

BP Bankruptcy Would Offer No Protection From Costs

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By Margaret Cronin Fisk and Linda Sandler

June 15 (Bloomberg) --BP Plc, whose potential liability for the Gulf of Mexico oil spill has lawmakers and analysts raising the specter of bankruptcy, would be unlikely to avoid paying claims by seeking court protection, restructuring experts said.

The spill, the worst in U.S. history, threatens wetlands, wildlife, fishing and tourism in five states. BP has spent more than \$1.43 billion to stop the leak and clean it up, and to compensate local businesses and residents since the April 20 explosion of the Deepwater Horizon oil rig.

The U.K. energy company faces more than 200 lawsuits, and the U.S. is assessing the cost of restoring natural resources destroyed or fouled by the spill. BP's liabilities include \$37 billion in cleanup and potential litigation expenses, according to a June 2 Credit Suisse report. While a U.S. bankruptcy may halt many claims, it wouldn't allow BP to avoid paying for most of the cleanup and damages, said New York bankruptcy lawyer Martin Bienenstock of Dewey & LeBoeuf LLP.

"It's highly unlikely the claims would be so large that BP would pay any valid claims less than in full," said Bienenstock, who advised General Motors Co. and Chrysler Financial Corp. in their bankruptcies. "The environmental claims and other claims would all ride through bankruptcy and be paid in the normal course."

BP said it won't seek court protection. "We categorically deny those rumors," said David Nicholas, a company spokesman.

Lowest Price

BP fell today to its lowest price in 13 years, down 48 percent from the day the oil rig blew up, killing 11 workers. The cost to protect \$10 million of BP debt for a year reached \$695,000, according to CMA DataVision. It was \$29,000 on April 30. The shares fell 13.45 pence to 342 pence in London trading, the lowest price since April 1997.

"The bankruptcy option is clearly there," said John Olson, managing partner of Houston Energy Partners, a hedge fund unit of Sanders Morris Harris Group Inc. "BP's board and CEO can say they've ruled it out, but you can't rule it out, realistically." Olson doesn't hold any BP shares.

On June 13, White House Adviser David Axelrod called on BP to establish an escrow account for claims tied to the spill. U.S. Senate Majority Leader Harry Reid requested that the London-

based company set up a \$20 billion fund administered by an independent trustee, according to a letter from his office.

The Obama administration should consider placing the company in receivership to preserve its assets because BP is likely to end up in bankruptcy, said Representative Steve Cohen, a Tennessee Democrat. Louisiana State Treasurer John Kennedy agreed, saying bankruptcy is a possibility and state and federal governments need to plan for it. The spill has sullied or threatened the coastlines of Louisiana, Alabama, Mississippi, Florida and Texas.

‘Ability to Pay’

The plan by state and federal governments to stop the gusher, clean it up and compensate victims “is all predicated on BP’s ability to pay for these objectives. And I say we need a plan in the event that it cannot pay for these objectives,” Kennedy said. “I don’t want us to miss a beat in the event that BP decides to seek protection of the U.S. bankruptcy laws.”

Such a U.S. bankruptcy filing, restructuring experts said, wouldn’t protect BP from liability for damage and cleanup costs stemming from the disaster. It may simply provide the company with a single venue from which to pay claims quickly.

Environmental Bankruptcy

In last year’s settlement of the largest-ever U.S. environmental bankruptcy, all claims were paid in full by the debtor, mining company Asarco LLC, said Gregory Evans, a lawyer at Milbank Tweed Hadley & McCloy LLP in Los Angeles.

Asarco paid \$1.8 billion in restoration and cleanup costs for water, land and air pollution at 100 sites across the U.S. under the auspices of the U.S. Bankruptcy Court in Corpus Christi, Texas.

The Asarco court employed a process called estimation, which lets injured parties and the company present evidence of claims directly to the judge on an expedited basis.

Estimation removed trial lawyers from the process and skirted years of potential delays, said Evans, who helped lead Tucson, Arizona-based Asarco through the bankruptcy.

“The perception is that a company runs to bankruptcy to avoid its environmental liabilities,” said Evans. “But if the assets are there to pay a claim, and the judge decides the amount is fair, then that is what is owed.”

Every Dollar Asked

After a federal judge discharged Asarco from bankruptcy in December, Associate U.S. Attorney General Tom Perrelli said taxpayers got more than a dollar back for every dollar asked.

BP, the largest oil and gas producer in the Gulf of Mexico, may put all or part of the company into Chapter 11 bankruptcy, said Lynn Lopucki, a law professor at the University of California,

Los Angeles. That would immediately halt spill litigation against it and place all claims under the control of the bankruptcy judge, he said.

“All claims could be liquidated expeditiously using the bankruptcy code’s magical estimation power, and the company could set aside an amount of stock or cash flow to pay off the estimated claims over a period of years,” Bienenstock, the New York bankruptcy lawyer, said.

The alternative to seeking court protection might be a “nightmare” lasting five or 10 years as BP dealt with claims while its stock remained under a cloud, he said.

Houston Energy Partners’ Olson said that while bankruptcy is “a plausible tactic” to protect BP’s North American assets, “any whisper of bankruptcy is something the short sellers would be likely to encourage.”

Public Sentiment

While providing an organized, single venue for addressing spill-related claims, a Chapter 11 filing might also inflame public sentiment. President Barack Obama said in an interview with NBC News broadcast June 8 that he’s looking for “whose ass to kick” and that BP Chief Executive Officer Tony Hayward “wouldn’t be working for me.”

“Political pressure can change what judges do. It would be very difficult for any judge to make a ruling in favor of BP right now,” said Lopucki. “It’s better right now for BP to avoid any court decisions.”

A bankruptcy filing would carry risks for BP management, including Hayward and the board, Lopucki said.

“The people in charge are generally forced out,” he said. “Bankruptcy seems to accelerate the process.”

BP wouldn’t succeed in assigning liability to a subsidiary that is subsequently placed into bankruptcy because creditors may seek to reverse the move, said John Penn, an attorney at Haynes & Boone LLP in Fort Worth, Texas, and a former president of the American Bankruptcy Institute.

Evans, the Asarco lawyer, cited the example of Exxon Mobil Corp. and the two decades of litigation it faced over the 1989 Exxon Valdez oil spill as a justification for letting judges, not juries, resolve the claims.

“Everyone deserves representation, but not to the point of the company spending 10 years circling the drain,” Evans said. “Justice delayed is justice denied, even for the company.”

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