

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

CORLISS GALLO; TIGHT LINES  
FISHING CHARTERS, LLC; RED HOT  
FISHING CHARTERS, LLC; ERNEST J.  
BROWNE, JR.; GULF COAST ASSETS,  
LLC, d/b/a BREATH'S BOATS &  
MOTORS; JUDY and LAWRENCE  
SIMPSON; RETREAT, INC.; DAVE  
PHELPS; and all others similarly situated,

Plaintiffs,

vs.

BP, P.L.C.; BP AMERICA, INC.; BP  
CORPORATION NORTH AMERICA, INC.;  
BP COMPANY NORTH AMERICA, INC.;  
BP EXPLORATION & PRODUCTION,  
INC.; BP PRODUCTS NORTH AMERICA,  
INC.; TRANSOCEAN LTD.;  
TRANSOCEAN, INC.; TRANSOCEAN  
OFFSHORE DEEPWATER DRILLING,  
INC.; TRANSOCEAN DEEPWATER, INC.;  
HALLIBURTON ENERGY SERVICES,  
INC.; and CAMERON INTERNATIONAL  
CORPORATION f/k/a COOPER  
CAMERON CORPORATION,

Defendants.

CASE NO.

JUDGE:

MAGISTRATE JUDGE

JURY DEMAND

**CLASS ACTION COMPLAINT**

Plaintiffs Corliss Gallo, Tight Lines Fishing Charters, LLC, Red Hot Fishing Charters, LLC, Ernest J. Browne, Jr., Gulf Coast Assets, LLC, d/b/a/ Breath's Boats & Motors, Judy and Lawrence Simpson, Retreat, Inc., and Dave Phelps, individually and as representatives of the class and subclasses defined herein, bring this action against Defendants BP, p.l.c., BP America, Inc., BP Corporation North America, Inc., BP Company North America, Inc., BP Exploration & Production, Inc., BP Products North America, Inc., Transocean Ltd., Transocean, Inc., Transocean Offshore Deepwater Drilling, Inc., Transocean Deepwater, Inc., Halliburton Energy Services, Inc., and Cameron International Corporation f/k/a Cooper Cameron Corporation, as follows:

**I. INTRODUCTION**

1. Plaintiffs and the nationwide class and state-wide subclasses they seek to represent are fishermen, property owners, business owners, and wage earners on the Gulf of Mexico in the States of Louisiana, Mississippi, Alabama, Florida and Texas. This Complaint seeks certification of a class and/or subclasses for the purpose of determining each of the Defendants' total liability to the class and/or subclasses for punitive damages, and is brought under the applicable provisions of Rule 23 of the Federal Rules of Civil Procedure, including, as appropriate, Rule 23(a)(1)-(4), (b)(1)(B), (b)(3) and (c)(4).

2. On April 20, 2010, an explosion on the Deepwater Horizon, an oil rig in the Gulf of Mexico, set the rig on fire. It burned for two days before tipping into the sea, on its way bending and breaking the long riser pipe connecting the rig to the wellhead on the seafloor. As the Deepwater Horizon sank, it broke off the riser, leaving the pipe leaking oil out of its now-open end as well as through two breaks along its length. An emergency valve, installed on the wellhead for just such a disaster, failed to seal the wellhead as it should have, leaving the well spewing oil into the Gulf waters.

3. Each day during the course of the spill, tens of thousands of barrels of crude oil gushed from the wellhead and broken riser, bubbling up to the surface and flattening out into a widening slick of oil, as well as spreading out in vast subsurface plumes. On the surface, the shifting smear was large enough to be visible from outer space, at times covering tens of thousands of square miles, and spreading with the wind and currents towards the Gulf states' coastlines, where oil made landfall on beaches and in marshes. While it has been reported that the majority of the surface oil has now been collected, burned, dispersed or broken down, the subsurface plumes still cover extensive areas potentially larger than the surface slicks ever were, continuing to threaten ecosystems throughout the water column and the economy of the Gulf Coast and the Class Members and/or Subclass Members.

4. The explosion of the Deepwater Horizon was foreshadowed by a string of prior disastrous incidents and near misses in Defendants' operations on land and at sea, as well as poor decision-making by Defendants' employees, as they ignored crucial safety issues, cut corners, and violated U.S. law to save time and money at the expense of worker safety and environmental protection. All the while, Defendants continued their ongoing lobbying campaign in Congress to fight industry regulation so that they could increase their profits.

5. Defendants could have prevented this catastrophe by following required safety protocols and precautionary procedures, properly maintaining equipment, and using widely available emergency safety technology aboard the Deepwater Horizon but, with no regard for the risk to the rig workers or the environment, Defendants chose to save money and time by skimping on safety. Their cost-cutting measures were intentional and outrageous – consistent with their long corporate histories of flagrant disregard for safety – and were taken with willful, wanton, and reckless indifference to the disastrous results to the workers aboard the rig, the

environment and the residents of the Gulf of Mexico. Moreover, because their conduct was repetitive, was purposeful or intentional rather than accidental, endangered the health and safety of a large region and population, caused and increased the risk of serious injury and bodily and emotional harm, and affected a financially vulnerable population dependent upon the Gulf of Mexico, the degree of reprehensibility of Defendants' conduct is at the highest level.

6. The oil spill resulting from Defendants' despicable conduct has caused, and continues to cause, devastating environmental damage and is costing the people of Louisiana, Alabama, Mississippi, Florida, and Texas billions of dollars in damages to their income, businesses and property. There have been thousands of square miles of waters closed to fishing, swimming and/or boating, and thousands of square miles of historic coastal marshes, cypress forests, barrier islands, and white sand beaches compromised. Fishermen and marine businesses have lost and continue to lose income and be put out of business; the tourism industry and hotels, resorts, restaurant owners, and other tourism-reliant businesses are losing income; and property values along the Gulf of Mexico coastline are decreasing due to the oil spill.

## **II. PARTIES**

7. Plaintiff Corliss Gallo is a resident of this district of Louisiana who has a partial interest in Grand Terre Island, an ecologically vital and delicate barrier island off the coast of Louisiana. Ms. Gallo suffered property damage when oil, tar balls, and clean-up and dispersant chemicals from the oil spill washed onto the shores of Grand Terre Island, followed by heavy foot- and equipment traffic from disaster response teams, which, without permission from Ms. Gallo, used her property as a staging area for the clean up effort. The resulting long-term damage to the island has significantly reduced the value of Ms. Gallo's property.

8. Plaintiff Tight Lines Fishing Charters, LLC is wholly owned and operated by B. Randall Marsh, a Florida resident and licensed fishing captain. Mr. Marsh earns his living

guiding customers on fishing trips out of Crystal River, Florida, and surrounding waters. The oil spill has resulted in an overall reduction in charters and a significant number of trip cancellations over the past three months, causing economic damage to Mr. Marsh and his business.

9. Plaintiff Red Hot Fishing Charters, LLC is wholly owned and operated by Kyle Messier, a Florida resident and licensed fishing captain. Mr. Messier earns his living guiding customers on fishing trips in Citrus County, Florida, and surrounding waters. The oil spill has resulted in an overall reduction in charters and a significant number of trip cancellations over the past three months, causing economic damage to Mr. Messier and his business.

10. Plaintiff Ernest J. Browne, Jr. is a Texas resident who owns beachfront property on the Gulf of Mexico in Crystal Beach, Texas. Mr. Browne's property values have declined as a result of the oil spill, and values will likely remain low as the stigma of the oil spill depresses the economy of the Gulf Coast for years to come.

11. Plaintiff Gulf Coast Assets, LLC, d/b/a Breath's Boats & Motors, is a Mississippi corporation based in Bay St. Louis, Mississippi, focused on the retail sale of boats and marine supplies and the servicing of boats and marine equipment. Gulf Coast Assets has suffered lost revenue as a result of the oil spill, and demand for its retail products and marine services has decreased sharply.

12. Plaintiffs Judy and Lawrence Simpson are Mississippi residents who run a charter sailing business, Aye Aye Sailing, out of Gulfport and Long Beach, Mississippi. The Simpsons and Aye Aye Sailing have lost revenue as a result of the oil spill, and demand for their charter sailing services has decreased along with tourist revenue across the Gulf Coast.

13. Plaintiff Retreat, Inc., is an Alabama corporation that owns developable Gulf-front property on Perdido Key, Alabama. Retreat, Inc. intended to develop the land into

vacation condominium residences. As a result of the oil spill, the value of the property Retreat, Inc., owns has declined sharply, and its value will likely remain low as the stigma of the oil spill depresses the economy of the Gulf Coast for years to come.

14. Plaintiff Dave Phelps is a Texas resident who owns and rents out property on Grand Isle, Louisiana, an ecologically vital and delicate barrier island off the coast of Louisiana. Mr. Phelps suffered property damage when oil, tar balls, and clean-up and dispersant chemicals from the oil spill washed onto the shores of Grand Isle, followed by heavy foot- and equipment traffic from disaster response teams, which, without permission from Mr. Phelps, used his property as a staging area for the clean up effort. The resulting long-term damage to the island has significantly reduced the value of Mr. Phelps' property. In addition, Mr. Phelps has experienced lost rental income as tourists have avoided renting beachfront property on the Gulf coast because of the oil spill.

15. As a result of Defendants' actions described herein, Plaintiffs have suffered, and continue to suffer, ascertainable losses and damages.

16. Defendant BP, p.l.c. is a British corporation, organized under the laws of the United Kingdom, doing business in the State of Louisiana and throughout the United States. BP is one of the world's largest oil companies.

17. Defendant BP America, Inc. is a Delaware corporation with its principal place of business in Warrenville, Illinois, but doing business in the State of Louisiana and throughout the United States. BP America, Inc. is a subsidiary of BP, p.l.c.

18. Defendant BP Corporation North America, Inc. (formerly BP Amoco Corporation), is an Indiana corporation with its principal place of business in Houston, Texas,

but doing business in the State of Louisiana and throughout the United States. BP Corporation North America, Inc. is a subsidiary of BP America, Inc.

19. Defendant BP Company North America, Inc. is a Delaware Corporation with its principal place of business in Warrenville, Illinois, but doing business in the State of Louisiana and throughout the United States. BP Company North America, Inc. is a subsidiary of BP Corporation North America, Inc.

20. Defendant BP Products North America, Inc. is a Maryland corporation, with its principal place of business in Houston, Texas, but doing business in the State of Louisiana and throughout the United States. BP Products North America, Inc. is a subsidiary of BP Company North America, Inc.

21. Defendant BP Exploration & Production, Inc. is a Delaware corporation with its principal place of business in Warrenville, Illinois, and executive address in Houston, Texas, but doing business in the State of Louisiana and throughout the United States. BP Exploration & Production, Inc. was the lease operator of the Deepwater Horizon at the time of the explosion.

22. Defendants BP America, Inc., BP Corporation North America, Inc., BP Company North America, Inc., BP Products North America, Inc., and BP Exploration & Production, Inc. are wholly owned subsidiaries of the global parent corporation, BP, p.l.c., and they shall be referred to herein collectively as “BP.”

23. BP holds the lease granted by the former 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 of the outer continental shelf in

the Gulf of Mexico. As of April 20, 2010, BP operated the Macondo well that is the source of the current oil spill.

24. Defendant Transocean Ltd. is a Swiss corporation doing business in the State of Louisiana and throughout the United States. Transocean Ltd. is the world's largest offshore drilling contractor and leading provider of drilling management services worldwide.

25. Defendant Transocean, Inc. is a Cayman Islands corporation with its principal places of business in Grand Cayman, Cayman Islands, and in Houston, Texas, but is doing business in the State of Louisiana and throughout the United States. Transocean, Inc. is a wholly-owned subsidiary of Transocean Ltd.

