

Environmental Disaster in the Gulf of Mexico: The Escalation of BP's Liability

As oil, sickness and contamination persist, Gulf residents and lawyers file thousands of lawsuits against the oil giant.

By [Dahr Jamail](#)

Global Research, October 05, 2011

[Al Jazeera](#) 3 October 2011

Region: [USA](#)

Theme: [Environment](#), [Oil and Energy](#)

In-depth Report: [THE BP OIL SLICK](#)

PHOTO: Residents of Grand Isle, Louisiana, display their signs of protest [Erika Blumenfeld/Al Jazeera]

"If you got caught humping another woman - [if] you're both naked and caught in the act - you'd want BP to explain to your wife how it didn't happen."

This colorful analogy was proposed by Dean Blanchard, a seafood distributor on Grand Isle, Louisiana, to explain oil giant BP's continuing machinations to evade liability in the aftermath of the April 2010 disaster.

During a recent discussion in his office, Blanchard told Al Jazeera that the fishing waters off Louisiana are only producing one per cent of the shrimp they formerly produced. "Half of the local fishermen have shut down," he stated. "They are dying. And [as] for the fishing, every day they are hauling dead porpoises in front of my place. I have a claim filed with BP, but none of us in the seafood business are being paid."

Speculating that he may soon have to close down his company, Blanchard spoke for hundreds of thousands of Gulf Coast residents who remain angry and frustrated when he added: "I worked 30 years to establish my business, and now BP has destroyed my life."

Fallout and responsibility

In a key investigative report released on September 14, the US government heaped most of the blame for the oil disaster on BP, which now faces a raft of criminal and civil litigation and billions of dollars in potential damages.

The report concluded that BP violated federal regulations, ignored safety concerns and crucial warnings, and made careless decisions during the cementing of the well nearly two kilometres underwater.

"That report summarised what we already knew, and it will help establish the punitive damage case against the defendant [BP]," New Orleans-based attorney Stuart Smith, representing more than 1,000 cases against BP, told Al Jazeera.

Smith has been litigating against oil companies for 25 years, and in 2001 was lead counsel in a case that resulted in a \$1bn verdict against ExxonMobil.

“The fastest way to lose a toxic tort case is to rely on the government or the defendant to collect the evidence,” explained Smith, whose firm has spent more than \$2m for its client’s cases by collecting samples and data and having them analysed by experts.

As litigation against BP continues to mount, several studies have confirmed Smith and Blanchard’s concerns about the deep impact of BP’s oil disaster.

One recent study carried out by experts at Auburn University concluded that mats of oil that remain submerged on the seabed could pose a long-term risk to coastal ecosystems. Large quantities of [tar balls and oil mats](#) have washed ashore, or have been uncovered by recent storms, at Gulf Shores and Orange Beach, Alabama, as well as at several beaches in Louisiana and in Pensacola, Florida. A recent [Al Jazeera over-flight](#) of the area near BP’s capped Macondo well, the origin of the April 2010 disaster, revealed a long swathe of oil and sheen.

Dr Wilma Subra, a chemist and MacArthur Fellow, has – since autumn of 2010 – been conducting tests on seafood and sediment samples along the Gulf for chemicals present in BP’s crude oil and toxic dispersants.

“Tests have shown significant levels of oil pollution in oysters and crabs along the Louisiana coastline,” Subra told Al Jazeera. “We have also found high levels of hydrocarbons in the soil and vegetation.”

In response to the question of what local, state and federal governments are doing about the ongoing chemical exposures, Subra declared: “There is a lack of concern by the government agencies and the [oil] industry. There is a leaning towards wanting to say it is all fixed and let’s move on, when it is not.”

Blanchard, who perceives the federal government’s inadequate response to the BP disaster as evidence of its collusion with the oil giant, meanwhile joked: “We’re fixing to have a fundraiser to try to buy our politicians back from BP.”

Health effects

On June 1, 2010, BP board chairman Henric Svanberg announced, in accordance with the company’s pledge to provide \$20bn in compensation to persons harmed by the disaster: “I hear comments sometimes that large oil companies are greedy companies or don’t care, but that is not the case in BP. We care about the small people.”

According to attorney Stuart Smith, however, neither oil companies nor the US government properly tends to citizens who suffer as a result of their policies.

