

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JOSEPH A. KUNSTLER, individually and	*	CIVIL ACTION NO. 10-1345
on behalf of all other similarly situated	*	
individuals;	*	SECTION: "I-5"
	*	
BAY E. INGRAM, individually and on behalf of	*	JUDGE AFRICK
all other similarly situated individuals;	*	
	*	MAGISTRATE CHASEZ
HAROLD H. CUMMINS, individually and on	*	
behalf of all other similarly situated individuals;	*	
	*	
FARREL WEIL, JR., individually and on behalf	*	
of all other similarly situated individuals;	*	
	*	
versus	*	
	*	
BP, P.L.C.; BP EXPLORATION & PRODUCTION,*	*	
INC.; BP PRODUCTS NORTH AMERICA, INC.;	*	
BP AMERICA, INC.; TRANSOCEAN, LTD.;	*	JURY TRIAL DEMANDED
TRANSOCEAN OFFSHORE DEEPWATER	*	
DRILLING, INC.; TRANSOCEAN DEEPWATER,*	*	
INC.; ANADARKO E&P COMPANY LP;	*	
ANADARKO PETROLEUM CORPORATION;	*	
MOEX OFFSHORE 2007 LLC;	*	
HALLIBURTON ENERGY SERVICES, INC.;	*	
CAMERON INTERNATIONAL CORPORATION,*	*	
f/k/a COOPER CAMERON CORPORATION; and *	*	
M-I, L.L.C. (USING TRADE NAME "SWACO") *	*	
* * * * *	*	

FIRST AMENDED AND RESTATED CLASS ACTION COMPLAINT

NOW INTO COURT, through undersigned counsel, come Plaintiffs, Joseph A. Kunstler, Bay E. Ingram, Harold H. Cummins, and Farrel Weil, Jr., individually and on behalf of all other

similarly situated individuals, to submit this First and Amended and Restated Class Action Complaint.

Federal Rule of Civil Procedure 15(a)(1) allows the Plaintiffs and Class Members to amend their Complaint once as a matter of course, as this First Amended and Restated Class Action Complaint is being filed prior to service of a responsive pleading by any Defendant to the original Class Action Complaint.

Therefore, Plaintiffs and the Class Members respectfully assert the following:

INTRODUCTION

1.

The captioned matter is a class action brought pursuant to Federal Rule of Civil Procedure 23 to recover damages suffered by Plaintiffs and the Class Members (as defined herein) as a result of the oil spill that has resulted from the fire, explosion, and subsequent sinking of the oil drilling rig *Deepwater Horizon* on April 20, 2010, in 5,000 feet of water, on the Outer Continental Shelf adjacent to the Louisiana coast. As a result of said explosion and sinking of the *Deepwater Horizon*, crude oil has been leaking from the oil well drilled by the *Deepwater Horizon* at a rate estimated at approximately 5,000 barrels (210,000 gallons) per day. The resulting oil slick has grown daily, located in the waters adjacent to the southern Louisiana coast, and has begun to impact the land masses which comprise the Louisiana coast. The oil slick caused by the sinking of the *Deepwater Horizon* has caused, and will continue to cause, severe damage and destruction upon the Gulf of Mexico's and the State of Louisiana's marine environments, coastal environments, estuarine areas, waters, and marine species. These areas are used by the Plaintiffs and all Class Members for different activities, including all recreational saltwater privileges conferred by the State of Louisiana, such as fishing. The State of Louisiana

has issued an extensive ban on all fishing in the areas affected by the oil spill and it is anticipated that the ban will be continued into the foreseeable future. As a result of the oil spill, the Plaintiffs and the Class Members will not be able to exercise the rights granted to them by the State of Louisiana pursuant to the valid recreational saltwater licenses they hold.

PARTIES

PLAINTIFFS

2.

