

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

**BON SECOUR FISHERIES, ET AL, as the duly  
appointed representatives of the DEEPWATER  
HORIZON ECONOMIC & PROPERTY DAMAGES  
SETTLEMENT CLASS, suing as the assignee of BP  
EXPLORATION & PRODUCTION, INC., and BP  
AMERICA PRODUCTION COMPANY,**

Versus

**HALLIBURTON ENERGY SERVICES, INC.**

**CASE NO.**

**SECTION:**

**JUDGE:**

**MAGISTRATE:**

**COMPLAINT**

**[BP Assigned Claims against Halliburton]**

**Admiralty**

**Rule 9(h)**

NOW COMES the certified Economic and Property Damages Settlement Class in the matter of *Bon Secour Fisheries vs. BP Exploration & Production Inc.*, No. 12-970 (“Plaintiff Class”), by and through appointed Class Counsel and the duly appointed Class Representatives, which stands in the shoes of BP Exploration & Production Inc. and BP America Production Company (collectively “BP”), as assignee, for all assigned claims of BP against Halliburton Energy Services, Inc. (“Halliburton”) as provided and defined in Exhibit 21 to the *Deepwater Horizon* Economic and Property Damages Settlement Agreement, as amended on May 2, 2012 (the “Assigned Claims”):

### **JURISDICTION AND VENUE**

1. Jurisdiction exists before this Court pursuant to Article III, Section 2 of the United States Constitution, which empowers the federal judiciary to hear “all Cases of admiralty and maritime jurisdiction.”

2. The claims presented herein include admiralty or maritime claims within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. The Class hereby designates this case as an admiralty or maritime case, and requests a non-jury trial, pursuant to Rule 9(h).

3. Jurisdiction also exists over this action pursuant to The Admiralty Extension Act, 46 U.S.C. § 30101, which extends the admiralty and maritime jurisdiction of the United States to cases of injury or damage, to person or property, caused by a vessel on navigable waters, even though the injury or damage is done or consummated on land.

4. Prosecution of this action in this district is proper under 28 U.S.C. § 1391 because the events or omissions giving rise to the claims asserted herein occurred in this district and at least some of the economic injuries at issue were incurred within this judicial district. Venue is further appropriate in this district consistent with 28 U.S.C. § 1407 and the 2010 Transfer Order of the Judicial Panel on Multidistrict Litigation (“J.P.M.L.”). *See In re Oil Spill by the Oil Rig*

“*Deepwater Horizon*” in the Gulf of Mexico, on April 20, 2010, MDL No. 2179, 731 F. Supp. 2d 1352 (J.P.M.L. 2010).

### **PARTIES**

5. The Plaintiff Class sues as a juridical entity, as assignee and on behalf of Cross-Claimants, BP Exploration & Production Inc. and BP America Production Company, under an assignment of BP’s rights, claims, causes of action and other interests to the Plaintiff Class, pursuant to Exhibit 21 of the *Deepwater Horizon* Economic and Property Damages Class Settlement Agreement as Amended on May 2, 2012 (“DHEPDS”), as further discussed in the History of Assignment section.

6. Defendant Halliburton Energy Services, Inc., (including its product service line Sperry Drilling Services), (“Halliburton”), is a Delaware corporation with its principal place of business in Houston, Texas. At all times pertinent and material hereto, Halliburton was and is registered to do and does business in the State of Louisiana.

### **HISTORY OF ASSIGNMENT**

7. The Plaintiff Class was created as a settlement class by the DHEPDS. The Court conditionally certified the Plaintiff Class on May 2, 2012, through its Preliminary Approval Order. On December 21, 2012, the Court granted final approval of the DHEPDS and confirmed certification of the Plaintiff Class. The Effective Date of the DHEPDS has occurred.

8. Through the DHEPDS, Plaintiff Class was assigned all the Assigned Claims as set forth in the Section 1.1.3 of Exhibit 21 to the DHEPDS:

- 1.1.3.1. All damages related to the repair, replacement, and/or re-drilling of the MC-252 Well;
- 1.1.3.2. All economic damages for the loss of the MC-252 Well, including lost profits, lost hydrocarbons, and diminution in value of the leasehold;
- 1.1.3.3. All costs that BP incurred to control the MC-252 Well and/or to respond

- to, contain, and/or clean up the DWH Spill;
- 1.1.3.4. All rights to indemnity, contribution, or subrogation for claims paid by BP and/or the GCCF on or before the entry of the Preliminary Approval Order, subject, however, to (a) BP's retention of its right to pursue the payments identified in Section 1.1.4.2, which are expressly retained, and (b) BP's retention of its right to recover from Transocean and Halliburton for the payments identified in Section 1.1.4.2;
  - 1.1.3.5. All claims or causes of action to pursue reimbursement of Settlement Payment(s) under theories of indemnification, contribution, subrogation, or any other theory of recovery;
  - 1.1.3.6. All punitive exemplary, multiple, or non-compensatory damages;
  - 1.1.3.7. All claims and causes of action to recover the damages, losses, costs, fees, and amounts set forth in Sections 1.1.3.1-1.1.3.6 including BP's claims for breach of contract, unseaworthiness, negligence, gross negligence, willful misconduct, fraud, fraudulent concealment, and intentional torts and including BP's claims in the *BP Parties' Counter-Complaint, Cross-Complaint And Third Party Complaint Against Transocean And Claim In Limitation*, Docket No. 2074 in Case 2:10-md-02179-CJB-SS, and *BP's Cross-Complaint And Third-Party Complaint Against Halliburton*, Docket No. 2082 in Case 2:10-md-02179-CJB-SS.

