

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LOUISIANA STATE EMPLOYEES'
RETIREMENT SYSTEM, TEACHER
RETIREMENT SYSTEM OF TEXAS, ING
(L) SICAV, for and on behalf of ING (L)
INVEST ENERGY, ING (L) INVEST
EUROPE HIGH DIVIDEND, ING (L)
INVEST EUROPE OPPORTUNITIES, and
ING (L) INVEST GLOBAL HIGH
DIVIDEND, ING FUND MANAGEMENT
B.V. and ING BEWAAR MAATSCHAPPIJ I
B.V., for and on behalf of ING ENERGY
BASIS FONDS, ING EUROPA BASIS
FONDS, ING DIVIDEND AANDELEN
BASIS FONDS, ING GLOBAL EQUITY
BASIS FONDS, ING INSTITUTIONEEL
DIVIDEND AANDELEN BASIS FONDS,
STICHTING PENSIOENFONDS ABP,
STICHTING DEPOSITARY APG
DEVELOPED MARKETS EQUITY POOL,
STICHTING TOT BEWARING CORDARES
SUBFONDS AANDELEN EUROPA ACTIEF
BEHEER, STICHTING BEWAARNEMING
APG-IS 1, and NORGES BANK,

Plaintiffs,

v.

BP p.l.c., BP AMERICA, INC., BP
EXPLORATION & PRODUCTION, INC.,
ANTHONY B. HAYWARD, ANDREW G.
INGLIS, ROBERT MALONE, DAVID
RAINEY and DOUGLAS J. SUTTLES,

Defendants.

MDL 2185

Case No. 4:10-MD-2185

COMPLAINT

DEMAND FOR JURY TRIAL

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Plaintiffs Louisiana State Employees' Retirement System ("LASERS"), Teacher Retirement System of Texas ("Texas Teachers"), ING IM Funds (defined below), ABP (defined below), and Norges Bank ("Norges Bank") (collectively, "Plaintiffs") bring this action under the U.S. federal securities laws and English law against BP p.l.c. ("BP" or the "Company"), its subsidiaries and, and certain of its former officers and directors (collectively, "Defendants") for recovery of damages incurred in connection with Plaintiffs' investments in BP American Depository Shares ("ADS")¹ and common stock from February 7, 2007 through June 25, 2010 (the "Relevant Period").²

I. INTRODUCTION

1. This securities fraud action arises out of one of the largest environmental catastrophes in United States history. The April 20, 2010 explosion and fire on board the Deepwater Horizon oil rig, located forty-nine miles off the Louisiana coast in the Gulf of Mexico, killed eleven people and injured dozens more. The resulting oil spill from the ruptured Macondo well lasted approximately eighty-seven days and leaked approximately 206 million gallons of

¹ Each ADS represents six shares of BP common stock. BP common stock, also known as "ordinary shares," and BP ADS are collectively referred to herein as "BP Shares."

² The allegations in this Complaint are based on personal knowledge as to Plaintiffs' own acts and on information and belief as to all other matters. Plaintiffs' information and belief is based on their counsel's ongoing investigation. Counsel's investigation is predicated upon, among other things, (i) review of the public filings by BP and its subsidiaries and affiliates with the U.S. Securities and Exchange Commission ("SEC"), including, among other things, reports filed on Forms 6-K and 20-F; (ii) press releases and public statements issued by the Company and its subsidiaries and affiliates; media reports about the same entities; publicly available data concerning the prices and trading volumes of BP shares; (iii) reports issued by securities analysts; (iv) factual allegations in pleadings and other documents filed in the criminal action and plea deal between the U.S. Department of Justice ("DOJ") and BP, in the enforcement action and settlement between the SEC and BP, and in other civil lawsuits; (v) the Court's orders denying in part Defendants' motions to dismiss the claims in *In re: BP p.l.c. Sec. Litig.*, No. 4:10-md-02185 (S.D. Tex.) (the "Securities Class Action"), *Alameda Cnty. Emps.' Ret. Assoc., et al. v. BP p.l.c., et al.*, No. 4:12-cv-1256 (S.D. Tex.) (the "Alameda Action"), and *Connecticut Ret. Plans and Trust Funds, et al. v. BP p.l.c., et al.*, 4:12-cv-1272 (S.D. Tex.) (the "Connecticut Action") and the related pleadings, testimony and documents produced in *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico*, on April 20, 2010, MDL 2179 (E.D. La.) (the "MDL 2179 Action"); (vi) documents that have been cleared for public release in response to numerous Freedom of Information Act requests; (vii) internal BP documents and reports; and (viii) documents concerning meetings between BP and Plaintiffs' investment managers. Plaintiffs believe that substantial additional evidentiary support will exist for the allegations after a reasonable opportunity for discovery.

crude oil into the Gulf of Mexico, polluting hundreds of miles of beaches, killing untold numbers of fish, birds and other wildlife, and damaging millions of acres of wetlands. The President deemed it the “worst environmental disaster the United States has ever faced.” In addition to devastating the environment and the Gulf Coast economy, the catastrophe exposed the truth about BP’s deficient process safety systems and inability to stop and contain a deepwater spill, as well as the actual amount of oil flowing into the Gulf—all of which Defendants had previously misrepresented and concealed from investors. As the market learned the truth about these matters, the price of BP stock plummeted, causing investors, including Plaintiffs, to incur substantial losses.

2. During the Relevant Period, BP was the single largest producer of oil and gas in the United States. Moreover, BP operated, and continues to operate, in over eighty countries, and is engaged in every facet of the oil and gas industry, including drilling, exploration and production, refining, distribution and trading. BP’s profits exceeded \$10 billion per quarter in 2008, and the Company’s quarterly profits remained in the billions throughout the Relevant Period. Despite these record profits, BP was plagued by a record of safety failures and catastrophic incidents that impacted the Company’s operations, including in the Gulf of Mexico, as early as 2002.

3. These regular safety failures came into focus when an explosion occurred at BP’s Texas City refinery in 2005, killing fifteen people and injuring 170 others. In response, federal regulators directed BP to immediately address safety issues. Thereafter, BP engaged the “Baker Panel” – an independent “Blue Ribbon” commission headed by former U.S. Secretary of State James Baker, III, charged with reviewing and improving the Company’s safety procedures. However, even during the Baker Panel’s investigation, safety-related incidents continued to plague the Company. For example, in early 2006, over 200,000 gallons of oil spilled from BP’s pipelines

in Prudhoe Bay, Alaska, for which the Company pled guilty to criminal negligence and paid a fine of \$22 million.

4. In January 2007, the Baker Panel issued its final report, singling out organizational problems as the root cause of the Texas City disaster and BP's failure to respond to major incidents. The Baker Panel found "systemic" failures in BP's safety procedures: "from the top of the company, starting with the Board and going down BP has not provided effective process safety leadership and has not adequately established process safety as a core value." The Baker Report identified, among other things, "a lack of operating discipline, toleration of serious deviations from safe operating practices, and apparent complacency toward serious process-safety risks." The Baker Report concluded that "BP management had not distinguished between occupational safety" – concern over slips, sprains, and other workplace accidents – and "process safety" – *i.e.*, hazard analysis, design for safety, material verification, equipment maintenance, and process-change reporting. The Baker Report issued ten recommendations that it urged BP to implement expeditiously to correct specific process safety deficiencies. Following the release of the Baker Report, two additional reports issued by the U.S. Chemical Safety Board ("CSB") and the management consulting firm Booz Allen Hamilton ("Booz Allen") echoed the findings of the Baker Panel and made BP senior management acutely aware of organizational deficiencies that directly contributed to the Company's safety failures.

5. The Relevant Period begins shortly after the issuance of the Baker Report, when BP embarked on a campaign to assure investors of the Company's commitment to safety and its progress in implementing the Baker Panel's recommendations. In a series of public statements included in, among other things, press releases, regulatory filings, and news reports, Defendants repeatedly represented not just that BP had embraced the Baker Panel recommendations, but also

that they would be implemented across all of BP's operations. Defendants' assurances included representations that BP was prepared to contain and adequately address any oil spill that might occur in the Gulf of Mexico. Notably, BP senior management made similar representations directly to Plaintiffs' investment managers in several face-to-face meetings, in which BP executives highlighted the creation of a consistent operations system – a “BP way” – that purportedly lowered the risk in all lines of the Company's businesses worldwide, including in the Gulf of Mexico.

6. Defendants' acknowledgement of BP's troubled safety record in the wake of the Baker Report, and their pledge to investors that BP would become a safer company, signaled a potential transformation in BP's operations. Defendants reiterated this pledge throughout the Relevant Period, assuring investors that BP had learned its lesson, was making progress implementing the recommendations of the Baker Panel, that its operations were now safe and reliable, and that it was prepared to and fully capable of addressing an oil spill in deepwater. BP even stated that it strived to be an industry leader in process safety and risk management.

7. In truth, however, BP failed to institute the safety reforms advocated by the Baker Panel. In addition, BP misrepresented the scope and implementation of its Operating Management System (“OMS”) – the cornerstone of BP's purported safety reform efforts – by failing to disclose to investors that OMS would not apply to project sites owned by contractors. This was a significant carve-out, as six out of seven of BP's offshore drilling units in the Gulf of Mexico in early 2010 were owned by contractors, including the Deepwater Horizon rig, which BP leased from a company called Transocean, Ltd. (“Transocean”).

8. Indeed, years later, the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling – the “Presidential Commission” tasked with investigating the cause of

the Deepwater Horizon explosion – found that, contrary to Defendants’ representations, BP had not implemented the recommendations made by the Baker Panel. The Presidential Commission concluded that BP suffered from systemic problems in its safety and control process—the very same lack of process safety that the Baker Panel, CSB, and Booz Allen reports had identified four years earlier. Just like those prior investigative commissions, the Presidential Commission concluded that the root causes for the Deepwater Horizon disaster were systemic – not human error. As the Presidential Commission explained: “[t]he blowout was not the product of a series of aberrational decisions made by rogue industry or government officials that could not have been anticipated or expected to occur again. Rather, the root causes are systemic.” The Presidential Commission Report left no doubt that it was BP’s “process safety” that was lacking: “BP has caused a number of disastrous or potentially disastrous workplace incidents that suggest its approach to managing safety has been on individual worker occupational safety but not on process safety. *These incidents and subsequent analyses indicate that the company does not have consistent and reliable risk-management processes – and thus has been unable to meet its professed commitment to safety.*”³

9. On April 20, 2010, as the crew aboard the Deepwater Horizon oil rig drilled the exploratory Macondo well 3.5 miles under the waters of the Gulf of Mexico, high-pressure gas shot up through a pipe in the well that led to the surface, released onto the rig, ignited, and engulfed the rig in flames. The blowout cost the lives of eleven rig workers, critically injured seven others, and set off a chain of events that eventually sank the rig. The blowout also caused over four million barrels of crude oil to spill into the Gulf of Mexico over a three month period, the largest spill in U.S. history and the worst environmental disaster in the history of marine oil exploration.

³ All emphasis has been added unless otherwise noted.

The well spilled more oil in just five days than was released in the entire Exxon Valdez oil spill, and ultimately surpassed the Exxon Valdez disaster by at least 1,800 percent in terms of the number of barrels of oil spilled into the sea.

10. The falsity of Defendants' statements during the Relevant Period regarding BP's commitment to safety, implementation of Company-wide process safety reforms, and ability to adequately respond to and contain a potential oil spill in deepwater was initially revealed shortly after the explosion on the Deepwater Horizon. Nevertheless, from April 28, 2010, through the end of the Relevant Period, Defendants continued to mislead investors, including Plaintiffs, regarding the magnitude of the spill and its impact on the Company. In particular, Defendants grossly understated the severity of the oil spill – including the amount of oil flowing into the Gulf – overstated BP's ability to stop and contain the spill, and minimized the cost of the spill to the Company and its shareholders. As a result, Plaintiffs were misled as to BP's true risk profile in deep sea drilling and the actual impact of the Deepwater Horizon oil spill, causing them to purchase BP Shares at artificially inflated prices.

11. After the Deepwater Horizon explosion, as the truth emerged about BP's lack of commitment to process safety and failure to implement adequate safety processes, as well as the actual amount of oil flowing out of the Macondo well into the Gulf of Mexico, BP Shares plunged in value, causing investors, including Plaintiffs, to incur substantial damages. From the date of the April 20, 2010 Deepwater Horizon explosion through June 25, 2010, BP Shares fell in value by approximately 50 percent.

12. Ultimately, BP entered into an agreement with the DOJ whereby it pled guilty to more than a dozen felony charges related to the spill, including providing materially false and misleading flow rate estimates to Congress, as part of a wide-ranging deal settling the Company's

criminal liability for a record \$4 billion penalty. Additionally, BP agreed to pay \$525 million to the SEC – the third-largest civil penalty in history – to settle securities fraud charges related to BP’s post-spill misstatements. Four current or former BP employees have been charged in federal court for spill-related crimes, and in December, a jury convicted a former BP senior drilling engineer of destroying internal communications indicating the flow rate was far higher than portrayed by BP’s public representations. Moreover, just days before Plaintiffs filed this lawsuit, BP’s Incident Commander and On-Scene Coordinator for the Deepwater Horizon oil spill agreed to pay more than \$224,000 to settle civil charges by the SEC that he used non-public information about the spill flow rate – specifically, internal Company estimates that the flow rate of spill was an order of magnitude greater than BP’s public representations – to safely unload his entire \$1 million portfolio of BP securities before the stock price plummeted.

13. BP has now paid more than \$42 billion on spill clean-up, government fines, settlement of private claims, and provisions for future costs related to the disaster. In addition, the Company faces billions of dollars in additional civil claims, civil Clean Water Act penalties, and restoration projects under the Oil Pollution Act. Investors who relied on BP’s false statements – both before and after the spill – also incurred substantial losses, and are entitled to recover for those losses. BP, however, has thus far refused to provide compensation to investors for their damages. This lawsuit seeks to hold Defendants accountable for the misrepresentations they made to Plaintiffs and the economic losses they caused Plaintiffs to suffer on their investments in BP Shares, under U.S. federal securities laws and English law.

II. JURISDICTION AND VENUE

14. The claims herein arise under Sections 10(b) and 20(a) of the Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§ 78j(b) and 78t(a), and Rule 10b-5, 17 C.F.R. 240.10b-5,

promulgated thereunder; English common law fraud and negligent misstatement; and the U.K. Financial Services and Markets Act 2000 (“FSMA”).

15. The Court has subject matter jurisdiction pursuant to the Outer Continental Shelf Lands Act (“OCSLA”), 43 U.S.C. § 1349(b)(1). As alleged herein, Defendants made false and misleading statements “in connection” with BP’s “operation[s]” conducted on the Outer Continental Shelf related to the “exploration of subsurface minerals.” The Court also has federal question jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337, and § 27 of the Exchange Act, 15 U.S.C. § 78aa; and supplemental jurisdiction pursuant to 28 U.S.C. § 1367. This Court has personal jurisdiction over each Defendant named herein. Each Defendant is either a corporation that conducts business and maintains operations in this District, or is an individual who resides in this District or has sufficient minimum contacts with this District, State, or the United States to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

16. Venue for the federal law claims is proper in this District pursuant to Section 27 of the Exchange Act, and 28 U.S.C. § 1391(b). Venue for the English law claims is proper in this Court because a significant part of the alleged wrongdoing occurred in this District, where BP has a presence.

17. In connection with the acts alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the United States mail, interstate telephone communications and the facilities of a national securities exchange and market.

III. THE PARTIES

A. Plaintiffs

18. Plaintiff LASERS is a U.S. public pension plan based in Baton Rouge, Louisiana. It was established for the benefit of the employees of the State of Louisiana and its members include approximately 44,000 active employees and 45,000 retired employees. LASERS had approximately \$10.5 billion of assets under management as of February 28, 2014. LASERS purchased BP Shares at artificially inflated prices during the Relevant Period and has been damaged thereby.

19. Plaintiff Texas Teachers is a U.S. public retirement system based in Austin, Texas. It was established to provide retirement and related benefits for teachers and others employed by the public schools, colleges and universities supported by the State of Texas. Texas Teachers is the largest public retirement system in Texas in both membership and assets, with approximately 1.3 million participants and \$124 billion of net assets under management as of December 31, 2013. Texas Teachers purchased BP Shares at artificially inflated prices during the Relevant Period and has been damaged thereby.

20. Plaintiff ING (L) SICAV is an investment company established under the laws of Luxembourg for the purpose of investing in securities. Plaintiff ING (L) SICAV brings this action on behalf of itself and for and on behalf of investment funds ING (L) Invest Energy, ING (L) Invest Europe High Dividend; ING (L) Invest Europe Opportunities, and ING (L) Invest Global High Dividend, which purchased BP common stock at artificially inflated prices during the Relevant Period and have been damaged thereby.

21. Plaintiffs ING Fund Management B.V. and ING Bewaar Maatschappij I B.V., are companies established under the laws of the Kingdom of the Netherlands. Plaintiffs ING Fund Management B.V., and ING Bewaar Maatschappij I B.V., bring this action for and on behalf of

themselves and for and on behalf of investment funds ING Energy Basis Fonds, ING Europa Basis Fonds, ING Dividend Aandelen Basis Fonds, ING Global Equity Basis Fonds, ING Institutioneel Dividend Aandelen Basis Fonds, which purchased BP common stock at artificially inflated prices during the Relevant Period and have been damaged thereby.

22. ING (L) SICAV, ING (L) Invest Energy, ING (L) Invest Europe High Dividend, ING (L) Invest Europe Opportunities, ING (L) Invest Global High Dividend, ING Fund Management B.V., ING Bewaar Maatschappij I B.V., ING Energy Basis Fonds, ING Europa Basis Fonds, ING Dividend Aandelen Basis Fonds, ING Global Equity Basis Fonds, and ING Institutioneel Dividend Aandelen Basis Fonds are collectively referred to herein as “ING IM Funds.”

23. Plaintiff Stichting Pensioenfonds ABP is an independent administrative pension fund established under the laws of the Kingdom of the Netherlands. Stichting Pensioenfonds ABP serves as the pension fund for public employees in the governmental and education sectors in the Netherlands. Stichting Pensioenfonds ABP had assets under management of approximately €300 billion (\$415 billion) as of December 31, 2013. Stichting Pensioenfonds ABP purchased BP Shares at artificially inflated prices during the Relevant Period and has been damaged thereby.

24. Plaintiff Stichting Depository APG Developed Markets Equity Pool (“APG DME”) is a collective investment fund established under the laws of the Kingdom of the Netherlands in which Stichting Pensioenfonds ABP and other pension funds pool investments. APG DME actively manages global investments with a focus on company analyses. APG Developed Markets Equity Pool purchased BP Shares at artificially inflated prices during the Relevant Period and has been damaged thereby.

25. Plaintiff Stichting tot Bewaring Cordares Subfonds Aandelen Europa Actief Beheer (“Cordares”) is an investment fund established under the laws of the Kingdom of the Netherlands. Cordares purchased BP common stock at artificially inflated prices during the Relevant Period and has been damaged thereby.

26. Stichting Pensioenfonds ABP, APG DME, Cordares and APG IS-1 are collectively referred to herein as “ABP.”

B. Defendants

1. Corporate Defendants

27. Defendant BP p.l.c. is one of the largest oil and gas companies in the world. In 1998, BP p.l.c. entered into a \$110 billion “merger of equals” with Amoco. The resulting entity, BP Amoco, purchased ARCO in 2000, and renamed itself “BP plc” in 2001. BP is a publicly traded company, incorporated under the laws of England and Wales. BP common shares are traded on the London Stock Exchange (“LSE”) and BP ADS are traded on the New York Stock Exchange (“NYSE”).

28. BP has extensive contacts with the United States, and its roots in this country go deep. As stated on BP’s website, “For nearly 150 years, BP has been part of America’s energy industry. . . . We can be found in oil and gas fields from Alaska, across the Rockies and out to the deepwater Gulf of Mexico. . . . Our presence in the US is greater than in any other nation where we operate. Nearly 40 percent of our shares are held in the US, and we employ more people and invest more dollars in the US than anywhere else.” In addition, (a) BP is the largest oil and gas producer in the U.S. Gulf of Mexico; (b) BP operates a massive oil field in Alaska’s Prudhoe Bay; (c) BP operates significant U.S. refineries including in Texas, California, Washington, Ohio, and Indiana; (d) 40% of BP’s workforce is located in the United States, including over 20,000 employees spread across the United States, and over 7,600 employees in Texas; (e) several BP brands and gas

stations, including ARCO, BP and Castrol, are sold and located throughout the United States; (f) BP's ADS are listed on the NYSE and BP is the largest non-U.S. company listed on the NYSE; (g) roughly 40% of BP's common stock are owned by U.S. individuals and institutions; (h) BP regularly files annual reports and other documents with the SEC; (i) during the Relevant Period, in particular following the Deepwater Horizon oil spill, BP's top executives and senior engineers, including the Individual Defendants (as defined herein), worked and made statements from the U.S. Gulf states, and (j) BP's current Chief Executive, Robert W. Dudley, is an American.

29. Defendant BP America, Inc. ("BP America"), a wholly-owned and controlled operating subsidiary of BP, is a Delaware corporation with its principal place of business in Houston, Texas. BP America is BP's largest division and the biggest producer of oil and gas in the United States. During the Relevant Period, BP America controlled Defendant BP Exploration & Production, Inc. and that entity's issuance of material information to the public.

30. Defendant BP Exploration & Production, Inc. ("BP Exploration"), a wholly-owned and controlled operating subsidiary of BP, is a Delaware corporation with its principal place of business in Houston, Texas. BP's exploration and production segment, BP Exploration, includes oil and natural gas exploration, field development and production, and marketing and trading of natural gas. It conducts exploration and production activities in numerous countries including the United States. During the Relevant Period, BP touted BP Exploration and, more specifically, its operations in the deepwater Gulf of Mexico, a region that BP hailed as a "profit centre" and a "high margin" production area. BP described the Gulf of Mexico as "an important source of domestic energy, and offshore deepwater developments" and stated to investors that oil from that region accounted for one-sixth of all oil produced in the United States. BP also highlighted the safety and success of its operations in the Gulf of Mexico, emphasizing the fact that it was one of the largest

deepwater operators in the world. BP Exploration was the lease operator of Mississippi Canyon Block 252, which contains the Macondo well.

31. Defendants BP, BP America and BP Exploration are collectively referred to herein as “BP.” Throughout the Relevant Period, BP controlled, directly or indirectly, BP America and BP Exploration.

2. Individual Defendants

32. Defendant Anthony B. Hayward (“Hayward”) served as the Company’s Group Chief Executive from May 2007 until October 2010, and served as an Executive Director of the Company from 2003 to November 2010. Hayward holds a Ph.D. in Geology, and began working at BP in 1982 as a rig geologist offshore of Aberdeen, Scotland, and later as a field geologist in various locations around the world. From 2002 to 2007, Hayward served as the Chief Executive of BP Exploration’s business segment, which oversaw exploration and drilling in the Gulf, among other places. Hayward was a member of BP’s executive management, and was responsible for the day-to-day running of BP. Starting in 2006, Hayward headed the Group Operations Risk Committee (“GORC”), an executive committee that reviewed the Company’s safety protocols, including BP’s OMS, and responded to safety incidents in BP’s operations. Hayward was also the executive liaison to the Safety and Ethics & Environment Assurance Committee (“SEEAC”), which is BP’s Board committee responsible for ensuring that BP’s safety protocols are implemented and followed, including the implementation of the Baker Panel’s recommendations. GORC prepared regular safety reports for SEEAC, including quarterly reports called the Health Safety Environment & Operations Integrity Report, otherwise known as the “Orange Book.” During the Relevant Period, Hayward signed certain BP Annual Reports, and made many of the other false and/or misleading statements as alleged herein. Hayward’s conduct as alleged herein is attributable to BP throughout the Relevant Period and to BP Exploration from the outset of the

Relevant Period through May 2007. Hayward directly or indirectly controlled BP, BP Exploration, and BP America throughout the Relevant Period. On July 27, 2010, BP announced that Hayward would be leaving the Company, effective October 1, 2010.

33. Defendant Douglas J. Suttles (“Suttles”) served as Chief Operating Officer (“COO”) for BP Exploration from January 2009 until at least January 2011. Suttles has worked in the oil industry since 1983 and in several different engineering and leadership roles at BP, including Vice President for Northern North Sea Operations and President of BP’s Trinidadian oil business. In January 2007, he was named President of BP Exploration (Alaska) Inc. After the Deepwater Horizon disaster on April 20, 2010, Suttles became the leader of BP’s overall response to the oil spill and was BP’s lead representative at the Unified Area Command (“Unified Command”), a group established pursuant to the National Oil and Hazardous Substances Pollution Contingency Plan that included representatives from both government and private sectors. At Unified Command press briefings, Suttles provided estimates of the rate at which oil was flowing from the Macondo well. Suttles’ activities with the Unified Command were focused on marshalling all resources and information needed to contain the Macondo well oil spill.⁴ During the Relevant Period, Suttles made false and/or misleading statements as alleged herein. Suttles’ conduct as alleged herein is attributable to BP and BP E&P throughout the Relevant Period. Suttles directly or indirectly controlled BP E&P from at least January 2009 through the end of the Relevant Period. On January 12, 2011, Suttles announced his retirement from BP.

34. Defendant Andrew G. Inglis (“Inglis”) served as the CEO of BP Exploration and as an executive director of the Company from February 2007 until October 2010. Inglis joined BP as

⁴ Suttles Dep. at 224:10-25; 346:16-24. All references herein to depositions (“Dep.”) are to depositions taken in the MDL 2179 Action.

a mechanical engineer in 1980 and worked in various locations throughout the world, including the Gulf of Mexico, Alaska and the North Sea. In 1996, Inglis became Chief of Staff for BP Exploration and from 1997-1999, he was responsible for leading BP's activities in the deepwater Gulf of Mexico. Beginning in July 2004, Inglis was Executive Vice President and Deputy CEO of BP Exploration. Inglis was a member of BP's executive management. As CEO of BP Exploration, Inglis attended SEEAC meetings to report on topics specific to BP Exploration. Inglis also served as a GORC member, provided special reports on BP Exploration to the Chairman of GORC (Hayward), and received quarterly Orange Book reports that monitored the progress of OMS implementation across BP. Inglis is a Chartered Mechanical Engineer and is a Fellow of the Royal Academy of Engineering and of the Institute of Mechanical Engineers. As Inglis testified in the MDL 2179 Action, he considered himself at the apex of responsibility during the Relevant Period (with the possible exception of Hayward) for BP Exploration's operations worldwide, including responsibility for the safety of its drilling and exploration operations in the Gulf of Mexico.⁵ Inglis's conduct as alleged herein is attributable to BP and BP E&P throughout the Relevant Period. Inglis directly or indirectly controlled BP E&P throughout the Relevant Period. On September 29, 2010, BP announced that Inglis would be stepping down from his role as head of the "upstream business" and as a main board director, and would be leaving the Company by the end of 2010.

35. Defendant Robert "Bob" Malone ("Malone") served as Chairman and President of BP America from July 2006 until February 2009, and as an Executive Vice President of BP until March 2009. Malone served on BP's executive management team, which is responsible for the day-to-day running of BP. Malone worked for BP for 34 years. Malone's conduct as alleged herein

⁵ Inglis Dep. at 75:24-76:5; 79:18-24; 80:13-22.

is attributable to BP, BP America and BP Exploration from July 2006 through February 2009. Malone directly or indirectly controlled BP, BP Exploration, and BP America from July 2006 through February 2009.

36. Defendant David Rainey (“Rainey”) was BP America’s Vice President of Exploration for the Gulf of Mexico. Rainey was the person within BP who had “ultimate accountability” for implementing OMS in the Gulf of Mexico and he participated in the Gulf of Mexico gap assessment in 2009 that identified significant risks to BP in the Gulf of Mexico. Rainey was also a member of BP’s executive management. In the days after the Deepwater Horizon disaster, Rainey served on behalf of BP as Deputy Incident Commander at Unified Command, headquartered in Robert, Louisiana, in the Eastern District of Louisiana. Unified Command consisted of representatives from the U.S. government as well as BP and Transocean, the designated “responsible parties” for purposes of responding to the spill. Led by the United States Coast Guard, Unified Command coordinated the oil spill response. Rainey was BP’s second highest-ranking representative at Unified Command. Rainey’s conduct as alleged herein is attributable to BP and BP America throughout the Relevant Period. Rainey directly or indirectly controlled BP E&P and BP America throughout the Relevant Period.

37. Defendants Hayward, Inglis, Malone, Rainey and Suttles are collectively referred to hereinafter as the “Individual Defendants.” The Individual Defendants, because of their positions with the Company, possessed the power and authority to control the contents of BP’s reports to the SEC, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, *i.e.*, the market. Each Individual Defendant was provided with copies of the Company’s reports and press releases alleged herein to be misleading prior to, or shortly after, their issuance and had the ability and opportunity to prevent their issuance or cause

them to be corrected. Because of their positions and access to material non-public information, each of the Individual Defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and that the positive representations which were being made regarding BP's operations were then materially false or misleading when made. Each Individual Defendant herein made materially false or misleading statements, or omitted to disclose material facts, to investors in the U.S. and disseminated such material misstatements through the use and means of interstate commerce within the U.S. and caused U.S. investors to purchase BP Shares at artificially inflated prices.

C. Relevant Non-Parties

38. Lord Edmund John Phillip Browne, Barron Browne of Madingley ("Browne") served as the Company's Chief Executive from 1995 until July 2007. Browne joined BP as an apprentice in 1966 and held various positions, including Managing Director and CEO of BP Exploration. Browne was a member of BP's executive management. Browne was succeeded by Hayward on August 1, 2007.

39. William Castell ("Castell") joined BP's Board in 2006 as the chairman of SEEAC. At each SEEAC meeting, Castell and other SEEAC members were provided a report from GORC, usually presented in person by Hayward, and each quarter SEEAC received the Orange Book. Additionally, SEEAC was provided with regular reports on the implementation of the Baker Panel's recommendations and reports on the development and implementation of OMS.

40. Robert W. "Bob" Dudley ("Dudley") became Group Chief Executive of BP p.l.c. on October 1, 2010, and has served as an Executive Director on BP's Board since April 6, 2009. Between June 23, 2010 and September 30, 2010, Dudley served as the President and CEO of BP's Gulf Coast Restoration Organization in the United States. From April 6, 2009 until June 22, 2010, Dudley was an Executive Vice President and a member of the executive management team with

responsibility for the group's activities in the Americas and Asia. Prior to that, Dudley served a variety of top roles at BP, including from 2003-2008 as President and CEO of TNK-BP, the joint venture between BP and Russian partners. During the time surrounding the Deepwater Horizon explosion and the Macondo well oil spill, Dudley was BP's Managing Director and one of the top BP officials coordinating BP's spill response. Dudley's conduct as alleged herein is attributable to Defendant BP throughout the Relevant Period.

41. H. Lamar McKay ("McKay") served as Chairman and President of BP America from January 2009 until January 2013, when he became Chief Executive, Upstream. McKay began his career in 1980 at Amoco Production Company. Since 1998, he has worked for BP in various capacities, including as the Head of Strategy and Planning for Worldwide Exploration and Production, the Business Unit Leader for the Central North Sea in Aberdeen, Scotland, and the Chief of Staff for Worldwide Exploration and Production. In May 2007, McKay became the Senior Group Vice President of BP and Executive Vice President of BP America, in which capacity he led BP's negotiations on the settlements for both the Texas City refinery disaster and Alaska pipeline oil spills. McKay is a member of BP's executive management. He holds a degree in Petroleum Engineering and is based in Houston, Texas. McKay's conduct as alleged herein is attributable to BP and BP America throughout the Relevant Period.

42. Ellis Armstrong ("Armstrong") has been the Chief Financial Officer ("CFO") of BP Exploration since 2005. Armstrong has worked with BP for more than 30 years, where he has served in a variety of operational, commercial planning and leadership roles, including Business Unit Leader for BP's Endicott operations in Alaska and Head of Technology. Armstrong holds a Bachelors of Science and Ph.D. in civil engineering.

IV. FACTUAL BACKGROUND

A. Overview Of BP's Operations

43. BP is one of the world's largest oil and gas companies. BP engages in every area of the oil and gas industry, including exploration and production, refining, distribution, petrochemicals and energy trading. During fiscal year 2009, BP's business generated \$246 billion in revenues and over \$16 billion in profit.

44. BP's core business is the exploration and extraction of oil and gas, refining the oil and gas into useable petroleum products like gasoline, diesel fuel, jet fuel, and liquefied petroleum gas (LPG), and then selling those products to businesses, consumers, and governments. To engage in these activities, BP owns and leases oil rigs, pipelines, refineries, petrochemical plants, and gas stations.

