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Venue Up In The Air After BP Spill Litigants' MDL Bid

By Julie Zeveloff

Law360, New York (June 22, 2010) -- With the U.S. Judicial Panel on Multidistrict Litigation widely expected to consolidate the hundreds of cases stemming from BP PLC's oil spill in the Gulf of Mexico, the buzz is building about where the litigation might be centralized — and whether the panel will settle for one of the two leading venues that the litigants proposed.

The April 20 explosion of the Deepwater Horizon rig and resulting oil spill have prompted the filing of nearly 200 cases in federal courts in the Gulf Coast region, and even more lawsuits are expected as fishermen, tourism companies, local governments and other affected parties attempt to calculate the disaster's toll on their livelihoods and businesses.

“In my opinion, this is ripe for an MDL,” said Scott Vezina, a partner at Ratzan & Rubio, a Miami-based plaintiffs firm. “The civil actions all involve one or more common questions of fact: was BP negligent in its failure to maintain the rig? That's a question that every seafood processor, fisherman — anyone who derives his living from the gulf — wants answered.”

The seven-member JPML is set to consider questions of consolidation and venue for the litigation at its July 29 meeting in Boise, Idaho.

Two front-runners have already emerged for the litigation, if it is consolidated: the U.S. District Court for the Southern District of Texas, suggested by the defendants, and the U.S. District Court for the Eastern District of Louisiana, which many plaintiffs are pushing.

BP urged the panel to consider the federal court in Houston in a petition dated May 7, arguing that the forum was appropriate since the defendants' headquarters, documents and key witnesses were all located there.

Halliburton Co. and Cameron International Corp., which are named as defendants in most of the litigation, filed papers supporting BP's petition last week, signaling that those defendants all plan to pursue a unified front.

Houston, often dubbed “the oil capital of the world” and home to BP, Halliburton and Transocean Ltd., the manufacturer of the leaking rig, is considered a friendly venue for the defendants, according to attorneys.

The majority of the plaintiffs, meanwhile, have urged consolidation in the federal court in New Orleans, arguing that much of the damage has occurred in that city and that the court there is particularly well-equipped to handle complex litigation.

“Texas has never been a very user-friendly jurisdiction to plaintiffs, so it is hoped that the court would consider more the rights of the people who have been harmed — rather than rights of people who have harmed them — for convenience,” Tom Girardi of Girardi & Keese, a plaintiffs attorney for around 800 oil spill cases, told Law360.

He said that some plaintiffs have also recommended there be three MDLs — one in Mississippi, one in Florida and one in Louisiana — “because it's such a huge undertaking that it would totally dwarf one judge, no matter how good that judge was.”

Like in all MDL considerations, the panel will look at several factors in placing the MDL, among them where the cases were initially filed, where the defendants are based, where the relevant documents and witnesses are located, whether the court is easily accessible to the parties, and the court's capacity to devote the necessary resources to the litigation.

It will likely come down to which court has an experienced MDL judge with space on his calendar, said Raymond G. Mullady, a partner in Blank Rome LLP's product liability and mass torts group.

Kenneth Kliebard, chair of Howrey LLP's consumer class action defense group, said that in mass tort-type cases, the panel tended to place the MDL in the district with the most victims, as opposed to the location of the defendants' headquarters.

“Given the advances in technology, and when you look at the types of documents and witnesses relevant in this case, it would seem that there is less of a compelling reason to have this case venued where the defendants' place of business is,” Kliebard said.

“Presumably, documents can be scanned electronically and made available.”

Kliebard said the panel in the BP case must be particularly careful to make sure that no potential conflicts of interest exist between the selected MDL judge and the defendants.

“It's always something to be concerned about, but given the size of BP and that its shares are owned by many pension funds — it seems like it could be a bigger issue in this situation,” he said.

Also noteworthy, at least one plaintiff has broken with party lines by petitioning for consolidation in the federal court in Houston.

That plaintiff, British Virgin Islands-based boat operator Nova Affiliated SA, who filed a putative class action in the Eastern District of Louisiana to recover damages suffered as a result of the spill, cited the location of the defendants, witnesses and

documents, and the Houston court's ability to manage the case, as reasons why transfer to that court was ideal.

"It's hard to say what the panel's ultimate decision will be, but the fact that at least one plaintiff has also suggested the Southern District of Texas will factor into that calculus significantly," said Paul G. Cereghini, an executive managing partner at Bowman and Brooke LLP who has extensive experience dealing with MDLs.

While MDL consolidation certainly has its advantages — avoiding duplicative discovery and inconsistent pretrial rulings are among the most frequently cited — the format also has some major drawbacks.

"From a defense perspective, the overarching disadvantage is that when you enter an MDL, what you gain in efficiency you make up for in complexity," said Alston & Bird LLP's Lisa Gilford. "When you aggregate a bunch of claims in one proceeding, it becomes difficult to manage. Things like choice of law become very complex."

Given the gamut of claims asserted in the litigation thus far — negligence, wrongful death, environmental, insurance, derivative and economic loss, among them — the oil spill MDL, no matter where it's housed, would be unparalleled in its complexity.

"The judge to whom this MDL is assigned will have a very big job in managing the large number of pieces," he said. "He will have to find a way of taking all the different types of actions and putting them on the appropriate tracks for pretrial matters and an ultimate resolution."

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