

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

KEY WEST TIKI CHARTERS, INC.,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

TRANSOCEAN, LTD., BP, p.l.c.,
TRANSOCEAN OFFSHORE DEEPWATER
DRILLING, INC.,
TRANSOCEAN DEEPWATER, INC.,
BP PRODUCTS NORTH AMERICA, INC.,
HALLIBURTON ENERGY SERVICES, INC.,
CAMERON INTERNATIONAL CORPORATION
f/k/a COOPER CAMERON CORPORATION
and BP AMERICA, INC.,

Defendants.

CASE NO.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff, KEY WEST TIKI CHARTERS, INC., by and through undersigned counsel, brings this action on its own behalf and on behalf of a Class of persons defined below against Defendants, TRANSOCEAN, LTD., BP, p.l.c., TRANSOCEAN OFFSHORE DEEPWATER DRILLING, INC., TRANSOCEAN DEEPWATER, INC., BP PRODUCTS NORTH AMERICA, INC., HALLIBURTON ENERGY SERVICES, INC., CAMERON INTERNATIONAL CORPORATION f/k/a COOPER CAMERON CORPORATION and BP AMERICA, INC., and for its Complaint alleges, upon information and belief and based on the investigation to date of its counsel, as follows:

INTRODUCTION

1. This is a class action, brought pursuant to Rule 23 of the Federal Rules of Civil Procedure, to recover damages suffered by Plaintiff and the Class Members as a result of the oil spill that resulted from the explosion and fire aboard, and subsequent sinking of the oil rig Deepwater Horizon (hereinafter Deepwater Horizon or Oil Rig) on April 20, 2010, at about 10:00 p.m. central time on the outer Continental Shelf, off the Louisiana coast. Following the sinking of the Oil Rig, approximately 4,000 – 5,000 barrels per day of crude oil have been leaking from the oil well upon which the Deepwater Horizon was performing completion operations, and from the pipe connected to it (drill stack). The fast-moving oil slick, which has grown to 100 miles long by 45 miles wide, and has already caused detrimental affects upon the Gulf of Mexico's and Florida's marine environments, coastal environments and estuarine areas, which are used by Plaintiffs and all others similarly situated for various activities, including fishing and other income producing activities.

THE PARTIES

2. Plaintiff, KEY WEST TIKI CHARTERS, INC., is a Florida corporation with its principal place of business located at 2004 Patterson Avenue, Key West, Florida. The business is owned and operated by Michael D. Burge, President.

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

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

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

6. Defendant, BP, p.l.c. (BP), is a foreign corporation doing business in the State of Florida.

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

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

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

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

JURISDICTION AND VENUE

11. This Court has jurisdiction over this class action pursuant to (1) 28 U.S.C. § 1332, as the amount 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 that is different from the State where at least one of the Defendants is incorporated or does business; (2) 28 U.S.C. § 1331, because the claims asserted herein arise under the laws of the United States of America, including the laws of the State of Florida which have been declared, pursuant to 43 U.S.C. § 1331(f)(1) and § 1333(a)(2), to be the law of the United States for that portion of the outer Continental Shelf from which the oil spill originated; and (3) 43 U.S.C. § 1331(a), which extends exclusive Federal jurisdiction to the outer Continental Shelf.

12. Venue in this Judicial District is proper pursuant to 28 U.S. C. § 1391(a) as a substantial part of the events and omissions giving rise to the claim occurred, and a substantial part of property that is the subject of this action is situated in this Judicial District.

FACTUAL ALLEGATIONS

13. 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 and BP America on the outer Continental Shelf, at the site from which the oil spill now originates, on April 20, 2010.

14. BP, BP Products and BP America (collectively “BP”) are the holders of a lease granted by the Minerals Management Service that allows BP to drill for oil and perform oil-production-related operations at the site of the oil spill and on April 20, 2010 operated the oil well that is the source of the oil spill.

15. Upon information and belief, Cameron manufactured and/or supplied the Deepwater Horizon’s blow-out-preventers (“BOPs”) that failed to operate upon the explosion, which should have prevented the oil spill. The BOPs were defective because they failed to operate as intended.

16. Halliburton was engaged in cementing operations of the well and well cap and, upon information and belief, improperly and negligently performed these duties, increasing the pressure at the well and contributing to the fire, explosion and resulting oil spill.

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

18. The fire and explosion on the Deepwater Horizon, its sinking and the resulting oil spill were caused by the negligence of Defendants, which renders them liable jointly and severally, to Plaintiff and all others similarly situated for all their damages.

19. The injuries and damages suffered by Plaintiff and the Class Members were caused by Defendants’ violations of numerous statutes and regulations, including, but not limited to,

statutes and regulations issued by OSHA and the United States Coast Guard, including the requirement to test the sub-sea BOPs at regular intervals.

