

## **COMMERCIAL FISHERMEN AND THE LOUISIANA ENVIRONMENTAL ACTION NETWORK HIRE PROMINENT ENVIRONMENTAL LAWYERS TO PROTECT THEIR RIGHTS**

Stuart H. Smith of the law firm Smith Stag, LLC, New Orleans, Louisiana has assembled a working group of lawyers from Louisiana, Texas, Mississippi, Pennsylvania, Alabama, and Florida to prosecute claims for those who have been affected by BP's Deepwater Horizon oil spill.

***Mr. Smith and other members of this group will speak to the press on this issue at a briefing on Thursday, April 29<sup>th</sup>, at 1:30 PM CST at the Law Offices of Smith Stag, LLC, Suite 2850, Canal Place, 365 Canal St., in downtown New Orleans.***

This group of lawyers has extensive experience in their respective jurisdictions addressing the substantial losses landowners and fishermen have suffered as a result of toxic contamination. For example Smith Stag was co-lead counsel with Sacks & Weston in the Grefer v. Exxon litigation wherein a judgment of \$1.056 billion was taken against Exxon for oilfield radiation contamination. Smith Stag also served on the Executive Committee for the Murphy Oil Spill litigation, which resulted in a cleanup and cash settlement in excess of \$280 million. Smith Stag and Sacks & Weston have successfully litigated cases against every major oil company in the world.

Adding the extensive legal experience of Val Exnicios and Gladstone Jones who have taken on much of the oil and gas industry in Louisiana provides this team with particular expertise suited to take on BP, Halliburton and other companies that caused this horrible catastrophe.

Mr. Jones served as lead counsel for Connecticut and New York lobstermen who lost their industry due to pesticide contamination. The firm of Krupnick Campbell of Fort Lauderdale is renowned for representing the shrimping industry in chemical contamination cases. The group also contains French speaking Acadian lawyer Warren Perrin since many of the fishermen expected to be affected will be Acadian.

Mr. George Barasich, individually and as the president of the United Commercial Fisherman's Association, and the Louisiana Environmental Action Network have requested that Mr. Smith and his team begin immediately investigating the cause of BP's Deepwater Horizon Spill and the environmental impact associated therewith. In light of current predictions of large-scale environmental damages, Mr. Smith and his team are preparing the legal paperwork necessary to file suit.

Any of these attorneys would be happy to provide comment on the issues of the case. With respect to the assembled team of lawyers, Mr. Smith provided, "Without any hesitation I can report that these lawyers who have joined together are ready to protect the interests of all those who have suffered and will continue

to suffer as a result of this most unfortunate disaster and like all Americans, we hope BP stops the leak soon."

**FOR FURTHER INFO:**

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**Client Information**

1. George Barasich

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2. Louisiana Environmental Action Network (LEAN), Mary Lee Orr

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Furthermore the legal group expects to be retained by numerous other clients as the situation develops and more information is discovered regarding the oil spill and its impacts.

**Context**

The Exxon Valdez spilled approximately 10.9M gallons (roughly 260,000 bbls) of oil into Prince William Sound. The oil slick in total spread over 11,000 square miles and onto over 1,300 miles of shoreline in Prince William Sound.

For the Deepwater Horizon spill, the Coast Guard has estimated a spill rate of 5,000 bbls/day or 210,000 gallons/day after claiming it to be 1,000 bbls/day for the first several days. The exact rate is unknown, but the Coast Guard initially estimated it to be 8,000 bbls/day on April 22, 2010, and based on the size and the rate of expansion of the oil slick, the real value is probably closer to the initial projection. Based on satellite imagery showing the size of the slick, some have estimated that up to as much as 126,000 bbls or 5.3M gallons have already been spilled (roughly half the amount of Exxon Valdez). The blowout occurred on April 20, 2010, and in just seven days, the slick grew to well over 2,200 square miles (1/5th the area of the Exxon-Valdez spill) and continues to expand as more oil is spilled and Gulf winds become less favorable.

While the Valdez spill caused severe economic losses upward of several hundred million to the Alaskan fisheries industry, the impacted area was limited. The area expected to be affected by the BP Deepwater Horizon oil spill is much greater than for the Exxon Valdez spill and Louisiana's fisheries alone are estimated to be a \$2.4B/year industry. When considering that other states will

also possibly be affected by the Deepwater Horizon spill, the economic losses due to the damage to fisheries could dwarf that of the Exxon-Valdez spill.

