

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

NOVA AFFILIATED, S.A., a British Virgin Islands
Corporation, and all similarly situated

Plaintiffs

versus

BP, plc, BP PRODUCTS NORTH AMERICA, INC.,
BP AMERICA, INC., TRANSOCEAN, LTD.,
TRANSOCEAN OFFSHORE DEEPWATER
DRILLING, INC., TRANSOCEAN DEEPWATER,
INC., HALLIBURTON ENERGY SERVICES, INC.
AND CAMERON INTERNATIONAL
CORPORATION f/k/a COOPER CAMERON
CORPORATION

Defendants

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* CASE NO.
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* SECTION
*
* MAGISTRATE
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* JURY DEMAND
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CLASS ACTION COMPLAINT

Plaintiff, Nova Affiliated, S.A., individually and as representatives of the class defined herein (the "Class"), bring this action against the defendants identified below ("Defendants"), and aver as follows:

INTRODUCTION

1.

For years, the oil rig Deepwater Horizon (hereinafter "Deepwater Horizon" or "Oil Rig") has been engaged in dangerous, deep-water drilling in a fragile ecosystem off the coast of Louisiana. Although its owners were well aware of the state and federal laws regulating oil drilling, the design, location and operation of the Oil Rig was not in compliance with these laws. Although its owners

were well aware of the dangers of oil spills—grave dangers that affected not only their employees, but ecosystems throughout the Gulf of Mexico and the livelihoods of millions of Gulf Coast residents—they did not take even the most basic precautions to avoid oil spills. On April 20, 2010, their negligence resulted in the greatest environmental catastrophe in a generation.

2.

At about 10:00 p.m. central time, an explosion occurred on the Oil Rig. Had the Oil Rig been maintained correctly, the resulting fire could have been contained. But it was not. Had the Oil Rig been equipped with a remote-controlled shut-off switch, as rigs operated by nations ranging from Brazil to Norway are, the well could have been closed, limiting the damage to the Oil Rig itself. But it was not. By the time the Oil Rig sank on April 22, it was leaking thousands of barrels a day, creating a thick and viscous oil slick larger than the state of Rhode Island. The oil slick has already caused catastrophic damage to the fragile ecosystem of the Gulf of Mexico, including coastal fisheries upon which millions of Americans depend. It reached the Louisiana coast yesterday. And it will poison estuaries, choke livelihoods, and smother the local economy for years to come.

3.

This is a class action, brought pursuant to Rule 23 of the Federal Rules of Civil Procedure, to recover damages suffered by Plaintiffs and the Class Members as a result of the oil spill. The spill has already caused catastrophic and irreversible damage to marine and estuarine environments in the Gulf of Mexico and on the Gulf Coast. Like millions of residents of the Gulf States, Plaintiffs and Class members obtain their livelihood from these environments. Their livelihoods have been destroyed by Defendants' negligence, and Plaintiffs demand redress.

PARTIES

4.

Named Plaintiff Nova Affiliated, S.A., is a British Virgin Island Corporation. Since 1969, Plaintiff has earned a living, and provided well-paying jobs for the people of Louisiana, through boat transportation, trawling and fishing. Plaintiff earns its livelihood in the Gulf of Mexico and in the “coastal zone” (as that term is defined in 43 U.S.C. § 1331(e)) (the “Coastal Zone”) and, as a result of the events described above and below, it has suffered severe damages that are more fully described below.

5.

Defendants herein are:

- (a) Transocean, Ltd., (“Transocean, Ltd.”) a foreign corporation doing business in the State of Louisiana and within this district;
- (b) Transocean Offshore Deepwater Drilling, Inc. (“Transocean Offshore”), a foreign corporation doing business in the State of Louisiana and within this district;
- (c) Transocean Deepwater, Inc. (“Transocean Deepwater”), a foreign corporation doing business in the State of Louisiana and within this district;
- (d) BP, plc (“BP”), a foreign corporation doing business in the State of Louisiana and within this district;
- (e) BP Products North America, Inc. (“BP Products”) a foreign corporation doing business in the State of Louisiana and within this district;
- (f) BP America, Inc. (“BP America”), a foreign corporation doing business in the State of Louisiana and within this district;
- (g) Halliburton Energy Services, Inc. (“Halliburton”), a foreign corporation doing business in the State of Louisiana and within this district; and

(h) Cameron International Corporation f/k/a Cooper-Cameron Corporation (“Cameron”), a foreign corporation doing business in the State of Louisiana and within this district.