45. Like the activities of other oil and gas companies, BP's activities face certain serious dangers. The upstream oil industry (exploration and production) involves the use of heavy industrial equipment to drill into the earth to access oil and natural gas that is trapped in underground reservoirs. When the drill pierces the reservoir, oil and gas will be pushed out through the hole with incredible force and, unless controlled, cause the well to "gush" or "blow out." From the beginning of the drilling industry, it has been clear that, in the absence of adequate safety procedures, blowouts would predictably kill and injure workers, damage equipment, and spill oil and gas into the environment.

46. The downstream oil industry (refining and selling) also involves substantial risks. Oil refineries use sophisticated equipment and dangerous chemicals to process the oil into other petroleum-based products. The chemicals are highly flammable, causing the risk of massive explosions and fires.

47. As a result, the oil industry as a whole is highly regulated. Federal and state safety laws and regulations were enacted and adopted to protect workers and the general public from exposure to explosions and fires, and from the release of oil, gas and dangerous chemicals into the environment. Some of these regulations specifically address the individual safety of workers. Others are more global and regulate the safety of the processes that oil companies must use to engage in these economically useful but dangerous activities.

48. BP's business is the focus of extensive regulation and regulatory oversight by, among other governmental authorities, the U.S. Environmental Protection Agency ("EPA"), the U.S. Minerals Management Service ("MMS"),⁶ the U.S. Department of Transportation ("DoT"), the U.S. Occupational Safety and Health Administration ("OSHA"), and their state equivalents throughout the United States. BP's activities are also subject to extensive environmental regulation under national, state and local laws, including the Clean Air Act (42 U.S.C § 7401, *et seq.*), the Clean Water Act (33 U.S.C § 1251, *et. seq.*), the Oil Pollution Act (33 U.S.C § 2701, *et seq.*), and the Occupational Safety and Health Act (29 U.S.C § 651, *et. seq.*), and rules promulgated thereunder.

B. BP Seeks To Increase Earnings By Cutting Budgets At The Expense Of Safety

49. In 1989, Browne, who was then head of BP exploration and development, assigned BP's ten best geologists to develop a new strategy to find oil. Hayward was one of the ten geologists. After a few days, the group advised Browne to develop a strategy that would focus BP's efforts on exploring and producing "elephants" – industry jargon for very large oil fields,

⁶ In 2011, the Secretary of the Department of the Interior redefined the responsibilities previously performed by the MMS and reassigned the functions of the offshore energy program among three separate organizations: the Bureau of Ocean Energy Management (BOEM), the Bureau of Safety and Environmental Enforcement (BSEE), and the Office of Natural Resources Revenue (ONRR). These agencies have promulgated several rulemaking changes based on issues raised by the Deepwater Horizon spill.

according to a January 24, 2011 article in *Fortune* magazine titled “*BP: An Accident Waiting to Happen.*” To find and develop these massive but elusive oil fields, BP would have to drill in places where few, if any, other oil companies had drilled before – places that were difficult to reach because of political, geological or technical difficulties. Deepwater wells in the Gulf of Mexico presented steep technological challenges, but were particularly promising places to find these massive fields.

50. Browne accepted the recommendations and began to implement the strategy. As he later explained in his memoir, *Beyond Business, An Inspirational Memoir From a Visionary Leader*:

Our agreed new exploration strategy would focus on a small number of the most attractive basins where we could potentially control a billion barrels of oil and gas. We reasoned that costs would be lower per barrel for big fields, and it would be easier to attract and retain good staff for the large long-lived projects. Success would be based on giant prolific fields and related infrastructure, not on a collection of small fields.

51. Browne was promoted to CEO of BP in 1995. He understood that the Company would need to grow substantially in order to successfully implement the “elephant” strategy. The Board authorized Browne to look for potential merger candidates in 1996.

52. In 1998, BP merged with Amoco, then the largest industrial merger in history. Amoco was the quintessential American oil company, having been founded by John D. Rockefeller in 1889 as Standard Oil (Indiana). Browne explained in his memoir that Amoco was a particularly attractive merger partner because of its “great U.S. refining and marketing operations and U.S. natural gas production,” and because of Amoco’s sizeable assets in the Gulf of Mexico.

53. Following the merger, BP embarked on an aggressive campaign of exploring and developing the Gulf assets, and of further expanding its total number of leases in the region. BP

explored and developed these assets by using deepwater drilling techniques that were considered beyond human capabilities until just recently.

54. BP knew that deepwater drilling was a high-risk but high-reward endeavor. Drilling a deepwater well can cost as much as \$200 million. In addition, the technological risks of drilling 5,000 feet below sea level under crushing pressure and in extreme temperatures are daunting.

55. BP's strategy initially appeared to pay off. By 2004, BP was the largest leaseholder in the Gulf of Mexico and, ultimately, produced more oil from the Gulf than any other company. As BP's 2009 Annual Report explained, BP is "the largest producer and acreage holder in the region," and the "Gulf of Mexico is our largest area of growth in the U.S."

56. Browne's 1995 promotion to Chief Executive was based on his record of "producing more earnings with less capital," according to a July 5, 1999 article in *Fortune* magazine titled *When John Browne Talks, Big Oil Listens*. Browne was a cost-cutter who deployed a strategy known as "more for less," as stated in the book *Drowning in Oil: BP & the Reckless Pursuit of Profit*.

57. Immediately following the 1998 BP-Amoco merger, Browne announced that the pre-tax profits of the combined company would increase by at least \$2 billion in two years. To achieve the promised earnings, BP had to grow production by between 5.5% and 7% over three years, mostly in the Gulf of Mexico and in Angola, Africa. BP was unable to achieve these production increases and could meet its promises only through significant cost-cutting. With Board approval, Browne implemented a Company-wide cost-cutting strategy, reducing budgets by 25% and cutting 6,000 jobs, including those of many structural and safety engineers. "Items cut included turnarounds; safety committee meetings . . . plant maintenance; and training courses.

Safety and maintenance expenditures were a significant portion of the cuts,” as reported in a March 21, 2007, article in *The Sunday Times* titled, *Deficiencies at all levels of BP caused refinery disaster, says U.S. Regulator*.

58. After BP acquired another American oil company with a long history – the Atlantic Richfield Company (“ARCO”) – the U.S. experienced a downturn in the economy. In 2001, the demand for oil declined, causing a two-year slide in the price for oil. This decline further intensified the Board’s determination to improve operating margins by cutting costs.

59. In 2004, the Board implemented another round of substantial cuts to BP’s operational budgets for U.S. refineries, again with no exemption for maintenance and safety programs. For example, Defendants told the Texas City refinery manager, Don Parus, to reduce the plant’s annual operational budget of \$300 million by \$48 million. During this time, Texas City was BP’s most profitable refinery, generating \$900 million in annual earnings.

C. BP Suffers A Decade Of Catastrophic Safety Failures In Its Deepwater Drilling Operations

60. Prior to the Relevant Period, BP experienced numerous catastrophic safety failures, including in its deepwater drilling operations.

BP’s Unsafe Deepwater Drilling Operations

61. In 2002, the Ocean King, a drilling rig under BP’s operational control in the Gulf of Mexico, experienced two separate blowout incidents within a three-month span, raising questions about BP’s process safety and well design procedures and practices.

62. The first incident occurred in August 2002, when the Ocean King suffered a gas blowout while drilling a well in the Gulf of Mexico’s Grand Isle block near Louisiana. The crew’s efforts to contain the well failed, and they soon evacuated the rig because of the high level of

airborne gas. The flow of gas and other material exploded, causing a fire on the rig and \$2 million in damage.

63. During its investigation of BP's safety practices, the MMS discovered that BP had installed a non-compliant blowout diverter system, which contributed to the explosion and fire, rather than the one specifically designed and approved for the rig. The MMS also found that the fire's effects were intensified because BP personnel had stored pressurized containers of flammable gas too close to the diverter output. Worse, the investigation revealed that BP engineers, because of a nearby well drilling project, knew that there was a shallow gas pocket at 2,700 feet beneath the sea floor surface, the precise depth which the rig had reached when the well blew out. The incident was both caused by and revealed a host of systemic safety issues involving BP's failures to build and execute wells as designed, ensure the proper design of the drill rig, and keep accurate up-to-date designs of their equipment.

64. In November 2002, just three months later, after the Ocean King had undergone major repairs and returned to the Grand Isle block, a second incident occurred similar to the first. After cementing the steel casing in another newly drilled well hole, mud and gas began to flow onto the rig, indicating a failed cementing job. After an unsuccessful effort to contain the well, the crew evacuated. The MMS cited BP for its flawed attempt to bring the well under control, and serious deficiencies in BP's safety protocols and knowledge of equipment. The MMS concluded that there was "a lack of pre-event planning and procedures" and said BP was "unfamiliar" with the safety system.

65. The two incidents in 2002 resulted in the MMS issuing a special "Safety Alert" to all drilling companies in the Gulf of Mexico regarding the serious risk of a blowout in the event of a failed cementing job. The Safety Alert specifically mentioned the MMS's findings about BP

during the Ocean King incident, cautioning others in the industry about an “erroneous chain of decisions, inadequate training of personnel or knowledge of the diverter system, and inadequate planning.”

66. In May 2003, BP suffered a near blowout not far from the Macondo well. In that incident, the Transocean Discoverer Enterprise, on contract with BP, drifted off its drill site just as a well was being completed, breaking the riser pipe linking the rig to the ocean floor. The breaking of the riser was strikingly similar to what occurred on the Deepwater Horizon after it exploded. Fortunately for BP, the backup “deadman” switch on the rig’s blowout preventer (“BOP”) worked: the BOP’s rams closed, preventing the flow of oil or gas into the Gulf of Mexico from the damaged riser. A subsequent inspection, however, showed that pieces of broken riser pipe were leaning up against the BOP, close to its control lines, and that the BOP itself was partially damaged – demonstrating that the “fail safe” BOP device, regardless of its immediate effectiveness, was subsequently vulnerable to damage or incapacitation by a falling riser pipe – an outcome which, in fact, occurred during the Deepwater Horizon tragedy.

67. In August 2004, BP experienced a blowout in the Nile Delta, off the coast of Egypt, when the GSF Adriatic IV, a gas drilling rig leased from Global Santa Fe (which, in 2007, merged with Transocean) exploded while completing a well for a joint consortium, which included BP. The fire raged for over a week before the well was brought under control. Analysts later said that Egypt’s natural gas production was reduced by 10-15 percent because of the incident. As with the Deepwater Horizon explosion, the blowout occurred after a final cementing job failed.

Safety Lapses Cause An Explosion At BP’s Texas Refinery

68. On March 23, 2005, an explosion occurred at BP’s Texas City refinery. Fifteen people were killed and approximately 170 were injured. The EPA criminal investigative division

launched a criminal investigation, as did OSHA, EPA civil inspectors, the Chemical Safety Board (“CSB”), and the Texas Environmental Quality Commission (“TCEQ”).

69. The next day, Browne flew to Texas City and held a press conference at which he acknowledged the gravity of the incident, saying, “Yesterday was a dark day in BP’s history. It is the worst tragedy I have known during my [38 years] with the company.” While asserting that BP believed that the Texas City explosion was unrelated to previous incidents, he pledged to “leave nothing undone in our effort to determine the cause of this tragedy” and to carry out any reforms necessary.

70. In April 2005, OSHA placed BP under its Enhanced Enforcement Program for employers who are “indifferent to their obligations under the OSHA Act.” EPA civil inspectors entered into a settlement with BP, laying out a timeline and plan to bring the refinery’s operations into compliance with EPA regulations. TCEQ reached a similar agreement with BP in mid-2006.

71. On April 14, 2005, Browne referred to Texas City as “the saddest and most moving day of my entire career at BP.” Later, in May 2005, he told the *Houston Chronicle*, “BP takes responsibility for what happens at its sites. We want BP to be a safe place to work. So as well as mourning for those we have lost, we are determined to learn from this tragedy and improve our safety record.”

72. In mid-2005, the CSB recommended that BP appoint an independent commission to investigate the Company’s internal safety culture and uncover the causes of the incident as well as to investigate other general concerns with BP’s safety environment. Browne issued a statement saying that BP would comply with the recommendation. He added, “The Texas City explosion was the worst tragedy in the recent history of BP, and we will do everything possible to ensure

nothing like it happens again. Today's recommendation from the CSB is a welcome development, and we take it seriously."

73. In October 2005, in response to the CSB's recommendation, BP announced the formation of the "U.S. Refineries Independent Safety Review Panel," chaired by former Secretary of State James Baker, III. Browne said in a prepared statement, "The panel will have BP's full support and cooperation. We are determined to do everything possible to prevent a tragedy like this from ever happening again by ensuring that safety practices at our operations are effective and comprehensive." While the Baker Panel's work was underway, on October 24, 2006, Browne stated, "The fire and explosion at Texas City have forever heightened our awareness of safety."

The Baker Panel Issued Its Final Report On January 16, 2007

74. In March 2007, CSB completed its investigation of the Texas City incident and issued its report on March 22, 2007. The report flagged weaknesses in BP's safety culture. It criticized BP's management for its lack of "focus on controlling major hazard risk," finding that managers provided "ineffective corporate leadership and oversight." CSB's report also identified the Company's failures to heed warning signs and internal concerns raised by its own staff, writing that BP's managers "provided ineffective leadership and oversight" and "did not implement adequate safety oversight, provide needed human and economic resources, or consistently model adherence to safety rules and procedures." The CSB found a direct correlation between the blast and BP's cuts in safety and staffing budgets, concluding: BP "did not effectively evaluate the safety implications of major organizational, personnel, and policy changes." Finally, the CSB report criticized BP for failing to learn from its earlier, similar mistakes.

Widespread Corrosion Causes Leaks In BP's Alaskan Pipeline Operations In Prudhoe Bay

75. In early 2006, an oil spill of 210,000 to 260,000 gallons occurred on BP's Prudhoe Bay pipelines on Alaska's North Slope, facing the Arctic Sea. The pipeline had been leaking for weeks and was first discovered on March 2, 2006. Joint federal and state investigations, encompassing both criminal and civil matters, began in March 2006. The investigations ultimately addressed not only the March 2006 leak, but also weaknesses in other parts of the pipeline, and a subsequent leak that occurred on another part of the pipeline in August 2006.

76. On July 25, 2006, Browne told analysts and investors that Texas City and the oil spill in Alaska had caused "great shock within BP." He took personal responsibility, stating, "These are things I want to apologize for. These caused a lot of stress and distress to people, and to some families irreparable damage." He stated, "First and foremost, we are committed to safety, integrity and the environment. We are redoubling our efforts in this sphere, notably in North America." He added that BP did not want to wait for the outcome of governmental investigations before acting, and that it would devote another \$1 billion, in addition to \$6 billion already committed over four years, to upgrade safety at BP's U.S. refineries and to replace infield pipelines in Alaska. As to Texas City and the Alaskan pipeline spill, he said, "We have to get the priorities right, and Job 1 is to get these things that have happened, get them fixed and get them sorted out. We don't just sort them out on the surface, we get them fixed deeply." He also underscored the importance of BP's having safe operations in the United States, stating, "BP has some 40 percent of its assets and its staff in the United States We are the largest indigenous producer of oil and gas combined. It is of vital importance to BP and to Americans who depend significantly on us for secure energy supplies that our US businesses operate to the highest standards of safety and integrity."

77. An EPA criminal investigation concluded that widespread corrosion in the pipelines had led to the March and August 2006 leaks (and other points of corrosion uncovered in the investigation) and that BP could have prevented the leaks by maintaining and inspecting its pipelines. It further concluded that the duration of the spill revealed BP's criminal neglect of the pipeline.

78. In 2007, BP pled guilty to a criminal charge in connection with the March 2006 spill, admitting that BP's "criminal negligence" caused the corrosion – and thus the spill itself. BP was sentenced to three years of probation and fined \$20 million.

79. The 2006 spill was BP's second criminal plea in the U.S. in a decade. In the late 1990s, BP was indicted because its engineers were injecting dangerous materials into a well casing to dispose of the materials. In response, BP pled guilty in 2000, was put on five years of probation, and entered into a compliance agreement with the EPA's debarment division.

80. In March 2007, the Company received warnings about the deficiencies in its safety-related corporate governance from Booz Allen. In the wake of the 2006 spill on its Prudhoe Bay pipeline, BP retained Booz Allen to "identify potential organizational, process, and governance issues" that related or contributed to the incident. The Booz Allen report found that BP's executive management and Board of Directors had created a culture focused on cost-cutting and ensuring that budget targets were met, while ignoring safety issues and critical maintenance. Among other findings, Booz Allen found major shortcomings in the Company's internal communications culture noting, in particular, that "critical risk data" and concerns about major risks were not properly communicated within BP. More specifically, the report noted that "[r]isk-related vertical and horizontal communications do not elevate critical risk data to senior leadership." The Booz Allen report put Defendants on notice that they could not rely on the Company's internal reporting

mechanisms to receive “critical risk data” and thus understand the risk of catastrophic operating failure.

81. In May 2007, the CSB chairman, Carolyn Merritt, testified before Congress about similarities between the Booz Allen report on Alaska and the CSB’s report on Texas City, noting that “[virtually] all of the seven root causes that BP consultants identified for the Prudhoe Bay incidents have strong echoes in Texas City,” and identified common findings that included flawed communication of lessons learned, excessive decentralization of safety functions and high management turnover. BP focused on personal safety statistics but allowed catastrophic process safety risks to proliferate.

BP Purports To Adopt The Baker Panel Recommendations

82. In 2005, at the CSB’s urging, BP established its own independent panel to review and improve its safety procedures, chaired by former U.S. Secretary of State James Baker, III. After completing its investigation, the Baker Panel issued a report on January 16, 2007 (the “Baker Report”), finding that ***“from the top of the company, starting with the Board and going down . . . BP has not provided effective process safety leadership and has not adequately established process safety as a core value.”***

83. The Baker Report singled out organizational problems as the root cause of BP’s continued failure to learn from, and respond to, major incidents, finding “a lack of operating discipline, toleration of serious deviations from safe operating practices, and apparent complacency toward serious process-safety risks.”

84. On January 16, 2007, the Baker Panel released its report which contained ten recommendations “to help bring about, sustainable improvements in process safety performance.”

BAKER PANEL RECOMMENDATIONS

#1	<p>PROCESS SAFETY LEADERSHIP – The Board of Directors of BP p.l.c, BP’s executive management (including its Group Chief Executive), and other members of BP’s corporate management must provide effective leadership on and establish appropriate goals for process safety. Those individuals must demonstrate their commitment to process safety by articulating a clear message on the importance of process safety and matching that message both with the policies they adopt and the actions they take.</p>
#2	<p>INTEGRATED AND COMPREHENSIVE PROCESS SAFETY MANAGEMENT SYSTEM – BP should establish and implement an integrated and comprehensive process safety management system that systematically and continuously identifies, reduces, and manages process safety risks at its U.S. refineries.</p>
#3	<p>PROCESS SAFETY KNOWLEDGE AND EXPERTISE – BP should develop and implement a system to ensure that its executive management, its refining line management above the refinery level, and all U.S. refining personnel, including managers, supervisors, workers, and contractors, possess an appropriate level of process safety knowledge and expertise.</p>
#4	<p>PROCESS SAFETY CULTURE - BP should involve the relevant stakeholders to develop a positive, trusting, and open process safety culture within each U.S. refinery.</p>
#5	<p>CLEARLY DEFINED EXPECTATIONS AND ACCOUNTABILITY FOR PROCESS SAFETY - BP should clearly define expectations and strengthen accountability for process safety performance at all levels in executive management and in the refining managerial and supervisory reporting line.</p>
#6	<p>SUPPORT FOR LINE MANAGEMENT - BP should provide more effective and better coordinated process safety support for the U.S. refining line organization.</p>
#7	<p>LEADING AND LAGGING PERFORMANCE INDICATORS FOR PROCESS SAFETY - BP should develop, implement, maintain, and periodically update an integrated set of leading and lagging performance indicators for more effectively monitoring the process safety performance</p>

	of the U.S. refineries by BP's refining line management, executive management (including the Group Chief Executive), and Board of Directors. In addition, BP should work with the U.S. Chemical Safety and Hazard Investigation Board and with industry, labor organizations, other governmental agencies, and other organizations to develop a consensus set of leading and lagging indicators for process safety performance for use in the refining and chemical processing industries.
#8	PROCESS SAFETY AUDITING - BP should establish and implement an effective system to audit process safety performance at its U.S. refineries.
#9	BOARD MONITORING - BP's Board should monitor the implementation of the recommendations of the Panel . . . and the ongoing process safety performance of BP's U.S. refineries. The Board should, for a period of at least five calendar years, engage an independent monitor to report annually to the Board on BP's progress in implementing the Panel's recommendations The Board should also report publicly on the progress of such implementation and on BP's ongoing process safety performance.
#10	INDUSTRY LEADER - BP should use the lessons learned from the Texas City tragedy and from the Panel's report to transform the company into a recognized industry leader in process safety management. The Panel believes that these recommendations . . . can help bring about sustainable improvements in process safety performance at all BP U.S. refineries.

85. Following the release of the Baker Panel recommendations, BP consistently stated that it would implement the mandates across all lines of its business. However, as described herein, Defendants knew of or recklessly disregarded their continued failure to implement the process safety programs and procedures either as promised or necessary to avoid the recurrence of similarly preventable deep sea drilling incidents. The occurrence of the worst industrial incident in history belied BP's public representations concerning its professed commitment to ensuring the safety of its deep sea drilling operations.

BP Creates Management-Level Committees To Implement And Monitor Process Safety Systems

86. As part of the Company's professed commitment to process safety, BP told investors that OMS was designed to address the Baker Panel's recommendation to establish and implement an integrated and comprehensive system that would systematically identify, reduce and manage process safety risks. In connection with this public mandate, BP set up GORC, which was tasked with oversight and implementation of OMS, among other responsibilities. GORC met monthly and included sectional CEOs, with Hayward as Committee Chair. GORC's role was to educate Hayward and the CEOs, and to insure that operational risks were identified and properly managed.

87. Hayward and Inglis both testified in the MDL 2179 action that they were knowledgeable about the scope and implementation of OMS through their participation in GORC.

Inglis testified:

A: The group operations – Group Operations Risk Committee was set up by – by Tony Hayward to monitor our safety and integrity performance. It was there to act as a vehicle for continuing to improve our performance. That was through OMS. So part of it was to actually look at how OMS was being implemented. It connected into the OMS audit function, so that reported in to GORC.⁷

88. Similarly, as the Chief Executive of BP and Chairman of GORC, Hayward was responsible for overseeing OMS development and implementation, which gave him detailed knowledge in these areas:

Q. And you are very familiar with process safety because of your position as Chair of the Group Operating Risk Committee, aren't you?

A. I am.

* * *

⁷ Inglis Dep. at 279:21-280:4.

Q. And one of the responsibilities you had . . . as Chair of [GORC] . . . tell me whether I read this correctly, quote, “Oversight of development and implementation of BP’s Operating Management System . . .”

A. That’s correct.⁸

89. Defendants Hayward, Inglis, and other members of GORC received regular status updates concerning the scope and implementation of OMS via the “Orange Book.” As described by Inglis, the purpose of the Orange Book was to provide members of GORC with key performance indicators concerning implementation of OMS:

Q. What was the purpose of the Orange Book?

A. The Orange Book actually started in the upstream [synonymous with “Exploration & Production”]. It was sort of under my leadership, and then it got introduced as something that would apply across the whole of the – of the group, but, in essence, it was to provide a – a performance monitoring in – performance monitoring information around safety and operational integrity. So it had in it key performance indicators, indicators of progress on various initiatives, whether they be the six-point plan, the implementation of OMS. So it was a – a compendium of all the information that you could use to assess progress on our safety and operation integrity agenda.⁹

90. Inglis testified that he monitored the implementation of OMS through the Orange Book: “There was then a very rigorous process for [OMS’s] implementation, as I’ve described to you. I monitored the implementation of that through the – the Orange Book and the three stages of [g]ap assessment, prioritization, and MOC [Management of Change].”¹⁰

91. Hayward further admitted that the Orange Book provided a clear indication of what areas of BP’s operations had or had not implemented OMS:

⁸ Hayward Dep. at 149:10-13; 163:14-21.

⁹ Inglis Dep. at 286:24-287:15.

¹⁰ Inglis Dep. at 379:11-16.

Q. And what other areas would not have had OMS fully implemented until the end of 2010, other than the Gulf of Mexico?

A. I can't remember the list, but, you know, we have a list that's in many of these reports, that – that document – if you refer to the thing called the Orange Book, it's very clear which areas are complete, which areas are in – in transition.¹¹

***A BP Board-Level Committee Closely Monitored
BP's Safety Performance In Evading OMS Implementation***

92. BP's SEEAC was a Board-level committee. SEEAC was created to ensure that Company publications concerning environmental, safety, and ethical matters were accurate. It purportedly carried out that purpose by obtaining reports from Hayward, a Special Liaison to SEEAC, who regularly reported to SEEAC concerning issues within the purview of GORC, including the status of OMS implementation. SEEAC also independently monitored progress in BP's process safety efforts. Inglis also reported to SEEAC, from time to time, concerning matters relating to his Exploration and Production unit. SEEAC met regularly – eight times in 2008, seven times in 2009, and nine times in 2010 – and was continuously updated with respect to BP's implementation of OMS. Indeed, Hayward attended each of these meetings up until the time of the blowout.

93. Castell, the chairman of SEEAC, testified that “the duties and obligations [of SEEAC] are set out in [BP's] Annual Report.”¹² BP's 2008 Annual Report, published on March 4, 2009, defined SEEAC responsibilities as including: “[r]eviewing material to be placed before shareholders that addresses environmental, safety and ethical performance and make [sic] recommendations to the board about their adoption and publication.” It defined “[t]he main tasks and requirements for SEEAC” to include “[m]onitoring and obtaining assurance . . . that the

¹¹ Hayward Dep. at 791:4-11.

¹² Castell Dep. at 11:14-15.

management or mitigation of significant BP risks of a non-financial nature [were] appropriately addressed by the group chief executive.” Castell testified that non-financial risks include safety-related risks.

94. The 2008 Annual Report also discussed the types of information received by SEEAC: “[SEEAC] receives information and reports from the safety and operations function, internal and external sources, including internal audit and the group compliance and ethics function. . . . Like BP’s other board committees, SEEAC can access independent advice and counsel if it requires, on an unrestricted basis.”

95. Moreover, Castell testified that SEEAC members received the Orange Book on a quarterly basis, and that it contained detailed data concerning BP’s safety performance:

Q. Now, the Reports you get, that’s the Orange Book; is that right?

A. We receive an Orange Book on a quarterly basis, sir.

Q. Yes. And tell us what that is. What is the Orange Book?

A. The Orange Book is a compilation of Operations and Risk data which is – which is received by the Group Operations Risk Committee, which is the mechanisms of formal reporting to the GORC Committee as to the level of safety achieved, the lead and lag factors, the major incidents reported. These are all consolidated. So on a quarterly basis, there is a consolidated document that refers to the last quarter’s performance.

* * *

Q. Is it metrics?

A. It’s metrics, and it’s - well, it goes beyond metrics, sir. There are Reports that highlight where there have been major incidents. There are verbal Reports from Upstream and Downstream, and there are Reports on Audit, so not always metrics. There are also, you know, comments on audits, audit closeouts, et cetera.

* * *

Q. I’m trying to understand at what level the seriousness of an incident would come to your Committee, the SEEAC Committee. How - how bad does it have to be before your Committee finds out about it?

* * *

- A. I think you've seen from the data, sir, that we have the data that comes to us. When you say, "How bad does it have to be," the - the data in the Orange Book goes down to lost days of work. So if they lost days at work, we can see it.¹³

BP Launches OMS To Purportedly Implement The Baker Panel's Recommendations, But Exempts OMS's Application From Rigs That BP Did Not Fully Own

96. In 2007, BP introduced OMS at twelve representative pilot sites and by early 2008 BP purportedly sought to implement OMS Company-wide. OMS was supposedly the cornerstone of BP's efforts at improving its process safety protocols and preventing major accidents in the wake of the Texas City disaster. According to Armstrong, a Fed. R. Civ. P. 30(b)(6) witness in the MDL 2179 Action, BP's executive management made the determination to extend the Baker Panel process safety recommendations across the entire panoply of the BP group, including Exploration and Production in the Gulf of Mexico, rather than limiting implementation to its refineries.¹⁴ Hayward repeatedly and publicly referred to OMS as the means by which BP would improve its process safety performance.

97. BP's 2006 Sustainability Report, made publicly available on May 9, 2007, represented that "OMS is a comprehensive system that covers *all aspects* of our operations" The 2006 Sustainability Report further represented that "[t]he new OMS will apply to *all operations*" and BP stated in its 2007 Annual Report that OMS "is the foundation for a safe, effective, and high-performing BP."

98. On September 24, 2007, Inglis spoke at the Sanford Bernstein 4th Annual Strategic Decisions Conference and stated misleadingly: "One aspect of our focus on safe and reliable

¹³ Castell Dep. at 377:23-378:12, 378:15-22, 380:22-381:1, 381:4-8.

¹⁴ Armstrong Dep. at 57:1-13.

operations that I mentioned earlier, is our new standardised Operating Management System (OMS). This will provide a blueprint for safety and *all aspects of operations* throughout BP.”

99. On May 20, 2008, BP released its 2007 Sustainability Report. In the “Group chief executive’s introduction” to that report, Hayward noted that BP was “still learning lessons from” Texas City and had “agreed to implement all [of the Baker Panel’s] recommendations and we are now working to do so.” Describing BP’s efforts, Hayward stated, “[w]e are also now introducing our new operating management system (OMS), designed to bring greater consistency to our operations. . . . My executive team continues to monitor closely our safety performance.” In that regard, the 2007 Sustainability Report further noted that the Hayward-led GORC met fourteen times in 2007.

100. On February 24, 2009, BP released its 2008 Annual Review. In the section titled, the “Group Chief Executive’s Review,” Hayward noted that “[t]he BP operating management system (OMS) turns the principle of safe and reliable operations into reality by governing how *every BP project, site, operation, and facility is managed.*” Similarly, on March 4, 2009, BP released its 2008 Annual Report filed with the SEC on Form 20-F, which was signed by Hayward. According to the 2008 Form 20-F, OMS was a “*framework for operations across BP* that is integral to improving safety and operating performance in *every site.*”

101. Contrary to Defendants’ representations, however, and as admitted by BP, OMS did not apply to BP’s operations on rigs unless the rig was fully-owned by BP. This included six out of seven wells in the Gulf of Mexico during early 2010, among them the Transocean-owned Deepwater Horizon. *See* the Securities Class Action MTD Hr’g Tr. (ECF No. 304) at 66:6-68:20.

102. Indeed, BP never intended for OMS to apply to the entirety of BP’s operations and OMS was specifically not applicable to drilling rigs that BP did not fully-own. Large portions of

BP's riskiest and potentially most profitable exploration and production projects were largely exempt from OMS because the well sites were physically drilled by contracted drilling rigs. Indeed, BP used contracted rigs to drill the majority of wells in the deepwater Gulf of Mexico.¹⁵ This practice and the intent to exclude contracted drilling rigs from OMS coverage meant that OMS did not apply to the vast majority of BP's deepwater drilling operations in the Gulf of Mexico, including the Deepwater Horizon.

103. The deposition testimony of several key BP personnel in the MDL 2179 Action confirms the limited scope of OMS. John Mogford ("Mogford"), BP's former Global Head of Safety & Operations and a GORC member testified that "OMS was designed for BP owned and operated installations, so the focus was on BP production facilities where BP had people . . . according to the guidance for where it was to be applied, on – OMS was not designed to be implemented on contractor sites or vessels."¹⁶ According to Mogford, this key limitation of the OMS was known to GORC, including Defendants Hayward and Inglis, because the "OMS document, it was approved, and the scope was approved . . . at the GORC." *Id.* at 461:18-19. Mogford testified that GORC held "a discussion that the scope was that [OMS] applied to BP owned and operated and controlled sites." *Id.* at 461:23-25.

104. Likewise, in his deposition in the MDL 2179 Action, Hayward testified that BP's OMS and safety systems did not apply to third-party contractors in the Gulf of Mexico, including the Deepwater Horizon:

Q. And, again, the effective well control system, is that something that is both part [Transocean]'s and part BP's?

¹⁵ Armstrong Dep. at 247:18-248:4.

¹⁶ Mogford Dep. at 150:13-19.

A. *Yes*, very largely Transocean, because it is a Transocean Drilling Team that implement the well control procedures. There's no one from BP involved in implementing well *control procedures*. So what we have to do is determine that the well control procedures that Transocean has and that are documented as their well control procedures are appropriate, and, of course, that they're . . . followed.

