IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

CASE NO. 3:10cv141-MCR/MD

DEWEY DESTIN, an individual; and EDGEWATER BEACH OWNERS ASSOCIATION, INC., a Florida condominium owners association, on their own behalf and on behalf of all others similarly situated,

Plaintiffs,

vs.

BP, PLC; BP PRODUCTS NORTH AMERICA, INC.; BP AMERICA, INC.; BP EXPLORATION AND PRODUCTION, INC.; BP CORPORATION NORTH AMERICA, INC.; BP COMPANY NORTH AMERICA, INC.; TRANSOCEAN, LTD.; TRANSOCEAN OFFSHORE DEEPWATER DRILLING, INC.; TRANSOCEAN DEEPWATER, INC.; TRANSOCEAN HOLDINGS, INC.; HALLIBURTON ENERGY SERVICES, INC.; CAMERON INTERNATIONAL CORPORATION f/k/a COOPER CAMERON CORPORATION, ADARKO PETROLEUM CORPORATION; MOEX OFFSHORE 2007, LLC; and M-I, LLC,

Defendants.

FIRST AMENDED CLASS ACTION COMPLAINT

Plaintiffs DEWEY DESTIN and EDGEWATER BEACH OWNERS ASSOCIATION, INC., on their own behalf and on behalf of all others similarly situated ("Plaintiffs") file this First Amended Class Action Complaint against Defendants, BP, PLC, BP PRODUCTS NORTH AMERICA, INC., BP AMERICA, INC., BP EXPLORATION AND PRODUCTION, INC., BP CORPORATION NORTH AMERICA, INC., BP COMPANY NORTH AMERICA, INC., TRANSOCEAN, LTD., TRANSOCEAN OFFSHORE DEEPWATER DRILLING, INC.,

TRANSOCEAN DEEPWATER, INC., TRANSOCEAN HOLDINGS, INC., HALLIBURTON ENERGY SERVICES, INC., CAMERON INTERNATIONAL CORPORATION f/k/a COOPER CAMERON CORPORATION, ADARKO PETROLEUM CORPORATION, MOEX OFFSORE 2007, LLC, and M-I, LLC (collectively "Defendants"), and allege as follows:

INTRODUCTION

1. This is a class action filed under Rule 23 of the Federal Rules of Civil Procedure to immediately address and protect the shared concerns of the proposed Class resulting from the massive oil slick created by Defendants. Defendants, through their action and inaction, have caused and are causing discharges of pollutants from the now destroyed Deepwater Horizon ("Deepwater Horizon") mobile offshore drilling unit, which had recently drilled the deepest well in the history of the oil industry.

2. On April 20, 2010, Defendants' negligence resulted in the greatest environmental catastrophe in a generation. At approximately 10:00 p.m., central time, an explosion occurred on the Deepwater Horizon. The explosion, resulting fire, and oil spill, however, could have been avoided. For example, Defendants disregarded numerous warning signs which should have put them on notice that there was a problem with the well. Defendants then made the decision to prematurely remove drilling mud from the oil well that allowed natural gases to enter the pipe and contribute to the explosion. Moreover, had the Deepwater Horizon's Blow Out Preventer ("BOP") been properly designed and maintained, the BOP could have prevented the resulting blowout from the well. Additionally, had the Deepwater Horizon been equipped with a remote-controlled shut-off switch, as oil rigs operated by nations ranging from Brazil to Norway routinely are, the well could have been closed, and the resulting damage could have been minimized.

3. Unfortunately for the Plaintiffs, and all others who rely on the Gulf of Mexico for their livelihoods, it was not, and the Deepwater Horizon exploded and burned for two days before tipping into the sea. On its way to the seafloor, it bent and broke the long riser pipe carrying oil to the surface from the seafloor. As the Deepwater Horizon sank, it eventually broke off the riser, leaving the pipe leaking oil out of its now-open end as well as through two breaks along its length, and leaving the well spewing oil into the Gulf of Mexico.

4. By the time the Deepwater Horizon sank on April 22, 2010, it was leaking thousands of barrels of crude a day, creating a thick and viscous oil slick larger than the State of Rhode Island. In fact, more than 5,000 barrels per day of oil have been leaking from the wellhead and the broken riser, bubbling up to the surface and flattening out into a widening slick of oil. The growing, fast-moving, rainbow-colored smear is large enough to be visible from outer space, covering more than 9,100 square miles, and spreading with the wind and currents towards the Florida, Louisiana, and Mississippi coastlines.

5. The oil slick has already caused catastrophic damage to the fragile ecosystem of the Gulf of Mexico, has already hurt Plaintiffs' property and businesses, and now threatens local economies for years to come. Defendants' negligence could not have come at a worse time for Gulf Coast residents and businesses as they were seemingly entering a period of limited economic recovery following the financial crisis of recent years and were optimistic about the approaching tourist season. Now, any hope for an immediate recovery is lost. Nevertheless, Plaintiffs and others similarly situated do not want their priceless local environmental heritage and hard-earned private properties and businesses invaded by Defendants' pollutants.

6. The Deepwater Horizon oil rig was engaged in dangerous, deep-water drilling in a fragile ecosystem in the Gulf of Mexico. Although the Defendants were well aware of the state

and federal laws regulating oil drilling, the design, location, and operation of the Deepwater Horizon was not in compliance with these laws. Defendants were also well aware of the dangers of oil spills, dangers which affect the livelihoods of millions of Gulf Coast residents, yet they failed to take even the most basic precautions to avoid such spills. And, despite having made billions in profits in the oil industry, they neglected to install a relatively simple device on the Deepwater Horizon, which could have prevented and/or minimized this tragedy. Even BP's Chief Executive Officer recently admitted that the company could have done more to prepare for a deepwater oil spill. In fact, federal authorities indicated that criminal charges will likely be filed against the companies involved.

7. A State of Emergency has been declared for Gulf Coast counties, including the counties where named Plaintiffs reside, Okaloosa and Walton Counties, which are contiguous counties with citizenry having common claims for relief arising from the approaching environmental disaster caused by Defendants. Most importantly, this citizenry can and should be commonly protected against this environmental disaster, using Defendants' funds, to lessen damages arising from the oil spill.

8. Historically and economically, Okaloosa and Walton Counties share a host of unique ties, including frequently noted world-class sugar sand beaches, a regional airport that is a major shared tourist conduit, the Greater Destin metropolitan area, the renowned Destin fishing fleet and adjacent near shore and offshore Gulf fishing areas, and a shared community college.

