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Oil spill legal mess likely one of costliest ever

By CURT ANDERSON (AP)

MIAMI — BP PLC and the other companies involved in the Gulf of Mexico oil spill are faced with fast-multiplying lawsuits that will provoke one of the most drawn-out and costliest legal battles in U.S. history, one that could easily consume the \$20 billion set aside by BP to pay for the disaster, according to legal experts and attorneys nationwide.

One veteran complex litigation attorney estimated that unless there is a quick settlement that satisfies all sides, it will be 2015 before any trials begin and at least 2028 before appeals and other legal issues are fully resolved. The attorney, Lela Hollabaugh of Nashville, Tenn., pointed out that it took 20 years to complete all claims from the 1989 Exxon Valdez oil disaster in Alaska.

"When you're looking at an incident like this, which has so many different parties in different states, you just simply can't get through the litigation quickly," Hollabaugh said. "It just takes a long time to move through the process."

So far, at least 300 federal lawsuits have been filed in 12 states against BP and the other three main companies involved in the April 20 explosion aboard the Deepwater Horizon drill rig, which triggered the nation's worst-ever offshore oil spill. Virtually every lawsuit names as defendants BP, rig owner Transocean Ltd., well contractor Halliburton Co. and Cameron International, maker of the well's failed blowout preventer.

The plaintiffs make up the entire mosaic of the Gulf Coast: shrimpers and oystermen, charter boat captains, beach resort and condo owners, restaurants and bars, seafood suppliers, bait and tackle shops, even tourist attractions like Key West's Ripley's Believe It or Not museum. Most of the parties claim severe economic losses from the oil spill, ranging from the fish they can no longer catch to tourists who never arrived to rent rooms.

There are also a few wrongful death and injury lawsuits filed, mainly in state courts, by workers who survived the Deepwater Horizon explosion and relatives of some of the 11 men who died. And some BP investors also have sued, claiming the company's mistakes led to a sharp drop in its stock price.

A federal judicial panel is meeting Thursday in Boise, Idaho, to consider whether to consolidate some or all of the lawsuits for pretrial decisions before a single judge, a development that most observers say is a foregone conclusion. BP and the other companies favor federal court in Houston — near their major U.S. operations — while a majority of plaintiffs' attorneys have suggested New Orleans, closer to the broken well and to many of the hardest-hit victims. Courts in Florida, Mississippi and Alabama also are being suggested as venues.

It's difficult to estimate potential damages that BP could be forced to pay, or what shape a settlement might take. But legal experts say BP alone is looking at some \$2 billion in costs just to defend itself, with the \$20 billion fund set aside to pay oil spill claims and cleanup costs potentially not enough to foot the entire bill.

"There's no way it's going to be enough," said Victor Diaz, a Miami attorney experienced in similar large-scale cases such as those involving faulty Chinese drywall. "We still don't know what will happen later, what the second and third wave of damages might be. What happens if six months later, some fish species is wiped out?"

One example of post-spill lawsuits: the owners of a Louisiana shrimp boat claim in a new lawsuit they are suffering health problems including headaches, nausea and shortness of breath after working for BP in the collecting and burning of oil in the Gulf.

BP's liability is already larger than the Exxon Valdez case, which ultimately led to a \$500 million payout to affected fishermen and residents. Other large "mass tort" cases include drug maker Merck & Co.'s agreement in 2008 to a \$4.85 billion settlement of some 50,000 cases stemming from its withdrawn painkiller Vioxx. Also, Pharmaceutical company

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Wyeth initially settled claims over its diet drug fen-phen for \$3.75 billion in 1999, but that soared to more than \$21 billion by 2004 as more claims were filed.

Asbestos, which has caused widespread lung disease and other ailments, is the longest-running mass lawsuit case in U.S. history, costing a variety of companies more than \$70 billion and involving more than 730,000 claims since the 1970s, according to an analysis by the nonprofit Rand Corp. And tobacco companies have been slapped with thousands of lawsuits over the dangers of cigarette smoking. They won most of them until the major companies agreed in 1998 to a 25-year, \$206 billion settlement with 46 states who sued over the costs to their health programs.

The BP case will differ in many ways from those involving drug companies, automakers and asbestos manufacturers, where people died or suffered illnesses directly caused by the product. In an oil spill, oystermen whose beds were choked off by oil might have relatively easy claims to prove, but what about a beachfront hotelier whose business fell off, or a property owner whose house may suddenly be worth much less?

"People who have those indirect claims are going to have a difficult time under any situation," Hollabaugh said. "Where does it end? You could say the oil spill has harmed our whole country."

Many of the lawsuits are proposed class actions, in which a plaintiff such as a commercial fisherman or a property owner seeks to represent everyone else in the same situation. One task for the judge appointed to preside over the consolidated cases is sorting out which of those overlap, and which should be deemed class actions.

One wild card is the claims process created by BP and President Barack Obama's administration. That process, administered by attorney Kenneth Feinberg, promises oil spill victims quicker access to money for what BP calls "legitimate" claims than the traditional legal process. Feinberg is touting the plan as a generous alternative to a lawsuit, telling one audience in Washington that although legal action remains an option, "You're crazy to do so."

Feinberg made similar arguments in convincing most survivors and victims' families to join the federal 9/11 compensation fund rather than sue airlines or other companies individually over the terror attacks.

Some plaintiffs' attorneys have raised questions about how the claims process can guarantee a fair result. But Howard Erichson, a law professor at Fordham University, said people also are taking their chances with the court system.

"Litigation is expensive, it's time-consuming, it is unpredictable," Erichson said. "The results often vary in unpredictable ways. Plaintiffs in mass tort litigation end up losing a lot of the money to legal fees and expenses. If the compensation fund is fair, I'm all for it."

Another unknown is whether BP and the other Deepwater Horizon companies will work together to defend themselves or sue each other. Much depends on the outcome of a Justice Department criminal investigation that could point the finger more heavily at one or the other; Transocean is already asking a federal judge in Houston to limit its liability to \$27 million under a century-old law meant to cut losses for shipping companies when vessels like the floating Deepwater Horizon rig are sunk.

Somewhat forgotten in all the economic litigation are the rig victims and their families. Michelle Jones, the wife of lost rig worker Gordon Jones, wants to keep her lawsuit separate so it does not get lost in the shuffle.

"While the damages incurred by the fishermen and property owners is significant, the stakes in Jones' case involves everyday living expenses and the education costs for her two children," Michelle Jones' attorney wrote in a federal court filing. "After losing her husband, and her sons losing their father, she may have to wait years."