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# Newsroom

## Logan on BP Punitive Damages

Dean David Logan was interviewed by Reuters for a widely picked-up story on a key decision allowing punitive damage claims against BP.

**From REUTERS:** "[Damages ruling may be pivotal in BP case](#)" by Moira Herbst

This story has been picked up by the [Chicago Tribune](#), [The Guardian](#) (UK), the [Huffington Post](#), [MSNBC](#), [NPR](#), [Yahoo Finance](#) and the [Vancouver Sun](#), among many others.



**NEW YORK, Sept 2, 2011 (Reuters)** - A key court

ruling in the Gulf of Mexico oil spill litigation could change the landscape in the massive case -- encouraging more plaintiffs to sue, or spurring the parties to make a deal to resolve what could be a long string of trials over damages.

Last week, the judge overseeing a group of spill-related lawsuits against BP Plc and its business partners ruled that claims for punitive damages -- not just compensatory damages -- could be brought by fishermen and other plaintiffs alleging harm to physical property. If a jury ultimately awards these plaintiffs punitive damages, defendants could be forced to pay out big.

The ruling gives some potential plaintiffs more of an incentive to sue because of the possibility of higher damage awards, experts say. Some people have been on the fence about suing or seeking payouts from BP's \$20 billion victims' compensation fund, which offers settlements as an alternative to litigation.

Also, the possibility of massive settlements to resolve the plaintiffs' claims involving BP and other corporate defendants may now be more likely.

That is because tossing punitive damages into the legal mix tends to scare defendants. Punitive damages are awards that are often multiples of the amounts that plaintiffs are reimbursed for their losses. They are intended to punish defendants and prevent others from engaging in similar conduct.



The prospect of punitive damages of any size is a "potent inducement to settle," **said David Logan, dean of Roger Williams University School of Law in Bristol, Rhode Island.**

Such claims can strengthen plaintiffs' bargaining position in settlement negotiations by presenting an added risk for defendants, said Howard Erichson, an expert in complex litigation and a professor of law at Fordham University.

Neither BP nor the plaintiffs' attorneys would comment on the possibility of a settlement before a liability trial is scheduled to begin in February 2012.

### **PINNING BLAME**

The February trial will decide who is to blame for the largest-ever U.S. offshore oil spill. If there are claims outstanding by the time that proceeding is done, multiple smaller trials will be scheduled to determine specific dollar amounts for damages.

The punitive damages ruling was handed down by Judge Carl Barbier of U.S. District Court in New Orleans, who will preside over the February trial.

In an emailed statement on Thursday, BP representative Daren Beaudou said: "The court's decision builds on the earlier dismissal of several other types of plaintiffs' claims. The court agreed with BP on several key issues, including dismissing plaintiffs' state law claims, limiting availability of attorneys' fees, and significantly narrowing the group of plaintiffs who are eligible to try to prove punitive damages."

Co-defendants Transocean, Cameron, Anadarko and Halliburton declined to comment.

BP is sparring with its former business partners over the disaster. On Friday, Halliburton said it had moved to add fraud claims against BP in the federal multi-district litigation pending in New Orleans, and had also filed defamation and other claims against BP in Texas court. Halliburton handled cementing services on the blown-out Macondo well.

BP has been hit with unrelated legal woes in Russia, as special forces there raided its Moscow offices earlier this week in connection with legal action brought by minority shareholders in its Russian joint venture TNK-BP. BP said on Friday that the lawsuit was "absurd."

## **NO STRAIGHTFORWARD VICTORY**

In the U.S. oil spill litigation, the punitive damages ruling had been one of the major issues pending before Judge Barbier.

While the ruling largely benefits plaintiffs, it is not a straightforward victory for them, legal experts said. Barbier dismissed all claims brought under state law in the ruling, as well as general maritime negligence claims against Anadarko and MOEX, a unit of Japan's Mitsui & Co Ltd.

Supreme Court decisions in the last decade could also serve to limit the size of punitive damages juries can award, said David Uhlmann, a professor of law at the University of Michigan. In the long-running Exxon Valdez case, the high court in 2008 ruled that punitive damages could not exceed the amount of compensatory damages awarded.

Also, it is not clear how much the ruling could translate into in dollar terms for the Gulf spill plaintiffs. Plaintiffs who say they suffered indirect losses -- as opposed to fishermen and those with property damage -- are not eligible for punitive damages. It is unknown how many of the 108,000 private claims before Barbier alleged such indirect losses, including restaurants and hotels claiming lost revenue as tourism fell.

Still, the prospect of winning punitive damages for clients could help plaintiffs' lawyers bring more claims from property owners and fishermen, said Byron Stier, a professor at Southwestern Law School in Los Angeles.

"The punitive damages green light is huge," Stier said. "That's the threat to BP, and that's what's animating the plaintiffs' lawyers."

Plaintiffs' lawyers are competing with the BP victims' compensation fund, known as the Gulf Coast Claims Facility.

Lead plaintiffs' lawyers in the litigation criticize the fund's offers to settle with BP and other defendants in exchange for giving up the right to sue. They say claimants may be better-served in court. Kenneth Feinberg, who administers the fund, has said litigation will take years and could prove less generous than the fund.

If punitive damages are not limited by the Exxon precedent, the potential upside for some plaintiffs who choose to go to court is massive.

But if that is not the case, suing might not be victims' best option, said Uhlmann, of the University of Michigan. Victims, he said, may do better turning to the settlement fund rather than "litigating for years and seeing most of the additional money paid to their attorneys under contingent fee arrangements."

The case is *In re: Oil Spill, U.S. District Court, Eastern District of Louisiana*, 2:10-md-02179. (Reporting by Moira Herbst; Editing by Martha Graybow and Matthew Lewis)

For full story, click [here](http://uk.reuters.com/article/2011/09/05/uk-bp-lawsuit-idUKLNE78401120110905). [http://uk.reuters.com/article/2011/09/05/uk-bp-lawsuit-idUKLNE78401120110905]