9. Critically for near term purposes, these counties physically border the Gulf of Mexico to the immediate south and are conjoined in an east-west direction by 25-mile wide Choctawhatchee Bay. The Bay's sole direct surface water connection to the Gulf of Mexico is the extremely narrow East Pass (also known as Destin Pass) in Okaloosa County. Further, the

Choctawhatchee River and numerous local bayous and other tributaries receive tidal flows from Choctawhatchee Bay and the Gulf of Mexico through the East Pass.

10. Defendants can and should immediately bring to the scene, or provide funding for the Class under Court oversight to bring to the scene, protective barriers to be on hand to put in place across Destin Pass, across Santa Rosa Sound to the west, and along oceanfront Okaloosa and Walton counties beginning immediately east of the Air Force property on Santa Rosa Island. While the damage from the approaching disaster would still be significant, properly designed barriers could allow Plaintiffs and the Class to avoid or minimize substantial irreparable harm and minimize the damages.

11. Now is not the time for this distinct, pristine, and protectable area to be unnecessarily placed at further risk or lost in the shuffle of competing statewide or out-of-state class actions solely focused on collecting money damages in the distant future. To assure that this Class is protected, and its unique needs represented with due expediency, this Class should be quickly given separate treatment from those pure damage class actions that ultimately may be recognized in the wake of this disaster.

PARTIES

12. Plaintiff DEWEY DESTIN is an individual residing in Destin, Florida, who owns waterfront real property located on Joe's Bayou within the tidal influence of Choctawhatchee Bay, is a member of the pioneer family after whom Destin is named, and is a life-long resident of Okaloosa County and serves on the Destin City Council. Dewey Destin owns and operates various businesses and restaurants in Destin, Florida associated with the tourism, fishing, and seafood industries.

13. Plaintiff, EDGEWATER BEACH OWNERS ASSOCIATION, INC. ("EBOA") is a Florida corporation which operates as a condominium association and that has its principal place of business in Walton County, Florida. EBOA is located and owns Gulf front real property in Miramar Beach, Walton County, Florida.

14. Defendant BP, PLC ("BP, plc") is a foreign corporation doing business in the State of Florida.

15. Defendant BP PRODUCTS NORTH AMERICA, INC. ("BP Products") is a foreign corporation doing business in the State of Florida.

16. Defendant BP AMERICA, INC. ("BP America") is a foreign corporation doing business in the State of Florida.

17. Defendant BP EXPLORATION AND PRODUCTION, INC. ("BP Exploration") is a foreign corporation doing business in the State of Florida.

18. Defendant BP CORPORATION NORTH AMERICA, INC. ("BP Corporation") is a foreign corporation doing business in the State of Florida.

19. Defendant BP COMPANY NORTH AMERICA, INC. ("BP Company") is a foreign corporation doing business in the State of Florida. All of the BP Defendants are collectively referred to as "BP."

20. Defendant TRANSOCEAN, LTD. ("Transocean, Ltd.") is a foreign corporation doing business in the State of Florida.

21. Defendant TRANSOCEAN OFFSHORE DEEPWATER DRILLING, INC. ("Transocean Offshore") is a foreign corporation doing business in the State of Florida.

22. Defendant TRANSOCEAN DEEPWATER, INC. ("Transocean Deepwater") is a foreign corporation doing business in the State of Florida.

23. Defendant TRANSOCEAN HOLDINGS, INC. ("Transocean Holdings, Inc.") is a foreign corporation doing business in the State of Florida. Upon information and belief, Transocean Holdings is a financially responsible party for the conduct of the Transocean entities named herein (collectively "Transocean").

24. Defendant HALLIBURTON ENERGY SERVICES, INC. ("Halliburton") is a foreign corporation doing business in the State of Florida.

25. Defendant CAMERON INTERNATIONAL CORPORATION f/k/a COOPER CAMERON CORPORATION ("Cameron") is a foreign corporation doing business in the State of Florida.

26. Defendant ANDARKO PETROLEUM CORPORATION ("Anadarko") is a foreign corporation doing business in the state of Florida. Anadarko is an oil and gas exploration and production company that owns a 25% interest in the Macondo well at Mississippi Canyon Block 252.

27. Defendant MOEX OFFSHORE 2007, LLC ("MOEX") is a foreign corporation doing business in the State of Florida. MOEX Offshore 2007 holds a 10% interest in the Macondo well at Mississippi Canyon Block 252.

28. Defendant M-I, LLC ("M-I") is a foreign corporation doing business in the State of Florida. M-I, also known as M-I SWACO, supplies drilling and completion fluids and additives to oil and gas companies, providing pressure control, rig instrumentation, and drilling waste management products and services. M-I provided the drilling fluids for the Deepwater Horizon at the time of the explosion.

JURISDICTION AND VENUE

29. This Court has jurisdiction over this class action pursuant to: (1) 28 U.S.C. § 1332(a), because the matter in controversy exceeds $75,000, exclusive of interest and costs, and because there is complete diversity of parties; (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 Florida, 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; (3) 43 U.S.C. § 1331, which extends exclusive federal jurisdiction to the outer Continental Shelf; (4) 28 U.S.C. §§ 2201-2202, which provides for federal declaratory actions and related relief; and (5) 28 U.S.C. § 1332(d)(2), because the matter in controversy exceeds the sum 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.

30. Venue in this District is proper under 28 U.S.C. § 1391 because a substantial portion of the events and omissions giving rise to the claims asserted herein, and all of the property that is the subject of this action, lie in this district.

FACTUAL ALLEGATIONS

A. Background

31. The Deepwater Horizon was an ultra-deepwater semi-submersible oil rig built in 2001. It was owned by Transocean and leased to BP through September 2013. It was one of the largest rigs of its kind. BP leased the Deepwater Horizon to drill exploratory wells at the Macondo prospect site in Mississippi Canyon Block 252, a location on the outer continental shelf

off the coast of Florida. In fact, the crew of the Deepwater Horizon had just celebrated drilling the deepest well in the history of the oil industry.

32. BP holds a lease granted by the U.S. Minerals Management Service ("MMS") that allows BP to drill for oil and perform oil-production-related operations at the Macondo site in the Mississippi Canyon Block 252 section. At all times material hereto, the Deepwater Horizon was owned, manned, possessed, managed, controlled, chartered and/or operated by Transocean and/or BP.

33. On April 20, 2010, the Deepwater Horizon was creating a cement seal and plug of the wellhead as part of the final phases of turning the Macondo well from an exploratory well into a production well. "Cementing" is delicate work that carries the risk of a blowout, which is the uncontrolled release of oil from the well. 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 explosion, fire and resulting oil spill.

