

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

Christine Reitano,
Plaintiff,

v.

BP Exploration & Production Inc. and Patrick
A. Juneau,
Defendants.

CASE NO. _____

On removal from the Civil District Court,
Parish of Orleans, Louisiana: Case No. 2013-
9913.

**BP'S NOTICE OF REMOVAL TO THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF LOUISIANA**

Pursuant to 28 U.S.C. §§ 1331, 1441, 1446 and 43 U.S.C. § 1349, Defendant BP Exploration & Production Inc. ("BP"), hereby gives notice and removes this case to the United States District Court for the Eastern District of Louisiana.

BP represents the following in accordance with the requirement of 28 U.S.C. § 1446(a) for a "short and plain statement of the grounds for removal":

Background and Procedural Requirements

1. BP is a defendant in the matter styled "*Christine Reitano v. BP Exploration & Production Inc. and Patrick A. Juneau*," pending in the Civil District Court, Parish of Orleans, Louisiana and bearing Case No. 2013-9913 ("State Court Action").
2. Plaintiff filed her Petition in the State Court Action on October 21, 2013.
3. BP was served with process on October 31, 2013.
4. This Notice of Removal is timely filed, as it is being filed within thirty days after receipt of the initial pleading setting forth the claims for relief and within thirty days of service of process as required by 28 U.S.C. § 1446(b), as computed pursuant to Fed. R. Civ. P. 6(a).

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EASTERN DISTRICT OF LOUISIANA**

Pursuant to 28 U.S.C. §§ 1331, 1441, 1446 and 43 U.S.C. § 1349, Defendant BP

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States District Court for the Eastern District of Louisiana.

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5. Pursuant to 28 U.S.C. § 1446(a), BP attaches as Exhibit A hereto a copy of all process, pleadings and orders served on BP in the State Court Action.

Factual Allegations

6. Plaintiff's Petition begins with the events of April 20, 2010, when "an offshore oil well (The Macondo Well) in the Gulf of Mexico . . . operated by BP and a number of its subcontractors and/or co-venturers, exploded" Pet. ¶ 4. Plaintiff asserts that the explosion and resulting oil spill were "caused by BP's operation of the Macondo Well." *Id.* She further states that "immediate physical damage and personal injuries caused by the spill were only the beginning," with the spill's economic impact stretching across the five Gulf States and beyond. *Id.*
7. To address the many claims arising from the spill, BP created the Gulf Coast Claims Facility, which was later "replaced" by the Court-Supervised Settlement Program ("CSSP"). *Id.* ¶ 5. The purpose of both programs was to provide "an organized system for processing and paying claims of those damaged by the spill." *Id.* With respect to the CSSP, Plaintiff recognizes that Patrick Juneau was "approved, accepted and appointed as the Claims Administrator by . . . the Court." *Id.* ¶ 6. Plaintiff's employment served the same purpose as the CSSP generally: "Reitano will assist Mr. Juneau in carrying out the responsibilities of the Claims Administrator of the . . . Court Supervised Claims Program." Pet. Ex. C at 1.
8. The Settlement Agreement at the core of the CSSP's operations leaves no doubt about its connection to the proceedings before this Court. It specifies that this Court retains "continuing and exclusive jurisdiction" over the settlement, including "over the administration and enforcement of the Agreement and the distribution of its benefits

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...” Economic & Property Damages Settlement Agreement, *In re: Oil Spill by the Oil Rig Deepwater Horizon in the Gulf of Mexico, on April 20, 2010*, MDL No. 2179, Rec. Doc. 6430, at ¶ 18.1 (E.D. La. filed May 3, 2012) (“Agreement”). The Court expressly incorporated its continuing jurisdiction into the order approving the Settlement, and the Fifth Circuit has twice recognized this Court’s continuing and exclusive jurisdiction. *See* Order & Reasons, *In re: Oil Spill*, MDL No. 2179, Rec. Doc. 8138, at 9 (E.D. La. entered Dec. 21, 2012) (“The Settlement Program and Claims Administrator are subject to this Court’s continuing and exclusive jurisdiction.”); *see also In re Deepwater Horizon*, --- F.3d ---, 2013 WL 5473330, at *9 (5th Cir. Oct. 2, 2013) (remanding to this Court questions related to the CSSP’s interpretation of the Settlement Agreement); *BP Exploration & Production, Inc. v. Johnson*, 2013 WL 4018614 (5th Cir. Aug. 8, 2013) (vacating a summary judgment decision in the Southern District of Texas in favor of transferring the case to this Court because it should have heard the case initially).