Made Plaintiffs herein are: (1) Joseph A. Kunstler, a citizen and domiciliary of the State of Louisiana, Parish of East Baton Rouge; (2) Bay E. Ingram, a citizen and domiciliary of the State of Louisiana, Parish of St. Tammany; (3) Harold H. Cummins, a citizen and domiciliary of the State of Louisiana, Parish of Orleans; and (4) Farrel Weil, Jr., a citizen and domiciliary of the State of Louisiana, Parish of Orleans; all who hold a valid Louisiana saltwater fishing license lawfully issued by the State of Louisiana, and all who engage in activities using the privilege granted unto them by the State of Louisiana pursuant to such licenses.

DEFENDANTS

3.

Made Defendants herein are:

- (A) Transocean, Ltd., (“Transocean, Ltd.”) a foreign corporation doing business in the State of Louisiana and within this district;
- (B) Transocean Offshore Deepwater Drilling, Inc., (“Transocean Offshore”) a foreign corporation doing business in the State of Louisiana and within this district;
- (C) Transocean Deepwater, Inc., (“Transocean Deepwater”) a foreign corporation doing business in the State of Louisiana and within this district;

(D) BP, P.L.C., (“BP”) a foreign corporation doing business in the State of Louisiana and within this district;

(E) BP Products North America, Inc., (“BP Products”) a foreign corporation doing business in the State of Louisiana and within this district;

(F) BP America, Inc., (“BP America”) a foreign corporation doing business in the State of Louisiana and within this district;

(G) BP Exploration & Production, Inc., (“BP E&P”) a foreign corporation doing business in the State of Louisiana and within this district;

(H) Anadarko E&P Company LP, (“Anadarko E&P”) a foreign corporation doing business in the State of Louisiana and within this district;

(I) Anadarko Petroleum Corporation, (“Anadarko Petroleum”) a foreign corporation doing business in the State of Louisiana and within this district;

(J) MOEX Offshore 2007 L.L.C., (“MOEX”) a foreign limited liability company doing business in the State of Louisiana and within this district;

(K) Halliburton Energy Services, Inc., (“Halliburton Energy”) a foreign corporation doing business in the State of Louisiana and within this district;

(L) Cameron International Corporation (f/k/a Cooper Cameron Corporation), (“Cameron”) a foreign corporation doing business in the State of Louisiana and within this district; and

(M) M-I, L.L.C. (using the trade name “SWACO”), (“SWACO”) a foreign limited liability company doing business in the State of Louisiana and within this district.

JURISDICTION AND VENUE

4.

This Honorable Court has jurisdiction over this class action pursuant to (1) 28 U.S.C. § 1332(d)(2), as the matter in controversy exceeds the sum or value of \$5,000,000.00, exclusive of interest and costs, and it is a class action brought by citizens of a state different from the state of any defendant; (2) 28 U.S.C. § 1331, because the claims asserted herein arise under the laws of the United States of America, including the laws of the State of Louisiana, the adjacent State, which have been declared pursuant to 43 U.S.C. §§ 1331(f)(1) and 1333(a)(2), to be the law of the United States for that portion of the Outer Continental Shelf from which the oil spill originated; (3) 43 U.S.C. § 1332(1) and 43 U.S.C. § 1349(b)(1), which extends exclusive federal jurisdiction to the Outer Continental Shelf; and (4) 28 U.S.C. § 1332, as the matter in controversy exceeds \$75,000, exclusive of interest and costs, and is between citizens of different states and citizens of a state and subjects of a foreign state.

5.

Prosecution of this action in this district is proper pursuant to 28 U.S.C. §§ 1391(a)(2) and 1391(b)(2) because all of the events or omissions giving rise to the claims asserted herein occurred in this district, and pursuant to 28 U.S.C. § 1411(a), as the captioned matter demands a jury trial, and 43 U.S.C. § 1349(b)(1), as the captioned matter involves an operation conducted on the Outer Continental Shelf which involves exploration, development, or production of the minerals of the subsoil and seabed of the Outer Continental Shelf and as this is a judicial district of the State nearest the place the cause of action arose.

