

[Gulf Oil Spill](#)

## Full Scope of Legal Action Against BP Starts to Emerge



[Laura Parker](#) Contributor

(July 23) -- The fast-growing stack of lawsuits filed against BP over the Gulf of Mexico oil spill will likely soon be consolidated before a single federal judge.

[The U.S. Judicial Panel on Multidistrict Litigation](#) will convene Thursday in Boise, Idaho, to hear arguments to combine the suits and avoid the legal chaos that could engulf what promises to be one of the biggest civil suits since the [19-year, \\$250 billion court fight over asbestos](#).

Attorneys for both sides favor the consolidation, although they disagree on which federal court and judge should get the case.

BP and its partners in the Deepwater Horizon venture prefer Houston, where BP's American headquarters, [Transocean](#) and [Halliburton](#) are all located.

Attorneys for the fishermen, hoteliers and property owners have asked that the case be assigned to federal judges in Florida, Alabama and Mississippi. But most are pushing for New Orleans, where the majority of the suits have been filed. The Justice Department, which is conducting separate civil and criminal investigations, also weighed in in favor of New Orleans.

"As for the oil spill, we shall forgo a cascade of words like 'catastrophic' and 'cataclysmic' as they simply do not do justice to the magnitude of the economic, health, and environmental devastation wrought up on the nation's waters," Justice Department lawyers said in a June 16 brief. "The proceedings regarding liability for this event will potentially be of unprecedented proportions."

The assemblage of attorneys in Boise is expected to be so large that the seven-judge

panel already has extended the allotted time for arguments. The panel is expected to assign the case to a federal judge by mid-August.

[http://xml.channel.aol.com/xmlpublisher/fetch.v2.xml?option=expand\\_relative\\_urls&dataUrlNodes=uiConfig,feedConfig,localizationConfig,entry&id=908666&pid=908665&uts=1278970951](http://xml.channel.aol.com/xmlpublisher/fetch.v2.xml?option=expand_relative_urls&dataUrlNodes=uiConfig,feedConfig,localizationConfig,entry&id=908666&pid=908665&uts=1278970951)

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## **Gulf Oil Spill**

A crew member looks out at the California Responder oil skimming vessel from the deck of the Pacific Responder in the Gulf of Mexico near the coast of Louisiana Monday, July 12, 2010. The vessels sailed from their home ports in California to the Gulf of Mexico to assist in the containment of oil leaking from the Deepwater Horizon oil well. (AP Photo/Patrick Semansky)

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Vessels assisting in the containment of oil from the Deepwater Horizon oil well leak are seen from the Pacific Responder oil skimming vessel in the Gulf of Mexico near the coast of Louisiana Monday, July 12, 2010. (AP Photo/Patrick Semansky)

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Crew members connect a hose to an intake for recovered oil while preparing for skimming operations on the Pacific Responder oil skimming vessel in the Gulf of Mexico near the coast of Louisiana Monday, July 12, 2010. The vessel sailed from its home port in the San Francisco Bay Area to the Gulf of Mexico to assist in the containment of oil leaking from the Deepwater Horizon oil well. It arrived near the leak site this morning and is awaiting orders from on-water coordinators. (AP Photo/Patrick Semansky)

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The New Jersey Responder oil skimming vessel is seen on the Gulf of Mexico near the coast of Louisiana Monday, July 12, 2010. (AP Photo/Patrick Semansky)

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Senior master responder Jeff Bramlett walks past rolled-up oil booms while preparing for oil skimming operations on the deck of the Pacific Responder oil skimming vessel in the Gulf of Mexico near the coast of Louisiana Monday, July 12, 2010. The vessel sailed from its home port in the San Francisco Bay Area to the Gulf of Mexico to assist in the containment of oil leaking from the Deepwater Horizon oil well. It arrived near the leak site this morning and is awaiting orders from on-water coordinators. (AP Photo/Patrick Semansky)

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Supervisor Wade Falany handles an oil suction hose while preparing for skimming operations on the deck of the Pacific Responder oil skimming vessel in the Gulf of Mexico near the coast of Louisiana Monday, July 12, 2010. The vessel sailed from its home port in the San Francisco Bay Area to the Gulf of Mexico to assist in the containment of oil leaking from the Deepwater Horizon oil well. It arrived near the leak site this morning and is awaiting orders from on-water coordinators. (AP Photo/Patrick Semansky)

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In this image taken from video provided by BP PLC, oil flows from the top of the transition spool at the site of the Deepwater Horizon oil spill in the Gulf of Mexico, Monday, July 12, 2010. Deep-sea robots swarmed around BP's ruptured oil well Monday in a delicately choreographed effort to attach a tighter-fitting cap that could finally stop crude from gushing into the Gulf of Mexico nearly three months into the crisis. (AP Photo/BP PLC) NO SALES

### [Gulf Oil Spill](#)

Deck hand Martin Mayorga carries netting while preparing for skimming operations on the deck of the Pacific Responder oil skimming vessel in the Gulf of Mexico near the coast of Louisiana Monday, July 12, 2010. The vessel sailed from its home port in the San Francisco Bay Area to the Gulf of Mexico to assist in the containment of oil leaking from the Deepwater Horizon oil well. It arrived near the leak site this morning and is awaiting orders from on-water coordinators. (AP Photo/Patrick Semansky)

