

APPENDIX

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APPENDIX A

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

No. 18-30243

[Filed August 13, 2019]

IN RE: DEEPWATER HORIZON)
)
LAKE EUGENIE LAND & DEVELOPMENT,)
INCORPORATED; ET AL,)
Plaintiffs,)
)
v.)
)
HALLIBURTON ENERGY SERVICES,)
INCORPORATED; TRANSOCEAN)
HOLDINGS, L.L.C.,)
Defendants – Appellees,)
)
v.)
)
JULIUS BARBOUR; EDWARD BARNHILL,)
JR.; EDWARD BARNHILL, SR.; KAREN)
BARNHILL; SCOTT BLACK; ET AL,)
Movants – Appellants.)
)
JOHN M. PETITJEAN, individually and on)
behalf of a putative class; ET AL,)
Plaintiffs,)
)

App. 2

v.)
)
HALLIBURTON ENERGY SERVICES,)
INCORPORATED; TRANSOCEAN)
HOLDINGS, L.L.C.,)
Defendants – Appellees,)
)
v.)
)
JULIUS BARBOUR; EDWARD BARNHILL,)
JR.; EDWARD BARNHILL, SR.; KAREN)
BARNHILL; SCOTT BLACK; ET AL,)
Movants – Appellants.)
)
<hr/> <u>ECONOMIC and PROPERTY DAMAGES</u>)
SETTLEMENT CLASS, in the matter of Bon)
Secour Fisheries v. BP Exploration &)
Production, Incorporated 12cv970,)
Plaintiff,)
)
v.)
)
HALLIBURTON ENERGY SERVICES,)
INCORPORATED; TRANSOCEAN)
HOLDINGS, L.L.C.,)
Defendants – Appellees,)
)
v.)
)
JULIUS BARBOUR; EDWARD BARNHILL,)
JR.; EDWARD BARNHILL, SR.; KAREN)
BARNHILL; SCOTT BLACK; ET AL,)
Movants – Appellants.)
)

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CONSOLIDATED WITH 18-30413)
)
IN RE: DEEPWATER HORIZON)
)
LAKE EUGENIE LAND & DEVELOPMENT,)
INCORPORATED; ET AL,)
Plaintiffs,)
)
v.)
)
HALLIBURTON ENERGY SERVICES,)
INCORPORATED; TRANSOCEAN)
HOLDINGS, L.L.C.,)
Defendants – Appellees,)
)
v.)
)
JULIUS BARBOUR; EDWARD BARNHILL,)
JR.; EDWARD BARNHILL, SR.; KAREN)
BARNHILL; SCOTT BLACK; ET AL,)
Movants – Appellants.)
)
JOHN M. PETITJEAN, individually and on)
behalf of a putative class; ET AL,)
Plaintiffs,)
)
v.)
)
HALLIBURTON ENERGY SERVICES,)
INCORPORATED; HALLIBURTON)
COMPANY,)
Defendants – Appellees,)
)
v.)

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)
JULIUS BARBOUR; EDWARD BARNHILL,)
JR.; EDWARD BARNHILL, SR.; KAREN)
BARNHILL; SCOTT BLACK; ET AL,)
Movants – Appellants.)

JOHN M. PETITJEAN, individually and on)
behalf of a putative class; ET AL,)
Plaintiffs,)

v.)

TRITON ASSET LEASING GmbH;)
TRANSOCEAN DEEPWATER,)
INCORPORATED; TRANSOCEAN)
HOLDINGS, L.L.C.; TRANSOCEAN)
OFFSHORE DEEPWATER DRILLING,)
INCORPORATED,)
Defendants – Appellees,)

v.)

JULIUS BARBOUR; EDWARD BARNHILL,)
JR.; EDWARD BARNHILL, SR.; KAREN)
BARNHILL; SCOTT BLACK; ET AL,)
Movants – Appellants.)

ECONOMIC and PROPERTY DAMAGES)
SETTLEMENT CLASS, in the matter of Bon)
Secour Fisheries v. BP Exploration)
& Production, Incorporated 12cv970,)
Plaintiff,)

v.)

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HALLIBURTON ENERGY SERVICES,)
INCORPORATED,)
Defendant – Appellee,)
v.)
JULIUS BARBOUR; EDWARD BARNHILL,)
JR.; EDWARD BARNHILL, SR.; KAREN)
BARNHILL; SCOTT BLACK; ET AL,)
Movants – Appellants.)
CONSOLIDATED WITH 18-30533)
In re: Deepwater Horizon)
-----)
DOBBY DARNA; DARRIN COVERT;)
RICHARD DELACEY; JOSEPH)
WILLIAMSON; GEORGE ZIRLOTT,)
Plaintiffs – Appellants,)
v.)
HALLIBURTON ENERGY SERVICES,)
INCORPORATED; HALLIBURTON)
COMPANY; TRANSOCEAN HOLDINGS,)
L.L.C.; TRITON ASSET LEASING GMBH;)
TRANSOCEAN DEEPWATER,)
INCORPORATED; TRANSOCEAN)
OFFSHORE DEEPWATER DRILLING,)
INCORPORATED,)
Defendants – Appellees.)

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Appeals from the United States District Court
for the Eastern District of Louisiana
Nos. 2:10-MD-2179, 2:12-CV-970, 2:15-CV-4143,
2:15-CV-4146, and 2:15-CV-4654

Before KING, ELROD, and ENGELHARDT, Circuit
Judges.

PER CURIAM:

Following the *Deepwater Horizon* disaster, Halliburton Energy Services, Inc. and Transocean Holdings, L.L.C. each entered into a punitive damages settlement agreement with a class of claimants who alleged that they were harmed by the oil spill. In these consolidated appeals, a group of menhaden fishermen challenge the denial of their claims pursuant to those settlements. Because the magistrate judge properly affirmed the denial of the claims and the district court properly declined review, we AFFIRM.

I.

Appellants are commercial menhaden fishermen (the Fishermen) who allegedly suffered economic loss due to the *Deepwater Horizon* oil spill. The Fishermen did not file separate lawsuits against BP or any of the other entities involved in the spill. However, they fell within the class definition in the class-action portion of the B1 Master Complaint filed in the *Deepwater Horizon* MDL.¹ The B1 Master Complaint sought

¹ As we explained in *Graham*, the district court divided the claims against BP, Transocean, and the other entities into pleading bundles for ease of administration. *In re Deepwater Horizon (Graham)*, 922 F.3d 660, 664 (5th Cir. 2019). The B1 Master

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compensatory and punitive damages on behalf of the B1 plaintiffs and class members.

The familiar *Deepwater Horizon* Economic and Property Damages Settlement (E&P Settlement) eventually resolved the majority of the claims asserted in the B1 Master Complaint. However, the terms of that agreement specifically excluded the Fishermen. Instead, the Fishermen entered into settlement agreements with the Appellees, Halliburton Energy Services, Inc. (HESI) and Transocean Holdings, L.L.C. (Transocean). These class settlement agreements (the HESI Settlements) created a fund to distribute among the claimants for punitive damages arising out of the oil spill, and the parties agree that the Fishermen fit within the class definition set out in the settlements.² The HESI Settlements also include a provision limiting the claimants' rights to appeal to this court. The HESI Settlements were entered into and filed with the district court on September 2, 2014 (HESI) and May 29, 2015 (Transocean).³

Complaint asserted claims on behalf of plaintiffs in the B1 pleading bundle, which encompassed claims for "non-governmental economic loss and property damages." The class-action portion of the complaint defined the class as follows: "All individuals and entities residing or owning property in the United States who claim economic losses, or damages to their occupations, businesses, and/or property as a result of the April 20, 2010 explosions and fire aboard, and sinking of, the Deepwater Horizon, and the resulting Spill."

² The terms of the two HESI Settlements are substantially the same for purposes of this appeal, except where otherwise indicated.

³ The HESI Settlement was amended on September 2, 2015.

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While these settlements were awaiting district court approval, the district court issued Pretrial Order 60 (PTO 60) on March 29, 2016, which applied to all claims in the B1 pleading bundle. Foreseeing “no further administrative or procedural benefit to maintaining” the B1 Master Complaint, PTO 60 first dismissed that complaint. It then instructed “[p]laintiffs [who] did not file an individual lawsuit, but instead filed a [short-form joinder] and/or were part of a complaint with more than one plaintiff” to file an individual lawsuit with the district court by May 2, 2016. PTO 60 warned that plaintiffs who failed to comply would “have their claims deemed dismissed with prejudice without further notice.”

On April 12, 2016, the district court preliminarily approved the HESI Settlements, and notice of their terms was given to class members, including the Fishermen. The April 12, 2016 order, *inter alia*, set deadlines for objecting to (September 23, 2016) and opting out of (October 16, 2016) the proposed settlements and scheduled a fairness hearing to be held on October 20, 2016. A few weeks later, on May 2, 2016, the deadline to comply with PTO 60 expired. The Fishermen did not file individual lawsuits, nor did they seek relief from PTO 60 or additional time to comply. On June 7, 2016, the district court issued a show cause order to B1 plaintiffs who had failed to comply with PTO 60. The Fishermen did not respond to the order. Thereafter, on July 14, 2016, the district court found that “[a]ll remaining Plaintiffs in the B1 bundle . . . [were] deemed noncompliant with PTO 60” and dismissed their claims with prejudice. Order Re: Compliance with PTO 60 at 5, *In re Oil Spill by the Oil*

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Rig “Deepwater Horizon” in the Gulf of Mex. on Apr. 20, 2010, No. 2:10-md-2179-CJB-JCW (E.D. La. July 14, 2016), ECF No. 20996.

After the issuance of the June 7, 2016 show cause order but before the June 28, 2016 deadline to respond, the Claims Administrator for the HESI Settlements filed a proposed Distribution Model on June 13, 2016 detailing how claims would be processed under the agreements. The Distribution Model specified that commercial fishermen, including menhaden fishermen, would be required to provide “proof of [their] timely preservation of [their] rights to a claim for damages by compliance with [PTO 60].” Both the Distribution Model and the attached Claim Form warned that claims would be assigned a value of \$0 if the claimant had failed to comply with PTO 60. Although other class members filed objections to the Distribution Model on the ground that it improperly required claimants to comply with PTO 60, the Fishermen did not object. Nor did the Fishermen attend the “fairness hearing” that the district court held in November 2016 to address objections to the Distribution Model.

On February 15, 2017, the district court gave its final approval of the HESI Settlements and the Claims Administrator’s Distribution Model. In its approval order, the district court declined to comment on the propriety of the Claims Administrator’s interpretation of the HESI Settlements as requiring compliance with PTO 60. Instead, the district court observed that “[t]his objection [was] most properly considered in an appeal to [the district court] after claim determinations [were] concluded.” On February 14, 2018, a year after the

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district court issued the approval order, the Fishermen filed a Federal Rule of Civil Procedure 60(b) motion for relief from that order, arguing that the Distribution Model was contrary to the terms of the HESI Settlements and that they had not received adequate notice of PTO 60 or its applicability to their claims. The district court denied the motion.

The Fishermen submitted claims pursuant to the HESI Settlements, but the Claims Administrator denied them because the Fishermen had failed to comply with PTO 60. The Fishermen then appealed to the district court, which had referred “all appeals of claim determinations by the HESI/Transocean settlements claims administrator” to the magistrate judge pursuant to an agreement between the parties. The magistrate judge affirmed the denial, holding that requiring the Fishermen to comply with PTO 60 was consistent with the terms of the HESI Settlements and “the general maritime law precept that a claimant may obtain punitive damages only if that claimant has underlying compensatory damages.”

The Fishermen objected to the magistrate judge’s determination, complaining that his reliance on PTO 60 was contrary to the terms of the HESI Settlements and violated their due process rights. The district court overruled the objection on the ground that the claimants had waived their right to appeal the magistrate judge’s determination to any other court, including the Fifth Circuit. The Fishermen then appealed to this court.

II.

As an initial matter, we address the Fishermen's pending motion to take judicial notice of the docket and complaint in *Bruhmuller v. BP Exploration & Production Inc.* Complaint, *Bruhmuller v. BP Expl. & Prod. Inc.*, No. 2:13-CV-97 (E.D. La. Jan. 18, 2013), ECF No. 1. We may take judicial notice of prior court proceedings as matters of public record. *ITT Rayonier Inc. v. United States*, 651 F.2d 343, 345 n.2 (5th Cir. 1981) ("A court may . . . take judicial notice of its own records or of those of inferior courts."). We GRANT the motion, and we have considered these materials in our review of the case.

III.

The Fishermen raise four issues on appeal: (1) whether this appeal is barred by the appeal waiver in the HESI Settlements; (2) whether the magistrate judge erred in affirming the denial of their claims; (3) whether the district court erred by declining to review the magistrate judge's decision; and (4) whether the district court erred in denying their Rule 60(b) motion.

A.

The appeal waiver in the HESI Settlement reads as follows:

[T]he Claims Administrator shall establish rules for appealing the determinations of the Claims Administrator to the [district] Court. The [district] Court's decision on any such appeal involving the amount of any payment to any

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individual claimant (other than a determination that a claimant is not entitled to any payment due to a failure to meet the class definition) shall be final and binding, and there shall be no appeal to any other court including the U.S. Court of Appeals for the Fifth Circuit.

The Transocean Settlement contains a similar provision, but it omits the exception in parentheses.