9. Plaintiff’s Petition also alleges misconduct by Special Master Louis Freeh, whom this Court appointed “to look into allegations which had been made by BP regarding fraud being committed in the [Claims Administrator’s Office].” Pet. ¶ 17. Specifically, Plaintiff alleges that the Special Master’s “conclusions are nothing short of a misrepresentation and distortion” *Id.* ¶ 20; *see also id.* ¶ 21 (accusing Special Master Freeh of “intentionally and wrongfully mischaracterizing” Plaintiff’s discussions with the Andry Lerner Law Firm). The Special Master’s alleged misconduct is essential to Plaintiff’s wrongful termination claims because they “are the only allegations in Mr. Freeh’s report which, if true, could possibly rise to the level of ‘cause’ under the terms of Ms. Reitano’s contract.” *Id.* ¶ 22.

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Original Federal Jurisdiction Exists Over the Complaint Pursuant to OCSLA and Thus Under the Federal Question Statute As Well.

10. The first basis for removing the State Court Action to this Court relates to the fact that this lawsuit arises in connection with the *Deepwater Horizon*'s drilling operations occurring on the Outer Continental Shelf ("OCS" or "the Shelf"). As a result, the State Court Action falls within the jurisdictional grant of the federal Outer Continental Shelf Lands Act ("OCSLA"), 43 U.S.C. § 1331, *et seq.*
11. OCSLA Jurisdiction: OCSLA provides, in relevant part, that "district courts of the United States shall have jurisdiction of cases and controversies *arising out of, or in connection with* (A) any operation conducted on the outer Continental Shelf which involves exploration, development, or production of the minerals, of the subsoil and seabed of the outer Continental Shelf, or which involves rights to such minerals." 43 U.S.C. § 1349(b)(1) (emphasis added).
12. OCSLA defines "minerals" to include "oil, gas, sulphur, geopressured-geothermal and associated resources." 43 U.S.C. § 1331(q). "Exploration" is the "process of searching for minerals, including . . . any drilling." 43 U.S.C. § 1331(k).
13. On April 20, 2010, the date the oil spill began, the *Deepwater Horizon* was in the Gulf of Mexico working at the Macondo well. The Fifth Circuit has noted that the *Deepwater Horizon*'s purpose was to "drill the Macondo well, which is located on the sea floor at Mississippi Canyon Block 252." *Center for Biological Diversity, Inc. v. BP Am. Prod. Co.*, 704 F.3d 413, 418 (5th Cir. 2013). These operations were part of BP's "exploration and drilling operations in the Gulf of Mexico." *Id.* The Northern District of Florida has reached a similar conclusion: "[w]hen it exploded, the *Deepwater Horizon* was operating on the outer continental shelf. Its operations were part of the exploration for, and

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intended development and production of, continental-shelf oil.” *Phillips v. BP p.l.c.*, 2010 WL 3257737, at *1 (N.D. Fla. Aug. 17, 2010). Likewise, this Court’s counterpart in MDL 2185 has held that even lawsuits concerning securities filings which allegedly contained misrepresentations in connection with Shelf drilling activities fall within OCSLA’s broad grant of federal jurisdiction. *See* Memorandum & Order, *In re: BP p.l.c. Sec. Litig.*, No. 4:10-md-2185, Rec. Doc. 441 (S.D. Tex. filed Oct. 1, 2012) (“MDL 2185”).