“I’ve spent 25 years suing the oil and gas industry, and the government has never been on the side of the people,” Smith informed Al Jazeera. “But the extent to which they’ve behaved that way this time is unbelievable. The government has not even acknowledged any health impact [from the disaster].”

Over the course of his career, Smith has represented a number of chemical plant employees with a condition known as toxic encephalopathy, a degenerative neurological disorder that can result in permanent brain damage. Caused by exposure to toxic substances, symptoms of the condition include memory loss, concentration difficulties, fatigue, seizures,

depression, light-headedness, headaches and nausea. Similar symptoms are now being experienced by residents of the Gulf Coast.

Indeed, since July 2010, Al Jazeera has spoken with scores of Gulf residents, fishermen, and clean-up workers who have blamed negative health effects on the chemicals from BP's oil and dispersants.

"The government knew about ... peer-reviewed studies of what happens when people are exposed to these chemicals, and millions have been exposed," Smith stated. "Peer-reviewed scientific literature shows that you'll have these health problems, and yet the government does nothing."

Al Jazeera recently spoke with Steven Aguinaga, a 33-year-old father of three who confirmed that he acquired "critically high levels of chemicals" in his body after swimming with his friend Merrick Vallian at Fort Walton Beach, Florida, in July 2010.

"At the time I had no knowledge of what dispersants were, but within a few hours, we were drained of energy and not feeling good," said Aguinaga. "I've been extremely sick ever since."

Al Jazeera has covered this subject [extensively](#), and, given that BP has just confirmed filing a plan with US regulators to pursue its first deepwater oil work in the Gulf of Mexico since the April 2010 disaster, concerns of future problems persist. According to BP's application, the company wants to drill four new wells at a depth of 1770 metres (244 metres deeper than the Macondo well) in an area approximately 300km off the Louisiana coast.

Ecological litigation

A biological study published on September 26 in the *Proceedings of the National Academy of Sciences* shows that effects of the oil on a small Louisiana marsh fish, the killifish, could be an early warning sign of trouble ahead for fish populations.

"The message that seafood is safe to eat doesn't necessarily mean that the animals are out of the woods," said Andrew Whitehead, an assistant professor of biology at Louisiana State University and a lead researcher in the study, which found that the fish were being exposed to oil in the sediment. The study indicates that the same kinds of health and reproduction problems are likely to occur in the Gulf as were witnessed among herring, salmon, and other animal populations in the aftermath of the 1989 *Exxon Valdez* oil disaster, which prompted significant losses among various species.

Doug Inkley, a senior scientist with the National Wildlife Federation, said in a written statement: "This study is alarming because similar health effects seen in fish, sea otters, and harlequin ducks following the *Exxon Valdez* spill in Alaska were predictive of population impacts, from decline to outright collapse."

Unfortunately for BP, the Centre for Biological Diversity (CBD) is now suing the company for \$19bn. A group that utilises the law to protect the lands, waters, and climate that species need to survive, CBD has an unparalleled record of legal successes, winning 93 per cent of its lawsuits.

"We have sued them under the Clean Water Act," Kieran Suckling, the executive director and founder of the CBD, told Al Jazeera. "The way the Act works is it levies a fine based on

the number of gallons [of oil] spilled and how malicious or criminal BP was acting when the spill occurred.”

According to Suckling, BP “should be made to pay \$19bn under the Clean Water Act and in so doing be found to be criminally negligent. That \$19bn should [consist of] entirely new funds, not including anything they’ve already put out, and those funds should be dedicated to Gulf Coast restoration.”

CBD estimates that “approximately 6,000 sea turtles, 26,000 dolphins and whales, 82,000 birds, and countless fish and invertebrates may have been harmed by the disaster.”

Cyn Sarthough, meanwhile, is the executive director of the Gulf Restoration Network (GRN), an environmental group active in all of the states along the Gulf of Mexico. GRN, like CBD, sues companies and government organisations that violate environmental laws.

“Much of our litigation is against the Bureau of Ocean Energy Management Regulation and Enforcement (BOEMRE), the group that was formerly the Minerals Management Service (MMS),” Sarthough told Al Jazeera. “There is also a challenge to BP’s original oil spill response plan. We are engaged in this with several other claimants ... [The plan BP] had in place was inappropriate and failed to meet safety requirements because it grossly exaggerated BP’s response capabilities.”

BP’s liability: ‘From bad to disastrous’

The Gulf Coast-based law firm Brent Coon and Associates (BCA) is considered one of the world’s foremost experts on BP, and has successfully sued the oil giant in the past.

