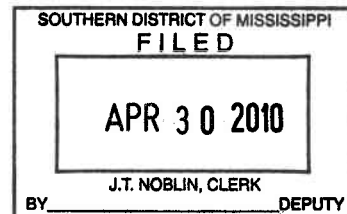


UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI



**HIEP TRIEU, SON NGUYEN, PAN ISLES, INC.,
TAI HUYNH and KHUYEN DINH**

PLAINTIFFS

v.

1:10cv177LG-RHW

**BP EXPLORATION AND PRODUCTION, INC.,
TRANSOCEAN LTD, TRANSOCEAN DEEPWATER, INC.,
BP, and OTHER ENTITIES**

DEFENDANTS

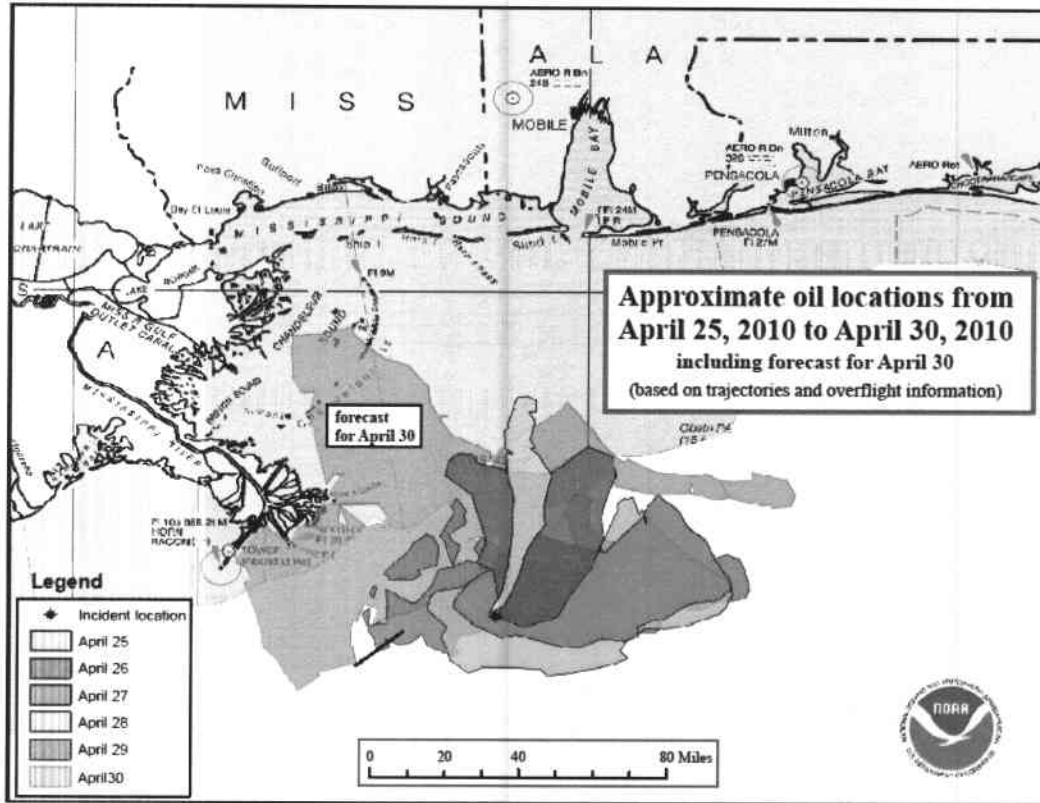
CLASS ACTION COMPLAINT

Plaintiffs Hiep Trieu, Pan Isles, Inc., Son Nguyen, (“Plaintiffs”), individually and as representatives of the classes defined herein (the “Classes”), bring this action against the defendants identified below (“Defendants”), and state as follows:

INTRODUCTION

1.

On April 20, 2010, the Transocean Drilling rig Deepwater Horizon, drilling on British Petroleum’s Macondo prospect in Mississippi Canyon block 252 on the federal Outer Continental Shelf, caught fire and exploded. Every day since that day between one and five thousand barrels of crude oil have spilled into the Gulf of Mexico. The resulting oil slick has caused and will continue to cause devastating physical and economic losses to coastal Mississippi. It has prevented shrimpers working in some of their most valuable grounds, resulted in the cancellation of recreational charter trips, and will result in future damages to tourism, fishing and other water dependent industries. As shown in the illustration below, as of April 30, 2010, the oil slick covers much of the Central Gulf of Mexico and is expected to reach land in Mississippi:



PARTIES

2.