34. Halliburton had been engaged by the BP and/or Transocean Defendants to conduct cementing operations on the well. In fact, Halliburton has stated that it completed the cementation of "the final production string" twenty hours before the accident, and that tests on the integrity of its casing were completed. But, placement of a final cement plug had not yet occurred at the time of explosion. Halliburton's improper and negligent conduct in its cementing duties caused and/or substantially contributed to the explosion and resulting oil spill. Moreover, Halliburton used a type of nitrogen charged cement to close off the bottom of the well which was not the typical type of cement used in the industry.

35. Defendants did not follow the usual protocol in the deepwater drilling industry with respect to the cement plug. The usual procedure is to place the plug first and then switch out the heavy drilling fluid for seawater. The heavy drilling fluid is essential, however, because it functions to weigh down the natural gases which are attempting to escape from the well. Defendants, however, started removing the heavy drilling fluid before the cement plug was placed which allowed the gas to shoot up the pipe and explode.

36. In fact, hours before the explosion, the oil well had failed key pressure tests which should have put Defendants on notice of a problem with the well. One test indicated that pressure was building up in the well and that oil or gas was seeping into the well and could potentially lead to an explosion. Specifically, the test revealed uneven buildups of pressure in different lengths of the pipe. Yet, Defendants did not suspend operations at that time.

B. The Explosion and Resulting Oil Spill

37. During the course of the above-referenced cementing work, an explosion occurred on the Deepwater Horizon causing the deaths and injuries of many workers on the rig. The resulting fire burned for two days, and the rig began to sink progressively more and more until it finally sank on April 22, 2010.

38. The Deepwater Horizon had been connected to the wellhead at the seafloor by a 5,000-foot pipe called a riser. As the Deepwater Horizon sank to the seafloor, it pulled the riser down with it, bending and breaking the pipe before finally tearing away from it completely. The riser, bent into a crooked shape underwater, now extends from the well to 1,500 feet above the seabed and then buckles back down. Oil is flowing out from the open end of the riser and from two places along its length.

39. The now-leaking wellhead is fitted with a blowout preventer-known as a BOP, consisting of a stack of hydraulically activated valves at the top of the well designed to pinch the pipe closed, cut it, and seal off the well in the event of a sudden pressure release exactly like the one that occurred during the Deepwater Horizon blowout. At this time, however, the response teams have been unable to activate the Deepwater Horizon's BOP. The BOP was defective, among other things, because it failed to operate as intended.

40. The BOP is a steel-framed stack of valves, rams, housings, tanks, and hydraulic tubing that are painted industrial yellow and sit atop the oil well. The BOP is approximately sixteen feet wide and sits on the seabed between the well and the pipe that carries oil to the surface, known as the riser. The drilling pipe, which comes down from the rig through the riser, is usually about half a foot in diameter and is surrounded inside the well by a larger pipe that forms a permanent casing for the finished well. Each BOP is configured for a given well. The BOP for the Deepwater Horizon had a series of five hydraulic rams. Some are designed to seal the well by clamping around the drill pipe. Another of the rams, known as the shear ram, is designed to seal the well by shearing off the drill pipe.

41. According to a news report in the New York Times on Saturday, May 1, 2010, when the explosion and fire ripped through the rig on April 20, 2010, workers threw a switch to activate the BOP, which was supposed to seal the well quickly in the event of a burst of pressure. According to the report, "[i]t did not work, and a failsafe switch on the device also failed to function." The report continued with a quote from a person familiar with the effort to activate the BOP, who requested anonymity because he was not authorized to speak on the subject: "'It's a mystery, a huge Apollo 13-type mystery,' as to why the blowout preventer did not work . . . .'" Although Defendants knew or should have known that the Deepwater Horizon had a defective

BOP and was not equipped with a remote shut-off switch, Defendants used the Deepwater Horizon to drill the deepest oil well in history.

42. Upon information and belief, the BOP at the Deepwater Horizon had a dead battery in its control pod, leaks in its hydraulic system, had a useless test version of one of the devices that was supposed to close the flow of oil, and a cutting tool that was not strong enough to shear through joints that made up ten percent of the drill pipe. In fact, the BOP apparently had a significant leak in a key hydraulic system. This leak was found in the hydraulic system that provides emergency power to the shear rams, which are the devices that are supposed to cut the drill pipe and seal the well.

43. The BOP had been modified in unexpected ways. One of these modifications was potentially significant. The BOP has an underwater control panel. BP spent a day trying to use this control panel to activate a variable bore ram on the blowout preventer that is designed to seal tight around any pipe in the well. When they investigated why their attempts failed to activate the bore ram, they learned that the device had been modified. A useless test ram, not the variable bore ram, had been connected to the socket that was supposed to activate the variable bore ram. An entire day's worth of precious time had been spent engaging rams that closed the wrong way.

44. After the accident, drawings of the BOP were requested from Transocean. Because of the modifications, however, the drawings they received did not match the structure on the seafloor. BP wasted many hours figuring this out.

45. The BOP was also not powerful enough to cut through joints in the drill pipe. Upon information and belief, the emergency controls on the blowout preventer also failed. The BOP has two emergency controls. One is called the emergency disconnect system or EDS. The EDS was activated on the drill rig before the rig was evacuated. But the signals did not reach the

BOP on the seafloor. Defendants were aware of problems with the emergency control but failed to address those problems.

46. The emergency controls may have also failed because the explosion that caused the emergency also disabled communications to the BOP. Still, the BOP had a "deadman switch" which is supposed to activate the BOP when all else fails. According to Cameron, there were multiple scenarios that could have caused the deadman switch not to activate. One is human oversight: the deadman switch may not have been enabled on the control panel prior to the BOP being installed on the ocean floor. Another is lack of maintenance: the deadman switch will not work if the batteries are dead. The deadman switch is connected to two separate control pods on the BOP. Both rely on battery power to operate. When one of the control pods was removed and inspected after the spill began, the battery was found to be dead.

47. With respect to design problems, the deadman switch activates only when three separate lines that connect the rig to the BOP are all severed: the communication, power, and hydraulic lines. Cameron has indicated that the power and communication lines were severed in the explosion, but it is possible that the hydraulic lines remained intact, which would have stopped the deadman switch from activating. If this last scenario is true, the acoustic shut-off switch that BP failed to install to save $500,000 would probably have worked to stop the blowout.

48. If the BOP on the wellhead had been functional, it could have been manually or automatically activated right after the explosion, cutting off the flow of oil at the wellhead, limiting the spill to a minute fraction of its current severity and thereby sparing Plaintiffs and Class Members billions of dollars in losses and damage.

49. 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.