14. In a case especially relevant to the current dispute, the Southern District of Texas has held that OCSLA jurisdiction encompasses a dispute over whether the CSSP’s predecessor, the Gulf Coast Claims Facility, entered a contract to settle the claims of a *Deepwater Horizon* responder. Order, *Johnson v. BP Exploration & Production, Inc.*, No. 4:12-cv-989, Rec. Doc. 39 (S.D. Tex. July 19, 2012), *vacated on other grounds and directly transferred to MDL 2179 by BP Exploration & Production, Inc. v. Johnson*, 2013 WL 4018614 (5th Cir. Aug. 8, 2013). In transferring the case to this Court, the Fifth Circuit made no mention of the plaintiff-appellant’s argument challenging federal jurisdiction under OCSLA. Because federal courts begin by examining their own jurisdiction — even where the parties purport to agree on such matters, *see, e.g., Iracheta v. Holder*, 730 F.3d 419, 422 (5th Cir. 2013) — the Fifth Circuit’s decision to keep *Johnson* in federal court over the plaintiff-appellant’s vociferous objection is instructive. *See Unida v. Levi Strauss & Co.*, 986 F.2d 970, 974 (5th Cir. 1993) (recognizing that courts may “impliedly” deny a motion to remand by saying nothing about it). Unlike the current case, which additionally triggers federal jurisdiction under the Settlement Agreement and the continuing injunction and retention of exclusive federal jurisdiction it

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establishes, *Johnson* did not involve the CSSP and relied strictly on OCSLA for federal jurisdiction.

15. The State Court Action thus “aris[es] out of” and “in connection with” a drilling operation on the outer Continental Shelf. Plaintiff concedes as much by basing her claims on contracts with the Court Supervised Settlement Program. Those documents refer exclusively to the resolution of claims arising out of or in connection with the *Deepwater Horizon* Incident. See Pet. Ex. C at 1 (explaining, in relevant part, that Plaintiff’s job was to “assist with the Claims Administrator’s responsibilities as set forth in . . . a final settlement agreement”). The Settlement Agreement defines the Claims Administrator’s work to include only claims arising out of or in connection with the blowout of the Macondo well and ensuing oil spill. See Agmt. ¶ 38.43 (defining the “Deepwater Horizon Incident” to include “the blowout of the MC252 Well,” “the explosion and fire aboard the *Deepwater Horizon*,” the sinking of the *Horizon*, “the release of oil, other hydrocarbons and other substances from the MC252 Well,” containment and response activities, and BP’s public statements regarding the same). Plaintiff’s employment was narrowly confined to the resolution of claims under the *Deepwater Horizon* settlement. Mr. Juneau did not employ her for any other purpose; her work existed *only* in connection with the *Deepwater Horizon* Incident. Because there can be no question that the *Deepwater Horizon*’s operations at the Macondo well were related to oil exploration, this Court has original subject matter jurisdiction under 43 U.S.C. § 1349(b)(1)(A).
16. Federal Question Jurisdiction: This Court also has subject matter jurisdiction under 28 U.S.C. § 1331 because the claims asserted arise in connection with a federal statute,

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15. The State Court Action thus “aris[es] out of” and “in connection with” a drilling operation on the outer Continental Shelf. Plaintiff concedes as much by basing her claims on contracts with the Court Supervised Settlement Program. Those documents refer exclusively to the resolution of claims arising out of or in connection with the Deepwater Horizon Incident. See Pet. Ex. C at 1 (explaining, in relevant part, that Plaintiff’s job was to “assist with the Claims Administrator’s responsibilities as set forth in . . . a final settlement agreement”). The Settlement Agreement defines the Claims Administrator’s work to include only claims arising out of or in connection with the blowout of the Macondo well and ensuing oil spill. See Agmt. 38.43 (defining the “Deepwater Horizon Incident” to include “the blowout of the MC252 Well,” “the explosion and fire aboard the Deepwater Horizon,” the sinking of the Horizon, “the release of oil, other hydrocarbons and other substances from the MC252 Well,” containment and response activities, and BP’s public statements regarding the same). Plaintiff’s employment was narrowly confined to the resolution of claims under the Deepwater Horizon settlement. Mr. Juneau did not employ her for any other purpose; her work existed only in connection with the Deepwater Horizon Incident. Because there can be no question that the Deepwater Horizon’s operations at the Macondo well were related to oil exploration, this Court has original subject matter jurisdiction under 43 U.S.C. § 1349(b)(1)(A).

