United States Court of Appeals
for the Fifth Circuit

IN RE: OIL SPILL BY THE OIL RIG "DEEPWATER HORIZON" IN THE GULF OF MEXICO, ON APRIL 20, 2010
Case No. 12-31155

LAKE EUGENIE LAND & DEVELOPMENT, INCORPORATED; BON SECOUR FISHERIES, INCORPORATED; FORT MORGAN REALTY, INCORPORATED; LFBP 1, L.L.C.; ZEKES CHARTER FLEET, L.L.C.; WILLIAM SELLERS; KATHLEEN IRWiN; RONALD LUNDY; CORLISS GALLO; JOHN TESVICH; MICHAEL GUIDRY, on behalf of themselves and all others similarly situated; HENRY HUTTO; BRAD FRILOUX; JERRY J. KEE,

Plaintiffs – Appellants

v.

B.P. EXPLORATION & PRODUCTION, INCORPORATED; BP AMERICA PRODUCTION COMPANY; BP PIPE LINE COMPANY,

Defendants – Appellees

v.

GULF ORGANIZED FISHERIES IN SOLIDARITY & HOPE, INCORPORATED,

Movants- Appellant

Cons. w/Case No. 13-30095

PLAINTIFFS-APPELLANTS' BRIEF

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CERTIFICATE OF INTERESTED PERSONS
Case No. 12-31155

IN RE: DEEPWATER HORIZON - APPEALS OF THE ECONOMIC AND PROPERTY DAMAGE CLASS ACTION SETTLEMENT

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Plaintiffs-Appellants:

1. Class Representatives of the Economic and Property Damages Class that the District Court certified, for settlement purposes only, on December 21, 2012. *See MDL 2179* include objectors identified in R. 7224-1, R. 7224-2, and R. 7863, Exhibit A. The absent class members together comprise a "large group of persons who can be specified by a generic description, such that individual listing is not necessary."(See 5th Cir. R. 28.2.1)

Defendant-Appellants:

2. Defendant-Appellees B.P. Exploration & Production Incorporated and BP America Production Company are subsidiaries of Defendant-Appellee B.P., P.L.C.

Class Representatives:

3. Class Representatives associated with the *Bon Secour* action is brought by fifteen class representatives Bon Secour Fisheries, Inc., Fort Morgan Realty, Inc.; LFBP #1, LLC d/b/a GW FINS; Panama

City Beach Dolphin Tours & More, LLC; Zeke's Charter Fleet, LLC; William Sellers; Kathleen Irwin; Ronald Lundy; Corliss Gallo; Lake Eugenie Land & Development, Inc.; Henry Hutto, Brad Friloux; Jerry J. Kee; John Tesvich; and Michael Guidry.

/s/ Brent W. Coon, Brent Coon & Associates
Attorney of Record for Plaintiffs-Appellants

STATEMENT REGARDING ORAL ARGUMENT

The Plaintiffs-Appellants respectfully requests oral argument, as the issues in this case are sufficiently important and complex to warrant oral argument.

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Treatises

Other Cases

STATEMENT OF JURISDICTION

This is an appeal from a final order approving a class action Economic and Property Damages Settlement by the U.S. District Court for the Eastern District of Louisiana. (*In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico*, 2012 U.S. Dist. LEXIS 181511 (December 21, 2012). Plaintiffs-Appellants and objecting class members (hereinafter the Brent Coon and Associates or "BCA Objectors") filed their timely notice of appeal regarding the order on January 18, 2013. (R. 8292.)[1]

This Court has jurisdiction over the appeal because it arises from a "Final Order and Judgment" entered by the district court upon its approval of the aforementioned Economic and Property Damages Settlement as related to Rule 23 of the Federal Rules of Civil Procedure (hereinafter "Rule 23"). (R. 6430-1, page 69 of 123.) The district court's decision approving the settlement, which resolved all claims of all class members related to the matter, is an appealable final decision under 28 U.S.C. § 1291 and § 1294. *See Devlin v. Scardelletti*, 536 U.S. 1, 9 (2005).

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[1] Unless otherwise indicated, all record citations "R." refer to the MDL 2179 record.

STATEMENT OF THE ISSUES

I. Whether the district court properly determined for the class that the requirement of commonality under Rule 23(a) and the requirements of predominance and superiority under Rule 23(b)(3).

II. Whether the district court, prior to certifying the class action settlement, failed to scrutinize the appointments to Class Counsel in order to determine if the members adequately represent the interests of the class.

III. Whether the district court's approval of a complex class settlement notice was fair and practical under Rule 23(c)(2)(B).

STATEMENT OF THE CASE

On April 20, 2010, an explosion tore through the Deepwater Horizon drilling rig while its crew was completing construction of the exploratory Macondo well deep under the waters of the Gulf of Mexico. The extensive torrent from the well released over 200,000,000 gallons (4.9 million barrels) of crude oil into the Gulf of Mexico impacting 88,522 square miles or nearly 37% of federal waters in the Gulf of Mexico and 1,053 total linear miles of oiled shoreline.[2] The result was a human, economic, and environmental disaster that eclipsed in severity the 1989 Exxon Valdez spill in Alaska.[3]

Today the economic impact of the disaster on the natural systems and people of the Gulf Coast has exceeded tens of billions of dollars. Livelihoods, precious habitats, a unique way of life and a treasured American landscape have been destroyed, along with damages to many businesses in the states of Florida, Louisiana, Texas, Alabama and Mississippi, not to mention the tourism, fishing and restaurant industries.

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[2] See the Congressional Research Service report of Deepwater Horizon Oil Spill and the Gulf of Mexico Fishing Industry, 2/17/2011 (www.fas.org/sgp/crs/misc/R41640.pdf).

[3] Deep Water - The Gulf Oil Disaster and the Future of Offshore Drilling Recommendations from the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Foreword, January 2011.

During the months immediately following the explosion, hundreds of lawsuits involving over 100,000 individual claims were filed in various state and federal courts against BP and the other defendants (hereinafter "BP defendants") concerning the *Deepwater Horizon* disaster. (R. 3830 at page 1 of 39.) The claims addressed the death of eleven individuals, numerous claims for personal injury, and various claims for environmental and economic damages. (R. 3830 at page 1 of 39.) By August 10, 2010 numerous cases were consolidated before the district court under Multi-District Litigation docket MDL No. 2179, presided over by U.S. District Judge Carl Barbier. (R. No. 1.) Trial was set to begin on February 27, 2012.

Management of MDL 2179 for the various claimants occurred through a court-appointed Plaintiffs Liaison Counsel and Plaintiffs Steering Committee ("PSC"). Beginning largely in the summer of 2011 and ending in early 2012, the Plaintiffs Liaison Counsel, PSC and the BP defendants negotiated a Economic and Property Damages Settlement (hereinafter "Settlement Agreement") which modified the MDL into a class action and allocated the distribution of settlement funds to various class members. The Plaintiffs Liaison Counsel and the PSC would receive an eye popping $600,000,000 for their attorney fees associated with the agreement.

By May 2012 the district court preliminarily certified the settlement class. Even though the Settlement Agreement had not been finalized (and would not occur until December 2012), the BP defendants commenced a Settlement Program whereby claimants injured from the disaster could submit damage claims for consideration according to specific compensation frameworks. Before the Settlement Agreement was officially approved the law firm of Brent Coon & Associates (hereinafter the "BCA law firm") objected to its fairness, adequacy and reasonableness on behalf of thousands of objectors. The BCA Objectors represent businesses and individuals from a wide range of industries, locations and walks of life that have been affected by the *Deepwater Horizon* disaster. They vary widely in their socioeconomic status, while many are illiterate and uneducated members, including those for whom English is not their native language.

The BCA Objectors objected to the Settlement Agreement on numerous grounds, namely due to claims processing or implementation problems with the Settlement Program (as related to the compensation frameworks) that emerged well before the court granted its final approval. All of the problems that the BCA Objectors encountered were related to the determination of damage awards that lacked the rigorous 'good

housekeeping seal of approval' validation under the requirements of Rule 23 Federal Rule of Civil Procedure ("Rule 23"). Despite the warnings of the BCA Objectors and many others, the district court granted final approval of the agreement on December 21, 2012. As a result of this decision to forego the warning signs, the chickens came home to roost. In an unprecedented move, the BP defendants would acknowledge in a separate appeal to this Court that there also were problems with the compensation frameworks of the Settlement Agreement. (See the Circuit Court of Appeal Docket No. 00512230427; Case No. 13-30315.) Since the Settlement Agreement is not workable, it should be sent back with a directive to the district court to rigorously scrutinize it such that it meets the mandatory requirements of Rule 23 as related to commonality, predominance, sufficiency, adequacy of counsel, and notice.

STANDARD OF REVIEW

The standard of review for whether the district court erred in approving a proposed class-action settlement and fee agreement under Rule 23 is abuse of discretion. *Ayers v. Thompson*, 358 F.3d 356, 368 (5th Cir. 2004); *Welch v. Univ. of Tex.*, 659 F.2d 531, 535 (5th Cir. 1981). "Generally, an abuse of discretion only occurs where no reasonable person could take the view adopted by the trial court. If reasonable persons could differ, no abuse of discretion can be found." *Dawson v. United States*, 68 F.3d 886, 896 (5th Cir. 1995). Alternatively, the standard of review in determining whether the district court applied the correct standard in determining whether to certify a class is *de novo*. *Allison v. Citgo Petroleum Corp.*, 151 F.3d 402, 408 (5th Cir. 1998).

STANDING

Any class member has standing to object to a class settlement. *Devlin v. Scardelletti*, 536 U.S. 1, 6-7 (2002). The BCA Objectors filed their Motion in Opposition and Objections to the Economic Class Settlement on August 31, 2012. (R. 7224.) According to the district court (R. 6418, ¶ 38), objectors were to provide claim information such as name, address and telephone number, proof of residency / ownership of property and its location, or ownership of a business operation and its location. Due to the private nature of the information, the BCA Objectors provided to the court their names and individual Gulf Coast Claims Facility ("GCCF") Claim Number (where applicable), which allowed the court access to their private information. The complete list of objectors associated with this motion is attached to the Notice of Appeal filed with the District Court. (R. 8349-1.) Later their names, along with their claimant number associated with the Deepwater Horizon Economic Claims Center ("DHECC") were also provided to the district court prior to its determination to approve the agreement in December 2012, (See R. 7224; R. 7863, Exhibit A.) The names include those BCA Objectors who originally filed complaints in state court against the defendants as associated with *Harley D. Allen, et al v. BP*

*American Production Company (*12-2953), *Kevin D. Brannon, et al v. BP American Production Company (*12-964) and *Abbasi, et al v. Transocean Deepwater, Inc. et al.* (10-2771). (R. 7224.)

STATEMENT OF FACTS

On December 21, 2012 the United States District Court for the Eastern District of Louisiana (hereinafter "district court") determined that the class action Settlement Agreement associated with the *Deepwater Horizon* disaster and thousands of American citizens was acceptable. Specifically, it stated that the settlement terms were "fair" to the class as a whole, the settlement was "reasonable" in relation to the class's legitimate claims, that the settlement was "adequate" enough to redress class members' actual losses, and that Class Counsel, which developed the agreement along with the BP defendants was "adequate". (R. 8138.)

The BCA Objectors have filed this appeal of the district court's approval of the Settlement Agreement for three specific reasons. *First*, the agreement fails to meet the requirements for commonality, predominance and superiority under Rules 23(a) and 23(b)(3). *Second*, Class Council was not adequately scrutinized under Rule 23(g) so as to determine whether its members adequately represented the interest of the class. *Third*, the agreement does not provide adequate and reasonable notice provisions for class members who desire to opt out of the class under Rule 23(c)(2)(B) and (c). The configuration of these problems can be traced back to the

formation of the Plaintiffs Steering Committee and its failure to develop a rigorous Settlement Agreement aligned to Rule 23 requirements.

Plaintiffs Steering Committee

When MDL 2179 was created, the district court gathered thousands of individual economic loss and property damages claims into a bundled group called B1. (R. 3830 at page 1 of 39.) In order to manage the various claims of B1, the court appointed a Plaintiffs Steering Committee ("PSC") of attorneys to coordinate the discovery matters on behalf of all the claimants and their attorneys. (R. No. 2 at page 13 of 19.)

