. Or, as he put it, a deliberate indifference to the likelihood that “bad things are likely to happen.”

Logan offered the analogy of a car crash. A driver who looks down to adjust an iPhone may be guilty of simple negligence, he said. A driver who gets drunk and then takes the wheel would be guilty of something more egregious.

In the context of the BP litigation, Carroll said, a onetime accident probably is insufficient to prove gross negligence.

“Obviously, gross negligence is evidence that would support a finding that you knew of problems in the past that you have consistently ignored,” he said. “It’s almost equivalent to the concept in criminal law of willful blindness. ... It would be hard to prove gross negligence in a single incident.”

The determination would be “hugely significant” to the case, **Logan said.**

Under the Clean Water Act and Oil Pollution Act, BP would be fined \$1,000 for every barrel of oil spilled as a result of simple negligence. Gross negligence increases the fines to \$4,300 per barrel. The aggregate difference could be \$22 billion instead of \$5.4 billion.

“That’s the whole reason why BP would be scared,” **Logan said.** “It’s sort of like the difference between going from a misdemeanor to a felony.”

In establishing gross negligence, experts said, it is important for the plaintiffs to show that the Deepwater Horizon explosion was more than a simple accident. **Logan said** findings that BP ignored safety warnings, cut corners and failed to address problems cited by regulators all would play into it.

"One bad day on the rig" like would not be enough, **he said**.