There are still a lot of unknowns regarding the potential impacts of the leak. However the leak will likely continue for another three months and easily as much as 4 months, while BP drills relief wells. Based on the amount expected to be spilled, the great length of time over which the spill is expected to occur, the rapid expansion of the slick and taking into account the size of the Gulf Coast fisheries, recreation and tourism industries, it is likely this spill will greatly surpass Exxon-Valdez both in size and economic impact.

This spill may very well become the largest environmental disaster in the history of the United States. The source of the spill is still spewing at least 210,000 gallons of oil per day into the spawning grounds of the shrimp, snapper and oyster areas of the Gulf waters and if isn't contained in the next week will threaten critical gulf beaches and marshlands. The impact on individuals and small business still recovering from a series of hurricanes is incalculable.

## **BACKGROUND**

### **1. Claims alleged in lawsuit**

The lawsuit will bring claims under the Oil Pollution Act of 1990 (OPA), as well as various state law claims and claims under the General Maritime Law. The lawsuit will allege gross negligence in the operation of the Deepwater Horizon rig and/or violations of applicable Federal safety, construction, or operating regulations by BP, an agent or employee of BP, or a person acting pursuant to a contractual relationship with BP.

The lawsuit will allege that defendants were grossly negligent in the destruction of the Deepwater Horizon and causing of the subsequent oil spill:

- by allowing a blowout to occur; and
- by allowing natural gas to migrate into the annulus of the well through the cement sheath as the cement was setting; and/or
- by allowing the hydrostatic head to be reduced in the act of displacing the riser with seawater such that it caused the well to start flowing through the cement before it set; and/or
- by failing to implement a sufficient well control program; and/or
- by having a deficient blow out prevention program; and/or
- by failing to follow the blowout prevention program; and/or
- by using a faulty blow out preventer; and/or
- by failing to detect in a timely manner the unsafe pressure drop and subsequent migration of oil and gas into the annulus; and/or
- by failing to utilize sufficient blowout detection methods and equipment; and/or

- by using faulty blow out detection equipment; and/or
- by failing to ensure the proper functioning of the blow out preventer; and/or
- by failing to implement proper safety, detection, and monitoring procedures and protocols to discover oil and gas in the annulus or to discover the faulty blow out preventer.

OPA was signed into law in August 1990, largely in response to rising public concern following the Exxon Valdez incident. OPA was intended to improve the nation's ability to prevent and respond to oil spills by establishing provisions that expand the federal government's ability, and provide the money and resources necessary, to respond to oil spills.

OPA also attempted to cure injustices encountered under the Clean Water Act (Federal Water Pollution Control Act) and the Maritime Tort scheme of the Exxon Valdez litigation by patching holes in these liability systems and enhancing the ability of claimants to collect for damages by:

- allowing parties to collect for new categories of economic damages (specifically third-party economic loss, since victims who suffered damages in Alaska, but whom were not fisherman and whom did not own property were not compensated for their losses);
- restricting the limits and defenses to liability that polluters had previously used to avoid paying damages (specifically by increasing liability limits on the amount of recovery and eliminating several defenses used by Exxon to avoid payment);
- improving the ability to recover damages under state laws (specifically by preempting the Limitation Liability Act of 1851 for state claims which previously limited state claims to the value of the vessel); and
- enhancing the ability of claimants to collect for natural resource damages (specifically by providing a stricter method for assessing natural resource damages accounting for both the costs of restoration and the diminution in value, as opposed to the lesser of those two).<sup>1</sup>

Furthermore state law claims will also be brought based on the grossly negligent operation of the rig which proximately caused the release of oil.