JURISDICTION AND VENUE

6.

This Court has jurisdiction over this class action pursuant to (1) 28 U.S.C. § 1332(d)(2), because the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and it is a class action brought by citizens of a State that is different from the State where at least one of the Defendants is incorporated or does business; (2) 28 U.S.C. § 1331, because the claims asserted herein arise under the laws of the United States of America, including the laws of the State of Louisiana which have been declared, pursuant to 43 U.S.C. §§ 1331 (f)(1) and 1333(a)(2), to be the law of the United States for that portion of the outer Continental Shelf from which the oil spill originated; and (3) 43 U.S.C. § 1331(1), which extends exclusive Federal jurisdiction to the outer Continental Shelf.

7.

Prosecution of this action in this district is proper under 28 U.S.C. § 1391(a)(2) because all the events or omissions giving rise to the claims asserted herein occurred in this district.

FACTUAL ALLEGATIONS

8.

Transocean, Ltd., Transocean Offshore and Transocean Deepwater (collectively “Transocean”) are the owners and/or operators of the Deepwater Horizon, a semi-submersible mobile drilling rig, which was performing completion operations for BP, BP Products and BP America on the outer Continental Shelf, at the site from which the oil spill now originates, on April 20, 2010.

9.

BP, BP Products and BP America (collectively “BP”) are the holders of a lease granted by the Minerals Management Service that allows BP to drill for oil and perform oil-production-related operations at the site of the well and oil spill. On April 20, 2010, BP operated the oil well that is the source of the oil spill.

10.

Upon information and belief, Cameron manufactured and/or supplied the Deepwater Horizon’s blow-out-preventers (“BOPs”) that failed to operate upon the explosion, which should have prevented the oil spill. The BOPs were defective because they failed to operate as intended. As such, Cameron is liable to Plaintiffs and the Class Members pursuant to the Louisiana Products Liability Act in addition to being liable for its negligence.

11.

Halliburton was engaged in cementing operations of the well and well cap and, upon information and belief, improperly and negligently performed these duties, increasing the pressure at the well and contributing to the fire, explosion and resulting oil spill.

12.

Upon information and belief, it is well-known in the oil extraction industry that oil rigs can be equipped with remote-controlled shut-off switches. This inexpensive precaution allows the owner of the oil rig to close the well via remote signal in the event of a rig malfunction, thereby preventing an oil spill. Because of their low cost and obvious safety benefits, remote-controlled shut-off switches are used in oil rigs throughout the world, in nations ranging from Brazil to Norway.

13.

Upon information and belief, Defendants, and each of them, were aware of the danger posed

by not installing a remote-controlled shut-off switch on the Deepwater Horizon. Specifically, Defendants were aware that failing to install such a device on the Deepwater Horizon would greatly increase the danger of an oil spill that would choke and poison thousands of square miles of marine and coastal ecosystems in the Gulf of Mexico. Defendants, who have made record profits in the past decade, were also aware that such a device could be installed on the Deepwater Horizon at negligible cost.

14.

Defendants, and each them, failed to install a remote-controlled shut-off switch on the Deepwater Horizon.

15.

At all times material hereto, the Deepwater Horizon was owned, manned, possessed, managed, controlled, chartered and/or operated by Transocean and/or BP.

16.

Upon information and belief, Defendants, and each of them, were fully aware that deep-water oil drilling is significantly more dangerous than drilling in other areas. Defendants were fully aware that deep-water drilling cannot be carried out safely using equipment that is inadequately designed or poorly maintained.

17.

Although Defendants knew or should have known that the Deepwater Horizon had defective BOPs and was not equipped with a remote shut-off switch, Defendants used the Deepwater Horizon to drill *the deepest oil well in history* in September 2009.

18.

On April 20, 2010, an explosion occurred in the Deepwater Horizon. Because the BOPs

failed to operate, the explosion was not contained, and fire began spreading throughout the Deepwater Horizon. Because Defendants negligently failed to equip the Deepwater Horizon with a remote shut-off switch, the oil well was not shut off.

19.

The explosion and fire caused multiple leaks in the still-pressurized pipe through which the Deepwater Horizon was extracting oil. As of April 30, at least three leaks have been reported.

20.

On April 22, 2010, the Deepwater Horizon sank. It now sits under approximately 5,000 feet of water. The ruptured well continues to spew oil into the Gulf of Mexico.

21.

