

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA

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LORETTA G. WHYTE
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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA **06-5154**

FRANK FRELICH, CLARA FRELICH,
KEVIN FRELICH, GRETA FRELICH,
GRETA FRELICH, LEO ROTH,
VINCENT FRELICH, Sr., JANICE FERACH,
ROBIN GAUTHIER, HEWITT GAUTHIER,
ANNA ZIBILICH LINCOLN, JOHN J. PENNISON, Jr.
CHRISTOPHER D. JOHNSON,
HAROLD J. TREADAWAY, Jr
and EMPIRE INN,, L.L.C.

CIVIL ACTION NO.

SECTION

VERSUS

MAGISTRATE

SHELL PIPELINE CO., LP, ~~ET AL~~

ORIGINAL CLASS ACTION COMPLAINT

NOW INTO COURT, by and through undersigned counsel, come Frank Frellich, Clara Frellich, Kevin Frellich, Greta Frellich, Leo Roth, Vincent Frellich, Sr., Janice Ferach, Robin Gauthier and Hewitt Gauthier, Anna Zibilich Lincoln, John J. Pennison, Jr., Christopher D. Johnson, Harold J. Treadaway, Jr. and Empire Inn, L.L.C. (hereinafter plaintiffs and/or "class representatives"), each of whom are major individuals, domiciled in the Parish of Plaquemines, State of Louisiana, who file this claim individually and as representatives of all others similarly situated, respectfully allege as follows:

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1.

Class Representatives 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;**
- 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;**
- H) **ANNA ZIBILICH LINCOLN, a major individual, domiciled in the Parish of Plaquemines, State of Louisiana;**

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- I) PAUL J. PENNISON, JR., a major individual, domiciled in the Parish of Plaquemines, State of Louisiana;
- J) CHRISTOPHER D. JOHNSON, a major individual, domiciled in the Parish of Plaquemines, State of Louisiana;
- K) HAROLD J. TREADAWAY, JR., a major individual, domiciled in the Parish of Plaquemines, State of Louisiana;
- L) EMPIRE INN, L.L.C., a Louisiana limited liability company, domiciled in the Parish of Plaquemines, State of Louisiana;

2.

Made defendant herein is 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 defendant 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.

Defendant 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 Plaquemines 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 defendant 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, defendant 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 remained in a state of disrepair for an extended period of time due to the Shell pipeline rupture.

14.

The residents in the area affected by the spill and flooding were displaced by the ruptured pipeline and/or prolonged flooding. After the levee is repaired and the flood water receded, the crude oil which originated from the pipeline settled 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 defendant, Shell Pipeline Company, L.P. through its 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 its pipeline;*

- c) Failing to shut in the pipeline and remove all crude oil from within the pipeline;
- e) Failure to follow its own procedures for the prevention of the crude oil spill;
- f) Failing to form, implement, follow or comply with defendant's internal policies and procedures, as set forth by defendant and/or as required by governmental agencies in disaster evacuation planning reporting requirements.

16.

As a result of the weakened and compromised condition of the levee, caused by the negligence and/or fault of Shell, the back canal levee failed where it intersected with the Shell pipeline resulting in a substantial levee breach which caused flooding of the class area and that resulted in substantial and irrevocable damage to the putative class members real and personal property and businesses as well as causing class members a significant delay in returning to their residences, property and/or businesses.

17.

On or about September 25, 2005, Hurricane Rita made landfall in southwestern Louisiana causing considerable increases in water levels in the area in and around the Shell pipeline levee breach that remained in a state of disrepair due to Shell's negligence or fault. Due to the breach in the levee, the class area not only remained flooded but the flood waters increased resulting in substantial damage to the putative class members real and personal property and/or businesses.

18.

Due to the continued state of flooding in the class area around the Shell levee breach, the putative class members were delayed in returning to their property, residences and businesses, resulting in further damages, destruction and contamination of the class members real and personal properties, businesses and residences as well as causing prolonged displacement and delayed access.

19.

The class members property was contaminated by Shell's oil released from its pipeline as well as flood water contamination, including salt water, of the property each causing irrevocable damage to Plaintiffs real and personal property and businesses.

20.

The oil spill and prolonged flooding killed plants, trees and other vegetation and caused contamination including, but not limited, to oil contamination and a substantial increase in the salinity of the soil making the property and soils unusable and requiring remediation.

21.

Defendant Shell Pipeline has a duty to conduct itself and its operations in a safe manner and to operate and maintain its facilities and associated structures, appurtenances, equipment, grounds and rights of way, including the back canal levee, so as to prevent oil spills that would endanger the surrounding communities.

22.

Defendant Shell Pipeline has a duty to conduct itself and its operations in a safe manner and to operate and maintain its facilities and associated structures, appurtenances, equipment, grounds and rights of way, including the back canal levee, so as to prevent failure, compromise, weakness, or instability of the pipeline and the levee system that would endanger the surrounding communities, including, but not limited to, flooding.

23.