According to the Manual (4th) for Complex Litigation, district courts are strongly recommended to address specific factors prior to finalizing appointments to a group such as a PSC. These factors range from assessing the qualifications and competence of counsel to determining whether counsel can fairly represent the various interests of the class members. (See, Manual for Complex Litigation (Fourth) § 10.224.) Despite these factors, the district court evaluated applications for PSC positions in accordance with three criteria (e.g. willingness and availability to commit to a time-consuming project; ability to work cooperatively with others; and

professional experience involving "this type of litigation"). (R. 2 at page 13 of 19.) At this time there was no class action.

The district court designated 17 individuals to serve as PSC members. (R. 506, 4226.) Other than a general statement about how the members exhibited "a high degree of competency and experience", it appears nothing was provided in the record showing if the court evaluated whether the PSC members could actually manage MDL 2179--or for that matter class actions and class settlement negotiations for this type of case.

The PSC was to conduct and coordinate discovery, attend hearings and coordinate teams for trial on behalf of the B1 group. (R. 506 at page 4 of 4.) It was also authorized by the district court to pursue settlement options pertaining to any claim the case. *Id.* By February 2011 the district court was already recognizing the litigation involved "putative class members". (R. 1098 at page 2 of 15.) But court records show that not all the members had experience with class action litigation. (R. 223, R. 261, R. 340, R. 359.) Furthermore, of the remaining members who did have class litigation experience, *only 4 individuals* represented that they had experience in the formation of class settlement frameworks. (R. 322, R. 324, R. 335, R. 337.)

When the PSC was formed, the district court appointed Plaintiffs Liaison Counsel to "coordinate the responsibilities of the PSC". (R. 506 at page 2 of 4.) As far as the BCA Objectors are aware, no information about the experience and ability of Plaintiffs Liaison Counsel to manage an MDL committee was provided to the district court at that time for viewing by the "putative class". (R. 80.) Regardless, the seeds for the formation of class action settlement were planted at that time.

Forming The Class Action

On September 16, 2010, during an early PSC monthly meeting with the district court, the parties discussed the concept of a class action for MDL 2179. Mr. Andrew Langan, representing BP Exploration and Production Inc., requested the group look into the possibility of a class action. (R. 550 at page 46 of 83.) In response Mr. Steven Herman, as Plaintiffs Liaison Co-Counsel, agreed to consider the matter. *Id.* Encouraged by the exchange, the district court acknowledged that the litigation could be managed as a class action. *Id.* By December 15, 2010, the PSC formally stated its intention to pursue the MDL litigation as a class action on behalf of a class defined as "[a]ll individuals and entities residing or owning property in the United States who claim economic losses, or

damages to their occupations, businesses, and/or property as a result of the April 20, 2010 explosions and fire aboard, and sinking of, the Deepwater Horizon, and the resulting Spill." (R. 879 at page 131 of 178; R. 1128 at page 150 of 201.) By January 2011, the PSC had already developed a proposed class action notice program. (R. 1101, pages 17-18 of 59.) By February 2011 preliminary class action settlement negotiations began. (R. 8138 at page 3 of 125; R. 6266-1 at page 14 of 77.) But the district court, as far as the BCA Objectors can tell, still did not evaluate the qualifications of Plaintiffs Liaison Counsel or the PSC members' to manage class action settlement negotiations for the largest environmental disaster in U.S. history.

Private Meetings In New Orleans and London

According to PSC records, negotiations regarding the development of a Settlement Agreement were held on a daily basis starting in May 2011. (R. 6266-1 at page 14 of 77.) However private dinner meetings to explore settlement opportunities between the parties began earlier in February 2011 and March 2011 (R. 7114-9), and continued into May and June 2011 (R. 7101-7 at page 2 of 5.) The meetings resulted in a commitment "to meet on an ongoing basis to attempt to resolve some of the extant claims." *Id.* But

it was clear the intent was to develop a class Settlement Agreement and notice program. (R. 6266-1 at page 15 of 17.) As acknowledged by the PSC, these negotiations were focused on producing claim frameworks based on the merits of underlying claims. (R. 7101-2 at page 13 of 67; R. 7101-8 at page 7 of 12.) The frameworks, according to the PSC, were to reflect the situations faced by the hundreds of thousands of people affected by the *Deepwater Horizon* oil spill. *Id.* During this time the district court stated it would again accept applications to the PSC. It re-appointed the original PSc members, along with two other individuals. However, it appears that the court did not provide within the record any evidence of its decision to re-appoint/appoint these members to the PSC on behalf of thousands of "putative class" members or their attorneys. (R. 3638, 4226.)

The Bargaining Chip

After the *Deepwater Horizon* disaster, BP set up a $20 billion Gulf Coast Claims Facility ("GCCF") whereby individuals could settle their damage claims with BP. (R. 1098 at page 2 of 15.) Near the end of 2011 the GCCF had paid out more than $5 billion in settlement funds to claimants.

By November 2011, the effect of managing settlement negotiations for MDL 2179 was taking a toll upon the PSC. At that time, it had expended

over $11.5 million in upfront assessments "to fund the necessary work for the common benefit of all plaintiffs" without any reimbursement. (R. 4507-1 at pages 5, 23-24 of 43.) Seeing an opportunity to cash in, the PSC asked the district court to approve the formation of an "escrow" fund that would collect a 6% surcharge, or 6 cents of every dollar, on all settlements made through the GCCF. (R. 4507 at page 2 of 6.) The fund would be a "reserve" account that distributes common benefit fees and/or cost reimbursement awards to the PSC for its representation of the "putative class" during class settlement discussions. (R. 4507; R. 4507-1 at pages 5, 9 of 43.) This request should bring into question whether the PSC attorneys had any legal basis for a fee interest in the GCCF settlements.

Push back from the BP defendants was immediate. (R. 4682; R. 4696.) According to the BP defendants, the PSC could not capitalize on taking a percentage of funds for its benefit from past GCCF claimants, which would have been an "unprecedented extension of the common benefit doctrine" by the court. (R. 4696 at page 2 of 9.) Regardless the court authorized the creation of a court-supervised escrow account whereby 6% of the gross monetary settlements related to the *Deepwater Horizon* disaster made after November 7, 2011 would pay for common benefit litigation fees and

expenses of the PSC. (R. 5022 at pages 10-11 of 12.) From that point forward the landscape of the settlement negotiations between the PSC and the BP defendants markedly changed.

The No-Go Threshold

According to the PSC and BP defendants, only after the parties worked out the essential terms of the Settlement Agreement did they negotiate an appropriate attorney fee for the PSC members (later called Class Counsel). (R. 6266-1 at pages 16-17 of 77.) That statement is simply not true.

Plaintiffs Liaison Co-Counsel Mr. Joseph Rice notified the district court that before the Settlement Agreement was finalized; he had discussions about attorney fees (plural) before April 17, 2012, not with "Class Counsel", or "Interim Class Counsel" or "Proposed Class Counsel", but with "PSC/Class Counsel." (R. 7101-10 at page 3 of 10.) When Mr. Rice wrote his affidavit on April 17, 2012, the district court had not even designated the PSC as "Class Counsel". In fact not until April 18, 2012 did the PSC file a joint motion with BP requesting the appointment of Class Counsel. (R. 6269.) Therefore the meetings Mr. Rice was referring to were in all likelihood associated with the PSC's earlier request in November 2011

for compensation of its "common benefit time." (R. 4507.) Soon after on December 28, 2011 the district court approved the motion. (R. 5022.) Only then did Magistrate Judge Shushan begin to heavily mediate the negotiations. (R. 7101-5 at page 33 of 68.)

Mr. Rice, as Liaison Co-Counsel to the PSC, stated in an affidavit that with regards to the settlement negotiations, "[p]rior to April 17, there had been no substantive discussions of attorney's fees." (R. 7101-10 at page 3 of 10.) Yet the parties had already negotiated, as shown right in the Settlement Agreement, the allocation of $600,000,000 "as a payment of all common benefit and/or Rule 23(h) attorneys' fees, costs and expenses incurred at any time, whether before or after the date hereof, for the common benefit of members of the Economic Class…" (R. 6276; R. 6430-46.) What did BP receive in exchange? A guaranteed low number of opt-out challenges to the Settlement Agreement. In other words, in exchange for the PSC's acquisition of 6% of all class claims (which would not exceed a total of $600 million from the BP defendants), the BP defendants would have the absolute and unconditional right to terminate the agreement if the number of claimants opting out of the class did remain under a certain threshold. (R. 6276-46 at page 2 of 10 (e.g. Ex. 27 to the Agreement); R.

6430-1 at page 87-88 of 123.) That threshold number, as noted by Halliburton Energy Services, Inc., ("Halliburton") was hidden from the class members—which created the appearance of collusion between the PSC and the BP defendants. (R. 6350 at pages 6 of 13; R. 6430-1 at page 87-88 of 123.)

Later during the Fairness Hearing counsel for the BP defendants acknowledged that the opt-out threshold was not exceeded:

> Mr. Godfrey: Both. But I also have an announcement to make, which I will do formally now. As the Court knows, under Section 21.3.6 of the settlement agreement, BP negotiated with Mr. Rice the option of terminating the agreement if we reached numbers in a sealed envelope. We didn't reach the numbers. Indeed, the numbers of objectors and opt-outs were less than anticipated, BP had the obligation to exercise that option to terminate three days ago. It chose not to do so. The option has expired. BP is not exercising the option. The settlement is working as we anticipated and as we negotiated with Mr. Rice and Mr. Fayard.
>
> (R. 7892 at page 62 of 328.)

The district court never addressed this matter in either the preliminary or final approval of the Settlement Agreement.

Settlement Compensation Frameworks

By April 2012 the PSC and BP filed their Proposed Settlement Agreement (R. 6276), a motion for its preliminary approval along with the

notice plan for the putative class. (R. 6266.) It also filed a new class action complaint which moved the settlement forward for the putative class. (R. 6412). The district court soon after preliminarily approved the Settlement Agreement. (R. 6418).

The Settlement Agreement is designed to resolve a myriad of claims by private individuals and businesses associated with economic loss and property damage resulting from the *Deepwater Horizon* disaster located within geographic zones in the Gulf coast states from April 20, 2010 to April 16, 2012. (R. 6418.) The settlement categories targeted: (1) economic losses (e.g. loss of wages, business economic losses), (2) property damage, (3) vessel of opportunity ("VoO") Charter payment claims, (4) vessel physical damage and decontamination, (5) subsistence, and (6) commercial fishing losses. (R. 6430-1 at pages 6-11 of 123.)

Economic losses are calculated address differences in earnings or profits during a prescribed claim period, and are adjusted to a variable Risk Transfer Premium to account for consequential damages, inconvenience, aggravation etc. (R. 7101-2 at pages 22-24 of 67; R. 6430-1; R. 8138.) Depending on the claimant, the losses may also address matters from health benefits to job search costs. Regardless, causation is presumed,

but not equally. *Id*. For some economic loss claimants causation is presumed due to their geographic proximity to the oil spill, while others need to prove causation by specific criteria outlines in the Settlement Agreement. (R. 7101-2 at pages 22-24 of 67.) Calculations are also provided for losses associated with coastal and wetlands real property based on the extent of proven contamination. (R. 7101-2 at pages 22-24 of 67.)

Under the Settlement Agreement, a class member receives compensation for damages by contacting a court-approved Settlement Program (e.g. DHECC). (R. 8138 at page 8 of 125.) Depending on the type of damages, a member must submit to the Settlement Program a prescribed claim form with certain documentation so it can calculate a final award. (R. 8138 at pages 8-9 of 125.) The district court assures "[t]he Settlement Program calculates awards using public, transparent frameworks that apply standardized formulas derived from generally accepted and common methodologies." (R. 8138 at page 8 of 125.) Yet this assurance was not accompanied by any supportive information, whether through expert or otherwise, showing the frameworks are aligned to the claims, defenses, relevant facts and applicable substantive law in the Class

Complaint in light of the fact that the district court denied any discovery related to the causes of action and extent of injuries suffered by individual claimants as a result of the *Deepwater Horizon* disaster. (R. 6412; R. 91 at page 1 of 27; R. 7727; R. 7731; 7101-2; R. 7110-3; R. 7114; R. 7726-4; R. 7104-4, R. 7104-3; R. 7727-4; R. 7114-4; R. 7114-5; R. 7114-9; R. 7114-11 to R. 7114-20; R. 7114-22; R. 7114-23; R. 7731-1 to R. 7731-14.) This glaring omission was brought to the attention of the court by Halliburton (R. 91) and one of the objectors to the class (R. 144 and R 144-3.) But the court dismissed these concerns about the construction of the settlement frameworks as legitimate. (R. 8138 at page 8 of 125.)