16. Federal Question Jurisdiction: This Court also has subject matter jurisdiction under 28

U.S.C. § 1331 because the claims asserted arise in connection with a federal statute,

namely, OCSLA, 43 U.S.C. § 1331 *et seq.*, and OPA, 33 U.S.C. § 2701 *et seq.*, which undergirds the Settlement Agreement's very purpose. Moreover, claims under OCSLA are not subject to the well-pleaded complaint rule. *Amoco Production Co. v. Sea Robin Pipeline Co.*, 844 F.2d 1202, 1205 (5th Cir. 1988) ("In determining federal court jurisdiction, we need not traverse the Serbonian Bog of the well pleaded complaint rule . . . because § 23 of OCSLA expressly invests jurisdiction in the United States District Courts."). Hence, Plaintiff's protestations that her complaint does not explicitly state causes of action based on federal law is irrelevant. *See* Pet. ¶ 2 (wrongly asserting that removable is impermissible because all stated claims purport to arise under Louisiana law and because this case is not qualified to be an MDL 2179 "'tag-along' matter").

17. OCSLA not only provides that federal courts have original jurisdiction over all cases arising out of Shelf operations, it also directly specifies that federal law governs as a substantive matter. *See* 43 U.S.C. § 1333(a)(1). Hence, federal question jurisdiction under 28 U.S.C. § 1331 inherently and unavoidably exists over claims that arise out of Shelf conduct without regard to claims made by plaintiffs that a source of law other than federal law, such as state or maritime law, controls. The Fifth Circuit recently held that OCSLA confers both original and removal jurisdiction, regardless of whether state or maritime law supplies the rule of decision. *Barker v. Hercules Offshore, Inc.*, 713 F.3d 208, 214 (5th Cir. 2013) ("The more difficult question in this appeal is whether federal, state, or maritime law provides the substantive rule of decision for Barker's OCSLA claim. . . . [T]he panel chooses not to decide this issue because the result is the same regardless of which law is applied.").

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Alternatively, This Court Has Exclusive and Continuing Jurisdiction Over the CSSP's Operations.

18. Plaintiff's claims based on the operations of the CSSP fall within this Court's continuing and exclusive jurisdiction. The contract at the core of this lawsuit makes clear that Plaintiff's work derived from the Settlement Agreement: "Reitano shall work at the direction of the Claims Administrator to assist with the Claims Administrator's responsibilities as set forth in . . . a final settlement agreement." Pet. Ex. C at 1. The Settlement Agreement, in turn, provides that this Court retains "continuing and exclusive jurisdiction" over the settlement, including "*over the administration and enforcement of the Agreement and the distribution of its benefits . . .*" Agmt. ¶ 18.1 (emphasis added).
19. There can be no debate over this Court's "continuing and exclusive" jurisdiction over the Settlement Agreement and its implementation. As mentioned above, the Fifth Circuit has twice recognized this Court's jurisdiction. *In re Deepwater Horizon*, 2013 WL 5473330; *BP Exploration & Production, Inc. v. Johnson*, 2013 WL 4018614. While the latter case illustrates the broad reach of OCSLA's jurisdictional provision, the former removes any doubt that settlement administration falls within this Court's exclusive trial-court purview. The issue in *In re Deepwater Horizon* was the Claims Administrator's interpretation of the Agreement's provisions related to business economic losses. Recognizing that this Court has sole authority over the administration of the CSSP (subject, of course, to appeal), the Fifth Circuit remanded with instructions to oversee the development and implementation of a new CSSP policy. 2013 WL 5473330, at *15-16.
20. Plaintiff's claims also encroach upon the work of Special Master Freeh, whom this Court appointed to conduct "an independent, external investigation" of the CSSP and a "fact finding as to any other possible ethical violations or other misconduct within the CSSP."

