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Epic legal battle over oil spill is about to begin

A panel of federal judges will decide who will oversee lawsuits against BP, Transocean and others. Plaintiffs and defendants say location is key.

By Carol J. Williams
Times Staff Writer

The largest oil spill in U.S. history has unleashed a gusher of at least 250 class-action lawsuits that could eventually encompass millions of victims in a legal battle expected to stretch on for decades.

The first step in what many experts predict will be among the most complex environmental cases to hit the U.S. courts begins Thursday when an army of attorneys converges on Boise, Idaho, where a federal panel will start to decide what judge or judges will oversee the cases and where they will be heard initially.

“The stakes here are tremendous,” said Georgene Vairo, a Loyola Law School professor of civil procedure and expert in complex litigation. “For a single-event type of incident, this is the biggest we’ve ever seen, just in the range of claims, the government and private-party actions, the cost of claims, the insurance aspects. It’s just the whole nine yards. It’s huge.”

Since the April 20 explosion of the Deepwater Horizon rig, hundreds of trial attorneys have descended on Gulf of Mexico states, some garnering clients by advertising on billboards and holding town hall meetings. They have filed scores of lawsuits seeking damages expected to reach into the double-digit billions from BP, Transocean Ltd. and other companies.



Support vessels surround the Q4000, left, in the Gulf of Mexico. The platform operated briefly Thursday during a testing problem, but it stopped collecting and burning off oil from BP’s leaking well after the well was sealed for the first time since the disaster began in April. (Carolyn Cole / Los Angeles Times)

The vast majority of the suits have been filed by fishermen, charter operators, restaurants and property owners claiming financial losses after the disaster shut down fisheries and pummeled coastal tourism. One suit seeks payouts for the diminished property values of every land, home and business owner within five blocks of the gulf shore.

Families of the 11 men killed in the explosion have filed wrongful-death suits. Seafood processors and marinas have sued over their dwindling revenues.

Complaints have flooded in from afar as well. An Ohio-based investment

fund hit by falling oil industry share values is seeking damages. And a group of South Carolina beach hoteliers has filed suit, saying they are suffering from a spate of cancellations because tourists fear the oil will reach around to the East Coast.

Environmental defense groups have sued on behalf of dead and injured wildlife. Veteran litigators have gone so far as to target BP with civil RICO actions, accusing the company of negligence so willful that it should be subjected to the steep penalties of the Racketeer Influenced and Corrupt Organizations Act.

“This spill has caused tremendous

fallout in the legal arena,” said New Orleans environmental attorney Allan Kanner, noting that the scope of the accident already far eclipses that of the 1989 Exxon Valdez spill in Alaska, which led to more than 20 years of courtroom wrangling.

The panel of seven federal judges, known formally as the U.S. Judicial Panel for Multidistrict Litigation, is responsible for sorting through the mountain of legal actions and will hear the parties’ arguments about where all pretrial proceedings should be consolidated. The assignments are expected to be decided within a few weeks.

The panel often consolidates litigation from mass-casualty accidents like plane crashes and train wrecks, or victims alleging a common cause of their problems, such as those suffering from asbestos exposure. The panel recently assigned more than 200 lawsuits brought against Toyota alleging sudden acceleration and other defects to a judge in Southern California.

Location is key, the plaintiffs and defendants agree.

Those with seafood industry and marine services businesses devastated by the spill want their cases merged in New Orleans or Mobile, Ala., close to where they live and work.

BP, the majority owner of the leaking oil well, has asked the panel to send the entire docket to Houston, the corporate heart of the oil industry, and specifically to U.S. District Judge Lynn N. Hughes. Like many judges in the gulf, Hughes has long-standing ties to and investments in energy industries.

Anticipating the surge of litigation,

Transocean, which operated the drilling rig, quickly filed a petition in a Houston courtroom, seeking to limit its liability. Because Judge Keith Ellison has begun work on that case in Houston, legal analysts expect the panel to send all defendant challenges to liability to his bench.

The judge or judges selected to handle the spill cases will have tremendous power. The judges will appoint a steering committee of plaintiffs’ lawyers from among all who have filed suit. A defense lawyers’ panel will also be named.

The appointed jurists will decide important fact-finding and discovery issues, determine whether the cases can even move forward, vet the parties’ expert witnesses and rule on the admissibility of evidence. A key objective will be to press the parties to settle rather than go to trial.

The companies targeted by lawsuits are also under federal investigation by the U.S. Coast Guard and the Justice Department, which could expose them to fines and recovery costs in addition to court-ordered compensation.

Many legal analysts expect the judicial panel to split up the huge caseload. Under this scenario, one judge might be assigned all the economic loss complaints, and others would oversee environmental claims, securities actions, RICO charges and the liability limitation efforts.

Still, professor Vairo said, it wouldn’t be surprising for a single judge to be put in charge of all the litigation.

“The facts here are going to be relevant to every single claim. What did they do when they built that pipeline and well?

Who did what in terms of maintaining the well over time? Did they do the required inspections?” Vairo said. Once those questions are answered in one case, they can be applied to the rest, she said.

Most of the lawsuits have been filed under the post-Valdez Oil Pollution Act of 1990. Although that statute caps a company’s liability at a total of \$75 million, it holds the firm responsible for paying unlimited cleanup and environmental restoration costs. However, if victims’ attorneys can prove that BP and the others were willfully negligent, the liability cap comes off and the companies have to pay what the court orders.

Charlie Tebbutt, an Oregon attorney representing the Center for Biological Diversity in its suit alleging violations of the Clean Water Act, said he was pursuing the maximum penalties against BP and Transocean of \$4,300 per barrel of oil spilled into the gulf. He estimates the bill could be \$20 billion, “if we can prove gross negligence or willful misconduct, which we expect should be relatively easy to prove in this case.”

Attorney Kanner, who represents the state of Louisiana, said, “We are witnessing nothing short of a collapse of an ecosystem that took tens of thousands of years to create.” He added that it would have a domino effect on the region’s economy.

Filing of lawsuits has tapered off since last month’s announcement of an out-of-court program for settling claims from a \$20-billion fund established by BP. But if claimants despair of that process, they could abandon it and turn to the courts.