Implementation Problems

In May 2012 the district court preliminarily approved the Settlement Agreement. (R. 6418.) From that time until the Fairness Hearing the court had five months to observe whether the Settlement Program (e.g. DHECC) was actually working. (R. 7863 at page 6.) Unfortunately the program was proving to be unwieldy. Complaints were issued to the Settlement Program, but changes did not occur. The problem, it was realized, was the Settlement Agreement—a complicated and difficult to read 1200-page document that failed to take into account all of the contingencies in the

analysis process of every conceivable set of circumstances individual putative class members would experience in the Gulf states. *Id.* at page 6. Even the class notice was so lengthy, complicated and detailed that no reasonable individual could seriously be expected to read, digest, and analyze its contents in order to make an informed decision about his or her damages prior to submitting a claim to the Settlement Program. *Id.* (See also R. 7224 at page 11 of 23; R. 7224-4; R. 7224-5.) It consisted of eight claim categories broken further down into additional types within the main category, with some claims having their own subcategories.

Ultimately the Settlement Agreement was based upon an extremely complicated and nested methodology where a thorough analysis is required to determine the types of claims an individual could file with the Settlement Program. (R. 7224 at pages 11-12 of 23.) Understanding the value of the submitted claim for most claims types requires a high-level understanding of math. (R. 7224 at page 12 of 23.) As such the Settlement Program could not offer assurances up front as to claim values because (a) individual discovery on their claims was unavailable, and (b) the agreement's compensation frameworks were not aligned to accommodate the differences between the various claims in the case.

During the first five months of operation, the Settlement Program could not ensure that "legitimate claims" would be timely. The BCA law firm, representing the largest number objectors in this case, submitted hundreds of claims to the program for seafood, individuals, and businesses beginning the very first week the program for settlement processing. (R. 7863 at page 7.) By November 2012, on the eve of the Fairness Hearing, the law firm had gathered a number of "samples" detailing implementation problems with the Settlement Program at the ground level. (R. 7863 at page 6.) The information afforded the court a rare and invaluable opportunity to determine whether the Settlement Program was actually working *before* it provided its final approval. It was also an opportunity for putative class members, in light of implementation problems, to convince the court they needed more time to meet the opt-out notice requirements of the Settlement Agreement. *Id.* Although legitimately filed with the court before the date of the Fairness Hearing, the court quickly struck the information from the docket for simply being "untimely". (R. 7870.)

Prior to the court's approval of the Settlement Agreement, BCA Objectors were receiving a very slow response rate on their claims. (R. 7224 at page 9 of 23.) According to statistics found on the Settlement

Program web portal, as of November 6, 2012, BCA has submitted 1,382 claims for processing. Most were on file for several months. (R. 7863 at page 7.) Of those claims, 897 (65%) were not provided any notice on their claim. Of the 458 individual claims submitted, only one (less than 1%) had received an offer of payment. *Id.* Of the 274 business claims submitted only 18 (6.5%) received an offer of payment. *Id.* Of the 490 seafood claims submitted only 92 (18.7%) received an offer of payment. *Id.* Such examples were a representative snapshot of the firm's 1500-plus claimants potentially eligible for settlement funds. *Id.*

At the time of the Fairness Hearing, BCA had been working on these claims for up to two and a half years and was very familiar with most of them. *Id.* Staff members invested a considerable amount of time into understanding the submission process, and developed specializations in the different types of claims so as to better facilitate client claims forward. (R. 7863 at pages 7-8.) This also allowed staff to navigate through various types of deficiencies, which included changes in the submission process so as to avoid contentions of document deficiencies of any type. (R. 7863 at page 8.) Often the program would claim documents were missing,

however many times the "missing" documents were not required under the terms of the Settlement Agreement. *Id.*

Despite these difficulties, by November 2012 it was apparent that claims were not getting offers and that the Settlement Program was not working. The BCA firm would regularly receive calls from other law firms, accounting firms, individuals and businesses who were also unable to get their claims processed. *Id.* As such, a number of BCA Objectors could not determine the compensation to which they were entitled under the Settlement Agreement. (R. 7731, Section IV. A. 2.) For example, the PSC and BP defendants claimed that small businesses were not required to submit monthly profit and loss ("P & L") statements under the agreement in order to receive a settlement award. (R. 7863 at page 9.) Despite this assertion, BCA staff members have been told by auditors working on the claims that monthly P&L statements are required for every business. *Id.* Numerous 'incomplete' notices attest to this fact.

Individual claims fared no better. Of 458 individual claims submitted to the program, only two received eligibility notices by the date of the Fairness Hearing, and only one of those included an offer for payment. *Id.* In its place BCA received dozens of incompleteness notices for individuals

for one of two reasons: (1) pay period information and (2) missing employer statements. *Id.* Due to this strict requirement, hundreds, if not thousands of individuals were unable to cure these deficiencies since few had the requisite documentation to show their pay period earnings going back to 2007. *Id.* Getting employer signed statements was difficult for many individuals since they changed jobs, moved, or their former employer was not in business anymore. (R. 7863 at page 9-10.)

Many eligibility calculations coming back from the fund were often wrong. This was particularly true for seafood claims, where trip tickets routinely were left off of the calculations resulting in offers that were low. (R. 7863 at page 10.) Sometimes these numbers were a few thousand dollars off, while other times they were inaccurate by more than $100,000 in trip tickets. *Id.* Occasionally, boat captains were assigned to different benchmark numbers than the owner of the boat. *Id.* All of this was further exacerbated by the lack of a timely system to re-review and correct these omissions. *Id.* Despite sending to the Settlement Program detailed re-review requests specifically pointing out these errors, only one request for re-review had been sent a response (a denial of a Vessel of Opportunity ('VoO"). *Id.*

Even where the calculations were correct the process of accepting an offer was utterly confusing and delayed. Many claimants had multiple claims under the fund, such as a boat owner who was also a boat captain. The offers they received were sent separately, but each one had an offset for previous payment from the GCCF and/or BP. *Id.* In addition, many claims were receiving eligibility notices that said the claimant was overpaid settlement funds. As such, BP has appealed these determinations through the Settlement Program appeal process. In the meantime clients were forced to wait for the full appeal timeline to run before the fund representatives even began the process of actually paying their claims. This process in and of itself is long drawn out ordeal. (R. 7863 at page 11.)

In support of these assertions, the BCA law firm provided to the district court, on behalf of numerous objectors, a detailed analysis of these problems associated with implementation of the Settlement Program. (R. 7863 at pages 11-31.) Notably, the BP defendants would also acknowledge serious problems with the implementation of the Settlement Program associated with the compensation frameworks. (*Lake Eugene Land & Development, et al.,* v. *BP Exploration & Production Inc.*, Case 13-30329, 5th Circuit Court of Appeals, Doc. 00512230427.) They complained that

damage figures under the Settlement Program were being manipulated due to the court's approval of after-the-fact policy changes which amounted to nothing more than "arbitrary cash-flow computations or incorrect recording of revenue and expenses — not actual economic performance." *Id.* at page 26.)

Limiting The Opt-Outs

The Settlement Agreement notice program required that putative class members either object to, or opt out of the class by November 1, 2012. In order to do so the claimants needed to know what settlement offers were before them. (R. 7224 at page 17 of 23.) By the deadline, the window for receiving an offer or even to determine the estimated value of claims was closing such that it put the claimants in an incredibly difficult position to quickly choose a course of action—without being properly informed about their rights—something which cut into the very heart of class action fairness. Barring any offer, and without some idea or precedent that their claims could be paid under the class, claimants could not be assured that joining the class was the right thing to do during the opt-out period. (R. 7863 at pages 4-5.) Nervous with the possibility of foregoing their tort rights, the BCA Objectors had no choice but to opt out of the litigation.

Many were so worn down from not being compensated for their damages for so long that they just threw up their hands. Others, who were so near bankruptcy, or succumbed to bankruptcy as a result of the spill, felt that having no ability to determine their losses was a dangerous position to be in. (R. 7863 at pages 5-6.)

Absent some definitive indication that they would be paid, the BCA law firm determined that it was in the best interest of many of its clients' due process rights to opt out of the settlement. (R. 7224 at pages 19-20 of 23.) The firm did not make this recommendation for all of its clients, including many seafood and VoO claimants, because the settlement frameworks were more defined such that settlement eligibility could be determined in advance of the class opt-out deadline. In one last attempt to convince the court of the various concerns with the Settlement Program, Mr. Brent Coon, representing the largest percentage of objectors in the putative class, attended the Fairness Hearing on the Settlement Agreement on November 8, 2012. (R. 7892.) Yet Mr. Coon was not asked to further elaborate on the concerns of his clients. (R. 7892.) Later the court would limit these opt outs claimants to those who could not meet the rigorous opt-out process, and imposed a constrictive opt-out process that demanded

submission of individual claimant signatures even though the common practice in federal courts is to allow for attorneys representing clients, electronic signatures on their behalf. (R. 8138 at pages 66-68 of 125.)

a. Lacking an Opt-Out Form. The Opt Out provision of the settlement intentionally put obstacles in front of a putative class members' right to opt-out. (R. 7224 at pages 15-19 of 23.) Section 8.2.1 of the Settlement Agreement, which covers opt Outs, states that in order to opt out of the class, members "must submit a written request to Opt Out" which "may not be signed by any form of electronic signature, but must be signed by a handwritten signature." Although the *Deepwater Horizon* website included a registration form, eight individual loss or damage forms, nine authorizations and tax forms, three forms for personal representatives, two forms concerning individual attorney representation, 39 sworn statement forms—it never included an opt-out form. (R. 7224 at page 16 of 23.) While the parties spent millions of dollars on the proposed Class Settlement Agreement, it did not take the time to create an exclusion form, such that individuals could easily remove themselves from the class. Furthermore, repeated requests by the BCA law firm to class representatives for such a form proved futile.

b. Forbid Attorney Signatures. One of the most prejudicial and tedious portions of the opt-out provision of the settlement is that it required the signature of a Natural Person or Entity, and specifically kept claimants' respective attorneys from excluding them from the class. (R. 7224 at pages 19–21 of 23.) Attorney signatures have long been held to have a binding effect on their clients. Yet nowhere does it allow for electronic signatures of the claimants, even though e-mails and web advertising have been employed, in addition to traditional mailers and print media for accepting electronic signatures. *Id.* Even the Settlement Program, which was set up with required documentation and an online submission feature, did not provide for this option. In its place the Settlement Agreement required that individual wishing to opt out of the settlement produce a letter with a handwritten signature for mailing via the U.S. Postal Service. (R. 6430-1 at page 68 of 123.) Interestingly, Class Counsel agrees that Oil Pollution Act submissions to the BP defendants are acceptable and can be validated through attorney electronic signatures for presentment purposes—even though it took the opposite position on the opt-out notices. Oil Pollution Act of 1990 – Public Law 101-380 (33 U.S.C 2701 *et seq.*; 104. Stat. 484)

As stated above, the nature of many vocations along the coast often involve lower socio-economic classes. (R. 7224 at pages 21-22 of 23.) These groups have a disproportionate amount of residency relocations and forwarding addresses. Tracking down these claimants for proper notice, documents, on short notice is often impractical if not, in fact impossible. *Id*. Due in part to severe financial hardship caused by the spill many clients have moved or had their phones disconnected. A high incident rate of natural disasters such as hurricanes and floods further increase the rate of relocation among class members. *Id*. Many claimants also are engaged in maritime vocations that take them to sea for weeks and months at a time, again causing significant delays and compromise of effective communication. This occurs both with regard to notice issues and with regard to client cooperation. Last, many of the seafood claimants speak English as a second language or are illiterate, and have trouble and/or delays in getting their correspondence read to them to know what and when they are needed to do something in their case. *Id*. This resulted in long delays in receiving signed documents back from thousands of clients. BCA, and other Plaintiffs attorneys, were forced to choose between collecting the required documentation so that a claim can be submitted to

the class settlement and spending time collecting yet another signature from all of their clients just to preserve the clients right to a jury trial. *Id.*

Who's Minding the Store

On March 5, 2012, right after the parties reached an agreement on the terms of a proposed class settlement (R. 5950), the district court appointed Plaintiffs Liaison Counsel as Interim Class Counsel to oversee the case pursuant to Rule 23. (R. 5960.) Other than this one-page order, nothing existed in the record at that time of the court's scrutiny addressing the qualifications of Interim Class Counsel. Even the class action complaint filed on April 16, 2012 fails to address the experience of the PSC other than a generalized statement on behalf of all its members. (R. 6412.)

