



lost profits and/or an impairment of earning capacity have standing to submit a claim pursuant to the Oil Pollution Act, 33 U.S.C. §2701, *et. seq.*, and the Regulations promulgated thereunder, including specifically, 33 C.F.R. ¶136.231(a), for lost profits and/or loss of earning capacity arising from the fire, explosion and subsequent oil spill aboard the oil rig and vessel MODU *Deepwater Horizon* (hereinafter sometimes referred to as “Oil Rig” or “Deepwater Horizon”) on April 20, 2010, at about 10:00 p.m. Central Time, on the outer Continental Shelf, off the Louisiana coast.

### **The Parties**

2. Plaintiff, St. Ann Lodging, L.L.C., is a Louisiana limited liability company engaged in the hotel business and, specifically, operating hotels in New Orleans, Louisiana, in close proximity to the coast of the Gulf of Mexico and in the “coastal zone” (as that term is defined in 43 U.S.C. § 1331(e)) (the “Coastal Zone”), and, as a result of the events described above and below, have suffered damages that are more fully described below.

3. Plaintiff, 2929 Williams Blvd., L.L.C., is a Louisiana limited liability company engaged in the hotel business and, specifically, operating hotels in Kenner, Louisiana, in close proximity to the coast of the Gulf of Mexico and in the “coastal zone” (as that term is defined in 43 U.S.C. § 1331(e)) (the “Coastal Zone”), and, as a result of the events described above and below, have suffered damages that are more fully described below.

4. Plaintiff, High Cotton Ventures, L.L.C., is a Louisiana limited liability company engaged in the hotel business and, specifically, operating hotels in New Orleans, Louisiana, in close proximity to the coast of the Gulf of Mexico and in the “coastal zone” (as that term is defined in 43

U.S.C. § 1331(e)) (the “Coastal Zone”), and, as a result of the events described above and below, have suffered damages that are more fully described below.

5. Plaintiff, Riverfront Lodging, L.L.C., is a Louisiana limited liability company engaged in the hotel business and, specifically, operating hotels in New Orleans, Louisiana, in close proximity to the coast of the Gulf of Mexico and in the “coastal zone” (as that term is defined in 43 U.S.C. § 1331(e)) (the “Coastal Zone”), and, as a result of the events described above and below, have suffered damages that are more fully described below.

6. Plaintiff, 730 Rue Bienville, L.L.C., is a Louisiana limited liability company engaged in the hotel business and, specifically, operating hotels in New Orleans, Louisiana, in close proximity to the coast of the Gulf of Mexico and in the “coastal zone” (as that term is defined in 43 U.S.C. § 1331(e)) (the “Coastal Zone”), and, as a result of the events described above and below, have suffered damages that are more fully described below.

7. Plaintiff, 717 Conti, L.L.C., is a Louisiana limited liability company engaged in the hotel business and, specifically, operating hotels in New Orleans, Louisiana, in close proximity to the coast of the Gulf of Mexico and in the “coastal zone” (as that term is defined in 43 U.S.C. § 1331(e)) (the “Coastal Zone”), and, as a result of the events described above and below, have suffered damages that are more fully described below.

8. Plaintiff, 415 Rue Dauphine, L.L.C., is a Louisiana limited liability company engaged in the hotel business and, specifically, operating hotels in New Orleans, Louisiana, in close proximity to the coast of the Gulf of Mexico and in the “coastal zone” (as that term is defined in 43

U.S.C. § 1331(e)) (the “Coastal Zone”), and, as a result of the events described above and below, have suffered damages that are more fully described below.

9. Made Defendants herein are:

- A. BP, plc (“BP PLC”), a foreign corporation doing business in the State of Louisiana and within this district;
- B. BP Products North America, Inc. (“BP Products”), a foreign corporation doing business in the State of Louisiana and within this district; and,
- C. BP America, Inc. (“BP America”), a foreign corporation doing business in the State of Louisiana and within this district.

#### **Jurisdiction and Venue**

10. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1332(a), as there is complete diversity among the parties and more than \$75,000 in controversy, exclusive of interests and costs, and 28 U.S.C. §1332(d), as there is minimal diversity between the putative classmembers and the Defendants in a suit seeking certification under Federal Rule 23 in which there is at least \$5 million in controversy, exclusive of interest and costs. In addition, and in the alternative, jurisdiction is founded upon 28 U.S.C. §1331, because the claims asserted herein arise under the laws of the United States of America, and/or 43 U.S.C. §1331(1), which extends exclusive Federal jurisdiction to the outer Continental Shelf.

11. Prosecution of this action in this District is proper under 28 U.S.C. §1391 because part of the events and/or omissions giving rise to the claims asserted herein occurred in this District, and a substantial amount of the damages and/or injuries have occurred and will continue to be

incurred within this Judicial District.

**Factual Allegations**

12. Transocean, Ltd., Transocean Offshore, Transocean Deepwater and/or Triton Asset Leasing GmbH, (collectively “Transocean”) are the owners and/or operators of the MODU *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 originated on April 20, 2010, and is continuing to spread to this day.