20. Defendants knew of the dangers associated with deep water drilling and failed to take appropriate measures to prevent damage to Plaintiff, the Class Members, Florida's and the Gulf of Mexico's marine and coastal environments and estuarine areas, and the Coastal Zone, where Plaintiff and the Class Members conduct their business and earn a living.

21. Upon information and belief, Defendants intentionally and recklessly chose not to install that appropriate safety measures on the Deepwater Horizon that, if installed, would have prevented or minimized the amount of oil spilled into the Gulf of Mexico.

22. The spilled oil does not simply evaporate from the water's surface and is causing dangerous environmental contamination of the Gulf of Mexico and its shorelines, threatening Florida's sensitive marine, wetland and estuarine areas.

23. The spilled oil also threatens one of Florida's most financially important industries – tourism. In 2009, Florida hosted approximately 80 million visitors who generated an economic impact of \$57 billion on Florida's economy.

24. Much of the economic impact of tourism in Florida can be traced directly or indirectly to the coastal communities and local businesses that exist on or near Florida's 663 miles of beaches popular to travelers and vacationers from around the world.

25. In particular, the City of Key West, Florida and the business operating therein are vitally dependent on the tourism industry. The attractions, hotels/inns, golf courses, fishing charters, dive shops, eco-tour operators, retail stores, marinas, campgrounds and restaurants are just some of the Key West businesses that owe their economic survival to vacationing tourists.

26. Once it became clear that early oil spill containment efforts had failed, the tourism industry in Florida was immediately affected. Businesses along the Florida panhandle and down the

Florida west coast that cater to tourists began experiencing an unusually high rate of cancellations of reservations and bookings. Despite the fact that no oil had actually washed up on a Florida beach, the news reports were ominous and tourists, particularly those from out of state, were simply unwilling to take any chances that their vacations might be adversely affected by the oil spill.

27. On May 19, 2010, the United States Coast Guard reported that a small portion of the oil spill had entered the Gulf of Mexico's "loop current" and that oil from the spill could reach the Florida straits within a week. Almost immediately, Key West businesses suffered from even fewer numbers of tourists. Moreover, there have been numerous reports of cancellations of upcoming summer travel to the Florida Keys and particularly Key West.

28. Plaintiff's business relies almost exclusively on tourism to generate revenue. As a result of the oil spill and the detrimental effect it has played and continues to play on the tourism trade in Florida, Plaintiff has experienced a significant decrease in customers that appears to be getting worse by the day. This reduction in customer attendance has resulted in significant lost business revenue with no immediate sign of relief.

29. The oil spill and the contamination have caused and will continue to cause loss of revenue to businesses such as Plaintiff's and the Class Members' that are economically dependent on Florida tourism.

30. There are many other potential affects from the oil spill that have not yet become known, and Plaintiff reserves the right to amend this Complaint once additional information becomes available.

CLASS ACTION ALLEGATIONS

31. Plaintiff brings this action on behalf of itself and all others similarly situated, as members of the proposed Plaintiff's class. The proposed class is initially defined as:

All Florida businesses and citizens who derive income from the Florida "Coastal Zone" as that term is defined in 43 U.S.C. § 1331(e), and who have

sustained any legally cognizable loss and/or damages as a result of the April 20, 2010 fire and explosion which occurred aboard the Deepwater Horizon mobile offshore drilling rig and the oil spill resulting therefrom. Excluded from the class are the Defendants in this action, and entity(s) in which the Defendants have a controlling interest, any employees, officers or directors of Defendants, and the legal representatives, heirs, successors and assigns of Defendants.

32. *Numerosity of the Class* - Fed. R. Civ. P. 23(a)(1): The members of the proposed class are so numerous that separate joinder of each member is impracticable. Pursuant to Local Rule 23.1, Plaintiff estimates the approximate size of the class to be in excess of one thousand. The disposition of the claims asserted herein through this class action will be more efficient and will benefit the parties and the Court.

33. *Predominance of Common Questions of Fact and Law* - Fed.R.Civ.P. 23(a)(2): Common questions of fact and law predominate over the questions affecting only individual class members. These common factual questions include, but are not limited to, the following:

- a. Whether, and to what extent, Defendants caused and/or contributed to the fire, explosion and continuous oil spill;
- b. Whether Defendants' actions were negligent;
- c. Whether the fire, explosion and oil spill have caused environmental or other damage;
- d. Whether, and to what extent, Defendants engaged in abnormally dangerous activities for which they are strictly liable;
- e. Whether Defendants negligently maintained and/or operated the mobile offshore drilling unit Deepwater Horizon;
- f. Whether Defendants negligently failed to take reasonable measures to contain the oil spill;
- g. Whether Defendants collectively and/or individually owed a duty to Plaintiff and the proposed class it seeks to represent to maintain the Deepwater Horizon and/or to

conduct drilling operations in a manner so as to prevent the discharge and/or substantial threat to discharge of oil into or upon the Gulf of Mexico and/or the shore of Florida;

- h. Whether Defendants are strictly liable to Plaintiff and the Class Members;
- i. Whether Plaintiffs and proposed class members were injured by the Defendants' acts or omissions, and, if so, the appropriate class-wide measured of damages.