When Defendants first learned of the oil spill, they reported that the well was leaking approximately 1,000 barrels per day. The oil spill was in fact leaking over 5,000 barrels—210,000 gallons—a day. On information and belief, Defendants impaired the response to the emergency, greatly increasing the danger to the environment, human health, and the Gulf Coast economy, by knowingly understating the amount of oil that was leaking from the well.

22.

The spilled oil did not, and will not, simply evaporate off of the surface of the water. Instead, it has formed a vast expanse of thick, poisonous sludge, contaminating an area larger than the state of Rhode Island. The oil slick will continue to expand until the ruptured pipe is shut off, a process that could take weeks or months. In two months, the spill will surpass the 11 million gallons leaked from the *Exxon Valdez* in 1989.

23.

The rapidly-expanding oil slick already threatens hundreds of species of fish, birds, and other

wildlife in one of the planet's richest marine ecosystems. It is likely to cripple, or entirely destroy, one of only two breeding grounds in the world for Atlantic bluefin tuna, greatly increasing the likelihood that this species will go extinct in the near future. It has already reached Louisiana's vulnerable wetlands, which are still recovering from the damage caused by Katrina. And in the coming days and weeks, it will poison thousands of miles of already-fragile estuaries in Louisiana and other Gulf States.

24.

The oil slick also threatens human health. A number of studies have linked oil contamination with significantly increased risk of cancer and other illnesses. Although Louisiana's fishing and tourism industries may never recover to pre-spill levels, millions of Gulf Coast residents will be exposed to the toxins released by this oil spill. Whether through fishing, boating, or simply breathing the air in their homes, these Gulf Coast residents will suffer the consequences of Defendants' negligence for decades to come.

25.

In addition to its effects on the environment and human health, the oil slick is an economic catastrophe for the Gulf States. Millions of businesses and individuals on the Gulf Coast, including Plaintiff, face the permanent loss of their livelihoods. Louisiana's fishing industry, which has been valued at \$3 billion, and is the source of one third of the seafood consumed in the United States, is expected to lose as much as \$2.5 billion. Given the permanent damage that the oil slick is doing to fisheries, including shrimp spawning grounds, this loss will be difficult or impossible to recover. Florida's tourism industry is expected to lose \$3 billion, and the tourism industry of Louisiana—much of which is focused on attractions in this District—faces similarly catastrophic losses.

26.

The public image of this region—an image on which the livelihoods of millions of Gulf Coast residents depend, particularly in an area as reliant on tourism as this District—has suffered grave and irreparable damage. Tourists once associated this region with the history and culture of New Orleans, the natural beauty of the Gulf Coast, and the taste of some of the nation’s best seafood. For years to come, the public will view the Gulf Coast as a poisoned place, a once-living land suffocated by the viscous blight of an uncontained oil slick.

27.

Faced with an environmental catastrophe of this magnitude, Governors Bobby Jindal of Louisiana and Charlie Crist of Florida have both declared states of emergency. The Department of Homeland Security has declared this disaster to be of national significance and, along with the Environmental Protection Agency, the Department of the Interior, and even the Department of Defense, it is investigating. Federal and state officials have already expressed shock and outrage at BP’s inadequate response.

28.

The fire and explosion on the Deepwater Horizon, its sinking, and the resulting oil spill were caused by the inexcusable negligence and/or recklessness of Defendants, which renders them liable jointly, severally and *in-solido* to Plaintiffs and the Class Members for all their damages.

29.

The injuries and damages suffered by Plaintiffs and the Class Members were caused by Defendants’ violations of numerous statutes and regulations, including, but not limited to, statutes and regulations issued by OSHA and the United States Coast Guard, including the requirement to test the sub-sea BOPs at regular intervals.

30.

Defendants knew of the dangers associated with deep water drilling and failed to take appropriate measures to prevent damage to Plaintiffs, the Class Members, Louisiana's and the Gulf of Mexico's marine and coastal environments and estuarine areas, and the Coastal Zone, where Plaintiffs and the Class Members work and earn a living.

31.

There are many other potential affects from the oil spill that have not yet become known, and Plaintiffs reserve the right to amend this Complaint once additional information becomes available.

CLASS DEFINITION

32.

Plaintiffs bring this action on behalf of themselves and all others similarly situated, who are members of the following Class:

All Louisiana residents who live or work in, or derive income from, the Louisiana "Coastal Zone," as that term is defined in 43 U.S.C. § 1331(e), and who have sustained any legally cognizable loss and/or damages as a result of the April 20, 2010 fire and explosion which occurred aboard the Deepwater Horizon drilling rig and the oil spill resulting therefrom.