Shell's conduct was willful, wanton, reckless, and grossly negligent making them liable for punitive damages under the law of the State of Texas which is applicable pursuant to the conflict of law provisions of the Louisiana Civil Code.

24.

The injuries, offenses, and damages set out herein were caused through no fault of the Plaintiffs or third parties, but were caused by acts or omissions of Defendant, Shell.

25.

At all times herein, Defendant Shell was the owner and/or custodian of the storage tank(s) from which the oil and other petroleum hydrocarbons were released.

26.

At all times relevant to this action, Defendant Shell had supervision, custody, and control of the aforementioned storage tank(s), from which the oil spill described herein originated.

27.

At all times herein, under Louisiana Civil Code Article 2317, Defendant Shell was under a continuing duty to protect Plaintiffs from the harm occasioned by things within its custody or *garde*, including but not limited to, oil and the storage tanks that released hazardous oil and other petroleum hydrocarbons that presented an unreasonable risk of harm.

28.

The spill herein was occasioned by the ruin, vice, or defect of Defendant, Shell's storage tank(s) and pursuant to Louisiana Civil Code Article 2322, said ruin, vice, or defect presented an unreasonable risk of harm to Plaintiffs.

29.

Shell is liable under the doctrine of *res ipsa loquitur*.

30.

Defendant Shell, by allowing crude oil and toxic, hazardous chemicals to invade and trespass upon Plaintiffs' homes and businesses, has interfered with Plaintiffs' quiet and exclusive possession and enjoyment of their movable and immovable property, such as to constitute the torts of nuisance and trespass under Louisiana Civil Code Article 2315.

31.

Pursuant to Louisiana Civil Code Article 667, a servitude exists in favor of plaintiffs prohibiting defendant Shell from conducting activities and/or of making works upon its property that

are injurious to neighboring estates.

32.

Defendant has acted in violation of the servitude by conducting activities and making works upon its property that have damaged the properties of Plaintiffs, and have deprived them of the liberty of enjoying their property. These activities include, but are not limited to, the improper remediation and the failure to conduct complete restoration of all property protected by the servitude, including properties neighboring and/or adjacent to the property of Plaintiffs.

CLASS ALLEGATIONS

33.

Plaintiffs bring this class action pursuant to Federal Rule of Civil Procedure 23(b)(3) on behalf of all owners of property and/or businesses located within and/or residents who were domiciled on August 29, 2005 within the area damaged or adversely affected by the crude oil spillage from the Shell Oil pipeline and/or the flooding or re-flooding of the area in Plaquemines Parish and/or delayed entry due to the back canal levee breach at its intersection with the Shell pipeline, which generally includes the areas between the Mississippi River levee to the east, the 40 Arpent line to the west, the Empire bridge to the south and the Freeport golf course to the north all within the Homeplace/Nairn/Empire area.

34.

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 and the flooding of the area.

35.

There are common issues of law and fact as to (1) whether Shell is liable to the Plaquemines Parish residents and businesses in the class area for negligently allowing the release of substantial quantities of petroleum hydrocarbons onto real or personal property or businesses in the class area; (2) whether Shell is liable to those claimants for failure to contain the spill; (3) whether Shell is liable pursuant to Louisiana Code Article 2317 for damage to the property of the residents and businesses of Plaquemines Parish; (4) whether Shell's negligence is ultimately found to prolong the time in which claimants cannot return to their property; (5) whether the claimants' property's fair market value is diminished as a result of oil contamination; (6) whether the claimants' property's fair market value is diminished as a result of flood water, including salt water, contamination; (7) the extent of damages caused by the defendant's negligence; (8) whether Shell is liable pursuant to Louisiana Civil Code Article 667 for conducting activities and/or making works upon its property that are injurious to neighboring estates; (9) whether Shell is liable pursuant to Louisiana Civil Code Article 2322 for ruin, vice or defect in its pipeline and/or storage tanks that presented an unreasonable risk of harm; (10) whether Shell is liable for negligence in constructing a pipeline that intersected a hurricane protection levee; (11) whether Shell is liable for the continuous flooding and/or reflooding of the class area; (12) whether Shell is liable for nuisance and trespass; and (13) whether Shell is liable for punitive damages.

36.

Plaintiffs' claims are typical of the class. Plaintiffs all reside within the affected area. Their real and personal property have been contaminated 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.

37.

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.

38.

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 defendant 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

39.

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) Loss of use;
- e) Mental anguish caused by property damage;
- f) Business interruption;
- g) Damages for delayed return and/or access;
- h) Damages to trees, shrubs, soil and crops; and
- g) Punitive Damages.

WHEREFORE, plaintiffs, individually and as representatives of all persons similarly situated, pray that defendant 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 defendant, 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:

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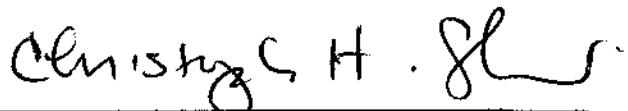
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PLEASE SERVE:

SHELL PIPELINE COMPANY LP
through its agent for service of process
CT Corporation Systems
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