FACTUAL ALLEGATIONS

6.

Transocean, Ltd., Transocean Offshore, and Transocean Deepwater (collectively “Transocean”) are the owners and/or operators of the *Deepwater Horizon*, a semi-submersible mobile drilling rig, which was performing completion operations for BP, BP Products, BP America, and/or BP E&P on the Outer Continental Shelf, at the site from which the oil spill originated on April 20, 2010, and its continued spread until the present time and the foreseeable future.

7.

BP, BP Products, BP E&P, and BP America (collectively “BP Companies”), Anadarko E&P, Anadarko Petroleum (collectively “Anadarko”), and MOEX are the owners of a lease granted by the Minerals Management Service (“MMS”) which allows them to drill for oil and perform oil production related operations at the site of the oil spill, and on April 20, 2010, and did operate the oil well which is the source of the oil spill. BP Companies is the designated operator of the lease. BP Companies, Anadarko, and MOEX as lessees, as well as Transocean, are jointly and solidarily responsible for all activities of the *Deepwater Horizon* and for all damages and relief requested herein.

8.

Cameron manufactured and/or supplied the blow-out preventer (“BOP”) for the *Deepwater Horizon*, which failed to operate following the explosion on the *Deepwater Horizon*, and which should have prevented the oil spill. The BOP was defective, as it failed to operate as intended by not stopping the oil spill. Crews were unable to activate the BOP to stop the oil spill. As such, Cameron is liable to the Plaintiffs and the Class Members pursuant to the

Louisiana Products Liability Act, La. R.S. 9:2800.51, *et seq.*, as well as being liable for negligence.

9.

A study commissioned by the MMS in 2004 singled out Cameron's BOPs for relying on calculations to determine the needed strength of certain components of the BOPs in deep water conditions, as opposed to actual testing of the components in deep water conditions, finding Cameron used "shear forces lower than required or desired in many cases." The MMS study demonstrated that the Cameron BOP was unreasonably dangerous in construction or composition, in design, because of inadequate warnings related to the use of "shear forces lower than required or desired in many cases," and because of nonconformity to express warranties.

10.

Halliburton Energy ("Halliburton") was handling the cementing operations on the *Deepwater Horizon* well and well cap at the time of the explosion which led to the oil spill. The cementing operations were conducted negligently, increasing the pressure at the well and allowing highly combustible gas to escape from the well and ignite. Problems with cementing operations were identified as factors in 18 of 39 well blowouts in the Gulf of Mexico from 1992 to 2006.

11.

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

12.

The Board of Directors of Transocean, Ltd. eliminated executive bonuses last year in response to the company's woeful safety record, which includes the death of four Transocean

workers in 2009. The Board of Directors took the step of eliminating the bonuses to “underscore the company’s commitment to safety” and to give executives an incentive to prevent future accidents. Eleven Transocean workers died in the explosion on the *Deepwater Horizon*. Transocean, Ltd. has displayed a complete lack of regard for the safety of its workers and the safe and proper operation of its drilling rigs, which has resulted in the oil spill at issue.

13.

The BP Companies also have a history of poor safety and maintenance. At its Texas City, Texas refinery, on March 23, 2005, explosions killed fifteen workers and injured 170, as a result of hydrocarbon vapors being discharged from refinery components as a result of increases in pressure in the components. The incident was caused by BP personnel not following procedures, supervisory personnel not being present or doing their jobs, and using out-of-date procedures. In Prudhoe Bay, Alaska, in March, 2006, BP discharged over 250,000 gallons of crude oil from a corroded pipeline it maintained, shutting down America’s largest oil field. The spill was the largest in Alaska, with the exception of the *Exxon Valdez* disaster, and occurred as a result of BP’s lack of maintenance on the pipeline. Two years prior to the spill, BP had been advised about corrosion problems in its pipes. In November, 2007, BP was fined \$20 million for the discharge pursuant to the Clean Water Act.