The Fishermen argue that this appeal waiver does not foreclose our review because their appeal does not “involv[e] the amount of any payment to any individual claimant” under the HESI Settlements—instead, the Claims Administrator determined that they were not eligible to recover at all. Alternatively, they argue that their appeal fits within the parenthetical exception for “a determination that a claimant is not entitled to any payment due to a failure to meet the class definition.” The Appellees respond that “the Claims Administrator’s decision was that Appellants are entitled to receive \$0, a clear determination as to ‘the amount of payment to any individual claimant.’”

We have enforced appeal waivers in settlement agreements in prior unpublished cases. *See Hill v. Schilling*, 495 F. App’x 480, 487–88 (5th Cir. 2012); *Campbell Harrison & Dagley, L.L.P. v. Hill*, 582 F. App’x 522, 523–24 (5th Cir. 2014). And in the context of the *Deepwater Horizon* settlements specifically, we have indicated that we would enforce an express waiver of the right to appeal from the district court’s claim determinations. *In re Deepwater Horizon*, 785 F.3d 986, 997 (5th Cir. 2015). But because we conclude that the Fishermen cannot prevail on the merits, we

need not determine whether the appeal waiver in the HESI Settlements bars their appeal. *See United States v. Story*, 439 F.3d 226, 230 (5th Cir. 2006) (“[A]ppeal waivers . . . do not deprive us of jurisdiction.”).

B.

We turn next to the issue of whether the magistrate judge erred in affirming the denial of the Fishermen’s claims. We conclude that the magistrate judge’s decision was correct.

Under maritime law, a plaintiff’s recovery of punitive damages is tied to his or her underlying compensatory damages claim. *See Exxon Shipping Co. v. Baker*, 554 U.S. 471, 506–07 (2008). It is unsurprising, then, that the HESI Settlements contemplated that claimants would need to “establish a claim for commercial fishing loss” to recover punitive damages. The Distribution Model set out three methods by which claimants could establish a compensatory damages claim: (1) by filing a claim pursuant to the E&P Settlement; (2) by filing proof of a separate settlement with BP that did not release the claimant’s punitive damages claims; or (3) by filing an individual lawsuit as required by PTO 60. As we explained, the Fishermen were excluded from the E&P Settlement, and they do not argue here that they entered into a separate compensatory damages settlement with BP. Consequently, to establish a compensatory damages claim upon which to predicate their recovery of punitive damages under the HESI Settlements, the Fishermen had to comply with PTO 60.

The Fishermen acknowledge that they received notice of this obligation to comply with PTO 60 at the latest when the Claims Administrator filed the Distribution Model in the district court on June 13, 2016. At that time, although the deadline to comply with PTO 60 had passed, the district court’s show cause order was in effect, and the deadline to respond—June 28, 2016—was two weeks away. The Fishermen did not respond to the show cause order, nor did they attempt *at any point* to file individual lawsuits or seek additional time to comply with PTO 60, although the district court had granted extensions to other parties.

The circumstances of this case are quite similar to those in our recent decision in *Barrera. In re Deepwater Horizon (Barrera)*, 907 F.3d 232 (5th Cir. 2018). There, although the plaintiff-fishermen received notice of PTO 60, they failed to comply, arguing that they were unable to file individual lawsuits because they were working offshore. *Id.* at 234. The district court dismissed their claims with prejudice, and we affirmed, observing that the plaintiffs had a “number of opportunities . . . to either comply with PTO 60 [or] explain why they could not do so.” *Id.* at 235–37. As in *Barrera*, the Fishermen here knew of their obligation to comply with PTO 60 but still failed to file individual lawsuits. And unlike in *Barrera*, the Fishermen did not attempt to comply with PTO 60 at any point throughout these proceedings. The magistrate judge therefore correctly affirmed the denial of their claims.

Despite the above, the Fishermen challenge the magistrate judge’s decision on several grounds:

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(1) requiring compliance with PTO 60 was contrary to the terms of the HESI Settlements; (2) PTO 60 did not apply to the Fishermen; and (3) requiring compliance with PTO 60 violated the Fishermen’s due process rights. Each of these arguments is unavailing.

1.

The Fishermen first contend that requiring compliance with PTO 60 was contrary to the terms of the HESI Settlements, arguing that the settlements deem any claimant who fits within the class definition to have standing. Thus, they maintain that they did not need to make a separate showing of standing by filing individual lawsuits to preserve their compensatory damages claims. According to the Fishermen, this was a “contractual concession” by the Appellees similar to BP’s contractual concession that proof of causation was not required under the E&P Settlement. *See In re Deepwater Horizon (Bon Secour Fisheries)*, 744 F.3d 370, 377 (5th Cir. 2014). The Fishermen also emphasize that “the law is not settled in this circuit” as to whether they have standing, but the HESI Settlements nonetheless expressly include them in the class definition. They argue that the HESI Settlements would not have included claimants whose standing is unclear in the class definition if a separate showing of standing was required—instead, a claimant is entitled to recover under the HESI Settlements merely by proving that he is a member of the class.

“The interpretation of a settlement agreement is a question of contract law that this [c]ourt reviews *de novo*.” *In re Deepwater Horizon*, 785 F.3d 1003, 1011 (5th Cir. 2015). The primary provision of the HESI

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Settlements on which the Fishermen rely to deem standing is the class *description* found in Section 3: “It is the intent of the Parties to capture within the New Class definition all potential claimants . . . who may have valid maritime law standing to make a Punitive Damages Claim under general maritime law against [Appellees.]” However, the class *definition* in Section 4 does not include any language regarding standing. Nor does the quoted language from the class description unequivocally deem standing for class members as the Fishermen contend. Instead, the class description provision demonstrates that the parties recognized that the class definition encompasses claimants whose standing is uncertain under existing law, without saying anything about whether a separate showing of maritime standing is required for recovery under the settlements. At best, this provision is silent as to whether class members must separately prove standing.

Helpfully, the class description in Section 3 is not the only provision in the HESI Settlements that sheds light on whether claimants were deemed to have standing such that compliance with PTO 60 was unnecessary. First, the HESI Settlements contain the statement that “this [settlement agreement] shall be interpreted in accord with general maritime law.” As we discussed above, maritime law links a plaintiff’s recovery of punitive damages to his or her underlying compensatory damages claim. *See Exxon Shipping Co.*, 554 U.S. at 506–07.

In addition, as we also noted above, the section of the HESI Settlements providing for the creation of the

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Distribution Model by the Claims Administrator, Section 8, contains the following provision: “The plan for distribution of payments to the New Class recommended by the Claims Administrator may, at his/her discretion, include . . . a standard to establish a claim for commercial fishing loss.” This expressly recognizes that claimants may be required to demonstrate that they have a claim for loss—in other words, a claim seeking compensatory damages—in order to proceed under the HESI Settlements. By requiring compliance with PTO 60 as one possible way to establish such a claim, the Claims Administrator was exercising the discretion afforded him under this provision.

Finally, in Section 19, the HESI Settlements contain a series of provisions stipulating that the parties will seek certain orders from the district court to effectuate the settlements. One of those provisions requires the parties to obtain an order that:

Adopt[s] the interpretation as to the scope of *Robins Dry Dock* in the [district court’s] Order and Reasons [As to Motions to Dismiss the B1 Master Complaint] . . . by finding that the New Class as defined and described in sections 3 and 4 includes all potential claimants who have standing to bring claims under general maritime law as interpreted by *Robins Dry Dock v. Flint*, 275 U.S. 203 (1927), *State of Louisiana ex. Rel. Guste v. M/V Testbank*, 752 F.2d 1019 (5th Cir. 1985), and their progeny[.]

Thus, the parties specifically bargained for an order by the district court limiting the class of claimants who

could recover under the HESI Settlements to “claimants who have standing to bring claims under general maritime law” as interpreted by the two named cases and their progeny.

Robins Dry Dock stands for the proposition that a plaintiff who sustains only economic loss unaccompanied by personal injury or property damage generally does not have standing to recover damages under maritime law. *See Robins Dry Dock & Repair Co. v. Flint*, 275 U.S. 303, 309 (1927); *Wiltz v. Bayer CropScience, Ltd. P’ship*, 645 F.3d 690, 695–96 (5th Cir. 2011). In *M/V Testbank*, we noted that “[a] substantial argument can be made that commercial fishermen possess a proprietary interest in fish in waters they normally harvest sufficient to allow recovery for their loss.” *State of La. ex rel. Guste v. M/V Testbank*, 752 F.2d 1019, 1027 n.10 (5th Cir. 1985). But we declined to decide whether commercial fishermen were an exception to the *Robins Dry Dock* rule. *Id.*

The district court order referenced in the provision—the order on the motions to dismiss the B1 complaint—interpreted these two cases, in conjunction with the district court’s decision in *M/V Testbank*, as creating an exception to *Robins Dry Dock* to allow commercial fishermen to sue for mere economic loss arising out of the *Deepwater Horizon* oil spill. Order and Reasons Granting in Part, Denying in Part, Defendants’ Motions to Dismiss the B1 Master Complaint at 19–20, *In re Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mex. on Apr. 20, 2010*, No. 2:10-md-2179-CJB-JCW (E.D. La. Aug. 26,

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2011), ECF No. 3830. In light of this interpretation, we read the above-quoted provision to indicate that for the purposes of the HESI Settlements, the Fishermen are not barred from recovery by *Robins Dry Dock* even though we have not affirmatively established that they would have standing under that rule. However, this provision does not purport to eliminate standing issues unrelated to *Robins Dry Dock*, especially the fundamental requirement that a plaintiff has suffered injury in fact. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992).

Thus, this case is distinguishable from *Bon Secour Fisheries* in that the settlement at issue there—the familiar E&P Settlement—set out express causation requirements that departed from the proof of causation a claimant would have been required to provide under general tort law. 744 F.3d at 375–77. Here, the HESI Settlements contemplate that the class encompasses only claimants “who *have* standing to bring claims *under general maritime law*”—suggesting that claimants must make the same showing of standing to recover under the settlements as they would under maritime law, subject to the district court’s interpretation of *Robins Dry Dock* and *M/V Testbank*. Unlike in *Bon Secour Fisheries*, the Appellees did not “contractually concede” standing under the HESI Settlements.

For the reasons described, we hold that requiring the Fishermen to establish underlying compensatory damages claims by complying with PTO 60—in other words, requiring them to have standing to recover

punitive damages under maritime law—was not contrary to the terms of the HESI Settlements.

2.

The Fishermen next argue that PTO 60 did not apply to them. Specifically, they contend that the district court’s conclusion that PTO 60 applied to unnamed class members in class action suits was incorrect because PTO 60 only mentions “mass joinder” plaintiffs, and class actions are distinct from mass joinder suits. Although the Fishermen acknowledge that we affirmed the district court’s dismissal of class action claims under PTO 60 in *Perez*, they “make a good-faith assertion that the *Perez* ruling was incorrect and should be reconsidered.” *See In re Deepwater Horizon (Perez)*, 713 F. App’x 360 (5th Cir. 2018).

We review the district court’s docket management decisions for an abuse of discretion, affording “special deference” to a district court administering an MDL. *Barrera*, 907 F.3d at 234–35. In *Perez*, the appellants, who had filed a series of class action suits in the BP MDL, challenged the district court’s decision that they were required to comply with PTO 60 and file single-plaintiff lawsuits instead. 713 F. App’x at 362. Observing that PTO 60 applied to class actions, we affirmed the district court’s dismissal of the appellants’ class action claims with prejudice. *Id.* The Supreme Court denied the appellants’ petition for a writ of certiorari. *Perez v. B.P., P.L.C.*, No. 18-59, 139 S. Ct. 231 (Oct. 1, 2018). We see no reason to revisit *Perez* here: The district court did not err in applying PTO 60 to unnamed class members.

3.

The Fishermen's third basis for challenging the magistrate judge's decision is that requiring them to comply with PTO 60 violated their due process rights. Their core argument in this regard is that they "did not have constitutionally adequate notice that they had to comply [with PTO 60] in order to receive compensation under the [HESI Settlements]." Whether a claimant's due process rights were violated is a question of law that this court reviews de novo. *See Simi Inv. Co. v. Harris Cty.*, 236 F.3d 240, 249 (5th Cir. 2000).

On this issue, the Fishermen first point to the district court's decision to excuse noncompliance with PTO 60 for certain claimants due to a "notice gap." They also contend that the terms of PTO 60, the terms of the HESI Settlements, and the notices of those settlements sent to class members did not adequately inform them that compliance with PTO 60 was a prerequisite to recovery under the settlements. Finally, while the Fishermen acknowledge that the Distribution Model put them on notice of the requirement to file individual lawsuits, they emphasize that the Distribution Model was not filed until after the deadline to comply with PTO 60 had expired.

The Fishermen's "notice gap" argument analogizes their situation to that of Zat's Restaurant, a claimant that the district court excused from compliance with PTO 60 because it had not received notice of that order. As addressed above, we reject this argument because, unlike Zat's, the Fishermen did not attempt to comply with PTO 60 once they *did* receive notice of it. In fact, we observe that the Fishermen had numerous

opportunities to comply with, object to, or otherwise challenge the PTO 60 compliance requirement before their claims were denied by the Claims Administrator, but they failed to do so. First, the Fishermen had an opportunity to respond to the district court's show cause order with respect to PTO 60 *after* they unequivocally received notice via the Distribution Model that failure to comply with PTO 60 would bar their claims under the HESI Settlements. Second, the Fishermen had an opportunity to object to the Distribution Model itself based on the PTO 60 compliance requirement. Third, the Fishermen had an opportunity to participate in a fairness hearing before the district court to challenge the Distribution Model based on the PTO 60 compliance requirement. Fourth, the Fishermen had an opportunity to appeal the district court's order approving the HESI Settlements and Distribution Model based on the PTO 60 compliance requirement.

