

Spill, Baby, Spill

Gulf Coast Disaster Sets Off Gusher of Work for Attorneys

by MARY ALICE ROBBINS

From Texas to Florida, the litigation rush is on, as thousands of gallons of oil spill into the Gulf of Mexico in the wake of the April 20 explosion of a drilling rig off the coast of Louisiana.

Injured workers and families of the 11 individuals missing and presumed dead after the Deepwater Horizon rig exploded and then sank have filed personal injury or wrongful death suits. Shrimpers, charter fishing boats and others who engage in business along the Gulf Coast have filed individual suits or class actions in which they allege damages to their livelihoods.

"It's sort of like a gold rush for clients," says Brian O'Neill, a partner in Faegre & Benson in Minneapolis, Minn., and lead plaintiffs' counsel in the litigation stemming from the Exxon Valdez oil spill that occurred in 1989 off the coast of Alaska.

O'Neill, who says he's still involved in the Valdez litigation, has some advice for lawyers itching to file suits over the Gulf spill: "If I were a lawyer getting involved in these cases, I would make sure I have the financial and emotional resources to wage this war."

The plaintiffs' lawyers involved in the consolidated Valdez cases invested

The oil rig Deepwater Horizon in the Gulf of Mexico on April 21.

PHOTO COURTESY JON T. FRITZ/MCT

\$200 million worth of time and maybe \$40 million worth of cash, O'Neill says.

James F. Neal, a member in Neal & Harwell in Nashville, represented Exxon Corp. in the Valdez litigation. Neal, whose voicemail indicated his law office was affected by the recent floods in Nashville, did not return a telephone call and an e-mail by presstime May 6.

According to the U.S. Supreme Court's 2008 opinion in *Exxon Shipping Co., et al. v. Baker, et al.*, an Alaskan jury awarded \$287 million in compensatory damages to some plaintiffs, while other plaintiffs settled their compensatory claims for \$22.6 million. As noted in the opinion, the jury also awarded \$5 billion in punitive damages, which the 9th U.S. Circuit Court of Appeals reduced to \$2.5 billion. In its 5-3 decision in *Exxon Shipping*, the Supreme Court limited the punitive damages to \$507.7 million.

Stephen Susman, a partner in Susman Godfrey in Houston and New York City, originally represented the plaintiffs in the Valdez cases before a conflict of interest forced him to bow out. Based on his work in the Valdez case, Susman predicts there will be "a huge war" on the defendants' side as to who was at fault for what happened to the Deepwater Horizon rig.



Joseph E. Ritch says he became friends with several lawyers while he was trying a case in Plaquemine, La., in February, and those lawyers contacted him about working on oil spill litigation.



Godwin Ronquillo chairman and CEO Donald E. Godwin is Halliburton's attorney for pollution, property damage and environmental claims stemming from the oil spill. "We're still involved in the investigative stage of it," he says.

"Everyone's going to be blaming everyone else," Susman says.

Plaintiff attorney Mark Lanier of The Lanier Law Firm in Houston says the Gulf oil spill is much bigger than the Valdez spill.

"This makes the Valdez look like an oil leak in a car," Lanier says. "Honestly, this is a monstrosity; it's a tragedy. . . . There are huge legal problems that need resolution. It will take the courts to do it."

Lanier also says, "This is going to be, in my estimation, the largest tort we've had in this country."

Companies named frequently as defendants in the explosion-related oil spill suits reviewed by *Texas Lawyer* are Transocean Ltd., BP PLC, Halliburton Energy Services Inc. and Cameron International Corp.

According to an e-mail from BP spokesman Mark Salt, the Transocean rig was under contract to BP. Salt writes that Transocean owned and operated the rig, and BP owns the right to produce and save the oil. Under the Oil Pollution Act, BP has been named a responsible party, Salt confirms in the e-mail.

In an interview, Salt says, "We are committed to paying every legitimate claim."

Transocean spokesman Mike Gesci

responded to requests to interview the company's general counsel and an inquiry about the firm or firms representing Transocean with an e-mail, which reads in part: "It is our policy not to comment on pending litigation."

Howard L. Murphy, Cameron's attorney and a partner in Deutsch, Kerrigan & Stiles in New Orleans, did not return a telephone call for comment by presstime. Scott Amann, Cameron's vice president for investor relations, declines comment. As alleged in *Nova Affiliated S.A. v. BP PLC, et al.*, a class action filed April 30 in the U.S. District Court for the Eastern District of Louisiana in New Orleans, Cameron manufactured and/or supplied the Deepwater Horizon's blowout prevention equipment that failed to operate in the explosion.

Godwin Ronquillo chairman and chief executive officer Donald E. Godwin of Dallas, Halliburton's attorney for pollution, property damage and environmental claims stemming from the oil spill, says Halliburton was involved in cementing of the well and provided mud services for the drilling of the well.