50. Upon information and belief, during a 2009 earnings call to investors, Transocean admitted knowledge of BOP problems on at least some of its oil drilling platforms.

51. Upon information and belief, Cameron manufactured or supplied the Deepwater Horizon's BOP that failed to operate upon the explosion which should have prevented the oil spill.

C. The Aftermath

52. At the time of this filing, the wellhead has not been capped and the flow of oil continues into the Gulf waters. The ever-expanding oil slick made landfall on April 30, 2010, and will continue to affect more and more of the Gulf coastline as it is driven landward by currents and winds. Although BP will begin drilling a relief well to stop the flow to the leaking well, the relief well may take months to complete, while oil continues to flow out of the leaking well.

53. While the media has compared this spill to the 1989 Exxon Valdez disaster, one crucial difference is that the Valdez was a tanker with a limited supply of oil. Experts estimate that the volume of this continuous gush of oil will eclipse that of the Valdez spill. In contrast, the relief well will most likely take sixty to ninety days to complete, virtually ensuring this spill's classification as the worst oil spill in history.

54. What is worse, the floating booms that BP has set out to block the oil from reaching the coastline are too low and/or may be placed too far out to sea to be useful. Experts

report that anything higher than a three-foot wave will clear the boom, lifting the oil slick over the barriers with it. In the past few weeks, the Gulf has experienced seven to ten-foot swells, diminishing the usefulness of the booms.

55. As the oil continues to make landfall along the Gulf Coast, it will cause severe damage to the delicate wetlands and intertidal zones that line the coast of Florida, destroying the habitats where fish, shellfish, and crustaceans breed, spawn, and mature.

56. Not only is Florida's Gulf coastline at risk. Experts are indicating that satellite images show that the spill has been picked up by the Gulf of Mexico's "loop current," floating the oil slick along a "conveyor belt" down the Gulf coast of Florida, through the delicate ecosystem of the Florida Keys, and out into the Atlantic, where the Gulf Stream will carry the pollution up Florida's Atlantic coast.

D. The Risks of Deepwater Oil Drilling

57. The risks of offshore drilling were well known to Defendants, and are especially high in the Gulf of Mexico, where floating rigs are used, unlike the permanent rigs used in other areas such as the North Sea. Permanent rigs are anchored to the ocean floor and cannot sink, while floating rigs are far more precarious and subject to disastrous results like this incident.

58. Moreover, Defendants knew the work the Deepwater Horizon was performing was especially risky. In 2007, the MMS raised concerns about oil rig blowouts associated with the exact type of cementing work the Deepwater Horizon was doing when it exploded.

59. Defendants 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.

60. Although blowouts due to other causes were on the decline, the MMS study noted that blowouts during cementing work were continuing with regularity, and most frequently in the Gulf of Mexico. Cementing problems were associated with 18 of 39 blowouts between 1992 and 2006, and 18 of 70 from 1971 to 1991. Nearly all the blowouts examined occurred in the Gulf of Mexico.

61. Defendants were aware of the recent August 2009 blowout in the Timor Sea, which was found to have been caused by careless cementing work. During that incident, which bears a strong resemblance to the Deepwater Horizon blowout, oil leaked from the site for ten weeks, spreading damage over 200 miles from the well site.

62. The threat of blowouts increases as drilling depth increases. The Deepwater Horizon was drilling in 5,000 feet of water, to a total depth of 18,000 feet below the seafloor. Defendants were aware of the high risk of blowouts from such deep drilling.

63. In addition to increasing the risk of blowouts, deep-sea drilling also increases the failure risk of the chief blowout safety mechanism, the BOP. Defendants were aware of the risk of the BOP failing at greater depths, yet did not install a backup BOP activation system or a backup BOP. Alternatively, Defendants failed to maintain the Deepwater Horizon's BOP in proper working order after being put on notice of various warning signs.

64. A 2004 study by Federal regulators showed that BOPs may not function in deep-water drilling environments because of the increased force needed to pinch and cut the stronger pipes used in deep-water drilling. Only three of fourteen rigs studied in 2004 had BOPs able to squeeze off and cut the pipe at the water pressures present at the equipment's maximum depth. "This grim snapshot illustrates the lack of preparedness in the industry to shear and seal a well with the last line of defense against a blowout," the study said. Moreover, the study singled out

Cameron, the manufacturer of the Deepwater Horizon's BOP, for relying on faulty calculations to determine the needed strength for its BOP equipment to function properly at greater depths.

65. Defendants could have installed a back up trigger to activate the BOP in the event of the main trigger failing to activate it. In fact, in 2000, the MMS told Defendants and other oil rig operators that it considered a backup BOP activation system to be "an essential component of a deepwater drilling system." Despite that notice, and although the backup trigger is a common drill-rig requirement in other oil-producing nations, including other areas where BP operates, the Deepwater Horizon was not equipped with this back-up remote BOP trigger.

66. Defendants 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 billions in profits, were also aware that such a device could be installed on the Deepwater Horizon at a negligible cost. Yet, Defendants failed to install a remote-controlled shut-off switch on the Deepwater Horizon.

67. Nor was the Deepwater Horizon equipped with a second, backup BOP, as newer rigs increasingly are. The Deepwater Horizon only had one BOP installed, leaving the wellhead vulnerable to disaster when the single BOP fails.

E. Defendants' Ineffective Responses to the Oil Spill

68. Considering the inherent risks of deepwater drilling, Defendants should have had more effective plans in place to deal with oil leaks at such depths. They are apparently, however, making it up on an ad hoc basis.

69. Since the time of the accident, a remotely operated vehicle, or "sea robot," has attempted to carry out multiple attempts to activate the BOP to stop the well from leaking thousands of barrels of crude per day into the Gulf of Mexico. To date, those efforts have been unsuccessful.

70. The next proposal by Defendants to stop the gushing oil was to install a "containment dome" over the leaking well with the hopes of placing it over the leaking oil and funneling a substantial portion of it onto a tanker above. When Defendants attempted to install the dome, however, its opening became clogged with hydrates that form when gas and water mix under certain temperatures and pressures. Accordingly, those efforts were also unsuccessful.

71. Next, Defendants proposed to install a smaller dome, or "top-hat," to perform the same function as the containment dome. After weeks of unabated oil discharge in the Gulf, BP has only recently announced that it may have achieved "some" success in capturing some of the oil by inserting a narrow tube into the damaged pipe from which most of the oil is leaking. BP cannot state, however, how much oil is being captured or what percentage of the oil leaking from the riser pipe is flowing into the narrow tube.

