

NO. 2010-CV-25752

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| MATTHEW DAVIS | § | IN THE DISTRICT COURT OF |
| | § | |
| | § | HARRIS COUNTY, TEXAS |
| VS. | § | |
| | § | 151 ST JUDICIAL DISTRICT |
| | § | |
| TRANSOCEAN LTD., TRANSOCEAN | § | |
| OFFSHORE DEEPWATER DRILLING | § | |
| L.L.C., BP EXPLORATION AND | § | |
| PRODUCTION, INC. and BP, PLC | § | JURY TRIAL DEMANDED |

EUGENE DEWAYNE MOSS'S ORIGINAL PETITION IN INTERVENTION

Intervenor EUGENE DEWAYNE MOSS complains of Defendants TRANSOCEAN LTD., TRANSOCEAN OFFSHORE DEEPWATER DRILLING, L.L.C., BP EXPLORATION AND PRODUCTION, INC., and BP, PLC, and for cause of action respectfully shows this Honorable Court the following:

I.

Discovery in this matter will be conducted pursuant to Level 2.

On April 20, 2010, a blow out occurred on a rig operated by the Transocean Defendants and leased by the BP Defendants. The resulting explosion and fire led to the severe injuries to the Intervenor in this case. Because the Transocean Defendants were the rig operators and owners, and because the BP Defendants had leased the rig and had a significant hand in the control of the rig—importantly in the application of casing and cement and preparation of the well for production—Intervenor seeks remedy against both the BP and Transocean Defendants. And, as BP has a long history involving similar incidents, Intervenor seeks punitive damages against the BP Defendants.

II.

Defendant TRANSOCEAN LTD. is a foreign company doing business in the State of Texas.

Defendant TRANSOCEAN OFFSHORE DEEPWATER DRILLING, L.L.C. is a foreign limited liability company doing business in the State of Texas. It can be served through its registered agent: Capitol Corporate Services, Inc., 800 Brazos, Suite 400, Austin, Texas 78701.

Defendant BP EXPLORATION AND PRODUCTION, INC. is a foreign company doing business in the State of Texas. It can be served through its registered agent: CT Corporation System, 350 North St. Paul St., Dallas, TX 75201-4234.

Defendant BP, PLC is a foreign company doing business in the State of Texas.

III.

Intervenor Eugene Dewayne Moss is a resident of Mississippi.

IV.

The Court has jurisdiction over this matter in that Defendants do business in the State of Texas. Venue is proper in this matter because at least one of the Defendants is headquartered in this County.

V.

Intervenor is an American seaman and bring this action pursuant to Title 46 U.S.C. § 688.

VI.

At all times material hereto, Intervenor was aboard the DEEPWATER HORIZON (the “Vessel”) as an employee of the Transocean Defendants and was acting within the course and scope of his employment as a seaman in service of the Vessel. The DEEPWATER HORIZON was owned by the Transocean Defendants, but was leased by the BP Defendants.

VII.

On April 20, 2010, as Intervenor was performing his regular duties aboard the vessel, he sustained severe injuries to his body, including injuries to both of his knees, his neck, chest, the

right side of his body and other parts of his body. Such injuries were legally caused by the negligence of the Defendants and the unseaworthiness of the Vessel in question. Specifically, the DEEPWATER HORIZON caught fire and exploded, and ultimately sunk, injuring more than twenty, and likely killing eleven. Such an incident does not occur without an unseaworthy condition or negligence. Due to his severe injuries, Intervenor cannot work. Indeed, in light of the circumstances leading to Intervenor's injuries, there is a rebuttable presumption that the vessel was unseaworthy. Further, because the vessel was leased to the BP Defendants, such Defendants have a duty to ensure that operations are conducted in a prudent manner. The BP Defendants failed in that regard, legally causing Intervenor's injuries.

Defendant BP Exploration and Production, Inc. has a record of safety infractions in the Gulf of Mexico. In the last ten years, this Defendant has been fined by the Minerals Management Service (MMS) at least five times. These infractions include:

- \$41,000 fine for a "loss of well control." MMS found that this Defendant "failed to verify employees were trained to competently perform the assigned well control duties";
- \$190,000 fine for an improperly installed fire diverter system. This violation was discovered in the wake of a fire that damaged property and the environment;
- \$80,000 fine for bypassing relays for the Pressure Safety High/Low on four producing wells;
- \$70,000 fine for low pressure in the fire water system; and
- \$190,000 fine for the BP's rig operator, after it was found that BP's employees, working as contractors, bypassed the safety valves on a rig. MMS discovered that found that the rig failed to shut down in an emergency because the safety devices had been bypassed.

