

NO.

IN THE
SUPREME COURT OF THE UNITED STATES

LMPC0402457

Petitioner,

1

BP Exploration & Production, Inc., et al.,

Respondent

On Petition for Writ of Certiorari to the

United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

- (1) Whether the Deep-Water Horizon Medical Benefits and Settlement and BP Exploration & Production Inc, et. al, erred in not providing the claimant with his medical-benefits settlement?
- (2) Whether the residency condition for claiming such benefits is within the purpose of the law?
- (3) Whether there has been a deprivation of the constitutional rights and due process as provided by the United States Constitution?

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PETITION FOR WRIT OF CERTIORARI

Petitioner, identified as claimant LMPC0402457 [an anonymous identifier assigned to Raoul A. Galan, Jr. for privacy purposes] respectfully requests that the Court grant a writ of certiorari to review the decision of the United States Court of Appeals for the Fifth Circuit in denying his petition for rehearing.

DECISION BELOW

The decision of the United States Court of Appeals for the Fifth Circuit is published at *whatever the citation is, if any*, and is reproduced at Petitioner's Appendix B.

JURISDICTION

The United States Court of Appeals for the Fifth Circuit affirmed the United States District Court for the Eastern District of Louisiana on May 4, 2022. The same court denied Petitioner's application for rehearing on June 29, 2022. This Court's jurisdiction is invoked under 28 U.S.C. §1254

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Louisiana State Constituion Article 1 §2

Insert whatever the Article says here

Louisiana State Constituion Article 12 §8

Insert whatever the Article says here

Louisiana State Constituion Article 12 §10

Insert whatever the Article says here

STATEMENT OF THE CASE

The Petitioner was denied compensation for his medical expenses under the Class Action Settlement Agreement, reached after the explosion and oil spill caused by Respondent's negligent operation of its Deepwater Horizon drilling platform, because of exclusion from the affected class without any basis in law or fact.

1. Factual Background.

The Oil Pollution Act of 1990 makes parties who cause oil spills liable for the damages that result. In 2010, the Respondent's Deep Water Horizon oil-drilling platform exploded, resulting in the loss of life and a huge oil-spill, with concomitant injuries. Consequently, Respondent used a huge amount of Corexit oil-spill dispersant in the area surrounding the explosion. In January of 2013, a federal judge approved a settlement designed to benefit an estimated 255,000 individuals who were injured, or became ill, following the 2010 Deep Water Horizon disaster.

Respondent, et al, is required to compensate all eligible oil-spill claims under two settlement agreements (1) private economic losses, such as lost profits or real-property sales losses; and (2) for acute or chronic-illness medical claims over the next 21 years. Under the settlement agreement, any medical condition diagnosed after April 16, 2012 is considered a "later Manifested Physical Condition." As part of the Medical Benefits Settlement, "later manifested conditions" may qualify for compensation. These are health conditions that manifest in the future and therefore do not meet the criteria for chronic conditions and acute medical conditions under the Specified Medical Conditions Matrix. Later manifested conditions that may

develop include, but are not limited to memory loss, post-traumatic stress disorder (PTSD), cancer, liver damage and renal failure.¹

The Medical Benefits Settlement divided the areas near the oil-spill disaster into Zone A and Zone B, to provide medical benefits limited to persons living in the two zones between April 20, 2010 and April 16, 2012. The Settlement is intended to: (1) provide compensation for those who manifest specific physical conditions; (2) establish a program to provide periodic medical-consultations to injured clean-up workers and certain residents of the Gulf Coast Region; and (3) provide an option for back-end litigation for those who have later-manifested physical conditions. The Settlement stipulates that compensation should be provided to those who have suffered: (1) chronic conditions; (2) acute medical conditions; and (3) other illnesses caused by crude-oil exposure.

According to a study conducted by the National Institute of Health, Corexit oil-dispersant is designed to break oil slicks into globules that either are more quickly consumed by bacteria or sink before reaching the shore. It was discovered, after three years, that Corexit made the oil it was supposed to disperse, 52 times more toxic than the untreated crude-oil. It has also been noted that, in the aftermath of large oil-spills, like Deep Water Horizon, affected persons had increased levels of anxiety, depression, and respiratory issues lasting several years. In addition, people developed symptoms of skin-rashes; muscle-cramps; pneumonia; and migraines.

