

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA
2005 SEP 21 PM 2:18

LORETTA G. WHYTE
CLERK

05-4212

Timothy Danos, individually and as
representative of all similarly situated
commercial fisherman

versus

Bass Enterprises Production Co.;
Shell Oil Company.;
Chevron Corporation;
Venice Energy Services Company, L.L.C.;*
Sundown Energy LP;
Shell Pipeline Company LP;

Civil Action

Docket:

Judge:

Magistrate:

SECT. C MAG. 2

CLASS ACTION PETITION FOR DAMAGES

NOW INTO COURT, through undersigned counsel, comes Timothy Danos, pursuant to Federal Rule of Civil Procedure 23(a) and (b)(1), individually and on behalf of all similarly situated commercial fisherman, and represents as follows:

1.

Made a defendant herein is:

Bass Enterprises Production Company, a foreign corporation domiciled in the States of Texas, with its principal place of business in the State of Texas and authorized to do and doing business within the State of Louisiana including those Parishes within the jurisdictional boundaries of this Court;

Shell Oil Company, a foreign corporation domiciled in the State of Delaware, with its principal place of business in the State of Texas and authorized to do and doing business within the State of Louisiana including those Parishes within the jurisdictional boundaries of this Court;

Chevron Corporation, a foreign corporation domiciled in the State of Delaware, with its principal place of business in the State of California and authorized to do and doing business within the State of Louisiana including those Parishes within the jurisdictional boundaries of this Court;

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Venice Energy Services Company, L.L.C., a foreign limited liability company domiciled in the State of Delaware, with its principal place of business in the State of Texas and authorized to do and doing business within the State of Louisiana including those Parishes within the jurisdictional boundaries of this Court;

Sundown Energy LP, a foreign partnership domiciled in the State of Texas, with its principal place of business in the State of Texas and authorized to do and doing business within the State of Louisiana including those Parishes within the jurisdictional boundaries of this Court;

Shell Pipeline Company LP, a foreign partnership domiciled in the State of Delaware, with its principal place of business in the State of Texas and authorized to do and doing business within the State of Louisiana including those Parishes within the jurisdictional boundaries of this Court.

2.

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 as the parties are diverse.

3.

Venue is proper in this Court as the tortuous acts complained of herein occurred within the Eastern District of Louisiana.

4.

Petitioners propose bringing this matter against said Defendants, which conducted significant activities related to the exploration, production, transportation and storage of crude oil and gas from the marshes, estuaries, lakes, bayous and Gulf of Mexico.

5.

Petitioners propose to proceed on behalf of the following class of individuals:

All commercial fisherman who have suffered economic damages for the loss of their livelihood, which was caused by the oil spills and/or leaks during Hurricane Katrina from the facilities of defendants named herein and located in St. Bernard, Jefferson and Plaquemines Parishes, Louisiana.

Named as proposed representative of the Plaintiff Class is:

1. **Timothy Danos**, a person of full age and majority and a commercial fisherman domiciled in the Parish of Jefferson, State of Louisiana.

6.

Named Defendants own and/or operate several crude oil storage tanks and/or pipelines in St. Bernard, Jefferson and Plaquemine Parishes, Louisiana at the following locations: Bass Enterprises Production Company- Cox Bay and Point a la Hache; Shell Oil Company- Pilot Town; Chevron Corporation- Empire; Venice Energy Services Company, L.L.C.- Venice; Sundown Energy LP- West Potash; and Shell Pipeline Company LP- Nairn.

7.

On August 28, 2005, Hurricane Katrina was upgraded to a Category 5 hurricane prior to making landfall in Southeast Louisiana.

8.

On August 29, 2005, Hurricane Katrina made landfall in Southeast Louisiana as a Category 4 hurricane bearing winds of in excess of 145 mph. As a result of the negligence of said Defendants in failing to take the proper precautionary measures and/or actions prior to Hurricane Katrina making landfall, thousands of gallons of crude oil burst from the ruptured storage tanks and/or pipelines causing crude oil to contaminate the marshes, estuaries, lakes, bayous and Gulf of Mexico. Petitioners state a cause of action for negligence pursuant to La. C.C. arts. 2315 and 2316, which provides that “[E]very person is responsible for the damage he occasions not by his own act, but by his negligence, his imprudence, or want of skill.”

9.

Petitioners state a cause of action for strict liability pursuant to La. C.C. art. 2317 arising out

of damages done by things in the Defendants custody or "garde." La. C.C. art. 2317 proscribes that a custodian is strictly liable for damages occasioned by their things. At all times herein, Defendants were under a continuing duty to protect Petitioners from the harm occasioned by the ruptured storage tanks and/or pipelines into the marshes, estuaries, lakes, bayous and Gulf of Mexico.

10.

