

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

**WILLIAM D. GREGOIRE, VERONICA
G. STELLY AND TOBY J. STELLY**

CIVIL ACTION NUMBER 2:10-CV-01351

VERSUS

JUDGE KURT D. ENGELHARDT

TRANSOCEAN, LTD., ET AL.

MAGISTRATE JUDGE ALMA CHASEZ

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF
MOTION TO CONSOLIDATE AND TRANSFER CASE
PURSUANT TO LOCAL RULES 3.1 & 3.1.1E**

MAY IT PLEASE THE COURT:

On May 5, 2010, Plaintiffs herein filed their original "Class Action Complaint" on behalf of:

All individuals and entities (both natural and juridical) in the State of Louisiana, which are commercial fishermen, shrimpers, charter boat operators, and/or businesses which incur economic losses as a result of the oil spill from the Deepwater Horizon well.

[10-1351, Rec. Doc. 1, p.10, para. 21]. Prior to the commencement of this civil action, other plaintiffs in the *Wetzel, et al. v. Transocean, et al.*, case (2:10-cv-01222)("Wetzel") filed a very similar class action in the Eastern District of Louisiana on April 28, 2010 on behalf of:

All individuals and entities (both natural and juridical) in the States of Louisiana, Mississippi, Alabama and/or Florida which are commercial fishermen, shrimpers, charter boat operators, and/or businesses which incur economic losses as a result of the oil spill from the Deepwater Horizon well.

[10-1222, Rec. Doc. 1, pp. 5-6, para. 9]. The operative facts giving rise to both of these class actions are the same, and the subject matter of these two related cases clearly overlap. Although there are a number of pending class actions seeking "economic damages" resulting from the BP Oil Spill, upon information and belief, the first filed class action seeking such relief—and

therefore the civil action with the lowest docket number pending in the Eastern District—is the *Wetzel* (10-cv-1222) case.

According to Local Rule 3.1 of this Court regarding “Collateral Proceedings and Refiled Cases”:

Whenever a civil matter, commenced in or removed to the court, involves subject matter that either comprises all or a material part of the subject matter or operative facts of another action, whether civil or criminal, then pending before this or another court or an administrative agency, or previously dismissed or decided by this court, counsel shall append on a separate sheet of paper, to the front of the complaint, a list and description of all such actions then known to counsel and a brief summary of the relationship. If information concerning any such action or proceeding is obtained subsequent to the filing of the original pleading in the latter case, it shall be the duty of counsel obtaining such information to notify the court and opposing counsel in writing of the information so received in the same manner.

And according to Local Rule 3.1.1E of this Court regarding the “Assignment of Collateral Proceedings and Refiled Cases”:

In order to promote judicial economy and conserve judicial resources, and to avoid the potential for forum shopping and conflicting court rulings, all actions described in LR3.1 shall be transferred to the section to which the matter having the lowest docket number has been allotted, unless the two judges involved determine that some other procedure is in the interest of justice. If the transferee or transferor judges cannot agree upon whether a case should be transferred, the opinion of the transferee judge prevails.

If counsel fails to make the certification described in LR3.1 , then the allotted judge shall take this action when he or she learns of the related nature of the proceedings.

In an effort to comply with Local Rules 3.1 & 3.1.1E, Plaintiffs have this date previously given notice to this Court and opposing counsel of this collateral proceeding by “append[ed] on a separate sheet of paper” the material facts regarding the *Gregoire* and *Wetzel* cases in the form of a Notice of Related Case. A similar “Notice of Related Case” has this date been filed in the

Wetzel case.

Given that this case “involves subject matter that either comprises all or a material part of the subject matter or operative facts of another action,” namely the previously filed *Wetzel* case, Local Rules 3.1 & 3.1.1E dictate that this Court “shall” transfer the later filed case “to the section to which the matter having the lowest docket number has been allotted.” As is undoubtedly well-known to this Court, the use of the obligatory word “shall” indicates that such a transfer is not discretionary. Furthermore, given that Local Rule 3.1.1E expressly states the purpose of this obligatory rule (i.e., “to promote judicial economy and conserve judicial resources, and to avoid the potential for forum shopping and conflicting court rulings”), the immediate transfer of this proceeding is evident from the record and no contradictory hearing is necessary.

For example, the BP Defendants, who are represented by the same counsel here as in the *Wetzel* case, have filed substantially similar Motions to Stay in both the *Wetzel* proceeding and in this case. On Friday, June 4, 2010, Judge Barbier DENIED Defendants’ Motion to Stay in open court and ordered all parties to continue to work closely together on various evidentiary, administrative, and discovery issues at hand [10-1222, Rec. Doc. 88]. Plaintiffs and undersigned counsel would understandably like to join in and take an active role in the closely related *Wetzel* case as it moves forward. Currently, this Court has pending before it the BP Defendants’ identical Motion to Stay [Rec. Doc. 5; currently noticed for hearing without oral argument on June 9, 2010]. To promote judicial economy, conserve judicial resources, and avoid both forum shopping and conflicting court rulings, Plaintiffs respectfully request this Court to consolidate this suit with the *Wetzel* case by transferring this action to the first-filed proceeding, namely

2:10-cv-01222; Sec J(5).¹

Furthermore, Local Rules 3.1 & 3.1.1E authorize, if not dictate, Your Honor to consolidate these related proceedings *sua sponte* through transfer. Counsel of record herein for the Defendants who have made an appearance, BP Exploration & Production, Inc., BP Products North America, Inc., Transocean Deepwater, Inc., and Transocean Offshore Deepwater Drilling, Inc., were asked by undersigned counsel via email on the morning of June 7, 2010, to state whether Defendants consent or oppose this requested consolidation; to date, opposing counsel has not responded to Plaintiffs' email request in any way. Under the current circumstances, Plaintiffs respectfully suggest that there is no need for a contradictory hearing regarding this motion. In an abundance of caution, however, Plaintiffs have noticed their motion for hearing pursuant to local rule. Therefore, regardless of whether Defendants ultimately consent to or oppose this requested consolidation, this case should be consolidated with the earlier filed *Wetzel* case as soon as practicable and without further delay. Plaintiffs have submitted a proposed ORDER (as a separate attachment hereto) to accomplish this transfer for Your Honor's consideration.

For all of the foregoing reasons, Plaintiffs respectfully request Your Honor to transfer this later-filed civil action to the section to which the matter having the lowest docket number has been allotted, namely *Wetzel*, 2:10-cv-01222; Sec. J(5), without the need of any formal hearing or further delay.

¹ To add further uncertainty to this proceeding, as Your Honor undoubtedly already appreciates, the Stone, Pigman firm represents defendant Cameron International Corporation in other BP Oil Spill cases, including *Wetzel*. Given Your Honor's prior recusals in other, comparable cases [*e.g.*, *Cooper*, 10-1229, Rec. Doc. 36] involving the Stone, Pigman firm, if and when Stone, Pigman appears in this case, Your Honor will have to face the issue of recusal again.

Respectfully submitted:

s/Michael C. Palmintier

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CERTIFICATE

I HEREBY CERTIFY that on this 8th day of June, 2010, the foregoing document was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all counsel of record by operation of the court's electronic filing system.

s/J.E.Cullens, Jr.
J.E.Cullens, Jr.