On April 18, 2012 the parties filed a joint motion requesting that "Interim Class Counsel to serve as Lead Settlement Class Counsel, and the undersigned PSC Members to serve as Settlement Class Counsel, for the Economic Class." (R. 6269 at page 7 of 41.) When the court appointed the 17 PSC members as the official Class Counsel, although it stated it did so under Rule 23(g), the court never addressed whether it considered their appointments-as individual counsel (and *not* their firms) under the criteria

set forth in Rule 23(g)(1)-(4). (R. 6418 at page 33 of 47; R. 8139; R. 8138 at page 29 of 125.)

SUMMARY OF THE ARGUMENT

A court's decision to approve a settlement agreement depends upon proper certification of a class under Rule 23. Certification under Rule 23(a) requires four prerequisites in order to certify a class action: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. *Amchem Prods. v. Windsor*, 521 U.S. 591, 613 (1997). Two additional factors under Rule 23(b)(3) must be met prior to certifying a class: (1) that questions common to the class members predominate over questions affecting only individual members, and (2) that class resolution is superior to alternative methods for adjudication of the controversy. *Feder v. Elec. Data Sys. Corp.*, 429 F.3d 125, 129 (5th Cir. 2005). The burden of proving these criteria falls on the party seeking to maintain the class action. *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2548 (2011).

Before determining whether to certify a class, a district court must conduct a rigorous analysis of the Rule 23 prerequisites, especially in light of due process concerns. *Madison v. Chalmette Refining, L.L.C.,* 637 F.3d 551, 554 (5th Cir. 2011)(citing *Amchem*, 521 U.S. at 613). Rule 23 requires the court to "find" and not just assume the facts favoring class certification. *Madison* at 555. Yet in this case the district court has failed to conduct a

rigorous scrutiny of the class and Settlement Agreement under Rule 23 which has caused the Settlement Program to be mired in implementation problems negatively impacting the due process rights of numerous class members, including the BCA Objectors. If the court had properly performed its duty, it would have acknowledged the following serious flaws of the class: (1) a lack of commonality among the various claims or issues of the class members as related to the extent of damages caused by the *Deepwater Horizon* incident, (2) a lack of predominance and superiority because expert evidence failed to properly evaluate the Settlement Agreement compensation frameworks resulting in implementation problems, (3) a notice program that failed to meet the due process requirements of all class members, and (4) a lack of evidence determining whether Class Counsel was qualified to design the compensation frameworks.

ARGUMENT

I. Whether the district court properly determined for the class that the requirement of commonality under Rule 23(a) and the requirements of predominance and superiority were met under Rule 23(b)(3).

The decision of a court to certify a class under Rules 23(a) and 23(b)(3) must be supported by a "rigorous analysis." *General Telephone Co.*

of Southwest v. Falcon, 457 U.S. 147, 161 (1982); *Comcast Corp. V. Behrend,* 133 S. Ct. 1426, 1432 (2013**).** This entails thoroughly examining "evidentiary proof" to determine whether common issues predominate over individual issues. *Wal-Mart Stores, Inc*. at 2552-2553. It also requires a court to go beyond the pleadings and assess the proof supporting whether damages can be measured on a classwide basis in accordance with the theories of liability in a case. *Comcast Corp.* at 1432-1433; *General Telephone Co.* at 160. Doing so will likely require a court to investigate the merits of a case. *Wal-Mart Stores, Inc*. at 2551-2552. Doing otherwise (which is in essence accepting any method of damages no matter how arbitrary the measurements may be) will nullify Rule 23(b)(3). *Comcast Corp.* at 1433.

A. The district court failed to conduct a rigorous analysis of the class members' individual damages to determine whether the commonality perquisite of Rule 23(a) was met.

Under Rule 23(a)(2) in order to certify a class, a district court must show that the class representatives properly identified "questions of law or fact common to the class." *Wal-Mart Stores, Inc*. at 2551. Merely citing to the existence of common questions or stating that members of a class have suffered a violation of the same law (e.g. pleading standard) will not satisfy this requirement. Rather, in order to prove commonality, there must be

affirmative proof showing that class representatives provided "significant" expert and factual evidence through discovery that all class members have all suffered the same injury. *Wal-Mart Stores, Inc*. at 2541, 2552, 2554. Such evidence must be of a nature that it affords class-wide resolution, or that it resolves an issue central to the validity of each one of the claims in one stroke. *Wal-Mart Stores, Inc.*, at 2551.

The commonality test is not met when a court generally establishes that "there is 'at least one issue whose resolution will affect all or significant number of the putative class members.'" *M.D. v. Perry*, 675 F.3d 832, 840 (5th Cir. 2012). What it does require is a court to look rigorously beyond the pleadings to "understand the claims, defenses, relevant facts, and applicable substantive law" before making a meaningful determination on certification issues. *McManus v. Fleetwood Enters.*, 320 F.3d 545, 548 (5th Cir. 2003)(quoting *Castano v. A. Tobacco Co.*, 84 F.3d 734, 744 (5th Cir. 1996). This rigorous approach is similar to that prescribed by the U.S. Supreme Court in *Amchem*, where it determined commonality could not be met due to class members' varying degrees of exposure to different asbestos containing products, for different amounts of time, in different ways, and over different periods of time—which amounted to

varying degrees of damages. *Amchem Prods., Inc.* at 636. Demonstrations of such variability, the Court concluded was "ordinarily not appropriate" for class treatment and as a result class certification was denied. *Amchem Prods., Inc.* at 625.

Many courts, in applying the new rigorous *Wal-Mart* standard have denied environmental class actions. *See Price v. Martin,* 79 So. 3d 960, 969-970 (La. 2011)(plaintiffs could not determine whether defendants' off-site emissions caused property damage to all residents in the area near a manufacturing plant); *Gates v. Rohm & Haas Co.*, 655 F.3d 255, 266, 274 (3d Cir. 2011)(questions such as causation of contamination, extent of contamination, fact of damages, and amount of damages could not be determined for all individuals due to varied levels of contaminants); *Ginardi v. Frontier Gas Services*, No. 4:11-CV-00420, 2012 BL 98229 at *16 (E.D. Ark. Apr. 19, 2012)(plaintiffs causes of action required a detailed look at individual damages, including the amount of noise heard, the amount of gases present, and any level of contamination in the air, groundwater or soil); *Henry v. Dow Chemical Co.* No. 03-47775 at *6 (Saginaw Cnty. Cir. Ct. July 18, 2011)(could not determine how dioxin contaminated the soil on plaintiffs' properties since assessing how they were injured involves highly

individualized factual inquiries regarding the level and type of dioxin contamination in the specific properties).

In this case, the district court failed to conduct a rigorous scrutiny of the facts and law under the *Wal-Mart* commonality standard. Since it had closed all discovery related to individual causal issues, it could not assess the common existence of the *Deepwater Horizon* disaster and its equal causal impact upon property owners, business owners and others in the Gulf coast under commonality requirement of Rule 23(a)92). The Court could not even determine whether the Class Representatives adequately addressed the varied damages that were caused by the *Deepwater Horizon* disaster in terms of degree and location of the intrusion upon the individual class members because such evidence did not exist. (R. 8138 at page 27 of 125.) (See also R. 91 and R. 91-2 (declaration of Marc Vellrath, Ph.D., CFA, which generally support the BCA Objectors' position on this matter.) The BP defendants attempt to get around this by presenting their experts John Coffee, Jr. and Robert H. Klonoff (R. 8138 at page 25 of 125) to talk about it, but all they can do is gloss over how the parties have met the Rule 23(a) requirements necessary for class certification. For example, Coffee states that since the class members share the same type of claims

(OPA and general maritime) based on the same event and same conduct of the BP defendants, there is no need to address the differences in damages in this case. (R. 7110-3 at pages 23-25 of 41.) Klonoff essentially makes the same points and fails to address the dissimilarities in character and inquiry among the putative class members by relying on general statements and forgoing any rigorous analysis. (R. 7104-3 at page 9 of 68.) But this type of general review is not what *Wal-Mart* demands. Furthermore, without any fact-specific information on the damages of the individual class members, how can the class members be assured that their due process rights are protected?

According to the BCA law firm, which represents the lion's share of objectors in this case, this lack of "commonality" was evident well before the district court concluded that commonality for the class was met in this case so as to approve the Settlement Agreement. During the implementation of the Settlement Program, it became clear that the PSC's universal "one-size-fits-all" approach to assessing claims and providing awards was just not working for numerous individual claims simply due to the marked differences in claimant damages. Since the program could not accommodate these different and varied claims, they needed to be tried

separately. As such, opting out of the Settlement Program became a necessity for the BCA Objectors.

Evidence of a lack of commonality among the various claims in this case was never more evident than in the implementation of the incredibly-detailed Settlement Agreement that contained numerous "interpretation issues" on how to determine individual damages that, for all intents and purposes, just could not be resolved. Too much random guess work was needed to determine whether an individual's claim was eligible for settlement funds or not. Claims were being inconsistently evaluated, NAICS codes were being changed to take people out of eligibility after potential tort deadlines ran, property and loss statements that were "added to" to review process were not outlined in the settlement (which many claimants do not have), and arbitrary boundaries were difficult to understand such that people were being paid different amounts of compensation even though they lived on the two sides of the same street. Even the BP defendants acknowledged that "a number of plaintiffs who otherwise would receive compensation pursuant to the settlement would likely obtain nothing at all". (R. 7114-1 at pages 82-83 of 127.) How can this reflect a compensation program that is able to effectively provide

compensation to all class claimants based upon their common damages in just one simple stroke? The fact is, the Settlement Agreement does not accommodate the various damages of the class members, due to the poor design of the compensation frameworks contained within the Settlement Agreement. As such the Court should hold that the district court abused its discretion by approving the Settlement Agreement knowing it lacked commonality among the class members.

B. The district court failed to conduct a rigorous analysis of evidence supporting the class members' individual damages under the compensation frameworks in order to determine whether the requirements of predominance and superiority under Rule 23(b)(3) were met.

Before certifying a class, a district court must show that the Class Representatives properly determined under Rule 23(b)(3) that common questions within the class "predominate over any questions affecting individual members" and class resolution must be "superior to other available methods for the fair and efficient adjudication of the controversy." *Amchem Products, Inc.* at 615. Reference to the existence of commonality alone will not suffice under this requirement.

Clearing the predominance hurdle requires the court to scrutinize whether the class representatives have sufficiently created a compensation

method that calculates damages on a classwide basis. *Comcast Corp.* at 1433. Specifically, it entails reviewing expert evidence or damage study to determine if the model translates the "*legal theor[ies] of the harmful event* into an analysis of the economic impact *of that event*." *Comcast Corp.* at 1435 (emphasis in original)(quoting Federal Judicial Center, Reference Manual on Scientific Evidence 432 (3d ed. 2011)). In other words, a court must determine whether the damages model (or methodology) properly considers potential class members' damages by tying them to the theories of liability and showing the impact of the wrongful conduct is the same for all class members. *See generally Comcast Corp.* at 1434-1435.

In *Comcast* there was an attempt to show that damages predominated in an antitrust case. An expert model for damages calculations was developed to show that damages were based upon four theories of antitrust impact originally advanced in the litigation. However, as the case progressed, only one theory of impact remained. The court held that the damages model was not accurate for assessing liability in the case and that as such class certification was inappropriate under the predominance requirements of Rule 23(b)(3). *Comcast Corp.* at 1433-1435. The ruling reinforces the requirement of *Wal-Mart* that a court must look beyond the

pleadings and perform a "rigorous analysis" to determine whether both liability and damages are capable of measurement on a classwide basis.