72. Defendants have also discussed the use of technique know as a "top kill," which involves jamming up to 50,000 barrels of a heavy-density mud-like liquid into channels leading to the oil well, effectively overpowering the leak before adding cement to seal it off. This technique, however, has never been used in 5,000 feet of water.

73. Incredibly, another contingency plan is called a "junk shot," which would pump materials such as rubber tires, pieces of rope, and even golf balls into the well.

74. Defendants have also been negligent in their public response to the disaster, particularly with respect to downplaying the nature, size, and extent of the leak and failing to employ adequate responders and/or equipment in the field to control the oil slick.

75. After the explosion, Defendants attempted to downplay and conceal the severity of the oil spill. When the Defendants first learned of the spill, they reported that the well was leaking approximately 1,000 barrels per day. The oil spill was in fact leaking more than 5,000, or 210,000 gallons, a day, with some estimates going significantly higher. 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. Moreover, Defendants were slow and incomplete in their announcements and warnings to Gulf Coast residents and businesspeople about the severity, forecast, and trajectory of the oil spill.

76. On May 20, 2010, the Secretary of Homeland Security, Janet Napolitano, and the Administrator of the Environmental Protection Agency, Lisa P. Jackson, wrote to BP's Chief Executive Officer noting that although BP indicated before Congress that it was making every effort to keep the public and government officials informed, such efforts "have fallen short in both their scope and effectiveness." The letter demanded that BP make publicly available any data and other information relating to the Deepwater Horizon that it has collected or will collect in the future. BP has been accused of limiting access to such information.

77. Upon information and belief, the training provided by Defendants with respect to cleaning up the oil spill has not met all applicable standards. Specifically, Defendants have not provided an adequate amount of instructors based on the number of volunteers being trained. In fact, Defendants have even attempted to get general releases from volunteers wanting to clean up

the oil spill as a condition precedent to their volunteer efforts. *See Barisich v. BP*, Case No. 2:10-CV-01316-KDE-JCW (E.D. La. 2010) at D.E. 6.

F. Prior Incidents Involving BP

78. BP has a history of cutting corners on safety to reduce operating costs. The following are just a sampling of incidents of BP's widespread practice of willful, wanton and reckless failures and conduct that demonstrate a pattern and a practice of such conduct:

(a) In Prudhoe Bay, Alaska, BP has been fined by the State of Alaska and faces civil suits stemming from leaks from more than six miles of corroded pipelines. Although the Trans-Alaska pipeline is inspected (via a pipeline pig) every fourteen days, BP failed to inspect the corroded pipeline at issue in Prudhoe Bay for decades.

(b) BP pleaded guilty to a criminal violation of the Clean Water Act and paid a $20 million fine in criminal penalties for a spill from an Alaska pipeline that resulted because BP failed to heed many red flags and warning signs of imminent internal corrosion.

(c) BP even mislead its investors about the integrity of its pipelines, that resulted in a securities class action federal lawsuit that ultimately settled for over $40,000,000.00.

(d) BP's cost-cutting measures are so wide-spread and prevalent that they led to a fatal explosion at its Texas City, Texas Refinery in 2005, which resulted in a criminal fine of $50,000,000.00 (and much more in civil settlements and verdicts).

79. Nevertheless, BP continues to fight for less regulation of the oil exploration and production industry. In 2009, Defendant BP spent more than $16 million lobbying the Federal government on issues including encouraging removing restrictions on drilling on the continental shelf, despite its history of spills and explosions and its knowledge of the high risks involved in such drilling.

80. Moreover, Defendants have actively opposed MMS rules requiring oil rig lessees and operators to develop and audit their own Safety and Emergency Management Plans, insisting

that voluntary compliance will suffice. The Deepwater Horizon incident is a tragic example to the contrary.

G. Anticipated Effects of the Oil Spill

81. 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 months. In two months, the spill will surpass the 11 million gallons leaked from the Exxon Valdez in 1989.

82. 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 Hurricane Katrina.

83. A number of studies have linked oil contamination with significantly increased risk of cancer and other illnesses. Although Florida's tourism industry 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.

84. The oil contamination is dangerous. There are several hundred individual hydrocarbon chemicals defined as petroleum-based and each petroleum product has its own mix of constituents. Exposure to oil, petroleum products, petroleum constituents, petroleum by-products, and/or toxic and hazardous substances and wastes poses a threat to human health and

the environment. The health effects associated with petroleum are caused by its associated hydrocarbon mixtures. Exposure to soil, vapors, and water containing petroleum contamination can cause multiple health complications and illnesses such as respiratory conditions and illnesses, gastrointestinal conditions and illnesses, dermatological conditions and illnesses, neurological conditions and illnesses, immunological conditions and illnesses, and a host of other health complications and illnesses. Sensitivity to these effects can vary greatly from one person to the next, with children, the elderly, and people with pre-existing respiratory problems most affected. Long-term exposures pose a risk of cancer and damage to the respiratory tract, gastrointestinal tract, urinary tract, and other organs of the body, as well as immunological and neurological problems and damage to the nervous system. People exposed to petroleum in soil, water, and vapors over a period of time may gradually lose their ability to notice the petroleum, which can lead to greater exposures and health problems over time.

85. In addition to its effects on the environment and human health, the oil slick is an economic catastrophe for the Gulf States. Businesses and individuals on the Gulf Coast, including Plaintiffs, face the permanent loss of their livelihoods. Given the permanent damage that the oil slick is doing to the tourism industry, and the resulting stigma attached to the area, this loss will be difficult or impossible to recover. Florida's tourism industry is reportedly expected to lose $3 billion.

86. The oil contamination has affected the property of the Plaintiff and the Class, causing the property to lose value, causing the Plaintiff and the Class to lose the use and enjoyment of their property, and is likely to result in the contamination of Plaintiffs' properties with one or more of the substances described herein.

87. The oil contamination will require remediation. Plaintiff will likely incur costs associated with the remediation and removal of this contamination in order to restore the Plaintiffs' property to its original, pristine condition, all of which has been caused as a direct and proximate result of the negligent acts and omissions of the Defendants more fully described herein.

88. 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. 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.

89. Faced with an environmental catastrophe of this magnitude, Governor Charlie Crist has declared a State of Emergency for a number of the Gulf counties. The Department of Homeland Security has declared this disaster to be of national significance, and the Environmental Protection Agency, the Department of the Interior, and even the Department of Defense are investigating. Federal and state officials have already expressed shock and outrage at BP's inadequate response.

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

91. Although Defendants earn billions of dollars in profits every year, BP Defendants failed to invest sufficient resources and money to maintain, inspect, repair, and properly operate their facilities, all the while knowing that the product that the company handles is a toxic, dangerous and often lethal recipe for disaster.