Given the above, we cannot conclude that the Fishermen did not receive adequate notice or an opportunity to be heard on the PTO 60 compliance issue. *See Barrera*, 907 F.3d at 236 (affirming dismissal of plaintiffs' claims for failure to comply with PTO 60 “[g]iven the number of opportunities the district court gave Plaintiffs to either comply with PTO 60 [or] explain why they could not do so”). Requiring compliance with PTO 60 to recover under the HESI Settlements did not violate the Fishermen's due process rights.

None of the Fishermen's arguments convince us that the magistrate judge's decision to affirm the denial

of their claims was incorrect. We therefore hold that the magistrate judge did not err in applying PTO 60 to the Fishermen's claims under the HESI Settlements.

C.

The Fishermen also complain that the district court erred in declining to review their objections to the magistrate judge's decision. First, they note that the district court's order referring matters to the magistrate judge (the Referral Order) only delegated "questions regarding the amount of payments." This is not correct. The Referral Order, which the parties agreed to, referred "all appeals of claim determinations by the HESI/Transocean settlements claims administrator" to the magistrate judge. Thus, the Fishermen's appeal from the denial of their claims was within the scope of the Referral Order and was properly reviewed by the magistrate judge.

Second, the Fishermen point to the district court's statement in its order approving the HESI Settlements that objections to the PTO 60 compliance requirement were "most properly considered in an appeal to [the district court] after claim determinations [were] concluded." In the Fishermen's view, this statement reserved the PTO 60 compliance issue for the district court's review, so it should not have been delegated to the magistrate judge. However, the Fishermen cite no authority for the proposition that this determination was not delegable to the magistrate judge. On the contrary, that is precisely what the parties agreed to in the Referral Order, which the district court issued *after* the approval order in which it expressed that it would consider the PTO 60 compliance issue at a later time.

Thus, as the magistrate judge recognized, his decision in this case *was* the promised consideration of the PTO 60 compliance issue at a later stage of the proceedings. That the Fishermen disagree with the magistrate judge's decision on that issue does not permit them to circumvent the Referral Order that they bargained for.

D.

Finally, the Fishermen contend that the district court erred in denying their Rule 60(b) motion, which they filed a year after the district court issued the order approving the Distribution Model. This court reviews a district court's denial of a Rule 60(b) motion for an abuse of discretion. *Lowry Dev., L.L.C. v. Groves & Assocs. Ins., Inc.*, 690 F.3d 382, 385 (5th Cir. 2012). As the Fishermen explain, their Rule 60(b) motion raised the same arguments that they raised in their appeal of the magistrate judge's decision affirming the denial of their claims. Because we conclude that the magistrate judge's decision was correct, we hold that the district court did not err in denying the Fishermen's Rule 60(b) motion for the same reasons.

IV.

We recognize that, in the unique facts of this case, our holding leads to an unfortunate result for the Fishermen, who were unnamed, unrepresented class members for much of these proceedings—the record is not clear as to when they became represented. As a result, as even the Appellees recognized at oral argument, affirming the denial of the Fishermen's claims may appear unduly harsh. However, we are bound by our precedent, by the plain language of the

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HESI Settlements, and by the deferential standard of review applicable to several of the issues in this case. Under those standards, the magistrate judge correctly affirmed the denial of the Fishermen's claims, the district court did not err in declining to review the magistrate judge's decision, and the district court did not err in denying the Fishermen's Rule 60(b) motion. We must therefore AFFIRM the district court's judgment.

APPENDIX B

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**Civil Action Nos. 12-970, 15-4143, 15-4146
and 15-4654**

**JUDGE BARBIER
MAG. JUDGE WILKINSON**

[Filed January 4, 2018]

IN RE: OIL SPILL BY THE OIL RIG)
“DEEPWATER HORIZON” IN THE)
GULF OF MEXICO ON APRIL 20, 2010)
)

MINUTE ENTRY
WILKINSON, M. J.
JANUARY 4, 2018

MDL NO. 2179

SECTION “J”

THIS DOCUMENT RELATES TO:

Civil Action Nos. 12-970, 15-4143, 15-4146 and 15-4654

**CLAIMS APPEAL DETERMINATION AND
REASONS**

[Halliburton and Transocean Settlement]

This Appeal Determination addresses the denial of
80 claims for payment from the Halliburton/

Transocean Settlement fund. Specifically, the appeals address the claims of the following claimants:

Emanual McDonald, No. 605*****; L.V. Evans, No. 744*****; Lillian Alexander, No. B24*****; Keith C. Kelley, No. 52C*****; Kim Slaughter, No. 2DD*****; Marie James, No. 2B7*****; Jhoquan Hibbler, No. 4C5*****; Demarco Jones, No. F58*****; Timothy Alexander, No. 79f*****; Teresa Travis, No. F7F*****; Kendall C. Annan, No. 810*****; Brian Phillip Annan, No. BC1 *****; Due Nguyen, No. 197*****; Calvin Dumas, No. B1B*****; Donna Kennedy, No. 24A *****; Kerry Kiehl, No. 2CC*****; Norwood D. Cain, Sr., No. D8F*****; Deloyd E. Williamson, No. 0C3*****; Donald Zirlott, No. BEC*****; James Johns, No. 648*****; Cleve Boatwright, No. 4D4*****; Randolph S. Dama, Jr., No. 579*****; David E. Simms, Sr., No. F4C*****; Doran Hoffman, No. 868*****; Edward J. Barnhill, No. 937*****; Richard S. Harbison, No. 44A *****; James O. Stewart, No. 4B7*****; Thomas Smith, No. 06D*****; Bobby Shane Esfeller, No. 95C*****; Michael Krause, No. E58*****; Marion L. Strange, No. ESB*****; Jerry Walker, No. 874*****; Martin Young, No. DF8*****; Dennis Zirlott, No. 6EF*****; William C. Stewart, No. C0F*****; Derek Wainwright, No. 225*****; Clarence Waters III, No. A78*****; Scott Black, No. 9FF*****; Roy L. Kibbe, No. FD2*****; Julius Barbour, No. 62A *****; Edward Barnhill, No. D79*****; Jerel Conley, No. EB2*****; Donald Stork, No. B2D*****; Helton Nelson, No. 143*****; Simon Zirlott, No. 954*****; Frank Conley, No. 224*****;

Charles Cowart, No. 2B0*****; Arthur Coleman, No. B40*****; Jason Parker, No. C9D*****; William Ladnier, Sr., No. 9C9*****; Travis Wilkerson, No. 811 *****; Richard Lolly, No. 640*****; Troy Cornelius, Sr., No. 583*****; Rory Johnson, No. 9D6*****; William A. Ladnier, Jr., No. 76A *****; David Krause, No. 124*****; Karen Barnhill, No. D26*****; Cecil Wainwright, Jr., No. 78B*****; Richard Turner, No. A89*****; Anthony Moralis, No. F43*****; Richard Harbison, No. 751 *****; Destin P. O'Brien, No. 7C2*****; Franklin McCall, No. AEA *****; James M. Dooley, No. 8E6*****; Ernest Fisher Price, No. 780*****; Randolph S. Dama, III, No. AAE*****; Tommy Obrien, No. 598*****; Benjamin Hamilton, No. D84*****; Michael Shane Dooley, No. AB0*****; Daryl R. Johnson, No. E7A*****; Lloyd Nielson, No. BD1 *****; Charles Wallace, Jr., No. 0FA *****; Ernest Harris, No. 00A *****; Justin Sawyer, No. 413*****; James Parker, III/James W. Parker, No. A38*****; Allan B. Dopirak, No. D50*****; Ricky Gomes, No. 735*****; Robert Chad Paul, No. 4D9*****; Charles Porter, No. F49*****; and Jesse Stringo, Jr., No. BB5*****.

As to each claim, the Claims Administrator has provided me with the Appeal Determination Notice, Court Review Request, Claim Form and Settlement Program Appeal Determination letter. In addition, two documents have been submitted that amount to the briefs of counsel for 60 individual menhaden fishermen whose claims were neither recognized nor released in the BP settlements, Record Doc. No. 6430-1 at ¶ 3.4,

and were denied in this batch of claims determinations. These documents are styled “Grounds for Objection to the Decision of the Claims Administrator” and “Reasons for Permitting Appeal to the District Court.”

Having reviewed these materials, the determination of the Claims Administrator is AFFIRMED, essentially for the reasons provided by the Claims Administrator.

The New Class portion of the Halliburton/Transocean settlements is a maritime law punitive damages settlement. The Distribution Model and court order approving it, Record Doc. Nos. 18797, 22252, require that a claimant establish a compensatory damages component of his or her claim as a prerequisite to payment. Consistently with the court-approved Distribution Model, the Claims Administrator denied payment of the above-referenced claims principally because the claimants failed to establish a compensatory damages component in that they have no settlement through neutrals of such a claim, no compensatory damages claim paid through the separate Deepwater Horizon Economic & Property Damages Settlement program (“DHEPDS”), and no pending individual lawsuit seeking compensatory damages or sworn statement establishing their identities and preserving their claims as “B1 Plaintiffs,” as required by this court’s Pretrial Order No. 60. Record Doc. No. 16050. Judge Barbier has previously ordered that claims of individual “B1 Plaintiffs” who failed to comply with Pretrial Order No. 60 are dismissed with prejudice as time-barred. Record Doc. No. 20996 at p. 5.

During the settlement approval process concerning the Halliburton/Transocean Settlement Agreements and the related Distribution Model, when objections were asserted to the requirements of compliance with Pretrial Order No. 60 and/or payment through neutrals settlement or the DHEPDS, the court stated:

Seventy-four objectors who failed to comply with PTO 60 now object to the impact this failure will have on their New Class distribution. Rec. Doc. 21723. The Court makes no decision on the propriety of the Claims Administrator's interpretation. This objection is most properly considered in an appeal to this Court after determinations are concluded . . . Seven objectors did not recover in the DHEPDS and now seek assurance that they will recover in the New Class Settlement. . . . Assuming these objectors are New Class Members, if they take issue with their award under the Claims Administrator's Distribution Model, their proper remedy is an appeal to this Court.

Record Doc. No. 22252 at p. 44 (emphasis added). Thus, I find it appropriate to address these reasons for denial of these claims in some detail at this time.

The Claims Administrator's denial of these claims must be affirmed because the denials are consistent with the Settlement Agreements; the Neutral Allocation of the settlement funds, Record Doc. No. 15652; the court's orders approving the Settlement Agreements and its Distribution Model; and the law

supporting them. No basis requiring a different result is apparent or has been provided by the appellants.

As to the Distribution Model's requirement that a successful claimant to payment from the Halliburton/Transocean settlements fund must demonstrate a discernible basis for his or her recovery of compensatory damages, this prerequisite is consistent with the general maritime law precept that a claimant may obtain punitive damages only if that claimant has underlying compensatory damages. As one Louisiana admiralty court has explained:

While the Exxon Shipping Co. v. Baker [U.S. Supreme] Court [decision] did not expressly consider whether [plaintiffs] could recover compensatory damages for their economic losses, that conclusion is implicit in the Court's ruling. The [plaintiffs] were not prevented from seeking compensatory damages, despite their lack of physical damage to a proprietary interest. To the contrary, the amount of the award of punitive damages was ultimately based on a ratio utilizing that compensatory damage award. It is axiomatic that punitive damages may only be recovered in cases where compensatory damages are allowed in the underlying claim. Therefore, the [Supreme] Court's recognition of the [plaintiffs'] right to receive punitive damages, necessarily carried with it the right of those fishermen to be awarded compensatory damages as well.

La. Crawfish Producers Ass'n-W. v. Amerada Hess Corp., No. 6:10-0348, 2015 WL 10571063, at *7 (W.D.

La. Nov. 23, 2015) (citing Exxon Shipping Co. v. Baker, 554 U.S. 471 (2008)) (emphasis added).

In assessing what amount of punitive damages might be appropriate under maritime law, the Supreme Court in Baker endorsed a process of

pegging punitive to compensatory damages using a ratio or maximum multiple. See, e.g., 2 ALI Enterprise Responsibility for Personal Injury: Reporters' Study 258 (1991) . . . ("[T]he compensatory award in a successful case should be the starting point in calculating the punitive award"); ABA, Report of Special Comm. on Punitive Damages, Section of Litigation, Punitive Damages: A Constructive Examination 64-66 (1986) (recommending a presumptive punitive-to-compensatory damages ratio). . . . And of course the potential relevance of the ratio between compensatory and punitive damages is indisputable, being a central feature in our due process analysis.

