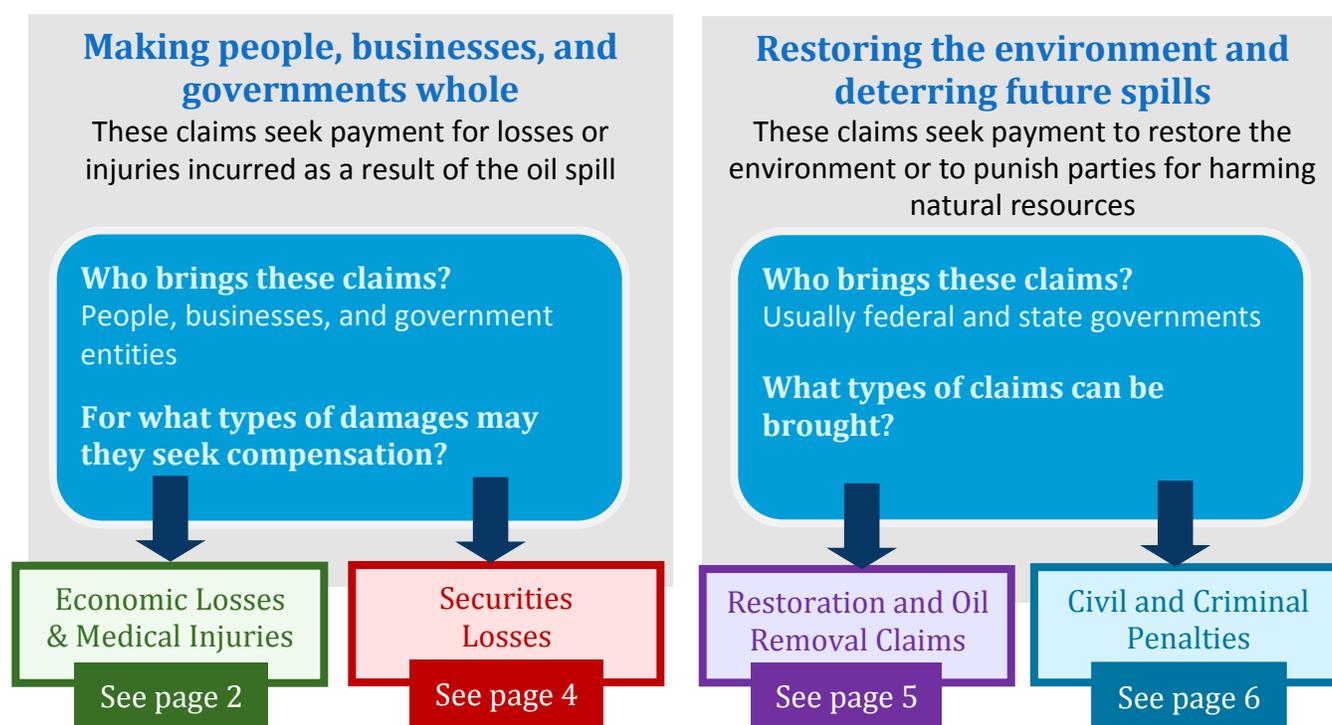


# Claims & Litigation Overview

Hundreds of lawsuits have been filed as a result of the *Deepwater Horizon* disaster. These lawsuits raise a wide variety of legal claims, from tort law (e.g., personal injury) to environmental law (e.g., water pollution). While claims have been filed under federal and state law, this overview focuses only on the various types of legal claims filed under federal law and their status as of **December 2013**. It does not explore the claims filed by individual Gulf states.

## What types of claims have been filed under federal law as a result of the *Deepwater Horizon* disaster?



## Who is liable for the disaster?

Several companies were involved in the *Deepwater Horizon* disaster. Which company (or companies) is liable for a loss depends on the nature of the claim. Companies involved include:

- **BP:** majority owner and operator of the Macondo well; hired Transocean to provide the *Deepwater Horizon* drilling rig and a drilling crew
- **Transocean entities:** owner of the *Deepwater Horizon* drilling rig
- **Anadarko entities:** minority owner of the Macondo well
- **MOEX:** minority owner of the Macondo well
- **Halliburton:** performed cementing work on the Macondo well

**NOTE:** All claims against Cameron (manufactured the blowout preventer), Weatherford (manufactured the float collar), and M-I (provided drilling mud products) have been dismissed.