Q. Okay. But if there are well control procedures and process procedures in place in the gulf of Mexico, BP procedures, those are applicable as well as the [Transocean] procedures?

A. Well, I don't want to be pedantic, *but BP doesn't have well control procedures to manage a well that is beginning to flow, because we're not actually drilling any of the wells that our contractors are*. So what we want to verify is that those procedures are in place, and they're deemed to be appropriate, and people have been trained such that they know them, and when a situation occurs, that they implement and follow them to control the well.¹⁷

105. John Baxter ("Baxter"), Group Head of Engineering for BP and member of GORC, testified that OMS did not apply to the Deepwater Horizon, and that as a result numerous safety and risk management procedures instituted in direct response to the Baker Panel recommendations were not applicable to the majority of BP's drilling fleet in the Gulf of Mexico, including the Deepwater Horizon.¹⁸ For example, BP did not apply its Integrity Management, Major Accident Risk ("MAR") analysis, Safety & Operations Audits, or Control of Work to the majority of its drilling rig fleet, including the Deepwater Horizon, because OMS was limited to rigs that were fully owned by BP. *Id.* at 175:11-13; 186:24-187:8; 191:20-192:23; 210:3-10. This was confirmed by Pat O'Bryan ("O'Bryan"), Vice President of Drilling & Completions, who testified that "[t]he only drilling rig that we had in our fleet [in the Gulf of Mexico] that would fall under the BP OMS is the BP-owned rig the PDQ on Thunderhorse."^{19 20}

¹⁷ Hayward Dep. at 668:7-669:5.

¹⁸ Baxter Dep. at 175:14-15.

¹⁹ O'Bryan Dep. at 413:6-9.

106. Several BP employees familiar with BP's drilling and completions in the Gulf of Mexico revealed that upstream operations – *i.e.*, drilling rigs, including the Deepwater Horizon – did not receive information on OMS. For instance, John Guide (“Guide”), Wells Team Leader for the Deepwater Horizon, testified that he had no formalized training on OMS until January 2011.²¹ Ronnie Sepulvado (“Sepulvado”), Well Site Leader on the Deepwater Horizon since 2003, stated that he didn't know what the Gulf of Mexico local OMS was, that he had only “heard” of process safety, and he was completely unfamiliar with thirteen policies that were ostensibly part of the Gulf of Mexico local OMS.²² Additionally, Cheryl Grounds (“Grounds”), Chief Engineer of Process and Process Safety, stated that “[m]y understanding is it was frequently stated in the company is [sic] that drilling managed their own work. And we had a lot of work to do in process safety elsewhere, so that was prioritized. So I focused on producing assets and major capital projects[.]”²³ These statements confirm that the scope of OMS was never intended to apply to some of BP's most critical projects involving drilling rigs that were not fully-owned by BP.

Contrary To Defendants' Assertions, BP Had Not Completed The Transition To OMS In The Gulf Of Mexico Before The Deepwater Horizon Disaster

107. BP's 2008 and 2009 Annual Reports filed with the SEC on Forms 20-F included Defendants' representations that OMS was in place at BP's exploration and production projects in the Gulf of Mexico. BP stated unequivocally that, “[e]ight sites completed the transition to OMS in 2008,” including “the Gulf of Mexico.” However, as BP conceded at oral argument, this statement was false when made. *See* the Securities Class Action MTD Hr'g Tr. (ECF No. 304) at 58:15-21

²⁰ “PDQ” means a production and oil drilling platform with crew quarters. *See, e.g.*, [www.bp.com/content/dam/bp/pdf/Thunder Horse Fact Sheet 6 14 2013.pdf](http://www.bp.com/content/dam/bp/pdf/Thunder_Horse_Fact_Sheet_6_14_2013.pdf).

²¹ Guide Dep. at 433:5-8.

²² Sepulvado Dep. at 357:16-20, 391:6-394:10.

²³ Grounds Dep. at 88:18-24.

(“The statement here that the Gulf of Mexico completed the transition to OMS in 2008, that is a statement of specific fact . . . that the plaintiffs have alleged and that I will admit to the Court is not accurate.”).

108. During the Relevant Period, Defendants presented specific information about OMS, including the number of sites in which the program was supposedly implemented, specific sites where it was supposedly already implemented, and statistical percentages demonstrating that the Company was supposedly on track with implementation. BP presented this hard data on OMS implementation – and the benefits that OMS had allegedly already begun to achieve – alongside the Company’s expectations for continued success in its Gulf of Mexico operations. However, the transition to OMS in the Gulf of Mexico was not complete in 2008 or at the time of the Deepwater Horizon disaster.

109. As Hayward testified at his deposition in the MDL 2179 Action, he knew that OMS was not fully implemented in the Gulf of Mexico as of April 2010:

Q. Go back to an old familiar subject, the OMS. Did you know in April of 2010, that the OMS had not been fully implemented in the Gulf of Mexico?

A. I – yeah. I believe I was aware that it had not been fully implemented. It was in the process of being implemented as it was in other parts of BP.

Q. But specifically with respect to the Gulf of Mexico, that’s your answer?

A. Yes.

Q. Okay. When did you come to learn that?

A. I would have been aware of it prior to the – you know, in the course of doing my – my job.

Q. Okay.

A. Because we had a – as I’ve explained a number of times through this deposition, the Group Operations Risk Committee was looking at the progress of implementation.

Q. So you were getting reports as to where it was implemented, where it was not yet implemented?

A. And where it – where it was entrained, so to speak.²⁴

110. Hayward further testified that BP did not even begin to implement OMS in the Gulf of Mexico until the Fall of 2009, and that he did not expect implementation to be complete until the end of 2010:

Q. [Y]ou said that you were on target to implement OMS in the Gulf of Mexico in 2009?

A. I – my recollection is that we began the process of cutover to OMS in the Fall of 2009.

* * *

Q. And your recollection also is that you would have completed that implementation in the Gulf of Mexico by the end of 2010?

A. That’s correct.²⁵

111. BP’s failure to complete implementation of OMS in the Gulf of Mexico had severe repercussions. Hayward testified that the Deepwater Horizon tragedy potentially could have been avoided if OMS had been fully implemented in the Gulf.

Q. If OMS had been implemented in the Gulf of Mexico before April 20, 2010, is there not the potential for having avoided this terrible catastrophe?

A. There is possible potential –

* * *

A. - undoubtedly.²⁶

²⁴ Hayward Dep. at 662:25-663:20.

²⁵ Hayward Dep. at 789:11-14, 789:17-20.

112. Likewise, SEEAC Chairman Castell fully understood that implementation of OMS had not been completed in the Gulf of Mexico by 2008. Castell testified, “I believe OMS started its integration in the Gulf in 2009. I would be personally surprised – and I don’t know, but I’d be surprised if it had been fully integrated with all the legacy systems [as of April 20, 2010].”²⁷

113. In the fourth quarter of 2009 and in January 2010, BP, as part of a global cost-cutting restructuring, reorganized the drilling operations unit for the Gulf of Mexico. A consequence of the restructuring was the termination or forced transfer for those chiefly responsible for BP’s Gulf of Mexico Operations, including but not limited to safety processes and the implementation of BP’s OMS in the Gulf of Mexico. Indeed, the people charged with implementing OMS in the Gulf of Mexico were transferred or terminated in Q4 2009 and Q1 2010.

114. Further, as described below, the individuals brought in to implement BP’s OMS and manage BP’s Gulf of Mexico Operations lacked the knowledge, experience and expertise of those they were replacing. In fact, in September 2009, a non-public BP rig audit of the Deepwater Horizon found that safety goals were not commonly known or properly communicated to employees and not all relevant rig personnel were knowledgeable about drilling and well operations practices.

115. For example, Ian Little (“Little”) was the Gulf of Mexico wells manager for BP. Little was replaced by David Sims (“Sims”) who lacked Little’s knowledge and expertise. Despite this, Sims was required to make decisions regarding not only management of the well, but also the response to the Deepwater Horizon’s explosion.

²⁶ Hayward Dep. at 793:25-794:8.

²⁷ Castell Dep. at 71:11-14.

116. Prior to becoming Vice President of Drilling and Completions, London, in December 2009, Harry Thierens (“Thierens”) served from 2006-2009 as the well director for the Gulf of Mexico. He managed the engineering and operations group in the Gulf of Mexico. Thierens was replaced by David Rich (“Rich”), who lacked the expertise of Thierens.

117. Kevin Lacy (“Lacy”) was the Vice President of Drilling and Completions for BP until December 15, 2009, when he left the Company. Lacy, who worked in exploration and production for thirty years, was replaced by Patrick O’Bryan (“O’Bryan”).

118. O’Bryan lacked Lacy’s experience and expertise. By 2009 and 2010, BP still had not implemented a robust operations management system to ensure offshore processes could be managed effectively for both exploration and risk. Given the difficulties of Gulf of Mexico exploration, this invited disaster.

V. DEFENDANTS’ SCIENTER

A. Defendants’ Scienter Concerning Process Safety Deficiencies In BP’s Deepwater Drilling Operations

119. Throughout the Relevant Period, Defendants were aware, or recklessly disregarded, that their statements to investors regarding BP’s commitment to safety were not true and that their statements touting the importance of deepwater drilling in the Gulf of Mexico omitted material information regarding BP’s highly risky and unsafe practices in its deep sea operations. When they spoke, Defendants knew or recklessly disregarded that BP’s process safety procedures did not adequately address the known risks of deepwater drilling, which materialized at the Deepwater Horizon explosion.

120. Following the Deepwater Horizon catastrophe, no fewer than nine governmental investigations reviewed the incident. This included a commission appointed by the President of the United States to study the catastrophe - the National Commission on the BP Deepwater Horizon

Oil Spill and Offshore Drilling (the “Presidential Commission”). The Presidential Commission, after interviewing hundreds of witnesses, reviewing hundreds of thousands of pages of documents and consulting with industry experts, issued the “Presidential Commission Report” in January 2011.

121. The Presidential Commission found that there was no “comprehensive and systematic risk-analysis, peer-review, or management of change process” for any of the following key decisions, amongst others:

- Failing to wait for the correct amount of centralizers;
- Failing to wait for the foam stability test results and/or redesigning slurry;
- Failing to run a cement evaluation log;
- Failing to use the correct spacer to avoid disposal issues;
- Failing to recognize the dangers inherent in displacing the mud from the riser before the surface cement plug had been set;
- Failing to properly place the cement plug at the appropriate level and instead placing it 3,000 feet before the mud line;
- Failing to install additional physical barriers during the temporary abandonment procedure;²⁸
- Failing to perform further well integrity diagnostics in light of the troubling and unexplained negative pressure test failures; and
- Failing to monitor the mud pits and conducting other simultaneous operations during mud displacement.

122. The Presidential Commission then concluded that: “The evidence now available does not show that the BP team members (or other companies’ personnel) responsible for these

²⁸ Temporary abandonment describes the process, after successful exploration, for securing the well until the production platform can be brought in for the purpose of extracting the oil and gas from the reservoir.

decisions conducted any sort of formal analysis to assess the relative riskiness of available alternatives.”

1. Faulty Cementing Jobs And Other Stability Issues Were Known As The Most Frequent Causes Of Well Control Problems

123. As early as 2003, BP knew or recklessly disregarded risks associated with oil spills in offshore drilling related to the failure of cementing at various stages of well development, from the cementing around well casings and annuluses to the cementing of plugs, or shoes, to block pressure during the process of “temporary well abandonment.”

124. BP was aware – though it failed to disclose its awareness to the investing public – that as early as 2003, MMS had determined that failed cement jobs were associated with thirty-three blowout or well kick incidents in the Gulf of Mexico since 1973, some of which involved “well loss” and “rig and platform destruction by fire.” Indeed, an October 22, 2003 MMS alert noted that “[a]nnular flow related to cementing surface casing has been identified as one of the most frequent causes of loss of control incidents in the Gulf of Mexico.”

125. BP had experienced cementing failures and knew of similar failures on other companies’ rigs prior to and during the Relevant Period. Additionally, BP experienced, but did not disclose, its own problems with a faulty cement job on one of its deepwater wells in the Caspian Sea, off the coast of Azerbaijan, in September 2008.

126. More specifically, on or around September 17, 2008, BP experienced a gas leak at one of its central production platforms in the Azeri-Chirag-Guneshi (“ACG”) field in the Caspian Sea – which is the largest of BP’s deepwater drilling operations in Azerbaijan. Shortly thereafter, another rig in the field, called B-i 7, suffered a blowout, causing gas, water, and mud to shoot onto the rig floor, raising the possibility of an explosion. B-i 7 was evacuated and its well was sealed, either by annular rams or because the well simply “bridged” (collapsed on itself or otherwise

stopped flowing on its own). As a result, BP shut down most of the entire field's operations, cutting daily production by over 600,000 barrels per day ("barrels per day" or "bopd"). In later communications, BP told U.S. officials that they suspected that numerous wells had a "bad cement job."

127. BP made no announcement or disclosure of this incident at the time it occurred. In fact, BP's Form 20-F for 2008 merely mentioned a "subsurface gas release" on September 17, 2008, and notably omitted references to the blowout on B-i 7, the fact that gas alarms went off on the field's central production platform, and the possibility that cementing jobs on other wells were faulty as well. As noted by *The Wall Street Journal* on December 17, 2010: "BP had been 'exceptionally circumspect in disseminating information' about the [ACG gas] leak, both to the public and [to] its partners." Moreover, according to the same article, several of BP's partners "were upset with BP for allegedly withholding information from them about the incident."

2. Defendants Knew Or Recklessly Disregarded That BOPs Were Known To Fail

128. Throughout the Relevant Period, Defendants were aware of or recklessly disregarded the substantial and known risks associated with relying on a single blind shear ram in a BOP to prevent an uncontrolled oil or gas release. Specifically, Defendants knew that blind shear rams were not dependable and failed nearly 50% of the time.

129. A BOP is a large, five-story device typically set on the ocean floor at the so-called "mud line," beneath the riser connecting the rig to the sea floor and on top of the cement surface casing that seals around the "annulus," which runs down further into the earth toward the "pay sands" in which oil and gas are found.

130. More specifically, Defendants knew, or recklessly disregarded, that, in the event the BOP needed to be activated, the following should occur:

- Closure of the “variable rams,” which would seal the area around the drill pipe in the well (or, with “annular rams” or “blind rams,” if no pipe lay in the well), thereby sealing oil and gas in the annulus below the BOP; and then attempting to pump drilling mud into the annulus to outweigh and balance the pressure of rising oil and gas; or
- In a worse scenario, and if the method described above did not work, activate the BOP’s “blind shear rams,” which are intended to cut through drill pipe in the well and then seal the oil down in the annulus below the BOP; or
- In an emergency setting, set the BOP to activate all of its rams – variable, annular, and blind shear – and disconnect from the riser, preventing further gas or oil from rising to the rig above.

131. As set forth below, throughout the Relevant Period, Defendants knew, or were reckless in not knowing, that various components of BOPs in use (both on their own rigs and Transocean-owned rigs) had high probabilities of failure, especially in deepwater and ultra-deepwater settings, where drill piping is thicker and more difficult to cut and where hydrostatic pressures affect hydraulic systems which control the BOP rams.

132. In July 2001, the analyst group SINTEF, the largest independent research organization in Scandinavia, provided the MMS with a report recommending that all deepwater and ultra-deepwater drilling rigs in operation in the Gulf of Mexico be equipped with not one, but two separate blind shear rams, because of the significant risk that one might fail. The SINTEF report, while not publicly released, was shared with BP and other industry operators.

133. In both December 2002 and September 2004, MMS provided to BP and other industry operators several reports written by West Engineering Services (“West Engineering”) revealing serious deficiencies with blind shear rams. In particular, the reports mentioned:

- The incapacity of shears to cut through many newer types of drill pipe, which tend to be thicker than older pipes;
- The certainty with which the shears that close on the thick joints that connect the sections of pipe together (rather than simply closing on the pipe itself) fail; and

- The significantly lower capabilities of shears to cut pipe at extreme depths, for instance, in excess of 5,000 feet, because of the effect of hydrostatic pressure on BOPs' hydraulic systems.

134. The studies noted above, although not known to the general public and Plaintiffs, were shared with and made available to industry members, including senior BP managers and directors involved in drilling operations. They were also discussed at industry conferences that occurred during the Relevant Period, including, but not limited to, conferences held by the Society of Petroleum Engineers ("SPE") and the International Association of Drilling Contractors ("IADC") in New Orleans, February 2-4, 2010, and in Amsterdam in 2009. Senior BP drilling managers routinely attended SPE and IADC conferences, including those noted above.

135. In April 2000, an independent expert report by EQE International ("EQE"), a risk and insurance consulting group, conducted an extensive analysis of the BOP to be installed on the Deepwater Horizon. The report, which was not publicly disclosed until June 20, 2010, identified a flaw in the BOP's design. Despite extensive back-up systems, or so-called "redundancies," in the BOP's layout, there was a particular component in the unit's hydraulic system, a single "shuttle valve," which had no backup. In response, EQE noted the potential for a "single point failure" of the shuttle valve and explained that if the shuttle valve failed, the remaining redundancies built into the BOP would be rendered irrelevant and the well would not be sealed.

136. Significantly, throughout the Relevant Period, BP utilized the services of West Engineering, the company that carried out the research for MMS on BOP reliability, to carry out specific studies for the Company on risk issues relating to BOP testing. In both 2008 and early 2010, BP requested, as a member of the joint industry group focused on deepwater drilling issues, that West Engineering carry out research projects on BOP reliability and testing, and integrate past studies analyzing BOPs and their device failures.

137. A July 2009 report also put BP on notice that BOPs were unreliable. BP's partner, Transocean, commissioned the report, which analyzed past BOP performance (including in the Gulf of Mexico) as part of a risk assessment for deepwater drilling in the Beaufort Sea, north of Alaska. The report, written by the consultant group Det Norske Veritas, which was subsequently contracted by the U.S. government to perform an extensive investigation into the Deepwater Horizon's BOP in the wake of the April 2010 blowout and explosion, found that, in practice, blind shear rams on offshore BOPs had a failure rate of 45 percent.

138. Hayward acknowledged in his deposition that he was aware that problems had been identified with BOPs and that those problems were generally known throughout the industry.²⁹ Nevertheless, the existence of this report and its findings were not disclosed to the investing public or Plaintiffs until June 20, 2010.

139. BP exacerbated the risk of BOP failure by permitting rigs operating in the Gulf of Mexico to be equipped with just one single blind shear ram. In addition, BP contracted with Transocean in 2004 to replace one of the variable bore rams on the Deepwater Horizon's BOP with a test ram in order to expedite subsea testing procedures. Yet the installation of this test ram lowered the unit's reliability even further. In an agreement between BP and Transocean executed in October 2004, Transocean noted BP's awareness that the removal of the variable bore ram would "reduce the built-in redundancy" of the BOP and raise the rig's "risk profile." The existence of this agreement was not made public until June 20, 2010.

140. Despite the well-known difficulties with cementing and BOPs, which Defendants either knew, or recklessly disregarded, BP failed to establish uniform process safety features for rig operators to follow during off shore drilling to address cementing issues and BOP failures.

²⁹ Hayward Dep. at 774:9-780:20.

3. BP Received More Than A Hundred Safety Warnings For Safety Protocol Lapses In North Sea Deepwater Drilling Operations

141. Defendants knew of the significant risks in its deepwater drilling operations during the Relevant Period that were endemic in BP's deepwater operations. Defendants also knew, or recklessly disregarded, that BP's process safety protocols failed to properly and sufficiently address these known risks.

142. Unknown to the investing public and Plaintiffs, the United Kingdom Health and Safety Executive ("UK HSE") levied extensive citations and fines on BP, sending no fewer than one hundred letters or notices to BP between 2006 and 2010. The UK HSE cited the Company for safety or environmental violations related to exploration or production rigs, pipeline or storage systems, or other facilities. Many of the communications related to offshore deepwater rigs operated by BP in the North Sea around Scotland, including the Schiehallion, Unity, Bruce, Hutton, Magnus, Clair, and Miller vessels. Some of these rigs and the ships that serviced them were decades old, and the safety issues, in many cases, concerned a failure to properly maintain and inspect equipment.

143. According to UK HSE records, the Schiehallion, an aging floating production storage and offloading ("FPSO") ship in the far North Sea, experienced a 2005 engine room fire and a 2006 "mooring chain failure." This resulted in special UK HSE inspections and meetings with BP officials, and notifications concerning various violations of safety and environmental violations during the Relevant Period.

144. In correspondence in 2006, UK HSE strongly urged BP to dry-dock the Schiehallion for repairs. BP refused, arguing that they would instead prioritize efforts to improve the ship's condition through a focus on maintenance. UK HSE, in a letter to BP on February 2, 2007, strongly criticized BP's decision, noting several areas of maintenance backlog and

numerous cases in which past UK HSE notices were not addressed, and listing various continuing operations that were not in compliance with “relevant statutory provisions” (“RSPs”):

Finally, it is HSE’s view that the overall magnitude of the various categories of maintenance backlog [on the Schiehallion] is such that BP does not have sufficient control of the situation. . . . [t]he situation means that there are concerns for BP’s continued ability to comply with the fundamental duties under Sections 2 and 3 of HASWA [Health and Safety at Work Act]. At the meeting of 29th January, we discussed with BP the issues associated with drydocking, shutting down production and prioritising integrity management (ie the latter being BP’s current approach) as a means of addressing the overall maintenance backlog. We listened to BP’s opinions on the issues associated with the various options, but remain unconvinced that BP’s proposed course of action to remain on station, with an increased focus on integrity, is compatible with achieving compliance with the RSPs given the historic susceptibility of the FPSO Schiehallion to events or conditions that exacerbate ongoing maintenance backlogs (eg 2005 Compressor Fire, 2006 Mooring Chain Failure).

145. The February 2, 2007 UK HSE letter continued, laying out concerns that were foretelling of the Deepwater Horizon tragedy:

[UK HSE] maintains the view that major accidents result when a series of failings within several critical risk control systems materialise concurrently. . . . The number and relatedness of backlogs on the Schiehallion is such that it appears as though there is a significant risk of such a series of failings arising.

146. The February 2, 2007 UK HSE letter concluded with criticism of BP’s lax safety culture and inability to avoid a major incident that echoed the MMS’s findings about BP in 2002: “BP’s decisions on the Schiehallion have not in any way been informed by a systematic assessment [by independent safety inspectors] of the adequacy of the management system to achieve compliance with those RSPs . . . that are intended to avoid the failings that might align to cause major accidents.”

147. According to a 2009 UK HSE letter, BP again suffered a “significant Hydrocarbon Release” (*i.e.*, an oil spill or gas release) on the Schiehallion rig on August 4, 2008. The UK HSE said the release was attributable to a “failure to comply” with BP’s own process safety procedures.

148. Several other UK HSE letters were sent to BP between 2007 and 2010 as well. These letters outlined safety and maintenance problems on other rigs that could create a serious risk of hydrocarbon release:

- A March 5, 2009 UK HSE letter discussed inspections of BP's *Harding* rig, criticizing BP's failure to inspect several "high risk" systems for corrosion, as requested in previous notices. The inspector wrote: "This lack of progress is unsatisfactory. It is important that the condition of these systems is ascertained in a timely manner, in order to reduce the risk of loss of containment incidents" (*i.e.*, spills); and
- Additional letters to BP Exploration Operating Company Ltd. on March 25, 2008, March 5, 2009, and July 7, 2009, relating to the *Bruce*, *Magnus*, *Unity*, and *ETAP* platforms criticizing BP for failing to conduct maintenance programs compatible with the intended lifespan of its rigs – suggesting, in other words, that BP was running its own equipment into ruin.

4. BP's Internal Reporting Structures Required The Chief Executive And Board To Review Process Safety And Risk

149. The Safety & Operations segment ("S&O") was a key component of OMS that BP utilized to monitor process safety performance. Before and during the Relevant Period, BP utilized the S&O function for a variety of reporting mechanisms, progress updates and metrics, which allowed the Executive and Board to monitor process safety performance.

150. The Orange Book was a reporting format devised by Defendants Inglis and Hayward to relay key safety information to GORC. Ellis Armstrong, CFO of BP Exploration, was also involved in the process of creating the Orange Book.³⁰ Armstrong testified that the purpose of the Orange Book was to cull safety metrics across BP and regional business units, including Exploration in the Gulf of Mexico that "had the same level of standing in the firm as financial

³⁰ Armstrong Dep. at 85:21-22.

information.”³¹ This information was reported on a quarterly basis to GORC and SEEAC in connection with the committees’ safety monitoring roles.³²

5. Defendants Consciously Limited The Scope Of Safety & Operations To *Not* Apply To The Majority Of BP’s Deepwater Drilling Fleet

151. BP repeatedly represented that OMS was a systematic management framework that provided superior monitoring of safety. For example, Hayward was the public face of BP’s safety reform efforts. Hayward assumed a very active role promoting BP’s safety reform efforts. He considered, and publicly declared, process safety improvement at BP to be his priority and his mandate. As a result, he regularly spoke on BP’s reform efforts, including OMS. Hayward was well aware of the emphasis placed on the expansive scope of OMS in various public statements. From February 27, 2008 up to the April 20, 2010 explosion, Hayward made repeated statements regarding the expansive scope of OMS, including that OMS would apply “across all of BP’s operations,” that BP had “completed the transition to OMS” in the Gulf of Mexico and that OMS “turns the principle of safe and reliable operations into reality by governing how every BP project, site, operation and facility is managed.”

152. S&O audits were especially critical because they tested rig and rig personnel’s compliance with safety standards and risk management practices, including requirements set by OMS.

153. Nonetheless, since at least January 2007 and throughout the Relevant Period, Defendants Hayward and Inglis made the decision to exclude some of the most lucrative – and the riskiest – of all BP operations from S&O audits. These risky BP operations were responsible for

³¹ Armstrong Dep. at 86:5-11.

³² As noted above, SEEAC responsibilities included: “[r]eviewing material to be placed before shareholders which addresses environmental, safety and ethical performance and make recommendations to the Board about their adoption and publication.”

drilling the vast majority of BP's deepwater wells in the Gulf of Mexico. Had such operations not been purposefully excluded, GORC and SEEAC (which received all S&O audits) would have received detailed information concerning the myriad process safety failures on the Deepwater Horizon (such as those identified throughout the Presidential Commission's Report).

154. The decision to exclude the Gulf of Mexico from BP's S&O audits contradicted BP's repeated public statements regarding a systematic framework for improved process safety.

155. Indeed, those statements were, at a minimum, severely reckless, considering that a deepwater blowout was the *highest* risk facing BP in the Gulf of Mexico, as Hayward testified in his deposition in the MDL 2179 Action:

Q. Well, what you did know, though, was that DEEPWATER blowout was the highest risk across the entire corporation and that it was the highest risk for your Exploration and Production Unit, wasn't it?

A. It was certainly one of the highest risks for the corporation. It was the highest risk in the Gulf of Mexico and one of the highest risks for the Ex – for the Exploration and Production Unit.³³

156. Defendants' scienter concerning their misleading statements regarding the scope of OMS – namely that it did not apply to and govern contractor-owned sites such as the Deepwater Horizon drilling project – is demonstrated by the frequency in which Defendants spoke about OMS and their increasing emphasis on the expansiveness of this safety management system. For instance, Hayward did not make one or two fleeting comments about the scope of OMS. Rather, he repeatedly emphasized its expansiveness in his most important presentations to investors. Additionally, throughout the Relevant Period, Defendants' statements regarding OMS became more detailed and forceful, and thus more likely to mislead investors given the reality of how OMS applied in the case of contractor-owned project sites. For instance, Hayward's early statements

³³ Hayward Dep. at 196:10-18.

regarding OMS were general and colorless. However, his later statements were phrased so strongly, their intensity cannot be squared with the fact that OMS would be—at most—only a comparator for many of BP’s operations, as Defendants contend. Moreover, Hayward’s scienter is evinced by the fact that his misrepresentations regarding the implementation of OMS were accompanied by alleged misrepresentations regarding the scope of OMS

157. For example, in the 2008 Annual Review dated February 24, 2009, Hayward proclaimed that OMS “turns the principle of safe and reliable operations into reality by governing how *every BP project, site, operation and facility is managed.*” In the following months, Hayward reiterated this claim by stating that OMS was a “*single framework*” key to improving safety “*in every site*” and would “*be implemented at each BP site.*” Finally, in the 2009 Annual Report, dated March 5, 2010, Hayward billed OMS as the “*single operating framework for all BP operations.*” Because Defendants understood the limitations to OMS’s deployment on sites owned by third parties, Defendants knew or should have realized that these later statements overstated—indeed, oversold—OMS. Consequently, Defendants had an obvious duty to disclose the limitations in OMS and intended to confuse the market by omitting to disclose this information.

**B. Defendants’ Scienter Is Further Established By
Their Disregard Of Safety And Operational Concerns**

**1. Defendants Knew Of, Or Recklessly Disregarded,
Significant Process Safety Deficiencies With
Third-Party Rigs, Including Rigs Leased From Transocean**

158. During the Relevant Period, Defendants knew of, or recklessly disregarded, significant process safety problems with rigs operated or owned by third parties. These individuals knew of especially serious problems for Transocean-operated rigs.

159. For example, on July 21, 2007, BP experienced a high-potential incident in the Gulf of Mexico. The incident involved Transocean rig operators dragging the BOP along the sea floor which almost severed underground pipelines.

160. Inglis himself expressed concerns that OMS standards were not being applied to contractor-operated drilling rigs. In an email to the Upstream Senior Leadership Team dated July 13, 2009, Inglis stated:

One of the emerging findings from our analysis of incidents is that conformance with Control of Work (CoW) practices, on many of our contractor operated drilling rigs, falls short of BP expectations. I have asked Barbara [Yilmaz] to clarify the expectations we have of our contractors in the matter of CoW and the bridging requirements between contractor practice and BP's CoW Standard.

**2. Concerns About The Integrity
Of Safety Processes In Alaska**

161. On April 11-12, 2009, Marc Kovac ("Kovac"), a BP mechanic, welder and union representative, sent two emails to BP's Ombudsman's office – which was headed by the Honorable Stanley Sporkin (a retired federal judge) – copying numerous BP Exploration Alaska BPXA offices. In his emails, Kovac raised concerns about the integrity of pipelines in Alaska, overstretched staff and contractors, and general problems with inspections of oil wells in the western part of BP's Prudhoe Bay facilities. The first email noted that "it's getting back to a very dangerous situation, too much overtime and too much responsibility and area to cover for each man. Anything can happen when [well] pads are not monitored. Anything can happen when workers work over 12 hours a day, every day. Things are not getting better." In a second email dated April 12, 2009, Kovac listed specific examples of overstretched staff, concluding that the situation "sets us up for another major mishap. Who will they blame this time? This situation is not acceptable."

162. Then, in June and August 2009, BP employees and representative members of the United Steelworkers met with BP management in Alaska about various safety and pipeline integrity issues and complaints about BP's culture making it difficult for employees to raise safety issues. Minutes released from the United Steelworkers reflect that union representatives raised detailed concerns to BP management about understaffing and excessive overtime (being required to work 16-18 hour shifts) and noted that these issues caused an "increased . . . risk for accidents."

163. This concern was underscored in October 2009 by Phil Dziubinski ("Dziubinski"), BPXA senior officer for HSE. Dziubinski noted that a shift greater than 16 hours impeded workers' ability to make sound decisions, describing the impaired decision-making ability as akin to "intoxication." He noted these conditions were persistent in BP's operations before and throughout the Relevant Period. Further, he believed that the failure to abate such work conditions would require BP to affirmatively acknowledge to HSE Committees, the Board, the Ombudsman and Congress that this situation put "production ahead of safety." In late 2009, Dziubinski was asked to resign from his post in what he believes was retaliation for voicing his concerns.

164. In the June and August 2009 meetings, union representatives also raised concerns about delayed replacement or repair of equipment and old, corroded pipelines, including gas leak detectors. (Faulty gas leak detection devices were among the problems that led to the ignition of flammable gases during the blowout and subsequent explosion on the Deepwater Horizon.) "We have several lines ready to leak," the representatives are noted as stating. The minutes show union representatives urging BP not to simply "patch" pipelines: "These lines should be replaced."

165. These were precisely the types of safety issues BP informed Plaintiffs it would address after the Baker Report was released and the types of safety issues that BP represented to Plaintiffs were being addressed and remedied throughout the Relevant Period.

3. Afraid-A-Spill E-mail Raises Complaints About Alyeska's Operations

166. In late 2009, another private employee “concern” was sent to the BP Ombudsman from an anonymous employee of BP-operated Alyeska, the BP-led consortium that operates the Trans-Alaska Pipeline in Alaska. The email was signed “Afraid-a-spill.” The email raised a litany of complaints about Alyeska’s operations, including serious safety and pipeline integrity concerns.