9. The Plaintiff Class expressly reserved and otherwise maintains the right to assert Assigned Claims against Halliburton consistent with Exhibit 21 of the DHEPDS, and asserts its rights to all such Assigned Claims in this Complaint.

### **FACTUAL ALLEGATIONS**

10. On April 20, 2010, the *Deepwater Horizon* drilling vessel experienced a blowout in the subsea deepwater Macondo well, which led to explosions and a fire aboard the vessel, and ultimately to the sinking of the *Deepwater Horizon* (the "*Deepwater Horizon Incident*"<sup>1</sup>).

11. After the *Deepwater Horizon* sank, oil and gas gushed out of the damaged well

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<sup>1</sup> The "*Deepwater Horizon Incident*" is defined more fully as: the events, actions, inactions and omissions leading up to and including (i) the blowout of the MC252 Well; (ii) the explosions and fire on board the *Deepwater Horizon* on or about April 20, 2010; (iii) the sinking of the *Deepwater Horizon* on or about April 22, 2010; (iv) efforts to control the MC252 well; (v) the release of oil, other hydrocarbons and other substances from the MC252 Well and/or the *Deepwater Horizon* and its appurtenances; (vi) the efforts to contain the MC252 Well; (vii) Response Activities, including the VoO program; and (viii) any damages to any reservoir, aquifer, geological formation, or underground strata related to the foregoing.

and into the Gulf of Mexico for 12 weeks, fouling the environment, damaging and contaminating real and personal property, and doing immense and long-lasting damage to the environment and commercial fishing economy of Plaintiffs and the Gulf of Mexico (the “Spill”).

12. Halliburton was responsible for the design, testing, and cement job execution at Macondo, including the production casing cement job.

13. At the same time, Halliburton, through its product service line Sperry Drilling Services, was responsible to provide a Measurement While Drilling (MWD) system, with Mudlogging services, and a computer monitoring system, (*i.e.*, the Sperry Drilling Services “Insite” system), which could be viewed in real time, not only by the Halliburton Mudlogger, but also by the Transocean Driller on the vessel, and the BP on-shore engineering team in Houston. Mudloggers were responsible to continuously monitor the well and notify the drill crew and BP’s Well Site Leader “of any irregularities or anticipated problems.”

14. In sum, and as further described herein, Halliburton personnel exhibited a grossly negligent, willful and reckless disregard to known risks in: failing to develop a formal Basis of Design or apply a formal Management of Change; recommending and using a left-over cement blend which included defoaming agents for a foam cement job; failing to properly staff or equip its testing lab; failing to run tests on the cement slurry; failing to disclose material pre-job test results indicating instability; failing to place flow-out sensors where the fluids could be monitored even when being diverted; and either abandoning the Mudlogger’s post or completely ignoring the well conditions during the critical displacement procedure.

15. Halliburton’s intentional misstatement of material facts to BP, combined with its intentional concealment of material information and data from BP—both before and after the explosion—caused significant injuries to BP as well as to other third parties. As a direct result of

Halliburton's improper conduct, the Macondo well blew out, sinking the *Deepwater Horizon*, and spilling crude oil and hydrocarbons into the Gulf of Mexico with its attendant environmental consequences. BP suffered direct property and economic losses, and has expended billions of dollars as the "responsible party" under the Oil Pollution Act of 1990 in response and clean-up costs, and to compensate business-owners and others who suffered economic losses as a result of the Spill.

*BP's Leasehold Interest*

16. The well at issue is the exploratory well drilled in the Macondo prospect of Mississippi Canyon 252 in the outer continental shelf of the Gulf of Mexico (the "Macondo well"). The Macondo well is located approximately forty-eight miles from the nearest shoreline, and approximately 130 miles southeast of New Orleans, Louisiana.

17. On March 19, 2008, BP submitted its bid application to lease lot #252 in the Mississippi Canyon (MC 252) to the Minerals Management Service ("MMS"), a bureau within the United States Department of the Interior. The MMS issued the lease (Lease OCS-G 32306) to BP on June 1, 2008. The MMS has since been replaced and reorganized as the Bureau of Ocean Energy Management ("BOEM") and the Bureau of Safety and Environmental Enforcement ("BSEE"). After acquiring the leasehold in the Macondo prospect, BP exchanged portions of its interest in the Macondo prospect with other companies. MOEX Offshore 2007 LLC became a 10% owner and Anadarko Petroleum Corporation became a 25% owner.