34. *Typicality* - Fed. R. Civ. P. 23(a)(3): Plaintiff's claims are typical of the claims of the proposed Class because Defendants engaged in common course of conduct that gave rise to the claims of Plaintiff and all proposed Class Members and the claims are based on the same legal theories.

35. *Adequacy of Representation* - Fed. R. Civ. P. 23(a)(4): Plaintiff will fairly and adequately represent and protect the interests of the class because (i) Plaintiff has retained counsel experienced in the prosecution of such litigation and counsel will adequately represent the interests of the class, (ii) Plaintiff and its counsel are aware of no conflicts of interest between Plaintiff and absent class members or otherwise; and (iii) Plaintiff is knowledgeable concerning the subject matter of this action and will assist counsel in the prosecution of this litigation.

Plaintiff is representative of the proposed class because its interests do not conflict with the interests of the members of the class they seek to represent. Plaintiff adequately and truly represents the interests of the members of the absent class members. Plaintiff and all Class members have been damaged by reason of the Defendants' conduct. The interests of Plaintiffs are coextensive with the interests of the proposed class members, with common rights of recovery based on the same essential facts. Plaintiffs have retained counsel competent and experienced in complex environmental class action litigation and Plaintiffs intend to pursue this action vigorously. Plaintiffs

and their counsel will fairly and adequately protect the interests of the member of the proposed class.

36. This action has been brought and may be properly maintained pursuant to the provisions of Fed. R. Civ. P. 23(b)(2) and (b)(3) and the case law there under.

37. *Superiority* - A class action provides a fair and efficient method for adjudicating this controversy and is superior to the other available methods of adjudication in that (i) neither the size of the class, nor any other factor, make it likely that difficulties will be encountered in the management of this class as a class action; (ii) the prosecution of separate actions by individual class members, or the individual joinders of all class members in this action is impracticable and would create a massive and unnecessary burden on the resources of Courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of each member of the class, (iii) because of the disparity of resources available to Defendants versus those available to individual class members, prosecution of separate actions would work a financial hardship on many class members, and (iv) the conduct of this action as a class action conserves the resources of the parties and the Court system and protects the rights of each member of the class and meets all due process requirements as to fairness to all parties. A class action is also superior to maintenance of these claims on a claim by claim basis when all actions arise out of the same circumstances and course of conduct.

COUNT I - NEGLIGENCE

38. Plaintiff, KEY WEST TIKI CHARTERS, INC., readopts and realleges the allegations set forth in paragraphs 1 through 37 as though fully set forth herein.

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

40. Defendants owed a duty of reasonable care to Plaintiffs in the operation and maintenance of Deepwater Horizon.

41. Defendants breached this duty by:

- a. Operating the Deepwater Horizon in such a manner that a fire and explosion occurred onboard, causing it to sink and resulting in continuous oil spill;
- b. Failing to properly inspect the Deepwater Horizon to assure that its equipment was fit for their intended purpose;
- c. Acting in a careless and negligent manner without due regard for the safety of others;
- d. Failing to promulgate, implement and enforce rules and regulations pertaining to the safe operations of the Deepwater Horizon which, if they had been so promulgated, implemented and enforced, would have averted the fire, explosion, sinking and oil spill;
- e. Operating the Deepwater Horizon with untrained and unlicensed personnel;
- f. Inadequate and negligent training and hiring of personnel;
- g. Failing to take appropriate action to avoid or mitigate the accident;
- h. Negligent implementation of policies and procedures to safely conduct offshore operations in the Gulf of Mexico;
- i. Employing untrained or poorly trained employees and failing to properly train their employees.
- j. Failing to ascertain that the Deepwater Horizon and its equipment were free from defects and/or in proper working order.
- k. Failure to timely warn.
- l. Failure to timely bring the discharge of oil under control.
- m. Failure to provide appropriate accident prevention equipment.

- n. Failure to observe and read gauges that would have indicated excessive pressures in the well.
- o. Failure to react to signs of danger.
- p. Providing BOP's that did not work as intended.
- q. Conducting well and well cap cementing operations improperly.
- r. Acting in a manner that justifies punitive damages.
- s. Such other acts of negligence and omissions as will be shown at the trial of this matter; all of which acts are in violation of the laws of Florida and Federal law applicable on the outer Continental Shelf.

