

# Beyond the BP Litigation: Economics, Policy and Decision Support Systems



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# Overview



- The Deepwater Horizon Disaster
- The BP Oil Spill Litigation
- The Various Types of Claims
- Areas for Collaborative Research

# I. Pre-Disaster Drilling Rig

## ➤ Who Owns/Who Operates?

- Transocean Triton Asset Leasing, GmbH Owned
- Transocean Operated
- BP Lessee until 2013
- Hyundai Heavy Industries, South Korean, manufactured and built
- BP “owned” the well
- Halliburton designed and poured cement seal meant to keep gas out

## ➤ When Started?

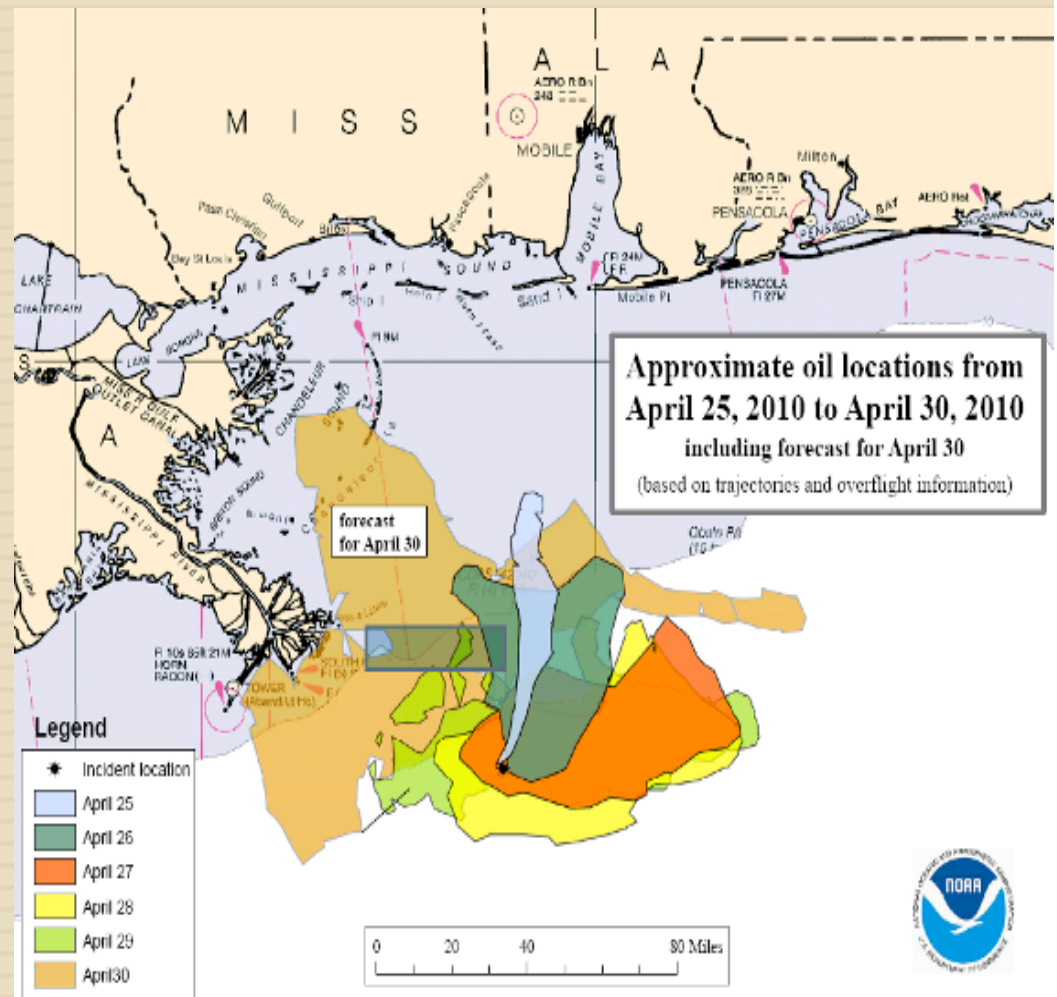
- February 2010 drilling began at the Macondo Prospect site