*Halliburton*

18. Halliburton is one of the world's largest providers of services to the energy industry. With more than 55,000 employees in approximately 70 countries, Halliburton provides services to the oil and gas industry throughout the lifecycle of the reservoir—from locating

hydrocarbons and managing geological data, to drilling and formation evaluation, well construction and completion, including cement and mud logging operations, and optimizing production through the life of the field. Halliburton holds itself out to the industry in general, and to BP in particular, as a provider of expert services in various fields, including cementing and drilling fluid (“mud”) monitoring services.

19. Halliburton claims that it originated oilfield cementing and further claims that it “leads the world in effective, efficient delivery of zonal isolation and engineering for the life of the well.” BP reasonably believed and relied upon Halliburton’s representations in this regard with respect to the operations at the Macondo well.

*Halliburton Exhibited Grossly Negligent, Willful and Reckless Disregard When It Failed to Create a Basis of Design or Apply a formal Management of Change*

20. Halliburton was obligated to provide a robust, written Basis of Design document to BP for each and every cement job to be performed on the Macondo well.

21. Among other things, Halliburton was required to: **(i)** produce and update a Basis of Design document for the project to record the major decisions and their process of determination; **(ii)** apply risk-based engineering processes to prepare the Basis of Design, individual well programs, and all associated engineering and documentation; and **(iii)** provide solutions where conventional cement design and procedures are not suitable, such as blend and foam cement.

22. The Scope of Work for this Basis of Design included consideration of:

What needs to be achieved? What objective would incur cementing NPT if not achieved? What are the design limits that need to be considered? Fracture gradient or local legislative requirements? What engineering decisions have already been made? Mud weight, casing size, and setting depths? What are the key risks? How can the major risks be managed? What cement design options exist? What are the best solutions for the project?

23. A formal Basis of Design for the production casing cement job was never prepared or provided by Halliburton. Jesse Gagliano and the officers, executives, and others with policy-making authority within Halliburton that direct and control the operations of Halliburton and its employees, including Mr. Gagliano, (“Halliburton Management”) willfully and recklessly ignored information regarding the downhole conditions that was gained over months of drilling experience. Halliburton Management also failed to make any attempts to develop and provide a design for the production casing cement job that identified and assessed, for example: **(1)** the risk of recycling the Kodiak #2 blend, which had aged and was not designed for use in a foam cement system; **(2)** the risk of including a known defoaming additive, D-Air 3000, in a foam cement slurry; **(3)** the risk of including a dispersant, KCL, in a foam cement slurry; **(4)** the risk of using SCR-100L, a liquid retarder additive, in the slurry; **(5)** the risk of increasing the SCR-100L concentration from .08 gal/sk to .09 gal/sk, particularly without running a full suite of tests on the final slurry; **(6)** the risk of pumping the cement job at a low pump rate; **(7)** the risk of pumping a low cement volume; **(8)** the risk of conducting a limited pre-job circulation clean of the wellbore instead of full bottoms-up circulation; **(9)** the risk of pumping super-light base oil ahead of spacer in a heavier-weighted mud system; or **(10)** the risk of using synthetic oil-based mud in a foam cement environment. The evidence establishes that these are all known risks that were disregarded by Halliburton in terms of developing and providing a formal Basis of Design.

24. Indeed, Halliburton did not even have a Basis of Design standard at the time.

25. Nor did Halliburton have any standard for a formal Management of Change (“MoC”). There is no evidence to suggest that, with respect the Macondo well, anyone at Halliburton was making an effort to “continually assess fitness of purpose of cementing

recommendations ... against client challenges and well hazards (red flags)” “identified during well construction” or “encountered while drilling” and, upon concluding that such well challenges or hazards “reduce probability of success of cementing service recommendation to unacceptable level,” ensure that “formal MOC action be taken and documented.”

26. Halliburton exhibited a gross and wanton disregard for its obligations, good engineering practices, the unique risks associated with its own cement mixture, and the unique hazards posed by the Macondo well – which was a substantial contributing cause of the blowout on April 20, 2010.

27. Thomas Roth, Vice President, Halliburton Cementing Product Service Line, acknowledged, in retrospect, that the slurry used for the production casing cement job was not consistent with Halliburton's global best practices and had a low probability of success to achieve zonal isolation.

*Halliburton Personnel Exhibited Grossly Negligent, Willful and Reckless Disregard in Utilizing a Cement Slurry that Was Defectively Designed and Not Properly Tested*

28. Not only was the Halliburton cement slurry unstable, but there were a number of warning signs that were actually known to Mr. Gagliano and disregarded prior to the time that the cement slurry was pumped into the well.

29. First and foremost, Mr. Gagliano used a known defoaming agent in a foam cement. Foam cement, in this regard, is known to present increased risks and potential complications not found in conventional (unfoamed) cement.

30. Indeed, two out of the five previous Halliburton deepwater foam cement jobs in the Gulf of Mexico where D-Air 3000 was used had failed to achieve zonal isolation.