LMPC0402457 is the anonymous claim-number assigned to the Petitioner, for his claims under Respondent's Medical Benefits Settlement. Due to the Deep Water Horizon oil-spill, Petitioner was damaged financially and medically. Financially, he lost his home, office and

¹ Later Manifested Conditions Settlements by Craig Downs

degradation of the value of his building lots; medically, he became depressed and is experiencing post-traumatic stress disorder. Petitioner has been under medical care for said mental-health damage since the Oil Spill. At very rare times, said depression, coupled with other activities and projects Petitioner undertakes creates a memory-flaw moment. For example, in the District Court, when the judge asked why he did not file his 2014 Louisiana individual tax return, Petitioner could not recall the reason.²

Petitioner owns 114 lots on the Gulf of Mexico [Grand Isle, LA]. For months during the incident, Petitioner traveled between the property and his home in Kenner, Louisiana, to inspect and maintain the property. Petitioner alleges that Respondent's negligence and recklessness in causing the oil-spill and subsequently failing to properly design and implement a clean-up response caused him to suffer myriad medical-injuries. Petitioner's injuries include exhaustion, pains, chills, difficulty walking or thinking, depression and post-traumatic stress disorder. Explicitly, Petitioner seeks to recover economic damages, personal injury damages-including damages for past and future medical expenses and for pain and suffering-punitive damages, and attorneys' fees, costs, and expenses.

In a recent report prepared by the Center for Behavioral Health Statistics and Quality (CBHSQ) and presented to the Department of Health and Human Services, a survey of Gulf residents indicates a significant decline in quality of life, which is often associated with PTSD. Loss of resources (such as the massive destruction of seafood, the Gulf's main source of income) is a strong indicator for severe depression and anxiety, two of PTSD's main components. The study suggests that the overall behavioral health of Gulf residents is poor, and it is predicted to decline further in the years to come.

² See Galan v. Petit, USCA 21-30728

Negative mental health impacts were most common in people whose work, family, or leisure life was impacted by the spill. Residents reported feeling depressed, anxious, and suffering from post-traumatic stress disorder. Impacts were strongest immediately after the spill and decreased over time. Levels of depression, mental illness, and stress that some residents experienced were above the national average even two years after the spill.

Scientists saw that even some residents in oil-free Gulf communities were anxious or depressed. These residents worried about the oil spill's impact on the environment, human health, and seafood safety. Residents living below the poverty line were more likely to suffer from depression, anxiety, and stress than those with higher incomes. Mental health impacts from income loss were not limited to adults. Parents that had income loss due to the spill were 1.5 times more likely to report new physical or mental health problems in their children. When digging deeper, scientists found that these health problems were not only due to the oil spill. These families also faced economic pressures independent from the oil spill and lacked access to programs to help overcome adversity. Scientists believe that these factors may also have contributed to mental and physical health problems.³

The parties agreed that the MSA "shall be interpreted in accordance with General Maritime Law."⁴ Under general maritime law, "a party's negligence is actionable only if it is a 'legal cause' of the plaintiff's injuries."⁵ Legal cause is something more than 'but for' causation, and the negligence must be a 'substantial factor' in the injury. The term 'substantial factor' means more than 'but for the negligence, the harm would not have resulted. It is clear from the

³ Graham, L., Hale, C., Maung-Douglass, E., Sempier, S., Swann, L., and Wilson, M. (2016). Oil spill science: The Deepwater Horizon oil spill's impact on people's health — Increases in stress and anxiety. MASGP-16-030

⁴ Pl.'s Resp. Ex. 1, at 192, ECF No. 83-1.

