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Newsroom

Logan on BP 'Battlefield' in Financial Times

Dean David Logan tells the Financial Times of London what's at stake in current discussions to determine the legal contours of oil-spill-related claims against BP.

The *Financial Times* of London on Sunday cited **Dean David A. Logan** in an article titled "[Judges draw up battlefield for BP damages](#)," by Michael Peel, Legal Correspondent:

July 18, 2010: BP is facing its first big public legal skirmish over the Gulf of Mexico disaster, at a hearing thousands of kilometres away that could have an impact on how much it ends up paying in compensation claims.

A panel of judges in Idaho in the US Pacific north-west is due to rule this month in a technical but significant battle over where scores of lawsuits launched by businesses ranging from oyster houses to estate agents should be heard.

Experts say the result matters because it could help determine the legal, political and emotional climate that governs years of litigation, particularly if the cases are allocated to the heart of the area affected by the oil leak, now nearly three months old.

David Logan, professor at the Roger Williams University school of law, says the procedural steps set in motion by the panel will "basically set the contours of the battlefield" where BP's financial liability will be



partly determined.

"Where this ends up being tried, how quick-moving it is, how pro-plaintiff or pro-defendant the judges are, can all have a huge impact on the settlement value," he says.

The compensation claimants and BP are preparing for a July 29 hearing in Boise of the Judicial Panel on Multidistrict Litigation, a roving group of seven judges that meets six times a year to decide how to deal with geographically dispersed mass lawsuits against corporations. The panel has the power to send cases to a state and nominate a judge, who would then decide whether to bundle the lawsuits together in a piece of super-litigation like that seen in the Exxon Valdez oil spill case.

The main emerging dispute so far is over where the BP-related cases should be heard, with most plaintiffs opting for Louisiana and the company favouring Texas. Legal experts say both sides will have made their choice according to what they think the level of anger about the leak will be among members of the public, from whom juries will be drawn.

Tim Howard, an academic who is also representing a group of businesses suing BP, says: "From the plaintiff side it makes sense to have it in Louisiana, the epicentre of the damage and harm. Houston has been an oil-industry-dominated town. The type of juries you get there, the type of media coverage, will be much more sympathetic to the oil industry."

BP declined to comment.

The panel's choice of judge could also prove highly significant, legal experts say. He or she will have to decide whether BP should be forced to disclose certain documents on which individual lawsuits may stand or fall.

Erin Ryan, a professor at the William & Mary Law School, says: "Because the facts yielded during [document] discovery will frame what is argued at trial, oversight of this process is tremendously important, with significant stakes for both sides."

Another consideration for the panel is whether any judge they nominate risks being pressed to recuse himself because he holds stock in BP or another company among the half dozen or more that are emerging as co-defendants. The question arose last month when Martin Feldman, a Louisiana federal judge, threw out a US government ban on offshore oil drilling. According to a 2008 financial disclosure report, he owned shares in many offshore drilling companies, including Transocean, owner of the Deepwater Horizon rig leased by BP.

The panel's final view will also be formed by a range of other factors, observers say, including the logistics of the trial, the convenience of the parties and the location of important documents. In a sign that the arguments may be unusually intense and complex, the panel judges have allocated the BP case double the half hour or so normally allowed for oral legal arguments.

The rich legal gumbo in the BP case makes for a tricky decision for the panel. Most importantly, the judges will have to quell what Doug Kysar, a professor at Yale Law School, describes as the “potential for the appearance of bias in both directions” in an emotive case.

He says: “Usually the [panel] would place a lot of weight on the location of the incident, necessary witnesses, and the domicile of the parties, all of which would point towards New Orleans. But the panel must also consider fundamental fairness – and in this case that might suggest locating a trial judge who is entirely unrelated to the parties and the accident.”

For full article, click [here](http://www.ft.com/cms/s/6ab0c926-928b-11df-9142-00144feab49a,Authorised=false.html?_i_location=http%3A%2F%2Fwww.ft.com%2Fcms%2Fs%2F0%2F6ab0c926-928b-11df-9142-00144feab49a.html%3Fsiteedition%3Duk&siteedition=uk&_i_referer=http%3A%2F%2Flaw.rwu.edu%2Fstory%2Flogan-bp-battlefield-financial-times#axzz2mLOH3VTI). [http://www.ft.com/cms/s/6ab0c926-928b-11df-9142-00144feab49a,Authorised=false.html?_i_location=http%3A%2F%2Fwww.ft.com%2Fcms%2Fs%2F0%2F6ab0c926-928b-11df-9142-00144feab49a.html%3Fsiteedition%3Duk&siteedition=uk&_i_referer=http%3A%2F%2Flaw.rwu.edu%2Fstory%2Flogan-bp-battlefield-financial-times#axzz2mLOH3VTI]