167. Unidentified executives, the email stated, “told employees not to speak up or go against” the Alyeska CEO, Kevin Hostetler (“Hostetler”). The email stated that as a result of Hostetler’s behavior, “People are afraid to speak up on safety or integrity issues for fear of retaliation.” According to a subsequent investigation into the allegations by BP-retained lawyers with the law firm Morgan Lewis & Bockius, the subject of the email was communicated to BP senior leadership in early 2010. Judge Sporkin, the BP Ombudsman, also discussed it with BP leadership, which led to the firm being hired to carry out a further investigation.

168. Concerns about the risks of spills in BP’s Alaska operations, and the inadequacy of BP’s pipeline integrity and inspection programs, were also raised in enforcement letters BP received from the U.S. Department of Transportation’s “Pipeline and Hazardous Materials Safety Administration” (“PHMSA”). PHMSA letters communicate regulatory violations, enforcement actions, orders to comply, and warnings relating to pipelines. Beginning in 2008 through 2010, BP-related companies operating in the United States received forty separate enforcement letters from PHMSA, a far higher number than those sent in the same period to peer companies Exxon Mobil, Conoco Philips, Chevron, or Shell. (During the same period, Shell received six PHMSA letters.) One PHMSA letter was sent to BP on April 20, 2010, the same day the Deepwater Horizon blast occurred. In that letter, PHMSA communicated that it had found serious

shortcomings with BP's pipeline inspection and anti-corrosion systems in Alaska, increasing the likelihood of a major spill.

169. These were the same types of safety issues BP informed Plaintiffs it would address after the release of the Baker Report and the types of safety issues that BP represented to Plaintiffs were being addressed and remedied throughout the Relevant Period.

4. Aftermath Of BP's 2007 Criminal Plea

170. During the Relevant Period, Defendants Hayward and Inglis knew, or recklessly disregarded, that the recommendations of the Baker Panel were not being instituted adequately throughout the Company, especially in terms of improving its process safety practices. In particular, as set forth below, between 2008 and 2010, the Environmental Protection Agency warned BP's General Counsel, among other senior BP executives, that EPA investigators found BP to be operating unsafely.

171. As described above, BP pled guilty to a violation of the U.S. Federal Water Pollution Control Act in connection with the Alaska pipeline oil spill, admitting that its "criminal negligence" had caused the corrosion and thus the spill. BP was sentenced to three years of probation, and fined \$20 million. In late 2008, BP attempted to obtain an early release from probation in Alaska, arguing to its federal probation officer, Mary Frances Barnes ("Barnes"), that the Company had made "significant progress" in relevant areas of maintenance and inspection. Unbeknownst to investors, however, Barnes, found continuing safety issues and incidents with BP operations and denied BP's request. In September 2010, due to continuing complaints that she received about safety and pipeline integrity issues in 2008 through 2010, Barnes requested that the court revoke BP's probation and that additional fines and penalties be levied against the Company.

172. Also unknown to investors during the Relevant Period, BP was potentially facing serious disciplinary action by the EPA's Suspension and Debarment Division ("SDD") in

connection with past and ongoing misconduct in Alaska, Texas, and other states. The SDD has the authority to prevent BP from being a party to any U.S. government or state contract or grant funded with federal funds, which would materially affect BP's revenues.

173. Beginning in early 2008 and through early 2010, Jeanne Pascal ("Pascal"), the EPA SDD Debarment Counsel for Region 10 (West Coast and Alaska) who handled EPA debarment oversight activities on the BP group in the greater United States, communicated repeatedly by telephone and email with senior BP officials, including senior BP executive and Suttles, BP General Counsel Jack Lynch ("Lynch"), and BP's counsel at Vinson & Elkins, Carol Dinkins, among other persons. The BP Ombudsman, Judge Sporkin, also raised Pascal's concerns with the President of BP America, McKay. In her communications, Pascal noted that her office was in receipt of information from BP employees and from EPA inspectors in Alaska and Texas demonstrating that BP was in a state of continuing noncompliance with numerous applicable laws and civil settlement agreements; that BP was continuing to run many of its operations unsafely; and that BP was continuing to retaliate against workers and contractors who raised safety and environmental issues. Thus, on several occasions during the Relevant Period, Pascal stated that, because of the Company's continuing misconduct, the EPA was entitled to file a debarment complaint, to strip BP and its subsidiaries of the right to bid for U.S. government contracts and to bid for U.S. government oil and gas concessions.

174. BP was also informed of significant problems with its process safety with respect to refineries. For example, in May 2010, it was revealed that between June 2007 and February 2010, BP received a total of 862 citations for OSHA violations relating to its refineries in Texas City and Toledo, Ohio, of which 760 were classified as "egregious willful" and 69 were classified as "willful." The willful violations accounted for more than 97 percent of all willful violations

found by OSHA in all U.S. refineries during the same period – BP’s main competitors’ combined citations were 22. The Center for Public Integrity, *OSHA Says BP Has “systemic safety problem,”* May 17, 2010.

175. These were precisely the types of safety issues BP informed Plaintiffs it was addressing after release of the Baker Report.

C. Defendants’ Scierter Is Further Established By BP’s Retaliation Against Whistleblowers

176. Throughout the Relevant Period, and contrary to BP’s representations to its shareholders, BP engaged in continuous and systemic retaliation against employees who reported concerns about the safety and integrity of BP’s operations. These whistleblowers provide further support of Defendants’ knowledge or reckless disregard of the falsity and misleading nature of their statements during the Relevant Period.

177. In August 2008, Kenneth Abbott (“Abbott”), a BP engineer working on design and blueprint management issues relating to the operations of BP’s Atlantis rig (a major BP rig involved in drilling deepwater exploration and production wells in the Gulf of Mexico), began to raise concerns with BP managers about the Company’s practices and policies for managing and updating designs and blueprints for its infrastructure and equipment on the Atlantis. One particular concern was that designs for critical units on the rig were not updated to reflect changes made during repairs, maintenance, or other modifications.

178. On or around August 15, 2008, BP manager Barry Duff (“Duff”), who worked with Abbott, wrote to BP managers and corroborated Abbott’s concerns, stating that a lack of properly reviewed and approved designs could result in “catastrophic operator errors” and that “currently there are hundreds, if not thousands, of Subsea documents that have never been finalized,” a situation which Duff referred to as “fundamentally wrong.”

179. Abbott continued to raise the above concerns from November 2008 through January 2009 when he was fired in retaliation for his whistle blowing. Shortly after his termination, Abbott raised his concerns with the Company's Ombudsman. On June 17, 2010, Abbott was invited to testify before Congress to describe the circumstances that led him to initially report his concerns to senior BP management. During his testimony, Abbott stated, in part, that:

From my experience working in the industry for over 30 years, I have never seen these kinds of problems with other companies. Of course, everyone and every company will make mistakes occasionally. I have never seen another company with the kind of widespread disregard for proper engineering and safety procedures that I saw at BP and that we hear from the news reports about BP Horizon, or BP Texas City, or the BP's Alaska pipeline spills. BP's own investigation of itself, by former Secretary of State James Baker, reported that BP has a culture which simply does not follow safety regulations. From what I saw, that culture has not changed.

180. Among the documents sent to the BP Ombudsman, and forwarded to senior BP managers during the Ombudsman's investigation into Abbott's allegations in 2009 and early 2010, was a declaration by a safety engineer in Houston, Texas, Mike Sawyer ("Sawyer"), who independently reviewed Abbott's allegations, internal BP emails, and applicable regulations.

181. The Sawyer affidavit affirmed that a "large portion of [the Atlantis] subsea safety critical drawings, documents, specifications, and certificates were not in final, 'as-built' status," and warned: "The lack of 'as-built' design documents is a violation of Federal requirements under the Department of Interior MMS Safety and Environmental Management Systems as specified in 30 CFR Part 250 [including] 30 CFR 250.903 and 905." The Sawyer affidavit specifically warned that:

- Time is of the essence in avoiding an Outer Continental Shelf (OCS) environmental disaster, Atlantis production should be shut in until resolution of its design short comings is complete and a thorough inspection confirms that critical breaches have been satisfactorily resolved. . . . ***It is inconceivable that BP could justify the risk of commissioning Atlantis production without completed design documentation reflecting the latest approved design version***

- The absence of a complete set of final, up-to-date, ‘as-built’ engineering documents, including appropriate engineering approval, introduces substantial risk of large scale *damage to the deep water Gulf of Mexico (GOM) environment and harm to workers*, primarily because analyses and inspections based on *unverified design documents can not accurately assess risk or suitability for service. . . .*
- “The wide spread pattern of unapproved design, testing, and inspection documentation on the Atlantis subsea project creates a risk of a catastrophic incident threatening the GOM deep water environment and the safety of platform workers. *The extent of documentation discrepancies creates a substantial risk that a catastrophic event could occur at any time.*

182. In April 2010, BP’s Ombudsman wrote to Abbott and affirmed that his allegations had been substantiated. More specifically, Abbott received a letter from BP’s Deputy Ombudsman, Billie Garde (“Garde”), on April 13, 2010, stating: “Your concerns about the [Atlantis] project not following the terms of its own Project Execution Plan were substantiated [BP] did not do a comprehensive documentation audit regarding the documentation issues on Atlantis. . . . The concerns that you expressed about the status of the drawings upgrade project were . . . of concern to others who raised the concern before you worked there, while you were there, and after you left.”

183. In addition, the Presidential Commission Report found that a contributory factor to the Deepwater Horizon explosion and the problems in attempting to trigger the BOP related to BP’s practice of not updating designs and plans from their original schematics – much like the problems complained about with regard to the Atlantis.

184. On the issue of retaliation, the Presidential Commission Report also noted that a survey conducted in March 2010 indicated that crew members working on the Deepwater Horizon feared retaliation. The survey, which included workers on the Deepwater Horizon and three other rigs, was conducted between March 12 and March 16, 2010 – *i.e.*, approximately one month prior to the Deepwater Horizon explosion. According to the Presidential Commission Report, the

survey found that: “Some 46 percent of crew members surveyed felt that some of the workforce feared reprisals for reporting unsafe situations, and 15 percent felt that there were not always enough people available to carry out work safely.”

185. In addition, the BP Ombudsman conducted a robust investigation of Acuren, the company responsible for pipeline inspection and monitoring of BP’s pipelines in Alaska, where BP contractor Marty Anderson (“Anderson”) had worked until 2008. Anderson had begun to raise with his supervisors and BP intermediaries serious concerns regarding BP’s pipeline corrosion and inspection system in Alaska and Acuren’s staffing for that program. According to 2009 communications between the BP Ombudsman’s office and Lynch, in 2007 Anderson began to cite “a significant quality control breakdown” in Acuren’s and BP’s testing procedures, “inadequate record keeping,” and “unqualified inspectors in the field performing inspections.” BP’s Ombudsman’s office stated that “the concerns were serious, and although people try to downplay the significance of the issues, they revealed a complete breakdown.” According to the BP Ombudsman’s office, the audit confirmed Anderson’s claims.

186. The matters concerning Anderson and pipeline inspections were serious enough for the BP Ombudsman’s office to raise them with BP and BP North America officials, including Rick Cape (“Cape”), BP’s Vice President for Compliance and Ethics, specifically recommending to him that Anderson’s concerns be reported to the BP Board of Directors and to Lynch.

187. In addition, the Ombudsman himself, Judge Sporkin, communicated Anderson’s concerns in 2008 with then-President of BP North America, Malone. Garde wrote to Lynch about it in September 2009, and Anderson himself met with Lynch on August 3, 2009.

188. BP did not adequately address the continuing concerns that had been raised. An internal email dated July 15, 2010, from Christine Anastos (“Anastos”), a BP Ombudsman

Inspector, to other Ombudsman staff, stated that “many of the issues identified by Marty [Anderson] years ago appear to be persisting” [*i.e.*, into mid 2010] and “it is clear that, over time, root causes have not been identified and/or addressed”

189. A 2008 BP Ombudsman “Workforce Briefing” containing an assessment of Acuren’s “Work Environment” reported that a survey of Acuren employees by the Ombudsman’s office found significant problems with workers’ perceptions of potential retaliation for reporting safety or environmental concerns. A “key insight” in the presentation stated that “[a]ctions and events in the past 18 months [*i.e.*, during the period BP vowed to improve safety practices in Alaska in the wake of the 2006 spills] have had a decidedly chilling impact on worker attitudes.” The section noted: “[p]roduction is viewed by very many workers as the primary focus,” (*i.e.*, as opposed to safety). The presentation also noted that the “actual or perceived presence of HIRD [Harassment, Intimidation, Retaliation, Discrimination] is high in the Acuren organization. . . .” In fact, one in three employees believed “recent resignations” were due to HIRD, and 38 percent of employees – and 80 percent of the employees who worked on natural gas lines – indicated as the reason for not reporting safety concerns: “nothing seems to happen to reported items.”

190. The BP Ombudsman also noted that about one in ten Acuren employees said in the last eighteen months that they had been asked to perform a job that was not in compliance with regulations or safety practices. (The number was even higher for workers who monitor BP natural gas pipelines: almost half of Acuren’s workers indicated that they had been asked to perform “non-compliant work”.)

191. The 2008 presentation also included selected quotes from employees, including the following:

- “I’ve raised issues, now I’m labeled a troublemaker.”

- “You get treated better when your supervisor doesn’t hear from you.”
- “[A] co-worker falsified production numbers and I brought it to my supervisor’s attention with the result that I was ostracized, moved to a different shift, moved to the ghetto and told I should produce more in line with the guy who falsified the records.”
- “Supervisors talk safety but when concerns are brought up they are viewed as irritating and just given lip service.”
- “I have stopped jobs for safety reasons and they just hand it to the next guy till they find someone who will do it” [*i.e.*, the job that was stopped].
- “I was pressured to change my evaluation of some pipe which I deemed to be defective.”
- “BP doesn’t listen, they put too much emphasis on rules to look good but have no common sense when it comes to safety.”
- “BP’s support of safety comes off as lip service and seems to only be in place to lower their insurance rates. While superficially, BP delivers lip service about safety, their continually increasing demands accompanied by consistently decreasing resources create a ‘results oriented’ atmosphere where the ends justify the means.”
- “BP creates the adverse and dysfunctional world we work in here. Many problems that occur are because they drive people too hard to perform with limited resources. . . .”

192. Furthermore, BP Ombudsman records from 2010 include numerous other examples of serious issues raised by Acuren employees. For instance, according to an article published by *ProPublica* on June 7, 2010, on December 9, 2009, a “Concerned Individual” at Acuren raised process safety concerns about other personnel “pencil whipping” test results (manipulating devices to change readings) and “falsified inspections.” This individual’s name is Stuart Sneed (“Sneed”). Sneed worked on BP’s Alaska pipeline and stated that: “They [BP] say it’s your duty to come forward . . . but then when you do come forward, they screw you. They’ll destroy your life. . . . No one up there [in Alaska] is going to say anything if there is something they see is unsafe. They are not going to say a word.”

D. Defendants' Scienter Concerning Post-Spill Misrepresentations

1. Defendants' Public Estimates Of Oil Spilling Into The Gulf Were Contradicted By Contemporaneous Internal BP Documents And Information

193. During the portion of the Relevant Period after the April 20, 2010 spill, Defendants BP, Hayward, Inglis, Malone, Rainey and Suttles were aware or recklessly disregarded that their statements regarding estimates of the amount of oil spilling into the Gulf following the Deepwater Horizon explosion were not true and that their statements omitted material information concerning the true magnitude of the Macondo well oil spill.

194. By way of example, at a time when the publicly reported oil flow rate from the blown well was only 1,000 barrels per day, an internal BP document dated April 26, 2010, revealed that the Company had actually estimated that 5,000 barrels per day were leaking into the Gulf (the following was linked to a May 27, 2010 article published in *The New York Times* entitled "Ruptured BP Well Tops Valdez as Worst U.S. Spill"):

2) Estimated Present Volume Release Rate

The following assumptions are used to make a release rate calculation. If any of them are changed, the answer could be significantly different.

The oil is leaking, in a vertical plume from a hole approximately 40 cm. in diameter.

The velocity of the material in the plume is estimated by visual observation to be between 7 cm/sec and 30 cm/sec.

The plume itself contains gas bubbles, oil droplets, and entrained seawater.

9 [Assuming that 50% of the plume volume is oil and a rise velocity of 15 cm/sec, the oil released from this source would be roughly 5000 bbl/day. (approximately 200,000 gal/day) Other sources would contribute additional oil. This answer will be refined as additional information becomes available.

(emphasis in downloaded version). As was later discovered, however, and as described in greater detail below, even the larger 5,000 barrels per day figure was knowingly and grossly underreported.

195. Another internal BP document dated April 27, 2010, also linked to *The New York Times* article in the preceding paragraph, which was provided to BP’s senior management, revealed that the Company’s low estimate of the oil spill was 1,063 barrels per day, the Company’s best estimate was 5,758 barrels per day and the Company’s high estimate was 14,266 barrels per day:

Using "Standard Guide for Visually Estimating Oil Spill Thickness on Water, ASTM F 2534 - 06."

ATTACHMENT 1

Oil on Water Estimate - Low

	sq mi	Cover Factor	gal/sq m	gals	bbls
Sheen	1500	0.5	50	37500	893
Dull oil	250	0.2	666	33300	793
Dark oil	9	0.15	3330	4495.5	107

Total oil on water 75296 1793

x 2 to compensate for evap and disp 3586

recovered 200

chemically dispersed 1000

Total emitted 4786

Barrels emitted per day 1063

Oil on Water Estimate - Best Guess

	sq mi	Cover Factor	gal/sq m	gals	bbls
Sheen	1500	0.66	333	329670	7849
Dull oil	250	0.35	1332	116550	2775
Dark oil	9	0.25	6660	14985	357

Total oil on water 461205 10981

x 2 to compensate for evap and disp 21962

recovered 450

chemically dispersed 3500

Total emitted 25912

Barrels emitted per day 5758

Oil on Water Estimate - High

	sq mi	Cover Factor	gal/sq m	gals	bbls
Sheen	1500	0.75	666	749250	17839
Dull oil	250	0.5	3330	416250	9911
Dark oil	9	0.35	13320	41958	999

Total oil on water 1E+06 28749

x 2 to compensate for evap and disp 57498

recovered 700

chemically dispersed 6000

Total emitted 64198

Barrels emitted per day 14266

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196. As COO for BP Exploration and BP’s officer in charge of co-managing the spill response with the U.S. Coast Guard, Suttles knew the Company’s estimated spill rate from the Macondo well, or was reckless in not knowing. Indeed, as described below, Suttles knew of at least six, and likely more, internal pieces of data, estimates, and calculations indicating that the oil spill flow rate was vastly greater than the figure being publicly reported. Nonetheless, on April 28, 2010, as reported by the *Huffington Post*, Suttles reiterated earlier estimates that 1,000 barrels of oil from the Macondo well were spilling into the Gulf of Mexico each day. Then, on April 29, 2010, Suttles stated in interviews on *CBS’s* “The Early Show” and other media outlets that “I think

that somewhere between one and five thousand barrels a day is probably the best estimate we have today” of the Macondo well spill rate.

197. Thereafter, Defendants BP, Suttles and Hayward made false and misleading misrepresentations and omissions, with scienter, throughout the rest of April and May 2010. As described below, in each such instance, they understated the then-stated oil flow rate, in the face of known information to the contrary, including internal data, estimates, and calculations. These allegations provide additional, extensive evidence as to the scienter of Defendants BP, Suttles and Hayward.

198. In one particularly glaring example, as reported by the *Times-Picayune* on May 19, 2010, “[a]n engineering professor who has been monitoring the Deepwater Horizon disaster said . . . that ***‘there is scientifically no chance’ that BP’s estimate of a discharge of about 5,000 barrels of oil per day into the Gulf of Mexico is anything close to the actual number.*** Steve Wereley [“Wereley”], associate professor of mechanical engineering at Purdue University, told the House Energy and Environment Subcommittee that his own review indicates that a 1.2-inch hole is producing about 25,000 barrels of oil a day by itself, and overall the daily spill could amount to something “short of ***70,000 barrels*** to as high as ***115,000 barrels.***”

199. In response to Professor Wereley’s estimates, BP America Chief Executive McKay, denied that his company is trying to obscure the size of the leak. “This leak is not measurable through technology we know,” he said. McKay also told the House Transportation and Infrastructure Committee that ***anyone working on the spill would have a hard time believing the size is anything close to the 70,000 barrels per day projected last week by Wereley.***”

200. As noted herein, roughly 60,000 barrels of oil per day leaked into the Gulf from the blown Macondo well. Coupled with the internal BP data, estimates, and calculations received by the Defendants (as described below) and Professor Wereley's estimates (and the information upon which he based his work, to which BP had access), Defendants knew, or at a minimum were reckless in not knowing, that their statements minimizing the spill rate were materially misleading. Here, the Defendants ignored, *inter alia*, contemporaneous reports provided to them, from among other sources, BP's own senior engineers, utterly undermining the veracity of their public statements as to the oil flow rate of the Macondo well spill.

201. The facts alleged herein have been previously found to support an inference of scienter as to Defendants Hayward and Suttles. *See In re BP p.l.c. Sec. Litig.*, 843 F. Supp. 2d 712, 782-84, 786-88 (S.D. Tex. 2012); *In re BP P.L.C. Sec. Litig.*, 2013 WL 6383968 (S.D. Tex. Dec. 5, 2013). In addition, the facts alleged herein were the basis upon which BP pled guilty to, *inter alia*, felony obstruction of Congress and agreed to pay the highest criminal penalty ever in U.S. history – \$4 billion. They were the basis upon which Rainey has been criminally indicted. They were also the basis upon which BP admitted its liability and settled the SEC's civil securities fraud case for the third highest penalty in the SEC's history – \$525 million.

2. Defendants Misrepresented The Size Of The Leak To Try To Minimize The Amount BP Would Owe In Fines

202. Civil fines under the U.S. Clean Water Act are based on the number of barrels spilled. According to *The Wall Street Journal*, the final government estimate of the amount of oil spilled was between 53,000 and 62,000 barrels of oil per day, or 4.9 million barrels spilled overall, which translates to \$5.4 billion to \$21 billion in fines, depending on whether investigators find that the Company was grossly negligent. Faced with this potential liability, Defendants were

motivated to misrepresent the amount of oil gushing into the Gulf in order to skirt the amount of civil fines and penalties it owed under the Clean Water Act.

3. BP Agreed To Pay The Third-Largest Civil Fine In SEC History

203. The facts alleged in Sections VII.T and VII.CC. below, among others, gave rise to the SEC's securities fraud complaint against the Company filed on November 15, 2012. On that same day, BP filed a Consent in the SEC action in which it agreed to entry of a Final Judgment and admitted that the allegations in the SEC's complaint were true. In doing so, BP agreed to pay a \$525 million penalty to settle with the SEC, thereby incurring the third-largest civil fine ever imposed by the SEC and a permanent injunction barring BP from violating the federal securities laws. As described in greater detail below, Defendants BP, Hayward, Inglis, Malone, Rainey and Suttles all engaged in a fraud by knowingly fabricating and repeatedly asserting to the public an artificially low oil spill flow rate figure in April and May 2010, at times directly refuting scientists who dared challenge its veracity. They did so despite internal knowledge of at least *sixteen* different sources of data, estimates, and calculations – many of them created by BP's own senior engineers – indicating that the spill was greater by many orders of magnitude. Each of those sixteen was undisputedly known to BP and at least one (and likely all) of the Individual Defendants.

204. At the announcement of the settlement, SEC officials criticized BP's conduct in misleading investors. For instance:

(a) Robert Khuzami ("Khuzami"), Director of the SEC's Division of Enforcement said in an SEC press release:

The oil spill was catastrophic for the environment, but by hiding its severity BP also harmed another constituency – its own shareholders and the investing public who are entitled to transparency, accuracy, and completeness of company information, particularly in times of crisis. Good corporate citizenship and responsible crisis

management means that a company can't hide critical information simply because it fears the backlash.

(b) Daniel M. Hawke ("Hawke"), Director of the SEC's Philadelphia Regional Office and Chief of the Enforcement Division's Market Abuse Unit said in the same press release, "Without accurate critical flow rate data known only to BP, the company denied its shareholders and investors the opportunity to fairly assess BP's potential liabilities and true financial condition."

(c) At a news conference, Khuzami further reprimanded BP's executives, the Defendants in the instant action, for standing behind an oil flow estimate of 5,000 barrels per day "despite an ever-growing body of evidence that this estimate was unreasonably low," until "eventually, outside groups realized that the flow rate estimate was 10 times what BP had fraudulently communicated to investors." He summarized the SEC's case against BP:

[T]he eyes of the world were on BP in the spring and summer of 2010. The company had an opportunity to provide fulsome, accurate disclosure about the facts needed by the public to make informed investment decisions. And, instead, BP chose to mislead the public.

That is not what we expect from public companies and their management. In fact, it is exactly in times of crisis that the need for accurate information is most acute.

4. BP Pled Guilty To Felony Manslaughter, Environmental Crimes, And Obstruction Of Congress, And Agreed To Pay The Largest Criminal Fine In U.S. History

205. On April 23, 2012, federal prosecutors filed criminal charges against BP engineer Kurt Mix ("Mix") for obstruction of justice in connection with a criminal investigation of the Deepwater Horizon disaster. In a press release issued the next day, the DOJ reported that "Mix worked on internal BP efforts to estimate the amount of oil leaking from the well and was involved in various efforts to stop the leak. Those efforts included, among others, Top Kill." The DOJ's April 24, 2012 press release also states the following:

Mix allegedly deleted on his iPhone a text string containing more than 200 text messages with a BP supervisor. The deleted texts, some of which were recovered forensically, included sensitive internal BP information collected in real-time as the Top Kill operation was occurring, which indicated that Top Kill was failing Mix deleted a text he had sent on the evening of May 26, 2010, at the end of the first day of Top Kill. In the text, Mix stated, among other things, “Too much flowrate – over 15,000.” Before Top Kill commenced, Mix and other engineers had concluded internally that Top Kill was unlikely to succeed if the flow rate was greater than 15,000 barrels of oil per day (BOPD). At the time, BP’s public estimate of the flow rate was 5,000 BOPD – three times lower than the minimum flow rate indicated in Mix’s text.

206. *The Wall Street Journal* reported on May 28, 2012, that during the DOJ’s investigation into whether BP’s representatives lied to Congress about the oil flow rate of the Macondo well spill, federal investigators examined an email by a BP engineer warning not to share data “outside the circle of trust.” In particular, the prosecutors uncovered a May 27, 2010 email written by a senior BP engineer, Rupen Doshi (“Doshi”), in the midst of the first effort to stop the leak, known as the “top kill,” warning that “NO ONE is to get the data files from the Top Kill method that is being pumped from yesterday or today except for Paul Tooms’ group.” Doshi was referring to Paul Tooms (“Tooms”), then head of upstream engineering at BP. “The purpose of the note was meant to put a limit on the people outside the circle of trust getting the data,” Tooms wrote in an email later that day.

207. On November 15, 2012, the DOJ announced that BP Exploration agreed to plead guilty to eleven counts of felony manslaughter, felony obstruction of Congress, and criminal violations of the Clean Water and Migratory Bird Treaty Acts. In its plea, BP agreed to pay a record \$4 billion in criminal fines and penalties for its conduct regarding the Deepwater Horizon disaster and the ensuing coverup – the single largest criminal fine ever in U.S. history. In addition to the record monetary penalty, BP agreed to extensive monitoring and reforms. Among other things, BP must retain a process safety and risk management monitor and an independent auditor, who will oversee BP’s process safety, risk management and drilling equipment maintenance with

respect to deepwater drilling in the Gulf of Mexico. BP also must retain an ethics monitor to improve BP's code of conduct to ensure BP's future candor with the U.S. government. These record sanctions underscore the severity of BP's fraud at issue in this case.

208. In the wake of BP's guilty plea, Assistant Attorney General Lanny A. Breuer of the Justice Department's Criminal Division put it bluntly: "The explosion of the rig was a disaster that resulted from BP's culture of privileging profit over prudence." He added:

As the oil spill continued, BP made a tragic situation worse: it began misleading Congress and the American people about how much oil was pouring out of the Macondo well. As BP now admits, in responding to Congress, the company lied and withheld documents, in order to make it seem as though less damage was being done to the environment than was actually occurring. Acknowledging those lies, BP has agreed to plead guilty to felony obstruction of Congress.

209. Among other things, the DOJ's fourteen count Information details that BP, through Rainey, obstructed an inquiry by the U.S. Congress into the amount of oil being discharged in the Gulf of Mexico while the spill was ongoing – the very facts at issue here. As part of the plea agreement, BP admitted that, through Rainey, it withheld documents and provided false and misleading information in response to the U.S. House of Representatives' request for flow-rate information. BP admitted that, *inter alia*, Rainey manipulated internal estimates to understate the amount of oil flowing from the Macondo well and withheld data that contradicted BP's publicly stated estimate of 5,000 barrels of oil per day. BP also admitted that, while Rainey was preparing his manipulated estimates, BP's internal engineering response teams were using sophisticated methods that generated significantly higher estimates. All of this information was withheld not only from Congress, but also Plaintiffs and other BP investors.

210. The DOJ's criminal Information, with respect to which BP admitted its guilt, is incorporated by reference as if fully set forth herein. By way of example, BP Exploration (referred to in the Guilty Plea Agreement as "BP") plead guilty to making the following omissions and false

and misleading statements in its May 24, 2010 response (“Markey Response”) to the Committee on Energy and Commerce:

1. BP, through a former vice president, withheld information and documents relating to multiple flow-rate estimates prepared by BP engineers that showed flow rates far higher than 5,000 BOPD, including as high as 96,000 BOPD.
2. BP, through a former vice president, withheld information and documents relating to internal flow-rate estimates he prepared using the Bonn Agreement analysis, that showed flow rates far higher than 5,000 BOPD, and that went as high as 92,000 BOPD.
3. BP, through a former vice president, falsely represented that the flowrate estimates included in the Response were the product of the generally-accepted ASTM methodology. At the time that this false representation was made, BP’s former vice president knew that those estimates were the product of a methodology he devised after, among other things, a review of a Wikipedia entry about oil spill estimation.
4. BP, through a former vice president, falsely represented that the flowrate estimates included in the Markey Response had played “an important part” in Unified Command’s decision on April 28, 2010, to raise its flow-rate estimate to 5,000 BOPD. At the time this false representation was made, BP’s former vice president knew that those flow-rate estimates had not played “an important part” in Unified Command’s decision to raise its flow-rate estimate and had not even been distributed outside of BP prior to that decision.
5. BP falsely suggested, in its May 24, 2010 letter, that the Unified Command’s flow rate estimate of 5,000 barrels of oil per day (“BOPD”) was the “most scientifically informed judgment” and that subsequent flow rate estimates had “yielded consistent results.” In fact, as set forth above, BP had multiple internal documents with flow rate estimates that were significantly greater than 5,000 BOPD that it did not share with the Unified Command.
6. On or about June 25, 2010, in a BP letter to Congressman Markey, BP’s former vice president inserted language that falsely stated that BP’s worst case discharge estimate was raised from 60,000 BOPD to 100,000 BOPD after subsequent “pressure data was obtained from the BOP stack.” At the time this false representation was made, BP’s former vice president knew that the 100,000 BOPD figure was not first derived after subsequent pressure data had been

obtained, but instead, he had been aware of a 100,000 BOPD worst case discharge since as early as on or about April 21, 2010.

211. A separate indictment was also unsealed on November 15, 2012, charging Rainey with obstructing a Congressional investigation and making false and misleading statements to law enforcement officials.

212. When the DOJ criminal pleas, SEC securities fraud settlement, and resulting fines and penalties were announced on November 15, 2012, Dudley issued a statement stating, in part, “We apologize for our role in the accident, and as today’s resolution with the U.S. government further reflects, we have accepted responsibility for our actions.”

5. The EPA Barred BP From New Contracts With The U.S. Government

213. On November 28, 2012, in the wake of BP’s guilty pleas, the EPA announced the suspension of BP from all future contracting activities with the federal government. The effects to BP of this ban on doing new business with the U.S. government were profound. In a statement on its website, the EPA stated, “EPA is taking this action due to BP’s lack of business integrity as demonstrated by the company’s conduct with regard to the Deepwater Horizon blowout, explosion, oil spill and response.” The U.S. Interior Department confirmed that the ruling temporarily barred BP from winning any new federal oil leases, including the roughly 20 million new acres of federal waters in the Gulf of Mexico that the Interior Department had opened for auction the same day. BP was barred from bidding on any of those parcels. The ban was expected to impact BP’s extensive business with the U.S. military as well, including an estimated \$1.35 billion in Defense Department fuel contracts.