Baker, 554 U.S. at 506-07 (additional citations omitted) (emphasis added). The Supreme Court has taken a similar approach in its decisions evaluating punitive damages awards under the due process standard. See BMW of N. Am., Inc. v. Gore, 517 U.S. 559, 580-81 (1996) (a non-maritime case) ("The principle that exemplary damages must bear a 'reasonable relationship' to compensatory damages has a long pedigree. . . . Our decisions . . . endorsed the proposition that a comparison between the compensatory award and the punitive award is significant."); id. at 581 (quotation, citation and

emphasis omitted) (“[T]he proper inquiry is whether there is a reasonable relationship between the punitive damages award and the harm likely to result from the defendant’s conduct as well as the harm that actually has occurred.”).

Even those potential claimants who, relying upon Baker and Gore, objected to court approval of the settlements based on this component of the Distribution Model conceded in their objections that “a correct statement of the law is that a party may recover punitive damages from a defendant if the party has recovered compensatory damages from the same defendant.” Record Doc. No. 21723 at p. 7. The essential point for present purposes is that some basis for a claimant’s recovery of compensatory damages is established. In this instance, of course, one indicator of compensatory damages recovery is the DHEPDS payments paid by BP, not Halliburton or Transocean. It is clear, however, that the DHEPDS payments made by BP also reflect any compensatory damages that might have been obtained from Halliburton or Transocean, since the BP settlement payments were also “made in full, complete, and total satisfaction of all of [plaintiffs’] compensatory damage claims against . . . Transocean . . . and . . . Halliburton.” Record Doc. No. 6430-1 at ¶ 4.4.10.3.

The Distribution Model is liberal in its provision that anyone who was paid through the DHEPDS program, regardless whether that claimant also filed an individual lawsuit, has established the compensatory damages component sufficiently to receive payment under the Halliburton/Transocean

settlements Distribution Model. However, this provision offers no recovery avenue for the 60 menhaden fishermen in this group of appellants because their claims were neither recognized nor released under the BP settlements. Record Doc. No. 6430-1 at ¶ 3.4. For them, it was reasonably necessary to establish the compensatory damages component of their claims as a prerequisite to their recovery of punitive damages settlement payments in some other way, such as by settlement through neutrals or by asserting their claims in a lawsuit, as required by Pretrial Order No. 60.

It is axiomatic that any person or entity with a claim for damages must timely assert the claim and that unasserted or untimely claims result in no recovery. See Fed. R. Civ. P. 3 (“A civil action is commenced by filing a complaint with the court.”); Fed. R. Civ. P. Supp. Adm. R. F(5) (“Claims shall be filed and served on or before the date specified in the notice . . . [and] shall specify the facts on which the claimant relies in support of the claim”). For more than five years after the Deepwater Horizon disaster, members of the broad putative class of claimants to damages arising from the disaster might reasonably have relied upon their presumed inclusion in the class and/or subclasses of claimants alleged in the B 1 Bundle Master Complaint, as amended, Record Doc. No. 1128 in MDL 10-2179, ¶¶ 544-45, and its predecessors, together with this court’s short form joinder procedure and individually filed lawsuits, as adequate to assert their claims. The B 1 Bundle Master Complaint asserted a wide variety of claims, including for both compensatory and punitive damages, on behalf of “[a]ll individuals

and entities residing or owning property in the United States who claim economic losses, or damages to their occupations, businesses, and/or property as a result of the April 20, 2010 explosions and fire aboard, and sinking of, the Deepwater Horizon, and the resulting Spill,” *id.* ¶ 544, against principally the BP, Transocean and Halliburton defendants. The B 1 Bundle Master Complaint expressly included menhaden fisheries and commercial fishers in its recitation of alleged damages caused by the Deepwater Horizon disaster. Record Doc. No. 1128, ¶¶ 28(a), 106, 108, 115.

On March 29, 2016, however, Judge Barbier entered Pretrial Order No. 60, which dismissed the B 1 Master Complaint in its entirety and required persons who wished to continue to assert the claims included in it to make certain filings as individuals, rather than merely as unidentified members of a putative class. The order provided an initial compliance deadline of May 2, 2016, which was subsequently extended to May 16, 2016, for anyone who requested an extension. See, e.g., Record Doc. Nos. 16424, 16482, 16755, 17044, 17922.¹

As noted above, the Distribution Model is liberal in its application of the axiom that a claim must be asserted to be compensable, in that the model assumes claim assertion for anyone who filed a claim and was paid through the DHEPDS program. This mechanism provided a readily identifiable basis and means of concluding that those claimants satisfied the compensatory damages prerequisite for payment of a

¹ Judge Barbier denied a request to extend this deadline to June 30, 2016 for all pro se plaintiffs. Record Doc. No. 18132.

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punitive damages settlement amount, for the purposes discussed above. For those who did not or could not file such claims, however, some other means was necessary by which they could be identified and the compensatory damages component required to trigger their entitlement to a punitive damages payment could be established. Pretrial Order No. 60 was that vehicle.

The court had undoubted authority and need to issue Pretrial Order No. 60, requiring all parties seeking recovery to identify themselves and assert their claims, in the interest of resolving and bringing to an end the complex, broad-ranging litigation that was the Deepwater Horizon April 20, 2010 Oil Spill Multi-District Litigation.

Although not without limits, the court's express and inherent powers enable the judge to exercise extensive supervision and control of litigation. The Federal Rules of Civil Procedure, particularly Rules 16, 26, 37, 42, and 83, contain numerous grants of authority that supplement the court's inherent power to manage litigation. Federal Rule of Civil Procedure [16(c)(2)(L)] specifically addresses complex litigation, authorizing the judge to adopt "special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems."

In planning and implementing case management, the court should keep in mind the goal of bringing about a just resolution as speedily, inexpensively, and fairly as possible.

Judges should tailor case management procedures to the needs of the particular litigation and to the resources available from the parties and the judicial system.

Manual for Complex Litigation Fourth, § 10.1 at p. 8 (Federal Judicial Center 2004) (citing Chamber v. NASCO, Inc., 501 U.S. 32, 42-51 (1991); Pedroza v. Cintas Corp., No. 6-01-3247-CV-S-RED, 2003 WL 828237, at *1 (W.D. Mo. Jan. 9, 2003), aff'd, 397 F.3d 1063 (8th Cir. 2005)). The legitimate need for trial courts to engage in active management, including the use of “special procedures” to bring the “Big Case” to “final adjudication” without undue protraction, was the basis for the development of both Rule 16 and the Manual for Complex Litigation. Charles Alan Wright et al., 6A Federal Practice & Procedure §§ 1525, 1530 (3d ed.; Westlaw database updated April 2017); *id.* § 1525, cases cited at nn. 28-32 (including Cech v. Moore-McCormack Lines, Inc., 294 F.2d 584, 584 (2d Cir. 1961) (Rule 16 gives district court authority to set deadline in pretrial order by which plaintiff must appear to execute settlement papers or face dismissal of his claims)); *id.* § 1530 at nn. 1-5.

Pretrial Order No. 60 was such a Rule 16 special procedure. At the time of the order’s entry, the Deepwater Horizon litigation had already lasted more than five years. In the interests of supervising, controlling and resolving the litigation, it was necessary to determine what particular claims remained to be resolved after such protracted litigation, which included trials, appeals and various settlements that had addressed most of the identifiable

claims. It was entirely reasonable and justifiable in furtherance of the interests embodied in Fed. R. Civ. P. 1 and 16 for the court to require those claimants who sought recovery to step forward and identify themselves so that proceedings concerning those claims could proceed and the litigation could be resolved.

The manner in which the court issued, administered and enforced Pretrial Order No. 60 demonstrates the seriousness of the order and the reasonableness of the Claims Administrator's adherence to its requirements in the Distribution Model. In two separate orders issued in 2016, Judge Barbier enforced Pretrial Order No. 60 by dismissing with prejudice as time-barred the claims of B 1 Plaintiffs who had failed to comply with it. Record Doc. Nos. 20996 at p. 5, 22003.

The court's order dismissing as time-barred the claims of plaintiffs who had failed to comply with Pretrial Order No. 60, Record Doc. No. 20996 at p. 5, was consistent with the maritime law doctrine of laches. Because Congress has enacted only a few statutes of limitations applicable to a limited number of types of admiralty claims, courts employ the long-established doctrine of laches to terminate stale claims that claimants have unduly delayed in asserting.

Laches is 'an inexcusable delay that results in prejudice to the defendant.' . . . In evaluating a defense of laches, the Court must weigh the equities as they appear from the facts of each case. . . . In maritime or admiralty actions, the Fifth Circuit uses a three-part test to analyze the validity of a laches defense: 1) whether there was a delay in asserting a right or claim;

- 2) whether or not the delay was excusable; and
- 3) whether the delay resulted in undue prejudice to the party against whom the claim is asserted.

Pac. Dawn, LLC v. New Orleans Marine Serv., Inc., No. 10-2852, 2012 WL 686034, at *2 (E.D. La. Mar. 2, 2012) (quoting Bd. of Supervisors v. Smack Apparel Co., 550 F.3d 465, 489-90 (5th Cir. 2008)) (citing W. Wind Africa Line, Ltd. v. Corpus Christi Marine Servs. Co., 834 F.2d 1232, 1234 (5th Cir. 1988); Mecom v. Livingston Shipbldg. Co., 622 F.2d 1209 (5th Cir. 1980); Esso Int'l, Inc. v. S.S. Captain John, 443 F.2d 1144, 1150 (5th Cir. 1971)).

Pretrial Order No. 60 itself and Judge Barbier's subsequent orders enforcing it indicate that the court weighed these three factors in favor of dismissing claims deemed untimely because of failure to comply with the order. As to delay in asserting a right or claim, each order stressed that the subject oil spill had occurred more than five years before Pretrial Order No. 60 was issued, Record Doc. Nos. 16050 at p. 2, 20996 at p. 2, 22003 at p. 2; and the importance of "timely" claims filing, Record Doc. Nos. 16050 at p. 2, 20996 at p. 2, 22003 at pp. 2, 4; all indicating that further delay beyond the deadline set by the court was unacceptable. Except for a very few claimants who were found to have fallen into a "notice gap," Record Doc. No. 22003 at p. 13, Judge Barbier has consistently found in enforcing Pretrial Order No. 60 that further delay by claimants who had failed to comply with its requirements was not excusable for any of the various reasons they advanced. Record Doc. Nos. 20996 and 22003. The court twice noted that "[t]housands of

Plaintiffs” had successfully complied with the simple requirements of Pretrial Order No. 60 without requiring excuses and had seized the “opportunity to proceed with their B 1 claims through compliance with” the order. Record Doc. Nos. 20996 at pp. 2-3, 22003 at p. 3. The inherent purpose of Pretrial Order No. 60, in its references to “effective administration of this multidistrict litigation” and “streamlining the remaining claims . . . to facilitate the administration of this MDL and the prosecution of the actions herein,” Record Doc. No. 16050 at pp. 1-2, included avoiding the inevitable prejudice to defendants that would result from uncertain damages exposure and having to defend unknown individual claims that might be asserted long after the oil spill and after the generous deadline and mechanisms for asserting claims established by the court expired.

Counsel for the menhaden fishermen who have filed 60 of these appeals assert a cavalcade of additional arguments for setting aside the Claims Administrator’s determinations. All of these arguments have either been previously addressed by the court or require little substantive discussion. These principal arguments include:

(a) Pretrial Order No. 60 applied only to those who had filed short-form joinders to the B 1 Bundle Master Complaint or were plaintiffs in multi-plaintiff lawsuits, neither of which applied to them, and New Class members were not required to do anything. Judge Barbier’s orders enforcing Pretrial Order No. 60 have already rejected these arguments. All of these claimants were clearly B 1 Plaintiffs included in the

broad definitions of plaintiffs contained in the B 1 Bundle Master Complaint.

(b) Their status as members of – although not as specifically named plaintiffs in – various putative class actions was sufficient to assert and preserve their compensatory damages claims, without the need to comply with Pretrial Order No. 60. Judge Barbier has specifically rejected this argument, finding that unnamed members of putative class actions were “part of a complaint with more than one plaintiff” and therefore responsible for complying with the requirements of Pretrial Order No. 60. Record Doc. No. 22003 at p. 21.

(c) They received inadequate notice either of the requirements of Pretrial Order No. 60 or that failure to comply would result in denial of their claims to a share of the Halliburton/Transocean settlements. As outlined in Judge Barbier’s orders, the notice provided was extensive, posted through a wide variety of means, and “deemed sufficient to satisfy notice requirements for all Claimants with ‘B1’ claims.” Record Doc. Nos. 16050 at pp. 5-6, 20996 at p. 3. None of these appellants appear to have fallen into the kind of “notice gap” that Judge Barbier has previously found might excuse some from the Pretrial Order No. 60 requirements. Record Doc. No. 22003 at p. 13.