31. In designing the specific foam cement for Macondo, moreover, Halliburton used left-over cement from the Kodiak #2 well. The Kodiak #2 base blend was a conventional cement

design that was not intended to be foamed. (It also arrived on the *Deepwater Horizon* in November of 2009, and had therefore aged and degraded for at least five months at the time of use.) In particular, the Kodiak blend contained D-Air 3000, a defoamer, (as well as KCL, a dispersant), that is incompatible with foam cement. Halliburton generally, and Mr. Gagliano in particular, were well aware of this fact, having designed the Kodiak #2 blend for BP as well.

32. Indeed, Mr. Gagliano admitted that he was aware of the risks of using D-Air 3000 in a foam slurry, but decided to disregard them, claiming that ZoneSealant 2000, a surfactant (or, “foamer”), could be used to counteract the effects of the defoamer. This claim is belied by: Halliburton’s Technology Bulletin for ZoneSealant 2000; Mr. Gagliano’s own previous e-mail to BP on the subject; and the fact that the level of ZoneSealant 2000 used by Halliburton for the Macondo slurry was not greater (and in at least one case even less) than the concentration of ZoneSealant used in other foam slurries which did not have a defoamer to be counter-acted.

33. Even if Mr. Gagliano was correct that a defoamer could be used in a foam slurry if properly managed, Mr. Gagliano exhibited a wanton and reckless disregard for attempting to manage that known risk – particularly when coupled with the utter failure to conduct appropriate laboratory testing on the proposed slurry.

34. The BP-Halliburton Services Agreement and Halliburton’s own Best Practices required the company to conduct a full suite of tests, including: settlement, fluid loss, rheology, static gel, zero gel time, and compressive strength testing – which were not all performed on the Macondo foam slurry; indeed, eight of the nine tests were not conducted on the slurry that was actually pumped into the well.

35. Halliburton never conducted foam stability testing on the slurry that was actually pumped, which contained .09 gal/sk of SCR-100L, a retarder additive that extended the

thickening time for the slurry. SCR-100L is an extremely powerful additive; by increasing its concentration by just .01 gal/sk, the thickening time increased by almost fifty percent.

36. Testing the slurry that contained a higher concentration of retarder was critical because lengthening the time that the slurry remained in liquid form created a greater risk of gas movement and slurry destabilization.

37. Despite this increased risk, Mr. Gagliano instructed the Broussard Lab to cancel the crush compressive strength and foam stability testing on the .09 gal/sk slurry.

38. The final testing conducted on the .08 gal/sk slurry, which Halliburton suggests shows the slurry was stable, was not provided to BP before the blowout.

39. Both Halliburton's Mr. Gagliano and BP's Management Team were grossly negligent, willful and reckless in commencing a foam cement job that was known to be risky without adequate testing confirming the reliability of the slurry.

40. Halliburton's conduct, however, is even more egregious, as there were additional test results that were concealed from BP.

*Halliburton Personnel Willfully Concealed Failed Cement Slurry Test Results*

41. Halliburton performed cement testing on February 12, February 17, April 13 and April 18, 2010. Halliburton's Vice President, Halliburton Cementing Product Service Line, Thomas Roth, acknowledged that these tests clearly showed that the cement slurry was unstable.

42. The February 12 and February 17 tests were pilot tests, to determine whether the Kodiak #2 blend could be used at Macondo. The Weigh-Up Sheet for the February 12 testing noted failure of both the foam stability and compressive strength testing. The February 16 testing showed that the slurry was significantly heavier than the target density of 14.5ppg and, therefore, indicated instability.

43. The tests conducted in April were the pre-job tests. Unlike the pilot tests, the purpose of the April pre-job testing was to confirm that the production casing cement design would perform successfully upon job execution. The April 13 testing resulted in an unacceptable deviation in density – an indication of instability.

44. The April 16 test was cancelled.

45. A “repeat” of the April 13 test was performed on April 17, which ultimately showed a density of 15.0 ppg – higher than the maximum 14.5 ppg ECD threshold BP’s engineers had calculated the well could withstand.

46. Even if Halliburton is correct that this April 17 test shows stability and was “successful” – BP did not receive these results until six days after the explosion.

47. Halliburton did not provide the February 12 test results, the April 13 test results, or the complete set of February 16 test results to BP.

48. While it is not clear exactly what Mr. Gagliano’s motive was, his actions and omissions were grossly negligent, willful, reckless, wanton and egregious in light of the fact that the cement mix was known to contain destabilizing ingredients. While BP was reckless itself to proceed without final test results, BP may have proceeded with more caution had Mr. Gagliano advised that all three sets of tests which had been conducted on the slurry gave indications of instability.

*Halliburton Personnel Exhibited Grossly Negligent, Willful and Reckless Disregard by Participating in a Cement Job That Was Contrary To Its Best Practices.*

49. While BP was ultimately making the decisions about how the cement job would be completed, Halliburton was aware that the operation was to be performed in a manner that was unsafe and not consistent with best practices.

