

Bigger fine sought for BP

Plaintiffs' lawyers say amount should be \$1 billion

By KRISTEN HAYS

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BP's penance for the deadly 2005 blast at its Texas City refinery has been costly but not costly enough for lawyers who represent people suing the London-based oil giant.

They say the company should be punished with a \$1 billion fine. With lawsuit settlements whittling down chances to entice that from a civil jury, a group of plaintiffs' lawyers are pushing for a federal judge to lower the hammer.

"I'd like to see a jury be able to assess the punishment," said Mark Lanier, one of several lawyers pushing for U.S. District Judge Lee Rosenthal to impose the 10-digit punishment in the federal criminal case against the company's North American products division.

"Certainly if not, a judge ought to be able to do it independently and not after a prearranged deal has been cut by the Justice Department and the company," Lanier said.

BP's North American products division has agreed to plead guilty to a felony federal environmental crime, pay a \$50 million fine and be on probation for three years. Rosenthal can approve the plea agreement and punishment as structured or reject it and impose something else. The company's plea hearing is slated for February.

So far BP has spent more than \$1.6 billion settling hundreds of blast-related lawsuits, including all involving deaths. Fifteen people died in the disaster, and scores were hurt.

Texas law caps punitive damages at twice the amount of economic damages such as lost wages and an amount equal to noneconomic damages, such as mental anguish, up to \$750,000. Punitive damages are judgments from civil juries intended to punish defendants on top of compensation awarded to plaintiffs. There are exceptions. If plaintiffs' lawyers can convince a civil jury that a defendant broke certain Texas laws, punitive damages awarded can exceed the cap.

"You have to establish conduct, and then the jury in a civil case can find that the conduct reaches the level of the criminal definition," said Jim Perdue Jr., a Houston plaintiffs' lawyer who was not involved in recent blast-related civil trials.

Trials shortened

However, a civil jury has to hear an entire trial and deliver a verdict for that to happen. Last year, the final lawsuit involving deaths was settled on the day jury selection was to begin. Two trials involving injuries in the latter half of this year ended with settlements.

Plaintiffs' attorneys in the second of those trials this year zeroed in on evidence aimed at

convincing jurors that BP violated Texas law in its efforts to get an air quality permit for the refinery in the years before the blast. The company received that permit in mid-2005, several months after the tragedy.

Specifically, the plaintiffs presented an expert witness who said the company secured that permit and others "by deception," which is among the exceptions to the cap.

BP conceded an application for that permit contained a pair of significant errors when submitted in early 2003. The company said those errors had been corrected by the time the company turned in the final application in February 2005.

The early settlement last week precluded jurors in that case from considering whether the permit issue fit a cap-busting criminal definition. But Lance Lubel, who represents several plaintiffs with pending cases, said the testimony wasn't necessarily a waste of time.

"We put punitive damage evidence on at trial because we don't know for sure when or if the case will settle," he said.

Next trial in May

The next trial before state District Judge Susan Criss in Galveston is scheduled for May, leaving a long stretch to negotiate settlements.

Lanier and other plaintiffs' attorneys have asked Rosenthal to consider a bigger fine in the federal criminal case.

"If we don't hold corporations in check, the average person doesn't stand a chance," Lanier said.

BP spokesman Ronnie Chappell noted that government agencies have acknowledged the company's cooperation with investigations, and that the company is spending \$1 billion overhauling the Texas City plant.

"We have shared the lessons learned from our own incident investigation, and we are working to become an industry leader in process safety management and performance," he said.

Chappell also said the \$50 million fine is 100 times the Clean Air Act's limit of \$500,000. However, the Justice Department surpassed that limit under a provision that allows prosecutors to consider profits as well as how much money the company may have saved by deferring repairs and failing to implement safety measures in the unit that exploded.

The plaintiffs' lawyers argue that the damage caused by the explosion spread beyond that unit, and the fine should account for profits of the entire plant \$1 billion in 2004.

Prosecutors noted in a filing last month that lesser charges were available to resolve the criminal probe, but the government pressed for a tougher punishment.

"In this case, the government has required that BP Products plead to the most serious offense supported by the evidence and available under the Clean Air Act and that BP Products admit that its illegal conduct was a knowing violation of the law and not merely negligent," the filing said.

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