



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.
8. Defendant TRITON ASSET LEASING GMBH, may be served by service through The HAGUE Convention who will in turn serve Robert Bowden, Managing Director at Turmstrasse 30,

Zug, ZG 6300, Switzerland, Europe.

9. Defendant TRANSOCEAN HOLDINGS, L.L.C. may be served by serving its President, John H. Briscoe, at 4 Greenway Plaza, Suite 700, Houston, Texas 77046.

### **C. Venue**

10. 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**

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

12. Christopher Choy 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. Intervention**

13. Intervenor would show that this lawsuit arises out of the same transaction and occurrences as *Tracy Kleppinger v. Transocean Offshore Deepwater Drilling, Inc., et al.*, Cause No. 2010-25245 and that this intervention is proper pursuant to Rule 60 of the Texas Rules of Civil Procedure.

### **E. Factual Summary**

14. Intervenor 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, Christopher Choy was employed by Defendant, TRANSOCEAN OFFSHORE DEEPWATER DRILLING, INC. and/or TRITON ASSET LEASING GMBH and/or TRANSOCEAN HOLDINGS, L.L.C. 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.* Christopher Choy'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.

15. 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.

16. 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.

17. Triton Asset Leasing GMBH and/or Transocean Holdings, L.L.C. were the owners and/or operators of the *DEEPWATER HORIZON* at the time of the subject incident.

18. 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*. Intervenor will show that Defendants were negligent and such negligence was a proximate and/or producing cause of the incident and the resulting damages.

#### **F. CAUSES OF ACTION**

19. At all relevant times, Christopher Choy was in the course and scope of his employment with the Defendants, Triton Asset Leasing GMBH and/or Transocean Holdings, L.L.C. and/or Transocean Offshore Deepwater Drilling, Inc. and/or *DEEPWATER HORIZON* and/or 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 Intervenor's damages.

20. Defendants TRANSOCEAN OFFSHORE DEEPWATER DRILLING, INC., *DEEPWATER HORIZON*, BP PRODUCTS NORTH AMERICA, INC., TRANSOCEAN OFFSHORE DEEPWATER DRILLING, INC., TRITON ASSET LEASING GMBH and TRANSOCEAN HOLDINGS, L.L.C. owed a duty to Christopher Choy to maintain the vessel in a seaworthy condition. However, Intervenor 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.

21. **TRANSOCEAN ENTITIES**

Transocean was negligent in the following non-exclusive particulars:

- a. Failing to provide Christopher Choy with a safe place to work; and requiring Christopher Choy 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 Christopher Choy with a seaworthy vessel;
- g. Other acts of negligence which will be shown more fully at trial.

22. **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 Christopher Choy with a safe place to work, and requiring Christopher Choy to work in unsafe conditions;
- d. Failing to exercise due care and caution;
- e. Failing to provide Christopher Choy with a seaworthy vessel;
- f. Other acts of negligence which will be shown more fully at trial.

23. **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.

24. **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.

25. **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.

26. **TRITON ASSET LEASING GMBH**

Triton Asset Leasing GMBH was negligent in the following non-exclusive particulars:

- a. Failing to provide Christopher Choy with a safe place to work; and requiring Christopher Choy 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 Christopher Choy with a seaworthy vessel;
- g. Other acts of negligence which will be shown more fully at trial.

#### **G. GROSS NEGLIGENCE**

27. Intervenor further asserts 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**

28. 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 Intervenor's Petition in Intervention, Defendant BP publicly acknowledged and accepted responsibility for this horrific event and should,

therefore, be estopped from denying liability herein

## I. DAMAGES

29. Intervenor will show that on the above-mentioned date, he was injured while in the course and scope of his employment with Defendants, TRANSOCEAN OFFSHORE DEEPWATER DRILLING, INC., TRITON ASSET LEASING GMBH and TRANSOCEAN HOLDINGS, L.L.C. and while serving as a seaman in the service of the *DEEPWATER HORIZON*. Defendant breached their absolute duty to provide Intervenor with maintenance and cure. As a result of this Defendant's unreasonable failure to provide maintenance and cure, Intervenor is entitled to recovery for damages and expenses incurred, including but not limited to, damages for prolongation or aggravation of injuries, pain and suffering and additional expenses. Intervenor will also show that he found it necessary to engage attorneys to represent him in the maintenance and cure action and he is entitled to reasonable attorney's fees for the collection of the maintenance and cure benefits due to him but for the arbitrary and capricious denial of said benefits. Intervenor further seeks punitive damages for the willful and wanton failure to pay maintenance and cure.

30. As a direct and proximate result of Defendant's conduct and/or the unseaworthiness of the vessel, Intervenor suffered the following injuries and damages:

- a. Intervenor has been forced to incur reasonable and necessary medical expenses in the past, and in all reasonable medical probability, will continue to incur reasonable and necessary medical expenses in the future;
- f. Intervenor has endured physical pain and suffering in the past, and in all reasonable medical probability, will continue to endure physical pain and suffering in the future;
- g. Intervenor has suffered mental anguish in the past, and in all reasonable medical probability, will continue to suffer mental anguish into the future;

- h. Intervenor has suffered physical impairment in the past and, in all reasonable medical probability, will continue to suffer physical impairment into the future;
- i. Intervenor has suffered physical disfigurement in the past and, in all reasonable medical probability, will continue to suffer physical disfigurement into the future; and,
- f. Intervenor has suffered lost earnings in the past and, in all reasonable probability, will continue to suffer loss of earning capacity into the future.
- g. Intervenor sues for found damages in the past and future.

31. Intervenor seeks punitive damages for the gross negligence of the Defendants.

#### **J. REQUEST FOR DISCLOSURE**

**32. 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**

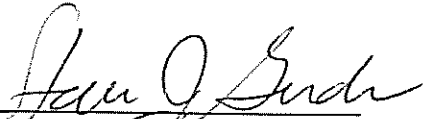
33. Intervenor demands a trial by jury. A jury fee is being paid contemporaneously with the filing of this Petition.

WHEREFORE, PREMISES CONSIDERED, Intervenor prays that, after trial on the merits, Intervenor 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 Intervenor may be justly entitled.

Respectfully submitted,

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

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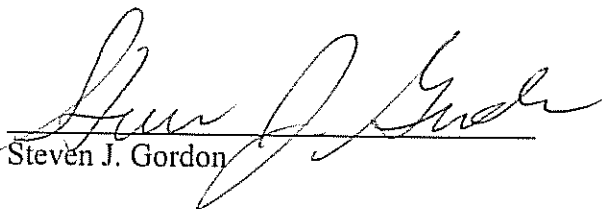
(713) 668-1980 (Fax)

ATTORNEYS FOR INTERVENOR

**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 4th day of May, 2010.

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