# Making people, businesses, and governments whole

## ECONOMIC LOSS & MEDICAL INJURY CLAIMS

### What are these claims?

#### ► Economic Loss Claims

Individuals, businesses, and governments may be compensated for economic damages that resulted from the oil spill by bringing a claim under the Oil Pollution Act or a tort action. Some examples of economic damages that may be claimed under the Oil Pollution Act include:

Type of Damage	Who May Claim
<ul style="list-style-type: none"><li>• Lost Profits or Earning Capacity</li><li>• Loss of Tax or Other Government Revenues</li><li>• Property Damage</li></ul>	<ul style="list-style-type: none"><li>• Individuals, businesses</li><li>• Governments</li><li>• Individuals, businesses, governments</li></ul>

#### ► Medical Injury Claims

Under maritime law, individuals may be compensated for medical injuries caused by the oil spill or removal.

### What is the status of these claims?

In March 2012, BP and the Plaintiffs' Steering Committee agreed to resolve most economic loss and medical claims in two settlements.

The **Economic and Property Damages Settlement** generally includes (1) people who worked, lived, owned or leased property or worked on a vessel harbored in certain areas of the Gulf; and (2) entities that were doing business in certain areas of the Gulf. Claimants must meet several requirements set out in the settlement to be eligible. The court granted approval of the economic settlement on Dec. 21, 2012.

### Litigation and Settlements between Defendants

**Indemnity** is an obligation by one party to reimburse another for its liabilities.

BP has reached settlements with **Anadarko, MOEX, Cameron, and Weatherford** under which BP agreed to, among other things, indemnify each party for certain compensatory claims (e.g., natural resource damages).

The district court found that, by the terms of its contracts with **Halliburton** and **Transocean**, BP is required to indemnify them for most compensatory claims. The court has not yet determined whether Transocean or Halliburton's conduct invalidates the indemnity clauses.

### What has happened with the economic settlement since it was approved?

BP has objected to the way in which the claims administrator interpreted the settlement agreement, particularly how the administrator calculated certain business economic loss claims. The district court agreed with the claims administrator's interpretation, and BP appealed to the Fifth Circuit. The Fifth Circuit overturned that portion of the district court's decision and sent the matter back to that court for further consideration. In December 2013, the district court reversed its earlier decision and ordered the claims administrator to develop an appropriate protocol for calculating these claims.

# Making people, businesses, and governments whole

The **Medical Benefits Settlement** includes clean-up workers and certain coastal and wetlands residents, who meet the eligibility requirements in the settlement. The court granted final approval of the medical settlement on Jan. 11, 2013.

## What happens to claims under the settlements?

These claims are being handled through the **Deepwater Horizon Claims Center (DHCC)**, a court-supervised claims center established in June 2012.\*

## What happens to claims not included in the settlements?

Individual lawsuits not included in the settlements (either because the claim was not included or the claimant opted out) remain in the ongoing **multidistrict litigation** (see page 6).

*\*NOTE: The DHCC replaces the transitional court-supervised settlement program (Mar.-June 2012), and the Gulf Coast Claims Facility (Aug. 2010-Mar. 2012).*



## SECURITIES CLAIMS

### What are these claims?

Under securities law, a shareholder may file a lawsuit against an individual or corporation that misrepresented a “material” fact—one that a reasonable shareholder would think was important to an investment decision. A shareholder must show, among other things, that the individual or corporation acted with the intent to deceive or with severe recklessness, and that the shareholder suffered economic loss as a result of the misrepresentation. In addition, the Securities and Exchange Commission (SEC) may seek civil penalties for a misrepresentation of a material fact, as well as for misrepresentations in a statement or report.

### What is the status of these claims?

#### ► Investor Suits against BP

Certain BP shareholders (including pension funds that purchased BP stock) filed lawsuits against BP and key officers. The shareholders allege, among other things, that BP misled investors about the safety of its Gulf operations and its internal risk-management practices, and that these misrepresentations resulted in dramatic investment losses for BP shareholders following the spill. On Aug. 10, 2010, shareholder actions were consolidated into a **multidistrict litigation** (see page 7). Since then, the court has dismissed certain claims against BP and its officers.

**Investor suits are compensatory claims, which means they are intended to reimburse plaintiffs for the injuries or losses they suffered.**

#### ► Investor Suit against Anadarko

Anadarko shareholders have filed lawsuits against Anadarko and key officers. The shareholders allege, among other things, that Anadarko made material misrepresentations regarding safety practices, risk management, insurance coverage, and the company’s involvement in the Macondo well, resulting in harm to shareholders after the spill. In July 2013, the court dismissed all but one of the claims.