## 2. Damages sought

Under OPA, the defendants in this case will be liable for:

- **Removal Costs** – Any removal costs incurred by Plaintiffs for acts taken consistent with the National Contingency Plan

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<sup>1</sup> See “Liability Incentives for Reducing the Costs of Oil Spills” by Bobbie Lively-Diehold of the U.S. E.P.A. and Paul Ameer, Gary Yoshioka, and Justin Anand of ICF Inc. presented at the International Oil Spill Conference (<http://www.iosc.org/papers/01139.pdf>)

- **Property Damages** – Damages for injury to, or economic losses resulting from destruction of, real or personal property, which shall be recoverable by Plaintiffs who owns or leases that property.
- **Loss of Subsistence Use** - Damages for loss of subsistence use of natural resources, which shall be recoverable by Plaintiffs who so uses natural resources which have been injured, destroyed, or lost, without regard to the ownership or management of the resources.
- **Lost Profits** - Damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by Plaintiffs

Plaintiffs also intend to seek compensatory and punitive damages under various state law claims and the General Maritime Law.

Supreme Court jurisprudence has approved punitive damages up to ten times (10x) the amount of compensatory damages.

### 3. Scope of Damages

Removal costs and property damages will be exorbitant due to the large area of contamination along the coast. Furthermore the oil spill will potentially have grave economic impact on coastal states, far in excess of that experienced by Alaska from the Exxon Valdez spill due to

- (i) the larger area of contamination and
- (ii) the more robust seafood, recreation and tourism industries in the Gulf Coast.

This oil spill has the potential to basically shut down the majority of the Gulf Coast seafood, recreation and tourism industries in which case the Defendants will be liable for the lost profits and damages to reputation of the commercial fishermen, processors, marinas, and others.

### 4. Who is responsible?

- BP and other companies invested in the project, as holders of the offshore lease and lessees of the Deepwater Horizon
- Halliburton as the company that performed the grossly negligent cementing job
- Transocean as the owner/operator of the Deepwater Horizon
- Cameron [formerly Cameron Cooper], as the likely manufacturer of the faulty blow out preventer; and
- Any other companies that in the future are discovered to have contributed to the proximate causation of the spill.



## **Information on the Legal Team**

### **Smith Stag, LLC**

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*Persons Involved:*

Stuart H. Smith            Cell: (786) 879-9601

Michael G. Stag

Located in New Orleans, Smith Stag LLC, focuses on plaintiff-oriented, environmental and toxic tort cases. Firm's partners, Stuart Smith and Michael Stag pioneered the field of Technologically Enhanced Radioactive Materials (TERM) oilfield waste litigation. TERM is sometimes also referred to as NORM or Naturally Occurring Radioactive Materials (NORM), or TENORM. By-products of oil and gas exploration and production, TERM and NORM are radioactive, highly toxic and extremely harmful to human health. In 1992, Stuart Smith was the first attorney to take an oil company to trial for damages caused from NORM/TERM. In a 2001 Stuart Smith and Michael Stag jointly prosecuted the widely publicized Grefer case. A jury returned a verdict of \$1.056 billion dollars against Exxon/ Mobil Corporation, the world's largest oil company, in favor of the firm's client after a six-week trial. The landmark verdict was listed in Lawyers Weekly, USA as the second largest verdict in the United States for 2001. Another notable case by Smith Stag, LLC is the highly publicized Murphy Oil class action litigation, currently pending in Federal Court. Smith Stag, LLC represents residents and business owners who sustained property and other economic damages caused by a massive oil spill at the Murphy Oil Refinery in Chalmette, Louisiana. The firm also represents thousands of other clients injured by toxic chemicals or defective products, and personal injuries arising from commercial vessel, cruise ship and offshore accidents.

### **Jones, Swanson, Huddell & Garrison, LLC**

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Kevin Huddell

Ebhard Garrison

Jones, Swanson, Huddell & Garrison, LLC was formed in 2001 by a diverse group of practitioners who share a common interest in consumer and environmental advocacy. Attorneys with the firm have been admitted to practice in Louisiana, New York, New Jersey, Mississippi, Alabama, and Texas. The firm is young and aggressive and dedicated to representing its clients with professionalism and integrity.

Jones, Swanson, Huddell & Garrison's boutique litigation practice focuses on four primary areas in which we have successfully represented clients: commercial litigation, including multiple suits for fraudulent or abusive tax shelters, as well as antitrust and securities claims; environmental and toxic torts; catastrophic personal injury; and consumer and employee protection. Not only do we represent individuals with their legal

needs, we have also been appointed lead counsel in class actions and mass tort suits and have brought those cases to successful resolution. Regardless of the size or complexity of the case, we provide all of our clients with our full and personalized attention and we take pride in representing them.

