

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

COTTON BAYOU MARINA, INC,)	
d/b/a TACKY JACK'S)	
RESTAURANT,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 1:10-cv-00243-WS-C
)	
BP plc; <i>et al.</i> ,)	
)	
Defendants.)	

MOTION TO DISMISS

Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), Defendants BP America Inc. and BP Products North America Inc. (collectively “BP Defendants”) hereby move the Court to dismiss the Complaint and each and every count and claim therein alleged against the BP Defendants. As grounds for this motion, the BP Defendants state:

1. The Oil Pollution Act of 1990 (OPA), 33 U.S.C. §2701, *et. seq.* displaces Plaintiffs’ negligence, wantonness, nuisance, and strict liability claims.
2. Absent from Plaintiffs’ Complaint is any allegation that they have submitted their claims to BP through the OPA-mandated claims process that BP is carrying out, which is a mandatory condition precedent under the OPA to filing a lawsuit against BP for recovery of damages related to the oil spill. 33 U.S.C. § 2713(a), (c).

3. Even if OPA had not displaced Plaintiffs' claims, they would still be barred by the economic loss rule of *Robins Dry Dock & Repair Co. v. Flint*, 275 U.S. 303, 309 (1927), or Louisiana state law principles, *see PPG Indus., Inc. v. Bean Dredging*, 447 So. 2d 1058, 1062 (La. 1984), made part of the federal law governing the Outer Continental Shelf.

4. In accordance with Local Rule 7.1, the BP Defendants submit a separate Memorandum of Law in support of this motion, which is adopted and incorporated by reference as part of this motion.

WHEREFORE, the BP Defendants respectfully request that the Court enter an order dismissing Plaintiff's complaint and each and every count and claim therein alleged against the BP Defendants.

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of July, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to:

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