#### ► SEC Settlement with BP

On Nov. 15, 2012, the SEC announced it had filed charges against BP, alleging that BP misled investors about the rate at which oil flowed from the Macondo well in reports filed with the SEC. The SEC accused BP of indicating a flow rate estimate of up to 5,000 barrels per day, despite internal data indicating the flow rate could be as high as 146,000 barrels per day. At the same time, the SEC announced that BP had agreed to settle the charges by paying a penalty of \$525 million. The SEC has indicated that it plans to use the money to set up a fund for defrauded investors. The court entered a final judgment on the matter on Dec. 10, 2012.

**The SEC charges were punitive. The civil penalties are intended to punish BP for its misleading conduct.**

# Restoring the environment and deterring future spills

## RESTORATION AND OIL REMOVAL

### U.S. Civil Lawsuit

On Dec. 15, 2010, the U.S. Department of Justice (DOJ) filed a civil lawsuit seeking a determination of liability under the Oil Pollution Act and civil penalties under the Clean Water Act.

- ❖ **Oil Pollution Act (OPA):** The U.S. asked the court to find BP, Transocean entities, Anadarko entities, and MOEX liable under OPA for oil removal costs, assessment, and restoration.
- ❖ **Clean Water Act (CWA):** The U.S. sought civil penalties from BP, Transocean entities, Anadarko entities, and MOEX for violations of the CWA.

### How do natural resource damages and oil removal claims arise?

NRD claims can only be brought by specified trustees.

#### ▶ Natural Resource Damages (NRD)

Under OPA, natural resource trustees can recover from parties responsible for the spill the costs of restoring natural resources damaged by the spill, lost use of the natural resources, and costs of assessing the damage.

#### ▶ Oil Removal

Under OPA, the parties responsible for the spill must pay for the costs of removing oil. To the extent that they do not remove the oil themselves, they must reimburse those who do. For example, federal and state governments and Indian tribes who assist in oil removal can recover removal costs. Others may also recover removal costs if their actions were consistent with the National Contingency Plan, which the federal government calls its blueprint for responding to oil spills.

### Who are the responsible parties?

On Dec. 8, 2011, the U.S. filed a motion asking the court to find, among other things, that BP, Anadarko, and Transocean are liable under OPA. On Feb. 22, 2012, the district court determined that BP and Anadarko are “responsible parties,” and therefore liable for removal costs, assessment, and restoration under OPA. The court also determined that Transocean was not a responsible party, but might still be liable for removal costs.

### What is the status of oil removal and restoration?

#### ▶ Natural Resource Damage Assessment (NRDA)

Federal and state trustees are in the process of assessing the extent of injuries to natural resources and developing a restoration plan. In the meantime, under a voluntary agreement with the trustees, BP has agreed to fund up to \$1 billion in early restoration, which allows certain restoration projects to begin before the assessment is complete.

#### ▶ Oil Removal

In June 2013, BP and the U.S. Coast Guard announced that they were winding down active oil removal operations in Alabama, Mississippi, and Florida. In Louisiana, oil removal is ongoing for wetlands and nearly 100 miles of coast.

# Restoring the environment and deterring future spills

## CIVIL FINES AND CRIMINAL PENALTIES

### What are these claims?

When a party discharges oil in violation of a statute, it may be liable for civil or administrative fines, and/or criminal penalties.

### Civil fines and criminal penalties are punitive.

They are intended to punish parties and to deter future violations of those parties and others.

#### ► CWA Civil Fines

The CWA prohibits the discharge of oil into navigable waters in amounts that may be harmful to the public or natural resources. The Act allows the U.S. to file suit to recover civil or administrative fines for such violations, and sets a statutory maximum on the amount of those fines. Courts must take into account a number of factors, including the amount of oil spilled, the party's culpability, and certain other factors (e.g. party's efforts to minimize the effects of the spill), in determining the ultimate amount of the fines.

#### ► CWA Criminal Penalties

If a party negligently or knowingly caused the spill, they may also be liable for **criminal penalties**.

#### ► Other Penalties

In addition to CWA fines and penalties, the government may also file suit to recover penalties under other environmental statutes (e.g., the Migratory Bird Treaty Act), resource statutes (e.g. Outer Continental Shelf Lands Act), and general criminal statutes (e.g., laws against fraud and racketeering).

