

CAUSE NO. 2010-25245

FILED
Loren Jackson
District Clerk
MAY - 3 2010

Time: _____
By: _____
Deputy: _____
Harris County, Texas

TRACY KLEPPINGER, Individually §
and as Representative of the Estate of §
KARL KLEPPINGER, Jr. and as next §
friend of AARON THOMAS §
KLEPPINGER, a minor-child §

IN THE DISTRICT COURT OF

VS.

HARRIS COUNTY, T E X A S

TRANSOCEAN OFFSHORE §
DEEPWATER DRILLING, INC., §
DEEPWATER HORIZON, and §
BP PRODUCTS NORTH AMERICA, §
INC. §

234th JUDICIAL DISTRICT

PLAINTIFFS' SECOND AMENDED ORIGINAL PETITION
and REQUEST FOR DISCLOSURE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, TRACY KLEPPINGER, Individually and as Representative of the Estate of KARL KLEPPINGER, JR. and as Next Friend of AARON THOMAS KLEPPINGER, a minor child, Plaintiffs, complaining of and against TRANSOCEAN OFFSHORE DEEPWATER DRILLING, INC., DEEPWATER HORIZON, BP PRODUCTS NORTH AMERICA, INC., HALLIBURTON ENERGY SERVICES, CAMERON INTERNATIONAL CORPORATION D/B/A CAMERON SYSTEMS CORPORATION AND MI SWACO, Defendants herein, and for cause of action, would respectfully show as follows:

A. Discovery Control Plan

1. Plaintiffs intend to conduct discovery under Level 3 pursuant to Rule 190.4 of the Texas Rules of Civil Procedure.

B. Parties

2. Plaintiff, TRACY KLEPPINGER, is an individual and is the wife of Karl Kleppinger, Jr. and is the mother of Aaron Thomas Kleppinger, the son of Karl Kleppinger, Jr.

3. Defendant, TRANSOCEAN OFFSHORE DEEPWATER DRILLING, INC. is a Corporation domiciled at 4 Greenway Plaza, Houston, Harris County, Texas and conducting business in the State of Texas, and can be served with process by serving its registered agent for service of process, Eric B. Brown, at 4 Greenway Plaza, Houston, Texas 77046.

4. Defendant, BP PRODUCTS NORTH AMERICA, INC. is a Maryland corporation but may be served with process by serving its registered agent for service of process in Texas, Prentice Hall Corp System at 211 E. 7TH Street, Suite 620 in Austin, Texas 78701.

5. Defendant, HALLIBURTON ENERGY SERVICES, INC., (hereinafter referred to as "Halliburton"), is a Delaware corporation with a principal place of business in Houston, Harris County, Texas and may be served with process by serving its registered agent for service of process C.T. Corporation Systems, 350 N. St. Paul Street, Suite 2900, Dallas, Texas, 75201.

6. DEFENDANT, CAMERON INTERNATIONAL CORPORATION D/B/A CAMERON SYSTEMS CORPORATION (hereinafter referred to as "Cameron"), is a Delaware corporation whose principal place of business is Houston, Harris County, Texas and may be served with process by serving its registered agent for service of process in Texas, CT Corporation System, 350 N. St. Paul St., Suite 2900, Dallas, TX 75201.

7. Defendant MI SWACO is a Texas joint venture company owned by Smith International, Inc., and Schlumberger, Ltd., (hereinafter referred to as "MI Swaco"), with its principal place of business at 5950 North Course Drive, Houston, Texas 77072 and may be served by serving its President, Chris Rivas at 5950 North Course Drive, Houston, Texas 77072.

C. Venue

8. Venue is proper in Harris County, Texas pursuant to Texas Civil Practice & Remedies §15.0181(c)(1) because Defendant TRANSOCEAN OFFSHORE DEEPWATER DRILLING INC.'s principal office in this state is located in Harris County, Texas.

D. Jurisdiction

9. This is an admiralty and maritime claim within the jurisdiction of this Honorable Court.

10. Karl Kleppinger, Jr. was a seaman and this action is brought pursuant to Title 46 U.S.C. §30104, *et. seq.* and pursuant to the admiralty and general maritime laws of the United States. This Court has concurrent jurisdiction.