50. Because the cement job involved procedures that were “irregular” (e.g., not

conducting a full bottoms-up circulation), Mr. Gagliano should have at least notified other members of Halliburton Management before allowing the job to go forward. He did not do so.

51. Halliburton acted recklessly in participating in a cement job that included:

**a. The use of foam cement in a synthetic oil-based mud environment.** Foam cement should not have been used in the Synthetic Oil-Based Mud (SOBM) environment that was present at the Macondo well. The destabilizing effects on foamed cement by SOBM are severe and can lead to a job failure. Halliburton knew that placing the lighter synthetic-based mud at the bottom of the column under the tail cement created a risk of inversion or swapping. Despite this knowledge, it went forward with the cement job without warning BP of this danger.

**b. Limited cement volume.** Halliburton knew that BP's cement design called for a low cement volume. The low volume of cement was an added risk that required extraordinary care. While the Top of Cement was such that a lower volume was necessary, it makes the job more complex and difficult, and requires a heightened degree of care.

**c. Limited pre-job circulation.** The inadequate pre-job circulation did not allow for breaking up of gels in the mud or circulation out of the formation any fluids that may have entered the mud while the casing was being run. Coupled with poor centralization, this lack of circulation eliminated opportunities to maximize the circulatable volume of mud in the wellbore. Pre-job circulation also allows observation of the condition of the mud that has been sitting static at the bottom of the well for several days to determine whether it has deteriorated or if there is debris in the mud.

**d. Low pump rates.** Halliburton knew that BP's design called for a low pump rate. The job design was inadequate for the cement to be properly placed in the well. Low pump rates, combined with poor centralization, the use of base oil pre-flush, and limited pre-job circulation virtually assured the cement integrity would be compromised.

**e. Too few centralizers.** While BP was certainly aware of this issue, and made the decision to proceed in the face of a known risk, this should have (at the very least) prompted Halliburton personnel to exercise even greater caution regarding the other elements of the job, the testing, and the cement design.

**f. Not performing a full bottoms-up circulation.** Halliburton knew that BP had decided not to perform a full bottoms-up circulation, which is a best practice and is identified as such throughout the cement industry. Halliburton did nothing to stop the cement job from proceeding.

52. The foregoing known risks and hazards, particularly when combined with the risky foam slurry, virtually guaranteed that the cement job would fail to achieve zonal isolation. Halliburton should have recognized, and communicated to BP in a serious and forceful way, that the cement job was going to fail, before BP commenced on April 19. By going forward with BP under these circumstances, Halliburton disregarded known risks that played a significant contributing role in the disaster.

*Halliburton Personnel Exhibited Grossly Negligent, Wanton and Reckless Disregard by Ignoring Signs That the Well Was Flowing and Failing to Warn the Drill Crew*

53. It is not clear exactly where Halliburton Mudlogger Joe Keith was or what he was doing during the displacement procedure. Mr. Keith was either away from his post, not paying attention at all, or paying attention but ignoring the red flags as they appeared. This was one of the most critical steps in the entire drilling process.

54. With no ability to monitor the flow-out, Mr. Keith should have been even more attentive to the pressure readings and other signs of the well. Instead, the evidence suggests that he completely abandoned his post. This was a gross and wanton deviation from the standard of care.

*Corporate Blameworthiness*

55. Mr. Gagliano was a Halliburton official with managerial and policymaking authority in connection with Halliburton policies and other recommendations associated with the drilling of the Macondo well.

56. Even if Mr. Gagliano was not considered a corporate official with policymaking authority, however, the grossly negligent, willful and reckless conduct of Mr. Gagliano, Mr. Keith and other Halliburton personnel was the direct result of Halliburton corporate policy or with the knowledge, approval or ratification of Halliburton Management. Evidence of this

includes, for example, the following:

57. Halliburton Management knew that its testing lab was understaffed and ill-equipped to handle the necessary testing.

58. The responsibility to provide a Basis of Design, with appropriate Management of Change, was a corporate responsibility. Halliburton's Management itself exhibited a reckless disregard as to whether or how its services were (or were not) being provided.

59. Complaints regarding Mr. Gagliano's competence were made to his superiors. Likewise, pre-Incident complaints were made regarding Halliburton Mudloggers. Halliburton Management ignored these complaints, and effectively ratified its employees' pre-Incident conduct.

60. Halliburton was not compensated under the BP Services Agreement for specific tests or technical support. Therefore, while using the left-over Kodiak Blend may have saved BP money with respect to the materials, Halliburton presumably had an incentive to avoid the testing and other engineering services that would have been required to formulate a new blend from scratch. This general disincentive to spend time and money on testing services permeated the Halliburton culture.

61. For example, a January 2010 audit of Halliburton's Broussard, Louisiana, Testing Lab (where the Macondo cement was tested) showed significant problems: the lab was overworked; there was no procedure in place to ensure that all lab cement and additive samples were reflective of current bulk plant or offshore rig inventories; there were no uniform published testing protocols; current versions of the Global Lab Best Practices were not available in the lab; and the lab had no way to validate whether chemical additive samples should be held in their inventory or discarded.

