

No. 13-30315
(consolidated with Nos. 13-30329, 13-31220, and 13-31316)

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

IN RE: DEEPWATER HORIZON

LAKE EUGENIE LAND & DEVELOPMENT, INCORPORATED; BON SECOUR FISHERIES,
INCORPORATED; FORT MORGAN REALTY, INCORPORATED; LFBP 1, L.L.C. DOING
BUSINESS AS GW FINS; PANAMA CITY BEACH DOLPHIN TOURS & MORE, 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–Appellees,

v.

BP EXPLORATION & PRODUCTION INCORPORATED,
BP AMERICA PRODUCTION COMPANY, AND BP P.L.C.,

Defendants–Appellants.

On Appeal from the United States District Court
for the Eastern District of Louisiana
MDL No. 2179, Civ. A. No. 12-970

**MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*
IN SUPPORT OF DEFENDANTS-APPELLANTS**

[*Counsel Listed on Inside Cover*]

Rachel Brand
Tyler R. Green
NATIONAL CHAMBER LITIGATION
CENTER, INC.
1615 H Street, N.W.
Washington, D.C. 20062

Linda E. Kelly
Quentin Riegel
NATIONAL ASSOCIATION OF
MANUFACTURERS
733 10th Street, N.W.
Washington, DC 20001

Catherine E. Stetson
Counsel of Record
HOGAN LOVELLS US LLP
Columbia Square
555 Thirteenth Street, N.W.
Washington, DC 20004
(202) 637-5600
cate.stetson@hoganlovells.com

Counsel for Amici Curiae

CERTIFICATE OF INTERESTED PERSONS

No. 13-30315
(consolidated with Nos. 13-30329, 13-31220, and 13-31316)

IN RE: DEEPWATER HORIZON

LAKE EUGENIE LAND & DEVELOPMENT, INCORPORATED; BON SECOUR FISHERIES, INCORPORATED; FORT MORGAN REALTY, INCORPORATED; LFBP 1, L.L.C. DOING BUSINESS AS GW FINS; PANAMA CITY BEACH DOLPHIN TOURS & MORE, 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–Appellees,

v.

BP EXPLORATION & PRODUCTION INCORPORATED,
BP AMERICA PRODUCTION COMPANY, AND BP P.L.C.,

Defendants–Appellants.

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.

A. Plaintiffs–Appellees

This action was brought by fifteen class representatives: Lake Eugenie Land & Development, Inc.; 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; John Tesvich; Michael Guidry; Henry Hutto; Brad Friloux; and Jerry J. Kee. The class representatives represent the Economic and Property Damages Class that the district court certified, for settlement purposes only, on December 21, 2012. *See* DL 2179 Docket Entry (“D.E.”) 8138, 8139. 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.” 5th Cir. R. 28.2.1.

B. Counsel for Plaintiffs–Appellees

Stephen Jay Herman
Soren E. Gisleson
HERMAN HERMAN & KATZ LLLP
820 O’Keefe Avenue
New Orleans, LA 70113
(504) 581-4892

James Parkerson Roy
DOMENGEAUX, WRIGHT, ROY &
EDWARDS
Suite 500
556 Jefferson Street
Lafayette, LA 70501
(337) 233-3033

Elizabeth Joan Cabraser
LIEFF, CABRASER, HEIMANN &
BERNSTEIN
29th Floor
275 Battery Street
San Francisco, CA 94111
(415) 956-1000

Samuel Issacharoff
NEW YORK UNIVERSITY SCHOOL OF
LAW
40 Washington Square, S., Suite 411J
New York, NY 10012
(212) 998-6580

Joseph F. Rice
MOTLEY RICE LLC
28 Bridgeside Blvd.
Mount Pleasant, SC 29464
(843) 216-9159

Conrad S.P. “Duke” Williams
WILLIAMS LAW GROUP
435 Corporate Drive, Suite 101
Maison Grand Caillou
Houma, LA 70360
(985) 876-7595

Brian H. Barr
LEVIN, PAPANTONIO, THOMAS,
MITCHELL,
ECHSNER & PROCTOR, PA
316 South Baylen St., Suite 600
Pensacola, FL 32502-5996
(850) 435-7045

Robin L. Greenwald
WEITZ & LUXENBERG, PC
700 Broadway
New York, NY 10003
(212) 558-5802

Jeffrey A. Breit
BREIT DRESCHER IMPREVENTO &
WALKER, P.C.
999 Waterside Drive, Suite 1000
Norfolk, VA 23510
(757) 670-3888