E. Factual Summary

11. Plaintiffs would show that this lawsuit has become necessary as a result of an incident, which occurred on or about April 20, 2010. On said date, Karl Kleppinger, Jr. was employed by Defendant, TRANSOCEAN OFFSHORE DEEPWATER DRILLING, INC. as a seaman and was assigned as a member of the crew on board the *DEEPWATER HORIZON*, a vessel within the meaning of 46 U.S.C. § 30104, *et. seq.* Karl Kleppinger, Jr.'s duties contributed to the mission of the *DEEPWATER HORIZON*, which is a semi-submersible drilling rig which was in navigation on April 20, 2010 at the time of the incident.

12. Halliburton was contracted to provide cement services to the rig *DEEPWATER HORIZON* by Transocean and/or BP. Upon information and belief Halliburton set or otherwise attempted to set a cement plug in violation of industry protocol and policies thus allowing gas to escape around the cement plug or plugs, ultimately resulting in a blowout, ignition and deadly explosion.

13. MI Swaco was contracted to provide drilling fluid services to the rig *DEEPWATER HORIZON*, owned by Transocean and leased to BP. M.I. Swaco in conjunction with Halliburton

failed to maintain appropriate drilling fluid weight before and during the cement operation, thus allowing gas to escape ignite, ultimately resulting in a deadly explosion.

14. On or about April 20, 2010, while working in the course and scope of his employment for Defendants, an explosion and fire occurred on the *DEEPWATER HORIZON*. Plaintiffs will show that Defendants were negligent and such negligence was a proximate and/or producing cause of the incident and the resulting damages.

15. As of the time of this filing, Karl Kepplinger, Jr. is still lost at sea and he is presumed dead. This pleading will be amended upon discovery of additional information.

F. CAUSES OF ACTION

16. At all relevant times, Karl Kleppinger, Jr. was in the course and scope of his employment with the Defendants, TRANSOCEAN OFFSHORE DEEPWATER DRILLING, INC., *DEEPWATER HORIZON* and BP PRODUCTS NORTH AMERICA, INC. The actions and/or inactions of these Defendants, and/or their officers, agents and/or employees constitute negligence. The negligence of these Defendants was a proximate and/or producing cause of the Plaintiffs' damages.

17. Defendants TRANSOCEAN OFFSHORE DEEPWATER DRILLING, INC., *DEEPWATER HORIZON* and BP PRODUCTS NORTH AMERICA, INC. owed a duty to Karl Kleppinger, Jr. to maintain the vessel in a seaworthy condition. However, Plaintiffs will show that the *DEEPWATER HORIZON* was unseaworthy and that said unseaworthiness was a proximate and/or producing cause of the incident and resulting damages.

18. TRANSOCEAN ENTITIES

Transocean was negligent in the following non-exclusive particulars:

- a. Failing to provide Karl Kleppinger, Jr. with a safe place to work; and requiring Karl Kleppinger, Jr. to work in unsafe conditions;

- b. Failing to provide sufficient personnel to perform operations aboard the vessel;
- c. Failing to properly follow drilling protocols and policies, proper well monitoring and control practices;
- d. Failing to exercise due care and caution;
- e. Failing to avoid this accident
- f. Failing to provide Karl Kleppinger, Jr. with a seaworthy vessel;
- g. Other acts of negligence which will be shown more fully at trial.

19. **BP AND BP PRODUCTS**

BP was negligent in the following non-exclusive particulars:

- a. Failing to properly train and/or supervise its crew and other employees;
- b. Failing to ensure that its crew worked in a safe and prudent manner;
- c. Failing to provide Karl Kleppinger, Jr. with a safe place to work, and requiring Karl Kleppinger, Jr. to work in unsafe conditions;
- d. Failing to exercise due care and caution;
- e. Failing to provide Karl Kleppinger, Jr. with a seaworthy vessel;
- f. Other acts of negligence which will be shown more fully at trial.

20. **HALLIBURTON**

Halliburton was negligent in the following non-exclusive particulars:

- a. Failing to properly set cement plugs.
- b. Failing to maintain pressure during cement operation.
- c. Failing to use adequate material for cement services.
- d. Failing to follow industry protocol and procedures for setting cement plugs.
- e. Failing to prevent escape of gas or combustible hydrocarbons to the surface.

- f. Attempting to carry out drilling operations with substandard and defective cement casing
- g. Other acts of negligence which will be shown more fully at trial.

21. **MI SWACO**

MI Swaco was negligent in the following non-exclusive particulars:

- a. Failing to monitor pressure of wells
- b. Failing to use adequate weight drilling fluid to prevent gas escape.
- c. Failing to follow industry protocol and procedure during plug completion phases.
- d. Use of sea water as weight and gas control medium during drilling and completion processes.
- e. Attempting to carry out drilling operations with substandard and defective cement casing;
- f. Other acts of negligence which will be shown more fully at trial.