214. Following this announcement, analysts stated that a lengthy government contract ban could seriously impact BP’s bottom line, particularly given BP’s previously stated intent to

ramp up U.S. production. Indeed, the injunction barred BP from renewing existing fuel contracts with the military and from leasing more offshore oil and gas properties.

215. In March 2014, the EPA stated that since the ban has been implemented, it has suspended twenty-five BP entities and disqualified BP Exploration from performing federal contract work at its corporate facility in Houston. Significantly, the EPA explained that “[s]uspensions are issued where there is an immediate need to protect the public interest supported by adequate evidence.”

216. On March 13, 2014, over a year after the ban was implemented, BP announced that it had reached an agreement with the EPA that would allow the Company to start doing business again with the federal government. Under the terms of the agreement, BP agreed to heightened safety, operations, ethics, and corporate governance requirements. As part of the deal, BP must enforce a detailed code of ethics, pay an independent auditor for the next five years to conduct annual reviews and report back to the government on BP’s compliance with the agreement, and protect Company employees who report violations and provide financial incentives to employees to pursue safety and compliance standards. The agreement additionally provides the EPA the authority to take appropriate corrective action in the event the agreement is breached. The agreement was the product of coordination between the EPA, the Department of Interior, Defense Logistics Agency and the U.S. Coast Guard.

VI. MATERIALIZATION OF THE UNDISCLOSED RISKS



Presidential Commission Report

A. BP's Pervasive And Systematic Failures Caused The Deepwater Horizon To Explode And Sink

217. The Macondo well explosion was avoidable, but BP's overarching culture of unjustifiable risk-taking prevailed. At every turn, BP's conduct evidenced a systematic departure from recognized industry safety practices. As the Presidential Commission found, "the cumulative risk that resulted from these decisions and actions was both unreasonably large and avoidable[.]"

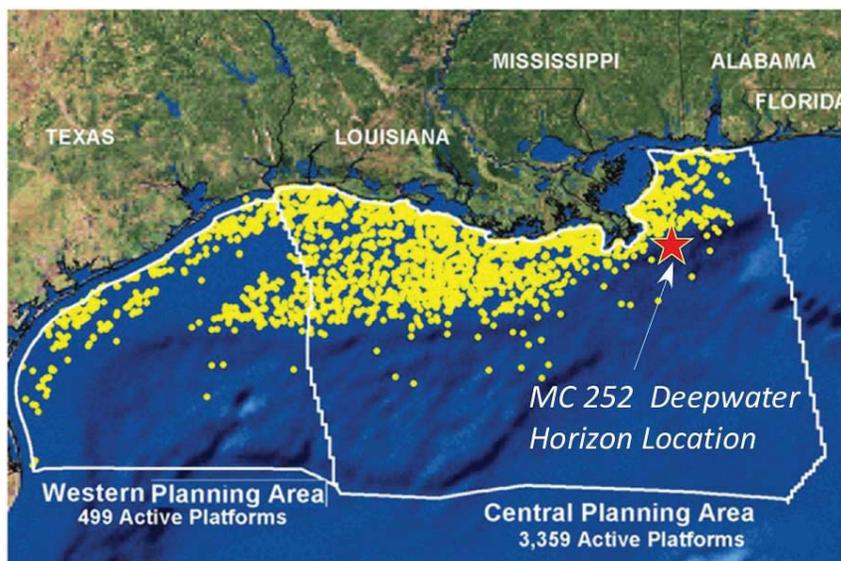
218. In addition to the Presidential Commission, numerous other governmental investigations have concluded that BP's pervasive and systematic process safety deficiencies caused the explosion on and sinking of the Deepwater Horizon, and the ensuing oil spill. For example, the U.S. Department of the Interior's Bureau of Ocean Energy Management, Regulation

and Enforcement issued its highly-anticipated *Report Regarding The Causes Of The April 20, 2010 Macondo Well Blowout* (the “Interior Department Report”) on September 14, 2011. The Interior Department Report included the following conclusions, and others, that place the blame for the explosion and spill squarely on BP’s deficient safety practices:

- BP’s failure to fully assess the risks associated with a number of operational decisions leading up to the blowout was a contributing cause of the Macondo blowout.
- BP’s cost or time saving decisions without considering contingencies and mitigation were contributing causes of the Macondo blowout.
- BP’s failure to ensure all risks associated with operations on the *Deepwater Horizon* were as low as reasonably practicable was a contributing cause of the Macondo blowout.
- BP’s failure to have full supervision and accountability over the activities associated with the *Deepwater Horizon* was a contributing cause of the Macondo blowout.

BP Acquires The Rights To The Macondo Well And Began Its Preparation To Drill Despite Having An Inadequate And Error-Filled Oil Spill Response Plan

219. In March 2008, BP paid approximately \$34 million to acquire the exclusive drilling rights from the MMS for the Mississippi Canyon Block 252, a nine-square-mile plot in the Gulf of Mexico that encompasses the Macondo well. Although the Mississippi Canyon area has many productive oil fields, BP knew little about the specific geology of Block 252 and, in fact, the Macondo well was the Company’s first well on the new lease. BP planned to drill the well to 20,200 feet in order to learn the geology of the area and to determine whether the oil and gas reservoir would warrant installing production equipment. The Macondo well was located 47.6 miles off the coast of Louisiana, as illustrated in the map below. It was believed that the well could hold as much as fifty (50) million barrels (or 2.1 billion gallons) of producible oil.



Mississippi Canyon Block 252 Location Map. From U.S. Minerals Management Service

220. Throughout the Relevant Period, MMS required BP to prepare and file oil spill response plans demonstrating the Company’s specific strategy and ability to respond to an oil spill if one occurred while drilling in the Gulf of Mexico. MMS regulations required that an oil spill response plan include, among other things, (i) an emergency response action plan; (ii) disclosure of the equipment available to combat an oil spill; (iii) any oil spill response contractual agreements with third-parties; (iv) calculations of the worst-case discharge scenarios; (v) a plan for dispersant use in case of a spill; (vi) an in-situ oil burning plan; and (vii) information regarding oil spill response training and drills. *See* 30 C.F.R. § 254.21.

221. The first of these requirements, the “emergency response action plan,” is the “core” of the overall operational response plan and required BP to disclose, among other things: (i) information regarding the Company’s oil spill response team; (ii) the types and characteristics of oil at the facility; (iii) procedures for early detection of a spill; and (iv) procedures to be followed in the event of an oil spill. *See* 30 C.F.R. § 254.23.

222. BP publicly filed its oil spill response plan for the Gulf of Mexico, entitled “Regional Oil Spill Response Plan – Gulf of Mexico,” with the MMS on December 1, 2000, and last revised the plan on June 30, 2009 (the “Regional OSRP”). A regional oil spill response plan is designed to cover multiple facilities or leases of a lessee that have: (i) similar modeled spill trajectories and worst case discharge scenarios, (ii) the potential to affect the same ecological or socioeconomic resources, and (iii) are located in close enough proximity to be served by the same response equipment and personnel. BP’s Regional OSRP covers a massive area, including all of the United States’ interests in the Gulf of Mexico. This area encompasses the coastal waters of Texas, Louisiana, Alabama, Mississippi, and Florida. BP has approximately 600 leases and operates roughly 70 oil wells in the Gulf of Mexico. BP’s Regional OSRP applied to all of these wells.

223. According to the Regional OSRP, the “**TOTAL WORST CASE DISCHARGE**” scenarios in the Gulf of Mexico ranged from a release of 28,033 barrels of oil per day to 250,000 barrels of oil per day. In particular, BP’s Regional OSRP stated: (i) an oil spill occurring less than ten miles from the shoreline could create a worst case discharge of 28,033 barrels of oil per day; (ii) an oil spill that occurred greater than ten miles from the shoreline could create a worst case discharge of 177,400 barrels of oil per day; and (iii) an oil spill caused by a mobile drilling rig that is drilling an exploratory well could create a worst case discharge of 250,000 barrels of oil per day. The Regional OSRP explicitly states that BP and its subcontractors could recover approximately 491,721 barrels of oil per day (or more than 20.6 million gallons) in the event of an oil spill in the Gulf of Mexico. Moreover, the Company claimed and provided certified statements to the MMS that BP and its subcontractors “maintain the necessary spill containment and recovery equipment to respond effectively to spills.”

224. On March 10, 2009, the MMS deemed the Company's initial exploration plan for Mississippi Canyon Block 252 ("BP's EP") "submitted." BP's EP included the area encompassing the Macondo well.³⁴ In connection with the EP, BP sought a permit from the MMS to drill to a total depth of 19,650 feet at the Macondo well. Following the sinking of the Deepwater Horizon, a BP crewman admitted that this depth had been misrepresented to the MMS, and that BP had in fact drilled in excess of 22,000 feet, in violation of its permit.

225. According to BP's EP, the worst case scenario of an oil spill occurring in Mississippi Canyon Block 252 would be the release of approximately 162,000 barrels of oil per day.

226. In BP's EP, the Company claimed it would have no difficulty responding to a worst case scenario while drilling the Macondo well:

Since BP . . . has the capability to respond to the appropriate worst-case spill scenario included in its regional OSRP. . . , and since the worst-case scenario determined for our [EP] does not replace the appropriate worst-case scenario in our regional OSRP, I hereby certify that BP . . . has the capability to respond, to the maximum extent practicable, to a worst-case discharge, or a substantial threat of such a discharge, resulting from the activities proposed in our [EP].

* * *

[D]ue to the distance to shore (48 miles) and the response capabilities that would be implemented, no significant adverse impacts are expected.

227. Because the worst case scenario discharge figures in BP's EP, which BP calculated, fell below the threshold established in BP's OSRP, the Company was not required to submit a site-specific drilling plan for the Macondo well itself.

³⁴ BP's OSRP and EP are collectively referred to herein as "BP's Oil Spill Response Plan."

228. In October 2009, the semi-submersible Transocean rig Marianas began drilling the Macondo well. However, operations were halted at approximately 4,000 feet below the sea floor due to damage caused to the rig by Hurricane Ida.

229. The replacement rig, the Deepwater Horizon, arrived at the Macondo well on January 31, 2010. Although the rig was in place on that date, several steps needed to occur prior to beginning any drilling operation, including connecting the rig's BOP to the wellhead. BP completed these steps by February 10, 2010, and the Deepwater Horizon began drilling shortly thereafter.

230. Once the rig was connected to the BOP via the riser, BP inserted the drill bit and drilling pipe through the riser and BOP in order to reach the wellbore in the ocean floor. As drilling progressed, so-called "drilling mud" was pumped down through the drilling pipe and emerged through holes in the drill bit.

231. Drilling mud is not mud in the traditional sense; it is a blend of synthetic fluids, polymers and weighting agents costing approximately \$100.00 per barrel. Drilling mud accounts for as much as 10% of the total cost in drilling a deepwater well. Drilling mud is a critical part of the drilling process. For example, as it is circulated down the drilling pipe and back up the wellbore to the rig, drilling mud clears the wellbore of broken rock and other debris (referred to as "cuttings"), cools the drill bit and maintains stable pressure within the well, which is critical to the mechanical stability and integrity of the wellbore.

232. When drilling a deepwater well like the Macondo – which lies approximately 5,000 feet (or about 1 mile) below the ocean's surface and extends another 13,000 feet below the ocean floor – controlling pressure is a paramount concern. The inward or "pore" pressure (*i.e.*, the pressure exerted by the fluid in the surrounding rock formation on the wellbore) must be balanced

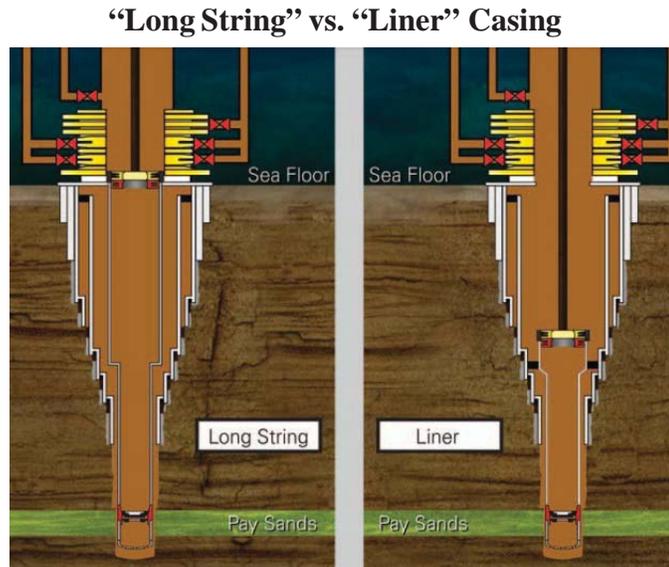
with the outward or “fracture” pressure (*i.e.*, the pressure exerted by the drilling fluids in the wellbore on the surrounding rock formation). Following proper safety procedures is critical because uncontrolled well pressure can cause an explosion.

233. On April 9, 2010, the weight of the drilling mud being pumped into the Macondo well was too high and fractured the surrounding formation; drilling mud began flowing into the cracks in the formation. In an attempt to plug the fractures and stop the outflow of drilling fluid, BP circulated 172 barrels of thick, viscous fluid, referred to as a “lost circulation pill,” into the wellbore. The lost circulation pill succeeded in staunching the outflow of drilling mud, but the episode underscored the sensitivity of the Macondo well. As noted by the Presidential Commission: “BP’s on-shore engineering team realized the situation had become delicate. They had to maintain the weight of the mud in the wellbore at approximately 14.0 pounds per gallon (ppg) in order to balance the pressure exerted by the hydrocarbons in the pay zone.” Thus, BP’s engineers were on notice that they must be even more vigilant in monitoring and controlling the competing pressures within the wellbore.

Casing and Cementing the Well

234. Once the initial drilling of the well was complete, BP then needed to insert casing to seal off the walls of the wellbore to provide structural integrity. BP considered two casing methods: a long-string casing and a liner/tie-back casing. The long-string casing involves hanging a single continuous wall of steel from the wellhead on the ocean floor down to the bottom of the well over thirteen thousand feet below. The liner/tie-back method entails hanging shorter segments of casing to one another in order to form a stronger and less flexible piece of metal. A critical distinction between the two methods is that the long-string casing method provides two barriers to flow up the annular space (once cementing is complete) whereas the liner/tie-back casing provides

four barriers to annular flow. This means that the liner/tie-back method provides twice the safety precautions as compared with the long-string casing method. In addition, BP knew that obtaining a reliable primary cement job with the long-string casing would be much more difficult.



Presidential Commission Report

235. In fact, between April 14 and 15, 2010, the BP engineering team in Houston, Texas modeled the likely success of the cementing process using the two casing methods and determined that the long-string method would fail in effectively cementing the Macondo well.

236. In light of this determination, the engineering team elected to proceed with the liner/tie-back method, but, according to the Presidential Commission, others at BP opposed the decision. In the end, despite the conclusion that the long-string method could not be cemented reliably, BP’s view prevailed and the crew proceeded with the long-string casing method.

237. The next step in the drilling process was to thread the long-string casing through the center of the wellbore down to the bottom of the well. Centering the casing is of vital importance to obtaining a secure cement job. As the cement mixture flows out of the casing, it ascends through the annular space surrounding the casing. If the space around the casing is uneven (*i.e.*, there is more space on one side than on the other), the cement begins to fill in the annular space in an

uneven manner, leaving channels of drilling mud in the cement. These channels are pathways through which highly pressurized hydrocarbons can flow.

238. To ensure that the long-string casing will be centered, guides called “centralizers” are placed around the casing at regular intervals. For the Macondo well, BP decided that it would use only six centralizers because that was the amount currently available on the rig. It does not appear that the Company’s reasoning was based on any scientific or engineering calculations. However, before BP could actually place the centralizers in the well, it needed Halliburton – who BP contracted for this cementing job – to verify that six centralizers would be sufficient.

239. On or about April 15, 2010, Halliburton engineer Jesse Gagliano (“Gagliano”) performed computer simulations to assess the likelihood of a satisfactory cement job using six centralizers. Gagliano’s calculations demonstrated a high likelihood of channeling resulting in a cement failure if the Company used only six centralizers. Computer simulations showed that twenty-one centralizers were necessary – *i.e.*, almost four times as many as BP intended to use.

240. After reviewing the modeling data himself, BP Drilling Team engineer Gregory Walz (“Walz”) agreed with Gagliano’s conclusions. On April 16, 2010, Walz wrote to other BP engineers and stated, in part, that the operation needs to “honor the . . . modeling to be consistent with our previous decisions to go with the long string.” Walz proceeded to make arrangements to obtain the additional centralizers.

241. However, BP Well Team Leader John Guide (“Guide”), who was also based in BP’s Houston office, opposed using the additional centralizers because the installation would delay the team by approximately ten hours and would therefore cost BP money. Although BP ordered additional centralizers, when they arrived on the Deepwater Horizon it was determined that the centralizers were the wrong type. Despite the serious threat of channeling identified in the

modeling data, however, Guide's view prevailed and only six centralizers were used to center the more than thirteen thousand foot long-string casing in the wellbore.

242. BP's culture of unreasonable risk-taking is evidenced by an email by Brett Cocales (a drilling operations engineer in BP's Houston office), dated April 16, 2010, in which he stated:

[E]ven if the hole is perfectly straight, a straight piece of pipe even in tension will not seek the perfect center of the hole unless it has something to centralize it. . . . ***But, who cares? It's done. [e]nd of story. We'll probably be fine,*** and we'll get a good cement job.

243. On April 17, 2010, after learning that BP would proceed with only six centralizers, Gagliano re-ran the computer simulations and modeling using seven centralizers and the conclusion was the same: the well would have "a SEVERE gas flow problem." BP, however, continued to ignore its own expert's opinion.

244. On April 18, 2010, BP began lowering the long-string casing into the wellbore. To enable the drilling mud located in the wellbore to flow smoothly and distribute evenly as the long-string casing is lowered, two trap doors within the long-string casing, referred to as the "float collar," are propped open with a tube called an "auto fill tube."

245. On April 19, 2010, after the long-string casing reached the bottom of the wellbore, BP needed to dislodge the auto fill tube, converting the float collar from a two-way valve to a one-way valve. Successfully converting the float collar insures that the pumped cement will only flow downward through the casing, a critical step in the cementing process.

246. Two events should have indicated to BP that the conversion of the float collar was not proceeding properly. First, the tube should be dislodged once the flow through the tube reaches six barrels of mud per minute (6 bpm), equivalent to six hundred pounds of pressure per square inch (600 psi). Yet, as the crew pumped drilling mud down the casing, pressure began to climb beyond the 600 psi threshold which should have converted the float collar, but still the crew was

unable to establish flow. The pressure continued to rise, peaking at 3,142 psi (more than five times more pressure than should have been needed to convert the float collar) before suddenly dropping precipitously. It appears that BP assumed that this meant the float collars had converted. This is a scientifically indefensible position, however, because, as noted by the Presidential Commission: “[t]he auto-fill tube was designed to convert in response to flow induced pressure. Without the required rate of flow, an increase in static pressure, no matter how great, will not dislodge the tube.”

247. Second, after the tube is dislodged and the float collar is converted to a one way passage, the amount of pressure needed to circulate drilling mud from the rig, down the drilling pipe and up the annular space to the rig again should have been 570 psi. Yet, as BP began the process of converting the float collars, the results differed considerably. After the spike and sudden drop in pressure, the circulation pressure was only 340 psi.

248. BP personnel on the rig erroneously ignored the mounting evidence that something was amiss, and proceeded to the next step in securing the well – mud circulation.

249. Correct mud circulation requires a complete circulation of drilling mud in the wellbore, referred to as “bottoms up” circulation. The process, which requires about 12 hours, allows workers on the rig to test the mud for gas influxes, safely remove any gas pockets, and evacuate any debris or other foreign matter that could contaminate the cement. Given the heightened challenges of cementing a long-string (as opposed to a liner/tie-back) casing, this step was critical. In addition, “bottoms up” circulation would allow the BP crew to test the mud at the bottom of the well for hydrocarbons, the presence of which would indicate a leak in the cement job at the bottom of the well.

250. In order to complete a “bottoms up” circulation, BP needed to circulate 2,760 barrels of drilling mud. Instead, as noted by the Presidential Commission, BP circulated only 350 barrels of mud – eight times less than the amount required to properly complete the “bottoms up” circulation of the well.

251. In cementing the Macondo well, BP used nitrogen foam, a cement with which it had little experience in the Gulf of Mexico. In February 2010, Gagliano conducted tests regarding the stability of the nitrogen foam cement. The tests showed that the mixture was unstable and therefore represented an additional risk of well failure. According to the Presidential Commission Report, these test results were communicated to BP personnel in Houston on March 8, 2010. However, the warnings were ignored and BP pumped nitrogen foam cement into the Macondo well.

252. BP’s internal guidelines dictated that the top of the annular cement should be 1,000 feet above the uppermost hydrocarbon zone. For the Macondo well, BP injected just enough cement to extend the annular cement barrier half the distance, or only 500 feet above the uppermost hydrocarbon zone. According to the Presidential Commission Report, this deviation reduced the safety margin for this procedure by 50%, and meant that a total of sixty barrels of cement would be used to cement the well, which BP’s own engineers recognized left absolutely no margin for error. Also according to the Presidential Commission Report, BP was also keenly aware that it was pumping the cement at an unsafe rate (four barrels per minute rather than six barrels per minute), further impeding the efficiency with which cement would be displaced from the annular space, and reducing its safety margin even further.

253. At 12:40 a.m. on April 20, 2010, the crew finished pumping the primary cement job. A team of outside technicians was on hand to conduct the battery of tests needed including, but

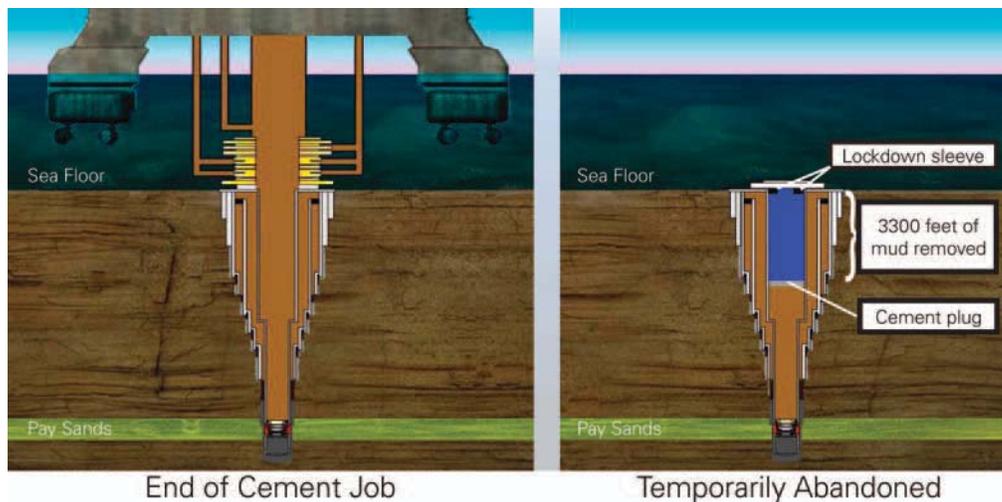
not limited to, the “cement log,” which was designed to evaluate and test the sufficiency of the cement job. The cement log is an acoustical test used to identify areas (if any) where the cement failed to channel up through the annular space in a uniform fashion. If cement channeling is uneven, pockets form, creating the possibility that hydrocarbons will enter the wellbore where they can ascend (and expand) rapidly.

254. The acoustical test was especially critical given BP’s prior erroneous decisions regarding the construction of the Macondo well, which included, *inter alia*: (i) using the difficult-to-cement long-string casing method; (ii) foregoing the “bottoms up” mud circulation; (iii) failing to use twenty one centralizers as the Company’s expert recommended; (iv) ignoring scientifically accepted data pertaining to the float collar conversion; (v) electing to use nitrogen foam cement deemed unstable in prior testing; (vi) pumping the cement at reckless rates; and (vii) halving the safety margin by setting the cement 500 (rather than 1,000) feet above the hydrocarbon bearing “pay zone.” BP decided to forego the acoustical test and sent the team of technicians home by helicopter at 11:15 a.m. that morning. Foregoing the acoustical test saved the Company approximately ten hours and \$100,000. This decision was contrary to industry practice and the recommended safe practices of the American Petroleum Institute.

BP Begins The Temporary Abandonment Process

255. The Deepwater Horizon rig is a drilling rig as opposed to a production rig. Once drilling operations are complete, the well is placed in “temporary abandonment” until the arrival of the production rig, which will connect to the well and begin pumping oil and gas from the site. As discussed above, placing the well into temporary abandonment means that the drilling rig will be removing its own BOP and riser from the wellhead. There are several key features in the temporary abandonment process to insure that the well is secure before the BOP and riser are removed. For

one, a cement plug, which acts like a cap, is placed in the well. Typically this cap is placed at or near the mudline. The area in the well *beneath* the cap is filled in with heavy drilling mud, which applies additional downward pressure on the hydrocarbon bearing zone. If the cement plug is placed at a greater depth, this necessarily means that there will be less heavy drilling mud in the well underneath the cement plug. Finally, the crew will install a “lockdown sleeve” at the wellhead. The status of the well before and after the temporary abandonment process is illustrated below:



Presidential Commission Report

256. Throughout this process, the well is monitored and a series of tests are performed to insure that the well is secure, *i.e.*, that no hydrocarbons are leaking into the well. According to the Presidential Commission, neither the BP Well Site Leaders, nor any of the rig’s crew, had seen the temporary abandonment plan for the Macondo well prior to 10:43 a.m. on the day the abandonment procedure began. Indeed, the temporary abandonment plan had undergone numerous changes leading up to April 20, 2010, but, according to the Presidential Commission: “It does not appear that the changes to the temporary abandonment procedures went through any sort of formal review at all.”

257. Prior to abandonment, the well must be tested to insure that there are no leaks. In part, this involves conducting a “negative-pressure test” to assess whether hydrocarbons are flowing into the well. To conduct this test, BP needed to simulate the pressure conditions that would exist in the well once it was placed into temporary abandonment. As part of the negative pressure test, the crew removed 3,300 feet of mud from the wellbore.

258. To remove the drilling mud from the wellbore (and later the riser), BP pumped “spacer” through the drilling pipe followed by seawater. Spacer is a synthetic blend that acts as a barrier between the drilling mud and seawater. Although the use of spacer is a common and accepted practice, BP’s spacer concoction was mixed on board the rig from leftover chemicals that would enable BP to save money and skirt environmental regulations. As explained by the Presidential Commission:

While drilling crews routinely use water-based spacer fluids to separate oil-based drilling mud from seawater, the spacer BP chose to use during the negative pressure test was unusual. BP had directed . . . mud engineers on the rig to create a spacer out of two different lost-circulation materials left over on the rig - the heavy, viscous drilling fluids used to patch fractures in the formation

BP wanted to use these materials as spacer in order to avoid having to dispose of them onshore as hazardous waste pursuant to the Resource and Conservation Recovery Act, exploiting an exception that allows companies to dump water-based “drilling fluids” overboard if they have been circulated down through a well. At BP’s direction, [the mud engineers] combined the materials to create an unusually large volume of spacer that had never previously been used by anyone on the rig or by BP as a spacer, nor been thoroughly tested for that purpose.

259. Testimony before the Presidential Commission indicates that this concocted, untested spacer may have clogged the BOP’s kill line, interfering with the results of later testing designed to assess the integrity of the well.

260. After removing drilling mud from the wellbore, BP began a negative-pressure test to determine whether the well was sealed such that gas or liquid could not permeate into the well. This negative pressure test is the only test that assesses the integrity of the cement job at the

bottom of the well. BP had no established procedure or protocol for conducting a negative pressure test.

261. To conduct the negative-pressure test, the crew “bled off” pressure from the drilling pipe until it was 0 psi. The pipe was then sealed and monitored. For a successful negative pressure test, the pressure within the drilling pipe must remain at 0 psi for a certain period of time. The BP crew went through this process *three* times – bleeding down the pressure and then sealing the pipe – and all *three* times the pressure within the drill pipe jumped, reaching 1400 psi on the third attempt. Thus, the pressure test failed three times, in identical fashion.

262. The negative-pressure test performed exactly as intended. It gave the clear, unequivocal warning that the integrity of the well was compromised. As noted by the Presidential Commission: “[B]ased on available information, *the 1400psi reading on the drill pipe could only have been caused by a leak into the well.*” In May 2010, BP admitted in Congressional testimony that these pressure test results clearly signaled a “very large abnormality” in the well. Yet, notwithstanding the unequivocal results of the negative pressure test and without communicating the results to safety experts in Houston, BP ignored the warnings and instead applied the same test to the “kill line,” one of the pipes used to circulate fluids into and out of the well.

263. After conducting the negative-pressure test a *fourth* time (this time on the kill line), BP achieved what it considered to be a successful test result, and continued with the temporary abandonment process. During this last test, the crew was able to maintain 0 psi on the kill line, but the pressure on the drill pipe continued at 1400 psi. The Presidential Commission Report found that “BP used a spacer that had not been used by anyone at BP or on the rig before, that was not fully tested, and that may have clogged the kill line,” leading to the so-called successful test result.

264. As part of the negative-pressure testing of the well, the crew had already removed 3,300 feet of drilling mud below the sea floor from the well and replaced it with seawater. This decision was driven by BP's choice to place the "cement plug" at a depth of 3,000 feet. The cement plug is a three hundred foot cap, which is placed in the well as an additional safety measure to secure the well while it is in temporary abandonment. Placing the cement plug 3,300 feet below the ocean floor is not in accordance with accepted industry practice for performing this function. Indeed, placing the cement plug three *thousand* feet below the mud line was inconsistent with MMS regulations and required special dispensation.

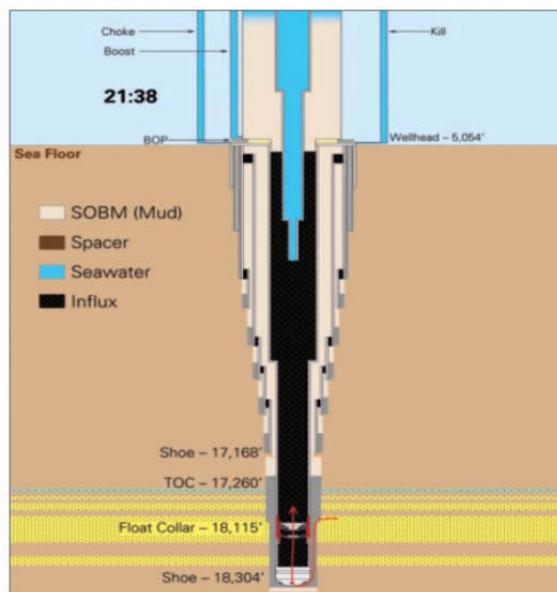
265. The associated risks were amplified by BP's decision (i) to leave 3,300 feet of the well below the ocean floor filled with only seawater, rather than heavy drilling mud and (ii) to postpone placement of the cement plug in the well. As a result, once BP opened the annular preventers on the BOP to facilitate the removal of mud from the riser, the only remaining barriers between the rig and the highly pressurized hydrocarbons in the well were the drilling mud remaining in the bottom section of the well and, beneath that, the cement job at the very bottom of the well.

266. At this stage, there was nothing to prevent leaked hydrocarbons (if present in the wellbore) from traveling up the riser to the rig. An influx of hydrocarbons is called a "kick" and is exceedingly dangerous due to the highly pressurized conditions. One gallon of gas at the bottom of the well is capable of expanding to 1,000 gallons by the time it reaches the rig on the ocean's surface. As the gas expands, it accelerates the kick. It is therefore imperative that the well be monitored closely for any evidence of a mounting kick.

267. At 8:02 p.m. on April 20, 2010, BP began to remove the drilling mud from the riser. As operations proceeded, the drilling mud was returning to the rig, but BP failed to monitor the rate

of return. The returned mud should have been placed in a subset of the rig's mud pits, referred to as the "active mud pits," to facilitate monitoring. Instead, the returned mud was being dispersed over a number of pits and mud from other operations was being routed to the active mud pits. As a result, there was no way to know whether more mud was returning to the rig than was being pumped into the well, a fact that would have been evidence that a kick was in progress.

268. At 9:01 p.m. on April 20, 2010, pressure measurements in the well signaled the impending crisis. Pressure in the well should have remained constant or decreased because the pumping pressure remained constant. However, the pressure in the drilling pipe slowly began to *increase*, signaling an influx of hydrocarbons into the well. An illustration of hydrocarbons entering the riser is below.



www.sec.gov

269. The crew did not respond to the pressure reading until approximately 9:30 p.m., when driller Dewey Revette ordered a crew member to bleed pressure from the drilling pipe. Despite the strong evidence of a kick, BP and its crew took no steps to assess the cause of the pressure reading or to seal the well. In addition, no employee in BP's Houston office was

monitoring the pressure in the Macondo well. As Fred Bartlit (“Bartlit”), a Presidential Commission investigator, made clear during a Commission presentation on November 9, 2010, drill pressure data was “available” in BP’s office in Houston, but BP did not in fact monitor it the night of the Deepwater Horizon blowout: “There was nobody in that B.P. Macondo Well office that night,” Bartlit said. “Everybody had gone home.”

