

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

2005 SEP 20 PM 4:50

LORETTA G. WHYTE
CLERK

FRANK FRELICH, CLARA FRELICH, *
KEVIN FRELICH, GRETA FRELICH, *
LEO ROTH, VINCENT FRELICH, SR., *
JANICE FERACH, ROBIN GAUTHIER *
and HEWITT GAUTHIER, Individually *
and On Behalf Of the Class They Seek To *
Represent *

CIVIL ACTION NO.:

SECTION:

05-4199 I/3

VERSUS

MAGISTRATE:

SHELL PIPELINE, L.L.C. AND SHELL *
PIPELINE COMPANY, L.P. *

JUDGE:

CLASS ACTION COMPLAINT

The Complaint of plaintiffs, Frank Frellich, Clara Frellich, Kevin Frellich, Greta Frellich, Leo Roth, Vincent Frellich, Sr., Janice Ferach, Robin Gauthier and Hewitt Gauthier, each of whom are major individuals, domiciled in the Parish of Plaquemines, State of Louisiana, who file this claim individually and on behalf of all others similarly situated, respectfully alleges as follows:

1.

Plaintiffs are as follows:

- A) FRANK AND CLARA FRELICH, both major individuals, domiciled in the Parish of Plaquemines, State of Louisiana;
- B) KEVIN AND GRETA FRELICH, both major individuals, domiciled in the Parish of Plaquemines, State of Louisiana;

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- C) LEO ROTH, a major individual, domiciled in the Parish of Plaquemines, State of Louisiana;
- D) VINCENT FRELICH, SR., a major individual, domiciled in the Parish of Plaquemines, State of Louisiana;
- E) JANICE FERACH, a major individual, domiciled in the Parish of Plaquemines, State of Louisiana;
- F) ROBIN GAUTHIER, a major individual, domiciled in the Parish of Plaquemines, State of Louisiana;
- G) HEWITT GAUTHIER a major individual, domiciled in the Parish of Plaquemines, State of Louisiana.

2.

Made defendants herein are:

- 1) SHELL PIPELINE, L.L.C., a foreign corporation, authorized to do and doing business within the State of Louisiana and the jurisdiction of this Honorable Court, and its principal place of business located at 8550 United Plaza Boulevard, Baton Rouge, Louisiana;
- 2) SHELL PIPELINE COMPANY, L.P., a foreign corporation, authorized to do and doing business within the State of Louisiana and the jurisdiction of this Honorable Court, and its principal place of business located at 8550 United Plaza Boulevard, Baton Rouge, Louisiana.

JURISDICTION

3.

This Honorable Court is vested with jurisdiction by virtue of 28 U.S.C. §1332. Plaintiffs are domiciliaries of the State of Louisiana and all defendants are domiciliaries of states other than the State of Louisiana. This putative class action is brought by named plaintiffs herein on behalf of all others similarly situated, each of whom are domiciled within the State of Louisiana. Further, the amount in controversy is in excess of \$5,000,000.00.

VENUE

4.

Plaintiffs allege that the cause of action forming the basis of this claim occurred within the Parish of Plaquemines, State of Louisiana, such that venue in this Honorable Court is proper.

FACTUAL ALLEGATIONS

5.

Defendants, individually and/or jointly and/or as part of a joint venture, owned, operated and maintained a crude oil pipeline that traversed certain areas of the State of Louisiana including, but not limited to, portions of lower Plaquemine Parish. This pipeline transported crude oil from certain locations, including offshore in the Gulf of Mexico, adjacent to the State of Louisiana, onto shore based sites for further processing. At all pertinent times, the pipeline was in the exclusive care, custody, control, and garde of defendants as to its design, construction, maintenance, and operation.

6.

A portion of the pipeline intersected and crossed under the hurricane protection levee

located on Highway 23 in Empire, Louisiana, in the Parish of Plaquemines, State of Louisiana.

7.

