

## Litigator of the Week: Brad Brian of Munger, Tolles & Olson

By Jan Wolfe  
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Transocean Ltd., the drilling company that owned the Deepwater Horizon oil rig and leased it to BP plc before the 2010 Gulf of Mexico spill, admitted to negligence and partial blame for the rig's catastrophic explosion. The multibillion-dollar question facing the company was whether a judge in New Orleans would hold it grossly negligent in civil litigation brought by the U.S. Department of Justice and other claimants. Such a finding would allow private plaintiffs to seek staggering punitive damages from Transocean. And it would allow BP to wiggle out of agreements to indemnify Transocean from much broader environmental liabilities.

Transocean and its lead counsel, Brad Brian of Munger, Tolles & Olson, had some reasons to be confident when the judge began a long bench trial to apportion blame for the Deepwater blowout in February 2013. The company had paid a much smaller penalty than BP in separate criminal litigation, lending credence to Transocean's argument that BP, the rig's operator, was most at fault. Still, with so many billions hanging on the judge's ruling, this was a bet-the-company trial.

After a nail-biting wait, Brian got the job done. In a 153-page ruling on Sept. 4, U.S. District Judge Carl Barbier issued the verdict Brian had been hoping for: negligence on the part of Transocean, gross negligence on the part of BP.

Barbier faulted Transocean for deficient safety systems and training and for misinterpreting a crucial safety test half an hour before the blowout. But the judge ultimately concluded that BP was in charge of the botched safety test and bears most of the blame. The judge also criticized BP for several risky and "profit-driven" decisions in the months leading up to the blowout, including a decision to drill deeper below the ocean's surface.

Tasked with apportioning blame for the blowout by percentage, the judge ruled that BP and Transocean were 67 and 30 percent at fault, respectively. (The remaining 3 percent of the blame fell on Halliburton Company, BP's cement contractor.)

"The judge's opinion properly distinguishes between Transocean's

conduct, which was largely reactive, and the decisions BP made much earlier," Brian said in an interview.

The ruling means that BP, in addition to its much-publicized \$9 billion settlement with nongovernment plaintiffs, now faces up to \$18 billion in additional damages. (Barbier will determine damages in a separate trial next year.) Transocean, on the other hand, has now resolved its potential liability for below-surface oil discharge from the spill, since the judge's ruling keeps its indemnification agreements with BP intact. Private plaintiffs could still seek additional damages for above-surface discharge, which falls under a different legal framework, but those claims are relatively minor.

During the trial, Brian cross-examined Mark Bly, BP's head of safety and operations, who wrote the company's internal report on the 2010 blowout. That report made no mention of a phone call on the evening of April 20, roughly an hour before the disaster struck, in which two BP employees misinterpreted the crucial safety test and failed to take action. Bly offered explanations for why the call wasn't included in BP's report, but the judge called those explanations untenable. "The court infers that BP's investigation team recognized the importance of the 8:52 p.m. phone call and chose to omit it from the BP Accident Investigation Report to avoid casting further blame on BP," Barbier wrote.

"That didn't help BP's credibility," Brian said.

Unlike BP's leaders, who have complained about the oil spill litigation becoming a feeding frenzy for plaintiffs lawyers, Brian raved about both Barbier and his opposing counsel. He said the lawyers on the other side were professional, and the judge controlled the courtroom masterfully.

"I think this case was tried the way cases were tried 50 years ago," he said. "This was the best professional experience of my life."



**Brad D. Brian**