⁵ Donaghey v. Ocean Drilling & Expl. Co., 974 F.2d 646, 649 (5th Cir. 1992)

aforementioned facts that there was both financial and medical harm to the Petitioner. Petitioner filed this individual action against the Defendants, on *date?*, to recover for said injuries and damages sustained because of the oil spill. Petitioner has a close, continuous, and on-going physical relationship with the Grand Isle, LA property, which is located within the Zones designated by the Claims Administrator. Petitioner has suffered harm as a direct result of this relationship. Therefore, to deny him medical benefits on the grounds that he is not a permanent-resident is arbitrary, capricious, discriminatory, and operates as a denial of due process.

REASONS FOR GRANTING THIS PETITION

The Deep-Water Horizon Medical Benefits and Settlement and BP Exploration & Production Inc, et. al wrongfully denied the Petitioner his medical benefits settlement, and the State of Louisiana failed to protect the Petitioner's property from pollution and subsequent degradation of value..

On January 11, 2013, U.S. District Judge Carl J. Barbier approved the Deepwater Horizon Medical Benefits Class Action Settlement Agreement ("MSA"), which includes a Back-End Litigation Option ("BELO") permitting certain class members who follow procedures outlined in the MSA to sue BP for later-manifested physical conditions.⁶ The Medical Benefits Settlement refers to lawsuits seeking recovery for LMPCs as "Back-End Litigation Option" ("BELO") suits.

It is undisputed that the depression and post-traumatic stress disorder suffered by Petitioner as claimant LMPC0402457 was not caused by his exposure to oil and/or other substances during clean-up operations. Instead it is a reaction to news reports of others associated with the clean-up efforts developing medical conditions, as a result of loss of value of his property near the oil spill. The news about almost losing his property among other things during the stressful time of such incident 10 (ten) years ago, made him anxious up to this day. He has experienced the symptoms of depression and post-traumatic stress disorder from the start of such incident until now. The situation was exacerbated during the clean-up, because he was also going back and forth to his property near the Gulf to check if it was severely damaged.

The Medical Benefits Settlement unambiguously requires that a BELO claimant demonstrate that exposure to oil and/or other substances legally caused his or her physical

⁶ Brown v. BP Expl. & Prod. Inc., CIVIL ACTION No. 18-9927 SECTION I, (E.D. La. Jul. 9, 2019)

condition in order to receive compensation for a LMPC.⁷ Petitioner has suffered emotional distress caused by concern over exposure to chemicals and their physical health effects, and seeks damages for his injuries, including, but not limited to mental anguish, loss of the capacity for the enjoyment of life, past and future expense of hospitalization, medical and nursing care and treatment, loss of real-estate earnings.

An emotional injury must be directly attributable to the emotional impact of the plaintiff's observation or contemporaneous sensory perception of the accident and immediate viewing of the accident victim. See *Lejeune*, 556 So. 2d at 570 n.11 (quoting *Gates v. Richardson*, 719 P.2d 193 (Wyo. 1986), and *Corso v. Merrill*, 406 A.2d 300 (N.H. 1979). That is the case here.

The anxiety and mental depression caused to Petitioner is directly attributable to the Respondent's misconduct. Thereafter the Respondent's denial of medical-claim benefits to the Petitioner has caused emotional injury, anxiety, and depression to the Petitioner. Therefore, Petitioner is entitled to recover and claim the medical claims benefits as provided under the Medical Benefits Settlement.

Furthermore, air pollution control, at its source, is the primary responsibility of State and local governments under 42 U.S.C. §7401 et seq. The State of Louisiana failed to protect the people of Grand Isle from the air pollution caused by the aftermath of the Deep Water Horizon explosion and oil-spill. In addition, the Petitioner asserts that there have been violations of 33 U.S.C. §§1251(a)(3); (b); and (f), along with violations of 42 U.S.C. §§5121(a)(1) and (b)(6). Petitioner, who owns 114 building lots in Grand Isle, was negligently and unnecessarily subjected to the ill effects of this pollution as he made repeated visits to inspect his property. In

⁷ Piacun v. BP Expl. & Prod., Inc., CIVIL ACTION NO. 15-2963 SECTION: "E"(1) (E.D. La. Dec. 12, 2016)

addition, the State of Louisiana failed to protect the Petitioner's rights under the State of Louisiana Constitution Article 1 §2; Article 12 §8; and Article 12 §10.