92. The overarching corporate culture of the Defendants, as demonstrated above, is one of profits over people. Defendants littered the road to making billions of dollars of profits annually with lives, livelihoods, property, and wildlife, in conscious disregard for life and safety.

CLASS ALLEGATIONS

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

> All Florida residents, including but not limited to owners of businesses and real property in Okaloosa and Walton Counties, who live or work in, lease property, or derive income from, the Florida "Coastal Zone," as that term is defined in 43 U.S.C. § 1331(e), who have sustained any legally cognizable loss and/or damages as a result of the April 20, 2010 explosion and fire which occurred aboard the Deepwater Horizon drilling rig and the oil spill resulting therefrom. Excluded from the Class are: (1) the officers and directors of any of the Defendants; (2) any judge or judicial officer assigned to this matter and his or her immediate family; and (3) any legal representative, successor, or assign of any excluded persons or entities.

94. The proposed Class is so numerous that joinder of all members is impracticable, as the members of the Class number in the thousands.

95. There are questions of law or fact common to the Class, specifically including all fact questions pertaining to the allegations of fact pertaining to liability contained in this Amended Complaint, as well as all legal questions pertaining to the allegations of law contained in this Amended Complaint, including the claims for relief contained below. Examples of the questions of law and fact common to the Class include, but are not limited, the following:

(a) Whether, and to what extent, Defendants caused and/or contributed to the fire, explosion, and continuous oil spill;

(b) Whether Defendants' actions were negligent;

(c) Whether the fire, explosion, and oil spill have caused environmental or other damage;

(d) Whether, and to what extent, Defendants engaged in abnormally

dangerous activities for which they are strictly liable;

(e) Whether Defendants negligently maintained and/or operated the mobile offshore drilling unit Deepwater Horizon;

(f) Whether Defendants negligently failed to take reasonable measures to contain the oil spill;

(g) Whether Defendants collectively and/or individually owed a duty to Plaintiffs and the proposed class they seek to represent to maintain the Deepwater Horizon and/or to conduct drilling operations in a manner so as to prevent the discharge and/or substantial threat of discharge of oil into or upon the Gulf of Mexico and/or the shores of Florida;

(h) Whether Defendants are strictly liable to Plaintiffs and all others similarly situated; and

(i) Whether Plaintiffs and proposed class members were injured by the Defendants' acts or omissions, and, if so, the appropriate class-wide measures of damages.

96. The claims of Plaintiffs are typical of the claims of the Class, and any defenses to the claims would be typical of the claims of the Class.

97. The representative parties will fairly and adequately protect the interests of the Class.

98. Under Rule 23(b)(1)(A) and (B), prosecuting separate actions by Plaintiffs and the other class members would create a risk of inconsistent or varying adjudications with respect to individual Class Members that would establish incompatible standards of conduct for the parties opposing the Class, as well as adjudications with respect to individual Class Members that, as a practical matter would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

99. Under Rule 23(b)(2), the parties opposing the Class have acted or refused to act on grounds that apply generally to the Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole.

100. Under Rule 23(b)(3), taking into account pertinent factors under (A)-(D) thereof, questions of law or fact common to Class Members predominate over any questions affecting only individual Class Members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The interests of the Class Members are aligned, and individual Class Members would not need to individually control the prosecution of separate actions in order to reasonably pursue and protect such interests. On the contrary, their interests would be well served by not controlling the prosecution of separate actions, which would be highly inefficient and not present significant value added for a Class of this size and orientation.

101. Although various class actions recently have been filed in and out of Florida purporting to represent all or part of the Class, along with numerous others not in the Class, the nature of these class actions is geared towards money damages, and moreover, not targeted at the specific reasonable needs and expectations of this specific Class. Thus, other class actions are not likely to serve the interests of the Class to the same degree as this action. In addition, it is desirable to concentrate this particular litigation in this District, the federal forum closest to the affected Class and in the best position to assess the particular needs and interests of the Class, including most importantly as to injunctive relief. Nonetheless, in the event this action is transferred to another forum, the other factors strongly weigh in favor of Rule 23(b)(3) certification, even without crediting for Rule 23(b)(3)(C). Finally, this class action would be far

less likely to have manageability difficulties than larger class actions purporting to represent statewide or multistate classes.

102. The undersigned proposed Class Counsel ("Class Counsel") likewise should be appointed as Class Counsel for this Class. Class Counsel have worked diligently to identify and investigate potential claims for relief based on threats urgently bearing upon the interests of the Class. They have devised an overall approach that will serve the best interests of the Class, including through common pursuit of injunctive relief and common fund mitigation not addressed in other class actions and relating to the geography of this particular Class area. Class Counsel are experienced in handling class actions, other complex litigation, and the types of claims asserted in this action, are knowledgeable of the applicable law, and will commit the resources needed to represent the Class. By their experience and conduct, they have demonstrated that they are best able to represent the interests of this particular narrowly tailored Class.

COUNT I: TEMPORARY AND PERMANENT INJUNCTIVE RELIEF

103. Paragraphs 1-102 above are incorporated herein by reference.

104. Plaintiffs and others similarly situated will suffer permanent irreparable harm if their properties are allowed by Defendants to be invaded by the pollutants Defendants have negligently discharged.

105. Plaintiffs and others similarly situated have already suffered from damages to the local tourism and economy as a result of the publicity regarding the pollutants Defendants have negligently discharged. Plaintiffs will suffer permanent irreparable harm if the Defendants do not take immediate measures to combat the negative publicity resulting from the pollutants Defendants negligently discharged.

106. Plaintiffs and others have been required by the Defendants to participate in an unreasonable claims procedure. Plaintiffs will suffer permanent irreparable harm if the Defendants do not take immediate measures to make this process fair and reasonable.

107. Defendants should be prohibited from engaging in any tactics through its claims process that would adversely affect disaster victims' legal rights (including forcing them to give up their legal claims, or their right to legal representation in order to obtain interim relief). Additionally, Defendants should be prohibited from preventing the disaster victims from engaging in any form of self-help permitted by state or federal law.

108. Plaintiffs and others similarly situated have no adequate remedy at law to protect their businesses and properties.

109. Defendants individually or collectively have the financial wherewithal to protect Plaintiffs and others similarly situated. Such protection readily and reasonably could occur either by Defendants directly providing needed protection or by Defendants being ordered to establish under Court supervision a fund for providing such protection.