14.

The fire and explosion on the *Deepwater Horizon*, its sinking, and the resulting oil spill were caused by the negligence and/or gross negligence of all Defendants, which renders them liable jointly, severally, and solidarily unto the Plaintiffs and the Class Members for all of their damages.

15.

The injuries and damages suffered by Plaintiffs and the Class Members were caused by the Defendants' violations of numerous statutes and regulations, including, but not limited to, statutes and regulations issued by OSHA and the U.S. Coast Guard, including the requirement to test the sub-sea BOP at regular intervals.

16.

Defendants knew the dangers associated with deep water drilling and failed to take appropriate measures to prevent damage to the Plaintiffs, Class Members, Louisiana's and the Gulf of Mexico's marine and coastal environments, estuarine areas, marine species, and the Coastal Zone, where Plaintiffs and Class Members exercised recreational saltwater privileges conferred by the State of Louisiana.

17.

The spilled oil has not and will not evaporate off the surface of the water and is causing dangerous environmental contamination of the Gulf of Mexico adjacent to and abutting Louisiana and its shorelines, necessitating an order from the State of Louisiana suspending fishing in the waters and adjacent areas affected by the oil spill. Therefore, the oil spill has caused and will continue to cause the loss for the Plaintiffs and the Class Members of using the Gulf of Mexico and Louisiana territorial waters for activities including the exercise of all recreational saltwater privileges conferred by the State of Louisiana, the enjoyment of fishing and utilization of the catch.

18.

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

CLASS DEFINITION

19.

Plaintiffs bring this action on behalf of themselves and all other similarly situated individuals, who are members of the following Class (*i.e.*, the “Class” or “Class Members”):

All natural persons who possess a valid recreational saltwater fishing, trawling, crabbing, and/or oyster tong license issued by the State of Louisiana who have sustained a deprivation of their rights to engage in recreational fishing, trawling, crabbing, or oystering activities in the saltwaters of the State of Louisiana and offshore therefrom as a direct and proximate result of the April 20, 2010, fire, explosion, and sinking which occurred on the *Deepwater Horizon* drilling rig and the oil spill which has resulted therefrom.

20.

Excluded from the Class are the officers and directors of any of the Defendants, any judge or judicial officer assigned to this matter and his or her immediate family, and any legal representative, successor, and/or assign of any excluded person(s) or entity(ies).

CLASS ACTION ALLEGATIONS

21.

(A) Numerosity of the Class:

The proposed class is so numerous that joinder is impractical. According to the Louisiana Department of Wildlife and Fisheries, as stated on its website, 487,421 natural persons possess a Louisiana recreational saltwater license which grants those persons a saltwater privilege of some sort, be it fishing, trawling, crabbing, or oyster tonging. The disposition of the

claims asserted herein through this class action will be more efficient and will benefit the parties and the Court.

22.

(B) Predominance of Common Questions of Law and Fact:

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

1. Whether Defendants caused and/or contributed to the fire, explosion, and oil spill;
2. Whether Defendants' actions were negligent and/or grossly negligent;
3. Whether the fire, explosion, and oil spill have caused environmental or other damage to the waters where the Plaintiffs and Class Members exercise the privilege granted unto them by the State of Louisiana; and
4. The extent to which the Class Members are prohibited from using their recreational Louisiana saltwater fishing, trawling, crabbing, and/or oystering license privileges.

23.

(C) Typicality:

The Plaintiffs and Class Members have suffered similar harm as a result of Defendants' actions.

24.

(D) Adequacy of Representation:

Plaintiffs will fairly and adequately represent and protect the interests of the Members of the Class because their interest does not conflict with the interests of the Class Members they

seek to represent. Plaintiffs have no claims which are antagonistic to the Class. Plaintiffs have retained counsel competent and experienced in complex class action litigation.

25.