(d) Denial of their claims violates their due process rights. Due process rights may be either substantive or procedural. Substantive due process rights have been described in broad and subjective terms, including “fundamental fairness.” Perry v. New Hampshire, 565 U.S. 228, 249 (2012) (Thomas, J., concurring); Cty. of

Sacramento v. Lewis, 523 U.S. 833, 846 (1998); Griswold v. Connecticut, 381 U.S. 479, 513 (1965); Rochin v. California, 342 U.S. 165, 169 (1952); Holt v. Alexander, 493 F. App'x 608, 610 (5th Cir. 2012). I know of no precedent or standard by which time-bar limitations on the assertion of stale claims of the type imposed by statutes of limitations, the laches doctrine or the requirements of Pretrial Order No. 60 have been deemed fundamentally unfair. The fundamental requirements of procedural due process are notice that is reasonably calculated to apprise parties of an action that might deprive them of rights, such as the right to assert a claim, and a meaningful opportunity to be heard. Nelson v. Colorado, 137 S. Ct. 1249, 1265 (2017); Hamdi v. Rumsfeld, 542 U.S. 507, 533 (2004); Burciaga v. Deutsche Bank Nat'l Tr. Co., 871 F.3d 380, 390 (5th Cir. 2017). As noted above, the notice mechanisms employed for Pretrial Order No. 60 were varied and numerous; thousands of persons whose rights were affected complied. The opportunity to be heard, both by making the filings required by Pretrial Order No. 60 and in the subsequent proceedings that resulted in Judge Barbier's reconciliation and compliance orders concerning the order, Record Doc. Nos. 20996 and 22003, were extensive and meaningful. No due process violations occurred.

(e) Denial of their claims was an “arbitrary and capricious” violation of their equal protection rights. Pretrial Order No. 60 did not discriminate based on race, religion, national origin, gender or any other conceivable suspect class. Thus, governmental action like Pretrial Order No. 60 need only be rationally related to legitimate purposes. Greater Houston Small

Taxicab Co. Owners Ass'n v. City of Houston, 660 F.3d 235, 239 (5th Cir. 2011); Dudley v. Angel, 209 F.3d 460, 463 (5th Cir. 2000); Johnson v. Rodriguez, 110 F.3d 299, 306 (5th Cir. 1997). The legitimate case management purposes of Pretrial Order No. 60 are summarized above, and the order's rational relationship to those purposes is clear.

For all of the foregoing reasons, the Claims Administrator's determination of these claims was consistent with the Settlement Agreements, the Neutral Allocation of the settlement funds, the court's orders approving the Settlement Agreements and its Distribution Model, and the court's subsequent orders and the law supporting them. They are therefore **AFFIRMED**. The Claims Administrator is directed to provide notice of this Appeal Determination to the claimants referenced above and their counsel, if any.

/s/ Joseph C. Wilkinson, Jr.
JOSEPH C. WILKINSON, JR.
UNITED STATES MAGISTRATE JUDGE

CLERK TO NOTIFY:
HON. CARL J. BARBIER
and
HESI/TRANSOCEAN SETTLEMENT
CLAIMS ADMINISTRATOR

APPENDIX C

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**Civil Action Nos. 12-970, 15-4143, 15-4146
and 15-4654**

**JUDGE BARBIER
MAG. JUDGE WILKINSON**

[Filed March 26, 2018]

IN RE: OIL SPILL BY THE OIL RIG)
“DEEPWATER HORIZON” IN THE)
GULF OF MEXICO ON APRIL 20, 2010)
)

MINUTE ENTRY
WILKINSON, M. J.
MARCH 26, 2018

MDL NO. 2179

SECTION “J”

THIS DOCUMENT RELATES TO:

Civil Action Nos. 12-970, 15-4143, 15-4146 and 15-4654

**CLAIMS APPEAL DETERMINATION AND
REASONS**

[Halliburton and Transocean Settlement]

The Claims Administrator has provided me with five sets of Appeal Forms, Appeal Determination Notices, Court Review Requests, Claim Forms, Settlement Program Appeal Determination Letter, letters (constituting briefs) from claimants' counsel and briefs and objections to the court's prior appeal determination addressing similar claims of menhaden fishermen. These materials concern the appeals of Dobby L. Darna, Claim No. F01*****; Darrin Covert, Claim No. 4D0*****; Richard A. DeLacey, Claim No. A 74*****; Joseph Williamson, Claim No. 3EF*****; and George Zirlott, Claim No. B26*****; denying their claims for payment from the Halliburton/Transocean Settlement Agreements.

Having reviewed these materials, the determination of the Claims Administrator is AFFIRMED essentially for the reasons provided by the Claims Administrator and for the same reasons set out in detail in In re Oil Spill by the Oil Rig "Deepwater Horizon", No. 2179, 2018 WL 334030 (E.D. La. Jan. 4, 2018). In addition, the United States Court of Appeals for the Fifth Circuit has recently affirmed the validity, enforceability and requirement of compliance with Pretrial Order No. 60 in In Re: Deepwater Horizon, 5th Cir. Case No. 17-30475 ("Eduardo Pineiro Perez v. BP, P.L.C. et al." and consolidated cases), 5th Cir. Record Doc. No. 00514364341 (Feb. 27, 2018).

/s/ Joseph C. Wilkinson, Jr.
JOSEPH C. WILKINSON, JR.
UNITED STATES MAGISTRATE JUDGE

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CLERK TO NOTIFY:
HON. CARL J. BARBIER
and
HESI/TRANSOCEAN SETTLEMENT
CLAIMS ADMINISTRATOR

APPENDIX D

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**Nos. 12-970, 15-4143, 15-4146, 15-4654
JUDGE BARBIER
MAG. JUDGE WILKINSON**

[Filed February 26, 2018]

In Re: Oil Spill by the Oil Rig)
“Deepwater Horizon” in the)
Gulf of Mexico, on April 20, 2010)
)

MDL No. 2179

SECTION: J

This Document Relates to: *Nos. 12-970, 15-4143, 15-4146, 15-4654*

ORDER

Before the Court is a Motion for Relief from Court’s Order Approving Distribution Model for HESI/Transocean Settlements (Rec. Doc. 23967).

IT IS ORDERED that the Motion is DENIED.

New Orleans, Louisiana, this 26th day of February, 2018.

/s/
United States District Judge

APPENDIX E

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF LOUISIANA

**Nos. 12-970, 15-4143, 15-4146, 15-4654
JUDGE BARBIER
MAG. JUDGE WILKINSON**

[Filed January 31, 2018]

In Re: Oil Spill by the Oil Rig)
“Deepwater Horizon” in the)
Gulf of Mexico, on April 20, 2010)
)

MDL No. 2179

SECTION: J

This Document Relates to: *Nos. 12-970, 15-4143, 15-4146, 15-4654*

ORDER

Before the Court is an Objection (Rec. Doc. 23852) to the Magistrate Judge’s Claims Appeal Determination and Reasons (Rec. Doc. 23804) concerning 63 claims that were denied payment from the Halliburton/Transocean Settlement Fund. Pursuant to this Court’s Referral Order (Rec. Doc. 23602) and the agreement by Class Counsel, Transocean, and Halliburton (Rec. Doc. 22178), the Magistrate Judge’s decision on any appeal from a Claims Administrator’s determination involving the

amount of any payment to any individual claimant (other than a determination that a claimant is not entitled to any payment due to a failure to meet the class definition) shall be final and binding, and there shall be no appeal to any other court including the U.S. Court of Appeals for the Fifth Circuit. Although the Claims Administrator and the Magistrate Judge determined that the instant claims are not eligible for payment, those determinations were not due to a failure to meet the class definition. Therefore, the Magistrate Judge's ruling is final and binding and may not be appealed to the District Judge or any other court. Accordingly,

IT IS ORDERED that the Objection to Magistrate Judge's Claims Appeal Determination and Reasons (Rec. Doc. 23852) is OVERRULED.

New Orleans, Louisiana, this 31st day of January, 2018.

/s/
United States District Judge

APPENDIX F

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

No. 18-30243

[Filed September 10, 2019]

IN RE: DEEPWATER HORIZON)
)
LAKE EUGENIE LAND & DEVELOPMENT,)
INCORPORATED; ET AL,)
Plaintiffs,)
)
v.)
)
HALLIBURTON ENERGY SERVICES,)
INCORPORATED; TRANSOCEAN)
HOLDINGS, L.L.C.,)
Defendants – Appellees,)
)
v.)
)
JULIUS BARBOUR; EDWARD BARNHILL,)
JR.; EDWARD BARNHILL, SR.; KAREN)
BARNHILL; SCOTT BLACK; ET AL,)
Movants – Appellants.)
)
JOHN M. PETITJEAN, individually and on)
behalf of a putative class; ET AL,)
Plaintiffs,)
)

v.)
)
HALLIBURTON ENERGY SERVICES,)
INCORPORATED; TRANSOCEAN)
HOLDINGS, L.L.C.,)
Defendants – Appellees,)
)
v.)
)
JULIUS BARBOUR; EDWARD BARNHILL,)
JR.; EDWARD BARNHILL, SR.; KAREN)
BARNHILL; SCOTT BLACK; ET AL,)
Movants – Appellants.)
)
<hr/> <u>ECONOMIC and PROPERTY DAMAGES</u>)
SETTLEMENT CLASS, in the matter of Bon)
Secour Fisheries v. BP Exploration &)
Production, Incorporated 12cv970,)
Plaintiff,)
)
v.)
)
HALLIBURTON ENERGY SERVICES,)
INCORPORATED; TRANSOCEAN)
HOLDINGS, L.L.C.,)
Defendants – Appellees,)
)
v.)
)
JULIUS BARBOUR; EDWARD BARNHILL,)
JR.; EDWARD BARNHILL, SR.; KAREN)
BARNHILL; SCOTT BLACK; ET AL,)
Movants – Appellants.)
)

CONSOLIDATED WITH 18-30413)
)
IN RE: DEEPWATER HORIZON)
)
LAKE EUGENIE LAND & DEVELOPMENT,)
INCORPORATED; ET AL,)
Plaintiffs,)
)
v.)
)
HALLIBURTON ENERGY SERVICES,)
INCORPORATED; TRANSOCEAN)
HOLDINGS, L.L.C.,)
Defendants – Appellees,)
)
v.)
)
JULIUS BARBOUR; EDWARD BARNHILL,)
JR.; EDWARD BARNHILL, SR.; KAREN)
BARNHILL; SCOTT BLACK; ET AL,)
Movants – Appellants.)
)
JOHN M. PETITJEAN, individually and on)
behalf of a putative class; ET AL,)
Plaintiffs,)
)
v.)
)
HALLIBURTON ENERGY SERVICES,)
INCORPORATED; HALLIBURTON)
COMPANY,)
Defendants – Appellees,)
)
v.)

)
JULIUS BARBOUR; EDWARD BARNHILL,)
JR.; EDWARD BARNHILL, SR.; KAREN)
BARNHILL; SCOTT BLACK; ET AL,)
Movants – Appellants.)

JOHN M. PETITJEAN, individually and on)
behalf of a putative class; ET AL,)
Plaintiffs,)

v.)

TRITON ASSET LEASING GmbH;)
TRANSOCEAN DEEPWATER,)
INCORPORATED; TRANSOCEAN)
HOLDINGS, L.L.C.; TRANSOCEAN)
OFFSHORE DEEPWATER DRILLING,)
INCORPORATED,)
Defendants – Appellees,)

v.)

JULIUS BARBOUR; EDWARD BARNHILL,)
JR.; EDWARD BARNHILL, SR.; KAREN)
BARNHILL; SCOTT BLACK; ET AL,)
Movants – Appellants.)

ECONOMIC and PROPERTY DAMAGES)
SETTLEMENT CLASS, in the matter of Bon)
Secour Fisheries v. BP Exploration)
& Production, Incorporated 12cv970,)
Plaintiff,)

v.)

HALLIBURTON ENERGY SERVICES, INCORPORATED, Defendant – Appellee,)
v.)
JULIUS BARBOUR; EDWARD BARNHILL, JR.; EDWARD BARNHILL, SR.; KAREN BARNHILL; SCOTT BLACK; ET AL, Movants – Appellants.)
CONSOLIDATED WITH 18-30533)
In re: Deepwater Horizon)
-----)
DOBBY DARNA; DARRIN COVERT; RICHARD DELACEY; JOSEPH WILLIAMSON; GEORGE ZIRLOTT, Plaintiffs – Appellants,)
v.)
HALLIBURTON ENERGY SERVICES, INCORPORATED; HALLIBURTON COMPANY; TRANSOCEAN HOLDINGS, L.L.C.; TRITON ASSET LEASING GMBH; TRANSOCEAN DEEPWATER, INCORPORATED; TRANSOCEAN OFFSHORE DEEPWATER DRILLING, INCORPORATED, Defendants – Appellees.)

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Appeals from the United States District Court
for the Eastern District of Louisiana

ON PETITION FOR REHEARING

Before KING, ELROD, and ENGELHARDT, Circuit
Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is
DENIED.

ENTERED FOR THE COURT:
/s/ Jennifer W. Elrod
UNITED STATES CIRCUIT JUDGE

APPENDIX G

Legal Notice

Deepwater Horizon Oil Spill

Halliburton and Transocean Settlements

Previous Claims Filers and Certain Excluded Groups to Benefit

Majority of People Affected Do Not Need to Do Anything

Two settlements, totaling \$1,239,750,000 have been reached with Halliburton Energy Services, Inc. and Halliburton Company (“HESI”) and Triton Asset Leasing GmbH, Transocean Deepwater Inc., Transocean Offshore Deepwater Drilling Inc., and Transocean Holdings LLC (“Transocean”) over the Deepwater Horizon oil spill.

The HESI/Transocean Settlements will not pay for any economic loss or personal injury claims. The Settlements cover punitive damages as well as certain assigned claims from the 2012 BP Deepwater Horizon Economic & Property Damages Settlement (“DHEPDS”). Generally, claims for punitive damages are not intended to compensate people for their losses, but rather seek a monetary award that is used to discourage a defendant and others from committing similar acts in the future.

