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Law Term Paper

Introduction

The BP oil spill was one of the largest unintentional oil spills globally. In fact, it was larger than the Exxon Valdez oil spill in the state of Alaska and Ixtoc spill of the Mexican coast. The BP oil spill resulted in the death of 11 crew members of the Deepwater Horizon drilling rig and injuries of others. It affected the livelihoods of several thousand fishermen, destroyed marine organism and animals, and destroyed beaches and marshes in a number of states including Florida, Alabama, Mississippi and Louisiana (Griggs 57). The BP oil spill was a dominant issue in the news since it occurred on April 20, 2010 until the spill was finally capped on July 15, 2010. Numerous lawsuits related to the BP oil spill have been filed. In addition, there have been several hearings before a joint investigation panel consisting of members from the Department of the Interior and the Coast Guard. In addition, several congressional hearings were conducted to discuss the BP oil spill. After the disaster, it was estimated that 4.4 million barrels of oil were released into the ocean (Sherman 327). Despite the fact that natural processes and cleaning efforts have helped in removing the discharged oil from the ocean surface, it has been projected that the impacts of the BP oil spill are likely to last for tens of years to come. The extensive media coverage of the BP oil spill raised a number of issues including people who were in charge, the effect of the oil on the environment, potential of the ecosystems recovering from the deleterious impact of the oil spill, utilization of dispersants, lax federal oversight, and slow

emergency response among others (Gill et al. 1911). This paper focuses on the trials following the BP oil spill including the companies sued, the issues that the government was suing for, and the role of insurance policies in regard to the damages caused by the BP oil spill.

The Gulf of Mexico Trials

The Companies Sued

The US government sued BP and its partners who were involved in the Deepwater Horizon oil well situated in the Gulf of Mexico based on their negligence that resulted in a blowout that led to a massive oil spill (Farrell 485). BP was the main operator of the well although its partners including MOEX (Mitsui and Co. subsidiary), Aandarko and Transocean, which BP had contracted to help in drilling the well, did not take measures that would ensure the well is secured appropriately (Griggs 60). The government also claimed that BP and its partners neither maintained nor monitored the state of the drilling equipment, which ultimately resulted in the oil spill. BP was in charge of making decisions regarding the drilling operations that were conducted on the Deepwater Horizon rig. The government argued that BP was focused more on profits rather than safety owing the fact that the operations had exceeded the plan budget and were behind the schedule; as a result, BP supervisors failed to conduct a vital safety test before the oil spill occurred (Farrington 21). Transocean, which has been subcontracted to oversee the operations, failed to provide proper training to its crewmembers; as a result, Transocean employees missed evident signals of an impending blowout (Sherman 327). Another corporation sued was Halliburton, which had been contracted to seal the well using lightweight cement containing nitrogen bubbles – this type of cement is apparently risky, which resulted in an incomplete sealing of the well. The representatives of the government consistently claimed that BP was involved in a number of missteps and made reckless decisions that amounted to

misconduct, and the government argued that BP prioritized profitability at the expense of people's safety and environment. Before the oil spill, a negative pressure was performed in order to ascertain whether the cement used for sealing the well would be effective in sealing the well off from the underground gas and oil; however, the crewmembers of Transocean under the supervision of BP misinterpreted the results of the tests and mistakenly thought the well as secure (Morrison para. 5). In this respect, Transocean was blamed for failing to provide sufficient training to its crewmembers (Gill et al. 1920). In addition, it was established that the crewmembers of Transocean failed to follow the basic processes in monitoring the state of the well (Griggs 75).

A breakdown of the companies involved in the oil spill reveals that despite the fact that Deepwater Horizon oil drilling was primarily a BP operation, there were other companies with stakes in the operations and others subcontracted (Gill et al. 1922). For instance, among the 126 individuals who worked in the Deepwater Horizon oilrig, BP had only eight employees, Transocean (a company that operated and owned the oilrig) had 79 employees, and additional 41 workers were workers of the contracted companies including Anadarko Petroleum Corporation, which was a BP partner in the Deepwater Horizon oilrig (Farrell 486). BP had a 65% stake in the Deepwater Horizon oilrig operation; Mitsui Oil Corporation owned 10%, whereas Anadarko owned 25%. In addition, there was a company called M – I Swaco, which was contracted to offer mud-engineering services. Two out of 11 workers who died belonged to M – I Swaco (Sherman 327). Halliburton had four employees working on the oilrig at the time, and had the responsibility of cementing the well in the seabed in order to prevent a potential blowout. Another firm, Cameron International was charged with supplying the blowout preventer valves used in the oilrig, which as it turned out, did not prevent the blowout that resulted in the disaster.