26. Defendant Transocean Deepwater, Inc. is a Delaware corporation with its principal place of business in Houston, Texas, but doing business in the State of Louisiana and throughout the United States. Transocean Deepwater, Inc. is a subsidiary of Transocean Ltd.

27. Defendant Transocean Offshore Deepwater Drilling, Inc. is a Delaware corporation with its principal place of business in Houston, Texas, but doing business in the State of Louisiana and throughout the United States. Transocean Offshore Deepwater Drilling, Inc. is a subsidiary of Transocean Ltd., and is the world's largest offshore drilling contractor.

28. Defendants Transocean, Inc., Transocean Deepwater, Inc., and Transocean Offshore Deepwater Drilling, Inc. are wholly owned subsidiaries of the global parent corporation, Transocean Ltd., and they shall be referred to herein collectively as "Transocean."

29. Transocean owned, and BP was leasing and operating, the Deepwater Horizon as it performed production well completion operations on the Macondo well on the outer continental shelf off the Gulf Coast, at the site from which the oil spill originated.



30. Defendant Halliburton Energy Services, Inc. (“Halliburton”) is a Delaware corporation with two headquarters, one in Houston, Texas, and one in Dubai, United Arab Emirates, but doing business in the State of Louisiana and throughout the United States. Halliburton is one of the world’s largest providers of products and services to the energy industry, with a special expertise in oil well cementing. Aboard the Deepwater Horizon, Halliburton was responsible for cementing the well and overseeing the final well-capping procedure.

31. Defendant Cameron International Corporation f/k/a Cooper Cameron Corporation (“Cameron”) is a Delaware Corporation with its principal place of business in Houston, Texas, but doing business in the State of Louisiana and throughout the United States. Cameron is a global provider of pressure control, processing, flow control, and compression systems as well as project management and aftermarket services for the oil and gas and process industries. Cameron manufactured and/or supplied the Deepwater Horizon’s blowout preventer valve that failed to activate at the time of the explosion.

32. At all times material hereto, the Deepwater Horizon was owned, manned, possessed, managed, controlled, chartered, and/or operated by Defendants and their contractors.

### **III. JURISDICTION AND VENUE**

33. This Court has jurisdiction over this action pursuant to 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.

34. Jurisdiction is also appropriate under 28 U.S.C. § 1331, because the claims asserted by Plaintiffs arise under the laws of the United States of America, including the laws of the State of Louisiana which have been declared, pursuant to 43 U.S.C. § 1331(f)(1) and

§ 1333(a)(2), to be the law of the United States for that portion of the outer continental shelf from which the spill originated. Title 43 U.S.C. § 1331(1) extends exclusive Federal jurisdiction to the outer continental shelf.

35. This Court's venue over this action is proper under 28 U.S.C. § 1391(a)(2) because a substantial part of the property that is the subject of this action is situated in this district.

#### **IV. FACTUAL ALLEGATIONS**

36. The Deepwater Horizon was an ultra-deepwater dynamic positioned 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.

37. BP leased the Deepwater Horizon to drill an exploratory well at the Macondo prospect site in Mississippi Canyon Block 252, on the outer continental shelf in the Gulf of Mexico, less than 50 miles off the coast of Louisiana.

38. On April 20, 2010 – the day of the catastrophic explosion – workers on the Deepwater Horizon were creating a cement seal around the pipes in the last drilled section of the wellbore, and putting a cement plug at the wellhead as part of the final phases of turning the Macondo well from an exploratory well into a production well. “Cementing” a wellbore is delicate work that carries the risk of a blowout, which is the uncontrolled release of gas and oil from the well.

39. During the course of this cementing work, an explosion occurred on the Deepwater Horizon and it caught fire, causing the deaths and injuries of many workers on the rig. Investigators believe the explosion was a blowout, a sudden surge of gas up the wellbore, likely caused by the cementing work Defendants had been performing on the well.

**A. Macondo: A Troublesome Well**

40. Investigations, documents, and testimony have revealed a complex cascade of greedy corporate cultures, reckless decision-making, flagrant safety violations, lax equipment maintenance, deep-sea equipment failures, and coordination and organizational problems and deficiencies thought to have caused the explosion and fire, the sinking of the Deepwater Horizon and the subsequent oil spill.

41. Defendants had trouble with the Macondo well even before the catastrophic events of April 20, 2010. In emails weeks before the explosion, BP employees referred to it as a “crazy,” “nightmare” well. Rig workers reported that since drilling began on October 7, 2009, they had struggled to control the problematic well, as pockets of natural gas regularly kicked up the drill pipes in highly flammable bursts, halting the drilling progress. The MMS had even warned BP that the gas buildup in this well was a concern and that BP should “exercise caution.” Throughout March 2010, the Defendants experienced serious problems at the drilling site, including loss of well control and kicks of gas in the wellbore. In one instance, the rig’s operations had to be completely shut down after a severe gas kick pushed so much gas up the riser that senior crew officials feared it would ignite. In some places the material the rig was drilling into was so brittle that gallons of drilling mud escaped into the porous rock around the well. Smaller kicks also occurred in the days before the explosion that destroyed the rig. All of these incidents caused delay and expense for Defendants.

42. As the drilling schedule fell farther behind due to these and other problems, BP increased the pressure on the Deepwater Horizon’s crew to “bump up” the drilling effort at Macondo. However, the effort to “speed up” the drilling damaged the geological formation at the bottom of the well hole to such an extent that it caved in and swallowed up drilling tools and mud. BP was forced to abandon the initial wellbore and to begin again at a

cost of \$25 million and the loss of considerable time. According to Mike Williams, an electronics technician employed by Transocean on the Deepwater Horizon, it also caused BP to further increase their demands that the rig's crew complete drilling operations at the well at a dangerously increased pace.

43. At the time of the explosion, drilling at Macondo was already weeks behind schedule and costing BP over \$1 million per day in rig lease and contractor fees. In spite of the difficult and dangerous nature of the Macondo well, BP made multiple decisions about the drilling plan for economic reasons, even though those decisions increased the risk of the catastrophic failure of the "nightmare" well. BP repeatedly chose to violate industry guidelines and government regulations, and ignore warnings from its own employees and contractors on board the rig to reduce costs and save time on the behind-schedule Macondo well. Testimony of employees on the rig highlights the time pressure BP was putting on workers as it rushed them to double up on tasks and finish quickly so the well could be sealed and the Deepwater Horizon rig moved to another well prospect to begin searching for even more oil.

**B. Reckless Decision-making in the Rush to Seal the Well**

44. In a June 14, 2010 letter to Tony Hayward, BP's Chief Executive Officer, Congressmen Henry Waxman and Bart Stupak identified five critical, questionable decisions made by BP in the days leading up to the explosion: (1) the decision to use a well design with few barriers to gas flow; (2) the failure to use a sufficient number of "centralizers" to prevent channeling during the cement process; (3) the failure to circulate potentially gas-bearing drilling muds out of the well prior to the cement job; (4) the failure to run a cement bond log to evaluate the effectiveness of the cement job; and (5) the failure to secure the wellhead with a casing hanger lockdown sleeve before allowing pressure on the seal from below. The Congressmen added that the "common feature of these five decisions is that they posed a trade-off between

cost and well safety.” These five decisions, combined with other willful, risky, reckless, and short-sighted cost-cutting, time-saving measures taken by Defendants certainly led to this avoidable disaster.

45. Halliburton, hired for its expertise in cementing wells, was fully aware that BP’s cementing plan was unsafe. Indeed, on April 1, 2010, Halliburton employee Marvin Volek warned in an email that the cementing plan BP had given to Halliburton “was against our best practices.” Despite this knowledge, Halliburton elected to implement BP’s plan without insisting on changes.

46. For the behind-schedule and over-budget Macondo well, BP chose a risky well design with relatively few barriers against gas blowouts because the safer option – which had been part of BP’s original well design and was recommended by its contractors – would have taken longer to complete and would have cost up to an additional \$10 million.

47. In order to strengthen the well design and provide multiple barriers against gas blowouts, drilling companies often use a pipe assembly – a “casing” – made of two pipes, one inside the other, sealed together with cement, and with the smaller “liner” pipe extending into the well. The double pipe setup – called a “liner-tieback” design – provides four barriers against gas blowouts, while the “full string” single pipe option BP ultimately chose only provided two: the cement surrounding the single pipe and the seal assembly at the top of the wellhead.

48. One of BP’s own documents identified several arguments against using the single pipe casing design, including the high risk of a failed cement job, the inability to comply with MMS regulations, and the need to verify the cement job with a cement bond log test and most likely perform remedial cement job(s). The single pipe casing design was especially

inappropriate for a difficult and kick-prone well like Macondo. Documents show that BP had originally planned to use the safer double pipe design, but rewrote the drill plan weeks before the disaster – against the advice of its own employees and those of its contractors – because the project was behind schedule and over budget. Internal BP emails from late March acknowledged the risks of the single pipe design but chose it as the primary option because it “saves a lot of time...at least 3 days,” “saves a good deal of time/money,” and is the “[b]est economic case.”

49. BP also made a risky choice for the pipe material itself, using metal well casings that raised concerns from its own engineers. Federal investigators cited internal documents showing that as early as 11 months prior to the explosion, BP engineers worried that the metal casings BP wanted to use might collapse under high pressure within the well. Senior drilling engineer Mark E. Hafle warned other BP employees that “I have seen it happen so know it can occur.” Moreover, using the metal casings would violate BP’s own safety policies and design standards. Nevertheless, the riskier metal casings were used after special permission was granted by BP supervisors. The internal reports do not explain why the company allowed for such a risky departure from its own safety standards.

50. BP also cut corners – again despite multiple warnings from its contractors – with the number of centralizers within the wellbore. Centralizers ensure that the casing is centered in the wellbore; if the pipe assembly is not centered, the cement job often fails to create a proper seal against pressurized oil and gas pushing up from below. The cement job is intended to seal the space (the “annulus”) between the rock walls of the drilled out wellbore hole and the casing string of pipes that will ultimately bring the oil up through the well during production. If the casing is not centered within the wellbore, the pipes can lay near or against the sides of the bore hole, creating too narrow of a space for the cement to seal properly and leading

to “channels” of empty space or weak areas in the cement. Those channels and imperfections can allow gas to escape up between the casing and the sides of the bore hole and cause a blowout. An email from a BP official acknowledged the importance of centralizers, noting that “[e]ven if the hole is perfectly straight, a straight piece of pipe even in tension will not seek the perfect center of the hole unless it has something to centralize it.”

51. When informed on April 15 that BP planned to use only six centralizers, a Halliburton engineer spent a day running models to determine how many centralizers would be necessary to prevent channeling. His analysis concluded that 21 centralizers was the recommended number. He found that using ten would result in a “moderate” gas flow problem and using only six would result in a “severe” gas flow problem. This information was provided to BP. Although extra centralizers could be flown in immediately from Houston, BP did not want to wait. In an email, one BP official complained about the ten hours it would take to install the extra centralizers, and another recognized the risks of proceeding with insufficient centralizers but flippantly concluded, “who cares, it’s done, end of story, will probably be fine.”

52. Halliburton, despite having run the models that made it clear proceeding with only six centralizers would lead to “failure of the cement job,” did not insist that BP use additional centralizers, but recklessly and wantonly moved forward with the cement job it knew was destined to fail.

53. BP skipped yet another safety precaution by choosing not to fully circulate the drilling mud from the bottom of the well to the top before beginning the cementing process. Drilling mud is heavy fluid, made dense by clay and other compounds, that fills the annular space in the wellbore hole during the drilling process, before that space is sealed up with cement. The mud provides downward pressure against the gas and oil pushing up from the reservoir

below. The American Petroleum Institute (API) recommends this “bottoms up” mud-circulation test be done because a full circulation allows workers to eliminate any small pockets of gas in the annular space, test the mud itself for the presence of gas, and eliminate debris in the mud that could contaminate the cement. Given that gas leaking into the well was what ultimately caused the blowout, a “bottoms up” circulation could have revealed the severity of the situation before disaster struck.