Numerous Fifth Circuit cases have taken the position that as a general matter, certain environmental cases cannot meet the predominance standard of Rule 23(b)(3) because damages must be assessed individually. *See Myers v. BP Am., Inc.* 2009 WL 2341983 (W.D. La. 2009)("claims for personal and emotional injuries arising from exposure to toxic chemicals are inappropriate) citing *Steering Committee v. Exxon Mobile Corp.*, 461 F.3d 598, 601-04 (5th Cir. 2006); *Salvant v. Murphy Oil, USA, Inc.*, 2007 WL 2344912, *1 (E.D. La. 2002) and *Hurd v. Monsanto Co.*, 164 F.R.D. 234, 239-40 (S.D. Ind. 1995). See also *Robertson v. Monsanto Co.,* 287 F. App'x 354 (5th Cir. 2008) (unpublished)(class denied superiority even though individuals located within an alleged plume of contamination due to damages found to be highly individualized), *Madison* at 556 (5th Cir. 2011)(class certification denied under predominance as to whether plaintiffs came into contact with a refinery adjacent to a battlefield released an amount of petroleum coke dust that the plaintiffs alleged migrated over the battlefield), and *In re FEMA Trailer Formaledhyde Products Liab. Litig.*, 72 Fed. R. Serv. 3d 622 (E.D. La. 2008)(predominance not met in a case alleging injuries resulting from

exposure to formaldehyde as a result of occupying temporary housing built by defendant manufacturers).

In this case, the district court erred by failing to assess whether the Class Representatives determined whether there is a common relationship between the individual claims of the class members, and whether their losses involved individual issues of causation. There is no study explaining how the compensation frameworks have been developed in accordance with the various claims of relief stated in the Class Complaint (e.g. general maritime (federal common) law (e.g. negligence, gross negligence, willful conduct, breach of contract), the Oil Pollution Act, other claims for relief (nuisance, trespass, fraudulent concealment) and punitive damages). (R. 6412 at pages 116-139 of 143.)

The Class Representatives attempt to circumvent this deficiency by offering the opinions of Klonoff and Coffee who simply state that the Settlement Agreement is consistent with well-established methodologies for determining economic loss. (R. 7727 at page 36 of 78). Although Klonoff does generally reference federal maritime law and applicable state law in the context of compensatory payments, he does not equate the individual damages of the class members to any particular provision under

these laws. (R. 7101-5 at page 18 of 68; R. 7101-5 at page 28 of 68; R. 7101-5 at page 29 of 68.) He cannot even explain why the various legal and factual differences in the class justify certification.

Even Coffee fails to explain a legal basis for the compensation frameworks, and tries to get around it by offering a weak argument that "common evidence" can be used to substantiate class injury claims. (R. 7110-3 at pages 31, 34 of 41.) But this is not what *Comcast* demands of the Class Representatives. Furthermore the statement that "complex formulas or methods" is needed for a large class such as this one because it brings organization and consistency to the situation is not sufficient to meet the requirements of 23(b)(3) either. (R. 7727 at page 41, 43 of 78).

Without any independent assurance by the district court that it has evaluated whether the Class Representatives have properly designed an expert-approved compensation model in accordance with the legal causes of action in a case under Rule 23(b)(3), the Settlement Agreement compensation frameworks amounts to nothing more than a sub-standard program based on arbitrary measurements. *Comcast Corp.* at 1433. Therefore the Court should hold that the district court abused its discretion

by improperly approving the Settlement Agreement based on a lack of predominance.

b. ***Superiority***. It is a court's obligation not only to assess whether--if tried—a class action case would present intractable management problems, but whether there are "difficulties likely to be encountered in the *management of a class action*." *Amchem Prods., Inc.* at 616, 620 (emphasis added). In considering management issues of the class, the district court serves as a guardian of the rights of absent class members and should pay particular attention to the only true adversaries of a class action—which is the objectors. *See Lane*, 696 F.3d at 830 ("Objectors provide a critically valuable service of providing knowledge from a different point of view, but one that is too often not used effectively.") Since objectors are not aligned with the settling parties and seek to unveil a settlement's weaknesses, they tend to provide district courts with important information and legal argument that would otherwise be absent. (*See*, What the Shutts Opt-Out Right is and What it Ought to Be, 74 U. Kan. L. Rev. 729-764 (2006), pgs. 743, 745.)

As stated herein, once the district court preliminarily approved the Settlement Agreement, the Settlement Program went into effect. (R. 6418.)

From that point forward the court was afforded an unusual opportunity to determine if the Settlement Program was actually working. *Id.* From May to November 2012 the court had approximately five months to gather information on whether the compensation frameworks were truly offering to claimants their entitled damages resulting from the *Deepwater Horizon* disaster. (R. 7863 at page 6.) Unfortunately, according to the BCA law firm, which represented thousands of potential claimants, the program was unwieldy. The BCA law firm, on behalf of the BCA Objectors, notified the district court of the serious problems with the Settlement Program through a number of actual examples. (*See* R. 7224; R. 7863.) The problems were so serious that BCA determined, in the best interest of its clients' due process rights, to opt many of them out of the settlement. (R. 7224 at pages 19-20 of 23.) The court, unfortunately, deliberately ignored these valid concerns, and forced *thousands* of claimants to remain in the class against their due process rights and the requirements of Rule 23(b)(3). (R. 8138; R. 8139.)

II. Whether the district court, prior to certifying the class action settlement, failed to scrutinize the appointments to Class Counsel in order to determine if the members adequately represent the interests of the class.

A. The court failed to scrutinize the qualifications and ability of Class Counsel to manage the class action under Rule 23(g).

Rule 23(a)(4) requires a court to determine whether Class Representatives (e.g. Class Counsel) adequately protected the interests of a class. *Horton v. Goose Creek Independent School District,* 690 F.2d 470, 484 (5th Cir. 1982). Under a settlement landscape, this determination requires a court to review not only recommendations and reputations, but experience of Class Counsel within the class action context. Specifically under Rule 23(g) a district court must consider the following specific factors prior to designating Class Counsel. They include: (1) the work counsel has done in identifying or investigating potential claims in the action, (2) counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in the action, (3) counsel's knowledge of the applicable law, and (4) the resources counsel will commit to representing the class. Rule 23(g)(C)(i)-(iv). Under this analysis, Class Counsel includes Interim Class Counsel. *In re Sensa Weight Loss Litig.,* 2012 U.S. District LEXIS 28178 at *4 (March 2, 2012); *In re Air Cargo Shipping Services Anti-Trust Ligiation*, 240 F.R.D. 56, 57 (E.D.N.Y. 2006).

District courts must scrutinize class settlements with great care to protect the interests of absent class members, eyes wide open to both the

fee-seeking motives of Class Counsel and the preclusion happy motives of defendants. *In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig .*, 55 F.3d 768, 783–800, 801–03 (3d Cir. 1995); see also, e.g., *Lane v. Facebook, Inc .*, 696 F.3d 811, 830 (9th Cir. 2012). Yet in this case the district court committed a reversible legal error when it failed to recognize and consider the Rule 23(g)(C)(i)-(iv) factors prior to appointing both Interim Class Counsel and Class Counsel so as to assure class members that the development of the Settlement Agreement, Notice Program and Settlement Program are sound. As far as the BCA Objectors can tell, no evidence exists in the record for the benefit of either the class members or their counsel of the court's adherence to these requirements. All the court does is rubber stamp the appointments by assuring class members, in essence, not to worry because "[t]here can be no question that the PSC has taken seriously its fiduciary obligations in the best interests of all claimants, both private and governmental" (R. 5022 at page 3) and that Class Counsel exhibited "general experience with class litigation" and recommendation to approve the settlement because it was fair, reasonable and adequate. *Holmes v. Cont'l Can Co .*, 706 F.2d 1144, 1150 (11th Cir. 1983). This lack of transparency and purposeful disregard of its fiduciary duty to properly

evaluate the adequacy of Class Counsel on behalf of the class members—which stems back to when the PSC was created—amounts to an abuse of discretion by the court. Therefore the Court should reverse the district court's approval of the Settlement Agreement.

B. The court failed to consider fiduciary conflicts of proposed Class Counsel in relationship to class members.

Prior to approval of a settlement agreement, a district court must act as a guardian of the absent class members and independently analyze the fairness of the settlement under Rule 23(e). *United States v. City of Miami*, 614 F.2d 1322, 1331 (5th Cir. 1980); *see also In re GM Truck*, 55 F.3d at 785. Granted, courts have recognized a "presumption of fairness" for settlements that are deemed to be the result of "arm's-length negotiations" following "meaningful" or "sufficient" discovery. *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 117 (2d Cir. 2005) (quoting the Manual for Complex Litigation, Third § 30.42 (1995). But this presumption goes out the window when attorney fee allocations create an appearance of being excessive or gigantic. *Amchem Prods., Inc.* at 625; *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 851-852 (1999).

When "class counsel negotiates a settlement agreement before the a class is even certified, court's 'must be particularly vigilant not only for explicit collusion, but also from more subtle signs that class counsel have allowed pursuit of their own self-interests and that of certain class members to infect the negotiations.'" *Dennis v. Kellogg Co.,* 697 F.3d 858, 864 (9th Cir. 2012). Special attention must also be given to a proposed settlement agreement when the record suggests it is driven by attorney fees. *In re General Motors Corp. Pick-up Truck Fuel Tank Litig.*, 55 F.3d 768, 778-779 (3d Cir.1995) Therefore a district court fulfills its "judicial duty to protect the members of a class in class action litigation from lawyers for the class who may, in derogation of their professional and fiduciary obligations, place their pecuniary self-interest ahead of that of the class." *Reynolds v. Beneficial Nat'l Bank*, 288 F.3d 277, 279 (7th Cir. 2002); *United States v. City of Miami*, 614 F.2d 1322, 1331 (5th Cir. 1980).

The Fifth Circuit has provided a specific framework that district courts must utilize for analyzing whether Class Counsel's fee compensation as related to a settlement agreement is just under Rule 23(e). That framework, called the *Johnson* factors, requires a district court to ensure that a fee is reasonable by analyzing the following as related to each

member of Class Counsel: (1) the time and labor required; (2) the novelty and difficulty of the issues; (3) the skill required to perform the legal service adequately; (4) the preclusion of other employment by the attorney because he accepted this case; (5) the customary fee for similar work in the community; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-719 (5th Cir. 1974). *See also, Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632 (5th Cir. 2012), citing *Forbush v. J.C. Penney Co.*, 98 F.3d 817, 823 (5th Cir. 1996) (quoting *Cobb v. Miller*, 818 F.2d 1227, 1232 (5th Cir. 1987).

The PSC assured the class members that during the negotiation of the Settlement Agreement with the BP defendants, compensation of their attorney fees was never an issue. This is completely not true because the Settlement Agreement specifically contains an eye-popping $600,000,000 fee award for the PSC for managing the class action. And there was one small caveat to the generous offer: limit the number of opt-outs to the

Settlement Agreement to a certain number, and if not, the deal was potentially off.

Once the proposed Settlement Agreement was submitted to the district court, the PSC and BP defendants were no longer adversaries to the litigation. At that point in time, their mission was focused on a quick approval of the Settlement Agreement and class certification, with a hopeful bypass of rigorous scrutiny from the court if it could produce a low number of opt-outs. But the $600,000,000 fee linked to the threshold opt-out requirement should have given rise to an inference such that the district court would further investigate into whether the settlement was truly a product of arm's-length negotiations. Yet the district court ignores this warning and basically concludes that because "the total recovery that BP has agreed to provide is uncapped," "there can be no question that the PSC has taken seriously its fiduciary obligations in the best interests of all claimants." R. 5022 at age 3. This boiler-plate approval of the PSC's fee compensation, without an *independent* analysis of the *Johnson* factors and assurance to the class members that a back-door deal to fast-track the approval of a sub-standard Settlement Agreement did not occur against their due process rights, is an abuse of discretion. *Protective Committee v.*

Anderson, 390 U.S. 414, 434 (1968). For that reason alone the Court should remand the case back to the district court for evaluation of the attorney fee award in accordance with the *Johnson* factors.

III. Whether the district court's approval of a complex class settlement notice was fair and practical under Rule 23(c)(2)(B).

In *Phillips Petroleum Co. v. Shutts,* the U.S. Supreme Court has held that due process requires absent class members to be given notice and an opportunity to opt out of a class action when their claims involve money damages. 472 U.S. 797, 811-12 (1985) Such due process requires: (1) adequate notice to the class; (2) an opportunity for class members to be heard and participate; (3) the right of class members to opt out; and (4) adequate representation by the lead plaintiffs. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985). Rule 23 expressly requires the court to order the "best notice that is practicable" in every Rule 23(b)(3) class action. *Eisen v. Carlisle & Jacquelin,* 417 U.S. 156, 176 (1974). The advisory committee notes of 1966 regarding Rule 23 state that "[t]his mandatory notice pursuant to subdivision (c)(2) ... is designed to fulfill requirements of due process to which the class action procedure is of course subject." Thus

because of their due process rights involving their damage claims, individuals must be afforded the right to opt out of a class action.