270. Sometime after 9:40 p.m. on April 20, 2010, drilling mud began spewing onto the rig floor and, a few minutes later, the crew began its initial attempt to activate the BOP.

Explosion On The Deepwater Horizon

271. The crew initially attempted to activate the rig’s BOP annular preventer, a doughnut-shaped rubber and steel seal that fits around the drill pipe and seals the hydrocarbons from flooding the rig itself. However, the annular preventer failed to stop the flow of oil, most likely because the device had been ruptured four weeks earlier when the drilling pipe was moved through the annular preventer while the preventer was in the closed position. This sent a plume of drilling fluid filled with chunks of rubber to the surface.

272. Well data indicates that at 9:38 p.m., the first hydrocarbons passed through the BOP.

273. At 9:46 p.m., the crew attempted to activate the variable bore ram, which (like the annular preventer) should have sealed off the area around the drilling pipe. This effort also failed to stop the flow of hydrocarbons.

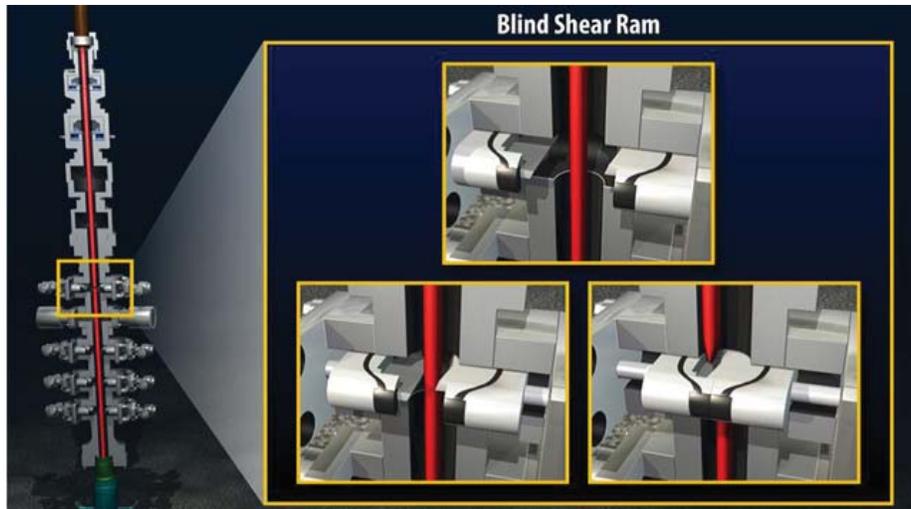
274. At 9:49 p.m., the hydrocarbon-filled drilling mud that was continuing to spew onto the deck of the rig ignited, causing the first explosion aboard the Deepwater Horizon. One eyewitness referred to “a cascade of liquid” pouring out twenty stories above the main deck of the

rig. Another described hearing an explosion that sounded like a “blown tire, times 100.” Barrels filled with explosive materials were catching fire and launching into the sky like missiles.

275. After the explosion, workers on the bridge did not immediately act to deploy the Emergency Disconnect System (“EDS”). Andrea Fleytas (“Fleytas”), a Dynamic Positioning Operator for the Deepwater Horizon who was in the bridge at the time of the explosion, told *The New York Times* that it did not occur to her to use the EDS and, in fact, she had never been taught how to use it. With respect to the EDS system, Fleytas stated, “I don’t know of any procedures.”

276. Sometime after the explosion, BP’s Subsea Supervisor Christopher Pleasant made his way to the bridge and attempted to activate the EDS, which should have activated the BOP’s blind shear ram. The blind shear ram – the last line of defense – is designed to seal a wellbore by cutting through the drilling pipe and pinching it closed, as the rams close off the well. However, the blind shear ram failed to respond.

277. Despite the failure of the EDS, the BOP’s “deadman switch” (an automatic response mechanism) should have triggered the blind shear ram. The deadman switch also failed to activate the blind shear ram. Later inspections revealed that the device had a myriad of problems due to lack of inspection and poor maintenance, including low battery charges in the critical components responsible for deploying the blind shear ram and defective relays that supply the power to close the blind shear ram.



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278. At this point, the only option left to the crew to activate the BOP would have been an acoustical control signal that would trigger deployment of the blind shear ram via an encoded pulse of sound transmitted by an underwater transducer. However, BP decided not to install the acoustic switch. While an acoustic switch is not required in the United States, it is mandated in many places throughout the world. In those foreign locations, BP uses rigs that do include such a safety device.

279. Witnesses on a supply ship could only watch as the fire grew on the rig and crew members leaping from the main deck and jumping 100 feet into the sea. With no way to bring the explosion under control, crew members abandoned ship. The Deepwater Horizon burned for thirty-six hours before finally tipping and sinking. The explosion claimed eleven crew members' lives, and seventeen more were injured.

***BP Continues To Attempt To Activate The BOP
Following The Abandonment Of The Deepwater Horizon***

280. Beginning at 1:15 a.m. on April 21, 2010, BP and other personnel began attempts to activate the BOP with remotely operated vehicles ("ROVs"). Over the ensuing days, BP attempted to activate the blind shear ram on several occasions. All efforts failed.

281. First, the ROVs applied hydraulic pressure to a panel controlling the blind shear ram, a method of activating the ram, referred to as “hot stab.” It would take BP ten days to learn that the method would necessarily fail because the targeted panel was actually attached to a useless test ram.

282. The ROVs also cut electrical wires in an attempt to simulate the deadman switch and attempted to activate the ram by triggering the autoshear (an automated disconnect that is triggered if the rig drifts too far from the well, threatening to break the riser). Still the ram did not deploy.

283. At 10:22 a.m. on April 22, 2010, the Deepwater Horizon sank, wrenching and further damaging the riser.

284. On May 5, 2010, after learning that the attempts to activate the blind shear ram through the “hot stab” method were actually targeting a useless test ram, BP ceased its attempts to activate the BOP.

285. As noted above, governmental investigations have primarily blamed BP for the explosion on Deepwater Horizon and the resulting oil spill. For example, the Interior Department Report states:

The loss of life at the Macondo site on April 20, 2010, and the subsequent pollution of the Gulf of Mexico through the summer of 2010 were the result of poor risk management, last-minute changes to plans, failure to observe and respond to critical indicators, inadequate well control response, and insufficient emergency bridge response training by companies and individuals responsible for drilling at the Macondo well and for the operation of the *Deepwater Horizon*.

BP, as the designated operator under BOEMRE regulations, was ultimately responsible for conducting operations at Macondo in a way that ensured the safety and protection of personnel, equipment, natural resources, and the environment.

B. BP Was Wholly Unprepared To Contain The Resulting Oil Spill

286. In the wake of the Deepwater Horizon catastrophe, it has become evident that BP's Regional OSRP was materially false and misleading when filed. Indeed, the Presidential Commission has described BP's Regional OSRP as "embarrassing." Suttles admitted on May 10, 2010, that BP failed to have an oil spill response plan with "proven equipment and technology" in place that could contain the oil spill. Similarly, in a November 8, 2010 interview with the BBC, Hayward ultimately confirmed that the Company had failed to develop sufficient emergency response plans, admitting that "[w]e were making it up day to day."

287. For example, since BP claimed that it was prepared to recover approximately 500,000 barrels of spilled oil per day, and the worst case scenario for the Macondo well was the release of only 162,000 barrels of oil per day, the Company should have had no problems containing the oil spill. However, as noted by the Presidential Commission: "Despite [BP's claims that it 'could recover nearly 500,000 barrels of oil per day'], the oil-spill removal organizations were quickly outmatched."

288. Furthermore, while BP's Regional OSRP claimed that an oil spill occurring under the three different scenarios – *i.e.*, less than ten miles from the shoreline, more than ten miles from the shoreline, and from a mobile drilling rig that is drilling an exploratory well – could cause differences in the amount of oil spilled, BP consistently stated that the "shoreline impact" under each scenario would be identical. This led the Presidential Commission to find that BP's Regional OSRP "evidenced [a] serious [lack of] attention to detail."

289. The Presidential Commission also noted several other errors in BP's Regional OSRP. For instance, the Presidential Commission found that BP's Regional OSRP was false when issued because "half of the 'Resource Identification' appendix (five pages) . . . was copied from material on [The National Oceanic and Atmospheric Administration ("NOAA")] websites,

without any discernable effort to determine the applicability of that information to the Gulf of Mexico. As a result, the BP Oil Response Plan described biological resources nonexistent in the Gulf – including sea lions, sea otters, and walruses.”

290. Likewise, BP’s Regional OSRP named Dr. Peter L. Lutz (“Lutz”) from the University of Miami’s School of Marine Sciences as a wildlife expert. Lutz was a pioneer in whole-organism integrative physiology, but the Presidential Commission found that he “had died several years before BP submitted its plan.” Not only had Lutz been deceased since 2005, but he left the University of Miami almost twenty years prior to chair the marine biology department at a different university.

291. Similarly, BP’s Regional OSRP included incorrect contact information for the Marine Spill Response Corporation (“MSRC”). According to the Presidential Commission, the MSRC was “BP’s main oil-spill removal organization in the Gulf,” but, inexplicably, “a link in [BP’s Regional OSRP] that purported to go to the Marine Spill Response Corporation website actually led to a Japanese entertainment site.” Likewise, the names and phone numbers of several Texas A&M University marine specialists were wrong and the listing of certain mammal stranding network offices in Louisiana and Florida were outdated and, in certain cases, had been closed.

292. On June 8, 2010, journalist Tim Dickinson from *Rolling Stone* magazine published an article criticizing BP’s Regional OSRP. The article stated: “The effect of leaving BP in charge of capping the well, says a scientist involved in the government side of the [clean up] effort, has been ‘like a drunk driver getting into a car wreck and then helping the police with the accident investigation.’” The article also stated, in part, that:

‘This response plan is not worth the paper it is written on,’ said Rick Steiner, a retired professor of marine science at the University of Alaska who helped lead the

scientific response to the Valdez disaster. ‘Incredibly, this voluminous document never once discusses how to stop a deepwater blowout.’

The Failed Use Of Unprecedented Amounts Of Dispersants

293. As set forth below, BP’s extensive and potentially problematic use of dispersants further demonstrated its lack of preparedness to respond to the spill.

294. On April 22, 2010, BP began spraying massive amounts of dispersants – namely “Corexit” – on the oil that had reached the surface of the Gulf of Mexico. Dispersants such as Corexit are not intended to remove oil from the water; rather, energy from wind and waves naturally disperses oil and dispersants may accelerate the process by allowing the oil to mix with water more easily, dispersing the oil vertically and horizontally in the water column.

295. However, dispersants pose several serious health and environmental threats. For example, dispersants – including Corexit – decrease the amount of oil on the surface of the water, but increase the amount of oil in the water column. Corexit therefore enables the oil to spread over a wider area, significantly increasing the exposure of marine life to toxic chemicals and oil. In addition, chemically dispersed oil can be toxic not just in the short term, but also over the long term. Accordingly, the decision to engage in wide-spread use of dispersants must be carefully considered, particularly given the fact that studies have found that dispersants may not increase biodegradation rates and might even inhibit biodegradation.

296. Furthermore, Corexit is a chemical dispersant that contains 2-butoxy ethanol. According to the New Jersey Department of Health, 2-butoxy ethanol “may be a carcinogen in humans. There may be no safe level of exposure to a carcinogen, so all contact should be reduced to the lowest possible level.” BP’s Regional OSRP makes no mention of this serious side effect.

297. Between April 22, 2010 through April 26, 2010, BP and its subcontractors applied 14,654 gallons of Corexit to the surface of the Gulf of Mexico. Then, from April 27, 2010 to May

3, 2010, BP and its subcontractors applied another 141,358 gallons of Corexit to the surface of the Gulf of Mexico. The following week, they applied an additional 168,988 gallons of Corexit to the surface of the Gulf of Mexico. The Presidential Commission found that BP's extreme use of Corexit was "novel" and had never been used in these "unprecedented volumes." The Presidential Commission stated that while oil spill "responders had often deployed dispersants to respond to spills" it had "*never* [been done] in such volumes; during the Exxon Valdez spill, responders sprayed about 5,500 gallons [of dispersants], and that use was controversial."

298. As the volume of dispersants sprayed on the surface grew dramatically, BP then raised the idea of applying dispersants directly at the well. Once again, however, the Presidential Commission found that oil spill responders "had never before applied dispersants in the deep sea" and "responders were concerned about the absence of information of the effects of dispersants in the deepwater environment. No federal agency had studied subsea dispersant use and private studies had been extremely limited."

299. Because no federal agency had ever allowed the subsea release of dispersants in a deepwater environment, on May 10, 2010, the U.S. Coast Guard and EPA prohibited its use "until initial testing demonstrates the effectiveness of subsurface dispersant application." Then, during a May 24, 2010 press conference, EPA Administrator Lisa Jackson announced that the government was instructing BP to "take immediate steps to significantly scale back the overall use of dispersants" and expressed EPA's belief that BP "can reduce the amount of dispersant applied by as much as half, and possibly more." Based on the unknown and highly risky side effects of dispersants, on May 26, 2010, the U.S. Coast Guard and EPA issued a joint letter and directive stating, in part, as follows:

Reduction in Use of Dispersants. BP shall implement measures to limit the total amount of surface and subsurface dispersant applied

each day to the minimum amount possible. BP shall establish an overall goal of reducing dispersant application by 75% from the maximum daily amount used as follows:

- a. Surface Application. BP shall eliminate the surface application of dispersants. In rare cases when there may have to be an exemption, BP must make a request in writing to the [Federal On Scene Coordinator (“FOSC”)] providing justification which will include the volume, weather conditions, mechanical or means for removal that were considered and the reason they were not used, and other relevant information to justify the use of surface application. The FOSC must approve the request and volume of dispersant prior to initiating surface application.
- b. Subsurface Application. BP shall be limited to a maximum subsurface application of dispersant of not more than 15,000 gallons in a single calendar day. Application of dispersant in amounts greater than specified in this Addendum 3 shall be in such amounts, on such day(s) and for such application (surface or subsurface) only as specifically approved in writing by the [FOSC].

300. “Despite this directive,” the Presidential Commission noted that “surface use of dispersants continued.” While the Company did seek exemptions from the directive, “EPA expressed frustration that BP sought regular exemptions, and it repeatedly asked for more robust explanations of why BP could not use mechanical recovery methods, such as skimming and burning, instead of dispersants.” On July 14, 2010, EPA ultimately prohibited the use of dispersants altogether.

The Failed Use Of A Cofferdam

301. Knowing that dispersants would be unable to significantly lessen the environmental catastrophe, BP began to theorize other ways that it might be able to contain and/or recover the spewing oil. The Company’s new idea – which was noticeably absent from BP’s Regional OSRP – was to place a large containment dome (or “cofferdam”) over the larger of the two leaks, with a pipe at the top channeling oil and gas to a ship on the surface of the Gulf of Mexico, the *Discoverer*

Enterprise. BP had several cofferdams already, but those had been designed, and had only been utilized, in shallow water scenarios and had never been tested in a similar deepwater environment. Thus, BP was forced to quickly attempt to modify one of its existing cofferdams for these new and unintended purposes. The modification of the preexisting cofferdam was complete on or about May 4, 2010. BP began its attempt to place the 98-ton dome on the sea floor late in the evening on May 6, 2010.

302. The *ad hoc* modifications made to the cofferdam were ultimately unsuccessful. In his book on the Deepwater Horizon tragedy published in late 2010, *Disaster on the Horizon*, former drilling engineer Bob Cavnar (“Cavnar”) described the initial containment dome effort as the “silliest contraption” that BP built in the aftermath of the incident, and that the steps to construct and lower it down to the leaking BOP “never made much sense . . . they were more for show – to look like they were doing something while they were trying to come up with a real plan.” Cavnar stated in an interview that the cofferdam was “destined to fail” due to the “scientific certainty” that gas hydrates would immediately form in the device and clog it, and describes in his book the results of its deployment as “almost instantaneous failure.”

303. Likewise, the Presidential Commission noted:

BP’s Suttles publicly cautioned that previous successful uses had been in much shallower water. BP recognized that chief among potential problems was the risk that methane gas escaping from the well would come into contact with cold sea water and form slushy hydrates, essentially clogging the cofferdam with hydrocarbon ice. Notwithstanding the uncertainty, BP, in a presentation to the leadership of the Department of Interior, described the probability of the containment dome’s success as “Medium/High.” Others in the oil and gas industry were not so optimistic: many experts believed the cofferdam effort was very likely to fail because of hydrates.

304. Not surprisingly, the effort failed. Hydrates accumulated during the installation of the dome, yet BP only had a plan to deal with hydrates once the cofferdam was in place. Thus, when crews started to maneuver the cofferdam into position on May 7, 2010, hydrates formed

before they could even place the dome over the leak, immediately clogging the opening through which oil was to be funneled. This error in planning almost led to another catastrophe. As noted by the Presidential Commission:

Because hydrocarbons are lighter than water, the containment dome became buoyant as it filled with oil and gas while BP tried to lower it. BP engineers told [the Company's Vice President overseeing the project Richard] Lynch that they had "lost the cofferdam" as the dome, full of flammable material, floated up toward the ships on the ocean surface. Averting a potential disaster, the engineers were able to regain control of the dome and move it to safety on the sea floor. In the wake of the cofferdam's failure, one high-level government official recalled Andy Inglis, BP's Chief Executive Officer of Exploration and Production, saying with disgust, "If we had tried to make a hydrate collection contraption, we couldn't have done a better job."

305. In the days after the failure of the cofferdam, BP temporarily utilized a device known as a "Riser Insertion Tube" to collect some of the oil. However, BP abandoned the effort after only a few days because of the relatively minor amount of oil the device actually managed to collect.

The "Top Kill" And "Junk Shot" Efforts Fail

306. Following the failure of the Company's cofferdam experiment, BP tried to stop the flowing oil by embarking on so-called "top kill" and "junk shot" efforts. Both methods are industry techniques that have been historically applied to stop the flow of oil from a blown-out well.

307. BP, like the rest of the oil industry, was well aware of the Ixtoc I Oil Spill in 1979 in which a rig exploded, caught fire, sank, killed workers and released millions of gallons of oil into the Gulf of Mexico. In the Ixtoc spill, the same two techniques were attempted and it took approximately 290 days to bring that well under control. BP's Oil Spill Response Plan made no mention of having to rely on either of these methods let alone provide any qualification as to how effective each method might be in a similar circumstance. Further, the Presidential Commission

noted that neither technique “had never been used in deepwater.” In the end, both efforts failed to control the proliferation of oil from the Macondo well.

308. A top kill – also known as a momentum or dynamic kill – involves pumping heavy mud into the top of the well through the BOP’s choke and kill lines, at rates and pressures high enough to force escaping oil back down the well and into the reservoir. A junk shot complements a top kill and involves pumping material (including pieces of tire rubber and golf balls) into the bottom of a BOP through the choke and kill lines. That material is supposed to get caught on obstructions within the BOP and impede the flow of oil and gas. By slowing or stopping the flow of oil, a successful junk shot makes it easier to execute a top kill.

309. BP’s top kill and junk shot plan began on the afternoon of May 26, 2010. In this regard, the Presidential Commission concluded, in relevant part, as follows:

As with the cofferdam, BP struggled with public communications surrounding the top kill. At the time, both industry and government officials were highly uncertain about the operation’s probability of success. One MMS employee estimated that probability as less than 50 percent, while a BP contractor said that he only gave the top kill a “tiny” chance to succeed. But BP’s Hayward told reporters, “We rate the probability of success between 60 and 70 percent.”

310. During three separate attempts over the next three days, BP pumped mud at rates exceeding 100,000 barrels per day and fired numerous shots of “junk” into the BOP. After the third unsuccessful attempt, BP acknowledged that the plan was a failure. BP’s explanation of the failed attempts focused on the well’s 16-inch casing, the outermost barrier between the well and the surrounding rock for more than 1,000 vertical feet. That casing was fabricated with three sets of weak points, or “rupture disks.” During the well’s production phase, the hot oil coursing through the production casing, which is inside the 16-inch casing, would lead to a buildup of pressure in the well. If the pressure buildup was too high, it could cause the collapse of one of the two casings. The disks were designed to rupture and relieve this potential buildup of pressure before a casing

collapsed. According to BP, pressures created by the initial blowout could have caused the rupture of disks to collapse inward, compromising the well's integrity.

311. The Presidential Commission, however, disagreed with BP's explanation and found, in part, "Collapse of the rupture disks was only one of BP's possible explanations for the unsuccessful top kill. But the company presented it to the government as the most likely scenario." Indeed, the U.S. government noted that it "did not fully accept BP's analysis of what happened" and, in contrast, believed that "the top kill likely failed because the rate at which oil was flowing from the well was many times greater than the then-current 5,000 barrels-per day estimate. Because BP did not pump mud into the well at a rate high enough to counter the actual flow, oil and gas from the well pushed mud back up the BOP and out of the riser."

The "Top Hat" Failed To Collect The "Vast Majority" Of The Spewing Oil

312. In the aftermath of the failed top kill and junk shot plan, BP began shifting its main focus to collecting the oil rather than killing the well itself. On May 29, 2010, BP announced that it would attempt to cut off the portion of the riser still attached to the top of the BOP and install a collection device – or "top hat" – which would then be connected via a new riser to the *Discoverer Enterprise* vessel. As before, BP's Oil Spill Response Plan failed to mention the top hat technique as a potential remedy in the event of an oil spill. BP began installing the top hat on June 1, 2010, and had it in place by 11:30 p.m. on June 3, 2010. By June 8, 2010, forty-nine days after the explosion occurred, the *Discoverer Enterprise* was collecting about 15,000 barrels of oil per day – or approximately 25% of the oil being released.

313. BP also developed a system to bring oil and gas to the surface through the choke line on the BOP. More specifically, BP outfitted a vessel called the *Q4000* with collection

equipment, including an oil and gas burner imported from France. This vessel and resource was also never mentioned in BP's Oil Spill Response Plan.

314. While BP was able to slowly start collecting some of the oil, the Company was, in the words of the Presidential Commission, once again "overly optimistic about the percentage of the oil it could remove or collect." Indeed, the Presidential Commission found, in part, as follows:

On June 1, Suttles said that he expected the top hat, when connected to the Discoverer Enterprise, to be able to collect the "vast majority" of the oil. Within days, it became apparent that the top hat and Discoverer Enterprise were inadequate. On June 6, Hayward told the BBC that, with the Q4000 in place, "we would very much hope to be containing the vast majority of the oil." But when the Q4000 came online in mid-June, the two vessels' joint capacity of 25,000 barrels per day was still insufficient.

315. In the wake of the failure to contain most of the oil using the top hat, the U.S. Coast Guard continued questioning BP's response to the spill. As noted, in part, by the Presidential Commission:

BP's Lynch said that the speed at which the company brought capacity online was limited solely by the availability of dynamically positioned production vessels.³⁵ One senior Coast Guard official challenged BP's definition of availability: he suggested that BP did not consider options such as procuring ships on charter with other companies until the government pushed it to do so.

Obtaining another production vessel might have enabled BP to collect oil through the BOP's kill line at a rate comparable to that of the *Q4000*.

The Well Is Finally Capped

316. Following the limited success of the top hat procedure, BP began presenting its final well-control plans to government experts. According to the Presidential Commission Report:

The [U.S. government] science advisors would question BP's assumptions, forcing it to evaluate worst-case scenarios and explain how it was mitigating risk. The government saw its pushback as essential because BP would not, on its own, consider the full range of possibilities. According to one senior government

³⁵ Dynamically positioned vessels have computer-controlled systems that maintain the vessel's exact position and direction, despite external factors such as wind, waves, and current.

official, before the increased supervision, BP “hoped for the best, planned for the best, expected the best.” [Paul] Tooms, BP’s Vice President of Engineering, believed that the government science advisors unnecessarily slowed the containment effort, arguing that scientists consider risk differently than engineers and that BP had expertise in managing risk. BP, however, was not in the best position to tout that expertise: its well had just blown out.

317. By late June, BP was working towards deploying a “capping stack,” yet another *post hoc* measure nowhere reflected in BP’s Regional OSRP. The capping stack was essentially a smaller version of a BOP, designed to sit atop the BOP and stop the flow of oil and gas.

318. On July 9, 2010, Coast Guard Admiral Thad Allen (“Admiral Allen”) authorized BP to install the capping stack, but not to close it. Sealing the capping stack would increase the pressure in the well. There was a concern that if one or more of the rupture disks had in fact ruptured, the increased pressure could force hydrocarbons into the surrounding formation, leading to uncontrolled eruptions from the ocean floor at other locations.

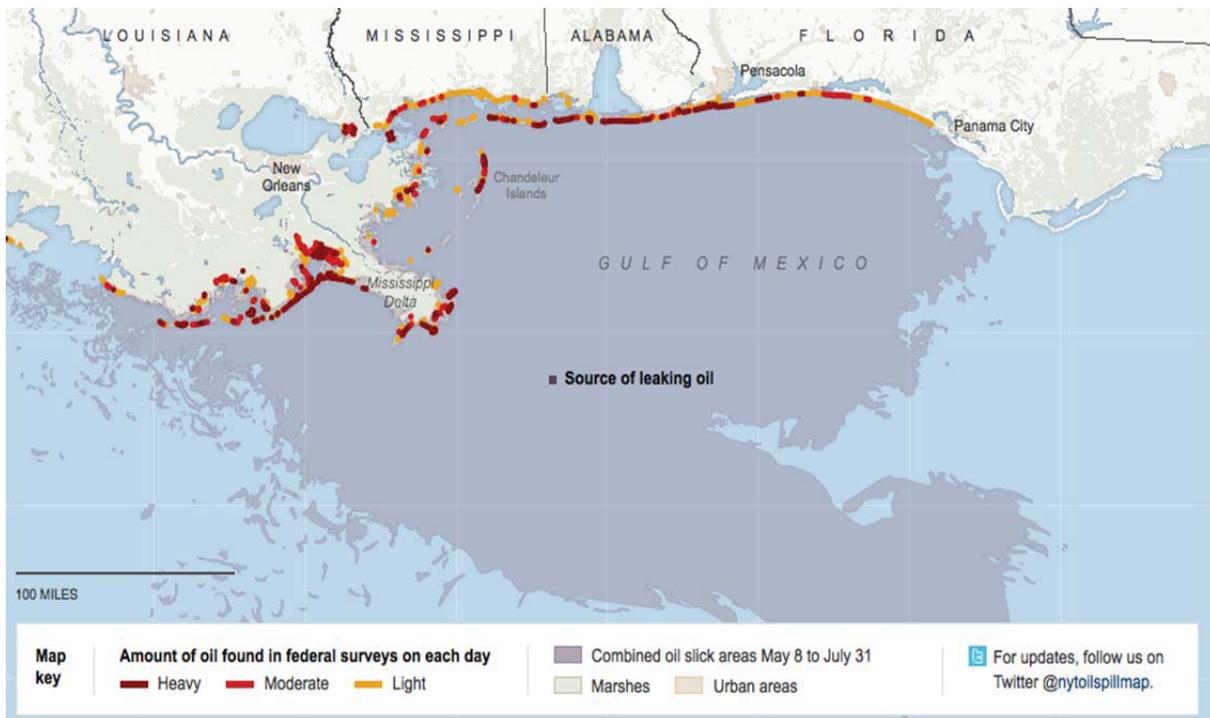
319. The installation of the capping stack was completed on July 12, 2010. The next day, experts conducted a “well integrity test” to determine if the well had been compromised and to see whether oil could flow into the rock formation. According to the Presidential Commission: “[t]he test was to last from 6 to 48 hours, and BP had to monitor pressure, sonar, acoustic, and visual data continuously, as recommended by the [U.S. government’s] Well Integrity Team.”

320. On July 15, 2010, after a 24-hour delay to repair a leak, BP shut the capping stack and began the well integrity test. For the first time in 87 days – and after approximately five million barrels of oil had already seeped into the Gulf of Mexico – the well had finally stopped spewing oil. Unfortunately, however, by that time, the vast environmental damage had already occurred and, as noted by *The New York Times* on August 6, 2010, “BP’s containment efforts had captured only approximately 16 percent of the spill.”

321. Meanwhile, on July 19, 2010, BP publicly raised the possibility of actually killing the well through a procedure called a “static kill.” Like the top kill, the static kill involved pumping heavy drilling mud into the well in an effort to push oil and gas back into the reservoir. However, because the oil and gas were already static, the pumping rates required for the static kill to succeed were far lower than the top kill. The U.S. government approved the static kill procedure on August 2, 2010. By 11:00 p.m. on August 3, 2010, the static kill appeared to have worked. On August 8, 2010, Admiral Allen reported that the cement had been pressure-tested and was holding.

322. In mid-September 2010, the first relief well – which BP had begun to drill in early May – finally intercepted the Macondo well, allowing BP to pump in cement and permanently seal the reservoir. Thus, on September 19, 2010 – 152 days after the blowout – the U.S. government finally announced that “the Macondo [] well is effectively dead.”

323. In total, 206 million gallons of crude oil spilled into the Gulf of Mexico, the largest maritime oil spill in history. The map below depicts the vast geographical impact of the oil spill, as of July 31, 2010.



<http://www.eoearth.org>

VII. DEFENDANTS' FALSE STATEMENTS AND OMISSIONS

324. Plaintiffs were injured by a series of misrepresentations and omissions made by Defendants between February 7, 2007 and May 24, 2010. The misleading nature of these statements were made clear by the April 20, 2010 explosion of the Deepwater Horizon drilling rig; the ensuing oil spill into the Gulf of Mexico; and various events and disclosures in the months following the explosion. Defendants' false statements and omissions may be categorized into four broad categories.

325. First, Defendants made false statements touting BP's progress in implementing the Baker Panel recommendations following the 2005 explosion at the Company's Texas City refinery. As noted above, the Baker Panel was convened to review and suggest improvements to BP's safety practices, the efficacy of which was seriously in doubt following a series of high-profile safety mishaps. The Baker Panel released a report in January 2007, which included

specific recommendations intended to improve BP's safety culture and processes. Following the release of the Baker Report, Defendants repeatedly publicized their progress on the Baker Report's recommendations to assure investors that BP had turned a corner on safety. These representations were false because, in truth, nothing about BP's safety programs had changed, and BP remained an accident waiting to happen.

326. Second, Defendants made false statements describing OMS as a system being applied across all of BP's lines of business, worldwide, in an attempt to standardize safety processes. Statements in this category were misleading because they omitted that OMS would not govern safety practices at contractor-owned sites, such as the Deepwater Horizon drilling rig. Statements in this category were also misleading because Defendants represented that OMS had been implemented in the Gulf of Mexico by the time of the Deepwater Horizon explosion, when in fact it had not.

327. Third, Defendants made false statements in two agency filings—the EP and the OSRP - describing BP's ability to respond to a catastrophic deepwater oil spill. These statements were grossly inaccurate, and BP had no contingency plans and no adequate response equipment for a disaster.

328. Fourth, Defendants made false statements after the April 20, 2010 Deepwater Horizon explosion regarding the magnitude of the resulting oil spill. Defendants perpetuated the fiction that the spill was only approximately 5,000 barrels per day, even as internal BP estimates showed that the true number was much higher.

329. Whenever any of the following false and misleading statements is attributed to any one or more of the Individual Defendants, it is attributable also to Defendant BP, as well as to BP

subsidiaries Defendants BP America and/or BP Exploration (whichever employed the Individual Defendant speaking).

A. February 7, 2007

330. On February 7, 2007, BP senior management held an in-person meeting at BP's offices with institutional investors, including certain of Plaintiffs LASERS's and Texas Teachers' Investment Managers. Representing BP at the meeting were Hayward, Dudley, John Manzoni (Chief Executive, Refining & Marketing), Fergus Macleod (Head of Investor Relations) and then Chief Executive Browne. The meeting occurred less than three months after BP informed institutional investors at another in-person meeting that the Texas City incident was partially due to competing safety cultures at different legacy operating sites and that BP had cross-applied lessons learned from Texas City to its other refineries. Additionally, the meeting occurred less than a month after the January 16, 2007 release of the Baker Report and BP's concurrent announcement in a press release that it had taken a number of actions which align with the recommendations of the [Baker Panel] and will, after a more thorough review, develop plans . . . for applying lessons learned elsewhere."