54. On the rig, Halliburton engineers told BP that Halliburton’s “recommendation and best practice was to at least circulate one bottoms up on the well before doing a cement job.” Yet again, Halliburton knew of the risk but did not insist that BP follow safe and recommended practices. A full “bottoms up” circulation would have taken up to 12 hours on the deep Macondo well, so against the recommendations of the API and Halliburton, BP chose to save time and money at the expense of safety by circulating only a small fraction of the drilling mud before beginning cementing. This too put the cement job further at risk.

55. BP also neglected to run a risk assessment model known as the “safety case,” which is compulsory in North Sea drilling and standard practice among other super major oil companies.

56. Notwithstanding all of BP’s risky choices and skipped safety precautions up to this point, Halliburton commenced the cementing job on the Macondo well. According to the Congressional testimony of BP executives, there was difficulty during the cementing process. Given that the cementing job was one of only two barriers to a blowout because of the well’s risky design, the difficulties with the cementing job should have caused BP and Halliburton to reevaluate their actions going forward as well as thoroughly test the integrity of the cement job upon completion. They did neither.



57. Moreover, according to sources on the rig, Halliburton was using a new type of cement to seal the wellbore – a mix infused with nitrogen and other chemicals, supposedly able to set faster than standard cement. But the chemicals added to the new cement can create substantial amounts of heat, which can thaw crystallized gas so that it releases up the wellbore in blowouts like the one aboard the Deepwater Horizon. The new cement could also have increased the risk of a blowout.

58. Shortly before dawn on the day of the explosion, the Macondo well failed a key pressure test taken to check if the cement job had created a strong seal against the powerful pressure from the gas and oil reservoir below the well. The integrity of the pressure-tight seal is tested by increasing pressure in the casing string and observing the pressure response. If the pressure bleeds off, it indicates a problem with the pressure integrity of the cement: the pressure is escaping through a leak somewhere along the line. However, if the pressure stays constant, it does not necessarily mean the cement seal is tight – the pressure from the oil and gas below can be sufficient to retain the pressure reading in the casing string even if the cement job has failed. A negative result (where the pressure leaks off) is useful because it is diagnostic of a failed cement job. In this case the result was positive (the pressure remained constant), which was not diagnostic of a successful cement job or a failed cement job, and basically told BP and Halliburton nothing about the integrity of the cement.

59. Next a “negative pressure” test was run, with pressure now released from inside the casing string and the pressure response to that release measured. Instead of the pressure dropping upon release, however, the Macondo well responded with a 1,400 psi pressure response – a highly diagnostic “red flag” result indicating the cement job had failed to form a seal at the casing around the reservoir. The 1,400 psi response was the pressure of the oil and

gas from below repressurizing the casing when the pressure the engineers had pumped in was released for the test. This indicated the cement job had failed and was not sealing the well off from the pressure from below.

60. In recent government hearings, BP has since admitted that these were clear warning signs of a “very large abnormality” in the well. There was only one appropriate response to these test results: a remedial cement job to correct the failed cement job and shore up the seal. BP and Halliburton, however, elected to ignore the “red flag” results of these, the only cement integrity tests they had even performed, and continue with the well-sealing plan as if the cement job had been a success. Experts later testified that BP’s interpretation of the pressure tests was not industry standard, while BP itself admitted to Congressional investigators that continuing work on the well after such alarming test results may have been a “fundamental mistake.”

61. Halliburton was also grossly negligent in ignoring the pressure test results and not insisting that a remedial cement job be done right away to correct the imperfections in the cement. Given its experience and expertise with cementing wells, Halliburton was well aware of the environmental and safety risks of a failed cement job, yet it did not insist that the appropriate action be taken to correct the Macondo well’s cement seal.

62. According to testimony of employees on the rig, by mid-morning on the day of the explosion there was “confusion,” a “skirmish,” and disagreement among the officials from BP, Transocean, and Halliburton as to how to proceed with the well drilling plan. Testimony indicates that both Halliburton and Transocean employees warned BP officials that the drilling and cementing plan was too risky and was against best practices. There was also conflict between Transocean and BP employees over the interpretation of the negative pressure

tests and the high pressure readings in the well. But despite these disagreements, neither Halliburton nor Transocean insisted that BP alter its plan, and so work resumed on the well.

63. After having made risky choices on well design, casing choice, the number of centralizers, skipping the “bottoms up” circulation and using the new type of cement, all of which sharply increased the risk that the cement job would fail, and after experiencing difficulties during the cementing itself and red-flag pressure test results afterwards, BP then made the unfathomable decision to cancel the “cement bond log” test that would check the integrity of the completed cement job. This was again contrary to BP’s own original drilling plan, which included the cement bond log test – particularly because the cement simulations that BP itself had run predicted cement failure in the Macondo well. But despite its own drilling plan and its own simulations predicting cement failure, and despite warnings from its own employees and Halliburton’s regarding the risk of cement failure due to well design and insufficient centralizers, BP again rewrote its drilling plan on the fly, cancelling the cement bond log test and turning back the team from Schlumberger Ltd. that had arrived on the rig specifically and solely to perform the test. An expert later testified that it was “unheard of” and “horribly negligent” not to perform a cement bond log test on a well using a single casing design like the Macondo’s. Moreover, skipping the test was a violation of MMS regulations, which require that a cement bond log test be conducted if there are indications – such as indefinite or anomalous pressure test results – of an inadequate cement job. BP’s reasoning for skipping this absolutely critical and required test seems to have been a savings of \$90,000 and less than 12 hours of work.

64. The riskier single pipe well design BP chose for Macondo meant that there were only two barriers to a gas blowout: Halliburton’s cement job around the casing string and the seal assembly at the wellhead on the sea floor. Given the insufficient centralizers, BP’s

failure to run a “bottoms up” mud circulation before the cementing, and the results of Halliburton’s and BP’s own simulations, the risk of a failed cement job was already high, and given the results of the “negative pressure” test, it seemed clear that the cement job – the first line of defense against a blowout – had indeed failed. This made the strength and integrity of the seal assembly at the wellhead – the second and final barrier against a blowout – paramount. Yet here again BP made a decision based on time and money rather than well, worker, and environmental safety: it did not deploy the casing hanger lockdown sleeve that would have prevented the wellhead seal from being blown out by pressure from below.

65. The casing hanger lockdown sleeve ties down the top of the well, providing an extra layer of protection against a blowout, much like the wire cage over the cork on a champagne bottle. Usually the casing hanger lockdown sleeve is deployed before the heavy drilling mud is pumped out of the well, so that it can protect against problems during and after the mud removal process. But BP’s plan was to deploy the casing hanger lockdown sleeve after the heavy drilling mud had been pumped out of the well. A well design expert at another major oil company expressed surprise at BP’s choice to pump out the mud before deploying the casing hanger lockdown sleeve, saying it was “not the norm.” BP had chosen to shake the champagne bottle with only a faulty cork – the failed cement job – standing in the way of disaster.

66. BP pressed forward with the next step in sealing the well: pumping the heavy drilling mud out of the casing pipes and replace it with lighter, less-dense seawater in preparation for placing the last cement plug in the wellbore. Without heavy drilling mud to exert downward pressure against the oil and gas reservoir, any leak in the well could turn dangerous very quickly, with only comparatively light seawater blocking the path up the wellbore, through the riser and to the surface. Given the danger of a gas leak springing through a faulty cement

job, Halliburton should not have permitted the drilling mud to be removed from the drill column unless it was absolutely certain that its cement job had successfully sealed the well, yet there is no evidence that Halliburton even protested BP's displacement of the drilling mud.

**C. Defendants Ignore Warning Signs of the Imminent Blowout**

67. Pressure data from the rig in the two hours before the explosion should have put Defendants on notice that there was a problem and that pressure was building in the wellbore. While a constant amount of seawater was being pumped into the drill pipe, the volume of drilling mud coming out was steadily increasing, indicating that gas pressure from the reservoir below was pushing the mud out faster than the seawater that was supposed to be displacing the mud being pumped in. This should have been an instant indication of gas leaking in the well, and BP should have started well kill operations immediately by pumping heavy black mud back into the wellbore to restore control over the pressure. Instead, BP appears to have completely ignored this additional red flag and it simply carried on pumping out the mud.

68. It is also possible that rig workers, pushed by BP to work faster and combine multiple tasks, were too distracted to notice the alarming signs of imbalance in the well. Investigators noted that simultaneous operations made it difficult for workers to determine exactly how much fluid was flowing in and out of the well: “[it is h]ard to track fluid volumes in the wellbore when you are pumping mud to [the nearby drilling-mud collecting] boat...and also [pumping] saltwater into the hole.” A BP well site leader said after the disaster that workers may have taken unusual steps “to save time,” such as combining a safety test with mud displacement.

69. BP twice shut off the seawater pump during the mud displacement process, apparently to check the stability of the well. Both times, although the pump was off and therefore pressure should have remained constant in the standpipe, a pressure increase was detected, indicating gas pressure from the reservoir below was filling the well. From 9:08 p.m.

to 9:30 p.m. on the night of the explosion, when the seawater pump was either running at constant flow or was shut off, pressure continued to rise in the well. Again, these test results should have triggered BP to start well kill operations to restore control over the pressure. But again, BP ignored these warning signals, and the gas pressure in the well continued its inexorable rise.

70. The faulty cement seal in the Macondo well finally gave way completely at 9:49 p.m. on April 20th, when the standpipe pressure showed a sudden, large increase and drilling fluid pushed by rapidly expanding underground gas kicked up uncontrollably through the well, with nothing but seawater in its way. Almost as soon as the gas reached the drill floor, it ignited into a deadly blast of flames.

**D. Poorly Maintained Equipment Exacerbates the Severity and Duration of the Crisis**

71. Investigations and testimony suggest that the initial explosion was caused by an engine on the rig deck that sucked in the gas vapors blasting out of the well and began to rev uncontrollably. Gas sensors, which shut down rig engines when dangerous vapors are present, are critical to preventing explosions in such situations. Testifying before investigators in May, rig mechanic Douglas Brown said gas sensors – and the emergency engine shutdown systems connected to them – were not operational aboard the Deepwater Horizon on the night of the explosion. Moreover, the air intake valves that should have closed upon sensing gas entering the engine room also failed. Brown further testified that the engine room was not equipped with a gas alarm system that could have shut off the power. The installation and maintenance of these sensors, alarms, and emergency shutdown systems were the responsibility of Transocean, the rig's owner.

72. Eleven crewmembers were killed as the fire spread. The rig's Emergency Disconnect System – designed to separate the rig from the riser in case of an emergency such as an explosion – failed to activate, so methane gas continued to rush up through the riser and feed the raging fire on the platform.

73. Immediately after the explosion, desperate rig workers tried to activate the blowout preventer (“BOP”), which was installed at the wellhead on the sea floor to squeeze off the surge in just such an emergency. But, as reports and testimony have shown, hydraulic fluid leaking from a loose fitting hindered the activation of the BOP's powerful shear rams to cut the piping and cap the blowout. Moreover, according to workers on the rig, the BOP's crucial annular valve may have been damaged days earlier, and at least one of the control pods had been leaking hydraulic fluid several weeks earlier but had not been repaired. To make matters even worse, investigators found a battery had gone dead in at least one of two control pods meant to automatically switch on the BOP in an emergency.