In order to make a claim for punitive damages under general maritime law, an individual or entity must generally show that property it owned was directly affected, impacted, or damaged by the oil. There is a “commercial fishing” exception, which also generally allows commercial fishermen to make a claim for punitive damages, even though they do not “own” the fish that were directly impacted or damaged.

What are the Lawsuits About?

The lawsuits involve certain claims arising out of the “Deepwater Horizon Incident” in the Gulf of Mexico beginning on April 20, 2010. The first phase of the trial focused on identifying the causes of the blowout, explosion, and subsequent oil spill. The Court determined, based on the evidence, that HESI and Transocean were not responsible for punitive damages. There have been no appeals of these findings.

HESI and Transocean have agreed to these Settlements to avoid the risks and costs of litigation. Given the Court’s findings, these Settlements are the only way to recover punitive damages under these lawsuits.

Who is Included in the HESI/Transocean Settlements?

There are two groups included in the Settlements:

New Class: The majority of the funds (\$902 million) will go toward compensating class members whose real or personal property was physically oiled as well as commercial fishermen. The New Class is intended to address only those claims that could have been brought

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for punitive damages under general maritime law. This includes previously excluded groups (local government, gaming, finance, insurance, real estate development, defense industries, and oil and gas entities), individuals and entities that opted out of the DHEPDS, and groups that were part of certain DHEPDS claims categories (coastal, wetlands, vessel physical damage, seafood, charterboat, real property sales loss, and subsistence). These are the only claims that will be addressed by the HESI/Transocean Settlement Program.

Old Class: The remaining funds (\$337 million) have been allocated to compensate the existing DHEPDS Class for Assigned Claims associated with the 2012 DHEPDS Agreement. This Class consists of hundreds of thousands of businesses and individuals who previously filed claims for economic losses associated with the Deepwater Horizon oil spill. Only individuals and businesses that previously filed a valid DHEPDS claim will be eligible for a payment from the HESI/Transocean Settlements associated with the assigned claims.

How Can I Get Benefits?

You will only need to file a claim if you are a New Class Member and were not eligible to file a claim in the DHEPDS or elected to opt out of that settlement. If you are a member of the earlier DHEPDS class with BP, you cannot file a new claim. The Settlement Administrator will use the information from your DHEPDS claim for the purposes of determining your eligibility for a payment from the HESI/Transocean Settlements. If you were part of the DHEPDS class and

decided not to file a claim or your DHEPDS claim was denied, you cannot get any benefits from the HESI/Transocean Settlements. The deadline to submit a claim is **December 15, 2016**.

Your Other Options

If you are a New Class Member and do not want to be legally bound by the HESI/Transocean Settlements, you must exclude yourself by **September 23, 2016**, or you won't be able to sue HESI or Transocean later about the claims in this case. However, considering the Court's findings, you may be precluded from making a claim for punitive damages outside of these Settlements. If you stay in the New Class or are a member of the Old Class, you may object to the Settlements by **September 23, 2016**. The Detailed Notice (available at the website below) explains how to exclude yourself or object.

The Court will hold a hearing on **November 10, 2016**, to consider whether to approve the HESI/Transocean Settlements and a request for attorneys' fees up to \$124,950,000. The attorneys' fees will be paid separately by HESI/Transocean and will not reduce any payments to Class Members. You or your own lawyer may ask to appear and speak at the hearing at your own cost.

For More Information:

Call Toll-free: 1-877-940-7792
Visit: www.GulfSpillPunitiveDamagesSettlement.com

APPENDIX H

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF LOUISIANA**

Deepwater Horizon Oil Spill

Halliburton and Transocean Settlements

**Previous Claims Filers and Certain Excluded
Groups to Benefit**

***Majority of People Affected Do Not Need to Do
Anything***

*A federal court authorized this notice. This is not a
solicitation from a lawyer.*

- Two settlements, totaling \$1,239,750,000 have been reached with Halliburton Energy Services, Inc. and Halliburton Company (“HESI”) and Triton Asset Leasing GmbH, Transocean Deepwater Inc., Transocean Offshore Deepwater Drilling Inc., and Transocean Holdings LLC (“Transocean”) over the Deepwater Horizon oil spill.
- The HESI/Transocean Settlements will not pay for any economic loss or personal injury claims. The Settlements cover claims that could have been asserted for punitive damages, as well as certain assigned claims from the 2012 BP Deepwater Horizon Economic & Property Damages Settlement (“DHEPDS”). Generally, claims for punitive damages are not intended to compensate people for

their losses, but rather seek a monetary award that is used to discourage a defendant and others from committing similar acts in the future.

- There are two groups included in the HESI/Transocean Settlements:
 - **New Class:** The majority of the funds (\$902 million) will go toward compensating class members whose real or personal property was physically oiled. *See Question 4* for what qualifies as “physical oiling.” The New Class is intended to address only those claims that could have been brought for punitive damages under general maritime law. This includes previously excluded groups (for example, local governments and menhaden/pogy fishermen), individuals and entities that opted out of the DHEPDS, and groups that were part of certain DHEPDS claims categories (coastal, wetlands, vessel physical damage, seafood, charterboat, real property sales loss, and subsistence). *See Question 5* for a complete list of the DHEPDS excluded groups. These are the only claims that will be addressed by the HESI/Transocean Settlement Program.
 - **Old Class:** The remaining funds (\$337 million) have been allocated to compensate the existing DHEPDS Class (“Old Class”) for Assigned Claims associated with the 2012 DHEPDS Agreement. This Class consists of hundreds of thousands of businesses and individuals who previously filed claims for economic losses associated with the Deepwater Horizon oil spill.

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Only individuals and businesses that previously filed a valid DHEPDS claim will be eligible for a payment from the HESI/Transocean Settlements associated with the assigned claims. Members of the Old Class are automatically included in this Settlement by virtue of their having participated in the 2012 Settlement Agreement.

- If you are included in the HESI/Transocean Settlements, your legal rights are affected whether you act or not. Read this Notice carefully. Your rights and options—**and the deadlines to exercise them**—are explained in this Notice.

QUESTIONS? CALL 1-877-940-7792 OR VISIT
WWW.GULFSPILLPUNITIVEDAMAGESSETTLEMENT.COM

CLASS MEMBERS' LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	Individuals/Entities who previously filed an eligible DHEPDS claim: Your previous claim will be transferred. Eligible DHEPDS claimants will automatically be considered for a payment from the HESI/Transocean Settlements. You will be bound by the claim you filed in the DHEPDS. Do not file a new claim.
FILE A CLAIM – NEW CLASS (NOT A DHEPDS CLASS MEMBER)	DHEPDS Excluded Parties and Opt Outs: File a claim to request a payment only if you were not part of the Old Class. This would apply if you are part of a previously excluded group listed in this Notice or if you validly exercised your option to Opt Out of the DHEPDS. Individuals and entities whose claim(s) fell outside the DHEPDS Damage Categories may also be eligible to file a New Class claim. You must meet the eligibility requirements listed in Question 11.

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ASK TO BE EXCLUDED	If you are part of the New Class, you may choose to get no benefits from the HESI/Transocean Settlements for the New Class. Requesting exclusion from the New Class would allow you to file or continue your own lawsuit against HESI and Transocean about the legal claims involved in these Settlements. But please see Question 29.
OBJECT	Write to the Court about why you do not like the HESI/Transocean Settlements.
GO TO A FAIRNESS HEARING	Ask to speak in Court about the fairness of the HESI/Transocean Settlements.

What This Notice Contains

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3. What is the Deepwater Horizon Incident?
4. What is physically oiled?
5. What groups were excluded from the DHEPDS?
6. Why is this a class action?
7. Are the HESI/Transocean Settlements part of the Gulf Coast Claims Facility (GCCF)?
8. Are the HESI/Transocean Settlements part of the DHEPDS?
9. What if my DHEPDS claim is still pending or unresolved?
10. What if I received a GCCF final payment and signed a release?

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11. Who is in the New Class?
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ELIGIBILITY CHART..... PAGE 15

BASIC INFORMATION

1. Why is this Notice being provided?

You have a right to know about proposed Settlements of these class action lawsuits and your options relating to the proposed Settlements. This Notice explains the lawsuits, the HESI and Transocean Settlements, your legal rights, what benefits are available, who may be eligible for those benefits, and how to get them.

Judge Carl J. Barbier of the United States District Court for the Eastern District of Louisiana is overseeing this class action. The case is known as *In re: Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico on April 20, 2010*, MDL No. 2179. The people who started the lawsuit are called “Plaintiffs,” and HESI and Transocean, the companies being sued, are called the “Defendants.”

Capitalized terms are defined terms in the HESI and Transocean Settlement Agreements, which are available on the website.

Do not call the Court or any Judge’s office to ask questions about the HESI and Transocean Settlements. If you have questions or if you want more information, please visit GulfSpillPunitiveDamagesSettlement.com or call 1-877-940-7792.

2. What are the lawsuits about?

The lawsuits involve certain claims arising out of the “Deepwater Horizon Incident” (*see Question 3*) in the Gulf of Mexico beginning on April 20, 2010.

The first phase of the trial focused on identifying the causes of the blowout, explosion, and subsequent oil spill. The Court determined, based on the evidence, that HESI and Transocean did not commit gross negligence, reckless, wanton, or willful misconduct, and are therefore not responsible for punitive damages. There have been no appeals of these findings.

HESI and Transocean have agreed to these Settlements to avoid the risks and costs of litigation. Given the Court’s findings, these Settlements are the only way to recover punitive damages under these lawsuits.

3. What is the Deepwater Horizon Incident?

The “Deepwater Horizon Incident” refers to the events, actions, inactions, and omissions leading up to and including:

- The blowout of the MC252 Well (also known as the “Macondo Well”) on April 20, 2010;
- The design, planning, preparation, or drilling of the MC252 Well;
- The explosions and fire on board the Deepwater Horizon oil rig;
- The sinking of the Deepwater Horizon oil rig on April 22, 2010;

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- The efforts to control the MC252 Well;
- The release of oil and other substances from the MC252 Well and/or the Deepwater Horizon oil rig and its appurtenances (equipment);
- The efforts to contain the MC252 Well;
- All “Response Activities,” including the “Vessels of Opportunity” (“VoO”) program;
- Any damages to the MC252 Well and any reservoir, aquifer, geological formation, or underground strata related to the above; and
- All other responsive actions taken in connection with the blowout of the MC252 Well.

4. What is physically oiled?

In order to make a claim for punitive damages under general maritime law, an individual or entity must generally show that property it owned was directly affected, impacted, or damaged by the oil. There is a “commercial fishing” exception, which also generally allows commercial fishermen to make a claim for punitive damages, even though they do not “own” the fish that were directly impacted or damaged.

5. What groups were excluded from the DHEPDS?

The groups that were previously excluded from the DHEPDS include: local government, gaming, finance, insurance, real estate development, defense industries, menhaden fishermen, and oil and gas entities. These groups are included in the New Class.

6. Why is this a class action?

In a class action, one or more “Class Representatives” sue on behalf of all those with the same types of claims arising from the same events. One court resolves the issues for all class members. Here, the Class Representatives are suing to obtain payments for a class of individuals, businesses, and local governments with specific types of claims arising from the Deepwater Horizon Incident.

7. Are the HESI/Transocean Settlements part of the Gulf Coast Claims Facility (GCCF)?

No. A new Settlement Program has been established under the HESI and Transocean Settlements. By the agreement of the parties, the new program operates according to specific, agreed-upon rules and is under the supervision of the Court. If you had a claim paid by the GCCF, and you did not sign a release (*see* Question 10), you may still be eligible to receive a payment under the HESI/Transocean Settlements.

8. Are the HESI/Transocean Settlements part of the DHEPDS?

The HESI/Transocean Settlements are separate from the DHEPDS. However, you should note the following:

- As part of the DHEPDS, BP assigned certain claims it had against HESI/Transocean to the DHEPDS class. HESI/Transocean have agreed

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to settle those assigned claims and pay DHEPDS class members (*see Question 15*).

- If you filed a valid claim in the DHEPDS and are included in the HESI/Transocean Class, your previous claim will be transferred to the administrator. **DO NOT FILE A NEW CLAIM.**
- If you had a claim rejected under the DHEPDS, it may affect your eligibility or right to receive a payment under these Settlements in the following ways:
 - If your DHEPDS claim was rejected because you or the claim were *excluded* from (or Opted Out of) the DHEPDS class, you may be eligible for benefits from the HESI/Transocean Settlements.
 - If your DHEPDS claim was denied for some other reason, (e.g., no causation, fraud, waste and abuse (“FWA”), or prior GCCF Release), you cannot get a payment from the HESI/Transocean Settlements.
- If you were eligible to make a claim in the DHEPDS, but chose not to, you cannot get a payment from the HESI/Transocean Settlements.
- If you are a New Class Member but were unable to file a claim in the DHEPDS because your claim did not fall into the DHEPDS Damage Categories, you may be eligible to file a HESI/Transocean claim (*see Questions 11 and 17 or the Eligibility Chart for additional details*).

9. What if my DHEPDS claim is still pending or unresolved?

The DHEPDS Program is working on these claims – and all DHEPDS claims – under the rules of the DHEPDS. If additional information is needed to process your claim, you will be contacted. If you have a specific question about the status of a DHEPDS claim, you can call the DHEPDS Administrator at 1-800-353-1262 for assistance.