A. The court failed to ensure that the Plaintiffs-Appellants were provided along with the class notice a reasonable opt-out form in accordance with the requirements of *Phillips Petroleum Co. v. Shutts,* 472 U.S. 797, 811 (1985).

Prior to certifying a class and approving a settlement agreement, a district court must adhere to the notice requirements of Rule 23(b)(3). Under the rule, a notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co*., 339 U.S. 306, 314 (1950); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-175 (1974). The notice should describe the action and the plaintiffs' rights in it.

Due process requires, at a minimum, that an absent class member be provided the opportunity to be removed from the class. According to the U.S. Supreme Court in *Phillips Petroleum Co. v. Shutts,* 472 U.S. 797, 811 (1985) "due process requires at a minimum that an absent plaintiff be provided with an opportunity to remove himself from the class by executing and returning an 'opt out' or 'request for exclusion form' to the

court." Therefore in accordance with due process, it is the defendant, and not the class member, who is required to provide with the notice an exclusion form for the class member to execute. As the Supreme Court of Kansas correctly noted, "[s]ince opt out forms were never sent to class members with the notice in this case, the district court properly determined such forms must be sent in order to meet minimum due process requirements." *Wortman v. Sun Oil Co.*, 241 Kan. 226, 755 P.2d 488, 491 (1987).

In this case the district court's approval of the Settlement Agreement notice without an attached opt-out form is a denial of the BCA Objectors' due process rights to opt out of the class action settlement. Even though the settlement website included a registration form, eight individual loss or damage forms, nine authorizations and tax forms, three forms for personal representatives, two forms concerning individual attorney representation, 39 sworn statement forms, it purposefully neglected to include an opt-out form. (R. 7224 at page 16 of 23.) By not taking the time to create a *practical* form that allows putative class members to remove themselves from the class, the PSSC and BP defendants disregarded the requirement of practicality under Rule 23(2)(B) and *Shutts.* Even the Advisory Committee

on the Federal Rules of Civil Procedure recognized the practicality in providing forms for class members back in March 12, 2001.[4]

B. The court unfairly barred Plaintiffs-Appellants from being excluded from the class through representation of their attorney.

The Supreme Court has recognized that the right of an individual to opt out of a class is a procedural due process right inherent in the Fourteenth Amendment to the U.S. Constitution. *Phillips Petroleum Co. v. Shutts* 472 U.S. 797, 811 (1985); *Zadvydas v. Davis*, 533 US 678, 693 (2001). Due process, as noted by the Fifth Circuit ensures that "deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case."' *In re Nissan Motor Corp. Antitrust* Litig., 552 F.2d 1088, 1103–04 (5th Cir. 1997). Even the Seventh Circuit has noted that "due process requires notice reasonably calculated to provide actual notice of the proceeding and a meaningful opportunity to be heard." *Nazarova v. INS*, 171 F.3d 478, 482- 83 (7th Cir.1999).

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[4] http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/Agenda%20Books/Civil/CV2001-03.pdf: pgs. 180-201. Also included in the Addendum to this brief.

Every class member in this case has an equal right to participate in the class action, but those rights and how to act on them can only be given through proper notification. Proper notification, or notice, provides the structural assurance of fairness that permits representative parties to bind absent class members. The 'assurance of fairness' can only be achieved if the class is adequately reached with a notice that is easy to understand and act upon. *Amchem Prods., Inc.* at 627. Yet according to a 2004 survey of class action suits between 1993 and 2003 reported that "on average, less than 1 [one] percent of class members opt out and about [one] percent of class members object to class-wide settlements."[5] While it depends on the particular case, it is generally assumed that most who fail to opt out do so out of lack of motivation.[6] But that is not always the case. In large class actions, it is well recognized that despite the best efforts of notice programs, not everyone can be reached, especially disenfranchised populations.

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[5] Theodore Eisenberg & Geoffrey Miller, *The Role of Opt-Outs and Objectors in Class Action Litigation: Theoretical and Empirical Issues*, 57 VAND. L. REV. 1529, 1532 (2004).

[6] *Id.* at 1561-62.

The district court goes into detail describing the adequacy of the Notice Program associated with this case. (R. 8139; R. 8138.) Yet like all notice programs, the one associated with this case is not perfect, nor has it assured with 100% accuracy that all its members have been contacted and understand the notice requirements. (R. 8138 at pages 71-72 of 125.)

Rule 23(a) ensures that for class members who do not opt-out of a class, their due process rights are adequately represented by the Class Counsel. But who protected the interests of putative class members' due process rights to opt-out of the class that potentially encompass future litigation rights? Certainly not the Class Representatives whose mission was to ensure a limited number of opt-out to the settlement. And who was protecting the rights of individuals who for whatever reason could not understand or be contacted to timely write and return an opt-out request associated with their due process rights? As noted by the U.S. Supreme Court, it can be the *lawyer* who represents the constitutional rights of the client. *See*, *Fare v. Michael C.*, 442 U.S. 707, 719 (1979) ("the lawyer is the one person to whom society as a whole looks as the protector of the legal rights of that person.") It is the lawyer duty to protect the right of "Each plaintiff…[who] has a significant interest in individually controlling the

prosecution of [his case]"; each "has a substantial stake in making individual decisions on whether and when to settle." *Amchem* at 616. That protection includes making sure clients retain considerable control over the disposition of their property interests, especially when they are threatened by administrative or judicial processes. *See generally Mullane* at 657-658.

Protection of the due process rights of individuals, who are opted out of a class action can be accomplished through individual counsel under the agency principles afforded under the attorney-client relationship which allows the attorney to file documents in court on behalf of the client. See *Newell v. Brown*, 187 Ga. App. 9, 369 S.E.2d 499, 501 (1988) (noting in dicta that "if an attorney signs an acknowledgement of service [on] behalf of an alleged client, the attorney is then estopped to deny his lack of authority to act".)

Under the attorney client relationship, clients must be able to rationally rely upon their attorneys to act in the client's best interest within the scope of the representation. As fiduciaries of their clients, attorneys must place the interests of clients ahead of their own. Even Rule 11(a) states that anyone who presents to the court, by signing, filing, submitting or later advocating, a pleading, written motion to other paper, certifies

compliance with Rule 11. That signature alone implies certain representations to the Court that if not met could subject the attorney to sanctions. Fed. R. Civ. Pro. 11(b) & 11(c).

Unlike the usual class action where thousands of putative class members are not represented by counsel, the BCA law firm represents thousands of individuals affected by the *Deepwater* Horizon disaster. These clients are under contract with the BCA firm and the firm in turn represents them though signed Power of Attorney forms. To deny the firm's ability to represent its clients and protect their due process interest in litigation against the BP defendants in this class action is in contradiction of *Phillips Petroleum Co. v. Shutts* 472 U.S. 797, 811 (1985) and Rule 11 of the Federal Rules of Civil Procedure, and violates the Due Process and Equal Protection Clause of the U.S. Constitution. Other class actions in the United States recognize that a signature may be provided on behalf of a class member, as shown in the "Pfizer Securities Litigation Notice of Pendency of Class Action, dated February 10, 2011" in the U.S. District Court for the Southern District of New York, NO. 04-CV-9866.[7]

[7] http://scas.issproxy.com/pdf/29112-Notice_of_Pendency_of_Class_Action.pdf ¶ 19.

CONCLUSION

Once BP's counsel Mr. Godfrey made the announcement in the Fairness Hearing that BP had agreed not to terminate the Settlement Agreement because sealed opt-out "numbers" were not exceeded, the appearance of a conflict of interest between the PSC and other plaintiff firms (representing thousands of putative class members) began to arise. Before that time, a conflict was not evident. Now, upon further investigation, it became apparent that the PSC rushed the development of the Settlement Agreement so as to ensure the "sealed' opt-out number was not exceeded, and its attorney fee was secured. It then was understood, within that context, why objectors had received so much push back from the PSC, despite the fact that they legitimately brought forth valid concerns about the design of the Settlement Agreement, implementation of the Settlement Program and distribution of the Notice Program. This rush to "close the deal" was supported by a district court that failed to protect the interests of all class members while ignoring the Rule 23 requirements to scrutinize the class settlement. The end result was a Settlement Program mired in implementation problems. Therefore in light of what is now known, and in order to bring justice and fairness back into the class, the

BCA Objectors request that the Court remand the case back to the district court and provide instructions for a rigorous re-review of the class action certification requirements and the Settlement Agreement under Rules 23(a) and 23(b)(3), including a revision of the opt-out requirements such that class members can properly protect their due process rights.

Respectfully submitted,

/s/ Brent W. Coon
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CERTIFICATE OF SERVICE

I certify that this document has been filed with the Clerk of the Court and served by ECF on July 12, 2013, upon:

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CERTIFICATE OF ELECTRONIC COMPLIANCE

Counsel also certifies that on July 12, 2013, this brief was transmitted to the Clerk of the United States Court of Appeals for the Fifth Circuit, via the Court's CM/ECF Document Filing System, https://ecf.ca5.uscourts.gov/. Counsel further certifies that: (1) required privacy redactions have been made, 5TH CIR. R. 25.2.13; (2) the electronic submission is an exact copy of the paper document, 5TH CIR. R. 25.2.1; and (3) the document has been scanned with the most recent version of Symantec Endpoint Protection and is free of viruses.

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CERTIFICATE OF COMPLIANCE

With Type-Volume Limitation, Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 13,014 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Book Antinqua 14-point type face.

Dated: July 12, 2013

/s/ Brent W. Coon
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APPENDIX

Filing Date	#	Docket Text
8/10/2010	1	TRANSFER ORDER FROM THE MDL PANEL transferring 77 actions to the Eastern District of LA and becoming part of MDL 2179.
8/10/2010	2	PRETRIAL ORDER #1 - Setting the Initial Pretrial Conference for 9/17/2010 09:30 AM before Judge Carl Barbier. Signed by Judge Carl Barbier on 8/10/2010. (Attachments: # (1) Schedule A, # (2) Schedule B)
8/11/2010	4	PRETRIAL ORDER #3: ORDERED that the time limitation contained in Local Rule 23.1B requiring that class certification be requested by Plaintiffs within 91 days of filing a class action complaint, is suspended & extended until further order of this Court. FURTHER ORDERED that the following motions are now set for hearing, with ORAL ARGUMENT, on Friday, 9/17/2010 at 9:30 a.m.: Motion to Intervene, In re: Deepwater Horizon, 10-CV-1156 (E.D. La. 2010), (Rec. Doc. 271); Motion to Remand, In re: Deepwater Horizon, 10-CV-1156, (Rec. Doc. 276); Motion to Remand, In re: Deepwater Horizon, 10-CV-1156, (Rec. Doc. 304); Motion to Remand, In re: Deepwater Horizon, 10-CV-1156, (Rec. Doc. 309); Motion for Judicial Disclosure, In re: Deepwater Horizon, 10-CV-1156, (Rec. Doc. 435); & Motion to Intervene, In re: Deepwater Horizon, 10-CV-1156, (Rec. Doc. 475); Motion to Remand, Louisiana State v. B.P. Exploration & Production Inc., 10-CV-1757 (E.D. La. 2010) (Rec. Doc. 9); and Motion to Remand, Louisiana State v. B.P. Exploration & Production Inc., 10-CV-1758 (E.D. La. 2010) (Rec. Doc. 7). Any oppositions to these motions shall be filed in accordance with the local rules. Also, in the interim & prior to the initial in-court status hearing, currently set for 9/17/10, the Court ORDERS that all protective orders &

		stay orders issued in In re: Deepwater Horizon, 10-CV-1156, remain in effect. Signed by Judge Carl Barbier on 8/11/10. (Ref: 10-2179)(sek,) . (Main Document 4 replaced on 8/12/2010) (sek,). (Entered: 8/11/2010)
8/16/2010	14	MOTION to Appoint Counsel Ervin A. Gonzalez to Plaintiffs' Steering Committee by Plaintiff.
8/25/2010	80	STATUS REPORT by Plaintiffs' Interim Co-Liaison Counsel.
8/26/2010	91 91-2	OBJECTIONS to the Economic and Property Damages Settlement Agreement filed by Halliburton Energy Services, Inc.. (Attachments: # (1) Exhibit Ex. 1 Cover, # (2) Exhibit Decl of Vellrath
8/27/2010	106	MOTION to Appoint Counsel Mikal C. Watts to Plaintiffs' Steering Committee.
9/7/2012	144	OBJECTIONS to the Economic and Property Damages Settlement Agreement filed by MRI, LLC et al. (Attachments: # 1 Exhibit Ex. A - Declaration of DIPOA, # 2 Exhibit Ex. B - Declaration of MRI, # 3 Exhibit Ex. C - Declaration of Geoffrey C. Hazard, Jr., # 4 Exhibit Ex. D - Map of Dauphin Island, # 5 Exhibit Ex. E - Objectors List)(Kuykendall, Frederick) Modified on 9/11/2012 (gec,).
8/31/2010	146	Application for Appointment to the Plaintiffs' Steering Committee by Jeffrey A. Breit.
9/7/2010	173	Application of Rhon E. Jones for Plaintiffs' Steering Committee (Attachments: # (1) Exhibit A).
9/14/2010	223	Application of Paul M. Sterbcow for Plaintiffs' Steering Committee.
9/15/2010	235	Application of Scott Summy, Esq. of Baron & Budd, P.C. for Appointment to the Plaintiffs' Steering Committee.
9/17/2010	261	Application for Appointment to the Plaintiffs' Steering Committee by Matthew E. Lundy.
9/21/2010	309	Application of Robin L. Greenwald to Plaintiffs' Steering Committee.
9/23/2010	322	Request for Application of Elizabeth J. Cabraser for

