



Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | [www.law360.com](http://www.law360.com)  
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | [customerservice@law360.com](mailto:customerservice@law360.com)

## Bellwether Trial Set For Fla. Deepwater Horizon Cases

By **Nathan Hale**

Law360 (January 20, 2021, 10:21 PM EST) -- A Pensacola, Florida, man who claims he suffers from eye ailments after being exposed to oil and chemicals while helping clean up northwest Florida beaches following the BP Deepwater Horizon oil spill will serve as a bellwether plaintiff for hundreds of similar claims against the energy giant.

In an order handed down Monday, U.S. District Judge Casey Rodgers of the Northern District of Florida announced that Christopher F. Causey's case had been selected to go to trial as a test case for a portion of the more than 500 suits before her related to the 2010 disaster. The judge is handling cases filed by plaintiffs who were diagnosed with medical problems after the cut-off date set in a settlement agreement in the main multidistrict litigation based in Louisiana federal court.

Causey's case was selected at random from a list of 10 individual suits raising claims of eye-related injuries — five submitted by the plaintiffs and five submitted by BP — according to the order.

In November, Judge Rodgers dismissed an initial group of bellwether cases brought by cleanup workers and coastal residents. In her ruling granting BP summary judgment, she found the plaintiffs' expert testimony was flawed and sided with the assessment of BP's experts that there was insufficient evidence from the data collected during the spill and cleanup to conclude that oil or other chemicals on the Florida coast could have caused any of the chronic health problems that the plaintiffs claimed.

In December, Judge Rodgers designated 212 cases — grouped as dermal, ocular and sinus claims, the three most common categories of alleged medical injuries — to serve as a second pool of bellwether cases to proceed on the issue of general causation, and she lifted a stay on discovery in them.

But she changed course after the plaintiffs objected that they would be prejudiced by such a large collection of cases, which they said would group together dissimilar claims.

"While some grouping of the 504 pending cases in this matter will inevitably be necessary, the court finds that proceeding with one test case will be instructive and, in the long run, will facilitate a more efficient and fair grouping of cases," Judge Rodgers said in a Jan. 11 order instructing the parties to submit five candidate cases apiece.

In that order, she limited the candidate cases to those in the original pool of 212 that featured plaintiffs who were beach workers during the cleanup and claimed ocular injuries.

In the same order, the judge said she plans to allow the test plaintiff to call as witnesses one treating physician, two case-specific fact witnesses and two case-specific experts. The defense will be allowed four fact witnesses and two case-specific experts. There is no limit on general causation expert witnesses.

She set a May 17 deadline for dispositive and Daubert motions and set an Aug. 23 start date for a two-week trial.

Discovery is stayed in the remaining cases from the second pool, according to the order.

The 2010 disaster killed 11 people and caused 4 million barrels of oil to spill into the Gulf of Mexico, ushering in a wave of litigation. The cleanup response involved skimming oil from the water and dispersing chemicals to break up the oil, according to case documents.

Hundreds of lawsuits raising claims of personal injury, property and environmental damage, and economic loss were consolidated in multidistrict litigation in the Eastern District of Louisiana, case documents said.

Out of that litigation, a medical benefits class action covering injured cleanup workers and coastal dwellers was certified and ultimately settled. The settlement agreement, which was executed in May 2012, required proof of a medical diagnosis made on or before April 16, 2012, but it allowed class members who received a diagnosis after that cutoff date to file individual claims as "later manifested physical conditions" through a back-end litigation option, or BELO, suit, case documents said.

Those suits had to be filed in the Eastern District of Louisiana and could then be transferred to more appropriate venues. It was through that process that more than 500 cases have been transferred to Judge Rodgers' court, according to case documents.

Causey's complaint, which was filed in November 2018, was one such BELO suit. In his complaint, he said that he was a cleanup worker for Oklahoma-based Plant Performance Services when he worked in Escambia County, Florida, shortly after the explosion and spill on the Deepwater Horizon oil rig to help clean up the Florida shore.

Causey alleged that he worked 12 hours a day, seven days a week over a four-week period, mostly digging and picking up tar balls on the shore and bagging them. He claimed he was exposed to oil, dispersants and other harmful substances throughout his work and also witnessed others around him getting sick on a daily basis due to chemical exposure.

He claimed he developed "chronic and ongoing irritation" as a result of his "direct contact exposure," and was diagnosed with chronic conjunctivitis and chronic dry eye syndrome in September 2012.

Counsel for Causey and the defendants did not respond to requests for comment Wednesday.

The plaintiffs are represented by The Downs Law Group PA, Falcon Law Firm and The Nations Law Firm.

BP is represented by Kirkland & Ellis LLP, McDonald Toole Wiggins PA, Liskow & Lewis, Shook Hardy & Bacon LLP and Williams & Connolly LLP.

The case is In Re: Deepwater Horizon BELO Cases, case number 3:19-cv-00963, in the U.S. District Court for the Northern District of Florida.

--Additional reporting by Emily Field. Editing by Bruce Goldman.