

Oil-spill suits pit BP against old foes

BY TRESA BALDAS

BP PLC is facing many of its old foes in the rising litigation over the Gulf of Mexico oil spill. More than a dozen plaintiffs' firms pursuing BP, Transocean Ltd. and Halliburton Energy Services Inc. have a history of trying to make the defendants pay for safety violations and the resulting harm.

They include Arnold & Itkin and the Buzbee Law Firm in Houston; Brent Coon & Associates of Beaumont, Texas; Baron & Budd and The Schmidt Firm in Dallas; Weitz & Luxenberg in New York; and the Law Offices of Ronnie G. Penton in Bogalusa, La.

In the case of the still-gushing oil spill, they're attacking on several fronts — wrongful death and personal injury, economic damages and environmental damages. None of these attacks are new. But for those seeking economic and environmental damages, the stakes are much higher this time. "The size of the defendants, the conduct that was displayed, the amounts of environmental damage and the number of those affected. Everything about it is big," said Scott Summy, a shareholder at Baron & Budd, which has eight oil-spill lawsuits alleging economic damages and several more in the pipeline. "If you take all the Southern states that are impacted, it could likely be the biggest environmental case that's occurred in the United States."

There are hurdles ahead. Specific oil-spill legislation and general maritime law set limits on damages. Plus, there's the legal and public relations machine of BP, the multibillion-dollar company that was



**BARON & BUDD'S
SCOTT SUMMY**

running the rig on the day disaster struck. BP is as accustomed to fighting accident-related claims as the plaintiffs' firms are to bringing them.

Still, plaintiffs' lawyers are confident the scope of the disaster is just too big this time for BP and the others to wiggle away. "This is such a national catastrophe — I just don't see BP walking away from this with caps and things like that because there's too much at stake," said Brent Coon, who is filing oil-spill lawsuits on a daily basis.

BEEN HERE BEFORE

For Coon, this all feels like *deja vu*. He was lead counsel in the litigation launched by a March 2005 explosion at BP's Texas City, Texas, refinery — the highest-profile BP disaster before the Deepwater Horizon drilling rig collapsed last month. In 2005, an effort to restart a unit that had been shut down for repairs released gas vapors and liquids, which then ignited, pulverizing nearby office trailers. Fifteen people died as a result of the accident, and 170 more suffered injuries.

BP was fined \$50 million for violating the Clean Air Act, and last year the Occupational Safety and Health Administration hit the company with an additional \$87 million fine — four times greater than any other OSHA fine — for uncorrected safety hazards, which BP is contesting. Four years of private litigation in state court ended in confidential settlements in 2006 and 2007 for the families of those killed and for the injured. A "Remember the 15" link to video and documents in the case is prominently displayed on Coon's Web site.

What he witnessed then, Coon said, is no different than what he's seeing now: BP in 2005 said it was being transparent and that it would take responsibility for the accident, he said, yet it kept many documents sealed. Fast forward five years, BP again is claiming to be responsible, Coon said, yet it's refusing to disclose certain information, including the complete video images of what's occurring on the ocean floor.

"They get into PR and damage control, tell everyone you're sorry, and in the meantime spin this to blame other people," Coon said, noting that he recently asked a federal court to revoke the probation and plea agreement reached in the 2005 explosion. Under the agreement, BP was supposed to improve safety conditions at its facilities. "Their behavior has not improved," Coon said, adding the Gulf disaster is yet another reason to revoke probation.

Attorneys representing BP could not be reached for comment. They include J. Andrew Langan, Richard Godfrey and Matthew Regan of Chicago's Kirkland

& Ellis and Scott Brister of Houston's Andrews Kurth, a former Texas Supreme Court justice. BP officials declined comment for this story.

The Texas City refinery in southeastern Texas is an ongoing source of litigation for BP. Tony Buzbee of the Buzbee Law Firm has handled roughly 250 cases against BP over the years — collecting more than \$200 million in settlements — and has 130 current BP cases that don't even involve the latest oil spill. Most involve problems at the Texas City refinery, such as explosions, crane accidents and people falling from heights.