Godwin says his firm has seen petitions in about 55 suits filed against Halliburton and its affiliates in Florida, Alabama, Mis-



Steve Gordon, a partner in Houston's Gordon, Elias & Seely, says the plaintiff in Kleppinger sought his assistance in finding her husband, one of the 11 individuals missing since the rig explosion and now presumed dead.

Mississippi, Louisiana and Texas, with more continuing to be filed daily.

"We're still involved in the investigative stage of it," Godwin says.

Godwin says Halliburton, which retained him April 30, "has been a very old, very significant client of our law firm for many years."

Referrals

In many instances, Texas plaintiff lawyers have gotten involved in the oil spill litigation as a result of referrals from other attorneys.

Lanier says his firm already has more than 100 cases, most of them received through lawyer referrals.

"We've had two lawyers working around the clock trying to scrub them to see which ones we want, which we don't," he says.

Lanier joined several attorneys in filing *Nova's* class action in federal court in New Orleans.

Brent Coon of Brent Coon & Associates in Beaumont says about two dozen firms that have filed individual suits or class actions stemming from the Gulf oil spill have approached his firm seeking help with their cases.

"We've been talked to by several dozen lawyers in several different states," says Coon, who predicts that his firm will be working on a number of different cases involving the oil spill.

Coon and his firm gained a national reputation representing plaintiffs in the 2005 explosion of a BP refinery in Texas City. "We were lead counsel, the liaison counsel for all of those cases," he says.

What his firm learned from the BP refinery explosion cases, Coon says, was to take steps to prevent the potential destruction of documents or physical evidence a client would be seeking in discovery. On April 30, 157th District Judge Randy Wilson signed a temporary restraining order Coon's firm had sought on behalf of injured worker Stephen Stone and his wife. The couple had filed *Stone, et al. v. Transocean Offshore Deepwater Drilling Inc., et al.* as an intervention in *Kleppinger v. Transocean Offshore Deepwater Drilling Inc., et al.*; *Kleppinger* had been filed April 22 in the 234th District

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Court in Houston. Stone, a longshoreman who lives in Houston, is a friend of an employee of Coon's firm and asked the firm to represent him, Coon says.

Corpus Christi-based Wigington Rumley & Dunn's involvement in cases involving the spreading oil slick stems from its representation of a client in a recent trial in Louisiana. Wigington associate Joseph E. Ritch says he became friends with several lawyers while he was trying a case in Plaquemine, La., in February, and those lawyers contacted him about working on oil spill litigation. On May 4, Wigington joined a Baton Rouge firm in filing *Fish Commander LLC v. BP PLC, et al.* in the New Orleans federal court.

Ritch recently spent several days in New Orleans meeting with the *Fish Commander* plaintiff, a family-owned charter fishing service, and working on the suit.

"My clients want to go back to work," he says. "Right now, they can't do that."

Steve Gordon, a partner in Houston's Gordon, Elias & Seely, says the plaintiff in *Kleppinger* sought his assistance in finding her husband, one of the 11 individuals missing since the rig explosion and now presumed dead. Gordon is representing Tracy Kleppinger, wife of Karl Kleppinger Jr., in a wrongful death suit.


Because the oil rig was a semi-submersible vessel, federal maritime law governs Tracy Kleppinger's wrongful death claim, Gordon says. And Gordon says he expects Transocean to file a limitation action, which could stay the proceedings against Transocean.

For some lawyers, how best to handle the multitude of cases arising from the oil spill is an issue. A large group of plaintiffs' lawyers met May 5 in New Orleans to discuss legal issues and strategy in the litigation.

Daniel F. Becnel Jr. of the Becnel Law Firm in Reserve, La., says about 250 lawyers attended that meeting and discussed, among other things, where a multidistrict litigation court should be designated to handle pretrial issues in the spill cases. Becnel says that on April 30, he filed a motion with the U.S. Judicial Panel on Multidistrict Litigation in Washington, D.C., to combine oil spill cases in a MDL court.

Coon, who attended the May 5 meeting, says one advantage of having a MDL court is the potential savings on discovery when cases are consolidated. But Coon says there is also the potential when one court must make decisions in a large number of cases that some plaintiffs "have to wait an inordinate amount of time" to get their cases through the system.

Referring to MDL courts, Coon says, "Sometimes they work well; sometimes they work OK; and sometimes they work terribly."

Plans are in the works for a continuing legal education seminar aimed at civil defense attorneys interested in issues involved in the oil spill cases. John Kouris, executive director of DRI, says the 22,000-member organization hopes to offer a seminar on the spill's likely liability issues within the next four months. DRI has not yet announced a date and location for the seminar, Kouris says. 

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