62. The Broussard Lab was understaffed and unable to keep up with cement testing demands during the spring of 2010. Halliburton's Lab Manager for the Gulf of Mexico Region, Tim Quirk, wrote to Halliburton's Gulf of Mexico Region Manager For Cementing, Richard Vargo, after the Incident, confirming that they had been "very rarely" able to keep up with the testing demands during that time period. Mr. Quirk noted that, between January and June of 2010, the lab averaged 108 tests per day, and that it was "very common to have 30 to 40 tests waiting in line" during this time.

63. Halliburton further demonstrated corporate and willful disregard for the performance or non-performance of its responsibilities. Mr. Gagliano, the cement engineer "embedded" in BP's Houston office, was inept, indifferent, and lacked the experience necessary to handle the Macondo job.

64. Indeed, in the weeks leading up to the blowout, BP engineers voiced serious questions about his competency as it affected the timeliness and quality of his reports to BP. They complained that he was not "cutting it."

65. BP Drilling Engineer Team Leader Greg Walz received multiple complaints from BP engineers concerning Mr. Gagliano's lack of timeliness, and believed that the decision to transfer Mr. Gagliano from his position on the Macondo team had been made.

66. BP Wells Team Leader John Guide testified that he shared his concerns regarding Mr. Gagliano with Halliburton Management.

67. Halliburton's responsibility to develop and provide a formal Basis of Design, with appropriate Management of Change, is a corporate obligation. Yet Halliburton Management exhibited its own indifference and disregard as to whether Mr. Gagliano was or was not providing these or other services to BP.

68. Halliburton provided absolutely no management oversight of Mr. Gagliano's work from the time he began the design of the production casing slurry through the time of the blowout. Roger Dugas, who was Mr. Gagliano's supervisor thru April 16, 2010, was a Sales Manager, who had no engineering experience. Ronnie Faul, who became Mr. Gagliano's supervisor on April 16, has expertise in design, testing and execution of cement jobs. Yet, during that four-day period, Mr. Faul never came to Mr. Gagliano to review his work or otherwise discuss the Macondo design.

69. Halliburton knew that Mr. Gagliano lacked the experience and reliability necessary for the Macondo project and that his performance as its cement engineer was deficient with BP, yet it vested in him unfettered control over all slurry design and testing decisions. The company's reckless disregard of its responsibilities, as well as the design, testing, and formulation of the cement itself led directly to the failure to achieve zonal isolation.

70. Halliburton also had chronic problems with incompetence among its mudloggers throughout the Macondo project. In October of 2009, while the *Marianas* was drilling Macondo, BP told Halliburton that one of its mudloggers was "not getting the job done" and "was not getting the basics right." After one of BP's Macondo Well Site Leaders "asked for a replacement," Halliburton agreed to pull the mudlogger from the job.

71. On March 8, 2010, another Halliburton mudlogger assigned to the *Deepwater Horizon*, Nick Malczewsky, failed to detect the signs of the 34-40 barrel kick, for a period of 25-30 minutes. The BP Well Site Leader "ran him off" for safety reasons.

72. Following this kick, Halliburton did no "lessons learned" investigation, and did not provide Mr. Keith or its other Mudloggers with any additional guidance, direction, or training.

73. Finally, Halliburton Management effectively ratified its employees' pre-Incident conduct by attempting to conceal relevant information after the Incident. The grossly negligent, willful and wanton conduct of Halliburton personnel stemmed from corporate policy and culture, or was otherwise known to, approved by, or subsequently ratified by corporate officials with policymaking authority.

### **CLAIMS FOR RELIEF**

#### **Count One: Fraudulent Conduct**

74. The Plaintiff Class realleges and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein

75. Halliburton made at least the following affirmative material false statements and misrepresentations to BP: **(a)** On March 8, 2010, Mr. Gagliano told BP that he was sending "the lab test for your review" when, in fact, he did not send all of the pilot test results nor did he send the test results showing that the cement slurry had failed the tests; **(b)** On April 1, 2010, Mr. Gagliano wrote to BP that "I already have a pilot test run, see attached" when, in fact, he did not send all of the pilot testing results nor did he send the test results showing that the cement slurry had failed the tests; **(c)** The pilot test results sent on March 8th and April 1st indicated that no conditioning had been done on the foamed cement slurry when, in fact, the slurry had been conditioned for two hours; **(d)** The pilot test results indicated that the crush compressive strength test was successfully conducted when, in fact, one test was cancelled due to settling and the other test had indications of foam instability; **(e)** On April 17, 2010, Mr. Gagliano told BP that he had "[a]ttached the lab tests" when, in fact, he had not attached all of the test results nor did he send the test results which showed failures of the tests; **(f)** On April 23, 2010, Mr. Gagliano transmitted a post-job report to BP that stated that "Cement job pumped as planned," "Full returns seen throughout entire job," "Mud Lost While Cementing: No," "Estimated TOC:

17,300 ft.,” and “MMS. Req. met: Yes”—even though Halliburton could not verify this information; **(g)** On April 26, 2010, Mr. Gagliano told BP to “See attached. Lab test not captured in Post-job Report” when, in fact, he had not attached all of the lab tests not captured in the post-job report nor did he attach any failed test results; **(h)** The laboratory report transmitted on April 26, 2010 to BP indicated that Halliburton had tested the foam stability of the cement slurry poured at the Macondo well when, in fact, Halliburton had not tested that slurry; **(i)** On or around April 26, 2010, Mr. Gagliano told a BP engineer that the cement slurry containing a defoamer had no stability problems when, in fact, it did have stability problems based on Halliburton’s testing; and **(j)** On April 30, 2010, Halliburton issued a press release informing BP and others that “Halliburton had completed the cementing of the final production casing string in accordance with the well design approximately 20 hours prior to the incident. The cement slurry design was consistent with that utilized in other similar applications,” but at no time did Halliburton tell or inform BP or anyone else about any failed test results.

76. The testing information that Halliburton misrepresented was material.

77. The concealment of such material facts and information contributed to BP’s decision to proceed with the cement job on April 19-20, 2010, as well as BP’s decision to authorize the pumping of an unstable foamed cement slurry into the Macondo well.

78. Halliburton knew and understood it was misrepresenting material information, knew that BP was relying upon those representations, and did so knowing that BP was relying upon Halliburton to provide professional cementing services.

79. Following the Incident, Halliburton continued to deceive BP and others. Thus, its intent to deceive BP both before and after the casualty was evident in its continued efforts to misrepresent and conceal the results of the slurry testing from BP.

80. Halliburton's knowing misrepresentations were a cause-in-fact and also a legal cause of BP's injuries.

**Count Two: Fraudulent Concealment**

81. The Plaintiff Class realleges and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

82. From February 2010 to April 20, 2010, Halliburton concealed from BP the results of testing that it had performed that showed that the cement was unstable. Specifically, Halliburton concealed from BP at least the following material facts: **(a)** Mr. Gagliano and others at Halliburton concealed from BP known problems with the stability of the foam cement slurry that Halliburton recommended to BP for the Macondo well; **(b)** Mr. Gagliano and others at Halliburton concealed from BP the results of the foam stability test reported on the laboratory worksheet dated February 12, 2010; **(c)** Mr. Gagliano and others at Halliburton concealed from BP the cancelled crush compressive strength test and the observations of settling in the foam cement reported on the laboratory worksheet dated February 12, 2010; **(d)** Mr. Gagliano and others at Halliburton concealed from BP the cement slurry preparation conditions on the laboratory worksheet dated February 16, 2010; **(e)** Mr. Gagliano and others at Halliburton concealed from BP the observations of foam instability in the crush compressive strength test reported on the laboratory worksheet dated February 16, 2010; **(f)** Mr. Gagliano and others at Halliburton concealed from BP the results of the foam stability test reported on the laboratory worksheet dated April 13, 2010; **(g)** Mr. Gagliano and others at Halliburton concealed from BP the cancellation of the foam stability test reported on the laboratory worksheet dated April 16, 2010; and **(h)** Mr. Gagliano and others at Halliburton concealed from BP that the foam stability test reported on the report sent April 26, 2010 was not for the slurry poured at the Macondo well.

83. The information that Halliburton concealed was material.

84. The concealment of such material facts and information contributed to BP's decision to proceed with the cement job on April 19-20, 2010, as well as BP's decision to authorize the pumping of an unstable foamed cement slurry into the Macondo well.

85. Halliburton knew and understood it was misrepresenting material information, knew that BP was relying upon those representations, and did so knowing that BP was relying upon Halliburton to provide professional cementing services.

86. Following the Incident, Halliburton continued to deceive BP and others. Thus, its intent to deceive BP both before and after the casualty was evident in its continued efforts to misrepresent and conceal the results of the slurry testing from BP.

87. Halliburton's knowing misrepresentations were a cause-in-fact and also a legal cause of BP's injuries.

**Count Three: Negligence, Gross Negligence, and Willful Misconduct**

88. The Plaintiff Class realleges and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

89. Halliburton had a duty to use reasonable care in the design, testing, mixing and pumping of the cement and in the monitoring of the well. As described above, Halliburton breached that duty of reasonable care with respect to, among other things, its provision of professional services. Moreover, Halliburton was negligent, grossly negligent, willful, wanton, and reckless, by, among other things: **(i)** refusing to create a Basis of Design or applying a formal Management of Change; **(ii)** utilizing a cement that was defectively designed and not properly tested; **(iii)** intentionally concealing or otherwise failing to disclose material test results; **(iv)** engaging in a cement job contrary to best practices; and **(v)** ignoring signs that the well was

flowing and failing to warn the drill crew.

90. Halliburton's negligence, gross negligence, willful, wanton and/or reckless conduct was a cause-in-fact and also a legal cause of BP's injuries.

**Count Four: Contribution**

91. The Plaintiff Class realleges and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

92. The Oil Pollution Act of 1990 ("OPA") states that "A person may bring a civil action for contribution against any other person who is liable or potentially liable under this Act or another law." 33 U.S.C. § 2709.