74. Both BP and Transocean officials had been informed of the annular valve damage, hydraulic fluid leaks, and control pod issues on the BOP well before the explosion, but no action was ever taken to address the issues, perhaps because additional delays and costs would accrue as all work stopped and the BOP was raised from the sea floor for repairs. In addition to posing a significant safety risk, Defendants' choice to continue drilling with a faulty hydraulic system violated federal regulations, which require companies to disclose problems to the MMS and to stop drilling if either of a BOP's two control systems is not working properly.

75. At the May 12, 2010 Senate hearings on the causes of the explosion and spill, testimony showed that the BOP failure may also have been due to shear rams that were not powerful enough to cut through the riser pipe, which was extra-strong to withstand the pressure

of the deep sea environment, or that the rams may have hit a section of pipe that was too thick to cut, such as a joint between two pipes.

76. According to a May report by Cameron International Corp., which manufactured the Deepwater Horizon's BOP, a crucial safety switch called a "deadman switch" was inoperable in a test conducted several weeks after the explosion. The switch should have been activated once the rig lost communication with the well-control equipment on the sea floor, triggering the BOP to shut down the well. The Cameron report noted that the switch had been rebuilt by an unknown party in February, most likely aboard the rig.

77. At the time of the explosion, the Deepwater Horizon's BOP was overdue for an extensive check-up – it had not undergone a thorough series of maintenance checks since 2005, despite that significant problems had been uncovered within the device during that inspection. Moreover, although the BOP's manufacturer, Cameron International Corp., required manufacturer testing of the device every five years, the Deepwater Horizon's BOP had not been inspected by its manufacturer since 2000.

78. According to Transocean maintenance documents from the 2005 inspection, the BOP's control panels gave unusual pressure readings and flashed inexplicable alarm signals, while a "hot line" connecting the rig to the BOP was leaking fluid badly. An independent engineering company was hired to assess the BOP, but could not perform all of its examinations – including verification that the Deepwater Horizon's BOP could effectively shear drill pipe and seal off wells in high pressure, deepwater conditions – because the BOP was in use and inaccessible on the sea floor, and BP and Transocean would not stop work to bring it up.

79. A Transocean-commissioned independent audit of the rig in April, just before the explosion, revealed a range of problems with the Deepwater Horizon's BOP,



including a leaking door seal, pump parts needing replacement, error-response messages, and “extraordinary difficulties” surrounding the maintenance of the BOP’s annular valves. BP well site leader Ronald Sepulvado testified last month that he too had raised concerns about Transocean’s maintenance of the BOP, reporting that several pieces of equipment had been out of service for extended periods of time, but that Transocean “always told me that they didn’t have the parts” to make the necessary repairs.

80. Transocean, which owned the Deepwater Horizon and was responsible for maintenance of its equipment, including the BOP, has a poor historical safety record with such maintenance. In 2005 and 2006, UK regulators reprimanded Transocean for poorly maintained BOPs on North Sea rigs it owned. In 2005, the UK regulators found the BOP on a Transocean-owned rig was not “maintained in an efficient state, efficient working order and in good repair.” In 2006, the regulators found the tools used for BOP pressure testing on another Transocean-owned rig were “not suitable,” “failed in service,” and exposed “persons to risks that endangered their safety.” The *Wall Street Journal* reported in June that nearly three out of four deepwater drilling incidents that triggered federal safety investigations on rigs in the Gulf of Mexico occurred on rigs owned by Transocean, despite the fact that Transocean owns fewer than half the deepwater rigs operating in the Gulf.

81. Despite rig workers’ efforts just after the blowout, and emergency engineers’ efforts in the weeks after the explosion and sinking, the Deepwater Horizon’s BOP was never activated. Efforts to pump hydraulic fluid or sea water into the BOP to force the rams closed failed repeatedly as the BOP continuously sprang new leaks. Workers spent a day trying to close one of the rams without realizing it had been replaced by a useless test part.

Investigations later showed that the BOP had aftermarket modifications (approved by BP and Transocean), but did not have updated schematic diagrams that reflected those changes.

82. The Deepwater Horizon's BOP was outfitted with only one "blind shear ram," so called because it is meant to pinch, cut and seal the pipe at the wellhead like a window blind closes over a window. But blind shear rams are vulnerable to a "single-point failure" – if just one of the small shuttle valves that carry hydraulic fluid to the ram blades jams, the entire BOP is rendered useless. A 2000 report on the Deepwater Horizon's BOP concluded that the shuttle valve was the BOP's weak spot – consultants attributed 56 percent of the BOP's "failure likelihood" to this one small valve – and indeed, evidence suggests that when the crew attempted to activate the Deepwater Horizon's BOP's blind shear ram, the blades could not cut the drill pipe because one or more of the shuttle valves leaked hydraulic fluid.

83. Vulnerabilities like the BOP blind shear ram's single-point failure risk were well understood by Transocean, BP, and the rest of the oil industry. In fact, offshore drillers now commonly add an extra layer of protection against this single-point failure risk by equipping their BOPs with two blind shear rams. In 2001, when the Deepwater Horizon went into service, Transocean was already equipping its new rigs with BOPs that could accommodate two blind shear rams, and today 11 of Transocean's 14 Gulf of Mexico rigs have two blind shear rams. (The three that do not were built before the Deepwater Horizon.) Neither Transocean nor BP retrofitted the Deepwater Horizon's BOP with two blind shear rams. BP's explanation was that the rig needed to carry the BOP from well to well and there were space limitations, but oil industry experts have dismissed that explanation, saying an additional blind shear ram on the BOP would not necessarily have taken up any more space on the rig.

84. Moreover, BP and Transocean were already well aware of the benefits of redundant blind shear rams. In May 2003 the Discoverer Enterprise – a Transocean rig operated by BP, just like the Deepwater Horizon – was rocked as the riser pipe connecting the rig to the wellhead cracked open in two places. The BOP was activated and the first blind shear ram closed. After robots checking the integrity of the BOP noticed damage, the second blind shear ram was also closed to provide an extra layer of protection against a blowout. Despite this firsthand experience of the necessity of redundant blind shear rams, BP and Transocean later replaced the BOP’s secondary ram with a “test ram” that would save money by reducing the time it took to conduct certain well tests, but would leave the BOP vulnerable again to single-point failure. In a joint letter, BP and Transocean acknowledged their awareness that the replacement would “reduce the built-in redundancy” and raise the “risk profile” of the rig.

85. If the BOP on the wellhead had been functional and properly maintained by Transocean, 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 ultimate severity and thereby sparing Plaintiffs and Class and/or Subclass Members millions of dollars in losses and damage.

86. Unfortunately, the BOP was not the only part of the Deepwater Horizon that was poorly maintained and in disrepair at the time of the explosion. Transocean, the rig’s owner, had a history of postponing and overlooking needed maintenance on the rig, despite concerns raised by its own employees and other rig workers. In the weeks before the disaster, the rig experienced power blackouts, computer glitches and a balky propulsion system. In some cases, Transocean officers even purposely overrode or disabled vital safety mechanisms.

87. According to testimony given before a federal panel by rig engineers last month, the Deepwater Horizon had a number of ongoing equipment problems at the time of the explosion, some of which contributed to the failure of backup generators that should have powered safety and shutdown devices immediately after the explosion. Rig-wide electrical failures had occurred two or three times before the explosion, and the driller's control chair had lost power just a few days prior to the blowout. The primary computer used to control all rig drilling functions routinely crashed and had to be restarted, interfering with workers' ability to monitor well data. The rig's thruster, an underwater propeller that helps the floating rig move and stabilize itself in the water, had been "having problems" for eight months prior to the explosion. Further, the computerized system used to monitor routine maintenance aboard the rig was not working optimally because glitches from a recent computer system migration had not yet been resolved. Sometimes the computer called for maintenance to be done on equipment that did not exist aboard the rig, while some pieces of equipment that were aboard the rig and in need of maintenance were not registered by the computer.

88. Some key safety systems had even been intentionally bypassed or disabled by Transocean. Mike Williams, a chief electronics technician working for Transocean aboard the Deepwater Horizon, testified last month that on the fateful night of April 20, the pressure regulator valve, which automatically cuts off natural gas flow at a certain pressure point and could have helped stop a gas blowout, was in bypass mode when the fatal kick of natural gas blew out of the well. Williams had repeatedly expressed concern about bypassed safety systems to Transocean supervisors, only to be upbraided for his efforts. In one instance, Williams activated a gas safety valve that he noticed was erroneously in bypass mode. Williams testified that Transocean subsea supervisor Mark Hay reprimanded him for it, saying: "The damn thing

has been in bypass for five years. Why did you even mess with it?' ... And [Hay] said, 'As a matter of fact, the entire fleet runs them in bypass.'" Williams said a fire alarm system on the rig was also partially disabled at the time of the explosion, and had been for at least a year since Williams first noticed it. The system was set to "inhibited" mode, meaning that the control panel would indicate a problem, but a general alarm would not sound throughout the rig. Transocean supervisors told Williams "they did not want people to wake up at 3 a.m. due to false alarms." Williams testified that he complained regularly about the practice of disabling and bypassing alarms and safety systems; his most recent complaint was just three days prior to the explosion.

89. Even if all the alarm and safety systems had been fully switched on and enabled, lack of power on the night of the explosion meant they still may not have been able to function to prevent the explosion, lessen its severity, or warn rig workers of danger. When the Deepwater Horizon lost power during the blowout, none of the backup or emergency generators were working – generators that were on board for the very purpose of providing power to alarm and safety systems in just such an emergency. Transocean employee and Deepwater Horizon chief engineer Stephen Bertone testified that there was no general alarm, no internal communications, and no power to the rig's engines. "We were a dead ship." Without power, the crew was also unable to engage the Emergency Disconnect System that would have halted the flow of gas fuelling the fire on the rig, and many other alarm and safety systems were rendered silent and useless.

90. An equipment assessment commissioned by Transocean earlier this year revealed many key components – including the BOP rams and failsafe valves – had not been fully inspected since 2000, and at least 36 components and systems on the rig were in "bad" or "poor" condition, which "may lead to loss of life, serious injury or environmental damage as a

result of inadequate use and/or failure of equipment.” The investigators also found problems with the rig’s ballast system that they noted could directly affect the stability of the ship. The rig also had a malfunctioning pressure gauge and multiple leaking parts. The report faulted the decision to use a type of sealant “proven to be a major cause of pump bearing failure.”

91. The Transocean-commissioned equipment assessment echoed the results of a similar BP-commissioned audit conducted in September 2009, which found that Transocean had “overdue planned maintenance considered excessive – 390 jobs amounting to 3,545 man hours [of needed maintenance work].”

92. In a confidential worker survey conducted on the Deepwater Horizon in the weeks before the disaster, workers voiced concerns about poor equipment reliability, and one worker noted that the rig had not once in its nine-year career been taken to dry dock for necessary repairs: “we can only work around so much.” Another worker described Transocean’s policy of running equipment into the ground before making just the bare minimum of repairs: “[r]un it, break it, fix it. ... That’s how they work.”

93. The Deepwater Horizon disaster was “entirely preventable,” according to one of the world’s leading experts on oil well management, Dr. Nansen Saleri. “There are many ... redundant elements in a robust safety management system,” Saleri said. “The first line of defense is not ever to let that kind of pressure build up. The reason this happened was a series of bad decisions about the well that are human-based and that completely disregarded the risks.” At bottom, “[t]he whole episode was systemic failure on a grand scale.”

**E. Defendants Were Aware of the Risk of a Blowout**

94. The risks of offshore drilling are 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.

95. 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 Halliburton was performing aboard the Deepwater Horizon when it exploded.

96. 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.

97. Defendants were also aware of the recent August 2009 blowout in the Timor Sea, which was found to have been caused by careless cementing work performed by Halliburton. 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.