331. The February 7, 2007 meeting focused on BP's safety issues. At the outset of the meeting, Browne updated the attendees on the investigations into Texas City and Prudhoe Bay. Browne remarked that the Company's strategy was unchanged and that it continued to focus on safety and performance. Browne indicated that the Texas City refinery was coming online with an emphasis on process safety. During a question and answer session that followed, the BP representatives indicated that "local checks and balances in compliance" had been instituted within the U.S., that BP "assess[ed] risk on an asset by asset basis," and that *the Company had taken "action to reduce risk" in its business, so that "risk in [its] business [was] lower" in an attempt to create a "consistent operations system" in a "BP way."*

332. BP senior management in attendance at the February 7, 2007 in-person meeting were aware of LASERS's and Texas Teachers' Investment Managers' identity and role as Investment Managers to a specific group of major institutional investors to which Plaintiffs LASERS and Texas Teachers belonged at the time the statements were made. Given Plaintiffs LASERS's and Texas Teachers' Investment Managers' role as investment advisor and the materiality of the information provided, BP senior management in attendance at the February 7, 2007 in-person meeting were or should have been aware that the information provided at this meeting would be used by Plaintiffs LASERS and Texas Teachers to determine whether to invest in or divest BP stock.

333. The foregoing misrepresentation, which caused BP Shares to trade at artificially inflated prices, was materially false or misleading when made, and was known by Defendants to be false at that time, or was made with reckless disregard for the truth, for the following reason, among others: This statement evoked the Baker Panel recommendation to “establish and implement an integrated and comprehensive process safety management system”—which was purportedly addressed by BP's OMS. Defendants failed to disclose that the “lower[ed]” risk profile stemming from BP's “consistent operations system” referred only to sites fully-owned and operated by BP – despite BP's professed intention to apply the Baker Panel recommendations across all lines of business worldwide. Accordingly, the foregoing statement is a misleading half-truth.

B. November 8, 2007³⁶

334. On November 8, 2007, Hayward spoke at the Houston Forum about BP's implementation of the Baker Panel recommendations. During his presentation, Hayward stated, in part, as follows:

We continue to implement the roadmap provided to ourselves and the industry by the excellent work of the Baker Panel. BP remains absolutely committed to taking these lessons and becoming a world leader in process safety.

335. The foregoing misrepresentation, which caused BP Shares to trade at artificially inflated prices, was materially false or misleading when made, and was known by Hayward to be false at that time, or was made with reckless disregard for the truth, for the following reasons, among others: Hayward misled investors about BP's implementation of the Baker Panel's recommendations because he falsely represented BP's intention to implement the policies, procedures, and recommendations detailed in the Baker Report. Additionally, Hayward's statement is false because he falsely represented that BP was making progress in addressing the recommendations of the Baker Report and improving its process safety systems following the Texas City incident.

C. February 22, 2008

336. On February 22, 2008, BP released its 2007 Annual Review, which BP made available to the investing public on its official website. The 2007 Annual Review contained the "Group chief executive's review." In his Executive Review, which Hayward signed, Hayward stated that, under his leadership, safety was BP's top priority. For example, Hayward stated, in part, as follows: "[w]hen I took over as group chief executive, the immediate task was to restore

³⁶ According to BP's press release entitled, "BP CEO Tony Hayward Details Commitment to U.S. Energy Security in the New Era," available at BP's corporate website, the foregoing statements were made on November 7, 2007.

the integrity and the efficiency of BP's operations. *I set out three priorities: safety, people and performance.*"

337. The foregoing misrepresentation, which caused BP Shares to trade at artificially inflated prices, was materially false or misleading when made, and was known by Hayward to be false at that time, or was made with reckless disregard for the truth, for the following reason, among others: Hayward misled investors with regard to BP's efforts to "restore the integrity and the efficiency of BP's operations" through implementation of the Baker Panel's recommendations. Hayward's repeated statements falsely represented BP's intention to implement the policies, procedures, and recommendations detailed in the Baker Report. Additionally, Hayward's statement is false because he falsely represented that BP was making progress in addressing the recommendations of the Baker Report and improving its process safety systems following the Texas City incident.

D. February 27, 2008

338. On February 27, 2008, BP conducted its 2008 Strategy Presentation during a conference call with investors and analysts (in which Hayward participated). There, Hayward stated, in part, as follows:

Notwithstanding this track record our intense focus on process safety continues. We are making good progress in addressing the recommendations of the Baker Panel and have begun to implement a new Operating Management System across all of BP's operations. Integrity related incidents have fallen significantly over the last three years and oil spills of more than one barrel continue a strong downward trend.

Safe and reliable operations remain our number one priority.

339. The foregoing misrepresentations, which caused BP Shares to trade at artificially inflated prices, were each materially false or misleading when made, and were known by Hayward

to be false at that time, or were made with reckless disregard for the truth, for the following reasons, among others:

(a) Hayward misled investors with regard to BP's implementation of the Baker Panel's recommendations because Hayward's repeated statements falsely represented that BP's intention to and actual progress in implementing the policies, procedures, and recommendations detailed in the Baker Report;

(b) Hayward misrepresented that BP was improving its process safety systems following the Texas City incident; and

(c) Hayward misrepresented that BP was implementing OMS "across all of BP's operations" when, in fact, OMS applied only to rigs that BP fully-owned but not to BP's operations where BP leased rigs from others, as it did with Transocean's Deepwater Horizon in the Gulf of Mexico.

E. March 4, 2008

340. On March 4, 2008, BP filed its Annual Report on Form 20-F, which was signed by Hayward. In it, BP stated, *inter alia*:

Throughout 2007, BP continued to progress the process safety enhancement programme initiated in response to the March 2005 incident at the Texas City refinery. We worked to implement the recommendations of the BP US Refineries Independent Safety Review Panel (the panel), which issued its report on the incident in January 2007 (see www.bp.com/bakerpanelreport). We have made material progress throughout the group across all of the panel's 10 recommendations.

341. The foregoing misrepresentations, which caused BP Shares to trade at artificially inflated prices, were each materially false or misleading when made, and were known by Hayward to be false at that time, or were made with reckless disregard for the truth, for the following reasons, among others:

(a) Hayward misled investors with regard to BP's implementation of the Baker Panel's recommendations because Hayward's repeated statements falsely represented that BP's intention to and actual progress in implementing the policies, procedures, and recommendations detailed in the Baker Report; and

(b) Hayward misrepresented that BP was improving its process safety systems following the Texas City incident.

F. April 17, 2008

342. On April 17, 2008, Hayward and BP Chairman Peter Sutherland delivered speeches at the Company's 2008 Annual General Meeting. BP posted transcripts of the speeches on its publicly accessible website. In his speech, Hayward again asserted that safety was of the utmost importance at BP and distinguished BP from other oil companies based on its deepwater operations. In particular, Hayward stated, in part, as follows:

When I took over as chief executive last May, I said that we would focus on three basic priorities: safety, people, and performance. Everyone at BP understands those priorities. And while I am in this role they will remain the priorities.

Safety is our number one priority and in 2007 our overall safety record continued to improve. Over the last eight years our safety performance according to the standard industry measure has improved threefold and is now among the best in our industry.

Our intense focus on process safety continues. We are making good progress in addressing the recommendations of the Baker Panel and have begun to implement a new Operating Management System across all of BP's operations. This is aimed at ensuring that our operations across the world look and feel the same everywhere - and perform to the same high standard.

343. On April 17, 2008, BP filed with the SEC on Form 6-K an "Address to Shareholders at The Annual General Meeting of BP p.l.c. on April 17, 2008," which contained the misleading statements set forth above.

344. The foregoing misrepresentations, which caused BP Shares to trade at artificially inflated prices, were each materially false or misleading when made, and were known by Hayward to be false at that time, or were made with reckless disregard for the truth, for the following reasons, among others:

(a) Hayward misled investors with regard to BP's implementation of the Baker Panel's recommendations because Hayward's repeated statements falsely represented that BP's intention to and actual progress in implementing the policies, procedures, and recommendations detailed in the Baker Report;

(b) Hayward misrepresented that BP was improving its process safety systems following the Texas City incident; and

(c) Hayward misrepresented that BP was implementing OMS "across all of BP's operations" when, in fact, OMS applied only to rigs that BP fully-owned but not to BP's operations where BP leased rigs from others, as it did with Transocean's Deepwater Horizon in the Gulf of Mexico.

G. December 17, 2008

345. On December 17, 2008, Hayward gave a speech at the HRH Prince Of Wales's 3rd Annual Accounting For Sustainability Forum. BP posted a transcript of the speech on its publicly accessible website. Hayward claimed that BP was continuing to improve its process safety practices. More specifically, Hayward stated, in part, as follows:

BP had a number of high-profile safety lapses in recent years, notably at our Texas City refinery, where there was tragic and unacceptable loss of life.

These lapses exposed shortcomings - but they also gave us a huge opportunity to learn and improve the way we operate. *We opened ourselves up to scrutiny - and we listened more to our front-line operations people - who, of course, really know what is going on on the ground. And we have continuously reported progress against a response plan and against an independent external report.*

One of the many consequences for us has been to develop and to embed a new Operating Management System right across BP - and we operate in 100 countries - so that is no mean feat.

346. The foregoing misrepresentations, of consistent progress in safety processes, a potent OMS, and thus, safe, reliable and responsible deep sea drilling operations, which caused BP Shares to trade at artificially inflated prices, were each materially false or misleading when made or included material omissions, and were known by Hayward to be false at that time, or were made with reckless disregard for the truth, for the following reasons, among others:

(a) An internal BP strategy document issued in December 2008 warned BP executives of “major” process-safety concerns in the Gulf of Mexico that permitted the accumulation of risks prior to and in response to incidents and therefore, increased the likelihood and severity of “process-safety related incidents”;

(b) Hayward misled investors with regard to BP’s implementation of the Baker Panel’s recommendations because Hayward’s repeated statements falsely represented BP’s intention to and actual progress in implementing the policies, procedures, and recommendations detailed in the Baker Report;

(c) Hayward misled investors because he seriously overstated the “progress” BP had made in process safety efforts following the Texas City incident and as measured against the Baker Report recommendations;

(d) Hayward misled investors because by claiming that BP “listened to operations people” and encouraged employees to raise safety concerns when in fact BP retaliated against workers workers—both its own and those of its contractors—who reported safety concerns.

H. February 24, 2009

347. On February 24, 2009, BP issued its 2008 Annual Review, which BP made available to the investing public on its official website, and repeatedly assured investors of its supposed continuing commitment to safety. For example, the 2008 Annual Review contained the “Group chief executive’s review,” in which Hayward asserted that safety was BP’s “number one priority” and discussed the “safe and reliable” Gulf of Mexico operations. More specifically, Hayward stated, in part, that:

Q: At the start of the year what priorities did you set out for BP?

Safety, people and performance, and these remain our priorities. Our number one priority was to do everything possible to achieve safe, compliant and reliable operations. Good policies and processes are essential but, ultimately, safety is about how people think and act. That’s critical at the front line but it is also true for the entire group. Safety must inform every decision and every action. **The BP operating management system (OMS) turns the principle of safe and reliable operations into reality by governing how every BP project, site, operation and facility is managed.**

* * *

Q: How did Exploration and Production perform?

It was an excellent year, with major projects such as Thunder Horse in the Gulf of Mexico and Deepwater Gunashli in Azerbaijan coming onstream. That, together with safe and reliable performance from our existing operations, contributed to underlying production growth – in contrast to the falling output of our major competitors – and more than compensated for the effects of Hurricanes Ike and Gustav and other operational issues.

348. The foregoing misrepresentations, which caused BP Shares to trade at artificially inflated prices, were each materially false or misleading when made, and were known by Defendants BP and Hayward to be false at that time, or were made with reckless disregard for the truth, for the following reasons, among others:

(a) BP misled investors by stating that the Gulf of Mexico operations had completed the transition to OMS when, in fact, *inter alia*, Hayward and other BP personnel

testified in MDL 2179 that OMS had not been implemented in the Gulf of Mexico as of April 2010, and BP conceded the falsity of the representation at the hearing on Defendants' motions to dismiss the Class Complaint on November 4, 2011;

(b) Hayward misrepresented that OMS governed "how every BP project, site, operation and facility is managed" when, in fact, OMS applied only to rigs that BP fully-owned but not to BP's operations where BP leased rigs from others, as it did with Transocean's Deepwater Horizon in the Gulf of Mexico; and

(c) An internal BP strategy document issued in December 2008 warned GORC members, including Hayward, that there were "major" process-safety concerns in the Gulf of Mexico that permitted the accumulation of risks prior to and in response to incidents and therefore increased the likelihood and severity of "process-safety related incidents" thereby misleading investors that operations in the Gulf of Mexico were operating within uniform Company-wide process safety procedures.

I. March 4, 2009

349. On March 4, 2009, BP filed its 2008 Annual Report with the SEC on Form 20-F, which was signed by Hayward. In the report, BP misrepresented the scope and implementation of its OMS, BP's marquee process safety initiative, and made numerous false statements about its supposed safe practices and the quality of its deepwater Gulf of Mexico operations. Specifically, BP misrepresented that eight sites, including the Gulf of Mexico, had "completed the transition to OMS in 2008 . . . [including the Gulf of Mexico[.]"

350. For example, the Form 20-F stated, in part, as follows:

We continue to implement our new operating management system (OMS), a framework for operations across BP that is integral to improving safety and operating performance in every site.

When fully implemented, OMS will be the single framework within which we will operate, consolidating BP's requirements relating to process safety, environmental performance, legal compliance in operations, and personal, marine and driving safety. . . .

The OMS establishes a set of requirements, and provides sites with a systematic way to improve operating performance on a continuous basis. BP businesses implementing OMS must work to integrate group requirements within their local system to meet legal obligations, address local stakeholder needs, reduce risk and improve efficiency and reliability. A number of mandatory operating and engineering technical requirements have been defined within the OMS, to address process safety and related risks.

All operated businesses plan to transition to OMS by the end of 2010. *Eight sites completed the transition to OMS in 2008*; two petrochemicals plants, Cooper River and Decatur, two refineries, Lingen and Gelsenkirchen and four Exploration and Production sites, North America Gas, *the Gulf of Mexico*, Colombia and the Endicott field in Alaska. . . .

For the sites already involved, implementing OMS has involved detailed planning, including gap assessments supported by external facilitators. A core aspect of OMS implementation is that each site produces its own 'local OMS', which takes account of relevant risks at the site and details the site's approach to managing those risks. As part of its transition to OMS, a site issues its local OMS handbook, and this summarizes its approach to risk management. Each site also develops a plan to close gaps that is reviewed annually. The transition to OMS, at local and group level, has been handled in a formal and systematic way, to ensure the change is managed safely and comprehensively.

Experience so far has supported our expectation that having one integrated and coherent system brings benefits of simplification and clarity, and that the process of change is supporting our renewed commitment to safe operations.

* * *

- Executive management has taken a range of actions to demonstrate their leadership and commitment to safety. The group chief executive has consistently emphasized that safety, people, and performance are our top priority, a belief made clear in his 2007 announcement of a forward agenda for simplification and cultural change in BP. Safety performance has been scrutinized by the Group Operations Risk Committee (the GORC), chaired by the group chief executive and tasked with assuring the group chief executive that group operational risks are identified and managed appropriately. . . .

351. The foregoing misrepresentations, which caused BP Shares to trade at artificially inflated prices, were each materially false or misleading when made, and were known by Defendants BP and Hayward to be false at that time, or were made with reckless disregard for the truth, for the following reasons, among others:

(a) Hayward – who signed the certification statement for the foregoing statement and was the Chairman of GORC, which was ultimately responsible and charged with oversight and implementation of OMS – testified that he knew OMS was not implemented in the Gulf of Mexico in 2008, that he knew the Gulf of Mexico would not “begin the process of cutover to OMS” until Fall 2009, and that OMS had not even been implemented in the Gulf of Mexico as of April 2010. Other BP personnel, including GORC member John Baxter, testified that OMS had not even been implemented in the Gulf of Mexico as of April 2010. Moreover, BP conceded the falsity of this statement at the hearing on Defendants’ motions to dismiss the Class Complaint on November 4, 2011;

(b) Approximately one month prior to publication of BP’s 2008 Annual Report, Hayward received a report directly from Inglis confirming that the Gulf of Mexico had not completed the transition to OMS by the conclusion of 2008;

(c) An internal BP strategy document issued in December 2008 warned GORC members, including Hayward, that there were “major” process-safety concerns in the Gulf of Mexico that permitted the accumulation of risks prior to and in response to incidents and therefore increased the likelihood and severity of “process-safety related incidents” thereby misleading investors that operations in the Gulf of Mexico were operating within uniform company-wide process safety procedures;

(d) Hayward testified that he knew that process safety was an integral part of OMS, and that the purpose of OMS was to prevent major accidents, such as the blowout that occurred on the Deepwater Horizon on April 20, 2010. He also testified that he knew that the risk of a deepwater blowout was “one of the highest risks” facing BP, and the “highest risk in the Gulf of Mexico.”³⁷ Moreover, Hayward testified that, had OMS been implemented in the Gulf of Mexico, OMS “undoubtedly” had the potential to avoid the Deepwater Horizon disaster;

(e) Hayward misrepresented that OMS was a “common” system that applied as a “single operating framework” to “all BP operations” and would be “adopted by all operating sites,” when, in fact, OMS applied only to rigs that BP fully-owned but not to BP’s operations where BP leased rigs from others, as it did with Transocean’s Deepwater Horizon in the Gulf of Mexico; and

(f) Defendants failed to disclose or indicate the following: (1) BP had inadequate safety procedures in place for its Gulf of Mexico operations; (2) BP conducted its operations in the Gulf of Mexico without any legitimate oil spill response plan; (3) BP understated the risks of its Gulf of Mexico operations while overstating its ability to extract oil from the Gulf of Mexico; and (4) BP lacked adequate internal safety and risk management controls.³⁸

J. March 10, 2009

352. On March 10, 2009, BP’s EP, which discusses BP’s purported safety protocol for the Mississippi Canyon Block 252, was “deemed submitted” by the MMS. The document was

³⁷ June 6, 2011 Hayward Dep. at 196:15-17.

³⁸ In the event that the Court holds that the U.K. Financial Services and Markets Act 2000 (“FSMA”) applies to any of the alleged false and misleading statements or omissions in Defendant BP’s March 4, 2009 (*see supra* at ¶¶312-14) and March 5, 2010 Annual Reports (*id.* at ¶¶331-32), and precludes any other claims, Plaintiffs plead in the alternative that such false and misleading statements constitute violations of Section 90A of the FSMA.

initially received by the MMS on February 23, 2009, and was available to the public and BP's investors no later than March 10, 2009. The document falsely stated, in part, that:

I hereby certify that BP Exploration & Production Inc. has the capability to respond, to the maximum extent practicable, to a worst-case discharge, ***or a substantial threat of such a discharge***, resulting from the activities proposed in our Exploration Plan.

* * *

An accidental oil spill that might occur as a result of the proposed operation in Mississippi Canyon Block 252 has the potential to cause some detrimental effects to fisheries. However, it is unlikely that an accidental surface or subsurface oil spill would occur from the proposed activities. ***If such a spill were to occur in open waters of the OCS proximate to mobile adult finfish or shellfish, the effects would likely be sublethal and the extent of damage would be reduced to the capability*** of adult fish and shellfish to avoid a spill, to metabolize hydrocarbons, and to excrete both metabolites and parent compounds. No adverse activities to fisheries are anticipated as a result of the proposed activities.

* * *

In the event of an unanticipated blowout resulting in an oil spill, it is unlikely to have an impact based on the industry wide standards for using proven equipment and technology for such responses, implementation of BP's Regional Oil Spill Response Plan which address available equipment and personnel, techniques for containment and recovery and removal of the oil spill.

353. In addition, the BP's EP stated that:

An accidental oil spill from the proposed activities could cause impacts to beaches. However, due to the distance to shore (48 miles) and the response capabilities that would be implemented, no significant adverse impacts are expected. ***Both the historical spill data and the combined trajectory/risk calculations referenced in the publication OCS EIS/EA MMS 2002-052 indicate*** there is little risk of contact or impact to the coastline and associated environmental resources.

354. The EP also contained identical statements to the statement in the immediately preceding paragraph, except that they pertained to wetlands, coastal wildlife, refuges, and wilderness areas.

355. Section 7.1 of the EP also falsely estimated a worst-case discharge scenario of 162,000 barrels of oil per day, an amount it falsely asserted that MMS could handle.

356. Additionally, before BP could begin operations at the Macondo site, federal regulations required BP to submit its EP demonstrating that it had planned and prepared to conduct its proposed activities in a manner that was safe, conformed to applicable regulations and sound conservation practices, and would not cause undue or serious harm or damage to human or marine health, or the coastal environment. 30 C.F.R. §§ 250.201, 250.202. BP did not have such a plan or a means of conducting their proposed activities.

357. Further, federal regulations required that the EP be accompanied by “[o]il and hazardous substance spills information” and “[e]nvironmental impact analysis information.” 30 C.F.R. §§ 250.212, 250.219, and 250.227.

358. Among the information required to accompany the EP was a “blowout scenario,” described as follows:

A scenario for the potential blowout of the proposed well in your EP that you expect will have the highest volume of liquid hydrocarbons. Include the estimated flow rate, total volume, and maximum duration of the potential blowout. Also, discuss the potential for the well to bridge over, the likelihood for surface intervention to stop the blowout, the availability of a rig to drill a relief well, and rig package constraints. Estimate the time it would take to drill a relief well. 30 C.F.R. § 250.213(g).

359. The oil and hazardous spills information accompanying the EP was also required to include an oil spill response plan providing the calculated volume of BP’s worst-case discharge scenario (*see* 30 C.F.R. § 254.26(a)), and a comparison of the appropriate worst-case discharge scenario in [its] approved regional [Oil Spill Response Plan] with the worst-case discharge scenario that could result from [its] proposed exploration activities; and a description of the worst-case discharge scenario that could result from [its] proposed exploration activities. *See* 30 C.F.R. §§ 254.26(b), (c), (d), and (e); 30 C.F.R. § 250.219.

360. Federal regulations required BP to conduct all of its lease and unit activities according to its approved EP, or suffer civil penalties or the forfeiture or cancellation of its lease. 30 C.F.R. § 250.280.

361. The misrepresentations above, which caused BP Shares to trade at artificially inflated prices, were each materially false or misleading when made, and were known by Defendant BP to be false at that time, or were made with reckless disregard for the truth, for the following reasons, among others:

(a) As explained by a group of eight U.S. Senators in a May 17, 2010 letter to U.S. Attorney General Eric H. Holder, Jr., there was no “proven equipment and technology” to respond to the spill. The Senators wrote that “[m]uch of the response and implementation of spill control technologies appears to be taking place on an ad hoc basis.” Indeed, BP acknowledged on May 12, 2010, that: “*[a]ll of the techniques being attempted or evaluated to contain the flow of oil on the seabed involve significant uncertainties because they have not been tested in these conditions before*”;

(b) BP falsely represented that the EP was based on an analysis of the Mississippi Canyon Block 252 site when, in fact, the EP was boilerplate language copied from one or more exploration plans that MMS had previously approved for other distinct drilling sites;

(c) BP misrepresented that BP was prepared to stop a blowout at Mississippi Canyon Block 252 or contain the resulting oil spill when, in fact, BP was wholly unprepared;

(d) In connection with the EP, BP sought a permit from the MMS to drill to a total depth of 19,650 feet at the Macondo well. Following the sinking of the Deepwater Horizon, a BP crewman admitted that this depth had been misrepresented to the MMS, and that BP had in fact drilled in excess of 22,000 feet, in violation of its permit;

(e) BP misrepresented that an oil spill would not adversely impact beaches, wetlands, and other environmentally sensitive areas;

(f) Concealed from the investing public was BP's failure to have sufficient internal safety and risk management processes to satisfy the above referenced regulation. In fact, Suttles acknowledged on May 10, 2010, that BP did not actually have a response plan with "proven equipment and technology" in place that could contain the Macondo well oil spill. Later, Hayward admitted that "BP's contingency plans were inadequate," and that the company had been "*making it up day to day.*" Hayward further admitted that it was "an entirely fair criticism" to blame BP for the disorganized and poor cleanup effort because "*[w]hat's undoubtedly true is that we did not have the tools you'd want in your tool kit*" to stop the leak from the Macondo well in the Gulf of Mexico in the aftermath of the explosion;

(g) On May 12, 2010, McKay, Chairman, President and COO of Defendant BP America, admitted in testimony to the House Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, that BP did not have the capability and technology to respond to the Macondo well oil spill:

Mr. McKay: We are using the best technology at scale. This is the largest effort that has ever been put together. So we believe we are using the best technology and if we have any other ideas – .

Mrs. Capps: But you never had any until it happened.

Mr. McKay: Well, we have been drilling with the Coast Guard for years.

Mrs. Capps: Did you develop technologies for dealing with this?

Mr. McKay: Not individual technologies for this, no.

Mrs. Capps: I rest my case.

(h) The Presidential Commission concluded, "there is nothing to suggest that BP's engineering team conducted a formal, disciplined analysis of the combined impact of [] risk

factors on the prospects of a successful cement job.” Finally, in his deposition testimony, Inglis confirmed that BP never invested a dollar in developing methods to contain an oil spill.³⁹

K. April 16, 2009

362. On April 16, 2009, BP issued its 2008 Sustainability Review, which BP made available to the investing public on its official website. The 2008 Sustainability Review contained a “Group chief executive’s review” containing remarks by Hayward. Hayward stated, in part: “You can see a similar balanced approach in our new operating *management system (OMS), which is to be implemented at each BP site*. It covers everything from compliance and risk management through to governance and measuring results.”

363. The foregoing misrepresentation, which caused BP Shares to trade at artificially inflated prices, was materially false and misleading when made, and was known by Hayward to be false at that time, or was made with reckless disregard for the truth, for the following reason, among others:

(a) Hayward misled investors with regard to BP’s implementation of the Baker Panel’s recommendations because Defendant’s repeated statements falsely represented that BP’s intention to and actual progress in implementing the policies, procedures, and recommendations detailed in the Baker Report;

(b) Hayward misrepresented that BP was improving its process safety systems following the Texas City incident; and

(c) Hayward misrepresented that BP was implementing OMS “at each BP site” when, in fact, OMS applied only to rigs that BP fully owned but not to BP’s operations where BP leased rigs from others, as it did with Transocean’s Deepwater Horizon in the Gulf of Mexico.

L. June 30, 2009

364. On June 30, 2009, BP publicly filed its revised oil spill response plan for the Gulf of Mexico, entitled “Regional Oil Spill Response Plan – Gulf of Mexico” or “BP’s Regional OSRP.” According to BP’s OSRP, the “***TOTAL WORST CASE DISCHARGE***” *scenarios in the Gulf of Mexico ranged from a release of 28,033 barrels of oil per day to 250,000 barrels of oil per day*. More specifically, BP’s Regional OSRP stated: (i) an oil spill occurring less than ten miles from the shoreline could create a worst case discharge of 28,033 barrels of oil per day; (ii) an oil spill that occurred greater than ten miles from the shoreline could create a worst case discharge of 177,400 barrels of oil per day; and (iii) an oil spill caused by a mobile drilling rig that is drilling an exploratory well could create a worst case discharge of 250,000 barrels of oil per day. BP’s Regional OSRP explicitly states that the Company and its subcontractors ***could recover approximately 491,721 barrels of oil per day*** (or more than 20.6 million gallons) in the event of an oil spill in the Gulf of Mexico. The Company further claimed and provided certified statements to the MMS that BP and its subcontractors “maintain the necessary spill containment and recovery equipment to respond effectively to spills.”

365. The foregoing misrepresentations, which caused BP Shares to trade at artificially inflated prices, that BP and its subcontractors “maintain the necessary spill containment and recovery equipment to respond effectively to spills” and that nearly 500,000 barrels of oil per day could be recovered were each materially false or misleading when made, and were known by Defendant BP to be false at that time, or were made with reckless disregard for the truth, for the following reasons, among others:

(a) BP’s Oil Spill Response Plan contained numerous errors, gross deficiencies and was wholly inadequate to respond to a deepwater oil spill; and

(b) Hayward confirmed that the Company had failed to draw up sufficient emergency response plans, admitting that during the spill “*we were making it up day to day*”. In addition, Suttles admitted that BP failed to have an oil spill response plan with “proven equipment and technology” in place that could contain the oil spill.

M. February 26, 2010

366. On February 26, 2010, BP issued its 2009 Annual Review, which BP made available to the investing public on its official website and subsequently filed with the SEC on Form 20-F. In the 2009 Annual Review, BP made misrepresentations concerning the scope of OMS. In a section entitled “Sustain[ing] momentum and growth,” BP acknowledged that its safety protocols are material to investors by including a separate section on safety entitled “Safety, reliability, compliance and continuous improvement.” That section states:

Safe, reliable and compliant operations remain the group’s first priority. A key enabler for this is the BP operating management system (*OMS*), ***which provides a common framework for all BP operations***, designed to achieve consistency and continuous improvement in safety and efficiency. [Alongside] mandatory practices ... to address particular risks ... ***[OMS] enables each site to focus on the most important risks in its own operations and sets out procedures on how to manage them in accordance with the group-wide framework.***

367. The foregoing misrepresentations, which caused BP Shares to trade at artificially inflated prices, that BP’s OMS “provides a common framework for *all* BP operations” and “enables *each site* to focus on the most important risks in its own operations and sets out procedures on how to manage them in accordance with the group-wide framework” were each materially false or misleading when made, and/or omitted to disclose material facts necessary to make the statements not misleading, for the following reasons, among others:

(a) Hayward misled investors with regard to BP’s implementation of the Baker Panel’s recommendations because Hayward repeated statements falsely represented that BP’s

intention to and actual progress in implementing the policies, procedures, and recommendations detailed in the Baker Report;

(b) Hayward misrepresented that BP was improving its process safety systems following the Texas City incident;

(c) Hayward misrepresented that BP was implementing OMS “at each BP site” when, in fact, OMS applied only to rigs that BP fully owned but not to BP’s operations where BP leased rigs from others, as it did with Transocean’s Deepwater Horizon in the Gulf of Mexico;

(d) Because the 2009 Annual Review was “material to be placed before shareholders which addresses environmental, safety and ethical performance,” SEEAC was required to review the 2009 Annual Review and make recommendations to the board concerning its adoption and publication;

(e) Hayward has testified that he knew OMS was not fully implemented in the Gulf of Mexico in 2008 or at the time of the Deepwater Horizon disaster. Other BP personnel, including GORC member John Baxter, testified that OMS was not implemented in the Gulf of Mexico as of April 2010. Moreover, BP conceded the falsity of such statements on November 4, 2011 (Transcript ECF No. 304 at 58:15-21);

(f) As of the date of this statement, OMS applied to only one drilling rig out of the seven drilling rigs in Gulf of Mexico (the BP-owned Thunder Horse PDQ). Moreover, Defendants Hayward and Inglis knew, or were reckless in not knowing, that contracted drilling rigs without OMS accounted for the majority of deepwater wells drilled in the Gulf of Mexico – which were the chief economic driver for BP Exploration – during the Relevant Period;

(g) Defendants Hayward and Inglis (and other GORC members) made the decision not to apply key elements of OMS, including Safety and Operations Audits and Major

Accident Risk analysis, to Gulf of Mexico joint ventures and Gulf of Mexico exploration, including the Deepwater Horizon;⁴⁰

(h) Key personnel in the Gulf of Mexico (David Sims, David Rich, and Patrick O'Bryan) lacked the knowledge, experience and expertise of those they were replacing (Ian Little, Harry Thierens, and Kevin Lacy) and as such BP's OMS implementation in the Gulf of Mexico was disorganized and incomplete; and

(i) A 2009 rig audit of the Deepwater Horizon revealed that not all relevant personnel on the rig were knowledgeable about drilling and well operation practices and rig crew members were not knowledgeable about well operation practices, including containing a blowout.

N. March 5, 2010

368. On March 5, 2010, BP filed its 2009 Annual Report with the SEC on Form 20-F, which was signed by Hayward. In the report, BP continued to tout its position as the largest producer of oil in deepwater Gulf of Mexico while delivering safety in its operations. In addition, the Form 20-F falsely stated, in part, that:

Safe, reliable and compliant operations remain the group's first priority. A key enabler for this is the BP operating management system (OMS), which provides a common framework for all BP operations, designed to achieve consistency and continuous improvement in safety and efficiency.

* * *

This performance follows several years of intense focus on training and procedures across BP. *BP's operating management system (OMS), which provides a single operating framework for all BP operations*, is a key part of continuing to drive a rigorous approach to safe operations. 2009 marked an important year in the continuing implementation of OMS.

* * *

⁴⁰ See also Armstrong Dep. at 207:20-208:18.

Our OMS covers all areas from process safety, to personal health, to environmental performance.