## II. Deepwater Horizon Explosion

- Date of Explosion
  - April 20, 2010
  - 9:45 p.m. CST
- How many dead? Injured?
  - Eleven workers were never found
  - Seventeen critically injured
- Potentially Responsible Parties?
  - BP, Transocean, Halliburton, Cameron International, and others







# IV. Litigation: MDL Consolidation

- USDC Eastern District, New Orleans,  
Judge Carl A. Barbier  
(Loyola Law graduate)

- Broad Scope of Claims,  
not including Shareholders' Claims

- Houston, Shareholders Claims



## V. Variety of Claims in Litigation

- Total Projected Liability: \$90 billion!
- Wrongful Death
- Personal Injury
- Property Claims
- Economic Injury
- Civil and Criminal Environmental Claim

# A. Wrongful Death Claims

## ➤ Jones Act

### ➤ History: Merchant Marine Act of 1920

- Intent: Ensure workers compensation rights for sailors working on U.S. ships and those that are foreign registered but involved in U.S. domestic trade

## ➤ Governance by the Jones Act: Wrongful Death Suits

- Spouses and Children are automatic beneficiaries
- Workers without either spouse or children, the named beneficiaries are the workers' parents



# B. Personal Injury Claims

- Jones Act
  - Gulf Clean-up
    - How Many vessels were needed?
    - National Oceanic and Atmospheric Administration
  - Waiver of the Jones Act would allow foreign vessels to enter U.S. waters to aid in clean-up efforts
    - Criticism of President Obama
  - United States Coast Guard Admiral, Thad Allen
    - Man in charge of oil spill clean-up and response
      - Also helped Coast Guard, Hurricanes Katrina and Rita
    - Oversaw the drilling of the final relief well

# C. Property Damages Claims

- Damages for pollution
- Loss of Revenue
- Oil Pollution Act of 1990
- BP accountability:
  - Removal costs of oil
  - Pollution to property



## D. Economic Injury Claims

- Business interruption
  - Claims representatives to determine the amount of time the business was not operational
- Lost profits
  - Inability to work due to spill
  - Affect on business
    - Less purchasers of seafood
    - Public fear of safe seafood

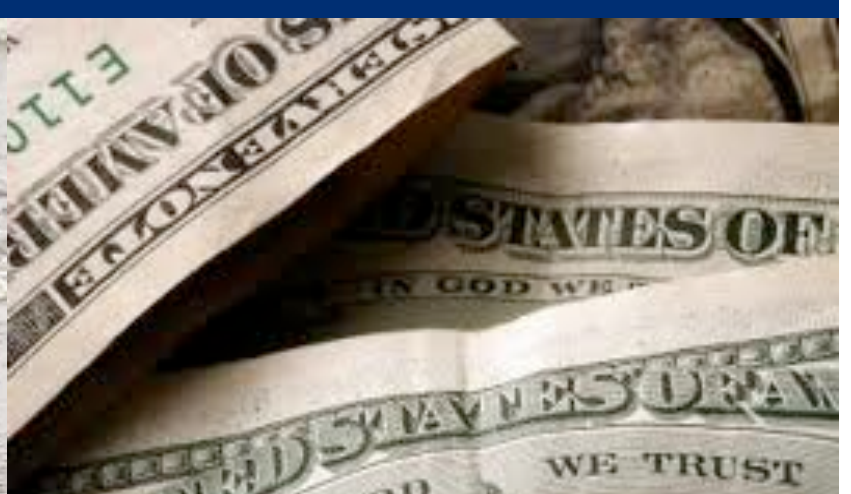
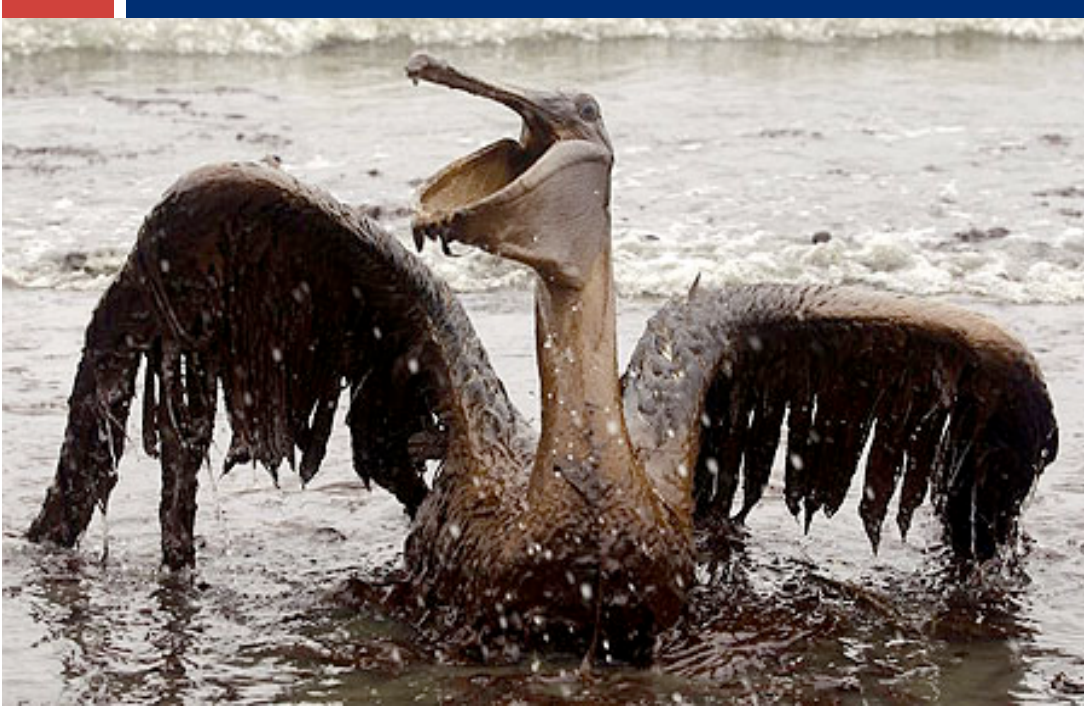