All the companies mentioned above have been sued by the government on accounts of negligence including improper design of the well and cement, lax oversight operations, failing to detect and correct early signs of a blowout, and incorrect operating procedures (Griggs 65).

Despite the fact that the Deepwater Horizon oilrig was primarily a BP operation, other minority interests were involved, and since BP had a majority stake, it bore responsibility for most of the legal damages, compensations and fines (Farrell 488).

Reasons for Suing

The aftermath of the BP oil spill disaster was characterized by numerous criminal and civil proceedings, which included a Clean Water Act lawsuit by the United States Department of Justice among other entities, criminal charges imposed on BP and claims settlement (Farrington 23). In September 2014, a federal court declared that BP had violated the Clean Water Act, and had to bear responsibility for the oil spill because of its gross negligence and deliberate misconduct. This ruling implies that BP will bear the costs of \$ 18 billion in the form of penalties besides the \$ 28 billion, which have already been paid in the form of cleanup costs and settlement claims (Gill et al. 1925).

Litigation started just after the blowout and the subsequent oil spill. As of May 27, 2010, Transocean stated before the United States House Judiciary Committee that the company was a defendant in 120 litigations, out of which at least 80 were considered class actions after payments for financial losses stipulated in the Oil Spill Pollution Act (Sherman 327). Transocean also stated that a significant proportion of the plaintiffs were seafood processors, restaurants, rental companies, landowners, hotel operators and fishermen, who claimed present or likely future loss following the oil spill. Simultaneously, media in the United Kingdom reported that at least 130 litigations have been filed against BP and its partners in the Deepwater Horizon oilrig

including Halliburton Energy Services, Cameron International Corporation, Transocean and BP (Randall and Osborne para. 3). Since the BP oil spill was prevalently offshore, plaintiffs citing damages and seeking compensation were mainly tourist hotels that were subject to cancellations and fishermen who had been pushed out of work (Griggs 70).

Violations of the Clean Water Act. The Department of Justice initiated a criminal and civil case against BP including its partners in the Deepwater Horizon oilrig (specifically Halliburton and Transocean) on the grounds that they violated the Clean Water Act (Farrell 490). The plaintiffs in this lawsuit comprised of private individuals and Gulf States. In addition, this lawsuit was merged with 200 other cases including lawsuits filed by private individuals, state governments, and corporations under the Multi-District Litigation Docket (Sherman 327). The Department of Justice was going to ensure that BP and its partners were subject to the stiffest fines that could possibly be imposed. In addition, the Department of Justice was going to prove that BP and its partners took part in deliberate misconduct and gross negligence that resulted in oil spill.

Nevertheless, BP refuted the claim by stating that the oil spill was an unintentional accident that turned into a tragedy. This lawsuit was thoroughly scrutinized owing the fact that if the court decided that BP was grossly negligent, the penalties stipulated in the Clean Water Act could be increased four times, and that BP would be responsible for punitive damages attributed to private claims. According to Griggs (65), fines associated with gross negligence are likely to have a significant impact on the bottom line of the company owing the fact that these fines are not tax-deductible. BP did not pay federal income tax during 2010 due to the deductions associated with the oil spill.

The lawsuit filed by the Department of Justice blamed BP for the oil spill in the Gulf of Mexico, describing the BP oil spill as an instance of deliberate misconduct and gross negligence,

a claim that BP refuted and promised to present evidence in regard to the issue. In addition, the Department of Justice maintained that Transocean also acted in a grossly negligent manner (Farrell 501). The Department of Justice directed its criticism at Transocean's officials for not rerunning the negative pressure test after the initial tests indicated a likely pressure irregularity in the oil well. Regardless of the fact that Transocean's crewmembers acknowledged the pressure reading and decided that it was troublesome, the supervisors of BP did not rerun the test. Conduct of a retest would have commenced before the closure of the blowout preventer used at the rig, and would have prevented the flow prior to the explosion (Sherman 327). According to the legal representatives of the Department of Justice, a basic safety-critical was blindly ignored, which amounts to gross negligence. The government maintained that corporations have a culture of recklessness, which in BP's case played a significant role in causing the BP oil spill. The Department of Justice also refuted the claim by BP that the ecosystem in the Gulf had been subjected to a significant recovery and a comprehensive cleanup. According to the government, there are far reaching damages that are not visible; thus, more clean-up is required (Gill et al. 1925).