33.

Excluded from the Class are:

- a. the officers and directors of any of the Defendants;
- b. any judge or judicial officer assigned to this matter and his or her immediate family;
and
- c. any legal representative, successor, or assign of any excluded persons or entities.

CLASS ACTION ALLEGATIONS

34.

- a. **Numerosity of the class**

The proposed Class is so numerous that joinder is impractical. The disposition of the claims asserted herein through this class action will be more efficient and will benefit the parties and the Court.

b. Predominance of Common Questions of Fact and Law

35.

There is a well-defined community of interest in that the questions of law and fact common to the Class predominate over questions affecting only individual Class Members and include, but are not limited to, the following:

- a. Whether Defendants caused and/or contributed to the fire, explosion and oil spill;
- b. Whether Defendants' actions were negligent;
- c. Whether the fire, explosion and oil spill have caused environmental or other damage;
and
- d. The amount of damages Plaintiffs and the Class Members should receive in compensation.

c. Typicality

36.

Plaintiffs and the Class Members have suffered similar harm as a result of Defendants' actions.

d. Adequacy of Representation

37.

Plaintiffs will fairly and adequately represent and protect the interests of the members of the Class because Plaintiffs' interests do not conflict with the interests of the Class Members they seek to represent. Plaintiffs have no claims antagonistic to those of the Class. Plaintiffs have retained

counsel competent and experienced in complex class actions and maritime and environmental litigation.

e. **Superiority**

38.

A class action is superior to other available methods for the fair and efficient adjudication of this litigation since individual litigation of the claims of all Class Members is impracticable. Even if every Class Member could afford individual litigation, the court system could not. It would be unduly burdensome to this Court in which individual litigation of thousands of cases would proceed. Individual litigation presents a potential for inconsistent or contradictory judgments, and the prospect of a race for the courthouse and an inequitable allocation of recovery among those with equally meritorious claims. Individual litigation increases the expenses and delay to all parties and the court system in resolving the legal and factual issues common to all claims related to the Defendants' conduct alleged herein. By contrast, a class action presents far fewer management difficulties and provides the benefit of a single adjudication, economies of scale, and comprehensive supervision by a single court.

39.

The various claims asserted in the action are also certifiable under the provisions of Rules 23(b)(1) and/or 23(b)(3) of the Federal Rules of Civil Procedure because:

- a. The prosecution of separate actions by thousands of individual Class Members would create a risk of inconsistent or varying adjudications with respect to individual Class Members, thus establishing incompatible standards of conduct for Defendants;
- b. The prosecution of separate actions by individual Class Members would also create the risk of adjudications with respect to them that would, as a practical matter, be

dispositive of the interests of the other Class Members who are not parties to such adjudications and would substantially impair or impede their ability to protect their interests; and

- c. The questions of law or fact common to the Members of the Class predominate over any questions affecting only individual Members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

FIRST CAUSE OF ACTION (NEGLIGENCE)

40.

Plaintiffs, on behalf of themselves and the Class Members, repeat, reiterate, and reallege each and every allegation set forth above with the same force and effect as if copied herein.

41.

The fire, explosion and resulting oil spill was caused by the concurrent negligence of the Defendants.

42.

Upon information and belief, Plaintiffs aver that the fire, explosion and resulting oil spill was caused by the joint negligence and fault of the Defendants in the following non-exclusive particulars:

- a. Failing to properly operate the Deepwater Horizon;
- b. Operating the Deepwater Horizon in such a manner that a fire and explosion occurred onboard, causing it to sink and resulting in an oil spill;
- c. Failing to properly inspect the Deepwater Horizon to assure that its equipment and personnel were fit for their intended purpose;
- d. Acting in a careless and negligent manner without due regard for the safety of others;
- e. Failing to promulgate, implement and enforce rules and regulations pertaining to the safe operations of the Deepwater Horizon which, if they had been so promulgated, implemented and enforced, would have averted the fire, explosion, sinking and oil spill;
- f. Operating the Deepwater Horizon with untrained and unlicensed personnel;
- g. Inadequate and negligent training and hiring of personnel;