At all times herein, Defendants retained ownership of the crude oil storage tanks and/or pipelines and the vice or defect caused by the rupture of the crude oil storage tanks created an unreasonable risk of harm to persons, property and the environment. The aforementioned vice or defect in the custody of Defendants caused Petitioners damages stated herein.

11.

Upon information and belief, over 7,126,440 gallons of crude oil was discharged from the storage tanks and/or pipelines of said Defendants and was dispersed into the marshes, estuaries, lakes, bayous and Gulf of Mexico. This spill was reported as follows:

- A) **Bass Enterprises Production Company**- approximately 3.78 million of gallons of oil was discharged from the Cox Bay facility and 461,000 gallons was discharged from the Point a la Hache facility;
- B) **Shell Oil Company**- approximately 1,051,000 gallons of oil was discharged from the Pilot Town facility;
- C) **Chevron Corporation**- approximately 991,000 gallons of oil was discharged from the Empire facility;
- D) **Venice Energy Services Company, L.L.C.**- approximately 25,000 gallons of oil was discharged from the Venice facility;
- E) **Sundown Energy LP**- approximately 13,000 gallon of oil was discharged from the West

Potash facility; and

F) **Shell Pipeline Company LP**- approximately 13,440 gallons of oil was discharged from the Nairn facility.

12.

Petitioners state a cause of action for punitive damages pursuant to the general maritime law for Defendants intentional and/or wanton and reckless disregard for the rights of others and the environment. Defendants knowingly failed to design their facilities and take the proper precautionary measures to withstand the known hazards posed by hurricanes or to protect the environmentally sensitive marshes, bayous, estuaries and lakes surrounding their facilities resulting in the dispersal of over 7 million gallons of crude oil into the surrounding marshes, bayous, estuaries lakes and Gulf of Mexico.

13.

The Defendants are liable for all damages sustained by Petitioners under the following non-exclusive legal causes of action:

- a) Negligent and/or intentional failure to conduct reasonable inspection and to do what they should have done;
- b) Negligent and/or intentional failure to warn;
- c) Strict liability and/or absolute liability for conducting an abnormally dangerous and/or ultrahazardous activity;
- d) Strict liability for creating a public and/or private nuisance which caused the damage;
- e) Absolute liability pursuant to La. Civil Code Arts. 667-669;
- f) Punitive damages pursuant to the general maritime law for Defendants intentional or wanton and reckless disregard for the rights of others and the environment;
- g) 33 U.S.C. § 2702, Oil Pollution Liability and Compensation Act;

- h) Any other negligence proven at trial; and
- i) Any other right or cause of action provided under Louisiana Law.

14.

As a direct and proximate cause of the negligence of said Defendants by knowingly failing to take the necessary precautionary measures by securing their facilities prior to Hurricane Katrina making landfall in Southeast Louisiana, Petitioners sustained damages that include contamination of property, mental anguish, emotional distress, inconvenience, loss of use, loss of property value, loss of income, loss of profits, loss of business opportunity, economic loss and punitive damages.

15.

Petitioners and all those similarly situated are entitled to have this cause maintained as a class action pursuant to La.C.C.P. art. 591, *et seq.* for the following reasons:

- (a) Requiring the institution of separate lawsuits would pose a serious risk of inconsistent adjudications and earlier separate determinations with a prejudicial effect on subsequent litigants.
- (b) Prosecution of separate actions would pose a serious threat of substantially impeding the ability of class members to protect their interests.
- (c) Any resistance of liability by the defendants would be applicable to all claims presented by all members of the class.
- (d) There are common issues of law and fact that predominate over those issues that might pertain to individual cases.
- (e) The class action is a superior procedural vehicle for the fair and efficient adjudication of this controversy, to wit:
 - (1) The vast majority of the class members have no interest in controlling the litigation;
 - (2) Such a method of proceeding would allow the Court to process all rightful claims in one proceeding;
 - (3) It is desirable to concentrate all the litigation in one forum; and
 - (4) Class litigation is manageable considering the opportunity to afford reasonable notice of significant phases of the litigation to class members and permit distribution of recovery.

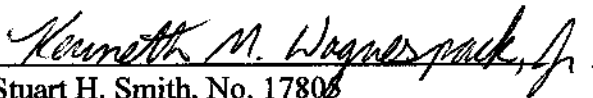
16.

Petitioners respectfully request a trial by jury on all issues stated herein.

WHEREFORE, Petitioners and all those similarly situated, pray that this matter be ordered to proceed as a class action; and after all legal delays and due proceedings are had, that there be judgment in favor of petitioners for damages, together with legal interest thereon from date of judicial demand until paid, for all costs of these proceedings and for all general and equitable relief as provided by law.

Respectfully submitted,

SMITH STAG, L.L.C.



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Shell Oil Company

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Chevron Corporation

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