Consequently, the Petitioner is entitled to compensation for breach of the duty owed to him by the Respondent and the State of Louisiana.

The residency condition for claiming such benefits is not within the purpose of the law.

The term "United States resident" means: (i) any individual who (I) is a United States citizen or a resident alien and does not have a tax home in a foreign country; or (II) is a non-resident alien and has a tax home in the United States, and (ii) any corporation, trust, or estate which is a United States person.⁸

Residence in civil law is a material fact, referring to the physical presence of a person in a place. A person can have two or more residences, such as a country residence and a city residence. Legally, a person can have multiple residences, in multiple states, but only one domicile. Despite their name, the residence rules are not rules in any legal or regulatory sense. Residence rules are not written into census law; indeed, as discussed below, not even the term "usual residence" (much less its definition) is written into active census law. Rather, the residence rules are guidelines, internal to the Census Bureau, on how certain living situations should be handled in terms of defining "usual residence."⁹

In addition, "every person, who shall be an inhabitant of any district, but without a settled place of residence, shall be counted in that division where he or she shall be on" and "every

⁸ 26 USC § 865(g)(1)(A)

⁹ National Academies of Sciences, Engineering, and Medicine. 2006. Once, Only Once, and in the Right Place: Residence Rules in the Decennial Census. Washington, DC: The National Academies Press.
<https://doi.org/10.17226/11727>

person occasionally absent at the time of the enumeration shall be counted as belonging to that place in which he usually resides in the United States”¹⁰

In this case, Petitioner is a resident of Kenner, Louisiana and also of Grand Isle, Louisiana. He has a physical presence of his person in Grand Isle, Louisiana. Even though he does not live there, it is a mere two-hour drive from Kenner. Therefore, in a day, he travel to Grand Isle, in the morning; then return to Kenner when he wants to. By establishing such, he can be considered as also a resident of Grand Isle.

The Petitioner's constitutional rights were violated.

The Ninth Amendment to the United States Constitution ensures that a person does not lose certain rights just because they are not specifically granted to a person or mentioned elsewhere in the United States Constitution. The language and history of the Ninth Amendment reveal that the framers of the Constitution believed that there are additional fundamental rights, protected from governmental infringement, which exist alongside those fundamental rights specifically mentioned in the first eight constitutional amendments. It was proffered to quiet expressed fears that a bill of specifically enumerated rights could not be sufficiently broad to cover all essential rights, and that the specific mention of certain rights would be interpreted as a denial that others were protected.¹¹

The Ninth Amendment shows a belief of the Constitution's authors that fundamental rights exist that are not expressly enumerated in the first eight amendments, and intent that the list of rights included there not be deemed exhaustive. This Court has held, often unanimously,

¹⁰ 1 Stat. 101, §5

¹¹ *Griswold v. Connecticut*, 381 U.S. 479 (1965)

that the Fifth and Fourteenth Amendments protect certain fundamental personal liberties from abridgment by the Federal Government or the States.¹² In determining which rights are fundamental, judges are not left at large to decide cases in light of their personal and private notions. Rather, they must look to the "traditions and [collective] conscience of our people" to determine whether a principle is "so rooted [there] . . . as to be ranked as fundamental."¹³

The inquiry is whether a right involved "is of such a character that it cannot be denied without violating those 'fundamental principles of liberty and justice which lie at the base of all our civil and political institutions.' . . ."¹⁴ The case at present is clear that there were harm and damages that has occurred. Therefore, there should be no reason why Respondent et, al. would deny the Petitioner his claims under the Ninth Amendment.

¹² *Bolling v. Sharpe*, 347 U. S. 497; *Aptheker v. Secretary of State*, 378 U. S. 500; *Kent v. Dulles*, 357 U. S. 116; *Cantwell v. Connecticut*, 310 U. S. 296; *NAACP v. Alabama*, 357 U. S. 449; *Gideon v. Wainwright*, 372 U. S. 335; *New York Times Co. v. Sullivan*, 376 U. S. 254.

