

# Exhibit 8

BEFORE THE JUDICIAL PANEL ON MULTI-DISTRICT LITIGATION

IN RE: )  
)  
)

DEEPWATER HORIZON )  
INCIDENT LITIGATION )  
)

MDL Docket No. 2179

**POTENTIAL INTERESTED PARTY'S RESPONSE IN OPPOSITION  
TO MOTIONS FOR TRANSFER, COORDINATION  
AND CONSOLIDATION PURSUANT TO 28 U.S.C. §1407**

Pursuant to 28 U.S.C. §1407 and Rule 7.2, Rules of Procedure of the Judicial Panel on Multidistrict Litigation, Respondent in Opposition, Clark Seafood Company, Inc., a Mississippi corporation, files this response in opposition to the various motions for transfer, coordination and consolidation heretofore filed in these proceedings.

1. The Respondent in Opposition is a seafood processor and distributor in Jackson County, Mississippi which has been forced to shut down its operations as a result of the oil spill and the resulting closure of the affected waters for the commercial fishing industry.

2. The Respondent in Opposition was originally a Plaintiff in the case styled "*Franklin Parker, et al., v. Transocean, Ltd., et al.*," filed on April 30, 2010, in the United States District Court for the Southern District of Mississippi, Southern Division, Civil Action No. 1:10-CV-00174-HSO-JMR. On May 10, 2010, the Plaintiffs in that case filed a Notice of Dismissal of their action pursuant to Rule 41(a)(1)(A)(I), and that case cannot be presently considered a "tag along" case.

3. The Respondent in Opposition believes it is typical and representative of a multitude of individuals, businesses and others who have suffered and will continue to suffer damages and loss as a result of the oil spill in the Gulf of Mexico and who are or will pursue claims under the federal Oil Pollution Act of 1990, 33 U.S.C. §2701, *et seq.*

4. The Oil Pollution Act (OPA) is a unique statutory enactment for the recovery of costs of removal and damages against a party responsible for causing the discharge of oil into or upon the navigable waters and adjoining shorelines of the United States. The OPA imposes strict liability against the responsible party for damages enumerated under the Act and is the exclusive remedy for such damages against the responsible party unless a state imposes additional liability. 33 U.S.C. §2718(a).

5. The United States Coast Guard, acting pursuant to federal statutory authority under the OPA on April 28, 2010, designated BP Exploration & Production, Inc. (BP) as a responsible party for the incident upon which this litigation is based. (Exhibit 1 attached hereto)

6. The OPA requires that before a lawsuit is filed against a responsible party for damages as a result of the discharge of oil, individual claims must first be presented to the responsible party and the responsible party has a period of ninety (90) days in which to resolve the claim before a claimant can begin the institution of litigation. 33 U.S.C. §2713

7. Upon information and belief, BP has accepted the designation as a responsible party under OPA and has set up a claims presentment procedure as required by law for the receipt and processing of individual claims. To date, BP acknowledged that at least 26,000 people have filed claims. (Exhibit 2 attached hereto)

8. All underlying Complaints upon which these motions for transfer, coordination and consolidation are based, assert multiple fault-based claims against numerous parties,

including BP Exploration & Production, Inc., or a BP entity. However, none of the underlying Complaints alleged or have complied with the mandatory conditions precedent of presentment of claims to BP before initiating the underlying litigation. As a result, all underlying Complaints upon which these motions for transfer, coordination and consolidation are based, were prematurely filed and must be dismissed against BP as to any claims under the OPA, and cannot serve as a basis for transfer, coordination and consolidation for MDL proceedings.

9. Since the OPA is predicated upon individual claims treatment, consolidation of litigation for MDL proceedings of claims under the OPA are inimical to the federal statutory scheme and serves no useful purpose under 28 U.S.C. §1407.

10. But for the single fact that the movants seeking MDL consolidation and those who have initiated the claims process against BP under the OPA, all claim damage resulting from the oil discharge, there are no common questions of fact between these movants who have not complied with the mandatory prerequisites under the OPA before filing suit and those who have or intend to.

11. Because BP's fault-based liability is not a disputed issue in claims against it under the OPA as will be the liability against other defendants, there is no substantial risk of voluminous, duplicated discovery against BP or of inconsistent pretrial rulings relative to BP as there might be with other defendants, as to claims under the OPA.

12. On the other hand, for those claimants who elect to pursue claims against BP under the OPA and who subsequently file suit under the Act if settlement fails, 33 U.S.C. §2713(c)(2), it would be unduly burdensome and unjustified to drag them into an MDL proceeding when the only unresolved issues for such claimants are their individualized damages.

13. Because claims against BP under the OPA are in all respects separate and distinct from claims of liability against all other defendants, and involve predominantly individualized and not common claims, all OPA claims against BP arising from the explosion and subsequent sinking of the Deepwater Horizon and subsequent oil discharge should be severed from these motions for transfer, coordination and consolidation in MDL proceedings or, alternatively, dismissed from these proceedings before any decision on transfer.

14. Respondent in Opposition incorporates by reference its memorandum of legal authority filed this date in supports of its response.

WHEREFORE, Respondent in Opposition requests that all claims against BP arising under the Oil Pollution Act from the April 20, 2010, explosion on the Deepwater Horizon and subsequent discharge of oil be severed and/or dismissed from these MDL proceedings.

This the 8th day of June, 2010.

Respectfully submitted,  
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