Because of BP's record, specifically because similar incidents have occurred on other rigs leased by BP, and because, on information and belief, a well control issue led to the blow out that

occurred in this case, Intervenor seeks punitive damages for the BP Defendants' gross negligence and malice.

Intervenor also specifically pleads the doctrine of *Res Ipsa Loquitor*.

VIII.

By reason of the occurrences made the basis of this action, including the conduct on the part of the Defendants, Intervenor sustained severe bodily injuries. Intervenor has suffered physical pain and mental anguish and, in reasonable medical probability, will continue to do so for the balance of his natural life.

IX.

As a result of the foregoing injuries, Intervenor has suffered a loss of wages in the past and a loss of or reduction in the capacity to work and earn money in the future and, in reasonable probability, his earning capacities has been impaired permanently.

X.

Additionally, Intervenor has incurred reasonable and necessary medical expenses in the past and, in reasonable probability will incur reasonable medical expenses in the future.

XI.

Additionally, as a result of the injuries sustained in the occurrences as set forth above, Intervenor has suffered in the past and will, in reasonable medical probability, continue to suffer permanent physical impairment.

XII.

Pleading further, in the alternative, if it is shown that Intervenor was suffering from some pre-existing injury, disease and/or condition, then such was aggravated and/or exacerbated as a proximate result of the occurrence made the basis of this lawsuit.

XIII.

Intervenor is physically impaired as a result of injuries sustained in the above-referenced occurrence. As a consequence, he has lost the ability to perform household services and, in reasonable probability, this loss is permanent.

XIV.

Intervenor would show that on the above-mentioned date, he was injured while in the service of a vessel. Because he is an employee, the Transocean Defendants have, and continue to have, a non-delegable duty to provide Intervenor with the benefits of maintenance and cure. Intervenor would show that he has not reached maximum medical improvement and that Defendants' duty continues. Defendants have denied payment and/or have unreasonably delayed payments for maintenance and cure and/or have paid maintenance in an insufficient amount. Defendants' conduct towards this injured seaman is arbitrary, malicious, capricious, and wrong. As a result of Defendants' failure to pay and/or delay in paying the benefits of maintenance and cure, Intervenor has suffered further injuries and damages, for which he now sues. Intervenor would further show that Defendants' failure to provide the benefits of maintenance and cure was not only unreasonable, but was arbitrary and capricious, or willful, callous and persistent, and that as a result thereof, Intervenor is thus entitled to PUNITIVE DAMAGES, and an award of attorneys' fees, for which he now sues, in addition to all other relief sought.

XV.

Request for Rule 194 Disclosure

Pursuant to Texas Rule of Civil Procedure 194, Intervenor requests that Defendants disclose, within 50 days of the service of this request, the information or material described in Rule 194.2(a)-(k), Tex. R. Civ. P.

WHEREFORE, PREMISES CONSIDERED, Intervenor Eugene Dewayne Moss prays for judgment against Defendants in the amount of FIVE MILLION, FIVE HUNDRED THOUSAND (\$5,500,000.00) DOLLARS, plus pre- and post-judgment interest at the legal rate, for all costs of court, and all such other and further relief, at law and in equity, to which he may be justly entitled.

INTERVENOR RESPECTFULLY REQUESTS A TRIAL BY JURY.

Respectfully submitted,

THE BUZBEE LAW FIRM

By: /s/ Anthony G. Buzbee

ANTHONY G. BUZBEE

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**ATTORNEY FOR INTERVENOR, EUGENE
DEWAYNE MOSS**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document has been duly served on opposing counsel in accordance with the Texas Rules of Civil Procedure on April 30, 2010, as set forth below:

Via Facsimile: (713) 572-9129

And/Or ProDoc E-Filing

Frank A. Piccolo

PREIS & ROY

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/s/ Anthony G. Buzbee

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