Rhon E. Jones
BEASLEY, ALLEN, CROW, METHVIN,
PORTIS & MILES, P.C.
218 Commerce St., P.O. Box 4160
Montgomery, AL 36104
(334) 269-2343

Matthew E. Lundy
LUNDY, LUNDY, SOILEAU & SOUTH,
LLP
501 Broad Street
Lake Charles, LA 70601
(337) 439-0707

Philip F. Cossich, Jr.
COSSICH, SUMICH, PARSIOLA &
TAYLOR
8397 Highway 23, Suite 100
Belle Chasse, LA 70037
(504) 394-9000

Michael C. Palmintier
DEGRAVELLES, PALMINTIER,
HOLTHAUS & FRUGÉ
618 Main Street
Baton Rouge, LA 70801-1910
(225) 344-3735

Robert T. Cunningham
CUNNINGHAM BOUNDS, LLC
1601 Dauphin Street, P.O. Box 66705
Mobile, AL 36660
(251) 471-6191

Paul M. Sterbcow
LEWIS, KULLMAN, STERBCOW &
ABRAMSON
601 Poydras Street, Suite 2615
New Orleans, LA 70130
(504) 588-1500

Alphonso Michael "Mike" Espy
MORGAN & MORGAN, P.A.
188 East Capitol Street, Suite 777
Jackson, MS 39201
(601) 949-3388

Scott Summy
BARON & BUDD, P.C.
3102 Oak Lawn Avenue, Suite 1100
Dallas, TX 75219
(214) 521-3605

Calvin C. Fayard, Jr.
FAYARD & HONEYCUTT
519 Florida Avenue, SW
Denham Springs, LA 70726
(225) 664-4193

Ervin A. Gonzalez
COLSON HICKS EIDSON
255 Alhambra Circle, Penthouse
Coral Gables, FL 33134
(305) 476-7400

Mikal C. Watts (resigned)
WATTS GUERRA CRAFT, LLP
Four Dominion Drive, Building 3,
Suite 100
San Antonio, TX 78257
(210) 447-0500

James B. Irwin, V
Douglas J. Moore
IRWIN FRITCHIE URQUHART & MOORE,
LLC
400 Poydras St.
Suite 2700
New Orleans, LA 70130
(504) 310-2100

C. Defendants–Appellants

BP Exploration & Production Inc.
BP America Production Company
BP p.l.c.

D. Counsel for Defendants–Appellants

Theodore B. Olson
Miguel A. Estrada
Thomas G. Hungar
Scott P. Martin
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8500

George H. Brown
GIBSON, DUNN & CRUTCHER LLP
1881 Page Mill Road
Palo Alto, CA 94304
(650) 849-5300

Richard C. Godfrey, P.C.
J. Andrew Langan, P.C.
Wendy L. Bloom
Andrew B. Bloomer, P.C.
R. Chris Heck
KIRKLAND & ELLIS LLP
300 North LaSalle Street
Chicago, IL 60654
(312) 862-2000

Jeffrey Bossert Clark
Dominic E. Draye
Steven A. Myers
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 879-5000

S. Gene Fendler
Don K. Haycraft
R. Keith Jarrett
LISKOW & LEWIS
701 Poydras Street, Suite 5000
New Orleans, LA 70139
(504) 581-7979

Robert C. "Mike" Brock
COVINGTON & BURLING LLP
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 662-5985

Daniel A. Cantor
Andrew T. Karron
ARNOLD & PORTER LLP
555 Twelfth Street, N.W.
Washington, D.C. 20004
(202) 942-5000

Jeffrey Lennard
Keith Moskowitz
DENTONS LLP
233 South Wacker Drive
Suite 7800
Chicago, IL 60606
(312) 876-8000

Kevin M. Downey
F. Lane Heard III
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, D.C. 20005
(202) 434-5000

James J. Neath
Mark Holstein
BP AMERICA INC.
501 Westlake Park Boulevard
Houston, TX 77079
(281) 366-2000

E. Defendants–Appellees

Deepwater Horizon Court Supervised Settlement Program
Patrick A. Juneau (Claim Administrator)

F. Counsel for Defendants–Appellees

Richard C. Stanley
Jennifer L. Thornton
Gina M. Palermo
Patrick H. Fourroux

STANLEY, REUTER, ROSS, THORNTON & ALFORD, L.L.C.
909 Poydras Street, Suite 2500
New Orleans, LA 70112
(504) 523-1580

Phillip A. Wittman
John M. Landis
Maggie A. Broussard
STONE PIGMAN WALTHER WITTMAN LLC
546 Carondelet Street
New Orleans, LA 70130-3588
(504) 581-3200