110. Public policy and the equities strongly favor such measures.

COUNT II: DECLARATORY JUDGMENT CONCERNING STRICT LIABILITY UNDER FLORIDA'S POLLUTANT DISCHARGE PREVENTION AND CONTROL ACT, AND UNDER SECTIONS 376.30-376.317, FLORIDA STATUTES

111. Paragraphs 1-102 above are incorporated herein by reference.

112. The Deepwater Horizon oil rig is a no longer functioning mobile offshore drilling unit that was placed over a deep ocean oil well, to which it was connected by pipeline. The pipeline, or riser, has now been severed, causing the major and continuing discharge of pollutants. The immediate discharge is occurring into waters outside the territorial limits of Florida; however, lands and waters within the territorial limits of Florida, and specifically lands

and waters within the Class area, are reasonably expected to be directly affected by the discharge.

113. Plaintiffs have a real, immediate, and bona fide need for a preventative adjudication of whether under these circumstances Defendants will be strictly liable under Florida's Pollutant Discharge Prevention and Control Act, Sections 376.011-376.21, Florida Statutes. This Act provides for strict liability for destruction to or loss of real or personal property, along with reasonable attorneys' and expert witness fees. *See* §§ 376.031(5), 376.12(5), and 376.205, Fla. Stat.

114. The foregoing Act is specifically concerned with protecting Florida's coastal waters, *see* Section 376.021, Florida Statutes, and is separate from and in addition to any strict liability under Section 376.313(3), Florida Statutes. Nonetheless, while Section 376.313(3) comes within a portion of Chapter 376, Florida Statutes, *see* Sections 376.30-376.317, that, among other things, protects potable water sources, *see*, *e.g.*, Section 376.30(1)(b), its language ("a cause of action in a court of competent jurisdiction for all damages resulting from a discharge or other condition of pollution covered by ss. 376.30-376.317") is broad. This language has been flexibly interpreted by Florida state courts and is not by its terms limited to fresh water surface or groundwater sources. Thus, Plaintiffs likewise have a real, immediate, and bona fide need for a preventative adjudication of whether under these circumstances, Defendants will be strictly liable under Section 376.313(3), as well as subject to reasonable attorneys' and expert witness fees under Section 376.313(6).

115. Preventative adjudication of these Florida statutes is necessary and would be greatly and presently beneficial to Plaintiffs and the Class because the uncertainty created by Defendants' conduct goes to the constitutionally protected property rights of Plaintiffs and the

Class. The uncertainty created by Defendants' conduct undermines the policy reasons for having property and property rules in the first place. Forcing Plaintiffs and the Class to engage in "discounting" of their property rights while they wait for Defendants' contamination to arrive would be thoroughly inadequate. Further preventative adjudication would encourage the timely implementation by Defendants of prophylactic remedies to protect the property rights of the Class so as to avoid or minimize remedial adjudication under these laws.

COUNT III: STRICT LIABILITY PURSUANT TO FLORIDA STATUTE § 376.313

116. Paragraphs 1-102 above are incorporated herein by reference.

117. At all relevant times, Defendants owned, operated and/or maintained the mobile offshore drilling unit Deepwater Horizon which exploded and caught fire on April 20, 2010.

118. Following the explosion and fire, the Deepwater Horizon sunk resulting in the continuous discharge of crude oil from the well upon which the rig had been performing completion operations.

119. At all relevant times, Defendants had a statutory duty to Plaintiffs and Class Members to maintain and operate the Deepwater Horizon so as to not create or continue hazardous conditions due to the discharge of pollutants as defined by Florida Statute §§ 376.301(10), 376.301(11), and 376.301(13).

120. At all relevant times, Defendants breached their statutory duty to the Plaintiffs and Class Members by discharging, or allowing to be discharged, crude oil into and upon the Gulf of Mexico and allowing the massive oil spill to migrate into the Florida's marine environments, coastal environments and estuarine areas which are used by Plaintiffs for different activities, including but not limited to, commercial fishing, and other income generating

endeavors in violation of Florida Statutes 376.30 to 376.317, and Defendants are strictly liable to Plaintiffs and Class Members under Sec. 376.313(3), Florida Statutes, which provides:

> [N]othing contained in ss. 376.30-376.317 prohibits any person from bringing a cause of action in a court of competent jurisdiction for all damages resulting from a discharge or other condition of pollution covered by ss. 376.30-376.317. Nothing in this chapter shall prohibit or diminish a party's right to contribution from other parties jointly or severally liable for a prohibited discharge of pollutants or hazardous substances or other pollution conditions. Except as otherwise provided in subsection (4) or subsection (5), in any such suit, it is not necessary for such person to plead or prove negligence in any form or manner. Such person need only plead and prove the fact of the prohibited discharge or other pollutive condition and that it has occurred.

121. As the direct and proximate result of Defendants' breach of a statutory duty to the Plaintiffs, the oil spill originating from the Deepwater Horizon has resulted in detrimental effects upon the Gulf of Mexico and Florida's marine environments, coastal environments, and estuarine areas, which are used by Plaintiffs for various income generating endeavors.

COUNT IV: COMMON LAW NEGLIGENCE,
GROSS NEGLIGENCE AND WILLFUL MISCONDUCT

122. Paragraphs 1-102 above are incorporated herein by reference.

123. The explosion, fire, and resulting oil spill were caused by the concurrent negligence of the Defendants. Considering the inherent danger of deepwater oil drilling, Defendants failed to exercise the appropriate degree of care required for such activity. In fact, through their actions and inactions, Defendants' care departed extremely from the care required under the circumstances.

124. Upon information and belief, Plaintiffs allege that the explosion, fire, and resulting oil spill were caused by the joint negligence and fault of the Defendants, by among other things, and including but not limited to the following

(a) Failing to properly operate the Deepwater Horizon;

(b) Operating the Deepwater Horizon in such a manner that an explosion and fire 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 explosion, fire, 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) Negligently implementing 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) Failing to timely warn;

(m) Failing to timely bring the oil release under control;

(n) Failing to provide appropriate accident prevention equipment;

(o) Failing to observe and read gauges that would have indicated excessive pressures in the well;

(p) Failing 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, 2010; and

(v) 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 Florida and Federal law applicable on the outer Continental Shelf.

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

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

127. In addition to the negligent actions described above, and in the alternative thereto, the injuries and damages suffered by Plaintiffs and the Class were caused by the acts and omissions of the Defendants that are beyond proof by the Plaintiffs and the Class, 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 explosion, fire, sinking and the resulting oil spill would not have occurred had the Defendants exercised the high degree of care imposed on them. Plaintiffs, therefore, plead the doctrine of *res ipsa loquitur*.

128. Moreover, Defendants were and are responsible for the foregoing acts and omissions under egregious circumstances, with utter awareness of their placement of innocent persons and properties, including the public at large, at great risk of injury, loss, or damage.