On information and belief, during portions of 2003 and 2004, defendants performed construction on the pipeline which necessitated backfilling operations at the juncture of the pipeline and the levee.

8.

On August 29, 2005, Hurricane Katrina, then a Category 4 hurricane, made landfall at or near the location where the pipeline intersected the levee.

9.

For several days before the storm made landfall, various reports from weather reporting agencies including, but not limited to, NOAA, predicted Katrina to become a Category 5 storm, which would cause widespread and catastrophic devastation and damage to the area where the pipeline was located.

10.

Prior to landfall, Plaquemines Parish was designated a national disaster area. Orders were given to evacuate all Gulf of Mexico personnel employed in the oil and gas industry, as well as all residents of Plaquemines and other surrounding and soon to be affected parishes.

11.

As a result of the storm, lower Plaquemines Parish, including the area where the pipeline was located, suffered extensive damage. The extent of the damage was predicted far in advance of the storm.

12.

At some point during or after the storm made landfall, the Shell pipeline ruptured and spewed thousands of gallons of raw crude oil from the pipeline and into the flood waters which engulfed the immediate vicinity.

13.

The presence of crude oil has contaminated the personal and real property of the individuals who were property owners and/or domiciled within the area affected by the spill. Further, the breach in the Highway 23 levee remains in a state of disrepair, unable to be fixed due to the existence of the Shell pipeline rupture.

14.

The residents in the area affected by the spill continue to be displaced, in part, by the ruptured pipeline. Once the levee is repaired and the flood water removed, undoubtedly the crude oil which originated from the pipeline will settle onto the property of the putative class thereby prolonging displacement, further destroying property, and effectively contaminating and otherwise making uninhabitable the class members' real and personal property.

15.

The above-described pipeline rupture and resulting spill was proximately caused by the acts and omissions of defendants, Shell Pipeline, L.L.C. and Shell Pipeline Company, L.P., acting jointly and/or individually and/or in concert with one another, through their collective agents, employees, or others acting on their behalf, for the following reasons, to wit:

- a) Breach of a legally imposed duty of reasonable care;
- b) Failure to maintain their pipeline;

- c) Failing to shut in the pipeline and remove all crude oil from within the pipeline;
- d) Violation of applicable portions of the Oil Pollution Act of 1990, as set forth in 33 U.S.C. §2701, et. seq., thus constituting negligence per se;
- e) Violation of certain provisions of the Code of Federal Regulations, which require defendants to take necessary and appropriate steps to avoid the spillage of crude oil;
- f) Failure to follow its own procedures for the prevention of the crude oil spill;
- g) Failing to form, implement, follow or comply with defendants' internal policies and procedures, as set forth by defendants and/or as required by governmental agencies in disaster evacuation planning reporting requirements.

16.

In addition, defendants are strictly liable, by virtue of the applicable provisions of the Oil Pollution Act of 1990 and/or the Code of Federal Regulations, or as otherwise allowed by law.

CLASS ALLEGATIONS

17.

Plaintiffs bring this class action pursuant to Federal Rule of Civil Procedure 23(b)(3) on behalf of all property owners and persons who were domiciled on August 29, 2005 within the area adversely affected by the crude oil spillage from the Shell Oil pipeline which, on information and belief, includes the areas between the hurricane levees from approximately the Empire bridge north to an area approximately two miles north of the Shell facility, including, but not limited to, the entirety of the municipalities of Empire and Nairn, Louisiana.

18.

The geographic areas adversely affected may be further defined in the future as the area adversely affected is currently inaccessible and the exact nature and extent of damage caused by the spillage cannot presently be defined with more specificity.

19.

The class is so numerous that joinder of all issues is impracticable. It is believed that there are thousands of people and hundreds of home sites adversely affected by the crude oil spill.

20.