98. Defendants were aware that the threat of blowouts increases as drilling depth increases. Deepwater Horizon was drilling in 5,000 feet of water, to a total depth of over 22,000 feet below the sea floor. Not only was BP aware of the high risk of blowouts from such deep drilling, but it was also aware that drilling at this depth violated its MMS permit, which only allowed it to drill down to 20,000 feet below the sea floor.

99. In addition to increasing the risk of blowouts, deep-sea drilling also increases the failure risk of the chief blowout safety mechanism, the BOP. Blind shear ram

failure as described above was responsible for the 1979 Ixtoc 1 blowout, one of the largest spills on record, as well as disasters off Texas in 1990 and off Louisiana in 1997, when the ram blades failed to cut the drilling pipe. BP and Transocean were aware of the risk of the BOP failing at greater depths, yet did not install a backup BOP activation system, a second blind shear ram, or a backup BOP.

100. 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 14 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.

101. Moreover, BP and Transocean could have installed other safety devices that would have stopped the leak when the BOP failed. These include an acoustically-activated remote control shut-off valve at the well. This safety device would have cost BP and Transocean \$500,000, an amount they considered too high to be warranted. These devices are required on rigs in other countries, and several other large oil companies voluntarily install them on risky wells even when they are not required. BP and Transocean were well aware of this but chose cost savings over safety yet again. Indeed, BP has successfully lobbied Congress to be free of such requirements in the United States.

102. BP and Transocean 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 Defendants operate, the Deepwater Horizon was not equipped with this backup remote BOP trigger.

103. As discussed above, the Deepwater Horizon's BOP had only one blind shear ram, itself vulnerable to single-point failure. Additionally, the Deepwater Horizon was not 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 if the single BOP fails, as it may have done in this case.

104. Defendants' reckless and grossly negligent decisions and actions regarding the Macondo well and terribly lax maintenance of the rig and its equipment were all violations of MMS regulations that required them to take necessary precautions to keep well control, i.e. to prevent gas from migrating up the drilling column at all times by using the "best available and safest drilling technology to minimize the potential for the well to flow or kick," and to "use and maintain equipment and materials necessary to ensure safety and protection of personnel, equipment, natural resources, and the environment."

**F. Defendants' History of Putting Profits Before Safety**

105. The Deepwater Horizon explosion and spill, while an environmental disaster of unprecedented magnitude, is neither an isolated, unforeseeable incident, nor the first of BP's cost-cutting exercises to end in disaster. In 2005, a huge blast at a Texas refinery killed 15 people and injured more than 170; federal investigators found the explosion was due to cost-cutting, poor facility maintenance, and "organizational and safety deficiencies at all levels of BP." Fatigued workers – who had been on 12-hour shifts for more than a month straight due to cost-cutting staff reductions – overfilled a tower with liquid hydrocarbons, triggering the explosion. Various gauges and safety mechanisms on the tower were known to be in poor or

inoperable condition at the time of the explosion, but had not been repaired due to time- and cost-saving concerns. A special probe into that disaster by the Chemical Safety and Hazard Investigation Board found that “[c]ost cutting, failure to invest, and production pressures from BP Group executive managers impaired process safety performance” at the refinery. Investigators also found that managers ignored warning signs that an accident was imminent. Last October, BP was fined \$87 million – the largest such fine ever – after inspectors following up after the Texas refinery blast found 270 previously-cited violations that had not been fixed as well as 439 new violations at the facility.

106. In 2006, four years after being warned to check its pipelines, BP had to shut down part of its Prudhoe Bay oilfield in Alaska after oil leaked from a corroded pipeline. Five months later a second spill was found in the same oilfield. Subsequent investigation found the Prudhoe Bay lines were riddled with corrosion, with 176 places where more than half the original diameter of the line had been eaten away. Congressional investigators found that BP had employed “draconian” cost cutting measures in Alaska, and suggested that BP had “bet the farm” that the pipeline wouldn’t fail before Prudhoe Bay ran out of oil, saving BP the cost of replacing older pipes. BP eventually pled guilty to violations of the Clean Water Act for the 2006 spill. In November last year, BP spilled oil in Alaska again, as 46,000 gallons of oil gushed from an over-pressurized BP pipeline on the North Slope, prompting yet another criminal investigation of BP’s actions.

107. At sea, BP’s record is equally awful. In 2005, Thunder Horse, BP’s largest oil platform in the Gulf of Mexico, began listing severely due to a valve that had been installed backwards and was flooding the rig. Further inspection of that rig, which had not yet begun pumping oil, revealed such shoddy welding that the underwater pipelines were brittle and

riddled with cracks, damage that would certainly have led to a spill had the rig been in production. In May 2008, 77 people had to be evacuated from the Deepwater Horizon itself, when it began to sink after a section of pipe was mistakenly removed from the ballast system. Also in 2008, a minor spill on BP's Atlantis rig – a deepwater rig similar to the Deepwater Horizon – was caused by a defective pipeline pump that BP had postponed repairing in “the context of a tight budget,” according to an internal report. More recently, reports revealed that BP has been operating the Atlantis rig with incomplete and inaccurate engineering documents, which one official warned could “lead to catastrophic operator error” and disaster like the fate of the Deepwater Horizon.

108. Despite this history of crises and near misses, BP has been chronically unable or unwilling to learn from its mistakes. The company's dismal safety record and disregard for prudent risk management are the results of a corporate safety culture that has been called into question repeatedly by government regulators and its own internal investigations. BP has consistently demonstrated that it will choose profit before safety at the expense of human lives and the environment. Moreover, the company's actions imply that it would rather pay fines than comply with U.S. law, as paying those fines – when its negligence is detected – is ultimately a cheaper solution than regulatory compliance. This deficient corporate culture has been cited as a primary contributor to previous catastrophes at BP facilities, and is ultimately to blame for BP's grossly negligent decisions concerning the Macondo well, decisions made with willful, wanton, and reckless indifference to the potentially disastrous results to the workers aboard the rig, the environment and the residents of the Gulf of Mexico.

109. Many of BP's workers at various facilities have voiced complaints about their employer's actions and policies, sometimes in the face of harsh retaliation from supervisors.

Former employees and oil field workers who worked with BP have reported that BP regularly cheated on pressure tests and failed to report leaks and spills to the proper authorities. A BP subsidiary in Carson, California submitted falsified inspection results to air quality regulators for eight years before it was revealed that the refinery was in a frightening state of disrepair. Instead of running at 99% compliance with regulations, as the falsified reports from BP had indicated, the refinery was actually operating with 80% *non*compliance. Workers at BP's Alaskan oilfield accused BP of allowing "pencil whipping," or falsifying inspection data, as well as pressuring workers to skip key diagnostics, including pressure testing, cleaning of pipelines, and corrosion checks, in order to cut costs. Workers on the Deepwater Horizon described "a corporate culture of ...ignoring warning signs ahead of the [April 20th] blast," saying that "BP routinely cut corners and pushed ahead despite concerns about safety."

110. Testimony at Congressional hearings has shown that BP actively discourages workers from reporting safety and environmental problems. Reports from multiple investigations of the Texas City and Alaska disasters all indicate a pattern of intimidating – and sometimes firing – workers who raise safety or environmental concerns. In Alaska, pressure for increased production with fewer safety reports created "an environment where fear of retaliation [for reporting problems] and intimidation did occur." Also in Alaska, a pipeline safety technician working for a BP contractor was scolded, harassed, and ultimately fired for reporting a crack in a pipe that was dangerously close to an ignition source, despite that other reports indicated he was one of the top-performing employees in his position. "They say it's your duty to come forward," he said of BP's official corporate policies, "but then when you do come forward, they screw you." In a more extreme example, in the 1990s a BP executive was

involved in a scandalous scheme involving hiring spies to track down a whistleblower who had leaked information about BP spills to the press.

111. In 2007, as he took office as BP's CEO, Tony Hayward promised to change BP's culture with a renewed commitment to safety. He did not follow through on that promise. According to the Occupational Safety and Health Administration ("OSHA"), over the past three years – during which time BP was under Mr. Hayward's leadership – BP has committed 872 safety violations – most categorized by OSHA as "egregious willful" – a number made even more shocking when compared to BP's competitors, who average about five violations each. Two refineries owned by BP account for 97 percent of all "flagrant" violations found in the refining industry by government safety inspectors over the last three years. According to a former EPA lawyer involved in the BP investigations, "none of the other supermajors have an environmental criminal record like they do."

112. BP's marginal ethics are well known to its competitors and others in the oil and gas industry, yet BP is one of Halliburton's largest oil drilling and cement operations customers. Halliburton has worked with BP on a great number of projects over the past decade, despite being aware of BP's flagrant disregard for safety and reckless risk-taking in the pursuit of profits. Clearly, Halliburton placed the preservation of its ongoing relationship with BP – a known habitual offender in the oil drilling industry – over its obligations to Plaintiffs and all the many others plainly within the scope of the foreseeable risk when disaster inevitably struck.

113. Transocean's corporate culture is also skewed towards profits over safety, according to the results of a broad review of its North American operations made just a month before the Deepwater Horizon explosion. Workers complained of poor equipment reliability that they attributed to "drilling priorities taking precedence over planned maintenance."

“[Transocean] won’t send the rig to the shipyard for major refurb that is required in certain areas,” said one worker. Moreover, as Mike Williams testified, Transocean’s entire fleet bypassed certain vital safety systems as a matter of practice.

114. Investigators found that a lack of hands-on experience for Transocean workers and managers contributed to safety concerns, as many workers were too readily promoted without sufficient on-the-job experience to fully appreciate the risks. “[C]rews are potentially working with a mind-set that they believe they are fully aware of all the hazards when it is highly likely that they are not,” the investigators wrote. Transocean’s system for tracking health and safety issues on the rig was “counterproductive,” according to nearly all the workers surveyed. Fake data entered into the program in order to circumvent it distorted the perception it gave of safety on the rig.

115. Investigators also found that a stifling bureaucracy imposed by onshore management bred resentment among Transocean rig workers. Workers complained that past problems were only investigated by the company in order to place blame, rather than to learn from the mistakes. Although workers “often saw unsafe behavior at the rig” many expressed fears of reprisals for reporting problems, especially to “offshore” supervisors based in Houston.

116. As Defendants internally prioritize profits over safety at every level of their companies, they continue to fight publicly for less regulation of the oil exploration and production industry. In 2009 and 2010, BP has spent more than \$20 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. Moreover, despite the vulnerabilities and shortcomings of BOPs, this year BP helped finance a study to support their argument that BOP pressure tests should be required with

less frequency – every 35 days rather than the current frequency of every 14 days. This change would save the industry \$193 million per year in lost productivity.

117. Moreover, BP has 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. Specifically, in 2009 when MMS proposed a rule to require companies to have their safety and environmental management programs audited once every three years, BP's Board of Directors lodged a formal objection on behalf of BP.

118. The explosion and fire on the Deepwater Horizon, its sinking and the resulting oil spill were caused by the gross negligence, recklessness, willful, and wanton conduct of Defendants, which renders them jointly and severally liable to Plaintiffs and the Class and/or Subclass Members for punitive damages.

119. BP knew of the dangers associated with deep water drilling, but it nevertheless drilled below the level it was permitted to drill, and acted with gross negligence, recklessness and willful misconduct in its operation of the Macondo site and the Deepwater Horizon. In testimony on June 15, 2010, the officers of other supermajor oil companies like Shell, Chevron, and Exxon testified that the Deepwater Horizon disaster was “preventable” and caused by BP's failure to adhere to proper deepwater oil drilling safety regimes. Even BP's co-investor in the Macondo well, Anadarko Petroleum Corp., has publicly criticized BP for “grossly negligent” decision making and operations. BP refused to use appropriate safety mechanisms, technologies, and precautions that were known and available to it, and recklessly and knowingly ignored warning signs that its well was threatening to blow out, simply so that it could finish the sealing of the well quickly, with no additional delay or costs.