13. Defendants 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.

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

15. The U.S. Coast Guard has identified BP as the “Responsible Party” pursuant to 33 U.S.C. §2713.

16. The injuries and damages suffered by Plaintiffs and the Class Members were caused by Defendants’ gross negligence (or, alternatively, negligence) and willful (or, alternatively, negligent) violations of numerous Federal statutes, standards and regulations, including, but not limited to, statutes and regulations issued by the United States Coast Guard, OSHA and/or MMS, including the requirement to test the sub-sea blow-out-preventers (BOPs) at regular intervals.

17. Defendants knew of the dangers associated with deep water drilling and failed to take appropriate measures to prevent damage to Plaintiffs, Louisiana's and the Gulf of Mexico's marine and coastal environments and estuarine areas, and the Coastal Zone.

18. On information and belief, the spilled oil has not and will not simply evaporate off of the surface of the water and is causing dangerous environmental contamination of the Gulf of Mexico and its shorelines, threatening Louisiana's sensitive wetlands and estuarine areas.

19. Plaintiffs and many members of the Proposed Class have invested significant time, money and other resources into branding, marketing and/or advertising the New Orleans metropolitan area as an attractive tourist destination for many reasons, including its reputation for plentiful, fresh seafood and/or, in particular, local seafood, Louisiana seafood, and/or seafood from the Gulf of Mexico.

20. Due to the environmental damage and associated mitigation, protection and/or remediation efforts, fishing, shrimping, oystering and other commercial activities have been suspended, and will likely continue to be legally and/or effectively reduced.

21. In this regard, the oil spill and the contamination therefrom have caused and/or are likely to cause a direct and proximate loss of revenue and/or loss of earning capacity to Plaintiffs and other members of the Proposed Class, including but not limited to a loss of client and customer base due to adverse impact on tourism and convention/business travel within the region.

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

23. The Oil Pollution Act imposes liability upon a “responsible party for a... facility from which oil is discharged...into or upon navigable waters or adjoining shorelines” for the “damages that result from such incident.” 33 U.S.C. §2702.

24. Section 2702(b)(2)(E) provides for the recovery of “damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant.”

25. The Regulations promulgated under the Act expressly confirm, in this regard, that “a claim for loss of profits or impairment of earning capacity due to the injury to, destruction of, or loss of real or personal property or natural resources may be presented by a claimant sustaining the loss or impairment” and that “the claimant need *not* be the owner of the damaged property or resources.” *See* 33 C.F.R. ¶136.231(a) (emphasis supplied).

26. Plaintiffs are accordingly entitled to a declaratory judgment finding that Plaintiffs and other Class Members who have suffered lost profits and/or an impairment of earning capacity due to the spill fall within the scope of eligible claimants under the Oil Pollution Act, 33 U.S.C. § 2701, *et. seq.*, and, therefore, are capable of submitting an administrative claim to Defendants as the Responsible Party pursuant to 33 U.S.C. § 2713, as prescribed in 33 C.F. R. § 136.231(a).

### **Class Allegations**

27. Plaintiffs bring this claim individually and, pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of a class of those similarly situated, initially defined as: “All persons or entities who own and/or operate hotels, motels, condominiums, and/or other facilities that

provide overnight lodging that are located in Louisiana Parishes and/or Texas, Florida, Mississippi and/or Alabama Counties which touch and/or border on the Gulf of Mexico, (including any and all inlets, lakes and/or bays which are part of and/or contiguous with the Gulf), from April 20, 2010 thru [the date of certification]”, to wit:

- (A) The number of these persons and/or entities is unknown at present but reasonably believed to exceed 1,000; the joinder of this number of parties as plaintiffs in one proceeding would be impracticable;
- (B) There exist questions of law and fact which are common to all members of the class;
- (C) The claims of the Named Plaintiffs are typical of the claims of the Proposed Class;
- (D) The Named Plaintiffs will fairly and adequately advance and protect the interests of the class; Plaintiffs are committed to the vigorous prosecution of this action, and have retained competent counsel, who are experienced in complex litigation of this nature;
- (E) The class may be defined objectively in terms of ascertainable criteria, such that the court may determine the constituency of the class for the purposes of the conclusiveness of any judgment that may be rendered; and,
- (F) The Defendants have acted on grounds generally applicable to the class, thereby making appropriate declaratory relief with respect to the class as a whole.

### **Prayer for Relief**

**WHEREFORE**, Plaintiffs respectfully pray that this Complaint be deemed good and sufficient, and that, after due proceedings be had a class be certified in accordance with Federal Rule of Civil Procedure 23(b)(2), and that, after further proceedings be had, there be judgment herein, against Defendants, declaring that Plaintiffs and other Class Members who have suffered lost profits

and/or an impairment of earning capacity due to the April 20, 2010 spill fall within the scope of eligible claimants under the Oil Pollution Act, 33 U.S.C. § 2701, et. seq., and, therefore, have standing to submit an administrative claim to the Responsible Party pursuant to 33 U.S.C. § 2713 and as prescribed in 33 C.F. R. § 136.231(a).

This 26<sup>th</sup> day of May, 2010.

Respectfully submitted,

/s/ Stephen J. Herman

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