There are questions of law and fact common to the class which predominate over any individual issues. The common questions of law and fact include, but are not limited to, the following:

- a) Defendants' negligence;
- b) Whether defendants violated their own internal shut down and evacuation policies and procedures;
- c) Whether defendants violated any provisions of the Oil Pollution Act of 1990 and/or the Code of Federal Regulations;
- d) The actions of defendants in light of the predictability of catastrophic damage for lower Plaquemines Parish as Hurricane Katrina approached;
- e) The remediation necessary as a result of the crude oil spillage.

21.

Plaintiffs' claims are typical of the class. Plaintiffs all reside within the affected area.

Their real and personal property have been coated by the spilled crude oil. They have been unable to return to their homes due to flood water, which has been prolonged by the Shell pipeline rupture which has prevented repair to the levee breach. Plaintiffs' interests are identical to those of other class members.

22.

Plaintiffs will fairly and adequately represent and protect the interests of the class because:

- a) Plaintiffs have retained counsel experienced in the prosecution of class action litigation and counsel will adequately represent the interests of the class;
- b) Plaintiffs and their counsel are aware of no conflicts of interest between plaintiffs and absent class members or otherwise;
- c) Plaintiffs have, or can acquire, adequate financial resources to assure that the interests of the class will not be harmed; and
- d) Plaintiffs are knowledgeable concerning the subject matter of this action and will assist counsel in the prosecution of this litigation.

23.

A class action provides a fair and efficient method for adjudicating this controversy and is superior to the other available methods of adjudication in that:

- a) Neither the size of the class nor any other factor make it likely that difficulties will be encountered in the management of this class as a class action;
- b) The prosecution of separate actions by individual class members, or the individual joinders of all class members in this action is impracticable and would create a

massive and unnecessary burden on the resources of the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of each member of the class;

- c) Because of the disparity of resources available to defendants versus those available to individual class members, prosecution of separate actions would work a financial hardship on many class members; and
- d) The conduct of this action as a class action conserves the resources of the parties and the court system and protects the rights of each member of the class and meets all due process requirements as to fairness to all parties. The conduct of the class action is also superior to maintenance on a claim by claim basis when all actions arise of the same circumstances and course of conduct.

DAMAGES

24.

As a result of the spillage from the Shell pipeline, plaintiffs, individually and on behalf of the putative class, claim compensation for;

- a) Inconvenience and trespass;
- b) Remediation and/or replacement of all affected personal and real property;
- c) Diminution of property value;
- d) Attorney fees as allowed by law;
- e) Legal interest on all amounts as allowed by law.

WHEREFORE, plaintiffs, individually and as representatives of all persons similarly situated, pray that defendants be duly cited and served with this Complaint, be required to appear

and answer same, and after due proceedings had, that there be judgment rendered herein in favor of plaintiffs, and against defendants, Shell Pipeline, L.L.C. and Shell Pipeline Company, L.P., as follows:

- 1) An Order certifying the class under the appropriate provisions of FRCP 23 and appointing plaintiffs and their counsel to represent the class;
- 2) For damages as set forth herein;
- 3) For pre-judgment interest as allowed by law;
- 4) For attorney fees as allowed by law;
- 5) For all costs of these proceedings;
- 6) For notice to be sent to the class in a form and manner approved by the Court;
- 7) For all general and equitable relief.

Respectfully submitted:

PENDLEY LAW FIRM
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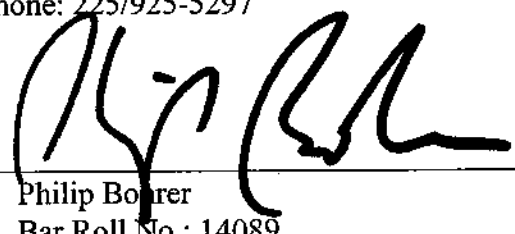
-and-

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By: _____

A handwritten signature in black ink, appearing to read 'P. Bohrer', is written over a horizontal line. The signature is stylized and cursive.

Philip Bohrer
Bar Roll No.: 14089