David Israel
Kevin G. Barreca
SESSIONS, FISHMAN, NATHAN, & ISRAEL, LLC
Lakeway Two, Suite 200
3850 North Causeway Boulevard
Metairie, LA 70002-7227
(504) 828-3700

G. Amici Curiae

The Chamber of Commerce of the United States of America
The National Association of Manufacturers
The United States Hispanic Chamber of Commerce

G. Counsel for Amici Curiae

Catherine E. Stetson
HOGAN LOVELLS US LLP
Columbia Square
555 Thirteenth Street, N.W.
Washington, DC 20004
(202) 463-5337

Rachel Brand
Tyler R. Green
NATIONAL CHAMBER LITIGATION
CENTER, INC.
1615 H Street, N.W.
Washington, D.C. 20062
(202) 637-3000

Linda E. Kelly
Quentin Riegel
NATIONAL ASSOCIATION OF MANUFACTURERS
733 10th Street, N.W.
Washington, DC 20001

Respectfully submitted,

/s/ Catherine E. Stetson
Catherine E. Stetson
Counsel for Amici Curiae

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE

1. Pursuant to Rule 29(b) of the Federal Rules of Appellate Procedure, the Chamber of Commerce of the United States of America (“the Chamber”), the National Association of Manufacturers (“NAM”), and the United States Hispanic Chamber of Commerce (“USHCC”) hereby move for leave to file a brief as *amici curiae* in support of Defendants-Appellants, BP Exploration & Production Incorporated, BP America Production Company, and BP p.l.c. (collectively, “BP”). The prospective *amici* have sought consent for this filing from parties’ counsel. BP consents; the Class Appellees do not consent; and the Claims Administrator takes no position with respect to this request to file an amicus brief. The proposed *amicus* brief is filed herewith.

2. The prospective *amici* believe BP’s petition for rehearing *en banc* merits close attention and that the attached brief—which is just 7.5 pages long—will aid the Court’s consideration. The Chamber, NAM, and USHCC together represent the interests of businesses, organizations, and trade associations from every region of the country. These organizations regularly file *amicus* briefs in cases that raise issues of vital concern to the nation’s businesses and manufacturers. As frequent class-action defendants, the prospective *amici*’s members are deeply interested in the issues at the heart of this case: the continuing viability of class settlements and the proper application of Federal Rule of Civil Procedure 23.

3. Consistent with Fifth Circuit Rule 29.2, the proposed brief “avoid[s] the repetition of facts or legal arguments contained in the principal brief and . . . focus[es] on points . . . not adequately discussed” therein. Whereas BP’s brief explains why the decision below was wrong, the proposed *amicus* brief focuses on its potential consequences for future litigants. As the attached brief explains, the panel’s decision, if left in place, will make it much more difficult for parties to resolve class actions through settlement. The result will be proliferation of unnecessary litigation that will cost parties time and money and expend scarce judicial resources. The prospective *amici* are uniquely situated to explain these consequences, which constitute an additional and independent reason this case merits *en banc* review.

For foregoing reasons, the Chamber, NAM, and USHCC respectfully request leave to file the attached brief *amicus curiae*.

Rachel Brand
Tyler R. Green
NATIONAL CHAMBER LITIGATION
CENTER, INC.
1615 H Street, N.W.
Washington, D.C. 20062

Linda E. Kelly
Quentin Riegel
NATIONAL ASSOCIATION OF
MANUFACTURERS
733 10th Street, N.W.
Washington, DC 20001

March 24, 2014

Respectfully submitted,

/s/ Catherine E. Stetson
Catherine E. Stetson
Counsel of Record
HOGAN LOVELLS US LLP
Columbia Square
555 Thirteenth Street, N.W.
Washington, DC 20004
(202) 637-5600
cate.stetson@hoganlovells.com

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit through the appellate CM/ECF system on March 24, 2014. All participants in the case are registered CM/ECF users and will be served through the appellate CM/ECF system.

Dated: March 24, 2014

/s/ Catherine E. Stetson
Catherine E. Stetson
Counsel for Amici Curiae

CERTIFICATE OF ELECTRONIC COMPLIANCE

I hereby certify that on March 24, 2014, this motion was transmitted to the Clerk of the United States Court of Appeals for the Fifth Circuit through the Court's CM/ECF document filing system. I further certify that: (1) required privacy redactions have been made pursuant to this 5th Circuit Rule 25.2.13, (2) the electronic submission is an exact copy of the paper document pursuant to Fifth Circuit Rule 25.2.1, and (3) the document has been scanned with the most recent version of Sysmantec Endpoint Protection and is free of viruses.