10. What if I received a GCCF final payment and signed a release?

If you made a claim to the GCCF and signed a document called, “Release and Covenant Not to Sue,” you are not eligible to receive money from the HESI and Transocean Settlements. However, you may still be eligible for a payment from the HESI/Transocean Settlements if your GCCF claim and the “Release and Covenant Not to Sue” related only to a bodily injury claim.

WHO IS IN THE SETTLEMENTS?

To see if you will be affected by the HESI and Transocean Settlements or if you can get a payment from them, you first have to determine if you are a Class Member.

11. Who is in the New Class?

The New Class includes individuals, businesses, local governments, and other entities that had Real or

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Personal Property, anytime between April 20, 2010, through April 18, 2012, that was touched or physically damaged by the Deepwater Horizon oil spill. This includes some new groups: local government, gaming, finance, insurance, real estate development, defense industries, and oil and gas entities.

The New Class also includes:

Commercial Fishermen (including menhaden/pogy fishermen) or Charterboat Operators who, at any time between April 20, 2009, through April 18, 2012:

- Owned, chartered, leased, rented, managed, operated, utilized, or held any proprietary interest in commercial fishing or charter fishing that were Home Ported in or that landed Seafood in the Gulf Coast Areas, OR
- Worked on or shared an interest in catch from Vessels that fished Specified Gulf Waters and landed Seafood in the Gulf Coast Area.

Subsistence hunters and fishers who, at any time between April 20, 2009, through April 18, 2012:

- Fished or hunted in the Identified Gulf Waters or Gulf Coast Areas to harvest, catch, barter, consume, or trade natural resources, including Seafood and game, in a traditional or customary manner, to sustain basic family dietary, economic security, shelter, tool, or clothing needs.

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Individuals and entities that were unable to file a DHEPDS claim because the claim fell outside of the DHEPDS Damage Categories.

See the Eligibility Chart on page 16 for more details on who is included in the New Class. The complete text of the New Class definitions is in Section 4 of the HESI and Transocean Settlement Agreements. The Agreements and other materials and information are available on the website, GulfSpillPunitiveDamagesSettlement.com, and by request. The definitions below will help you determine if you are a member of the New Class.

- “**Charterboat Operators**” means owners, captains, and deckhands of charter fishing vessels that carry passengers(s) for hire to engage in recreational fishing.
- “**Commercial Fisherman**” means any person or entity that gets income from catching and selling Seafood. This includes Vessel owners, boat captains, boat crew, boat hands, and others who are paid based on the quantity of Seafood lawfully caught while holding a commercial fishing license issued by the United States and/or the State(s) of Alabama, Florida, Louisiana, Mississippi, and/or Texas, or otherwise engaged in lawful commercial fishing.
- “**Gulf Coast Areas**” include the States of Louisiana, Mississippi, and Alabama; the counties of Chambers, Galveston, Jefferson, and Orange in the State of Texas; and the counties of Bay, Calhoun, Charlotte, Citrus, Collier, Dixie,

Escambia, Franklin, Gadsden, Gulf, Hernando, Hillsborough, Holmes, Jackson, Jefferson, Lee, Leon, Levy, Liberty, Manatee, Monroe, Okaloosa, Pasco, Pinellas, Santa Rosa, Sarasota, Taylor, Wakulla, Walton, and Washington in the State of Florida. “Gulf Coast Areas” also includes all adjacent Gulf waters, bays, estuaries, straits, and other tidal or brackish waters within the States of Louisiana, Mississippi, and Alabama, and those described counties of Texas or Florida.

- “**Entity**” means an organization, business, local government, or entity, other than a Governmental Organization, operating or having operated for-profit or not-for-profit, including a partnership, corporation, limited liability company, association, joint stock company, trust, joint venture, or unincorporated association of any kind or description.
- “**Identified Gulf Waters**” means the U.S. and state territorial waters of the Gulf of Mexico and all adjacent bays, estuaries, straits, and other tidal or brackish waters within the territory of the States of Louisiana, Mississippi, and Alabama and the Texas and Florida counties listed in the definition of Gulf Coast Areas.
- “**Local Government**” means a county, parish, municipality, city, town, or village (including a Local Government’s agency, branch, commission, department, unit, district, or board).

- **“Personal Property”** means any form of tangible property that is not Real Property, including Vessels.
- **“Real Property”** means all real property adjacent to Identified Gulf Waters, including property below the surface of the water, Oyster Beds, and deeded docks.
- **“Seafood”** means fish and shellfish, including shrimp, oysters, crab, menhaden, and Finfish, caught in the Specified Gulf Waters or Identified Gulf Waters.
- **“Specified Gulf Waters”** means the U.S. waters of the Gulf of Mexico where residents of Gulf Coast Areas are allowed to lawfully fish, and all adjacent bays, estuaries, straits, and other tidal or brackish waters within the Gulf Coast Areas.

12. Are there exceptions to being included in the New Class?

Yes. The following individuals and entities are excluded from the New Class:

- Anyone who excludes themselves from (or “Opts Out” of) the New Class;
- Defendants in MDL 2179 and certain current and former employees of HESI and Transocean;
- The Court, including any sitting judges on the United States District Court for the Eastern District of Louisiana, their law clerks serving during the pendency of this lawsuit, and

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members of any such judge's or current law clerk's immediate family;

- Governmental Organizations (outside of included local governments);
- BP Released Parties and certain individuals who were employees of BP; and
- Individuals and Entities that received a payment from the GCCF and signed a "Release and Covenant Not To Sue." *See Question 10.*

The following claims are also not included in the HESI and Transocean Settlements:

- Bodily Injury Claims
- BP Shareholder Claims

You may still pursue these claims and remain a New Class Member without Opting Out.

The full description of the entities, individuals, and claims that are excluded from the New Class can be found on the website or by calling 1-877-940-7792.

13. Do the HESI and Transocean Settlements cover claims for economic loss, medical, or personal

No. The HESI and Transocean Settlements do not include claims for economic loss, medical, or personal injury.

14. What if I'm still not sure whether I am included in the New Class?

If you are not sure whether you are in the New Class, or have any other questions about the HESI and Transocean Settlements, visit the website at GulfSpillPunitiveDamagesSettlement.com or call the toll-free number, 1-877-940-7792. You may also write with questions to HESI/Transocean Punitive Damages & Assigned Claims Settlements, PO Box 10260, Dublin, OH 43017-5760 or send an e-mail to questions@GulfSpillPunitiveDamagesSettlement.com.

THE SETTLEMENTS' BENEFITS

15. What do the HESI/Transocean Settlements provide?

HESI will contribute \$1,028,000,000, and Transocean will contribute \$211,750,000 to fund the HESI/Transocean Settlements. The majority of the Fund (\$902,083,250) will be used to pay New Class Members. The remainder of the Fund (\$337,666,750) has been allocated to the Assigned Claims for the benefit of the existing DHEPDS Class. The allocation was performed by United States Magistrate Judge Joseph C. Wilkinson, Jr., who was appointed to serve as the Allocation Neutral under the terms of the Settlement Agreements. The Court has preliminarily reviewed the allocation, has granted preliminary approval to the Settlements on that basis, and will consider final approval of the allocation as well as the Settlements at the formal Fairness Hearing. The cost to provide notice and administer the HESI/Transocean

Settlements will be paid out of the Fund. In addition to the Fund, HESI and Transocean have also agreed to pay certain attorneys' fees and expenses (see Question 35).

16. How much will my payment be?

The proposed Distribution Model will be filed with the Court no later than June 15, 2016. The proposed Distribution Model will also be posted to the website, GulfSpillPunitiveDamagesSettlement.com. The Court will assess the Distribution Model along with the Settlements as a whole at the Fairness Hearing.

After the Distribution Model has been filed with the Court, if you have questions about how the value of your potential claim will be determined, you can call 1-877-940-7792 for assistance.

**HOW TO REQUEST A PAYMENT—SUBMITTING A
CLAIM FORM**

**17. Who has to submit a Claim Form to
request a payment?**

There is only one group that needs to file a claim. If you are a New Class Member and were not eligible to file a claim in the DHEPDS or elected to Opt Out of that Settlement, you will need to file a claim to request a payment from the HESI/Transocean Settlements. If you are a member of the earlier DHEPDS Class with BP, you cannot file a new claim. The Settlement Administrator will use the information from your DHEPDS claim for the purposes of determining your

eligibility for a payment from the HESI/Transocean Settlements.

Group	Need to File a Claim
Filed a valid claim in DHEPDS	No
<p>Certain Individuals/Entities not allowed to file a claim in DHEPDS.</p> <p><u>Including new groups:</u></p> <p>Pogy/menhaden fishermen</p> <p>Local governments</p> <p>Gaming</p> <p>Insurance</p> <p>Financial</p> <p>Real estate developers</p> <p>Defense industries</p> <p>Oil and gas entities</p> <p>New Class Members whose claims fell outside of the DHEPDS Damage Categories.</p>	<p>Yes</p> <p>(But will only be eligible to participate if you have oiled property or are a commercial fisherman)</p>
Elected to Opt Out of DHEPDS	<p>Yes</p> <p>(but will only be eligible to participate if you have oiled property or are a commercial fisherman)</p>

Claim was denied in DHEPDS	No. You are not eligible for a payment from HESI/Transocean Settlements (unless you were denied because you had an excluded claim or Opted Out of the DHEPDS).
DHEPDS class member but did not file a claim in that Settlement	No. You are not eligible for a payment.

18. Can I submit a claim if I voluntarily decided not to file a claim in the DHEPDS?

No, unless you were deemed a valid Opt Out party for the DHEPDS. You gave up your right to a punitive damage award because you failed to file a claim to recover for economic loss from the DHEPDS.

19. Should I submit a claim if I have a claim pending in the DHEPDS?

No. The claim you filed in the DHEPDS will be transferred to the HESI/Transocean administrator.

20. Should I submit a claim if my claim was paid in the DHEPDS?

No. The claim you filed in the DHEPDS will be transferred to the HESI/Transocean administrator.

21. Should I submit a claim if my claim was denied in the DHEPDS?

No. If your DHEPDS claim was rejected for a reason other than the fact that you were excluded from (or opted out of) the DHEPDS class, (e.g. no causation, FWA denial, prior GCCF Release), you cannot get a payment from the HESI/Transocean Settlements because your claims for compensatory damages (upon which a punitive damage award would be premised) have been released. Compensatory damages compensate for actual losses.

22. Should I submit a claim if I previously Opted Out of the DHEPDS?

Yes, if you Opted Out of the DHEPDS Class and are included in the New Class, you may submit a claim.

23. How do I submit a Claim Form to request payment?

To submit a Claim Form, you must mail it to the address below. If you have questions about how to file your claim, you should call 1-877-940-7792 for assistance.

Claim Forms will be available after the Distribution Model is filed with the Court; you may download the Claim Form from the website or request it be mailed to you by calling 1-877-940-7792.

The address for mailing your Claim Form(s) is:

HESI/Transocean Punitive Damages &
Assigned Claims Settlements
PO Box 10260
Dublin, OH 43017-5760

The deadline for filing a Claim Form is **December 15, 2016**.

24. Do I need to submit supporting documentation?

Yes. If you are a New Class Member who needs to submit a claim to be considered for payment as explained above, you will need to include certain supporting documents for your claim to be accepted. The Claim Form will be available when the Distribution Model is submitted to the Court for approval and will be posted on the website, GulfSpillPunitiveDamagesSettlement.com, or you may request a Claim Form by mail.

25. What if my claim is denied or I am not satisfied with my payment?

The HESI/Transocean Settlements provide a process to resolve disagreements about how much money you should get. You will get further details in the letter you receive after your claim has been processed. If your claim is denied, or if you are not satisfied with the amount of your payment, you may file an appeal. **The Court's decision on any appeal involving the amount of payment will be final and binding**, and you cannot appeal to any other court regarding that

determination, including the U.S. Court of Appeals for the Fifth Circuit. The website will have an appeal form and further explanation of the appeals process.

26. When will I get my payment?

All claims will be paid after all determinations are complete and the Court has approved final distribution. HESI/Transocean payments will not be made until after all DHEPDS claims have been processed and paid. There will be no opportunity for advance/interim payments.

27. What am I giving up to get a payment?

If you accept a payment in the HESI and Transocean Settlements, you will give up your right to sue the Defendants or the Released Parties regarding all of the claims resolved by the HESI and Transocean Settlements, as described more fully in Section 10 of the Settlement Agreements.

However, you will NOT give up your right to sue HESI or Transocean or any of the Released Parties for any other claims (that is, any claims that were not resolved by these Settlements).

The Settlement Agreements are available on the website. **The Settlement Agreements describe the released claims with specific descriptions in legal terminology, so read it carefully.** If you have any questions about the released claims and what they mean, you can talk to the lawyers representing the

New Class, listed in Question 34 below, for free, or you can, at your own expense, talk to your own lawyer.

**EXCLUDING YOURSELF FROM THE
HESI/TRANSOCEAN SETTLEMENTS**

If you are a member of the New Class and you do not want to participate in the HESI/Transocean Settlements, and want to keep all of your rights to sue the Defendants and any of the Released Parties about the claims being resolved in these Settlements, then you must take steps to get out of the New Class. This is called asking to be excluded from, or sometimes called “Opting Out” of the class. (Members of the existing DHEPDS cannot opt out of that class because the opt out deadline expired when the DHEPDS Class was approved by the Court in 2012.)