(E) Superiority:

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

26.

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

(A) The prosecution of separate actions by hundreds of thousands of individual Class Members would create a risk of inconsistent or varying adjudications with respect to individual Class Members, thus establishing incompatible standards of conduct for Defendants;

(B) The class action process affords cost effective adjudication for Class Members with meritorious claims having relatively small damages and promotes justice for such individuals.

(C) The prosecution of separate actions by individual Class Members would also create the risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Class Members who are not parties to such adjudications and would substantially impair or impede their ability to protect their interests; and

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

FIRST CAUSE OF ACTION (NEGLIGENCE AND/OR GROSS NEGLIGENCE)

27.

Plaintiffs, on behalf of themselves and the Class Members, repeat, reiterate, and reallege each allegation set forth above as if copied fully herein.

28.

The fire, explosion, and resulting oil spill were all caused by the concurrent negligence and/or gross negligence of the Defendants in violation of the following non-exclusive statutes, Louisiana Civil Code articles 2315, 2316, 2317, 2317.1, 2320, and/or 2322.

29.

Upon information and belief, Plaintiffs aver that the fire, explosion, and resulting oil spill were caused by the joint negligence and/or gross negligence and fault of the Defendants in the following non-exclusive particulars:

(A) Failing to properly operate the *Deepwater Horizon*;

- (B) Operating the *Deepwater Horizon* in such a manner that a fire and explosion occurred onboard, causing the *Deepwater Horizon* to sink, resulting in an oil spill, which is ongoing;
- (C) Failing to properly inspect the *Deepwater Horizon* to assure that its equipment, appurtenances, and personnel were fit for their intended purpose;
- (D) Acting in a careless and negligent manner without due regard for the safety of others;
- (E) Failing to promulgate, implement, and/or enforce rules and regulations pertaining to the safe operation of the *Deepwater Horizon* which, if they had been so promulgated, implemented, and/or enforced, would have averted the fire, explosion, sinking, and oil spill complained of herein;
- (F) Operating the *Deepwater Horizon* with untrained, poorly trained, and/or unlicensed personnel;
- (G) Inadequate and negligent training and hiring of personnel;
- (H) Failing to take appropriate action to avoid or mitigate the accident;
- (I) Negligent implementation of policies and procedures to safely conduct offshore operations in the deep water of the Gulf of Mexico;
- (J) Failing to properly train their employees;
- (K) Failing to ascertain if the *Deepwater Horizon* and its equipment and appurtenances were free from defects, vices, and/or in proper working order;
- (L) Failure to timely warn;
- (M) Failure to timely bring the oil release under control or to bring the oil release under control at all;
- (N) Failure to provide appropriate, functioning accident prevention equipment;

- (O) Failure to observe and read gauges that would have indicated excessive pressures in the well;
- (P) Failure to properly react to danger signs of impending catastrophe;
- (Q) Utilizing a BOP which did not work properly or at all;
- (R) Conducting well and well cap cementing operations improperly;
- (S) Using substandard equipment and materials; and
- (T) Such other acts of negligence and omissions as will be shown at trial or discovered during the course of litigation of this matter, all of which acts are in violation of the laws of Louisiana and federal law applicable on the Outer Continental Shelf.

30.

Defendants are liable jointly, severally, and solidarily liable to the Plaintiffs and Class Members pursuant to the Louisiana duty/risk analysis for the Defendants' negligent and/or grossly negligent acts.

31.

Defendants had a duty to conform their conduct in such a manner as to assure that a fire, explosion, sinking, and resulting oil spill would not occur from the *Deepwater Horizon* pursuant to federal and Louisiana law.

32.

Defendants failed to conform their conduct to the appropriate legal standard, thereby breaching their duty to conform their conduct in such a manner as to assure that a fire, explosion, sinking, and resulting oil spill would not occur from the *Deepwater Horizon* pursuant to federal and Louisiana law.

33.

