

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

In re: DEEPWATER HORIZON

*** CIVIL ACTION**

*** NO. 10-CV-1156**

*** SECTION "J"**

*** DIVISION "3"**

*** JUDGE CARL J. BARBIER**

*** MAGISTRATE SHUSHAN**

*** Applies to 10-CV-1156, 10-CV-1196,
10-CV-1222, 10-CV-1249, 10-CV-
1250, 10-CV-1295, 10-CV-1324,
10-CV-1339, 10-CV-1346,
10-CV-1352, 10-CV-1411, 10-CV-
1446, 10-CV-1452, 10-CV-1472, 10-
CV-1472, 10-CV-1482, 10-CV-1484,
10-CV-1499, 10-CV-1502, 10-CV-
1515, 10-CV-1540, 10-CV-1542, 10-
CV-1561, 10-CV-1574, 10-CV-1613,
10-CV-1630**

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ORDER

On June 18, 2010, BP Exploration and Production, Inc. ("BPXP") provided notice of an operation planned for June 21, 2010, to recover and inspect the kinked riser section, under the direction and with the approval of Unified Command. BPXP advised in the notice that the riser section, once recovered and brought to the deck of the recovery vessel, would be measured, inspected and photographed, but that no destructive testing will be conducted and no experts retained specifically for

litigation purposes would be present. At the conclusion of the operation, the riser section would be delivered to the USCG Base Support Unit in New Orleans, subject to the custody and supervision of the Marine Board of Investigation (“MBI”).

In response, Plaintiffs Interim Co-Liaison Counsel contacted Interim Defense Liaison Counsel (who is also Counsel for BPXP) to request that Plaintiffs be permitted to send an expert to observe the recovery and inspection. Plaintiffs’ Interim Co-Liaison Counsel further requested the written protocol for the recovery and inspection, as well as information regarding the creation of and access to independent photographs, videotape or other documentation of the recovery and inspection. Finally, counsel wanted to ensure that Plaintiffs’ experts or consultants would have access to the riser section prior to any chemical cleaning, x-ray, metallurgical analysis, or other potentially destructive testing.

BPXP objects to the presence of an attorney or expert representing the plaintiffs for safety, logistical and other reasons. BPXP advises that the proposed action is solely for operational purposes and that no attorneys or experts for BPXP will be present. Subject to a protocol approved by the Responsible Party Incident Commander, the U.S. Coast Guard, and MMS, wall thickness will be determined; a boroscope inspection will be conducted; rubber molds will be used to take impressions of the holes (and all such rubber molds will be preserved); still photographs will be taken of the entire riser joint in order to subsequently create a 3-D rendering; the Surveyor will conduct the marking of the riser; all steps will be supervised by Custody Observers; and a Chain of Custody Record will be maintained by the U.S. Coast Guard Commanding Officer. BPXP also points to a previous order by Judge Zainey in *Roshto*, (Civil Action No. 10-1156) (May 19, 2010), declining to require BPXP to provide Plaintiffs access (or even notice) to operations performed at the direction and/or with the approval of Unified Command, (subject to the limitation that Plaintiffs will be provided access whenever any of the defendants’ various litigation experts examine the equipment or visit the scene). Finally,

BPXP represents that any motion by Plaintiffs to MBI to inspect the riser section at the Coast Guard facility will not be opposed

On June 20, 2010, the Court held a Status Conference with Plaintiffs' and Defendants' Interim Liaison Counsel; based on the record and the argument of counsel:

IT IS HEREBY ORDERED that:

1. All physical evidence recovered will be preserved;
2. No metallurgical analysis or other potentially destructive testing will be conducted on the riser section (or any other physical evidence which may be recovered) without first providing Plaintiffs (or other interested parties) access to inspect the riser section (or other evidence) and without an agreed or Court-approved protocol;
3. Shall prying of a bent portion be necessary to accomplish the operational objectives under the Unified Command protocol, such portion shall be comprehensively measured, photographed and otherwise documented in an appropriate way prior to such prying or other modification;
4. BPXP shall, consistent with Judge Zainey's previous Order, maintain a log/summary of each action relating to the recovery, inspection, modification and/or transport of the equipment;
5. Any and all such logs/summaries, as well as any and all photographs, measurements, videotape, film, diagrams, 3-D analysis, wall thickness readings, and/or other documentation of the removal, inspection and/or chain of custody shall be produced to Interim Plaintiffs Liaison Counsel on or before July 15th; and,
6. In light of BPXP's representations that no attorneys or litigation experts will be present for the removal / inspection, any claims of privilege or work product over the documents and information described in Paragraph 5 are deemed waived.

This order shall apply only to the proposed recovery of the kinked riser section, and shall not be construed to in any way restrict the direction or activities of the Unified Command in their investigation, recovery, well control, remedial or rescue efforts.

SIGNED New Orleans, Louisiana, this 21st day of June, 2010.



United States District Judge