**28. If I do not want to participate in the
HESI/Transocean Settlements, what must I
do?**

To exclude yourself or your Entity from (or Opt Out of) the New Class, you must mail a written request stating, “I wish to be excluded from the HESI/Transocean Class.” Your written request must also include your printed name, address, and phone number, and must be signed by you.

You must **mail** your written request postmarked by **September 23, 2016**, to:

HESI/Transocean Punitive Damages &
Assigned Claims Settlements
Exclusions Department
PO Box 10260
Dublin, OH 43017-5760

You cannot ask to be excluded from the HESI and Transocean Settlements on the phone, by email, or on the website.

If you choose to Opt Out of the New Class, you must Opt Out for all claims you have that are included in the HESI/Transocean Settlements.

You do not have to Opt Out of the HESI and Transocean Settlements in order to preserve or pursue these Reserved Claims:

- Bodily Injury Claims
- BP Shareholder Claim

29. If I exclude myself, can I get anything from the HESI/Transocean Settlements?

No. If you exclude yourself from the HESI/Transocean Settlements, you will not be able to receive any payment under the HESI/Transocean Settlements, and you cannot object to the HESI/Transocean Settlements. If you exclude yourself, however, you may sue or be part of a different lawsuit against HESI and Transocean in the future. However, considering the Court's findings, you may be precluded from making a claim for punitive damages outside of these Settlements.

30. If I do not exclude myself, can I sue HESI and Transocean later?

No. If you are a New Class Member and you do not exclude yourself, you give up the right to sue HESI and Transocean or any of the Released Parties for the claims that these Settlements resolve. You can still pursue the Reserved Claims listed in Question 28.

31. If I exclude myself from the HESI/Transocean Settlements, can I change my mind later?

Yes. You have the right to request to withdraw (“revoke”) your decision to Opt Out of the HESI and Transocean Settlements as long as you do it by **October 14, 2016**, as described more fully in Section 21(a) of the HESI and Transocean Settlement Agreements. Please visit the website or call 1-877-940-7792 for details about how to revoke an Opt Out.

OBJECTING TO THE HESI/TRANSOCEAN SETTLEMENTS

32. How do I tell the Court if I do not like the HESI/Transocean Settlements?

If you are a Class Member, you can object to the HESI and Transocean Settlements if you do not like all or some part of them. To object, send a letter explaining your objection to the proposed HESI/Transocean Settlement in *In re: Oil Spill by the Oil Rig “Deepwater*

Horizon" in the Gulf of Mexico on April 20, 2010, MDL No. 2179. Your objection letter must include:

- 1) A detailed statement of each objection being made, including the specific reasons for each objection, and any evidence or legal authority to support each objection;
- 2) Your name, address, and telephone number;
- 3) Written evidence establishing that you are a New Class Member, such as proof of residency, proof of ownership of property, proof of employment, and/or proof of business incorporation and operation;
- 4) Any supporting papers, materials, or briefs that you want the Court to consider when reviewing the objection; and
- 5) Your signature.

A Class Member may also object through an attorney hired at his, her, or its own expense. The attorney will have to file a notice of appearance with the Court by **September 23, 2016**, and serve a copy of the notice and the objection containing the information detailed above on New Class Counsel and HESI and Transocean's Counsel by **September 23, 2016**.

Objections must be sent by first class mail to each of the following addresses postmarked by **September 23, 2016**. Objections submitted after this date will not be considered.

NEW CLASS COUNSEL	
James P. Roy Domengeaux Wright Roy Edwards & Colomb 556 Jefferson St., Suite 500 P.O. Box 3668 Lafayette, LA 70501	Stephen J. Herman Herman Herman & Katz 820 O'Keefe Avenue New Orleans, LA 70113

DEFENDANT'S COUNSEL	
<i>For HESI:</i> Christopher J. Bellotti Senior Counsel Halliburton Energy Services, Inc. 3000 N. Sam Houston Parkway East Bldg. J, Room 432 Houston, TX 77032-3219	<i>For Transocean:</i> Brady Long Senior Vice President and General Counsel Transocean Ltd. Chemin de Blandonnet 10 1214 Vernier, Switzerland

Alan York Godwin PC 1331 Lamar Suite 1665 Houston, Texas 77010	Robyn Goldstein Legal Counsel, Disputes and Human Relations Transocean Offshore Deepwater Drilling Inc. 4 Greenway Plaza Houston, TX 77046
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COURT
Clerk of Court United States District Court for the Eastern District of Louisiana 500 Poydras Street New Orleans, LA 70130

Do not call the Court or any Judge's office to object to HESI and Transocean Settlements. If you have questions, please visit GulfSpillPunitiveDamagesSettlement.com or call 1-877-940-7792.

33. What is the difference between objecting to and asking to be excluded from the HESI/Transocean Settlements?

Objecting is simply telling the Court that you do not like something about the HESI/Transocean Settlements. You can object only if you stay in the New Class. Excluding yourself, also called Opting Out, is telling the Court that you do not want to be part of the New Class. If you exclude yourself, you cannot object to the HESI/Transocean Settlements, and you will not be eligible to apply for a payment under the Settlements.

THE LAWYERS REPRESENTING YOU

34. Do I have a lawyer in this case?

The Court has appointed Stephen J. Herman (Lead Class Counsel), James P. Roy (Lead Class Counsel), Brian H. Barr, Jeffery A. Breit, Elizabeth J. Cabraser, Philip F. Cossich, Jr., Robert T. Cunningham, Alphonso Michael Espy, Calvin C. Fayard, Jr., Ervin A. Gonzalez, Robin L. Greenwald, Rhon E. Jones, Matthew E. Lundy, Michael C. Palmintier, Joseph F. Rice, Paul M. Sterbcow, Scott Summy, and Conrad S. P. Williams as "New Class Counsel" to represent the New Class Members. You will not be charged for these lawyers. If you want to be represented by your own

lawyer in this case, you may hire one at your own expense.

35. How will the lawyers be paid?

New Class Counsel will ask the Court to consider an award of attorneys' fees and costs and expenses incurred for the benefit of the entire Class. Class Counsel fees, costs, and expenses under the HESI and Transocean Settlement Agreement jointly cannot exceed \$124,950,000.

New Class Members' payments will not be reduced if the Court approves the payment of Class Counsel fees, costs, and expenses described above. HESI and Transocean will separately pay these attorney fees, costs, and expenses.

THE COURT'S FAIRNESS HEARING

36. When and where will the Court decide whether to approve these Settlements?

The Court will hold a Fairness Hearing at **9:30 a.m.** on **November 10, 2016**, at the United States District Court for the Eastern District of Louisiana, Court Room No. C268, 500 Poydras Street, New Orleans, LA 70130. At the Fairness Hearing, the Court will consider whether the proposed HESI/Transocean Settlements are fair, reasonable, and adequate along with the proposed Distribution Model. The Court will also consider Class Counsel's request for fees, costs, and expenses described in Question 35.

If there are objections to the HESI/Transocean Settlements, the Court will consider them. After the Fairness Hearing, the Court will decide whether to approve the HESI/Transocean Settlements and how much to award to New Class Counsel as fees, costs, and expenses.

The Fairness Hearing may be moved to a different date, time, or location without additional notice, so it is recommended that you periodically check the website for updated information.

37. Do I have to attend the Fairness Hearing?

No. New Class Counsel will answer any questions the Court may have. However, you are welcome to attend the hearing at your own expense. If you send in a written objection, you do not have to come to the Fairness Hearing to talk about it. As long as you mailed your written objection on time, the Court will consider it.

You or any attorney you have hired may ask the Court for permission to speak at the Fairness Hearing. To do so, you must include this request with your objection as described in Question 32.

Do not call the Court or any Judge's office to get information about the HESI and Transocean Settlements. If you have questions, please visit the website or call 1-877-940-7792.

IF YOU DO NOTHING

38. What happens if I do nothing?

The consequences of doing nothing depends on which group you fall into:

- New Class Members who do not exclude themselves from the HESI and Transocean New Class Settlements will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against HESI and Transocean or the Released Parties about the punitive damages claims being released by the HESI/Transocean Settlements.
- New Class Members who are members of the DHEPDS Class, but never filed a claim in the DHEPDS Settlement Program, and do nothing will not get a payment from the HESI/Transocean Settlements.
- New Class Members who previously filed a valid DHEPDS claim and do nothing will be eligible for benefits from the HESI/Transocean Settlements.

However, even if you take no action, you will keep your right to sue HESI and Transocean or any of the Released Parties for any other claims not resolved by the HESI/Transocean Settlements or by the Court's findings (see Question 2). These "Reserved Claims" are listed under Question 28 and are described in the HESI and Transocean Settlement Agreements and on the website.

GETTING MORE INFORMATION

39. How do I get more information?

This Notice summarizes the proposed HESI/Transocean Settlements. More details are in the HESI and Transocean Settlement Agreements. You can get a copy of the Settlement Agreements on the website. You also may write with questions to HESI/Transocean Punitive Damages & Assigned Claims Settlements, PO Box 10260, Dublin, OH 43017-5760 or send an e-mail to questions@GulfSpillPunitiveDamagesSettlement.com. You can get a Claim Form on the website or have one mailed to you by calling 1-877-940-7792.

Do not call the Court or any Judge's office to get information about the HESI and Transocean Settlements. If you have questions, please visit the website or call 1-877-940-7792.

ELIGIBILITY CHART

Claim Category	New Class Eligibility Requirements
Real Property Damage	Individuals, businesses, trusts, non-profits, or any other Entity (including Local Government entities) who owned, leased, rented, or held any proprietary interest in real property adjacent to Identified Gulf Waters, including property below the surface of the water, Oyster Beds, and deeded

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	<p>docks at any time between April 20, 2010, through April 18, 2012, that was alleged to have been physically damaged by oil or other substances as further described in the Settlement Agreement.</p> <p>This category includes the following claim types from the DHEPDS:</p> <ul style="list-style-type: none">• Coastal Real Property• Wetlands Real Property• Real Property Sales• Oyster Leaseholder <p>DHEPDS claims will be automatically transferred to the HESI/Transocean Settlements for consideration.</p>
Personal Property Damage	<p>Individuals, businesses, trusts, non-profits, or any other Entity (including Local Government entities) who owned, chartered, leased, rented, or held any proprietary interest in personal property, defined as any form of tangible property that is not Real Property, including Vessels, at any time between April 20, 2010, through April 18, 2012, that was alleged to have been physically damaged by oil or other substances as further described in the Settlement Agreement.</p> <p>This category includes the following claim types from the DHEPDS:</p>

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	<ul style="list-style-type: none">• Vessel Physical Damage• Physical damage to personal property portion of Coastal Real Property• Physical damage to personal property portion of Wetlands Real Property <p>DHEPDS claims will be automatically transferred to the HESI/Transocean Settlements for consideration.</p>
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Claim Category	New Class Eligibility Requirements
Commercial Fishermen and Charterboat Operators	<p>Commercial Fishermen or Charterboat Operators who, anytime from April 20, 2009, through April 18, 2012, (a) owned, chartered, leased, rented, managed, operated, utilized, or held any proprietary interest in commercial fishing or charter fishing Vessels that were Home Ported in or that landed Seafood in the Gulf Coast Areas, or (b) worked on or shared an interest in catch from Vessels that fished in Specified Gulf Waters and landed Seafood in the Gulf Coast Area as further described in the Settlement Agreement.</p> <p>Commercial Fishermen means a Natural Person or Entity that derives</p>

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	<p>income from catching Seafood and selling Seafood, which shall include Vessel owners, boat captains, boat crew, boat hands, and others who are paid based on the quantity of Seafood lawfully caught while holding a commercial fishing license issued by the United States and/or the State(s) of Alabama, Florida, Louisiana, Mississippi, and/or Texas, or otherwise engaged in lawful commercial fishing. Seafood means fish and shellfish, including shrimp, oysters, crab, menhaden, and Finfish caught in the Specified Gulf Waters or Identified Gulf Waters.</p> <p><i>Menhaden/Pogy fishermen are included.</i></p> <p>Charterboat Operators means owners, captains, and deckhands of charter fishing vessels that carry passenger(s) for hire to engage in recreational fishing.</p> <p>This category includes the following claim types from the DHEPDS:</p> <ul style="list-style-type: none">• Seafood Compensation (except for Oyster Leaseholder)• Business Economic Loss (BEL) for Charterboat Operators• Individual Economic Loss (IEL) for Charterboat crew members
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	<p>DHEPDS claims will be automatically transferred to the HESI/Transocean Settlements for consideration.</p>
Loss of Subsistence	<p>Includes individuals who fished or hunted, anytime from April 20, 2009, through April 18, 2012, in the Identified Gulf Waters or Gulf Coast Areas to harvest, catch, barter, consume, or trade natural resources, including Seafood and game, in a traditional or customary manner, to sustain basic or family dietary, economic security, shelter, tool, or clothing needs.</p> <p><i>Those who fish or hunt solely for pleasure or sport are not eligible to make claims for subsistence, regardless of whether or not they consume their catch.</i></p> <p>This category includes the following claim type from the DHEPDS:</p> <ul style="list-style-type: none">• Subsistence <p>DHEPDS claims will be automatically transferred to the HESI/Transocean Settlements for consideration.</p>