22. **CAMERON INTERNATIONAL CORPORATION**

Cameron International Corporation was negligent in the following non-exclusive particulars:

- a. Failing to provide adequate subsea flow control devices;
- b. Failing to properly engineer the subsea gas flow control devices.
- c. Failing to properly install a subsea gas flow control devices
- d. Failing to properly monitor the subsea engineering and gas flow control devices
- e. Placing into the stream of commerce a defective blowout preventer which was unfit for the purpose of which it was intended.
- f. Other acts of negligence which will be shown more fully at trial.

G. GROSS NEGLIGENCE

23. Plaintiffs further assert that the incident forming the basis of this suit was proximately caused by the willful acts and omissions and gross negligence in the performance of the duties of the Defendants. Defendants' conduct was grossly negligent in that it was carried out with a flagrant disregard for the rights of others and with actual awareness on the part of Defendants that their actions may result in serious bodily injury and/or death.

H. ESTOPPEL OF BP

24. Equitable estoppel is used to prevent a party from taking a legal position inconsistent with an earlier statement or action that places his adversary at a disadvantage. See *W. Keeton, D. Dobbs, R. Keeton & D. Owen, Prosser and Keeton on the Law of Torts* Sec. 105, at 733 (5th ed. 1984). The purpose of the doctrine of equitable estoppel is to ensure that no one will be permitted to "take advantage of his own wrong." *R.H. Stearns Co. v. United States*, 291 U.S. 54, 62, 54 S.Ct. 325, 328, 78 L.Ed. 647 (1934). The traditional elements of equitable estoppel are: (1) the party to be estopped must know the facts; (2) the party to be estopped must intend that his conduct will be acted upon or must so act that the party asserting the estoppel has the right to believe that it was so intended; (3) the party asserting the estoppel must be ignorant of the true facts; and (4) the party asserting the estoppel must rely on the other party's conduct to his injury. *Che-Li Shen v. INS*, 749 F.2d 1469, 1473 (10th Cir.1984). In the recent days just prior to this filing of Plaintiffs' Third Amended Petition, Defendant BP publicly acknowledged and accepted responsibility for this horrific event and should, therefore, be estopped from denying liability herein

I. DAMAGES

25. TRACY KLEPPINGER was the wife of Karl Kleppinger, Jr. AARON THOMAS KLEPPINGER is the minor child of Karl Kleppinger, Jr. Plaintiffs sue for all damages to which they are entitled by law.

26. Plaintiffs seek punitive damages for the gross negligence of the Defendants.

27. Plaintiffs will show that Karl Kleppinger, Jr. suffered intense pain, suffering and mental anguish in the moments prior to his death. The Estate of Karl Kleppinger, Jr. seeks recovery of all damages to which it is entitled under the law.

J. REQUEST FOR DISCLOSURE

28. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, each Defendant is requested to disclose, within fifty (50) days after service of this request upon each Defendant, the information or material described in Rule 194.2(a) through (l).

K. JURY DEMAND

29. Plaintiffs demand a trial by jury. A jury fee is being paid contemporaneously with the filing of this Petition.


WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that, after trial on the merits,

Plaintiffs have judgment against Defendants both jointly and severally for the following:

- a. a sum in excess of the minimum jurisdictional limits of this Honorable Court;
- b. pre-judgment interest thereon at the maximum legal rate;
- c. post-judgment interest thereon at the maximum legal rate;
- d. costs of Court; and,
- e. such other and further relief to which Plaintiffs may be justly entitled.

Respectfully submitted,

GORDON, ELIAS, & SEELY L.L.P.

By: 

Steven J. Gordon

SBN: 08207980

R. Todd Elias

SBN: 00787427

Jeffrey R. Seely

SBN 24033172

5821 Southwest Freeway, Suite 422

Houston, Texas 77057

(713) 668-9999

(713) 668-1980 (Fax)

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been provided to all counsel of record by facsimile transmission, certified mail, return receipt requested or hand delivery on this the 3rd day of May, 2010.

Brent W. Coon

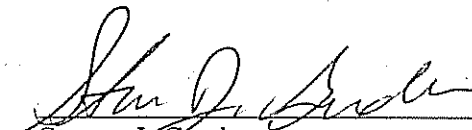
Arthur J. Gonzalez

Gary M. Riebschlager

BRENT COON & ASSOCIATES

300 Fannin, Suite 200

Houston, Texas 77002


Steven J. Gordon