		Appointment to Plaintiffs' Steering Committee.
9/23/2010	324	Request: Application of Calvin C. Fayard, Jr. for Appointment to PSC.
9/23/2010	325	Request: Application for Appointment of Michael C. Palmintier To Plaintiff Steering Committee.
9/23/2010	326	Request: Application of Brian H. Barr for Appointment to the Plaintiffs Steering Committee.
9/24/2010	335	Request: Application of Conrad S.P. Williams, III for Appointment to Plaintiffs' Steering Committee (Attachments: # (1) Exhibit).
9/24/2010	337	Request: Application of Joseph F. Rice to the Plaintiffs' Steering Committee.
9/24/2010	340	Request: Application of Alphonso Michael "Mike" Espy and Morgan & Morgan for Plaintiffs' Steering Committee.
9/24/2010	347	Memorandum: Application of Philip F. Cossich, Jr. for Appointment to the Plaintiffs' Steering Committee (Attachments: # (1) Proposed Order).
9/27/2010	359	Request: Application of Robert T. Cunningham for Appointment to Plaintiffs' Steering Committee.
10/8/2010	506	PRETRIAL ORDER #8: The Court hereby appoints the following members to the Plaintiffs' Steering Committee: Brian H. Barr, Jeffrey A. Breit, Elizabeth J. Cabraser, Philip F. Cossich, Jr., Robert T. Cunningham, Alphonso Michael Espy, Calvin C. Fayard, Jr., Robin L. Greenwald, Ervin A. Gonzalez, Rhon E. Jones, Matthew E. Lundy, Michael C. Palmintier, Paul M. Sterbcow, Scott Summy, Mikal C. Watts. Additionally, the Court appoints Plaintiffs Liaison Counsel, James Parkerson Roy and Stephen J. Herman, together with Brian Barr and Scott Summy, to comprise the Plaintiff Executive Committee. Duties & responsibilities are as set forth in order.
10/8/2010	508	PRETRIAL ORDER #9: re Plaintiffs' Counsel's Time and Expense Submissions.
10/15/2010	550	TRANSCRIPT of Status Conference held on September

		16, 2010 before Judge Carl J. Barbier. Court Reporter/Recorder Cathy Pepper, Telephone number (504) 589-7779. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Parties have 21 days from the filing of this transcript to file with the Court a Redaction Request. Release of Transcript Restriction set for 1/13/2011.
12/15/2010	879	MASTER COMPLAINT against All Defendants (number 053L-2739296)
2/2/2011	1098	ORDER & REASONS that Motion to Supervise Ex Parte Communications with Putative Class [912] is GRANTED IN PART: ORDERED that Defendant BP, through its agents Ken Feinberg, Feinberg Rozen LLP, & the Gulf Coast Claims Facility, & any of their representatives, in any of their oral or written communications with claimants, shall refrain from certain activity as set forth in document and should fully disclose & advise claimants as set forth in document; FURTHER ORDERED that the parties shall submit additional briefing on the question of whether and how BP as the responsible party is fully complying with the mandates of OPA, for example, in the processing of claims for "interim, short-term damages," or "final damages," methodologies for evaluation of claims, and the release forms required of claimants.
2/3/2011	1101	TRANSCRIPT of Status Conference held on January 28, 2011 before Judge Carl J. Barbier
2/9/2011	1128	First Amended Master Answer to Complaint & Petition of Triton Asset Leasing GmbH, et al for Exoneration From or Limitation of Liability (Rule 9(h)); First Amended Master Claim in Limitation (10-2771)(Rule 9(h)) & First Amended Master Complaint, Cross-Claim, & 3rd-Party Complaint for Private Economic Losses in Accordance with PTO #11 (CMO #1), Section III(B1) (B1

		Bundle) re [879] Complaint *for Non-Governmental Economic Losses ("B1 Bundle")* filed by plaintiffs (Reference: B1 Bundle Cases; No.10-2771)(Herman, Stephen) Modified text on 2/9/2011
8/8/2011	3638	ORDER: The Court at this time invites requests for appointment or reappointment of the Plaintiffs' Steering Committee and Plaintiff Executive Committee. Any such request shall be filed not later than September 9, 2011.
8/26/2011	3830	ORDER AND REASONS GRANTING IN PART, DENYING IN PART (as set forth in document) Defendants' Motions to Dismiss the B1 Master Complaint - Rec Docs. [1440], [1390], [1429], [1597], [1395], [1433], [1414], [2107].
10/5/2011	4226	PRETRIAL ORDER NO. 46 - Appointing Plaintiffs' Co-Liaison Counsel, Plaintiff Executive Committee, and Plaintiffs' Steering Committee; in accordance with [3638]
11/7/2011	4507 4507-1	MOTION to Establish Account and Reserve for Litigation Expenses by Plaintiffs' Co-Liaison Counsel, Plaintiffs' Steering Committee. (Attachments: # (1) Memorandum in Support, # (2) Proposed Order, # (3) Exhibit A - Fosamax Order, # (4) Exhibit B - Zimmer Hip Order, # (5) Exhibit C - Gadolinium Order)
11/21/2011	4682	RESPONSE/MEMORANDUM in Opposition filed by Plaintiff re [4507] MOTION to Establish Account and Reserve for Litigation Expenses.
11/22/2011	4696	RESPONSE/MEMORANDUM in Opposition filed by BP Defendants re [4507] MOTION to Establish Account and Reserve for Litigation Expenses.
12/28/2011	5022	ORDER AND REASONS Establishing Reserve Account re [4507] Motion to Establish Account and Reserve for Litigation Expenses. Signed by Judge Carl Barbier.
3/2/2012	5950	EXPARTE/CONSENT MOTION to Enroll Stephen K. Guidry and David L. Merkley as Additional Counsel of Record by Defendant Transocean Offshore Deepwater Drilling, Inc. (Attachments: # (1) Proposed Order)

3/5/2012	5960	ORDER Appointing James Parkerson Roy and Stephen J. Herman as Interim Class Counsel.
4/18/2012	6266 6266-1	Joint MOTION for Settlement *for Economic and Property Damage/PreliminaryApproval* by Plaintiffs Steering Committee, through Interim Class Counsel, and Defendants BP Exploration & Production Inc., BP America Production Company. (Attachments: # (1) Memorandum in Support, # (2) Exhibit 1 (Azari Declaration), # (3) Exhibit 2 (Kinsella Declaration), # (4) Exhibit 3 (Wehatman Declaration), # (5) Proposed Order)
4/18/2012	6269	MOTION for Conditional and Preliminary Certification of Economic and Property Damage Class for Settlement Purposes, MOTION for Appointment of Class Representative, and MOTION for Appointment of Class Counsel by Interim Class Counsel, and the Plaintiffs' Steering Committee. (Attachments: # (1) Memorandum in Support, # (2) Exhibit A - Class Definition, # (3) Exhibit A-1 (Gulf Coast Area), # (4) Exhibit A-2 (Specified Waters))(Reference: All Cases (including No. 12-970)
4/18/2012	6276 6276-46	NOTICE of Filing of Economic and Property Damages Settlement Agreement by Plaintiffs and BP Exploration & Production Inc., BP America Production Company re [6266] Joint MOTION for Settlement *for Economic and Property Damage/Preliminary Approval*. (Attachments: # (1) Exhibit DWH Economic and Property Damages Settlement Agreement, # (2) Exhibit List, # (3) Exhibit 1A (Map of Economic Loss Zones), # (4) Exhibit 1B (Geographic Definition of Zones), # (5) Exhibit 1C (Zone Classifications and Implementation), # (6) Exhibit 2 (Tourism Definitions), # (7) Exhibit 3 (Seafood Distribution Claim Definitions), # (8) Exhibit 4A (Documentation Requirements for Business Economic Loss Claims), # (9) Exhibit 4B (Causation Requirements for Business Economic Loss Claims), # (10) Exhibit 4C (Compensation Framework for Business Economic Loss Claims), # (11) Exhibit 4D (Attachment A

		- Compensation Framework for Business Economic Loss Claims - Fixed and Variable Claims), # (12) Exhibit 4E (Addendumto Compensation for Business Economic Loss Claims - Compensation for Spill-Related Cancellations), # (13) Exhibit 5 (Compensation for Multi-Facility Businesses), # (14) Exhibit 6 (Failed Business Compensation Framework), # (15) Exhibit 7 (Framework for Start-Up Business Claims), # (16) Exhibit 8A (Framework for Individual Economic Loss Claims), # (17) Exhibit 8B (Individual Economic Loss Claims Examples), # (18) Exhibit 8C (Addendum Regarding Compensation Related to a Claimants Loss of Employment Related Benefits Income as a Result of the DWH Spill), # (19) Exhibit 8D (Addendum to Individual Framework), # (20) Exhibit 8E (Addendum Regarding Interviews of Claimants Alleging Individual Economic Loss and Other Individuals Providing Sworn Statements in Support of Such Claim), # (21) Exhibit 9 (Framework for Subsistence Claims), # (22) Exhibit 10 (Seafood Compensation Program), # (23) Exhibit 11A (Compensation Framework for Coastal Real Property Claims), # (24) Exhibit 11B (Appendix A to Compensation Framework for Coastal Real Property Claims - Coastal Real Property Claim Zone Map), # (25) Exhibit 11C (Appendix D to Compensation Framework for Coastal Real Property Claims - Eligible Parcel Compensation Category Map), # (26) Exhibit 12A(Compensation Framework for Wetlands Real Property Claims), # (27) Exhibit 12B (Appendix A to Compensation Framework for Wetlands Real Property Claims - Wetlands Real Property Claim Zone Map), # (28) Exhibit 12C (Appendix C to Compensation Framework for Wetlands Real Property Claims - Eligible Parcel Compensation Category Map), # (29) Exhibit 12D (Appendix D to Compensation Framework for Wetlands Real Property Claims - Area of Potential Eligibility Map), # (30) Exhibit 13A (Compensation Framework for Real