Plaintiff Hiep Trieu is a resident of Biloxi and citizen of Mississippi. Plaintiff owns and operates a commercial shrimp boat within the coastal zone of Mississippi and in the Gulf of Mexico south of Mississippi. Mr. Trieu and other Mississippians who are commercial shrimpers similarly situated, have suffered, and will continue to suffer, damages caused by defendants for the reasons more fully described below.

3.

Plaintiff Son Nguyen is a resident of Harrison County and a citizen of Mississippi. Son Nguyen owns and operates a commercial oystering vessel in the Mississippi Sound.

Son Nguyen and other oystermen similarly situated, has suffered, and will continue to suffer, damages caused by defendants for the reasons more fully described below.

4.

Plaintiff Pan Isles, Inc. is a Mississippi corporation. Pan Isles owns and operates a commercial ferry shuttling outdoor enthusiasts to the barrier islands of Mississippi. The owners of Pan Isles have run this business since 1926. Pan Isles and other Mississippi businesses similarly situated, has suffered, and will continue to suffer, damages caused by defendants for the reasons more fully described below.

5.

Plaintiff Tai Huynh is a deckhand on commercial shrimping vessels operating in the Gulf of Mexico and the Mississippi Sound. Tai Huynh and other deckhands and employees similarly situated, has suffered, and will continue to suffer, damages caused by defendants for the reasons more fully described below.

6.

Plaintiff Khuyen Dinh is employed in the seafood processing industry, including processing shrimp from the Gulf of Mexico and the Mississippi Sound. Ms. Dinh and other employees similarly situated, has suffered, and will continue to suffer, damages caused by defendants for the reasons more fully described below.

7.

Defendants herein are:

- a. BP Exploration and Production, Inc., a foreign corporation;
- b. Transocean LTD, a Swiss corporation;
- c. Transocean Offshore Deepwater Drilling, Inc. ("Transocean Offshore"), a foreign corporation;

- d. Transocean Deepwater, Inc. (“Transocean Deepwater”), a foreign corporation;
- e. BP, plc (“BP”), a foreign corporation;
- f. Other entities currently unknown to plaintiffs.

JURISDICTION AND VENUE

8.

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

9.

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

FACTUAL ALLEGATIONS

10.

Transocean, Ltd., Transocean Offshore and Transocean Deepwater (collectively “Transocean”) are the owners and/or operators of the Deepwater Horizon, a semi-submersible mobile drilling rig, which in April 2010 was performing operations for BP Exploration and Production, Inc., BP Products and BP America on Mississippi Canyon Block 252 on the federal outer Continental Shelf.

11.

BP, PB Products and BP American (collectively “BP”) are the holders of a lease granted by the Minerals Management Service on Mississippi Canyon Block 252. This lease allows BP to drill for oil and perform oil-production-related operations at the site of the oil spill. On April 20, 2010 operated the oil well that is the source of the oil spill. This well was one of two wells intended to evaluate an oil and gas prospect known as the Macondo prospect. These wells are what is generally termed “expendable wells.”

12.

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

13.

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

14.

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, the Minerals Management Service,

and the United States Coast Guard, including the requirement to test the sub-sea blow out preventors at regular intervals.

15.

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

16.

The spilled oil is continuing and is causing environmental contamination of the Gulf of Mexico and its shorelines, threatening Mississippi's sensitive wetlands, estuarine areas and beaches.

17.

The oil spill and contamination have caused and will continue to cause loss of revenue to persons (and businesses) who are being prevented from using the Gulf of Mexico and Mississippi's "coastal zone" for diverse activities, including shrimping, fishing, tourism, and processing the products of the shrimping and fishing industries.

18.

The full duration and effects of this oil spill are not known at this time.

CLASS DEFINITION

19.

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

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

20.

Subclass One: Ferry boat operators and recreational fishing guides;

Subclass Two: Commercial fishing boat owners;

Subclass Three: Commercial fishing boat captains and crew;

Subclass Four: Oyster Harvesters;

Subclass Five: Employees of oyster harvesters;

Subclass Six: Employees of commercial seafood processors.

21.

Excluded from the Class are:

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

CLASS ACTION ALLEGATIONS

22.

- a. **Numerosity of the class**

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

b. Predominance of Common Questions of Fact and Law

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

- a. Whether Defendants caused and/or contributed to the fire, explosion and oil spill;
- b. Whether Defendant's actions were negligent;
- c. Whether the fire, explosion and oil spill have caused environmental damage and/or caused damage to the Plaintiffs and Class Members; and
- d. The extent to which Plaintiffs and the Class Members have been harmed and are entitled to compensation.

c. Typicality

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

d. Adequacy of Representation

Plaintiffs will fairly and adequately represent and protect the interests of the members of the Class because their interests do not conflict with the interests of the Class Members they seek to represent. Plaintiffs have no claims antagonistic to those of the Class. Plaintiffs have retained counsel competent and experienced in complex class actions and maritime and environmental litigation.

e. Superiority

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

23.