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Supervisor Wade Falany handles a rope while preparing for oil skimming operations on the deck of the Pacific Responder oil skimming vessel in the Gulf of Mexico near the coast of Louisiana Monday, July 12, 2010. The vessel sailed from its home port in the San Francisco Bay Area to the Gulf of Mexico to assist in the containment of oil leaking from the Deepwater Horizon oil well. It arrived near the leak site this morning and is awaiting orders from on-water coordinators. (AP Photo/Patrick Semansky)

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In this image taken from video provided by BP PLC, the new containment cap, left, is lowered toward the site of the Deepwater Horizon oil spill, right, as a remotely operated vehicle operates in between the two in the Gulf of Mexico, Monday, July 12, 2010. Deep-sea robots swarmed around BP's ruptured oil well Monday in a delicately choreographed effort to attach a tighter-fitting cap that could finally stop crude from gushing into the Gulf of Mexico nearly three months into the crisis. (AP Photo/BP PLC) NO SALES

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Mike Papantonio, a Florida attorney representing fishermen and property owners, said sending the case to Houston would be, for BP, "like having your mother and father on the jury. If you took the oil industry away from Houston, you'd have a tumbleweed town."

BP, in turn, argued in court papers that the federal court in New Orleans is still recovering from Hurricane Katrina and is already overburdened with several other large, complex cases.

BP further specifically requested the case be assigned to U.S. District Judge Lynn Hughes in Houston, arguing that he has previously handled complex, multijurisdictional cases and is already handling a class-action case filed by a group of Vietnamese-American fishermen.

The BP case has attracted some of the most prominent attorneys in the plaintiff bar, including those who sued Exxon after the 1989 spill of the [Exxon Valdez](#) tanker in Alaska. In the three months since the Deepwater Horizon well blew out, attorneys have scoured the gulf to sign up clients and filed more than 250 suits in eight states. Among the claims are several class actions, which could potentially involve thousands of plaintiffs.

And at least three suits have been filed using the [federal RICO law](#) (which stands for Racketeering Influenced and Corrupt Organizations), which was originally passed to give prosecutors a tool to fight organized crime.

"The types of claims and magnitude are limited only by the imagination of the American lawyer," said Eric Green, a Boston University law professor and mediator in large, complex cases. "That is pretty big when it comes to these cases."

The disaster itself involves multiple companies, all seeking to shift the blame. BP is pressing to recover from its partners, while claiming the spill was preventable. This week the president of Anadarko Petroleum Corp. told a Senate subcommittee [the spill could have been prevented](#) and has not paid BP anything.

"Exxon Valdez was pretty easy: one company that owned one ship," said Jeffrey Fisher, a Stanford University law professor who argued the Exxon case before the U.S. Supreme Court on behalf of the fishermen. "With BP, here's a much more complex web of business interests involved in the well. You can follow that right on down the line, to the number of claimants and the number of kinds of claims."

Val Exnicios, a New Orleans attorney representing the Louisiana commercial fishermen's union in its suit, said the case could end up like the asbestos litigation, which is the longest-running multijurisdictional case in the country.

"In my 21 years in practice, I have never seen a case that has potential to be as large in economic terms," Exnicios said. "I can't even imagine what."

But BP's money may not flow as freely as the oil from its runaway well. In 2008, the U.S. Supreme Court knocked down the punitive damages in the Exxon Valdez suit to \$500 million -- a fraction of the original jury award of \$5 billion, which a federal appeals court had cut to \$2.5 billion.

The 1990 Oil Pollution Act, passed in the wake of the Exxon Valdez spill, caps damages at \$75 million, although since BP's well blew out Congress has been working to raise it retroactively to \$10 billion.

Additionally, the \$20 billion victim compensation fund set up by BP is expected to reduce the number of court claims, much as the 9/11 victim fund did.

"In the end, the 9/11 fund limited and reduced the number of cases that went to court," said Green, who mediated 9/11 insurance coverage cases before the fund was established. "I expect that will happen here, too."

That may be overly optimistic.

"When BP says, 'We'll pay all legitimate claims,' the key word is 'legitimate,'" Fisher said. "Exxon said all the same things. Exxon paid a lot of claims. Many plaintiffs are going to think they deserve more money than BP is going to give them.

"The biggest issue is going to be what kind of harm is compensable," he continued. "BP, like Exxon, realizes they have nowhere to go in terms of paying fishermen for this summer. But what about fishermen still claiming loss five years from now? What about hotels that claim they are half-booked because people are afraid to be on the beach? There are an infinite number of secondary and tertiary harms caused by the spill."

The cases that do not settle out of court will be tried in the court in which they were filed. But the judge chosen by the multidistrict litigation panel to handle pretrial issues will have considerable influence over how those cases play out, settling which lawyers will lead the case for the plaintiffs and determining which laws will apply.

The MDL judge also could settle many of the complicated scientific issues by taking testimony from expert witnesses. In the breast implant litigation, for example, U.S. District Judge Sam Pointer appointed his own expert panel and heard weeks of testimony by high-profile experts.

Such an approach could be employed in the BP spill to settle issues such as projected future damage to fish stocks and oyster and shrimp populations.

"If there are 100 million gallons of oil floating around in the ocean, it's extraordinarily difficult to put a price tag on how much it's worth," Fisher said. "If someone breaks a leg, at least there are medical bills to look at to determine compensation. If you pour a bunch of oil in the ocean, how much harm does that cause the ocean itself? Who knows?"

With the array of those kind of issues, Papantonio, who is 56, said: "I don't expect this case to be finalized by the time I finish practicing law."

<http://www.aolnews.com/gulf-oil-spill/article/full-scope-of-legal-action-against-bp-starts-to-emerge/19566876>