Brent Coon was the lead attorney in a case against BP for a 2005 explosion at its refinery in Texas that killed 15 workers. His firm forced BP to accept full responsibility and to compensate the victims and their families.

BCA now represents more than 5,000 claimants from BP’s Gulf disaster and has been appointed by the Plaintiff’s Steering Committee to head several key sub-committees relating to discovery.

“We represent a cross section of claimants, who range from people who worked within the oil industry, to shrimpers, captains, deck hands, restaurant and condominium owners,” Coon told Al Jazeera in April. “We want full restitution and reparations for harm done by BP.”

Coon reiterated that other companies involved in the disaster, such as Halliburton and Transocean, need to be held accountable as well. He remarked:

“From what I’ve seen, after representing thousands of people who were made sick or died from petrochemical industry hazards over the years, companies like BP, Exxon, Citgo, Shell, and others do not mind killing people as the cost of doing business, even when it’s their own employees. I’ve seen it time and time again.”

Coon additionally argued that, “[u]nless you criminally prosecute these people and make them pay for their decisions, they do not have a sufficient deterrent for the way they do business. Unless the government steps in and criminally prosecutes these bastards and hold them accountable, nothing is going to change”.

According to Coon's calculations, BP will be forced to pay out another \$10-20bn to cover economic claims. Some experts expect the total could be much more than that, even as high as \$30bn.

Lawyer Stuart Smith agrees, writing recently that the federal government report on the 2010 disaster has caused the "state of BP's legal liability" to go "from bad to disastrous". He believes the report presents "incriminating new evidence" that "increases the likelihood that criminal charges will be brought" against the oil giant, and predicts the new findings will push BP to offer large settlements to spill victims, particularly commercial fishermen and charter boat captains.

"The company wants to put this nightmare in its rearview mirror as quickly as possible," added Smith, "both from a PR and business perspective." Corroborating this viewpoint is a recent Reuters [report](#) citing an anonymous BP insider as declaring: "We would like everything settled as soon as we can, otherwise you have lingering reputation issues and investor uncertainty."

Judge Carl Barbier, who will be hearing the civil damages claims against BP, has set a trial date for February 2012. According to Reuters, another source close to BP has anticipated: "I expect that early next year you will see the mother of all settlements."

If BP is found to have been grossly negligent, which the company denies, it could be fined over \$21bn in Clean Water Act fines alone.

Given that the latest government report links the accident to BP's cost-cutting efforts, Professor Zygmunt Plater at Boston College Law School said claimants could receive a multiple of any compensatory award, which would mean that even at a 1:1 punitive-to-economic damage ratio, BP may have to offer at least an additional \$5bn to cover punitive awards.

Smith is urging people with ongoing litigation against BP to stay the course: "Clients that hold out will, in the end, be compensated, because BP won't want to go to trial [since] the punitive damages will be so great."

He, along with Coon, feels his clients are going to get what they deserve.

"In light of this latest federal report, I think it may take more than \$30bn to cover all the cases," [said](#) Smith. "One thing's for sure, BP is feeling the heat. We'll see early next year just how much the company will put on the table to make all this liability disappear, like so many gallons of crude."

The original source of this article is [Al Jazeera](#)

Copyright © [Dahr Jamail](#), [Al Jazeera](#), 2011

[Comment on Global Research Articles on our Facebook page](#)

[Become a Member of Global Research](#)

Articles by: [Dahr Jamail](#)

Disclaimer: The contents of this article are of sole responsibility of the author(s). The Centre for Research on Globalization will not be responsible for any inaccurate or incorrect statement in this article. The Centre of Research on Globalization grants permission to cross-post Global Research articles on community internet sites as long the source and copyright are acknowledged together with a hyperlink to the original Global Research article. For publication of Global Research articles in print or other forms including commercial internet sites, contact: publications@globalresearch.ca

www.globalresearch.ca contains copyrighted material the use of which has not always been specifically authorized by the copyright owner. We are making such material available to our readers under the provisions of "fair use" in an effort to advance a better understanding of political, economic and social issues. The material on this site is distributed without profit to those who have expressed a prior interest in receiving it for research and educational purposes. If you wish to use copyrighted material for purposes other than "fair use" you must request permission from the copyright owner.

For media inquiries: publications@globalresearch.ca