¹³ *Snyder v. Massachusetts*, 291 U. S. 97, 291 U. S. 105.

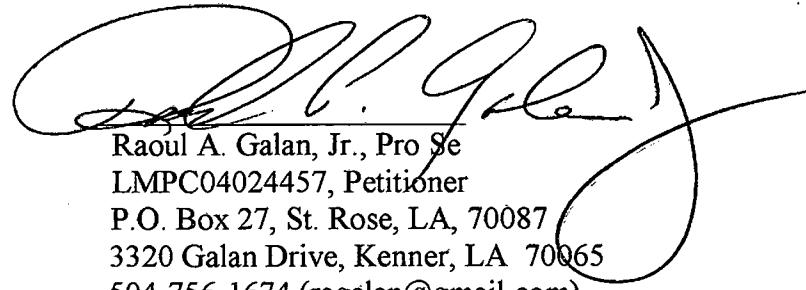
¹⁴ *Powell v. Alabama*, 287 U. S. 45, 287 U. S. 67

CONCLUSION

Petitioner respectfully pleads that this Court grant his writ of certiorari and permit briefing and argument on the issues.

Date: December 20, 2022

Respectfully submitted,



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United States Court of Appeals for the Fifth Circuit

No. 20-30502
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
May 4, 2022

LMPC0402457,

Lyle W. Cayce
Clerk

Requesting Party—Appellant,

versus

BP EXPLORATION & PRODUCTION, INCORPORATED; BP
AMERICA PRODUCTION COMPANY,

Objecting Parties—Appellees,

GARRETSON RESOLUTION GROUP, INCORPORATED, as *Claims
Administrator of the Deepwater Horizon Medical Benefits Class Action
Settlement Agreement*, doing business as EPIQ MASS TORT,

Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:20-CV-503

No. 20-30502

Before HIGGINBOTHAM, HIGGINSON, and DUNCAN, *Circuit Judges*.

PER CURIAM:*

Proceeding pro se, Raoul Galan, Jr., claim number LMPC0402457, appeals the district court's order denying his challenge to the *Deepwater Horizon* Medical Benefits Settlement Program Claims Administrator's determination that he did not qualify for class membership. The interpretation of a settlement agreement is a question of law that we review de novo. *BP Expl. & Prod., Inc. v. Claimant ID 100191715*, 951 F.3d 646, 648 (5th Cir. 2020). Under general maritime law, which controls the instant case, the *Deepwater Horizon* Medical Benefits Class Action Settlement Agreement "should be read as a whole and [its] words given their plain meaning unless the provision is ambiguous." *BP Expl. & Prod., Inc. v. Claimant ID 100094497*, 910 F.3d 797, 801 (5th Cir. 2018) (internal quotation marks and citation omitted).

Here, Galan does not meet the requirements detailed in the settlement agreement's class membership definition because he did not work as a clean-up worker at any time between April 20, 2010, and April 16, 2012, nor did he reside in Zone A or Zone B for at least 60 days within the applicable timeframe. Although he maintains that he is a managing member of Cypress Lake No.I, L.L.C., which owns property in Zone A, only natural persons are contemplated as class members under the settlement agreement, not business entities, and property ownership absent residency does not meet the settlement agreement's definition of a class member. Galan's suggestion that he should be included in the settlement class because he suffers from

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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depression and because “mental depression has no geographic boundaries” is at odds with the plain meaning of the class membership definition. To the extent his argument can be construed as an assertion that he is eligible to receive compensation despite failing to meet the class membership definition, such an argument is contrary to the plain meaning of the settlement agreement, which provides that only settlement class members may qualify for compensation. Accordingly, the district court did not err by denying Galan’s challenge and upholding the Claims Administrator’s determination. *See Claimant ID 100094497*, 910 F.3d at 801.

Finally, Galan has not shown that the Claims Administrator violated his right to due process by requiring him to comply with the terms of the settlement agreement in order to establish class membership and ultimately recover under the settlement agreement. *Cf. In re Deepwater Horizon*, 934 F.3d 434, 445-46 (5th Cir. 2019).

The judgment of the district court is AFFIRMED.