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In re: Oil Spill, MDL No. 2179, Rec. Doc. 10564, at 2 (E.D. La. entered July 2, 2013). Specifically, Plaintiff alleges that the Special Master's "conclusions are nothing short of a misrepresentation and distortion" Pet. ¶ 20; *see also id.* ¶ 21 (accusing Special Master Freeh of "intentionally and wrongfully mischaracterizing" Plaintiff's discussions with the Andry Lerner Law Firm). By alleging that "only" the contents of Special Master Freeh's investigation could have justified the Claims Administrator's decision to terminate her for cause, *id.* ¶ 22, Plaintiff has smuggled claims against the Special Master into her contract claims. Plaintiff's attack on the Special Master only underscores the fact that her case concerns "the administration and enforcement of the Agreement and the distribution of its benefits."

21. This Court's continuing jurisdiction extends to disputes over the Claims Administrator's employment decisions, especially when made in connection with fraud investigations which are themselves conducted pursuant to this Court's directive and oversight. These functions fall within "the administration and enforcement of the Agreement and the distribution of its benefits." As such, Plaintiff's claims belong before this Court.

Venue and Removal Under 28 U.S.C. §§ 1441(a)

22. Venue is proper in this Court pursuant to 28 U.S.C. § 1446(a), as the United States District Court for the Eastern District of Louisiana is the District in which the State Court Action was pending.
23. This matter is removable under 28 U.S.C. § 1441 as a civil action over which the United States District Court for the Eastern District of Louisiana has original subject matter jurisdiction under 43 U.S.C. § 1349 and 28 U.S.C. § 1331.

In re: Oil Spill, MDL No. 2179, Rec. Doc. 10564, at 2 (E.D. La. entered July 2, 2013). Specifically, Plaintiff alleges that the Special Master’s “conclusions are nothing short of a misrepresentation and distortion” Pet. 20; see also id. 21 (accusing Special Master Freeh of “intentionally and wrongfully mischaracterizing” Plaintiff’s discussions with the Andry Lerner Law Firm). By alleging that “only” the contents of Special Master Freeh’s investigation could have justified the Claims Administrator’s decision to terminate her for cause, id. 22, Plaintiff has smuggled claims against the Special Master

into her contract claims. Plaintiff’s attack on the Special Master only underscores the fact that her case concerns “the administration and enforcement of the Agreement and the distribution of its benefits.”

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23. This matter is removable under 28 U.S.C. § 1441 as a civil action over which the United

States District Court for the Eastern District of Louisiana has original subject matter jurisdiction under 43 U.S.C. § 1349 and 28 U.S.C. § 1331.

Effectuation of Removal

24. BP hereby removes this action to the United States District Court for the Eastern District of Louisiana.
25. By filing this Notice of Removal, BP expressly consents to the removal.
26. Defendant Patrick A. Juneau will file his consent to this removal in this Court under separate cover.
27. Pursuant to 28 U.S.C. § 1446(a), copies of all pleadings, as well as copies of all process and other papers, including the Petition, on file in the record of the State Court Action which are within the possession, custody and control of BP are attached as Exhibit A.
28. The allegations of this Notice were true at the time the State Court Action was commenced and remain true as of the date of filing of this Notice of Removal.
29. Undersigned counsel certifies that a notice of filing removal, along with a copy of this Notice of Removal, will be promptly filed with the Civil District Court for the Parish of Orleans, State of Louisiana.

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and other papers, including the Petition, on file in the record of the State Court Action which are within the possession, custody and control of BP are attached as Exhibit A.

28. The allegations of this Notice were true at the time the State Court Action was commenced and remain true as of the date of filing of this Notice of Removal.

29. Undersigned counsel certifies that a notice of filing removal, along with a copy of this

Notice of Removal, will be promptly filed with the Civil District Court for the Parish of Orleans, State of Louisiana.