

Imagining the Worst in BP's Future

Пише: Andrew Ross Sorkin
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It seems unthinkable, even now, that the disastrous [oil spill](#) in the Gulf of Mexico could bring down the mighty [BP](#). But investment bankers get paid to think the unthinkable — and that is just what they are doing.

The idea that BP might one day file for bankruptcy, particularly as part of a merger that would enable it to cordon off its liabilities from the spill, is starting to percolate on Wall Street. Bankers and lawyers are already sizing up potential deals (and counting their potential fees).

Given the plunge in BP's share price — the company has lost more than a third of its value since Deepwater Horizon blew — some bankers and analysts say BP is starting to look like takeover bait. The question is, who would buy BP, given its enormous potential liabilities?



Charlie Riedel/Associated Press

BP's costs for cleaning up the Deepwater Horizon accident could run as high as \$23 billion, according to Credit Suisse.

Shell and [Exxon Mobil](#) are both said to be licking their chops. And already, flinty legal minds are dreaming up scenarios in which BP would file a prepackaged bankruptcy and separate the costs of the cleanup — and potentially billions of dollars in legal claims — into a separate corporate entity.

[Tony Hayward](#), BP's chief executive, has insisted that his giant will weather this storm. BP is indeed a money machine: it turned a profit of nearly \$17 billion last year.

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“The strength of cash-flow generation in recent quarters has provided us with a balance sheet that allows us to fully take on the responsibility for the Gulf of Mexico response,” Mr. Hayward told employees last Friday.

But that hasn't stopped the deal crowd from blue-skying potential outcomes. Here is some of the math:

BP's costs for the cleanup could run as high as \$23 billion, according to [Credit Suisse](#). On top of that, BP could face an additional \$14 billion in claims from gulf fisherman and the tourism industry. So while conservative estimates put the bill at \$15 billion, something approaching \$40 billion is not out of the question. After all, little about this spill has turned out as expected.

The company has about \$12 billion in cash and short-term investments, but there is already a debate about whether it should cut its dividend out of fear that it could run out of money. Of course, it could sell assets or seek loans, which in this environment is still not that easy.

But all those numbers don't account for the greatest possible threat: a jury verdict against BP. Such a verdict might push the cost of the spill into the hundreds of billions. If that happened, even BP might buckle.

This outcome might seem far-fetched right now. But on Wall Street bankers have already coined a term for it: “the Texaco scenario.”

In 1987, Texaco was forced to file for Chapter 11 because it could not afford to pay a jury award worth \$1 billion to Pennzoil. That award had been knocked down by a judge from a whopping \$10.53 billion. (Pennzoil successfully sued Texaco for “jumping” its planned merger with Getty Oil, in part, by moving the case to local court near its headquarters. The jury awarded triple damages.)

Imagine the BP case playing out in a Louisiana courtroom, against the backdrop of an

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oil-choked local economy, high unemployment and an angry public. How high can you count?

Under the Oil Pollution Act of 1990, BP's liability for economic devastation — above the cost of the cleanup — is capped at \$75 million, a number Mr. Hayward has already said he plans to blow through. But if BP is found to have violated safety regulations, which seems likely, that cap becomes irrelevant.

That's not to say that BP won't fight a huge judgment against it. After the [Exxon Valdez](#) spill, [Exxon](#) fought a \$5 billion fine for punitive damages for two decades. It won. The fine was cut down to \$4 billion, then to \$2.5 billion. The case eventually made it to the [Supreme Court](#), which found that Exxon's actions were "worse than negligent but less than malicious," and vacated the fine. The judgment limited punitive damages to the compensatory damages, which were calculated as \$507.5 million.

"There are so many imponderables over whether its liabilities would be capped or not," David Buik of BGC Partners in London wrote of BP. "If BP's share price continues to fall, it could become a takeover target."

Given that Shell and Exxon have billions in cash on hand and market values that easily exceed BP — Exxon is twice the size — bankers say now is the time to make a deal, as long as an acquirer can find a way to separate the legal exposure. That, of course, is a big 'if.'

There are many people — besides BP — who think even discussing the possibility of a bankruptcy or takeover is silly. But looking out a few years, that may be BP's best, last hope.

"Even with a prepackaged bankruptcy, BP's brand is permanently tainted," said Robert Bryce, a senior fellow at the Manhattan Institute and author of "Power Hungry: The Myths of 'Green' Energy and the Real Fuels of the Future." Yes, BP is financially sound now. It is unlikely to go bust near term, he said.

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“Instead, BP will spend the coming decades circling the drain, mired in endless litigation, its reputation irreparably damaged, and its finances weakened,” Mr. Bryce said.

That, if you believe the bankers, is the optimistic outcome.

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