42. In addition, and in the alternative, the fire, explosion, sinking and resulting oil spill were caused by defective equipment, including but not limited to BOPs, which were in the care, custody, and control of Defendants. Defendants knew or should have known of these defects and Defendants are, therefore, liable for them.

43. In the alternative, Plaintiffs reallege each and every allegation set forth above, as though set forth herein aver the applicability of the doctrine of res ipsa loquitur.

44. Plaintiffs are entitled to a judgment finding Defendants liable for damages suffered as a result of Defendants' negligence and/or wantonness and awarding Plaintiffs adequate compensation therefore in amounts determined by the trier of fact.

COUNT II
STRICT LIABILITY FOR ABNORMALLY DANGEROUS ACTIVITY

45. Plaintiff, KEY WEST TIKI CHARTERS, INC., readopts and realleges the allegations set forth in paragraphs 1 through 37 as though fully set forth herein.

46. Defendants, as the owners and/or operators of the Deepwater Horizon, engaged in abnormally dangerous activities resulted in the intentional, incidental or accidental fire, explosion, sinking and resulting oil spill from the deepwater horizon mobile offshore drilling unit, which (s)

created a high degree of risk of harm to others, and particularly to Plaintiffs: (b) created a risk involving a likelihood that the harm threatened by Defendants' activities would be great; (c) created a risk of harm that could not be eliminated by the exercise of reasonable care; (d) were not a matter of common usage; (e) were inappropriate to the place that they were being carried on, in that they constituted a non-natural use of Defendants' oil lease which imposed an unusual and extraordinary risk of harm to Plaintiffs'.

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

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

COUNT III
STRICT PRODUCTS LIABILITY FOR MANUFACTURING DEFECT

49. Plaintiff, KEY WEST TIKI CHARTERS, INC., readopts and realleges the allegations set forth in paragraphs 1 through 37 as though fully set forth herein.

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

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

52. Defendant Cameron's BOPs were defective because they failed to operate as intended.

53. As a result of the BOPs product defect, oil was released from the Deepwater Horizon mobile shore drilling unit thereby causing injury to Plaintiffs and the proposed class.

54. Defendant Cameron's BOPs were in a defective condition and unreasonable dangerous to Plaintiffs when the BOPs left Defendant Cameron's control.

55. At all times material, Defendant Cameron's BOPs were used in a manner intended.

56. By reason of the foregoing, Plaintiffs have incurred damages in an amount to be determined by trial.

57. By reason of the foregoing, Plaintiffs are entitled to compensatory and punitive damages.

COUNT IV
STRICT LIABILITY PURSUANT TO FLORIDA STATUTES § 376.313

58. Plaintiff, KEY WEST TIKI CHARTERS, INC., readopts and realleges the allegations set forth in paragraphs 1 through 37 as though fully set forth herein.

59. At all relevant times, Defendants owned, operated and/or maintained the mobile offshore drilling unit Deepwater Horizon which caught on fire and exploded on April 20, 2010 following the explosion and fire, the deepwater Horizon sunk resulting in the continuous discharge of crude oil from the well upon which the rig had been performing completion operations.

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

61. At all times, Defendants breached their statutory duty to the Plaintiffs and class members by discharging, or allowing to be discharged, crude oil into and upon the Gulf of Mexico and allowing massive oil spill to migrate into the Florida's marine environments, Coastal environments and estuarine areas which are used by Plaintiffs for different activities, including but not limited to commercial fishing, and other income generating endeavors in violation of Florida Statutes § 376.313(3), Florida Statutes, which provides:

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, KEY WEST TIKI CHARTERS, INC., individually and on behalf of the proposed class, prays for the Court to:

A. Enter an order certifying a class action pursuant to Federal Rules Civil Procedure Rule 23 (a), (b) (2) and (b)(3) consisting of the class defined herein and directing that appropriate notice to class members be delivered;

B. Designate Plaintiff as representative of the proposed class and designate its counsel as class counsel;

C. Enter judgment in favor of Plaintiff and the Class and against all Defendants;

D. Award Plaintiff and the Class Members' restitution, actual, statutory and punitive damages, and attorneys' fees and costs, including pre-judgment and post-judgment interest thereon;

E. Enter a temporary, preliminary and permanent order for injunctive relief enjoining Defendants from continuing to engage in the business practices complained of herein;

F. Provide such further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff, KEY WEST TIKI CHARTERS, INC., individually and on behalf of the Plaintiff Class Members, hereby demands a trial by jury as to all issues so triable.

DATED: May 25, 2010

By: /s/ Jordan L. Chaikin

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