Defendants substandard conduct in failing to prevent the fire, explosion, sinking, and resulting oil spill from the *Deepwater Horizon* pursuant to federal and Louisiana law was the cause-in-fact of the injuries, harm, and damages suffered by the Plaintiffs and the Class Members.

34.

Defendants substandard conduct in failing to prevent the fire, explosion, sinking, and resulting oil spill from the *Deepwater Horizon* was the legal cause of the Plaintiffs' and the Class Members' injuries, harm, and damage.

35.

Plaintiffs and the Class Members all suffered actual damage, injury, and harm as a direct and proximate cause of the Defendants' conduct and/or omissions, as detailed below.

36.

It was foreseeable that the conduct and/or omissions taken by the Defendants, resulting in the fire, explosion, sinking, and resulting oil spill from the *Deepwater Horizon*, would proximately cause the damage, injury, and harm complained of to individuals situated like the Plaintiffs and the Class Members, as defined above.

37.

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

38.

BP, P.L.C. has taken responsibility for the oil spill and cleaning up the oil spill, as BP Chief Executive Tony Hayward has issued a statement on the BP website that BP is "... taking full responsibility for the spill and we will clean it up." BP, P.L.C. has therefore admitted its liability for the oil spill.

39.

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

40.

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

41.

Plaintiffs and the Class Members are entitled to a judgment finding Defendants liable unto the Plaintiffs and the Class Members for damages suffered as a result of Defendants'

negligence and/or gross negligence and awarding Plaintiffs and the Class Members adequate compensation therefore in amounts determined by the trier of fact.

SECOND CAUSE OF ACTION (LOUISIANA PRODUCTS LIABILITY ACT)

42.

Plaintiffs, on behalf of themselves and the Class Members, repeat, reiterate, and reallege each allegation set forth above as if copied fully herein.

43.

Defendant, Cameron International Corporation (“Cameron”), is indebted to the Plaintiffs and Class Members pursuant to the Louisiana Products Liability Act, La. R.S. 9:2800.51, *et seq.*, as Cameron manufactured and/or supplied the blow-out preventer (“BOP”) for the *Deepwater Horizon*, which failed to operate following the explosion on the *Deepwater Horizon*, and which should have prevented the oil spill. The BOP was defective, as it failed to operate as intended by not stopping the oil spill. Crews were unable to activate the BOP to stop the oil spill.

44.

The BOP manufactured by Cameron was unreasonably dangerous in construction or composition, as the BOP, at the time it left Cameron’s control, deviated in a material way from the performance standards for the product.

45.

The BOP was unreasonably dangerous in design, as the BOP, at the time it left Cameron’s control, there existed an alternative design for the product that was capable of preventing the Plaintiffs’ damage and at the time the BOP left Cameron’s control, the likelihood that the BOP’s design would cause the Plaintiffs’ damage and the gravity of that damage

outweighed the burden on the manufacturer of adopting such alternative design and the adverse effect of such alternative design on the utility of the BOP.

46.

The BOP was unreasonably dangerous because of inadequate warning, as the BOP because an inadequate warning had not been provided by Cameron when the BOP left Cameron's control, the BOP possessed a characteristic that caused damage, that Cameron failed to use reasonable care to provide an adequate warning of the characteristic and its danger to users and handlers of the BOP, and/or Cameron learned of the dangerous characteristics of its BOP after the BOP left Cameron's control, by not using reasonable care to provide an adequate warning of the BOP's dangerous characteristics to the users and handlers of the BOP.

47.

The BOP was unreasonably dangerous because it did conform to an express warranty made at the time by Cameron about the BOP, as said express warranty induced other of the Defendants to use the BOP and the Plaintiffs' damage was proximately caused because the express warranty was untrue.

48.

