

2-22-2013

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Roger Williams University School of Law

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Recommended Citation

Roger Williams University School of Law, "Newsroom: Logan on BP Oil Spill Trial" (2013). *Life of the Law School (1993-)*. 183.
https://docs.rwu.edu/law_archives_life/183

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Newsroom

Logan on BP Oil Spill Trial

Dean David Logan tells the New Orleans Times-Picayune what's at stake as the long-awaited Gulf Oil Spill civil trial against BP and its partners begins.

From the New Orleans Times-Picayune: ["BP oil spill trial begins Monday in New Orleans almost three years after one of the worst spills in U.S. history"](#) by Mark Schleifstein and Richard Thompson, Staff writers



February 22, 2013, updated February 25, 2013: The

long-awaited civil trial against BP and its partners in the ill-fated Macondo oil well is slated to begin Monday in federal court in New Orleans, setting the stage for a three-month proceeding to assign liability potentially worth tens of billions of dollars for the explosion and collapse of the Deepwater Horizon rig in 2010, which killed 11 workers and caused one of the worst environmental disasters in U.S. history.

More importantly for BP and the other companies, the first phase of the complex court case will focus on whether their actions leading up to the accident constitute gross negligence or willful misconduct, which would result in a four-fold increase in the billions of dollars of Clean Water Act penalties expected to be levied.

The oil spill lasted 87 days and resulted in the release of 4.1 million barrels of oil into the Gulf of Mexico. Some oil washed up on beaches along the Gulf Coast, and into wetlands in Louisiana, Mississippi, Alabama and Florida.

The spill also resulted in the closure of thousands of hotels and motels during the 2010 vacation season and the closure of much of the Gulf to fishing for months.

BP is most likely to be charged the lion's share of the fines. Its lead counsel, Rupert Bondy, said recently that he believes the company's response to the accident, including early statements accepting financial responsibility for valid damage claims, will help convince U.S. District Judge Carl Barbier to charge BP much less than the maximum allowed by law.

In pleading guilty to criminal environmental charges in January, BP has already confirmed that its actions involving the well were negligent. Transocean and the Justice Department also laid most of the blame on BP in recent arguments supporting a similar plea by Transocean to criminal environmental charges. The attorneys argued that Transocean's negligence is overshadowed by BP's negligent actions.



Expect to see BP, Transocean and cement contractor Halliburton blame each other, as well as other BP contractors, in an effort to limit their own liability. But don't expect BP to like being placed in that position, said **David Logan, dean of the Roger Williams University School of Law.**

"Just like in criminal trials, sometimes defendants don't want to be tried with co-defendants because of the inclination of one defendant to try to turn the sympathies of the jury or the judge, not so much away from them but towards somebody else who, for the moment, might be an equally attractive culprit in the scenario that unfolds," **he said.**

The Plaintiffs' Steering Committee, representing private claimants, is likely to join the contractor blame-game, because it would like to hike up the damages paid by the other companies now that they have

reached a settlement with BP. But both PSC and Justice lawyers will push to show gross negligence on behalf of BP.

"Essentially, what you're going to have is the U.S. government trying to cast the largest portion of fault on BP, and of course trying to argue that BP's actions were the product of gross negligence rather than ordinary negligence," said Blaine LeCesne, a tort law professor at Loyola of New Orleans Law School.

To assign blame for the spill, Barbier will examine "the actions and conduct of the parties involved (and) who had the final say on the key decisions that led to the blowout," LeCesne said. He will then assign a percentage of fault based on that behavior.

Legal observers expect BP to fend off charges that it was needlessly reckless by blaming Transocean, which owned and partially manned the rig for the global oil giant.

"They think Transocean employees didn't properly read the data coming in and didn't take proper action, and that could've avoided the explosion," said Edward Sherman, a law professor at Tulane University who studies complex litigation.

For BP, tens of billions of dollars are at stake as it tries to deflect blame.

"Negligence is being sloppy. Gross negligence is being guilty of cussedness," **Logan, the law dean, said.**

"They're both not good things, but you sort of have this feeling about a heightened level of contempt for safety, a heightened level of fixation on the bottom-line, a heightened level of buck-passing. All those things are sometimes present in negligence, but in reckless or gross negligence, they almost all have to be present."

Logan continued: "When you're sitting down and figuring out reprehensibility... that he came by and shot at your house twice instead of just once might be the sort of thing that makes the judge more likely to find gross negligence in this event."

A finding of gross negligence usually triggers private claimants to be able to seek punitive damages, **he added.** [...]

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