120. For its part, Halliburton blatantly disregarded industry standards in performing a grossly inadequate cementing job in the well. Halliburton knew that BP's suggested cementing plan was inadequate and inherently dangerous. Nonetheless, Halliburton followed the cementing plan exactly as it had been presented, fully aware of the potentially disastrous consequences. Thereafter, Halliburton failed at every stage to cement the well in accordance with applicable regulations, industry standards, and its own best practices. As a result, the cementing failed, causing the catastrophic blowout.

121. At the same time, Halliburton failed to alert the proper authorities of the existence of a series of regulatory violations that should have led to a suspension of operations on the Deepwater Horizon. Halliburton knew of the rig's frequent equipment malfunctions, loss of well control due to gas "kicks," and other setbacks. However, Halliburton stood by as BP pressured the rig's crew to cut corners on safety in order to speed operations and save money.

122. Drilling procedure decisions made before the blowout, primarily by BP and Halliburton, including the risky well design, tests that were skipped or misinterpreted, and procedures that deviated from industry norms, likely paved the way for the disastrous explosion on the Deepwater Horizon. But once the well began to flow out of control, Transocean's poor maintenance of the rig and its emergency systems contributed to the failure of safety mechanisms that might have either prevented the disaster or lessened its severity and/or duration. Throughout, Defendants' corporate culture of trading safety for speed, production and profit, and disincentivizing workers to prioritize safety and report concerns, only sped the inevitable approach of catastrophe.



**G. Defendants Downplay Severity As Spill Devastates Gulf Environment and Economy**

123. After the explosion, the resulting fire on the rig burned for two days, and the rig began to list progressively more until it finally sank on April 22, 2010. 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, extended from the well to 1,500 feet above the seabed and then buckled back down. Oil flowed freely from the open end of the riser and from two places along its twisted length.

124. From the first, BP attempted to downplay and conceal the severity of the spill. Internal documents show that while BP was publicly estimating the leak at 1,000 barrels per day, its own scientists actually estimated the leak could reach 100,000 barrels per day. Nevertheless, Tony Hayward referred to the spill as “tiny” and indicated that the environmental impact would likely be minimal. BP was slow and incomplete in its announcements and warnings to Gulf Coast residents and businesspeople about the severity, forecast, and trajectory of the spill. BP also refused to let scientists accurately measure the plumes of oil beneath the surface to get a more specific reading on the size and rate of the spill.

125. BP has also been faulted for a slow response effort and a lack of preparedness for a spill emergency. In a spill-prevention plan filed with the MMS in conjunction with BP’s application for the lease on the Macondo well, BP assured the MMS that it could effectively contain any spill of 250,000 barrels of oil per day, using “proven equipment and technology.” In reality, BP was not at all prepared for an oil spill emergency of any size. The spill-prevention plan BP had submitted to the MMS was a cut-and-paste job that had not been

updated to current conditions – not only did it include reference to Arctic wildlife not found in the Gulf, such as walrus, it also listed incorrect and out-of-date contact information for engineers and experts, including one wildlife expert who has been dead for four years. BP Chief Operating Officer Doug Suttles admitted on May 10, 2010, that BP did not actually have a response plan with proven equipment and technology in place that would contain the Deepwater Horizon spill. In fact, a BP statement released that same day concedes: “All of the techniques being attempted or evaluated to contain the flow of oil on the seabed involve significant uncertainties because they have not been tested in these conditions before.”

126. Despite the constant risk of a spill at any one of its many Gulf wells, BP did not have a response plan, a containment barge, skimming vessels, a response crew, or recovery material like containment boom ready and available to deploy instantly in an emergency. Instead the emergency response could not begin until the U.S. government, including the Coast Guard and the Navy, brought in skimmers, containment boom, and other materials, and volunteers were found to assist with the clean up.

127. Since the spill began, Transocean and Halliburton have attempted to downplay their involvement in the cascade of negligence leading up to the blowout, and have deflected and denied responsibility for the deaths and environmental and economic damage caused by the disaster.

128. During the 12 week duration of the spill, over 206 million gallons of oil gushed into the Gulf –18 times more oil than spilled from the Exxon Valdez – making it the worst accidental oil spill in world history.

129. Oil in various forms has soiled many miles of coastline on the Gulf of Mexico, prompting state health officials to close beaches and prohibit swimming and fishing. As

the oil continues to make landfall along the Gulf Coast, it will cause continued severe damage to the white sand beaches and delicate marshes that line the coasts of the Gulf states, destroying their natural beauty and ability to support marine life, destroying their natural ability to lessen the effects of hurricanes and other storms, decreasing the acreage of valuable wetlands, and diminishing the value of beachfront property. Additionally, the oil severely impacts all industries which depend in whole or in part on the Gulf of Mexico and its natural resources.

130. The additional damage that will be caused by oil currently swirling in subsurface plumes is still unknown. The plumes range in depth from 600 to 3,300 feet, affecting the entire water column in the Gulf. In the end, these plumes may prove be the most devastating consequence to the Gulf's ecosystem. David Hollander, an oceanographer with the University of South Florida who is studying the plumes has stated that what scientists "have learned completely changes the idea of what an oil spill is [because it] . . . has gone from a two-dimensional disaster to a three-dimensional catastrophe."

131. As the plumes are dissolving and depleting oxygen levels, they seem to be creating dead zones throughout the Gulf. Such results will likely have long term effects on the fishing industry. Steve Murawski, the National Oceanic and Atmospheric Administration's chief scientist for the spill response, recently stated that "[t]he plumes closest to the well may be concentrated enough to pose a threat to nearby deepwater coral reefs, which host a diversity of ocean life," including fish that constitute the livelihood for many Gulf businesses. "[E]ven low concentrations can be harmful to the deep coral."

132. Moreover, significant surface damage has been caused to delicate barrier islands and other waterfront properties that BP used as staging areas for oil cleanup operations. Without seeking permission from property owners, BP brought heavy machinery and equipment

to these areas, the movement of which caused damage to the delicate coastal areas. Intense and prolonged foot traffic from clean up workers only worsened the impact and long-term damage.

133. The Gulf Coast ranks number one among the nation's destinations for Americans who swim, fish, dive, and otherwise enjoy the region's many beaches, coastal wetlands, shores, and waters. More than 20 million visitors enjoy the Gulf coast beaches each year. There are over 550,000 seasonal or vacation homes or housing units along the Gulf coast. The impact of the spill on home values in communities already affected by the spill is expected to range from \$648 million over one year to \$3 billion or more over five years, according to an August 2 report by CoreLogic cited in recent news articles.

134. The timing of this disaster makes it even more damaging as it struck just at the start of the 2010 summer tourist and vacation season. The physical and reputational sully of the Gulf coast's pristine beaches resulted in cancellations of pre-booked trips, and vacationers, beachgoers, and boaters continue to avoid the region, planning their trips to other destinations instead.

135. The stigma of the spill may last even longer than the physical oil damage does, further affecting the coastal economy for years to come. Experts estimate the spill will cost the Gulf coast tourist industry \$4 billion in economic losses.

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

## **V. CLASS ACTION ALLEGATIONS**

137. Plaintiffs seek certification of the following class ("the Class"):

All individuals and entities residing or owning property in the United States who claim economic losses or damages as a result of the April 20, 2010 explosion and fire aboard, and sinking of, the

Deepwater Horizon, and the resulting oil spill.

138. Plaintiffs also seek certification, to the extent necessary or appropriate, of the following state-wide subclasses (the “Subclasses”) of individuals and entities residing or owning property in the states of Alabama, Florida, Louisiana, Mississippi, and Texas, pursuant to the laws of their respective states.

The Alabama Subclass:

All individuals and entities residing or owning property in the State of Alabama who claim economic losses or damages as a result of the April 20, 2010 explosion and fire aboard, and sinking of, the Deepwater Horizon, and the resulting oil spill.

The Florida Subclass:

All individuals and entities residing or owning property in the State of Florida who claim economic losses or damages as a result of the April 20, 2010 explosion and fire aboard, and sinking of, the Deepwater Horizon, and the resulting oil spill.

The Louisiana Subclass:

All individuals and entities residing or owning property in the State of Louisiana who claim economic losses or damages as a result of the April 20, 2010 explosion and fire aboard, and sinking of, the Deepwater Horizon, and the resulting oil spill.

The Mississippi Subclass:

All individuals and entities residing or owning property in the State of Mississippi who claim economic losses or damages as a result of the April 20, 2010 explosion and fire aboard, and sinking of, the Deepwater Horizon, and the resulting oil spill.

The Texas Subclass:

All individuals and entities residing or owning property in the State of Texas who claim economic losses or damages as a result of the April 20, 2010 explosion and fire aboard, and sinking of, the Deepwater Horizon, and the resulting oil spill.

139. The following persons and counsel are proposed as representatives for the Class and/or Subclasses:

(a) The proposed representative plaintiffs for the Class and/or Subclasses are: Corliss Gallo, Tight Lines Fishing Charters, LLC, Red Hot Fishing Charters, LLC, Ernest J. Browne, Jr., Gulf Coast Assets, LLC, d/b/a/ Breath's Boats & Motors, Judy and Lawrence Simpson, Retreat, Inc., and Dave Phelps.

(b) The proposed counsel for the Class and/or Subclasses are: Elizabeth J. Cabraser of Lieff, Cabraser, Heimann & Bernstein, LLP; Dawn M. Barrios of Barrios, Kingsdorf & Casteix, LLP; Randall A. Smith of Smith & Fawer, L.L.C.; Don Barrett of Don Barrett, P.A.; Richard R. Barrett of Law Offices of Richard R. Barrett; Zach Butterworth of Hesse & Butterworth, PLLC; Larry D. Moffett of Daniel Coker Horton & Bell, P.A.; Dewitt M. "Sparky" Lovelace of Lovelace Law Firm, P.A.; M. Stephen Dampier of Law Offices of M. Stephen Dampier, P.C.; Zona Jones of Provost Umphrey Law Firm, LLP; L. DeWayne Layfield of Law Offices of L. DeWayne Layfield; and Charles Barrett of Barrett & Associates, P.A.

140. Excluded from the Class and/or Subclasses are:

- (a) the officers and directors of any of Defendants;
- (b) any judge or judicial officer assigned to this matter and his or her immediate family and staff;
- (c) any individual who has claims for personal physical, bodily injury as a result of his or her presence aboard the Deepwater Horizon at the time of the April 20, 2010 explosion and fire; and
- (d) any legal representative, successor, or assign of any excluded persons or entities.

141. This Complaint is brought and may properly be maintained as a class action on behalf of the proposed Class and/or Subclasses as described above, pursuant to the applicable and appropriate provisions of Rule 23(a)(1)-(4), (b)(3), (b)(1), (c)(4) and/or (c)(5).

**A. Numerosity of the Class and/or Subclasses - F.R.C.P. 23(a)(1).**

142. The Class and/or Subclasses consist of tens of thousands of individuals and businesses who have been economically damaged by the spill, making joinder impracticable. Class and/or Subclass members can be informed of the pendency of this action by published, internet, and broadcast notice.

**B. Commonality - F.R.C.P. 23(a)(2).**

143. Common questions of law and fact exist as to all members of the Class and/or Subclasses. Because the question of class-wide punitive damages in this case will be governed, in whole or substantial part, by the Supreme Court's decision in *Exxon Shipping Co. v. Baker*, 128 S. Ct. 2605 (2008) and/or other Supreme Court punitive damages jurisprudence, the Class and/or Subclass members will be subject to common questions of law.