Gladstone N. Jones, III: born Jackson, Mississippi, August 20, 1964; admitted to bar, 1992, Louisiana and U.S. District Court, Eastern, Western and Middle and Districts of Louisiana; 1994, U.S. Court of Appeals, Fifth Circuit. Education: Mississippi State University (B.A., 1986); Tulane University of Louisiana (J.D., 1992). Guest Lecturer, Annual Tulane Environmental Law Conference, 2002. Member, New Orleans World Trade Center Club. Member: New Orleans, Louisiana State and Federal Bar Associations; Louisiana Trial Lawyers Association; Association of Trial Lawyers of America. Reported Cases: *Harry Moore, et v. Africo Chemical Company, et al*, Case No. G-99-2794, Section 4, Class Representation, Circuit Court Tenth Judicial Circuit; *Clarice Friloux et al v. Campbell Well Corporation et al*, Case No. 75524, Division "D", Seventeenth Judicial District Court, Parish of Lafourche; *James E. Fox et al v. Cheminova Inc., et al*, Case No. Civil Action No. 005145, United States District Court Eastern District of New York; *Sweet Lake Land & Oil Company v. Union Oil Company of California*, Civil Action No. CV-99-1226, United States District Court, Western District of Louisiana, Lake Charles Division. Practice Areas: Environmental Law; Toxic Torts; Mass Torts; Property Damage; Commercial Litigation; Personal Injury; Antitrust; Consumer Protection.

**Krupnick Campbell Malone Buser Slama Hancock Liberman and McKee**

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*Persons Involved:*

Robert McKee

The Krupnick Campbell law firm has extensive experience litigating the effects of organo-chemicals in the marine and estuary environment. This type of litigation involves understanding the environmental movement of the chemicals into and through marine habitat niches; extensive evaluation of the chemicals' environmental degradation; the toxicologic and disease consequences of the chemicals' components in the environment; and the primary and secondary effects of the chemicals constituents' toxicity on marine life, including its cause of enhanced susceptibility to disease pressure, enhanced infection caused by chemically selected disease organisms, and direct toxic effects on marine life.

In addition to the biologic consequences of organo-chemical intrusion into marine environments, the firm has extensive experience regarding the economic effects on businesses whose income is derived from marine environments. Damage modeling is an essential part of a complete litigation of the losses caused by marine pollutants. The firm has worked with some of the nation's finest economists regarding losses to the shrimp industry of Ecuador which, prior to the effects of organic pesticides, was the second largest producer of farmed shrimp in the world.

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*Person Involved:*

Val Exnicios                      Cell: (504) 495-9666

Attorney Val P. Exnicios of the New Orleans law firm of Liska, Exnicios & Nungesser, has extensive experience representing the commercial fishing industry in Southeast Louisiana and has filed several class actions on behalf of the industry against major oil and gas companies believed to be responsible for devastation following Hurricane Katrina. Val serves as Chairman of the LSBA's Class action, Mass tort and Complex litigation Section. Val is also the recipient of the U.S. 5<sup>th</sup> Circuit Court of Appeals American Inns of Court Professionalism Award, LSBA President's Award and City Business Leadership in Law award.

**Murphy Falcon Kuykendall Ravenell and Murphy**

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*Person Involved:*

Frederick T. Kuykendall III

Attorney Frederick T. Kuykendall, III and his group have extensive experience in litigating environmental damage cases in general and specifically against the oil industry. A former member of the Alabama Commission on the Environment, an Honorary Member of the Board of Directors of Mobile Bay Keepers and Co-Founder of the Pensacola River Keepers, Kuykendall has successfully brought polluters to justice. For example, just last year he was co-lead counsel against Constellation Energy in an action that resulted in a pollution abatement and damages to citizens whose water had been poisoned by chemicals. In major cases against Weyerhaeuser, Shell, Exxon, Hoechst Celanese, Connoco and others, he has demonstrated a "no fear, no nonsense" approach to complex cases.

**Sacks & Weston**

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*Persons Involved:*

Andrew B. Sacks

Julie Parker

John Weston

Andrew Sacks and John Weston have practiced law together since 1984. For the first ten years their efforts were directed to general civil litigation and labor law. Beginning in 1994, an increasingly large proportion of their practice became devoted to environmental litigation, principally representing landowners and others who had been exposed to radioactive oil field contamination. Within a few years their national work had evolved into an international practice, representing private individuals and corporations as well as national governments in matters as diverse as antitrust and products liability, commercial litigation and RICO violations. Sacks & Weston today focuses its practice almost entirely on complex civil litigation.

