

Gulf Oil Spill

RICO law made to combat Mafia used in BP lawsuits

By: The Associated Press

Using a law originally enacted to combat the Mafia, attorneys are filing lawsuits accusing BP PLC and Transocean Ltd. of committing a longterm series of crimes by concealing flaws in deepwater drilling plans and lacking safeguards to contain a catastrophic Gulf of Mexico spill.

BP has been named in at least three lawsuits brought under the federal law known as RICO, which stands for Racketeering Influenced and Corrupt Organizations. Transocean, which leased the ill-fated Deepwater Horizon drilling rig to BP, has been named in two lawsuits filed in Louisiana and Florida.

The lawsuits accuse both companies of committing wire and mail fraud over a number of years by filing false documents with the U.S. government, and by misleading investors through other documents and falsehoods. They also claim both companies are guilty of bribery because they are part of an overall oil and gas industry effort to "infiltrate" federal regulators by providing favors such as alcohol and drugs, sex, golf and ski trips, concert and sports tickets, and more.

"The pattern of racketeering activity engaged in by defendants involves a scheme to fraudulently create a pretense of safety to the public while, at every turn, seeking to avoid the costs associated with actually conducting their operations in a safe manner," claims a lawsuit filed by Louisiana attorney Daniel Becnel and others on behalf of a restaurant seeking to represent a huge class of businesses suffering economic loss from the oil spill.

RICO, passed by Congress in 1970, contains both a civil and criminal component, but both of them rely on proof of longterm violations of at least two specific crimes from a lengthy list. The attraction of the civil portion, which are being used in the current lawsuits, is that any damages would be tripled.

In the past, civil RICO cases have often been followed by criminal prosecutions. The Justice Department has not ruled out using RICO in its ongoing criminal investigation of the Deepwater Horizon explosion, which killed 11 rig workers and triggered a massive oil spill that has affected five Gulf Coast states.

Criminal convictions can lead to prison sentences of 20 years on each racketeering count, plus hefty fines and forfeiture of ill-gotten gains.

"We are investigating any possible violations of the law," said Justice Department spokeswoman Hannah August.

BP declined comment on the RICO allegations. Transocean did not respond to a request for comment.

Florida attorney Peter Prieto, a former federal prosecutor, said it might be a stretch for the Justice Department to bring a criminal RICO case when there might be easier-to-prove offenses.

"If it's a simpler crime, that's what they are going to do. Prosecutors are going to use RICO when it is truly applicable or when it involves organized crime," said Prieto, who is not involved in the oil spill cases. "It is kind of a hammer, but if the facts fit RICO, you can use RICO."

Even as use of RICO in criminal cases has waned somewhat, it's become increasingly popular on the civil

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side. This year alone, RICO lawsuits have been filed against the Roman Catholic Church over priest abuses; Toyota over its sudden acceleration problems; a group of title insurers over alleged overcharges; and online cigarette vendors over lost tax revenue.

In March, pharmaceutical giant Pfizer was ordered by a Boston jury to pay \$142 million in damages for wrongly marketing the epilepsy drug Neurontin as treatment for migraines and bipolar disorder.

The difficulty in the BP and Transocean cases, some experts say, is finding evidence tying the companies' actions to damages caused by the spill. On the criminal side, a prosecutor would have to have ironclad proof of criminal intent, not just negligence or stupidity.

"The problem is just connecting the dots," said Thomas Walker, an Idaho attorney who has tried about 20 civil RICO cases and maintains a blog on RICO. "The fraudulent communications, if they were fraudulent, went from BP to the government. The damage was not caused by the letter, it was caused by the oil spill."

The RICO lawsuits are among more than 200 filed against BP, Transocean and other companies seeking damages for economic losses, environmental damage and shareholder losses. A federal judicial panel will meet July 29 in Boise, Idaho, to consider whether to consolidate some or all of them for pretrial purposes.

Potential damages from those lawsuits would come on top of the \$20 billion BP has pledged to set aside to pay claims and other spill cleanup costs.

Most of the criminal allegations in the RICO lawsuits are taken from testimony and documents produced by congressional investigations of the spill, documents filed with financial regulators and investors, and even investigative news articles by The Associated Press and other news outlets. For example, the Louisiana complaint charges that:

—According to an AP story, an independent firm hired by BP in 2009 found the company was violating its own policies by failing to have key engineering documents aboard the deepwater drilling rig Alantis. The study was never disclosed to regulators.

—BP filed documents showing it had a solid response plan for a catastrophic oil spill, when in fact it "lacked any meaningful ability" to respond.

—BP repeatedly failed to disclose to the U.S. Interior Department a range of safety concerns about the Deepwater Horizon, including use of a risky well cementing technique and problems with pockets of flammable natural gas.

—Transocean assured investors and regulators that it had an excellent safety record, when in fact it was responsible for an increasing number of accidents on deepwater drilling rigs.

—Both companies are part of an oil industry effort to prevent the Minerals Management Service — now renamed the Bureau of Ocean Energy Management — from imposing tough rules, in part through industry events where government officials were given cocaine, marijuana and alcohol, had sex with company executives and received gifts ranging from exotic travel to concert tickets.