## E. Federal Civil Claims

- Priority over Private Claims?
- Overwhelming and Uncertain
- Could promote corporate bankruptcy filings



## F. Environmental Damages Claims



# F-1. Federal Environmental Claims

- Justice Department
  - Civil Complaint filed in E.D. Louisiana
- Civil and Criminal
- Clean Water Act:
  - Authorizes the United States to seek civil penalties
  - Estimated fines: \$5.4 to \$21 billion, \$1100-\$4300 per barrel
- Oil Pollution Act
  - Gives the government the right to seek penalties
  - Bills to raise the current \$75 million cap to \$10 billion



# G. Criminal Liability

- Burden of Proof on the Justice Department
  - Proof that the company prosecuted, as a whole, knowingly violated federal regulations
    - Will likely need proof that the company orchestrated a cover-up, destroyed key documents, or lied to government agents
- Remedy for Criminal Liability
  - Additional fines for the company
  - Company executives or workers would likely be individually indicted

# H. Punitive Damage Claims

- Gross Negligence
- State Law vs Federal
- Single Multiplier of Actual Damages
- Exxon Valdez

# I. Multiple Investigations

- Various Sources of Fact-Finding
  - Federal District Court
  - Congressional Investigations
  - Agency Investigations
  - US Justice Department
  - BP Investigation

# J. Corporate Bankruptcy Protection?

- BP and other Corporate Defendants?
- Private Claimants as Unsecured Creditors
- Government Confiscation of Oil Wells, Leases
- Creation of Liability Fund
- Reorganization

## K. Regulatory Reform

- US Minerals Management Service; now Bureau of Ocean Management, Regulation, and Enforcement (Department of Interior)
- Deepwater Drilling Moratorium
- Ban on Offshore Drilling
- Restrictions on New Coastal Drilling, Florida

# L. Exploratory Drilling Moratorium

- Safety Considerations
  - Could the Industry harbor another spill
  
- Failed Clean Up Protocol
  - Building an effective response
  
- Economic Impact
  - Duration of the Moratorium?



# *M. Continued Gulf Investment?*



# Conclusion



- BP Oil Spill: Unprecedented Disaster
- BP Oil Spill Litigation is a Multi-faceted Opportunity of Collaborative Research
- Areas for Interdisciplinary Collaboration:
- Law and Economics; Regulation and Systems; Environmental Risk and Community and Economics;
- Domestically and Internationally