Defendants knowingly cut corners to save money and keep revenue streams from the Deepwater Horizon flowing. They were fully capable and aware of readily available measures to avoid or minimize a disaster of this kind but neglected to do so for profit. They gambled, and the public, including Plaintiffs and the Class, have lost. Therefore, in addition and in the alternative, Defendants' acts and omissions constitute both gross negligence and willful misconduct.

129. 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 therefore in amounts determined by the trier of fact.

COUNT V: LIABILITY UNDER THE FEDERAL OIL POLLUTION ACT, INCLUDING UNCAPPED LIABILITY FOR GROSS NEGLIGENCE AND WILLFUL MISCONDUCT

130. Paragraphs 1-102 above are incorporated herein by reference.

131. 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. *See* 33 U.S.C. § 2702.

132. Section 2702(b)(2)(C) provides for the recovery of "[d]amages for loss of 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."

133. 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.

134. 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."

135. The explosion, fire and resulting oil spill were caused by the concurrent negligence of the Defendants. Considering the inherent danger of deepwater oil drilling, Defendants failed to exercise the degree of care required for such activity. In fact, through their actions and inactions, the standard of care of the Defendants departed extremely from the care required under the circumstances.

136. Upon information and belief, Plaintiffs allege that the explosion, fire and resulting oil leak were caused by the joint negligence and fault of the Defendants, by among other things, and including but not limited to the following

(a) Failing to properly operate the Deepwater Horizon;

(b) Operating the Deepwater Horizon in such a manner that an explosion and fire 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 explosion, fire, 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) Negligently implementing 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) Failing to timely warn;

(m) Failing to timely bring the oil release under control;

(n) Failing to provide appropriate accident prevention equipment;

(o) Failing to observe and read gauges that would have indicated excessive pressures in the well;

(p) Failing 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, 2010; and

(v) 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 Florida and Federal law applicable on the outer Continental Shelf.

137. In addition, and in the alternative, the explosion, fire, sinking and resulting oil leak were caused by defective equipment, including the BOP, which was in the care, custody, and control of Defendants. Defendants knew or should have known of these defects and Defendants are, therefore, liable for them.

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

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

140. Defendants were and are responsible for the foregoing acts and omissions under egregious circumstances, with utter awareness of their placement of innocent persons and properties, including the public at large, at great risk of injury, loss, or damage. Defendants knowingly cut corners to save money. Defendants were fully capable and aware of readily available measures to avoid or minimize a disaster of this kind but neglected to do so for profit. Defendants gambled, and the public, including Plaintiffs and the Class, have lost. Therefore, in addition and in the alternative, Defendants' acts and omissions constitute both gross negligence and willful misconduct.

141. 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 Defendants for such damages in amounts to be determined by the trier of fact.

142. 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 therefore from Defendants in amounts to be determined by the trier of fact.

143. Defendants are therefore liable to Plaintiffs and the Class under the federal Oil Pollution Act, 33 U.S.C. §§ 2701-2719. Specifically, under 33 U.S.C. § 2702(b)(2)(B), (C), and (F), Defendants are liable to Plaintiffs and the Class for damages for injury to, or economic losses resulting from destruction of, real or personal property; damages for loss of subsistence use of natural resources; and damages 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. In addition, or in the alternative, the foregoing damages are uncapped under 33 U.S.C. § 2704(c)(1)(A) because the incident was proximately caused by Defendants' gross negligence or willful misconduct.

COUNT VI: STRICT LIABILITY FOR ABNORMALLY DANGEROUS ACTIVITY

144. Paragraphs 1-102 above are incorporated herein by reference.

145. Defendants, as the owners and/or operators of the Deepwater Horizon, engaged in abnormally dangerous activities by the manner in which they maintained and operated the Deepwater Horizon. Defendants' activities resulted in the intentional, incidental, or accidental explosion, fire, sinking, and resulting oil leak from the Deepwater Horizon mobile offshore drilling unit, which (a) created a high degree of risk of harm to others, and particularly to Plaintiffs; (b) created a risk involving a likelihood that the harm threatened by Defendants' activities would be great; (c) created a risk of harm that could not be eliminated by the exercise

of reasonable care; (d) were not a matter of common usage; and (e) were inappropriate to the place that they were being carried on, in that they constituted a non-natural use of Defendants' oil lease which imposed an unusual and extraordinary risk of harm to Plaintiffs.

146. As a direct and proximate result of Defendants' conduct in engaging in the abnormally dangerous activities alleged above, substantial amounts of crude oil have been released and continue to be released from the well. The harm sustained by Plaintiffs is exactly the kind of harm posed, the possibility of which made Defendants' activities abnormally dangerous.

147. Plaintiffs are entitled to a judgment finding Defendants liable for damages, including punitive damages, suffered as a result of Defendants' abnormally dangerous activities and awarding Plaintiffs adequate compensation therefore in amounts determined by the trier of fact.

COUNT VII: STRICT LIABLITY FOR MANUFACTURING DEFECT

148. Paragraphs 1-102 above are incorporated herein by reference.

149. Cameron manufactured or supplied the Deepwater Horizon's BOP.

150. Cameron's BOP failed to operate properly or at all, at the time of or following the explosion, and this failure caused or contributed to the oil spill.

151. Cameron's BOP was defective because it failed to operate as intended.

152. As a result of the BOP's product defect, pollutants were released from or at the Deepwater Horizon rig, thereby causing injury to Plaintiffs and the Class.

153. Cameron's BOP was in a defective condition and unreasonably dangerous to Plaintiffs when the BOP left Cameron's control.

154. At all times, Cameron's BOP was used in the manner intended.

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) Injunctive relief;

(c) Establishment of a court-administered fund to ensure timely prophylactic remedies are in place to protect Plaintiffs and the Class;

(d) Declaratory judgment under 28 U.S.C. § 2201(a) concerning the foregoing laws;

(e) Further necessary or proper relief under 28 U.S.C. § 2201(b) based on any declaratory judgment or decree which is issued;

(f) 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;

(g) Punitive damages;

(h) Pre-judgment and post-judgment interest at the maximum rate allowable by law;

(i) Attorneys' fees and costs of litigation;

(j) Such other and further relief available under all applicable state and federal laws and any relief the Court deems just and appropriate; and

(k) A trial by jury as to all Defendants.

Dated this 21st day of May 2010.

/s/ __Brett E. von Borke_____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been filed on May 21st, 2010 via CM/ECF, which will send a copy of this filing via electronic mail to all attorneys of record.

/s/ Brett E. von Borke
Brett E. von Borke

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