144. Furthermore, the factual bases of Defendants' outrageous conduct are common to all Class and/or Subclass members and represent a common thread of gross negligence and willful, wanton, and reckless indifference for the rights of others, resulting in injury to all members of the Class and/or Subclasses. Each Class and/or Subclass member's claim arises from the same course of events, and each Class and/or Subclass member will make similar legal and factual arguments to prove Defendants' outrageous, willful, reckless, wanton, and deplorable conduct and liability for punitive damages.

145. Defendants' conduct presents common factual questions, including:

(a) Whether Defendants outrageously, willfully, wantonly, or recklessly caused and/or contributed to the explosion, fire, and the resulting spill;

(b) Whether Defendants knew or should have known of the risk of a major failure of the rig such as that which caused it to fail and resulted in the explosion, fire, and spill;

(c) Whether Defendants' conduct in failing to utilize all available safety mechanisms to prevent the spill was outrageous, grossly negligent, willful, wanton, or reckless, or behavior even more deplorable;

(d) Whether Defendants acted outrageously or with willful, wanton, and reckless indifference to the risk of a major failure of the rig, its pipes, valves, and other machinery and materials.

(e) The degree of each Defendant's reprehensibility under the Supreme Court guidelines articulated in *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996) and *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

146. Common questions of fact also exist with respect to the punitive damages liability of Defendants to the Class and/or Subclasses, including Defendants' outrageous, grossly negligent, willful, reckless, and wanton conduct; the calculation of the amount of punitive damages that may be imposed upon Defendants consistent with due process; intra-class equity with respect to the allocation and utilization of punitive damages; and the most practicable and most equitable allocation, disbursement, and utilization of such damages for punishment of Defendants' wrongful conduct toward Plaintiffs, the Class and/or Subclasses, and society, and in fulfillment of the deterrent policy and purpose of punitive damages.

**C. Typicality - F.R.C.P. 23(a)(3).**

147. The claims of the representative Plaintiffs are typical of the claims of the Class and/or Subclasses in that the representative Plaintiffs, like all Class and/or Subclass members, have suffered harm caused by the spill. Each Class and/or Subclass member's claim



arises from the same course of events, and each Class and/or Subclass member will make similar legal and factual arguments to prove Defendants' outrageous, grossly negligent, willful, reckless, and wanton conduct and liability for punitive damages.

**D. Adequacy of Representation - F.R.C.P. 23(a)(4).**

148. Plaintiffs will fairly and adequately represent and protect the interests of the Class and/or Subclasses. Plaintiffs have retained counsel with substantial experience in prosecuting environmental, mass tort, and complex class actions, including actions involving environmental contamination and, specifically, catastrophic oil spills. Among the undersigned counsel for Plaintiffs are counsel who represent claimants from each of the affected Gulf states and claimants with each type of claim (fishery-related, property-related, and business-related), and counsel with experience in complex class action litigation and trials, including the Exxon Valdez litigation, and counsel with particular expertise on punitive damages issues. Plaintiffs and their counsel are committed to prosecuting this action vigorously on behalf of the Class and/or Subclasses and have the financial resources to do so. Neither Plaintiffs nor their counsel have interests adverse to those of the Class and/or Subclasses.

**E. Class Certification under F.R.C.P. 23(b)(3) - Predominance and Superiority.**

149. Common issues of fact and law predominate concerning the claims of the Class and/or Subclasses. Because the question of class-wide punitive damages in this case will be governed, in whole or substantial part, by the Supreme Court's decision in *Exxon Shipping Co. v. Baker*, 128 S. Ct. 2605 (2008) and/or other Supreme Court punitive damages jurisprudence, the Class and/or Subclass members will be subject to common questions of law.

150. Defendants' conduct presents predominant common factual questions. Plaintiffs' claims arise out of a single course of conduct by Defendants that caused the Deepwater Horizon explosion and spill. This is a single-event, single-location mass disaster that

will affect a large area, and many persons, for a long time – yet its cause derives from a chain of decisions made by a small group of Defendants. Plaintiffs will present common proof with respect to Defendants’ failure to take adequate safety precautions in the operation and maintenance of the Deepwater Horizon that is the same for each member of the Class and/or Subclasses. Plaintiffs’ proof of Defendants’ outrageous, grossly negligent, willful, reckless, and wanton conduct will involve the same events, discovery, documents, fact witnesses, and experts. Common questions of fact also predominate concerning the determination of the aggregate quantum of punitive damages, necessary to fulfill the punishment and deterrence goals of such damages.

151. A class action is superior to the only other method available for the adjudication of Defendants’ outrageous, grossly negligent, willful, reckless, and wanton conduct – individual litigation and multiple trials. The repetitive individual litigation of Defendants’ conduct by all members of the Class and/or Subclasses is inefficient, impracticable, economically infeasible, and potentially unfair, particularly in light of the unique context of Defendants’ course of conduct and its unprecedented impact upon the Class and/or Subclasses, the American environment, economy, and society.

152. It would be unduly burdensome on the courts to undergo the individual re-litigation of the same facts and legal issues in thousands of cases. The consideration of common questions of fact and law will conserve judicial resources and promote a fair and consistent resolution of these claims.

**F. Class Certification under F.R.C.P. 23(b)(1).**

153. Plaintiffs seek by this action exemplary damages that may, consonant with due process, and should, in accord with the egregiousness and social harm of Defendants’ conduct and their ability to pay, be imposed upon Defendants to punish them for their

outrageous, grossly negligent, willful, reckless, and wanton conduct, the devastating impact of that conduct upon Plaintiffs, the Class and/or Subclasses, the American public, and the environment, and to deter Defendants and others from ever again engaging in a similar course of conduct.

154. Plaintiffs seek class-wide adjudication as to the issue of punitive damages, with respect to the total amount Defendants may be constitutionally or equitably required to pay into a nationwide punishment fund (the “limits of punishment”), and the appropriate allocation and distribution of such damages to any member of the Class and/or Subclasses for their benefit, and that of society. The prosecution of separate actions by individual members of the Class and/or Subclasses on such claims and issues would create an immediate risk of inconsistent or varying adjudications. These varying adjudications would be prejudicial to members of the Class, Subclasses, and Defendants, and would establish incompatible standards of conduct. Piecemeal adjudications would also, as a practical matter, be dispositive of the interests of those Class and/or Subclass members not parties to such adjudications, and substantially impair or impede their ability to protect their interests, thereby making class certification of this action appropriate under Rule 23(b)(1)(A) and (B).

155. Piecemeal punitive damages adjudications in this situation would render the equitable allocation of such awards impracticable. Individual litigation would also present the potential for inconsistent or contradictory judgments on issues of Defendants’ knowledge, intent, conduct, and duty that do not vary, as of any particular point in time, from Class member to Class member. Individual litigation would increase the delay and expense to all parties and the court system and could undermine public confidence and trust in that system.

156. Piecemeal punitive damages adjudications on an individual, local, or statewide basis do not and cannot hold Defendants legally accountable for the total scope of their uniquely multi-state, region-wide course of conduct (which has impacted more individuals, groups, and categories of claims and claimants, on a more sustained basis, than any other course of tortious conduct).

157. Piecemeal adjudications will frustrate the efforts of this or any court to determine and enforce the constitutional limits of aggregate punishment for this course of misconduct, thereby (a) forcing victims to compete in a race for judgments in order to claim against a diminishing res, resulting in recoveries for some victims and worthless judgments for the rest; (b) ignoring what the Supreme Court has termed the substantive limit that due process places on the amount of punitive damages that may be awarded; and (c) thereby creating inequitable disparities among members of the Class and/or Subclasses.

158. Moreover, individual awards of punitive damages in the context of mass misconduct would frustrate the broader societal interest in not only punishing Defendants for their misconduct, but in directing any award toward the greatest possible public benefit, e.g., without limitation, scientific research, environmental remediation programs, clean energy programs, programs geared toward sustaining and retraining those whose livelihoods were destroyed by the spill, improving the economic situation for those communities whose economies were based on tourism in the Gulf of Mexico, and amelioration and mitigation of spill-related diseases and damages.

159. Finally, piecemeal adjudications may under-deter Defendants' misconduct by failing to account for the full scope or total social costs, thereby frustrating the purpose of punitive damages – the vindication of society's interests in deterrence and punishment that is

fully and fairly proportionate to the scope and nature of the misconduct and its harm to society as a whole.

160. By contrast, class treatment, as requested in this Complaint, presents far fewer management difficulties and provides the benefits of a single adjudication, economies of scale, exercise of equity jurisdiction and comprehensive supervision by a single court, in order to achieve justice and proportionality, avoid underdeterrence, and determine the proper roles of the “limits of punishment” theory raised by the common questions of punitive damages under the unique circumstances of this case, without offending the due process constraints articulated by the Supreme Court. Class treatment best ensures that Defendants pay for the economic and environmental costs of their misconduct and that there is a fair distribution of punitive damages among Class and/or Subclass members for their benefit, for the benefit of their beneficiaries, and for the benefit of society and the environment.

**G. Class Certification of Particular Issues under F.R.C.P. 23(c)(4).**

161. Certification of the Class and/or Subclasses with respect to common factual and legal issues concerning Defendants’ outrageous, grossly negligent, willful, wanton, and reckless conduct and the resulting necessary and appropriate quantum of punitive damages, or ratio of punitive damages to actual harm, is appropriate under Rule 23(c)(4).

**FIRST CLAIM FOR RELIEF**  
**Gross Negligence/Wantonness (on Behalf of the Class and/or Subclasses)**

162. The allegations in all previous paragraphs are incorporated by reference as though fully set forth here.

163. Defendants owed a duty to all Plaintiffs and Class and/or Subclass members to exercise reasonable care in the manufacture, maintenance, and operation of the Deepwater Horizon.

164. Defendants had a heightened duty of care to all Plaintiffs and the Class and/or Subclass members because of the great danger associated with deep drilling from floating platforms and the especially high risk of blowouts during cementing work.

165. Defendants breached their legal duty to Plaintiffs and the Class and/or Subclasses, failed to exercise reasonable care, and acted outrageously, and with malicious intent, owing to gross negligence, willful, wanton, and reckless indifference to the environment, and the property and economic interests of others, including Plaintiffs and the Class and/or Subclass members, in the manufacture, maintenance, and/or operation of the Deepwater Horizon.

166. Defendants knew or should have known that their outrageous, malicious, grossly negligent, willful, reckless, or wanton conduct would foreseeably result in a disastrous blowout and oil spill, causing damage to the environment, property and economic interests of individuals and businesses in the area affected by the spill.

167. The blowout explosion, fire, and resulting oil spill were caused by the joint conduct of the Defendants.

168. Upon information and belief, Plaintiffs allege that the disaster was the result of Defendants' joint conduct in:

(a) Outrageously, maliciously, grossly negligently, willfully, recklessly, and wantonly failing to properly maintain and/or operate the Deepwater Horizon;

(b) Outrageously, maliciously, grossly negligently, willfully, recklessly, and wantonly operating the Deepwater Horizon in such a manner the safety and integrity of the rig and the well were disregarded to save time and money, which was a direct cause of the explosion, fire, and the resulting spill;

(c) Outrageously, maliciously, grossly negligently, willfully, recklessly, and wantonly ignoring warnings that the integrity of the well, the cementing job, and the rig were in jeopardy;

(d) Outrageously, maliciously, grossly negligently, willfully, recklessly, and wantonly failing to promulgate, implement, and enforce proper rules and regulations to ensure the safe operations of the Deepwater Horizon, which would have prevented the disaster;

(e) Outrageously, maliciously, grossly negligently, willfully, recklessly, and wantonly violating MMS regulations for the safe design and operation of oil wells and drilling rigs in the Gulf of Mexico;

(f) Outrageously, maliciously, grossly negligently, willfully, recklessly, and wantonly failing to take appropriate action to avoid or mitigate the accident;

(g) Outrageously, maliciously, grossly negligently, willfully, recklessly, and wantonly failing to implementing policies and procedures to safely conduct offshore operations in the Gulf of Mexico;

(h) Outrageously, maliciously, grossly negligently, willfully, recklessly, and wantonly failing to ensure that the Deepwater Horizon and its equipment were free from defects, properly maintained and/or in proper working order;

(i) Outrageously, maliciously, grossly negligently, willfully, recklessly, and wantonly failing to provide appropriate disaster prevention equipment;

(j) Outrageously, maliciously, grossly negligently, willfully, recklessly, and wantonly failing to have an appropriate emergency spill response plan or readily available spill response equipment;

(k) Acting in a manner that justifies imposition of punitive damages, without reasonable or legitimate cause or excuse; and

(l) Such other acts and omissions as will be shown at the trial of this matter.