### What parties are subject to federal civil fines under the CWA?

On Dec. 8, 2011, the U.S. filed a motion asking the court to find, among other things, BP, Anadarko, and Transocean liable for CWA fines. On Feb. 22, 2012, the district court found BP and Anadarko liable for civil fines, but did not make a determination with respect to Transocean. BP and Anadarko are appealing the decision. The amount of the fine is currently being litigated in court.

## Settlements for Civil Fines and Criminal Penalties

The DOJ has settled various civil claims and criminal charges without a trial:

#### ▪ February 17, 2012 - CWA civil fines against MOEX

The DOJ, U.S. Coast Guard, and the Environmental Protection Agency entered into a \$90 million **civil settlement** with MOEX. MOEX agreed to pay \$70 million in civil fines and to spend \$20 million on Supplemental Environmental Projects focused on land acquisition and habitat protection. The court approved the settlement on June 18, 2012.

#### ▪ November 15, 2012 - Criminal charges against BP

BP pled guilty to 11 felony counts of misconduct or neglect of ship officers, one misdemeanor count of violating the CWA, one misdemeanor count of violating the Migratory Bird Treaty Act, and one felony count of obstruction of Congress. The court accepted the \$4.0 billion plea on Jan. 29, 2013. Civil claims against BP are still pending.

#### ▪ January 3, 2013 - CWA civil fines and criminal charges against Transocean

The DOJ and Transocean announced an agreement consisting of a **partial consent decree** and a **guilty plea agreement**. The \$1.4 billion settlement includes CWA civil fines and settles all criminal charges against Transocean; other civil claims are still pending. The criminal plea was accepted Feb. 14, 2013 and the partial civil settlement was approved Feb. 19, 2013.

Further details on these settlements can be found in fact sheets available at [eli-ocean.org/gulf/all-publications/](http://eli-ocean.org/gulf/all-publications/).

# How are all these claims managed?

When multiple legal cases arise out of a single incident, they may share “questions of fact”—that is, issues about the details of the incident itself. To increase efficiency and prevent inconsistent rulings, the Judicial Panel on Multidistrict Litigation may bring together cases with common questions of fact into a multidistrict litigation (MDL) for coordinated pretrial proceedings. **Two separate MDLs have been created:**

## MDL No. 2179

### *In re: Oil Spill by the Oil Rig “Deepwater Horizon”*

MDL 2179 is a consolidation of hundreds of lawsuits regarding impacts of the oil discharge, including lawsuits based on:

- Economic losses and medical claims,
- Federal civil penalty claims,
- State and local government economic claims.

Judge Carl J. Barbier of the U.S. District Court for the Eastern District of Louisiana oversees this MDL.

## MDL No. 2185

### *In re: BP Shareholder Derivative Litigation*

MDL 2185 is a consolidation of the **securities lawsuits** brought by shareholders against BP. They allege, among other things, that BP misled investors about the safety of its Gulf operations and its internal risk-management practices, resulting in dramatic investment losses for BP shareholders following the spill.

Judge Keith P. Ellison of the U.S. District Court for the Southern District of Texas oversees this MDL.

## Deepwater Horizon Litigation Summary

Type of Claim	Who may bring the claim here?	What is the basis of the claim?	Compensatory or punitive?	Where does the money go?
<b>Economic Losses</b>	Individuals, Businesses, Governments	Examples include property damage, lost subsistence use, lost earning capacity/profit	Compensatory, but punitive damages may be available	Plaintiff
<b>Medical Injuries</b>	Individuals	Injuries from oil spill or removal	Compensatory, but punitive damages may be available	Plaintiff
<b>Oil Removal</b>	Individuals, Businesses, Governments	Oil removal costs	Compensatory	Depends on who brings the claim (e.g. for federal government, goes to Oil Spill Liability Trust Fund)
<b>Natural Resource Damages</b>	Federal and state governments	Cost of restoring damaged natural resources, lost use, and the assessment	Compensatory	To assessment and restoration costs
<b>Securities Losses</b>	Shareholders	Misrepresentation	Compensatory	Plaintiff
<b>Securities Penalties</b>	Federal government	Misrepresentation	Punitive	Treasury or a fund to help defrauded investors (discretion of SEC)
<b>Federal Fines and Penalties</b>	Federal government	Violation of statute	Punitive	Depends on statute

**DISCLAIMER:** This overview is prepared for informational purposes only to inform individuals who are not involved in the litigation. It is not prepared for litigation and is not legal advice. Individuals with potential claims should consult with their own attorney.



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