On September 4, 2014, a federal court made a decision regarding the Clean Air Act, and BP was found guilty of deliberate misconduct and gross negligence. The court reported that the actions of BP were reckless; however, despite the fact that the actions of Halliburton and Transocean were negligent, the judge allocated 67 percent of the blame of the oil spill to BP, whereas 3 percent and 30 percent were allocated to Halliburton and Transocean (Gill et al. 1927). Fines will be allocated in accordance with the level of negligence of the companies involved in the oil spill with reference to the amount of oil discharged in barrels (Griggs 75). According to the Clean Water Act, the fines per barrel of oil discharged amount to \$ 4300. There

was contention in terms of the amount of barrels discharged with BP maintaining that disaster resulted in the discharge of 2.5 million barrels, while the court maintained that about 4.2 million barrels of oil were discharged during the disaster (Sherman 327).

Claims settlement. Apart from the litigation by the Department of Justice, there were at least 100,000 claims initiated by business and individuals who were affected by the BP oil spill, to which BP arranged to settle. Nevertheless, there is no specific cap for the claims settlement although BP stated that its claims settlements would amount to \$ 7.8 billion. In addition, BP has publicly stated that it has assets amounting to about \$ 9.5 billion stashed in a trust with the main objective of settling the claims (Freudenburg and Gramling 102). As of December 2013, settlements totaling \$ 13 billion had been paid by BP to the government, private individuals and business organizations (Freudenburg and Gramling 105). The 1990 Oil Pollution Act requires imposing a liability of \$ 75 million on a company in the form of economic damages on condition that the company is not involved in gross negligence; as a result, the government was out to make sure that BP did not cite the Oil Pollution Act to shield itself from economic liability. The government maintained that the environmental damage attributed to the oil spill could have a negative effect on the environment for coming decades. The court also sanctioned BP's proposal to make partial settlements for medical benefits. This settlement was applicable to people who had resided in oil-impacted shores for more than sixty days or took part in the cleanup process and documented particular health conditions attributed to oil spill or injury in the course of clean-up (Sherman 327).

The Role of Insurance Policies

The BP oil spill harmed various types of companies and individuals in a number of ways. The most prevalent form of harm is loss of revenue, especially for the companies that depended

significantly on Gulf beaches and waters for their sustainability such as business operations in tourism, energy and commercial fishing sectors. The revenue losses incurred by businesses operating in these industries initiated chain reactions leading to damages to their customers and suppliers. The liabilities and losses of the businesses and individuals affected by the BP oil spill are covered by the liability insurance. Nevertheless, specific exclusions and conditions are likely to present substantial challenges to insurance recoveries. Pursuing claims via the self-administered fund either by the BP or through litigation can help businesses and individuals receive compensation for losses. Sherman (327) recommends policyholders to act immediately for their rights to insurance coverage to be protected in the event that insurance recovery is required. In addition, it is imperative to note that all insurance coverage policies need early notice of claims by a policyholder as well as losses incurred. Despite the fact that the courts may exempt late notification and claim, policyholders should try to elude a potential problem by informing their insurers as early as possible followed by the documentation and preservation of evidence indicating their losses. In addition, the majority of property insurance policies usually have contractual limitations regarding the period for making a claim settlement against the insurer. As a result, it is imperative for policyholders to scrutinize policies for circumstances like these (Sherman 327).

Lost profits and damage of property are a crucial aspect of insurance policy coverage associated with the BP oil spill and other similar disasters. Several property insurance coverage policies ensure paying lost revenue to a business caused by damage of property that been covered by the insurance policy; this form of insurance policy is known as a business interruption insurance. Moreover, several insurance policies offer contingent business interruption coverage to cater for losses attributed to the damage of property owned by a

customer or supplier (Farrell 502). A pre-requisite for these forms of insurance coverage is that businesses must provide proof of damage to property as well as losses attributed to the damage. The damage to property requirement is likely to disqualify the coverage for business reporting losses in profits because offshore oil spill scares away potential tourists; this is because policyholders cannot own Gulf waters. Nevertheless, several businesses are likely to satisfy the requirement of property damage if the spilled oil is able to reach their industrial facilities, docks, beaches, boats or any other forms of equipment. In addition, there are companies having licenses to utilize Gulf waters for gas exploration, extraction of oil and fishing (Gill et al. 1926).

Conclusion

This paper has explored the legal issues concerning the BP oil spill including the companies that were sued, reasons for suing, and the role of insurance policies in covering the damages. A number of companies including BP, Transocean, Anadarko Petroleum Corporation, Halliburton Energy Services, M – Swaco, and Cameron International were sued for deliberate misconduct and gross negligence. The Deepwater Horizon oil exploration was mainly a BP operation, which resulted in the court allocating BP more responsibility for the damages associated with the oil spill. With respect to the role of insurance policies, it is evident that the BP oil spill resulted in loss of revenue, particularly for the companies that depended significantly on the Gulf waters for business; this is covered by the liability insurance.

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