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

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

who are not parties to such adjudications and would substantially impair or impede their ability to protect their interests; and

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

FIRST CAUSE OF ACTION (NEGLIGENCE)

24.

Plaintiffs, on behalf of themselves and the Class Members incorporate the allegations set forth above.

25.

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

26.

Upon information and belief, the fire, explosion and resulting oil spill were caused by the joint negligence and fault of the Defendants in the following no-exclusive particulars:

- a. Failing to properly operate the Deepwater Horizon;
- b. Operating the Deepwater Horizon in such a manner that a fire and explosion occurred onboard, causing it to sink and resulting in an oil spill;
- c. Failing to properly inspect the Deepwater Horizon to assure that its equipment and personnel were fit for their intended purpose;

- d. Acting in a careless and negligent manner without due regard for the safety of others;
- e. Failing to promulgate, implement and enforce rules and regulations pertaining to the safe operations of the Deepwater Horizon,
- f. Failing to provide an adequate oil spill response plan or indeed any site specific plan at all;
- g. Failing to plan for a blowout scenario that would be expected to have the highest volume of liquid hydrocarbons, and drastically underestimating the volume of an uncontrolled blowout in its Exploration Plan;
- h. Making an inadequate shallow hazards assessment;
- i. Failure to provide appropriate accident prevention equipment;
- j. Providing equipment including blow out preventer devices that did not work properly;
- k. Acting in a manner that justifies imposition of punitive damages; and
- l. Such other acts of negligence and omissions as well be shown at the trial of this matter; all of which acts are in violation of the laws of Louisiana, Mississippi and Federal law applicable on the outer Continental Shelf.

27.

In the alternative, the fire, explosion, sinking and resulting oil spill were caused by defective equipment, which were in the care, custody, and control of Defendants.

Defendants knew or should have known of these defects and Defendants are, therefore, liable for them.

28.

In the alternative, the fire, explosion, sinking and the resulting oil spill would not have occurred had the Defendants exercised the high degree of care imposed on them and Plaintiffs, therefore, plead the doctrine of *res ipsa loquitur*.

29.

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 in amounts determined by the tier of fact.

SECOND CAUSE OF ACTION (PUBLIC NUISANCE)

30.

Plaintiffs, on behalf of themselves and the Class Members incorporate the allegations set forth above.

31.

The defendant actions in causing the continuing oil spill constitute a public nuisance under the laws of the state of Mississippi, in that those action affect interests in wildlife, water and other resources common to the general public. Plaintiffs and the members of the class have suffered a harm different in kind than the general public in that they are dependent for their livelihood on these resources, and hold licenses to harvest or otherwise carry out businesses in connection with these resources, and the oil spill has significantly interfered with these interests. Further, the defendants have been unjustly

enriched by their *de facto* appropriation of the benefits of the marine ecosystem to their own use rather than that of the public.

32.

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 the public nuisance caused by defendants and awarding Plaintiffs and the Class Members adequate compensation in amounts determined by the trier of fact.

33.

Plaintiffs may also have other causes of action, including those not known to them, or available under the Oil Pollution Act of 1990, 33 U.S.C. § 2702, which may require compliance with conditions precedent for filing of suit. Plaintiffs expressly reserve the right to amend this complaint to assert such causes of action.

PRAYER FOR RELIEF

Based on the foregoing, 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 Representative; and appointing undersigned counsel as counsel for the Class;
- b. Economic and compensatory damages in amounts to be determined at trial, but no less than \$5,000,000.00 required by the Class Action Fairness Act which established one of this Court's bases of jurisdiction to hear this case;

- c. Punitive damages under Mississippi law;
- d. Pre-judgment and post-judgment interest at the maximum rate allowable by law;
- e. Attorney's fees and costs of litigation;'
- f. Such other and further relief available under all applicable state and federal laws and any relief the Court deems just and appropriate; and
- g. A trial by jury as to all Defendants.

Dated this 30th day of April, 2010.

Respectfully submitted,

By:


ROBERT B. WIYGUL (MSB 7348)
Waltzer & Associates
1011 Iberville Drive
Ocean Springs, MS 39564
Tel: (228) 872-1125
Fax: (228) 872-1128
robert@waltzerlaw.com

Attorneys for Plaintiffs