169. Defendants' outrageous, grossly negligent, willful, reckless, or wanton conduct, as described herein, entitles Plaintiffs and Class and/or Subclass members to compensatory and punitive damages.

**SECOND CLAIM FOR RELIEF**  
**Negligence *Per Se* (on Behalf of All Class and/or Subclass Members)**

170. The allegations in all preceding paragraphs are incorporated by reference as though fully set forth here.

171. Defendants' conduct with regard to the manufacture, maintenance, and/or operation of drilling operations and oil rigs such as the Deepwater Horizon is governed by numerous state and federal laws, and permits issued under the authority of these laws.

172. These laws and permits create statutory standards that are intended to protect and benefit Plaintiffs and Class and/or Subclass Members.

173. Defendants' violations of these statutory standards constitute negligence *per se* under the laws of Alabama, Florida, Louisiana, Mississippi, and Texas.

174. Defendants' violations of these statutory standards proximately caused Plaintiffs' and the Class and/or Subclass Members' injuries, warranting compensatory and punitive damages.

**THIRD CLAIM FOR RELIEF**  
**Trespass (on Behalf of the Property Owner Class and/or Subclass Members)**

175. The allegations in all preceding paragraphs are incorporated by reference as though fully set forth here.



176. Defendants discharged a polluting substance beyond the boundary of the Plaintiffs' and property owner Class and/or Subclass members' property in such a manner that it was reasonably foreseeable that the pollutant would, in due course, invade Plaintiffs' and property owner Class and/or Subclass members' property and cause harm.

177. By discharging pollutants, Defendants entered, invaded, and intruded on the properties of Plaintiffs and the property owner Class and/or Subclass members without privilege, permission, invitation, or justification, and did so with rudeness, malice, oppression and aggravation.

178. Defendants had a duty to use reasonable care not to enter, intrude on, or invade Plaintiffs' and property owner Class and/or Subclass members' properties. Defendants also owed a duty to Plaintiffs and property owner Class and/or Subclass members to exercise reasonable care in the design, execution, and operation of the Macondo well and the manufacture, maintenance, and operation of the Deepwater Horizon.

179. Defendants had a heightened duty of care to Plaintiffs and property owner Class and/or Subclass members because of the great danger associated with deep drilling from floating platforms, and the especially high risk of blowouts during cementing work.

180. Defendants breached the duty they owed to Plaintiffs and property owner Class and/or Subclass members when they outrageously and maliciously, owing to gross negligence, willful, wanton and reckless indifference for the rights of others, or behavior even more deplorable, failed to exercise reasonable care in the design, execution, and operation of the Macondo well and the manufacture, maintenance, and operation of the Deepwater Horizon, which conduct resulted in the rude, aggravated, and oppressive entry, intrusion, or invasion on Plaintiffs' and property owner Class and/or Subclass members' properties.

181. Defendants knew or should have known that their conduct would foreseeably result in a disastrous blowout and oil spill, causing damage to the properties and economic interests of persons in the area affected by the spill.

182. Defendants also breached the duty they owed to Plaintiffs and property owner Class and/or Subclass members when they outrageously and maliciously, owing to gross negligence, willful, wanton and reckless indifference for the rights of others, or behavior even more deplorable, failed to request permission to enter and use Plaintiffs' property as a disaster relief staging area, or exercise reasonable care when using Plaintiffs' property for those activities, which conduct resulted in the rude, aggravated, and oppressive entry, intrusion, or invasion on Plaintiffs' and property owner Class and/or Subclass members' properties.

183. Defendants' outrageous, malicious, rude, oppressive, grossly negligent, willful, reckless, and wanton conduct, as described herein, entitles Plaintiffs and property owner Class and/or Subclass members to compensatory and punitive damages.

**FOURTH CLAIM FOR RELIEF**  
**Nuisance (on Behalf of Property Owner Class and/or Subclass Members)**

184. The allegations in all preceding paragraphs are incorporated by reference as though fully set forth here.

185. Defendants' conduct has directly and proximately resulted in continuing and unreasonable interference with the use and enjoyment of properties owned by Plaintiffs and property owner Class and/or Subclass members and constitutes a nuisance.

186. Defendants' inadequate manufacture, maintenance, and operation of the Deepwater Horizon was outrageous and malicious, owing to gross negligence, willful, wanton, and reckless indifference for the rights of Plaintiffs and property owner Class and/or Subclass members, or behavior even more deplorable.

187. Defendants' outrageous, malicious, grossly negligent, willful, reckless, and wanton conduct, as described herein, entitles Plaintiffs and property owner Class and/or Subclass members to compensatory and punitive damages.

**FIFTH CLAIM FOR RELIEF**  
**Strict Liability for Abnormally Dangerous Activity (on Behalf of All Class and/or Subclass Members)**

188. The allegations in all preceding paragraphs are incorporated by reference as though fully set forth here.

189. Defendants 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, and resulting oil spill from the Deepwater Horizon, which (a) created a high degree of risk of harm to others, and particularly to Plaintiffs and Class and/or Subclass Members; (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 avoided by the exercise of reasonable care; (d) were not a matter of common usage; (e) were inappropriate to the place that they were being carried on, in that they constituted a non-natural use of the waters of the Gulf of Mexico, in close proximity to beaches, wetlands, estuaries, and marinas, which imposed an unusual and extraordinary risk of harm to Plaintiffs' and Class and/or Subclass Members' property and businesses.

190. As a direct and proximate result of Defendants' conduct in engaging in the abnormally dangerous activities alleged above, tremendous amounts of crude oil were released from the blown-out Macondo well. It is precisely that risk of the type of harm that was ultimately sustained by Plaintiffs and the Class and/or Subclass Members that makes Defendants' activities abnormally dangerous.

191. Plaintiffs and the Class and/or Subclass Members 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 and the Class and/or Subclass Members adequate compensation therefore in amounts determined by the trier of fact.

**SIXTH CLAIM FOR RELIEF**  
**Strict Products Liability for Manufacturing Defect (on Behalf of Florida, Louisiana, and Mississippi Subclass Members)**

192. The allegations in all preceding paragraphs are incorporated by reference as though fully set forth here.

193. Defendant Cameron manufactured and/or supplied the Deepwater Horizon's BOP.

194. At the time of, and at all times after the explosion, Defendant Cameron's BOP failed to operate properly or at all, and this failure caused or contributed to the oil spill.

195. Defendant Cameron's BOP was defective because it failed to operate as intended, either by manual trigger or by automatic trigger.

196. As a result of the BOP product defect, massive amounts of oil were discharged from the Macondo well, causing injury to Plaintiffs and the Class and/or Subclass Members.

197. Defendant Cameron's BOP was in a defective condition and unreasonably dangerous to Plaintiffs and Class and/or Subclass Members when the BOP left Defendant Cameron's control.

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

199. By reason of the foregoing, Plaintiffs and Class and/or Subclass Members have incurred damages in an amount to be determined at trial, and are entitled to compensatory and punitive damages.

**SEVENTH CLAIM FOR RELIEF**  
**Alabama Extended Manufacturer's Liability Doctrine**  
**(on Behalf of the Alabama Subclass Members)**

200. The allegations in all preceding paragraphs are incorporated by reference as though fully set forth here.

201. Defendant Cameron designed, manufactured and/or supplied the Deepwater Horizon's BOP.

202. At the time of, and at all times after the explosion, Defendant Cameron's BOP failed to operate properly or at all, and this failure caused or contributed to the oil spill.

203. Defendant Cameron's BOP was defectively manufactured and/or designed because it failed to operate as intended, either by manual trigger or by automatic trigger.

204. As a result of the BOP product defect, massive amounts of oil were discharged from the Macondo well, causing injury to Plaintiffs and the Alabama Subclass Members.

205. Defendant Cameron's BOP was in a defective condition and unreasonably dangerous to Plaintiffs and Alabama Subclass Members when the BOP left Defendant Cameron's control.

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

207. By reason of the foregoing, Plaintiffs and Alabama Subclass Members have incurred damages in an amount to be determined at trial, and are entitled to compensatory and punitive damages.

**EIGHTH CLAIM FOR RELIEF**  
**Strict Liability Pursuant to the Florida Pollutant Discharge Prevention and Control Act,**  
**Fla. Stat. § 376.011, et seq. (on Behalf of the Florida Subclass Members)**

208. The allegations in all preceding paragraphs are incorporated by reference as though fully set forth here.

209. At all relevant times, BP and Transocean owned, leased, operated, and/or maintained the Deepwater Horizon and the Macondo well. Following the April 20, 2010 explosion, fire, and ultimate sinking of the Deepwater Horizon, the Macondo well began spewing crude oil into the Gulf of Mexico.

210. At all relevant times, Defendants had a statutory duty to Plaintiffs and Florida Subclass Members to maintain and operate the Deepwater Horizon and the Macondo well so as to not create or sustain hazardous conditions due to the discharge of pollutants as defined by the Florida Pollutant Discharge Prevention and Control Act (the "Act"), Fla. Stat. § 376.031.

211. At all relevant times, Defendants breached their statutory duty to the Plaintiffs and Florida Subclass Members by discharging, or allowing to be discharged, crude oil into the Gulf of Mexico and allowing the massive oil spill to migrate into Florida's marine and coastal areas, in violation of the Act, Fla. Stat. §§ 376.011 - 376.21. Those affected waters and shores are the location of Plaintiffs' and Florida Subclass Members' properties.

212. Defendants are strictly liable to Plaintiffs and Florida Subclass Members under the Act, § 376.205, which provides in pertinent part:

... any person may bring a cause of action against a responsible party in a court of competent jurisdiction for damages, as defined in § 376.031, resulting from a discharge or other condition of pollution covered by §§ 376.011-376.21. In any such suit, it shall not be necessary for the 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 occurred.

213. As the direct and proximate result of Defendants' breach of statutory duty to Plaintiffs and Florida Subclass Members, the oil spill originating from the Macondo well has resulted in detrimental effects upon Plaintiffs' and Florida Subclass Members' property.

214. By reason of the foregoing, Plaintiffs and Florida Subclass Members have incurred damages in an amount to be determined at trial, and are entitled to compensatory and punitive damages.

**VI. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs and the Class and/or Subclass Members demand judgment against Defendants, jointly and severally, as follows:

- A. Economic and compensatory damages in amounts to be determined at trial;
- B. An order certifying the Class and/or Subclasses as set forth herein, appointing Plaintiffs as Class and/or Subclass Representatives, and appointing undersigned counsel as counsel for the Class and/or Subclasses for the purpose of determining the quantum or ratio of punitive damages to be assessed against each of the Defendants, to be paid ratably to Class and/or Subclass members who recover, through claims processes or litigation, actual damages and/or otherwise equitably utilized in accord with the societal purposes of punitive damages;
- C. Pre-judgment and post-judgment interest at the maximum rate allowable by law;
- D. Attorneys' fees and costs; and
- E. Such other and further relief available under all applicable state and federal laws and any relief the Court deems just and appropriate.

**JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury.

DATED: August 20, 2010

/s/ Dawn M. Barrios

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