93. The DOJ Complaint alleges that, as a result of the *Deepwater Horizon* Incident, natural resources have been injured, destroyed, or lost; the amount of damages and the extent of injuries sustained by the United States are not yet fully known; and the United States has expended and/or sustained and/or will expend or sustain, *inter alia*, "removal costs" and "damages," within the meaning of OPA, 33 U.S.C. § 2702(b). The DOJ Complaint also seeks a declaratory judgment that BP and the other defendants are liable for removal costs and damages in this action and in any such subsequent action or actions.

94. In addition to the claims in the DOJ Complaint, plaintiffs have initiated hundreds of suits naming BP as a defendant under federal, state and common law claims.

95. Halliburton is liable under OPA or another law for some of the damages related to the oil spill resulting from the *Deepwater Horizon* Incident for the reasons explained above.

96. If BP is held liable to the United States or plaintiffs for any damages associated with the Assigned Claims under OPA or another law, including but not limited to the removal costs and damages alleged in the DOJ Complaint, Halliburton is liable in contribution for those

Assigned Claims to the Class, as assignee of BP, under Sections 1009 and 1017 of OPA, 33 U.S.C. §§ 2709 and 2717.

97. To the extent other laws are applicable, Halliburton is further liable to the Plaintiff Class, as assignee of BP, for contribution as part of, and with respect to, the Assigned Claims.

**Count Five: Subrogation**

98. The Plaintiff Class realleges and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

99. OPA states “Any person ... who pays compensation pursuant to this Act to any claimant for removal costs or damages shall be subrogated to all rights, claims, and causes of action that the claimant has under any other law.” 33 U.S.C. § 2715.

100. The *Deepwater Horizon* Incident has caused and continues to cause harm, loss, injuries, and damages to BP, including but not limited to harm, loss, injuries, and damages related to the blowout of the Macondo well, the resulting explosion and fire onboard the *Deepwater Horizon*, the effort to regain control of the MC-252 well, the oil spill that ensued before control of the Macondo well could be regained, and claims related to the *Deepwater Horizon* Incident and the Spill.

101. BP has paid and will continue to pay damages to resolve claims related to the *Deepwater Horizon* Incident.

102. Halliburton is partly at fault for the *Deepwater Horizon* Incident, including the resulting Spill, and related damages, for the reasons explained in the preceding allegations.

103. Halliburton is liable in subrogation to the Plaintiff Class, as assignee of BP, to the extent that BP has directly or indirectly paid claims to settle causes of action against BP under

non-OPA causes of action, whether based on international law, state law, or other federal law.

104. To the extent other laws are applicable, Halliburton is further liable to the Plaintiff Class, as assignee of BP, in subrogation, as part of, and with respect to, the Assigned Claims.

105. Accordingly, under Section 2715 of OPA, the Plaintiff Class, as assignee of BP, is entitled to recover from Halliburton reimbursement for all or a part of the damages, costs and expenses related to the *Deepwater Horizon* Incident and the resulting Spill that BP has paid or will pay.

106. In addition, under subrogation law, the Plaintiff Class, as assignee of BP, is also entitled to recover from Halliburton reimbursement for part of the damages, costs and expenses related to the *Deepwater Horizon* Incident and the resulting Spill that BP has paid or will pay.

#### **PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff Class, suing as the assignee and on behalf of BP, demands judgment against Halliburton, as follows:

- a. Damages for all Assigned Claims under any theory or cause of action, including:
  - (i) All damages related to the repair, replacement, and/or re-drilling of the MC-252 Well;
  - (ii) All economic damages for the loss of the MC-252 Well, including lost profits, lost hydrocarbons, and diminution in value of the leasehold;
  - (iii) All costs that BP incurred to control the MC-252 Well and/or to respond to, contain, and/or clean up the Spill;
  - (iv) Indemnity, contribution, and subrogation for claims paid by BP and/or the Gulf Coast Claims Facility on or before the entry of the Preliminary Approval Order, excluding BP's retained claims for amounts paid for personal injury, bodily injury, and/or wrongful death claims of the employees of Transocean or Transocean's contractors who were on board the *Deepwater Horizon* on April 20, 2010;
  - (v) Reimbursement of settlement payment(s) to any member of the Plaintiff Class; and

- (vi) BP's claims for punitive, exemplary, multiple, and non-compensatory damages;
- b. litigation costs and attorneys fees;
- c. any and all relief the Court finds appropriate.

This 24th day of September, 2015.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that the above and foregoing Complaint has been served on All Counsel by electronically uploading the same to Lexis Nexis File & Serve in accordance with Pretrial Order No. 12, and that the foregoing was electronically filed with the Clerk of Court of the United States District Court for the Eastern District of Louisiana by using the CM/ECF System, which will send a notice of electronic filing in accordance with the procedures established in MDL 2179, on September 24, 2015.

/s/ Stephen J. Herman and James Parkerson Roy