BP Civil Settlement Remains Elusive as Trial Nears

MICHAEL KUNZELMAN,Associated Press

NEW ORLEANS (AP) — The U.S. Justice Department and the five Gulf coast states affected by a massive oil spill nearly three years ago have indicated they would like to settle their environmental and economic claims with BP PLC ahead of a trial scheduled to start next week.

The problem is that they haven't been able to agree on the possible terms of such an agreement. Months of negotiations have failed to resolve lingering differences — not just with the London-based oil giant, but among themselves.

The Justice Department convened a meeting with Gulf Coast state officials in Washington late last week in an effort to hammer out an offer to resolve the outstanding civil claims, but an agreement wasn't reached, said a person familiar with the negotiations. The person spoke on condition of anonymity because the discussions were confidential.

Alabama Gov. Robert Bentley said reaching a settlement that satisfies all states' competing interests has been difficult.

"We just want to make sure we get our fair share," he said. "We had more economic damage than probably any state because of the loss of all the tourism we had in 2010. So it's very important that the people of Alabama are compensated for the losses related to the oil spill."

Bentley said representatives of his office attended the meetings in Washington last week, but he declined to comment on the talks.

"We are ready to go to trial," he said Wednesday.

An 11th-hour settlement still could be reached before the trial starts Monday — or even after it has begun — but it is not surprising that a deal has proved elusive thus far in such a complex case, said David Uhlmann, a University of Michigan law professor and former chief of the Justice Department's environmental crimes section.

"It's extraordinarily difficult to negotiate any type of multiparty settlement, particularly when the sums involved reach into the tens of billions of dollars," he said. "The stakes are high. There are a lot of competing interests. Different parties may have different incentives to settle."

BP faces penalties under the Clean Water Act ranging from $5.4 billion to $21.1 billion, based on the government's estimate of how much oil spilled into the Gulf.

Among the company's motivations to settle before a trial would be to avoid the higher end of that range, which U.S. District Judge Carl Barbier could impose if he ruled the company acted with gross negligence before the well blowout on April 10, 2010, that triggered an explosion, killing 11 workers and spawning America's worst offshore oil spill. With so much money at stake, "It's a high-stakes gamble to go to trial," Uhlmann said.

BP didn't participate in last week's talks, and pledged this week to take the case to trial. In a statement released Tuesday, the company's general counsel, Rupert Bondy, said BP has been open to settlements on "reasonable terms" but was "faced with demands that are excessive and not based on reality or the merits of the case."

In its most recent quarterly earnings report, released earlier this month, BP said state and local governments have formally presented the company with more than $34 billion in claims. The report claimed those figures are inflated and based on "seriously flawed" methodologies.

A key sticking point among the states themselves has been deciding how much money BP would pay in Clean Water Act penalties and how much it would pay through the Natural Resource Damage Assessment process. The NRDA process, authorized by the Oil Pollution Act of 1990, only funds environmental-restoration projects and uses scientific research to assess spill damage and decide how to fix it.

A settlement that funnels more money into NRDA projects could mean a greater share of the funding would flow into Louisiana, which bore the brunt of the spill's ecological impact.

In a letter to Attorney General Eric Holder last week, Louisiana's Republican Sen. David Vitter urged the Justice Department not to settle with BP over Clean Water Act penalties without agreeing on NRDA payments.

Louisiana officials, however, don't appear to be uniformly in favor of a NRDA-heavy approach to a settlement. Louisiana's Democratic Sen. Mary Landrieu joined senators from other Gulf states in signing an Oct. 5, 2012, letter to the White House that expressed "grave concerns" about a settlement that would boost NRDA payments at the expense of Clean Water Act penalties.

The RESTORE Act, which Landrieu sponsored and Congress approved last year, dictates that 80 percent of the Clean Water Act penalties paid by BP be divided among Louisiana, Mississippi, Alabama, Florida and Texas. Not only would a large chunk of that money be spread out evenly among the Gulf states, but the legislation also gives them some flexibility in deciding how the money is spent.

"Circumventing the will of Congress by shortchanging the RESTORE Act is wholly unacceptable to us. We urge you to reject such an approach," the senators wrote.

The civil trial set for Monday originally was scheduled for February 2012, but Barbier delayed it to allow BP to wrap up a settlement with a team of private attorneys

representing residents and businesses that claimed economic losses from the spill.

The trial's first phase, which could last up to three months, is designed to identify causes of the blowout and assign percentages of blame to the companies involved. The second phase would determine how much oil spilled into the Gulf.

Bondy, the BP attorney, said the company will "vigorously" defend itself against gross-negligence allegations.

"This was a tragic accident, resulting from multiple causes and involving multiple parties," he said.

He also disputed the federal government's estimate of how much oil spilled into the Gulf, claiming it's inflated by at least 20 percent.

The Justice Department and the Plaintiffs Steering Committee, the lead private attorneys in the case, have vowed to prove at trial that BP was grossly negligent and that it engaged in willful misconduct in causing the spill.

"We remain as determined as ever to hold those responsible accountable," Department of Justice spokesman Wyn Hornbuckle said in a statement.

A team of scientists working for the government estimated that more than 200 million gallons of oil spewed from BP's blown-out Macondo well from April to July 2010.

BP already has reached a settlement with the Justice Department resolving its criminal liability for the spill. The company has pleaded guilty to manslaughter and other charges and agreed to pay $4 billion in criminal penalties.

Rig owner Transocean Ltd. reached a separate settlement with the federal government, pleading guilty to a misdemeanor charge and agreeing to pay $1.4 in civil and criminal penalties.

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Associated Press reporter Phillip Rawls in Montgomery, Alabama, contributed to this report.

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