**Morris, Sakalarios & Blackwell, PLLC**

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*Persons Involved:*

Stacey L. Sims

The firm developed expertise in asbestos related cancer cases and joined forces with Charles Blackwell in 1999. With a formal merger in 2000, the firm became known as Morris, Sakalarios & Blackwell. Currently, the firm handles thousands of cases for clients with exposure claims involving asbestos related diseases, including cancer and Mesothelioma, toxic exposure to benzene and creosote, products liability, personal injury, and wrongful death. Its many successes in standing up to large corporate entities and insurance companies, as well as dealing with complex areas of bankruptcy and asbestos litigation has earned the firm a leading reputation throughout the Mississippi area and nationally.

Stacey Lea Sims is a partner at Morris, Sakalarios & Blackwell where she handles personal injury cases, primarily asbestos related claims. Prior to joining the firm, she worked as a staff attorney for the Department of Human Services and was also a staff attorney at the Sims Law Firm. Additionally, Ms. Sims served as a judicial clerk in Chancery Court District 19 in Mississippi.

In her Asbestos related practice, Ms. Sims has diligently pursued complex individual and mass tort claims against large corporations and industries. She has successfully represented hundreds of individuals with asbestos related cancers and helped them receive the compensation to which they were entitled. Currently, she is also available to represent individuals in areas of personal injury, including aviation accidents, railroad, motor vehicle accidents, litigation and appeals, products liability, and toxic torts. She has particular interest in the area of pharmaceutical, asbestos and benzene litigation.

### **The Bilek Law Firm, LLP**

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*Persons Involved:*

Thomas E. Bilek

Kelly Cox Bilek

The Bilek Law Firm, L.L.P., a firm of trial lawyers, specializes in cutting-edge class and mass action securities fraud, consumer protection, environmental, occupational injury, and ERISA/401K cases throughout the United States. The Bilek Law Firm, L.L.P. is dedicated to the vigorous prosecution of plaintiffs' lawsuits in state and federal courts across the nation. With over 20 years of experience, Thomas Bilek has taken a position as one of the top plaintiffs' trial lawyers in Texas and is sought by other law firms to serve as co- or lead counsel in cutting-edge securities fraud, consumer protection, environmental, and occupational injury cases throughout the United States. Combined with Kelly Bilek's 15-plus years of class action, trial, and appellate expertise, the Firm's commitment to aggressive yet cost-effective counsel has frequently resulted in successful outcomes for its clients.

The Bilek firm has successfully litigated cases involving property contamination by landfills and by major oil and gas corporations, as well as toxic exposure cases, obtaining millions of dollars in settlement for its clients. The firm has also had significant success in various commercial class action suits against Enron, Compaq, El Paso, Penzoil, as well as many other large corporations.

**Perrin, Landry, deLaunay, Dartez & Ouellet**

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*Persons Involved:*

Warren A. Perrin

Warren A. Perrin is an attorney with the firm Perrin, Landry, deLaunay, Dartez and Ouellet, in Lafayette, Louisiana, and is a descendant of Beausoleil Broussard. He currently serves as President of the Council for the Development of French in Louisiana (CODOFIL). He helped to establish the non-profit Acadian Heritage and Culture Foundation, Inc., which operates the Acadian Museum of Erath, Louisiana. He is internationally recognized for his contributions to the preservations of Acadian culture and has received numerous awards and honors for those contributions. Mr. Perrin also has extensive experience in toxic tort and environmental litigation arising from damages throughout Southeastern Louisiana.

### **Murray Law Firm**

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*Persons Involved:*

Stephen B. Murray

Founded in 1969, the Murray Law Firm has extensive experience in both mass tort and environmental litigation. The firm was appointed to the executive committee in the Bogalusa Chemical Release litigation. The firm served as appellate counsel in the landmark oilfield environmental case of Greffer v Exxon. Over the past four decades, the firm has been appointed by a multitude of state and federal courts to act in leadership roles in consolidated and class action lawsuits involving environmental issues, pharmaceutical products, and matters of consumer protection.