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BP's Race to the Bottom

Reports in the press show that BP immediately began preparing for litigation following the spill. The company did this as it touted its intention to take full responsibility for the spill. It seems its partners in the Deepwater Horizon well did the same. Unlike BP who downplayed the disaster in the early weeks in efforts to get waivers and settlements on the cheap, its partners have gone the other direction alleging "gross negligence" on the part of BP in the disaster.

Of course, BP's partners, Anadarko Petroleum Corp. and Mitsui Oil Exploration Company of Japan, share BP's motivations. They are attempting to evade their shared responsibility for the disaster as partners in the well. According to the New York Times, BP has made a demand of \$272 million on Anadarko for its 25 percent share, and \$111 million from Mitsui for its 10 percent share. These demands will clearly go much higher in the coming months and years as the damages and legal claims continue to mount.

The public position taken by Anadarko in claiming gross negligence in order to escape its contractual responsibility is remarkable for a number of reasons. The same is true of Mitsui who has reserved judgment in assessing its contractual responsibilities. First, in its early preparation for litigation, BP apparently snatched up many industry experts. This effectively conflicted many of the experts out of representing plaintiffs. BP will be unable to take the same tact with its own partners since it will be the partners' experts that assess BP's level of negligence. Second, and related to the first, it may be BP's own experts that provide much of the groundwork for the thousands of civil lawsuits that are already in the works, and the many more that are sure to come against BP.

Predictably, BP will fight any claims of gross negligence by both its partners and the many plaintiffs in the civil lawsuits. It is also predictable that Anadarko will reverse position on the issue of gross negligence to avoid punitive damages in the civil lawsuits. It is equally predictable that the Tort Reformers, the right and the oil industry will continue to push for caps on liability both for this disaster and others to come in the future.

Much like Transocean who has pushed for \$25 million caps in liability while recovering hundreds of millions of dollars in insurance for the destruction of its rig, BP, Anadarko and Mitsui will waste no time in making claims against one another for their business losses while one and all will join in the refrain to prevent full and fair recovery by the true

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victims of the BP disaster, the people and businesses along the Gulf Coast. It really its a race to bottom of business, social and community morality.

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