Buzbee has also secured million-dollar settlements against Halliburton and Transocean, as well as sued over several drilling rig catastrophes involving other companies. He has seven pending oil-spill lawsuits and a dozen in the pipeline. True, he said, the oil business is a dangerous business. But BP is unique, Buzbee said. "Shoot, I've tried cases against BP, and even pounded them with a \$100.3 million verdict...and they don't get it. They don't get that they need to change their way of doing business."

On Dec. 23, a federal jury in Galveston awarded \$100.3 million to 10 workers who became ill after being exposed to toxic fumes at BP's Texas City plant in 2007. At trial, BP repeatedly denied that a leak had occurred. Buzbee said jurors also learned that the company had the injured sign statements saying they didn't see what happened and didn't know how the accident had occurred. "That just pisses people off in such a big way," he said.

And yet, in a sign of the difficulties that lie ahead if the oil-spill litigation actually goes to trial, a federal judge on March 16 set aside the punitive judgment, finding that BP had no intent to cause harm.

That sounds all too familiar to Summy. BP, he said, "will use every legal means possible to avoid liability, and they have the resources to do that." But plaintiffs' lawyers have ammunition, too, he noted. While his firm doesn't have the money or resources of BP — "not even close" as he put it — what the firm does have is a

record of hefty settlements against the oil industry.

In 2004, Baron & Budd helped secure a \$4.3 billion national settlement for 250,000 plaintiffs who had sued Halliburton over exposure to asbestos products distributed by Halliburton subsidiaries. The firm also litigated the first multijurisdictional MTBE-contaminated groundwater cases in the United States on behalf of more than 150 public water systems in 17 states, winning a nearly \$450 million settlement to pay future cleanup costs. The defendants included BP.

LEGISLATIVE HURDLES

Plaintiffs' lawyers are seeking big money again, but they have their work cut out for them. Besides the fact that the defendants will play defense, some key laws are written to protect businesses engaged in such hazardous work.

The Oil Pollution Act of 1990 caps oil-spill damages at \$75 million unless the plaintiff can prove gross negligence, willful misconduct or a violation of federal construction or operating requirements. A bill to raise the cap to \$10 billion was blocked on May 13 by Sen. Lisa Murkowski (R-Alaska), but proponents of the measure — including Sens. Robert Menendez (D-N.J.), Frank Lautenberg (D-N.J.) and Bill Nelson (D-Fla.) — have said they will try again.

The Oil Pollution Act also requires that claims alleging property damage, environmental damage or loss of livelihood — although not personal injury claims — be filed first with the responsible party. Arguably, that would be BP. The plaintiffs must then wait 90 days before filing suit.

General maritime laws also limit punitive damages, but can require owners of ships and, by extension, offshore oil rigs to pay families when workers are killed on a vessel that is deemed unseaworthy. "No one has ever dealt with the confluence of laws that are going to be present here," said Scott Bickford of New Orleans' Martzell & Bickford, who is handling a wrongful death case on behalf of the family of a missing rig worker presumed to have died in the Deepwater Horizon blast,

as well as several personal injury cases. "There are a lot of laws we have to get through before we can take BP down and drag them down the street," he said.

Specifically, he suggested that many of the 100-plus civil suits will have to be dismissed because of the Oil Pollution Act. Bickford — whose firm has handled litigation, including against Halliburton, over oil spills, well blowouts, fatal rig explosions, cement accidents and other mishaps — recently sat on a plaintiffs' steering committee involving a diesel-fuel spill on the Mississippi River. Just as now, scores of lawsuits were immediately filed alleging economic losses. "And all of those cases were dismissed as premature," he said, adding that the current race to the courthouse is really "a mad rush to see who will control the litigation."

Bickford acknowledged that he's never worked on a case involving a deepwater drilling oil accident, especially not one at 5,000 feet below sea level.

"I don't think anyone has ever done this before," he said.

Tresa Baldas can be contacted at tbaldas@alm.com.