- h. Failing to take appropriate action to avoid or mitigate the accident;
- i. Negligent implementation of policies and procedures to safely conduct offshore operations in the Gulf of Mexico;
- j. Employing untrained or poorly trained employees and failing to properly train their employees;
- k. Failing to ascertain that the Deepwater Horizon and its equipment were free from defects and/or in proper working order;
- l. Failure to timely warn;
- m. Failure to timely bring the oil release under control;
- n. Failure to provide appropriate accident prevent equipment;
- o. Failure to observe and read gauges that would have indicated excessive pressures in the well;
- p. Failure to react to danger signs;
- q. Providing BOP's that did not work properly;
- r. Conducting well and well cap cementing operations improperly;
- s. Acting in a manner that justifies imposition of punitive damages;
- t. Failing to equip the Deepwater Horizon with a remote shut-off switch;
- u. Impairing the emergency response by understating the extent of the oil leak in the days following April 20; and
- t. Such other acts of negligence and omissions as will be shown at the trial of this matter; all of which acts are in violation of the laws of Louisiana and Federal law applicable on the outer Continental Shelf.

In addition, and in the alternative, the fire, explosion, sinking and resulting oil spill were caused by defective equipment, including the BOP's, which were in the care, custody, and control of Defendants and over which the Defendants had *garde*. Defendants knew or should have known of these defects and Defendants are, therefore, liable for them.

44.

The injuries to Plaintiffs and the Class Members were also caused by or aggravated by the fact that Defendants failed to take necessary actions to mitigate the danger associated with their operations.

45.

In addition to the negligent actions described above, and in the alternative thereto, the injuries and damages suffered by Plaintiffs and the Class Members were caused by the acts and/or omissions of the Defendants that are beyond proof by the Plaintiffs and the Class Members, but which were within the knowledge and control of the Defendants, there being no other possible conclusion than that the fire, explosion, sinking and oil spill resulted from the negligence of Defendants. Furthermore, the fire, explosion, sinking and the resulting oil spill would not have occurred had the Defendants exercised the high degree of care imposed on them and Plaintiffs, therefore, plead the doctrine of *res ipsa loquitur*.

46.

Plaintiffs and the Class Members are entitled to a judgment finding Defendants liable to Plaintiffs and the Class Members for damages suffered as a result of Defendants' negligence and awarding Plaintiffs and the Class Members adequate compensation therefor in amounts determined by the trier of fact.

SECOND CAUSE OF ACTION

(OIL POLLUTION ACT)

47.

Plaintiffs, on behalf of themselves and the Class Members, repeat, reiterate, and reallege each and every allegation set forth above with the same force and effect as if fully copied herein.

48.

The Oil Pollution Act imposes liability upon a “responsible party for a... facility from which oil is discharged...into or upon navigable waters or adjoining shorelines” for the “damages that result from such incident.” 33 U.S.C. § 2702.

49.

Section 2702(b)(2)(C) provides for the recovery of “[d]amages for subsistence use of natural resources, which shall be recoverable by any claimant who so uses natural resources which have been injured, destroyed, or lost, without regard to the ownership or management of the resources.”

50.

The Coast Guard has named BP as the responsible party. Therefore, BP is liable pursuant to Section 2702 for all the damages that result from the oil spill.

51.

As a result of the oil spill, Plaintiffs and the Class Members have not been able to use natural resources (air and water, and potentially wetlands and other areas and spaces that have and/or may become contaminated by the spilled oil) for their subsistence, and they are entitled to recover from BP for such damages in amounts to be determined by the trier of fact.

52.

Section 2702(b)(2)(E) provides for the recovery of “[d]amages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal

property, or natural resources, which shall be recoverable by any claimant.”

53.

As a result of the oil spill, Plaintiffs and the Class Members have suffered the type of damages that may be recovered pursuant to Section 2702(b)(2)(E), and they demand compensation therefor from BP in amounts to be determined by the trier of fact.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the Class Members demand judgment against Defendants, jointly, severally and *in solido*, as follows:

- a. An order certifying the Class for the purpose of going forward with any one or all of the causes of action alleged herein; appointing Plaintiffs as Class Representatives; and appointing undersigned counsel as counsel for the Class;
- b. Economic and compensatory damages in amounts to be determined at trial, but not less than the \$5,000,000.00 required by the Class Action Fairness Act which establishes one of this Court’s bases of jurisdiction to hear this case;
- c. Punitive damages;
- d. Pre-judgment and post-judgment interest at the maximum rate allowable by law;
- e. Attorneys’ fees and costs of litigation;
- f. Such other and further relief available under all applicable state and federal laws and any relief the Court deems just and appropriate; and
- g. A trial by jury as to all Defendants.

Dated: April 30, 2010

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