		Property Sales), # (31) Exhibit 13B (Appendix A Real Property Sales Compensation Zone Map), # (32) Exhibit 14 (Compensation Framework for Vessel Physical Damage Claims), # (33) Exhibit 15 (RTP Chart), # (34) Exhibit 16 (Excluded Industries Chart), # (35) Exhibit 17 (Oil & Gas Industry Exclusions), # (36) Exhibit 18 (Economic Loss and Property Class Definition Exclusions), # (37) Exhibit 19 (Industry Types Subject to Review by Claims Administrator for Potential Moratoria Losses), # (38) Exhibit 20 (Other Released Parties), # (39) Exhibit 21 (Assignment and Protections), # (40) Exhibit 22 (Gulf Coast Area Map), # (41) Exhibit 23 (Specified Gulf Waters Map), # (42) Exhibit 24A (BP Corporation North America Inc. Guarantee), # (43) Exhibit 24B (BP PLC Back-up Guarantee), # (44) Exhibit 25 (Procedures for Filing and Briefing of Appeals), # (45) Exhibit 26 (Individual Release), # (46) Exhibit 27 (Fees and Costs))(Reference: 12-970)(Haycraft, Don) Modified on 4/18/2012 (blg).
4/24/2012	6350	RESPONSE/MEMORANDUM in Opposition filed by Defendant Halliburton Energy Services, Inc. re [6269] MOTION to Certify Class *for Settlement Purposes*, [6267] Joint MOTION for Settlement */Medical Preliminary Approval*, [6272] MOTION to Certify Class *for Settlement Purposes*, [6266] Joint MOTION for Settlement *for Economic and Property Damage/Preliminary Approval*. (Reference: ALL CASES; 10-2771)(Godwin, Donald) Modified on 4/25/2012 (blg).
5/2/2012	6412	AMENDED COMPLAINT *(Economic and Property Damage Class Complaint)* against Defendants filed by Plaintiffs Bon Secour Fisheries, Inc., et al. (Reference: No. 12-970 (and "B1" Bundle Cases))(Herman, Stephen) Modified on 5/3/2012 (blg).
5/2/2012	6418	ORDER re Rec. Doc. [6266], [6269], [6276] and [6414], preliminarily and conditionally certifying the Economic and Property Damages Settlement Class and preliminarily approving the proposed Economic and

		Property Damages Class Settlement.
5/3/2012	6430-1 6430-46	NOTICE of Filing of the Economic and Property Damages Settlement Agreement as Amended on 5/2/2012, and as Preliminarily Approved by the Court on 5/2/2012 by Plaintiffs, and Defendants BP Exploration & Production Inc. and BP America Production Company. (Attachments: # (1) DEEPWATER HORIZON Economic and Property Damages Settlement Agreement as Amended on May 2, 2012, # (2) Amended Economic and Property Damages Exhibit List Index, # (3) Exhibit 1A, # (4) Exhibit 1B, # (5) Exhibit 1C, # (6) Exhibit 2, # (7) Exhibit 3, # (8) Exhibit 4A, # (9) Exhibit 4B, # (10) Exhibit 4C, # (11) Exhibit 4D, # (12) Exhibit 4E, # (13) Exhibit 5, # (14) Exhibit 6, # (15) Exhibit 7, # (16) Exhibit 8A, # (17) Exhibit 8B, # (18) Exhibit 8C, # (19) Exhibit 8D, # (20) Exhibit 8E, # (21) Exhibit 9, # (22) Exhibit 10, # (23) Exhibit 11A, # (24) Exhibit 11B, # (25) Exhibit 11C, # (26) Exhibit 12A, # (27) Exhibit 12B, # (28) Exhibit 12C, # (29) Exhibit 12D, # (30) Exhibit 13A, # (31) Exhibit 13B, # (32) Exhibit 14, # (33) Exhibit 15, # (34) Exhibit 16, # (35) Exhibit 17, # (36) Exhibit 18, # (37) Exhibit 19, # (38) Exhibit 20, # (39) Exhibit 21, # (40) Exhibit 22, # (41) Exhibit 23, # (42) Exhibit 24A, # (43) Exhibit 24B, # (44) Exhibit 25, # (45) Exhibit 26,# (46) Exhibit 27)(Reference: 10md2179; 12-970)(Haycraft, Don) Modified on 5/4/2012 (blg).
6/15/2012	6684	ORDER: Setting caps on individual attorneys' fees; IT IS ORDERED that contingent fee arrangements for all attorneys representing claimants/plaintiffs that settle claims through either or both of the Settlements will be capped at 25 percent plus reasonable costs. The Claims Administrator is directed to require a certification by the attorney that his or her fees comply with this Order. The Claims Administrator shall not make any disbursements until the attorney provides this certification. IT IS FURTHER ORDERED that an individual attorney who believes a departure

		from the 25 percent cap is warranted will be permitted to object and submit evidence to the Court for consideration.
7/2/2012	6831-1	MOTION to Vacate *Preliminary Approval Order [As to the Proposed Economic and Property Damages Class Action Settlement]* by Selmer M. Salvesen. (Attachments: # (1) Memorandum in Support, # (2) Exhibit A - GCCF Status Report, 3/7/2012, # (3) Exhibit B - Plaintiff's Memorandum in Support of his Motion to Vacate Order & Reasons [As to Motions to Dismiss the B1 Master Complaint])(Reference: ALL CASES)(Donovan, Brian) Modified on 7/3/2012
8/13/2012	7101-2 7101-5 7101-7 7101-8 7101-10	EXPARTE/CONSENT MOTION for Leave to File *Memorandum (in Support of Economic Class Settlement) in Excess of Ordinary Page Limitations* by Plaintiffs Economic and Property Damage Class Representatives. (Attachments: # (1) Proposed Order, # (2) Proposed Pleading Memorandum in Support of Final Approval of Economic and Property Damages Class Settlement, # (3) Exhibit A (in globo) - Seafood Compensation Fund, # (4) Exhibit B (in globo) – GCCF Stated Methodologies, # (5) Affidavit Klonoff, # (6) Affidavit Issacharoff, # (7) Affidavit Herman, # (8) Affidavit Rice - Negotiations, # (9) Affidavit Rice - Seafood Program, # (10) Affidavit Rice - Fees, # (11) Affidavit Bon Secour, # (12) Affidavit Friloux, # (13) Affidavit Gallo, # (14) Affidavit Ft Morgan Realty, # (15) Affidavit GW Fins, # (16) Affidavit Hutto, # (17) Affidavit Irwin, # (18) Affidavit Kee, # (19) Affidavit Tesvich, # (20) Affidavit LKEU, # (21) Affidavit Lundy, # (22) Affidavit Guidry, # (23) Affidavit PCB Dolphin Tours, # (24) Affidavit Sellers, # (25) Affidavit Zeke's)(Reference: B1 Cases; VoO Charter Cases; Bon Secour No.12-970)(Herman, Stephen)
8/13/2012	7104-3 7104-4	MEMORANDUM IN SUPPORT OF FINAL APPROVAL OF ECONOMIC AND PROPERTY DAMAGES CLASS SETTLEMENT by Plaintiffs. (Attachments: # (1) Exhibit A, # (2) Exhibit B, # (3)

		Expert Report - Klonoff, # (4) Affidavit Issacharoff, # (5) Affidavit Herman, # (6) Affidavits: Rice -Negotiations, Rice-Seafood Program, Rice-Fee, Bon Secur, Friloux, Gallo, Ft. Morgan Realty, GW Fins, Hutto, Irwin, Kee, Tesvich, LKEU, Lundy, Guidry, PCB Dolphin Tours, Sellers, Zeke's)(Reference: Cases in Pleading Bundle B1,and * VoO Charter Dispute Cases, 12-970)
8/13/2012	7110-3	NOTICE by Class Counsel, BP Exploration & Production Inc., and BP America Production Company *of Joint Filing of the Declarations of Cameron R. Azari;Daniel J. Balhoff; John C. Coffee, Jr.; Meade Monger; and John W. Perry, Jr.*. (Attachments: # (1) Exhibit A, # (2) Exhibit B, # (3) Exhibit C, # (4) Exhibit D, # (5) Exhibit E)(Reference: ALL CASES, 12-970)(Haycraft, Don) Modified on 8/14/2012
	7114 7114-4 7114-5 7114-9 7114-11 7114-12 7114-13 7114-14 7114-15 7114-16 7114-17 7114-18 7114-19 7114-20 7114-22 7114-23	MOTION for Final Approval of Deepwater Horizon Economic and Property Damages Settlement Agreement as Amended on May 2, 2012 by Defendants BP Exploration & Production Inc. and BP America Production Company. (Attachments: # (1) Memorandum in Support, # (2) Exhibit 1, # (3) Exhibit 2, # (4) Exhibit 3, # (5) Exhibit 4, # (6) Exhibit 5, # (7) Exhibit 6, # (8) Exhibit 7, #(9) Exhibit 8, # (10) Exhibit 9, # (11) Exhibit 10, # (12) Exhibit 11, # (13)Exhibit 12, # (14) Exhibit 13, # (15)Exhibit 14, # (16) Exhibit 15, # (17) Exhibit16, # (18) Exhibit 17, # (19) Exhibit 18, # (20) Exhibit 19 (Part 1), # (21) Exhibit19 (Part 2), # (22) Exhibit 20, # (23) Exhibit 21, # (24) Exhibit 22)(Reference: ALL CASES, 12-970)(Haycraft, Don) Modified on 8/15/2012 (gec,). (Entered:8/14/2012)
8/31/2012	7224	(Clerk re-filed in case 10-7777) OBJECTIONS by Plaintiffs TAI et al *to the Economic Class Settlement* (Attachments: # (1) Memorandum in Support, # (2) Exhibit 1, # (3) Exhibit 2, # (4) Exhibit 3, # (5) Exhibit 4)(Reference: 10-2771, SDTX 12-22886, NDFL 3:11-189, 4:11-6055, Unfiled Economic and Property Damages

		Class Members)(Coon, Brent) Modified on 9/5/2012 (gec,). Modified on 9/13/2012 (gec,).
10/22/2012	7726-4	NOTICE *of Filing of the Supplemental Declarations of Cameron R. Azari; Daniel J. Balhoff; Stephen Cirami; John Coffee; Meade Monger; David Odom and John Perry, Jr.* by Class Counsel, BP Exploration & Production Inc., and BP America Production Company. (Attachments: # (1) Exhibit A, # (2) Exhibit B, # (3) Exhibit C, # (4) Exhibit D, # (5) Exhibit E, # (6) Exhibit F, # (7) Exhibit G)(Reference: ALL CASES & 12-970)(Haycraft, Don) Modified text on 10/23/2012
10/22/2012	7727 7727-4	REPLY to Response to Motion filed by All Plaintiffs re [7114] MOTION for Final Approval of Deepwater Horizon Economic and Property Damages Settlement Agreement as Amended on May 2, 2012 . (Attachments: # (1) Exhibit A revision (re Seafood Program), # (2) Exhibit C (Summary of Objections), # (3) Exhibit D (in globo) (GCCF Winding Down), # (4) Affidavit Klonoff - Supplemental Report, # (5) Affidavit Greenwald, # (6) Exhibit Haycraft Ltr (VoO Offset), # (7) Exhibit BP Submission (VoO Offset), # (8) Exhibit Cantor Ltr (VoO Offset), # (9) Exhibit Ltr to Wilson (Customer Mix), # (10) Exhibit Citizen Article, # (11) Exhibit Palmer Orders)(Reference: B1 Cases; VoO Charter Disputes; No.12-970; No.10-7777)
10/22/2012	7731 7731-1	*Reply in Support of BP Defendants' Motion for Final Approval of the Deepwater Horizon Economic and Property Damages Settlement As Amended on May 2,2012* by BP Defendants. (Attachments: # (1) Exhibit 1, # (2) Exhibit 2, # (3) Exhibit 3,# (4) Exhibit 4, # (5) Exhibit 5, # (6) Exhibit 6, # (7) Exhibit 7, # (8) Exhibit 8, # (9) Exhibit 9, # (10) Exhibit 10, # (11) Exhibit 11, # (12) Exhibit 12, # (13) Exhibit 13, # (14) Exhibit 14)(Reference: ALL CASES & 12-970)(Haycraft, Don) Modified text on 10/23/2012
11/15/2012	7892	TRANSCRIPT of Final Fairness Hearing held on November 8, 2012 before Judge Carl J. Barbier. Court Reporter/Recorder Cathy Pepper, Telephone

		number (504) 589-7779. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Parties have 21 days from the filing of this transcript to file with the Court a Redaction Request. Release of Transcript Restriction set for 2/13/2013.
12/21/2012	8138	ORDER & REASONS Granting Final Approval of the Economic and Property Damages Settlement Agreement as set forth in document. Signed by Judge Carl Barbier on 12/21/12. (Reference: No. 12-970, Bon Secour Fisheries, Inc., et al. v. BP Exploration & Production Inc., et al. and All Actions)
1/25/2013	8349-1	NOTICE OF APPEAL by Plaintiffs Earl Aaron et al as to [8138] ORDER & REASONS, [8139] ORDER AND JUDGMENT. (Fee previously paid) (Attachments: # (1) Exhibit 1)(Reference: 10-7777, 12-970, 12-2953, 12-964, 10-2771)(Coon, Brent) Modified on 1/28/2013