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## BP Must Face Foreign Investors In Texas Court, Judge Rules

By **Ed Beeson**

Law360, New York (October 01, 2014, 7:07 PM ET) -- Foreign investors who sued BP PLC over stock losses they suffered after the 2010 Deepwater Horizon disaster can continue to press their claims in U.S. district court, even though they are litigating under English law about shares that trade on the London Stock Exchange, a Texas federal judge ruled in an order made public Wednesday.

In a memorandum and order made under seal Tuesday, Judge Keith P. Ellison wrote that while he could dismiss the claims brought by Avalon Holdings Inc. and other overseas investors and "relieve congestion" on his own docket, other factors weigh against such a move, which would send the litigation to an English court.

"[T]he private and public interest factors must weigh heavily in favor of England to disrupt the foreign plaintiffs' choice of forum," the judge wrote. "Because it does not, the court once again declines to dismiss English law, securities fraud claims asserted in this MDL under the doctrine of forum non conveniens."

An attorney who represents South Yorkshire and other foreign plaintiffs in the BP litigation called the decision a significant one in light of the U.S. Supreme Court's ruling in *Morrison v. National Australia Bank*, which all but closed U.S. courts to overseas securities claims.

"Judge Ellison's decision is landmark in that it permits foreign investors who purchased securities traded in London to pursue English law claims in his court in Texas," said Matthew Tuccillo of Pomerantz LLP, who argued the motion in an earlier hearing. "That is a first-time occurrence in the wake of the Morrison decision in 2010."

A BP spokesman declined to comment.

Judge Ellison last year **rejected a similar motion** by BP seeking to move other related litigation to England, though that case involved U.S.-based pension funds that owned BP shares trading on the LSE.

At the time, he said Texas was an appropriate forum for the cases considering that BP is actively involved in multidistrict litigation and that two of the U.S. pension funds are pursuing claims related to domestic trading losses under the Securities Exchange Act that cannot be heard in the U.K.

The MDL before Judge Ellison is over allegations that BP and individual executives made material misrepresentations about the company's commitment to safety in the run-up to the 2010 Deepwater explosion, as well as its ability to clean up such a spill and the extent of its likely responsibility once the disaster occurred.

Also on Tuesday, Judge Ellison denied a separate motion by BP to dismiss a complaint brought by plaintiffs including the New York City Employees' Retirement System on the basis that they had **exceeded the five-year statute of repose** for certain claims.

In doing so, the judge took action on a legal question that the Supreme Court had scheduled oral arguments on for next week. But earlier this week, the high court withdrew its writ of certiorari to the Public Employees' Retirement System of Mississippi, which sought to overturn a Second Circuit decision in its case against IndyMac Corp., on the grounds that it was "improvidently granted" amid settlement talks between the parties.

Avalon is represented by Spector Roseman Kodroff & Willis PC and Kendall Law Group LLP.

BP is represented by Sullivan & Cromwell and Andrews Kurth LLP.

The case is Avalon Holdings Inc., et al. v. BP PLC et. al., case number 4:12-cv-3715, in the U.S. District Court for the Southern District of Texas.

The MDL is In re: BP PLC Securities Litigation, case number 4:10-md-02185, in the U.S. District Court for the Southern District of Texas.

--Editing by Chris Yates.

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