A study commissioned by the U.S. Mineral Management Service in 2004 singled out Cameron's BOPs for relying on calculations to determine the needed strength of certain components of the BOPs in deep water conditions, as opposed to actual testing of the components in deep water conditions, finding Cameron used "shear forces lower than required or desired in many cases." The MMS study demonstrated that the Cameron BOP was unreasonably dangerous in construction or composition, in design, because of inadequate warnings related to

the use of “shear forces lower than required or desired in many cases,” and because of nonconformity to express warranties, as detailed above.

OIL POLLUTION ACT

49.

Plaintiffs and the Class Members have submitted claims for damages to BP, P.L.C., a responsible party, pursuant to 33 U.S.C. § 2713. Should the responsible party not satisfy the Plaintiffs’ and the Class Members’ claims, Plaintiffs and the Class Members reserve the right to amend this civil action to seek damages pursuant to the Oil Pollution Act, 33 U.S.C. § 2701, *et seq.*

DAMAGES

50.

Plaintiffs and the Class Members have suffered one or more of the following non-exclusive damages:

- (A) Loss of the right of use of the Gulf of Mexico and Louisiana saltwater areas due to the existence of the oil released by the sinking of the *Deepwater Horizon*;
- (B) Loss of the right of use of the Gulf of Mexico and Louisiana saltwater areas due to the existence of booms in various areas which have been placed to block the oil released by the sinking of the *Deepwater Horizon*;
- (C) Loss of the right of use and privileges of the recreational saltwater permits issued by the State of Louisiana due to the oil from the oil spill forcing a ban on fishing;
- (D) Loss of enjoyment of fishing, trawling, crabbing, and/or oystering;
- (E) Costs and inconvenience suffered by the closure of harbors, marinas, boat launches, and waterways;

- (F) Costs and inconvenience of trailering boats and other equipment away from the areas affected by the oil spill;
- (G) Inconvenience of boats being trapped in an area blocked by the oil spill;
- (H) Loss of the subsistence of the seafood caught during fishing, trawling, crabbing, and/or oystering trips;
- (I) Loss of the prorated amount of the recreational saltwater permits issued by the State of Louisiana for fishing, trawling, crabbing, and/or oystering;
- (J) Loss associated with the unusable costs of boats, insurance, and other items purchased to engage in the saltwater recreational activities; and
- (K) Costs and inconvenience of arranging for the storage of boats and other equipment moved from the areas affected by the oil spill.

TRIAL BY JURY DEMANDED

51.

Plaintiffs and the Class Members are entitled to trial by jury as to all causes of action alleged and as to all Defendants and do hereby demand said trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, Joseph A. Kunstler, Bay E. Ingram, Harold H. Cummins, and Farrel Weil, Jr., and the Class Members, pray for judgment in their favor and against the Defendants, jointly, severally, and solidarily, as follows:

- (A) For an Order certifying the Class for the purpose of going forward with any one or all of the causes of action alleged herein and appointing the Plaintiffs as Class Representatives, and appointing undersigned counsel as counsel for the Class;

- (B) Damages in amounts to be determined at trial, but not less than \$5,000,000.00, as required by the Class Action Fairness Act, which establishes one of this Court's bases of jurisdiction to hear this matter;
- (C) Pre-judgment and post-judgment interest at the maximum rate allowed by law;
- (D) Attorney's fees and all costs of this litigation;
- (E) Such other and further relief available under all applicable state and federal laws and any relief the Court deems just and appropriate; and
- (F) Trial by jury as to all Defendants.

Respectfully submitted:

/s/ W. Christopher Beary

W. Christopher Beary, T.A. (Bar #22253)

R. Ray Orrill, Jr. (Bar #10239)

William R. DeJean (Bar #22762)

ORRILL, CORDELL & BEARY, L.L.C.

330 Carondelet Street

New Orleans, Louisiana 70130

wcb@ocblaw.com

rroj@ocblaw.com

wrd@ocblaw.com

Telephone: (504) 299-8724; Fax: (504) 299-8735

Counsel for Plaintiffs and the Class