* * *

Following the tragic incident at the Texas City refinery in 2005 the [Safety, Ethics, and Environment Assurance] committee has observed a number of key developments, including: the establishment of a safety & operations (S&O) function with the highest calibre of staff; development of a group-wide operating management system (OMS) which is being progressively adopted by all operating sites; the establishment of training programmes in conjunction with MIT that are teaching project management and operational excellence; the dissemination of standard engineering practices throughout the group; and the formation of a highly experienced S&O audit team formed to assess the safety and efficiency of operations and recommend improvements. Throughout this time the group chief executive has made safety the number one priority.

369. The foregoing misrepresentations, which caused BP Shares to trade at artificially inflated prices, were each materially false or misleading when made, and were known by Hayward to be false at that time, or were made with reckless disregard for the truth, for the following reasons, among others:

(a) Hayward falsely claimed that BP had undertaken a series of “key developments” since the Texas City refinery disaster and misled investors with regard to BP’s implementation of the Baker Panel’s recommendations because Hayward’s repeated statements falsely represented BP’s intent to and actual progress in improving its process safety since the Texas City disaster;

(b) Hayward misled investors because he seriously overstated the “progress” BP had made in process safety efforts following the Texas City incident and as measured against the Baker Report recommendations; and

(c) Hayward misrepresented that OMS was a “common” system that applied as a “single operating framework” to “all BP operations” and would be “adopted by all operating sites,” when, in fact, OMS applied only to rigs that BP fully-owned but not to BP’s operations

where BP leased rigs from others, as it did with Transocean's Deepwater Horizon in the Gulf of Mexico.

O. March 18, 2010

370. On March 18, 2010, BP held a meeting with its Board members and representatives of institutional investors, including the same investment managers of Texas Teachers and LASERS that attended the February 7, 2007 in-person meeting, to discuss its work over the preceding year. Participants for BP at the meeting included BP's Chairman, Carl-Henric Svanberg, and three members of BP's Board of Directors—De-Anne Julius, William Castell, and Ian Prosser. After discussing remuneration and a resolution on oil sands tabled by a group of investors, the issue of safety was addressed. BP representatives indicated that, “[t]here is a clear and increasing focus on safety, with regulators examining all aspects minutely.” The BP representatives noted that regulatory pressures from Washington D.C. had increased with the Obama administration in all aspects, including safety. Consistent with the statements Defendants had been disseminating to the public reinforcing the message that BP was improving its process safety procedures as a result of the Texas City explosion and the Baker Report recommendations, BP assured attendees, including the investment managers of Texas Teachers and LASERS, that safety continued to be a high priority, and that ***“BP’s standardised processes are being rolled out successfully throughout company.”***

371. BP senior management in attendance at the March 18, 2010 in-person meeting were aware of Texas Teachers' and LASERS's Investment Managers' identity and role as Investment Managers to a specific group of major institutional investors to which Plaintiffs Texas Teachers and LASERS belonged at the time the statements were made. Given Plaintiffs Texas Teachers' and LASERS's Investment Managers' role as investment advisor and the materiality of the information provided, BP senior management in attendance at the March 18, 2010 in-person

meeting were or should have been aware that the information provided at this meeting would be used by Plaintiffs Texas Teachers and LASERS to determine whether to invest in or divest BP stock.

372. The foregoing misrepresentations, which caused BP securities to trade at artificially inflated prices, were materially false or misleading when made, and were known by Defendants to be false at that time, or was made with reckless disregard for the truth, for the following reason, among others:

(a) These statements reinforced the false message that BP was improving its process safety procedures as a result of the Texas City explosion and the Baker Panel recommendations; and

(b) Given the context of BP and Plaintiffs Texas Teachers' and LASERS's Investment Managers' prior interactions, including at the February 7, 2007 in-person meeting, and in the context of BP's simultaneous public statements, it is clear that the "standardized processes" referred to BP's OMS. Accordingly, the statement is misleading due to the failure to disclose that the substance of the OMS architecture did not apply to, and was not intended to be implemented on, contractor-owned sites.

P. March 22, 2010

373. On March 22, 2010, Inglis delivered a speech at the Howard Weil Energy Conference in New Orleans, Louisiana, in which he discussed the nearby deepwater Gulf of Mexico operations. BP posted a transcript of the speech on its publicly accessible website. During the presentation, Inglis falsely stated, in part, as follows:

We are currently planning to make final investment decisions for 24 new major projects in the next two years. Each project has been high-graded through our project selection and progression process. They are concentrated in the Gulf of Mexico, the North Sea, Azerbaijan and Angola – high margin production areas that improve the portfolio and enable profitable growth.

Safety and operational integrity underpins everything we do, and we are now in the final phase of rolling out our operating management system that provides a single, consistent framework for our operations, covering all areas from personal and process safety to environmental performance.
And I am pleased to say that in 2009 we saw continuing improvement in all aspects.

374. The foregoing misrepresentation, which caused BP Shares to trade at artificially inflated prices, was materially false and misleading when made, and was known by Inglis to be false at that time, or was made with reckless disregard for the truth, for the following reasons, among others:

(a) Inglis was a member of GORC, a committee convened specifically to oversee and shepherd the OMS implementation project. This committee allegedly reviewed and approved the guidelines governing the structure of OMS. As such, Inglis was charged with oversight and implementation of OMS with respect to exploration and production activities in the deepwater Gulf of Mexico. Moreover, Inglis received the quarterly Orange Book that contained detailed reports concerning the scope of OMS and revealed that the status of its implementation across BP's various business units, including Exploration and Production in the Gulf of Mexico, was incomplete, as it was limited to project sites owned and operated by BP;

(b) Inglis made these statements about the importance of deepwater drilling in the Gulf of Mexico as part of BP's asset portfolio during the Howard Weil Energy Conference, which bills itself as "one of the premier investor conferences in the energy industry." However, as of the date of Inglis' statement, OMS applied to only one drilling rig out of the seven drilling rigs in Gulf of Mexico (the BP-owned Thunder Horse PDQ). Moreover, as Chief Executive of Exploration and Production, Inglis knew, or was reckless in not knowing, that over half of the deepwater wells drilled in the Gulf of Mexico – which were the chief economic driver for BP

Exploration – were drilled by contracted rigs that did not apply OMS, including the Deepwater Horizon;⁴¹

(c) Inglis (and other GORC members) made the decision to not apply key elements of OMS, including Safety and Operations Audits and Major Accident Risk analysis, to Gulf of Mexico joint ventures and Gulf of Mexico exploration, including the Deepwater Horizon;⁴²

(d) Inglis testified that “[o]ne of the purposes of OMS would be to prevent loss of primary containment.”⁴³ Moreover, on July 13, 2009, Inglis authored an email that he sent to the Upstream Senior Leadership Team that expressed concern over contractor operated rigs – *e.g.*, the Deepwater Horizon – not conforming to BP’s Control of Work practices. In the email, Inglis stated that “conformance with Control of Work (CoW) practices” – a facet of OMS – “on many of [BP’s] contractor operated drilling rigs, falls short of BP expectations”;

(e) BP had only begun to implement its OMS in a pilot stage in the Gulf of Mexico when BP, in part due to a re-organization led by Inglis, terminated and/or displaced the key employees responsible for the implementation of OMS. BP was not in the final stages of rolling out OMS in the Gulf of Mexico in 2010 and employees in key positions, including Well Team Leaders and Well Site Leaders, in Gulf of Mexico operations had no knowledge of OMS requirements; and

(f) Key personnel in the Gulf of Mexico (David Sims, David Rich, and Patrick O’Bryan) lacked the knowledge, experience and expertise of those they were replacing (Ian Little,

⁴¹ See also Armstrong Dep. at 247:7-248:21

⁴² See also Armstrong Dep. at 207:20-208:18.

⁴³ Inglis Dep. at 242:23-243:9.

Harry Thierens, and Kevin Lacy), and BP's OMS implementation in the Gulf of Mexico was disorganized and incomplete.

Q. March 23, 2010

375. On March 23, 2010, Hayward delivered a speech at the Peterson Institute for International Economics in Washington, D.C. in which he discussed BP's changes to its safety program following the Texas City refinery explosion. BP posted a transcript of the speech on its publicly accessible website. During the presentation, Hayward falsely stated, in part, that:

Five years ago on this day, fifteen people died and many more were injured, when an explosion tore through our Texas City refinery.

That tragic accident has changed in a profound and fundamental way our approach to safety and operations integrity – providing a safe working environment is a paramount responsibility, and our first and foremost priority.

376. The foregoing misrepresentation, which caused BP Shares to trade at artificially inflated prices, was materially false or misleading when made, and was known by Hayward to be false at that time, or was made with reckless disregard for the truth, for the following reason, among others:

(a) Hayward misrepresented that BP had changed its approach to safety “in a profound and fundamental way” in response to the Texas City disaster, when, in fact, BP had not instituted the safety reforms advocated by the Baker Panel following the Texas City disaster; and

(b) Hayward misled investors because he seriously overstated the progress BP had made in process safety efforts following the Texas City incident and as measured against the Baker Report recommendations.

R. April 15, 2010

377. On April 15, 2010, BP issued its 2009 Sustainability Review, which BP made available to the investing public on its official website. The 2009 Sustainability Review contained

a Q&A session with Hayward in a section entitled “Group chief executive’s review.” There, Hayward reemphasized the misrepresentation contained in BP’s 2008 Annual Report (which he signed), that eight sites (including the Gulf of Mexico) completed the transition to OMS in 2008:

- Group chief executive’s review

Question: What progress has BP made on safety during 2009?

Answer: Safety is fundamental to our success as a company and 2009 was important because of the progress we made in implementing our operating management system (OMS). The OMS contains rigorous and tested processes for reducing risks and driving continuous improvement. I see it as the foundation for a safe, responsible and high-performing BP. ***Having been initially introduced at eight sites in 2008***, the OMS rollout extended to 70 sites by the end of 2009, including all our operated refineries and petrochemicals plants. ***This means implementation is 80% complete.***

378. The foregoing misrepresentations, which caused BP Shares to trade at artificially inflated prices, were each materially false or misleading when made, and were known by Defendants BP and Hayward to be false at that time, or were made with reckless disregard for the truth, for the following reasons, among others:

(a) Hayward, as Chairman of GORC, was ultimately responsible for and charged with oversight and implementation of OMS;

(b) Hayward testified that he knew OMS was not implemented in the Gulf of Mexico in 2008, that he knew the Gulf of Mexico had not “beg[u]n the process of cutover to OMS” until the fall of 2009, and that OMS had not been implemented in the Gulf of Mexico as of April 2010. Other BP personnel, including GORC member John Baxter, testified that OMS was not implemented in the Gulf of Mexico as of April 2010;

(c) Hayward made this statement, which reemphasized and confirmed the earlier statement made in the 2008 Form 20-F that eight sites, including the Gulf of Mexico, had

completed the transition to OMS despite his knowledge that the Gulf of Mexico had not completed the transition to OMS in 2008;

(d) Hayward misrepresented that OMS was a “common” system that applied as a “single operating framework” to “all BP operations” and would be “adopted by all operating sites,” when, in fact, OMS applied only to rigs that BP fully-owned but not to BP’s operations where BP leased rigs from others, as it did with Transocean’s Deepwater Horizon in the Gulf of Mexico. Moreover, Hayward was aware or reckless in disregarding, that OMS was never meant to apply, and in fact, never did apply, to contracted third-party rigs, which accounted for the majority of BP’s deepwater wells drilled in the Gulf of Mexico during the Relevant Period;

(e) Approximately one month prior to publication of BP’s 2008 Annual Report, Hayward received a report directly from Inglis confirming that the Gulf of Mexico had not completed the transition to OMS by the conclusion of 2008;

(f) As members of GORC, Defendants Hayward and Inglis received documents that put them on notice that the Gulf of Mexico had not completed the transition to OMS;

(g) An internal BP strategy document issued in December 2008 warned GORC members, including Hayward, that there were “major” process-safety concerns in the Gulf of Mexico, which increased the likelihood and severity of “process-safety related incidents”;

(h) Hayward testified that he knew that process safety was an integral part of OMS, and that the purpose of OMS was to prevent major accidents, such as the blowout that occurred on the Deepwater Horizon on April 20, 2010. He also testified that he knew that the risk of a deepwater blowout was “one of the highest risks” facing BP, and the “highest risk in the Gulf

of Mexico.” Moreover, Hayward testified that, had OMS been implemented in the Gulf of Mexico, OMS “undoubtedly” had the potential to avoid the Deepwater Horizon disaster; and

(i) Defendants failed to disclose or indicate the following: (1) BP had inadequate safety procedures in place for its Gulf of Mexico operations; (2) BP conducted its operations in the Gulf of Mexico without any legitimate oil spill response plan; (3) BP understated the risks of its Gulf of Mexico operations while overstating its ability to extract oil from the Gulf of Mexico; and (4) BP lacked adequate internal safety and risk management controls.

S. April 24, 2010

379. On April 24, 2010, Suttles participated in a joint press conference with Coast Guard leader Rear Admiral Landry. Suttles participated in the press conference as BP’s lead representative at the Unified Command. At the press conference, Suttles stated that BP had detected ongoing releases of oil from the Macondo well at a rate of approximately 1,000 barrels per day at the seabed. At the same press conference, Rear Admiral Landry also stated that oil was leaking from the Macondo well at a rate of approximately 1,000 barrels per day: “It’s 1,000 barrels emanating from 5,000 feet below the surface.” Suttles failed to correct Landry’s erroneous statement. Prior to the press conference, Landry had asked Suttles if he could support a flow rate estimate of 1,000 barrels per day and Suttles said yes.

380. The foregoing misrepresentations, which caused BP Shares to trade at artificially inflated prices, were each materially false or misleading when made, and were known by Suttles to be false at that time, or were made with reckless disregard for the truth, for the following reasons, among others:

(a) Suttles falsely represented that the amount spilling from the Macondo well was approximately 1,000 barrels of oil per day when, in fact, the true rate was much higher. Suttles failed to disclose that the Company’s internal estimates of the amount of oil flowing from the well

were much higher than the 1,000 barrels per day stated by Suttles and Rear Admiral Landry. For example, on April 21, 2010, Suttles' deputy, David Rainey, among others, received an email containing a worst-case oil discharge rate from the Macondo well of 100,000 barrels of oil per day.⁴⁴ This worst-case discharge calculation was arrived at using sophisticated software modeling, with the participation of all the reservoir engineers in BP's Gulf of Mexico Exploration Division. *See id.* Mr. Rainey is currently under federal indictment for obstruction of a Congressional Committee investigation and making false statements to a federal prosecutor regarding BP's internal flow rate estimates. *See United States of America v. David Rainey*, 2:12-cr-00291-KDE-DEK (E.D. La.);

(b) An internal BP document also dated April 22, 2010, contained a "flow rate and production profile" for the Macondo well which contained a high-end flow rate estimate above 97,000 barrels per day.⁴⁵ These calculations were created by the principle reservoir engineer for the Macondo well. *See id.*; Bozeman Dep. at 16:21–17:2;

(c) Another internal email dated April 22, 2010, discusses a flow rate estimate of 82,000 barrels per day, which was calculated by Alistair Johnston, an expert retained by BP. *See* BP-HZN-2179MDL05004973. Mr. Johnston's flow rate estimate was specifically designed to approximate flowing conditions on the Macondo well. *See id.*

(d) On April 22, 2010, BP drilling engineer Kurt Mix used computer software to model oil flow rates from the Macondo well, which resulted in estimated flow rates of 64,000; 93,000; 110,000; and 138,000 barrels per day.⁴⁶ Mr. Mix has been convicted of obstructing a federal investigation into the Macondo oil spill by deleting text messages and voice mails relevant

⁴⁴ *See* BP-HZN-2179MDL04925832.

⁴⁵ *See* BP-HZN-2179MDL00442709-12.

⁴⁶ *See* BP-HZN-2179MDL04815271.

to, among other things, BP's internal flow rate estimates. *See United States of America v. Kurt Mix*, 2:12-cr-00171-SRD-SS (E.D. La.).

(e) Also, on the morning of April 22, 2010, Keith A. Seilhan ("Seilhan"), a senior BP Area Operations Manager who had been deployed to the Company's Incident Command Center in Houma, Louisiana, On-Scene Coordinator and Incident Commander, including in Houma, Louisiana, received an e-mail message from a BP manager commenting on worst case discharge estimates performed by BP engineers. These worst case estimates, which were nonpublic, ranged from 64,000 to 110,000 barrels per day. *See Securities and Exchange Commission v. Seilhan*, 2:14-cv-00893-CJB-SS (E.D. La.).

(f) On April 23, 2010, BP's Ryan Malone sent an email, on which Suttles was copied, providing an estimated flow rate of 31 gallons per minute (which equals approximately 1,417 barrels per day). The next day, (before Suttles made his April 24 misrepresentation) Malone sent another email, again copying Suttles, warning all to "[d]isregard the estimate for flowrate" previously sent because "[i]t is wrong[.]"⁴⁷

381. All of the internal flow rate estimates and information cited above in ¶369 preceded Suttles' and Rear Admiral Landry's statements at the April 24, 2010 press conference. Suttles had a duty to disclose these internal flow rate estimates in order to make his statement not misleading. Suttles conceded in his MDL 2179 deposition that he purposefully did not avail himself of these internal reports prior to making *any* of his public statements regarding the Macondo flow rate.⁴⁸ (testifying that he never "engage[d] with [BP's] flow assurance people" on their calculations of potential flow rates prior to his publicly providing estimates of the flow rates). Suttles further

⁴⁷ *See* BP-HZN- 2179MDL00441598.

⁴⁸ *See* Suttles Dep. at 435:15-436:19

testified that he was “very concerned” about the inaccuracy of publicly providing an inaccurate flow rate because it was “so difficult to predict” and “could be inaccurate.”⁴⁹

T. April 28-29, 2010

382. On April 28, 2010, in reliance upon Suttles’ representation, Coast Guard leader Rear Admiral Landry announced during a joint press conference with BP that NOAA had increased its estimate of the oil flow rate from 1,000 to only 5,000 barrels per day.

383. During the joint press conference, Suttles again reiterated that BP’s best estimate was that 1,000 barrels of oil per day were flowing from the Macondo well. In addition, Suttles stated, in part, as follows:

Late this afternoon, while monitoring the blowout preventer area, which we have done continuously since the event began, we discovered a new point of leak. This leak is just beyond the top of the blowout preventer in the pipe work called the ‘riser.’ Given the location, *we do not believe this changes the amount currently estimated to be released.*

384. The following day, April 29, 2010, Department of Homeland Security Janet Napolitano announced that “today I will be designating that this is a spill of national significance.”

385. On the same day, April 29, 2010, Suttles conducted several media interviews to discuss the oil flow rate from the Macondo well.

386. For example, during an interview with CBS’s “The Early Show,” Suttles stated, in part: “I think that somewhere *between one and five thousand barrels a day is probably the best estimate* we have today.”

(a) Similarly, during an interview on ABC’s “Good Morning America,” Suttles, stated, in part: “I think *between one and 5,000 barrels a day is a reasonable estimate.*”

⁴⁹ See *id.* at 346:7-16; 403:23-404:14; 436:11-16.

(b) Likewise, on NBC's "Today Show," Suttles stated, in part: "I actually don't think there's a difference between NOAA's view and our view. I would say *the range is 1,000 to 5,000 barrels a day.*"

387. On the news that spill estimates had increased to 5,000 barrels per day and Secretary Napolitano's designation of the spill as one of "national significance," BP ADS fell from \$57.34 per ADS on April 28, 2010, to close at \$52.56 per ADS on April 29, 2010, a decline of \$4.78 per ADS or more than 8%. BP's common stock suffered a similar decline.

388. Although the price of BP Shares fell in response to this news, the price of BP's securities were still artificially inflated due to the false and misleading statements made by Suttles on April 28 and 29, 2010, as well as those made by BP, Dudley, Hayward, McKay, Rainey and Suttles in the days and weeks ahead (as alleged below).

**U. April 29-30, 2010 (SEC Filings)
And April 30, 2010 (Company Website)**

389. On April 29, 2010, BP filed a Form 6-K with the SEC addressing the Deepwater Horizon explosion and sinking and containing quotes by Hayward. In it, BP stated in part: "Efforts continue to stem the flow of oil from the well, *currently estimated at up to 5,000 barrels a day.*"

390. On April 30, 2010, BP filed a Form 6-K with the SEC addressing its response effort, which contained quotes from Hayward. In it, BP stated in part: "Efforts to stem the flow of oil from the well, *currently estimated at up to 5,000 barrels a day*, are continuing with six remotely-operated vehicles (ROVs) continuing to attempt to activate the flow out preventer (BOP) on the sea bed."

391. On April 30, 2010, BP published on its Company website the same 5,000 barrels per day oil flow estimate as articulated in its Form 6-K filed with the SEC that day.

***Additional Reasons Why The Statements On April 28-30, 2010,
Were False And Misleading And Were Made With Scienter***

392. Each of the misrepresentations in Sections T. and U. above were materially false or misleading when made, and were known by Suttles (Section T.) and BP (Sections T. and U.) to be false at that time, or were made with reckless disregard for the truth, because they falsely represented that the amount spilling from the Macondo well was between 1,000 and 5,000 barrels of oil per day. Indeed, as discussed herein, BP agreed on November 15, 2012, to pay the third-largest penalty in the SEC's history, \$525 million, to settle securities fraud charges arising, in part, from the misrepresentations described in Sections T. and U. above.

393. In contrast to Suttles' and BP's misrepresentations on April 28-30, 2012, that the oil flow rate was between 1,000 and 5,000 barrels per day, they failed to disclose that the Company's then-existing, internal "best estimate" of the amount of oil flowing from the well, unbeknownst to the investment markets, was in actuality *many multiples* greater.

394. When the statements set forth in Sections T. and U., which caused BP common stock and ADS to trade at artificially high prices were made, BP and Suttles knew them to be false or were severely reckless in not knowing them to be false. BP admitted in its November 15, 2012 Consent with the SEC that by April 28, 2010, BP had possessed at least four internal pieces of data, estimates, or calculations and one external calculation that showed potential flow rates significantly higher than 5,000 barrels per day. They were:

(a) By April 22, 2010, a BP engineer had modeled possible oil flow path scenarios within the well, with corresponding rates of ***between 64,000 barrels per day and 146,000 barrels per day;***

(b) Also, on the morning of April 22, 2010, Seilhan, a senior BP Area Operations Manager who had been deployed to the Company's Incident Command Center in

Houma, Louisiana, On-Scene Coordinator and Incident Commander, including in Houma, Louisiana, received an e-mail message from a BP manager commenting on worst case discharge estimates performed by BP engineers. These worst case estimates, which were nonpublic, ranged from 64,000 to 110,000 barrels per day. *See Securities and Exchange Commission v. Seilhan*, 2:14-cv-00893-CJB-SS (E.D. La.).

(c) On or before April 24, 2010, BP was aware of an estimate that showed that immediately following the explosion, oil was flowing through the still-attached riser at a rate of 100,000 barrels per day;

(d) By April 25, 2010, BP engineers were told of an external analysis of the oil on the water that reached the conclusion that the flow rate could be as high as 10,000 barrels per day;

(e) On April 27, 2010, a BP engineer estimated the oil flow rate to be approximately 5,000 to 22,000 barrels per day on the basis of temperature readings along the riser pipe, among other factors; and

(f) By April 28, 2010, Rainey's own spreadsheets showed a flow rate ranging up to over 14,000 barrels per day.

395. In addition, by April 28, 2010, BP had learned that there was oil leaking also from the "kink," the place where the riser pipe had bent before it came to rest on the ocean floor. This fact represented a totally separate leak point, the flow from which would necessarily add to the total being calculated and reported.

396. Given that BP possessed data, estimates, and calculations significantly higher than 5,000 barrels per day, for BP and Suttles to publicly disclose that the flow rate had been estimated by BP as ranging "up to 5,000" barrels per day was knowingly and materially false and misleading.

Moreover, failing to disclose even the existence of data, estimates, and calculations showing a higher flow rate also constituted a material omission of information regarding the oil flow rate.

397. Further, Rainey's deposition testimony in the MDL 2179 action indicated that one internal estimate of the amount of oil flowing from the well was as high as 92,000 barrels per day. These figures were provided to BP's senior management in two internal BP documents dated April 26, 2010 and April 27, 2010 – *i.e.*, **before** Suttles made his public misrepresentations. In a hearing before the U.S. House of Representatives on May 26, 2010, Representative Edward Markey was outraged about Suttles' misrepresentations and stated, in part, as follows:

Yesterday, BP provided me with an internal document dated April 27, 2010, and cited as BP Confidential that shows a low estimate, a best guess, and a high estimate of the amount of oil that was leaking.

According to this BP document, the company's low estimate of the leak on April 27th [2010] was 1,063 barrels per day. ***Its best guess was 5,758 barrels per day. Its high estimate was 14,266 barrels per day.***

BP has also turned over another document dated April 26th [2010] which includes a 5,000 barrel per day figure as well. ***So when BP was citing the 1,000-barrel per day figure to the American people on April 28th, their own internal documents from the day before show that their best guess was a leak of 5,768 barrels per day, and their high estimate was more than 14,000 barrels*** that were spilling into the Gulf every day.

398. On May 3, 2010, after initially blaming Transocean and others for the Macondo well blowout and spill, BP admitted that it was fully responsible for the disaster in the Gulf of Mexico. More specifically, Hayward told NPR's Steve Inskeep that: "It is indeed BP's responsibility to deal with this, and we are dealing with it We will absolutely be paying for the cleanup operation. There is no doubt about that. It's our responsibility – we accept it fully." On this news, the Company's ADS fell from \$52.15 per ADS on Friday, April 30, 2010, to close at

\$50.19 per ADS on Monday, May 3, 2010, a decline of \$1.96 per ADS or almost 4%. BP's common stock suffered a similar decline.

V. May 4, 2010

399. On May 4, 2010, BP filed a Form 6-K with the SEC, which contained quotes from Hayward and in which BP stated in part: "Current estimates by the US National Oceanic and Atmospheric Administration (NOAA) suggest *some 5,000 barrels (210,000 US gallons) of oil per day* are escaping from the well."

400. The foregoing misrepresentation, which caused BP Shares to trade at artificially inflated prices, was materially false or misleading when made, and was known by BP to be false at that time, or was made with reckless disregard for the truth. BP omitted from this Form 6-K the material fact that, by that date, its own engineers and scientists had generated or received numerous pieces of data, estimates, and calculations regarding the oil flow rate estimates that far exceeded the 5,000 barrels per day figure, as set forth in Sections U. and DD. herein. For the same reasons, BP also failed to disclose that, based on the internal data, estimates, and calculations, it was not accurate to continue to assert that 5,000 barrels per day was the best estimate of the amount of oil flowing into the Gulf of Mexico. Likewise, for the same reasons, it was misleading to use NOAA's 5,000 barrels per day as the "best estimate" as the basis of any public disclosure when BP itself had its own, higher range of flow rate estimates.

W. May 5, 2010

401. On May 5, 2010, Hayward conducted an interview with journalists from the *Houston Chronicle*, at BP's offices in Houston. In reference to the oil flow rate at the Macondo well, Hayward stated, "*A guesstimate is a guesstimate. And the guesstimate remains 5,000 barrels a day.*"

402. The foregoing misrepresentation, which caused BP Shares to trade at artificially inflated prices, was materially false or misleading when made, and was known by Hayward to be false at that time, or was made with reckless disregard for the truth. Hayward omitted from this statement the material fact that, by that date, BP's own engineers and scientists had generated or received numerous pieces of data, estimates, and calculations regarding the oil flow rate estimates that far exceeded the 5,000 barrels per day figure. For the same reasons, Hayward also failed to disclose that, based on the internal data, estimates, and calculations, it was not accurate to continue to assert that 5,000 barrels per day was the best estimate of the amount of oil flowing into the Gulf of Mexico.

X. May 14, 2010

403. On May 14, 2010, Suttles appeared on ABC's "Good Morning America," during which interview he stated in part: "ourselves and people from NOAA believe that *something around 5,000, that's actually barrels a day, the best estimate.*"

404. Also on May 14, 2010, Suttles appeared on NBC's "Today Show," where he was asked whether BP had "underplayed" the size of the leak and "[I]s it possible that you are actually leaking more than 5,000 barrels a day? Yes or no." In response, Suttles replied in part: "I don't think it is wildly different than that number it could be a bit above or below."

405. Additionally on May 14, 2010, on *CNN.com*, BP publicly reasserted the 5,000 barrels per day number and directly rejected a Purdue University professor's estimate that the flow rate was up to 70,000 barrels per day. Specifically, Dudley, who at the time was BP's Managing Director and one of its top officials coordinating the Company's oil spill response, called the 70,000 barrel per day figure "not accurate at all" and said it "isn't anywhere I think within the realm of possibility." As discussed below, Dudley essentially disavowed this statement altogether as having been false just two weeks later, on May 30, 2010. On or about July 27, 2010, BP

announced that Dudley would become BP's new CEO, succeeding Hayward, which he did on October 1, 2010.

406. The foregoing misrepresentations, which caused BP Shares to trade at artificially inflated prices, were materially false or misleading when made, and were known by BP and Suttles to be false at that time, or were made with reckless disregard for the truth. Suttles omitted in his statements the material fact that, by that date, BP's own engineers and scientists had generated or received numerous pieces of data, estimates, and calculations regarding the oil flow rate estimates that far exceeded the 5,000 barrels per day figure. For the same reasons, BP and Suttles also failed to disclose that, based on the internal data, estimates, and calculations, it was not accurate to continue to assert that 5,000 barrels per day was the best estimate of the amount of oil flowing into the Gulf of Mexico. Likewise, for the same reasons, it was misleading to use NOAA's 5,000 barrels per day "best estimate" as the basis of any public disclosure when BP itself had its own, higher range of flow rate estimates.

407. As BP admitted in its November 15, 2012 Consent with the SEC, a BP senior engineer performed work that resulted in an estimated range of flow rates between 14,000 and 96,000 barrels per day, which he shared internally with BP executives during the second week of May 2010. That same engineer read on *CNN.com* that BP had publicly reasserted the 5,000 barrels per day flow rate while refuting the Purdue University professor's figure of 70,000 barrels per day, and after doing so, wrote an email to a senior executive within BP Exploration and a junior executive tasked to support him, stating:

I just read an article on CNN (May 14, 2010 1:00 pm) stating that a researcher at Purdue believes that the Macondo well is leaking up to 70,000 bopd and that BP stands by a 5,000 bopd figure. With the data and knowledge we currently have available we cannot definitively state the oil rate from this well. ***We should be very cautious standing behind a 5,000 bopd figure as our modeling shows that this well could be making anything up to ~100,000 bopd*** depending on

a number of unknown variablesWe can make the case for 5,000 bopd only based on certain assumptions and in the absence of other information.

408. This email failed to spur any discussion within BP as to whether it should update or correct its prior disclosures about the 5,000 barrels per day figure.

Y. May 17, 2010

409. On May 17, 2010, at a Unified Command press briefing, Suttles was asked if BP was “certain how much is actually leaking and that it is about that 5,000 barrel figure we used to hear before?” In response, he stated in part: “[*T*]hat’s *our best estimate today*. Clearly people are constantly asking that question.”

410. The foregoing misrepresentation, which caused BP Shares to trade at artificially inflated prices, was materially false or misleading when made, and was known by Suttles to be false at that time, or was made with reckless disregard for the truth. Suttles omitted from this statement the material fact that, by that date, BP’s own engineers and scientists had generated or received numerous pieces of data, estimates, and calculations regarding the oil flow rate estimates that far exceeded the 5,000 barrels per day figure. For the same reasons, Suttles also failed to disclose that, based on the internal data, estimates, and calculations, it was not accurate to continue to assert that 5,000 barrels per day was the best estimate of the amount of oil flowing into the Gulf of Mexico.

Z. May 19, 2010

411. On May 19, 2010, McKay appeared before the Committee On Transportation And Infrastructure and said the following in response to a question about whether “5,000 barrels per day [was] the most accurate” figure for the amount of oil leaking into the Gulf:

[McKay] *That is our best estimate*. Obviously, it’s continually being looked at. As you may know, we’ve gotten this riser insertion tube to work, and we’re getting increased volumes at the surface where we can actually measure. And then, I believe there is a new small task force that has been put together under direction of

Unified Command to get all the experts together in a room and try to understand, with the latest available data, is there a more accurate estimate? But we do recognize there is a range of uncertainty around the current estimate.

The following exchange ensued later during this same hearing:

[Rep. Laura A. Richardson]: . . . Why is there a disagreement between the total amount of oil that is leaking? BP has said 5,000, other reports are saying otherwise. Why do you think there is a disagreement, and do you stand by your point that it is only 5,000?

Mr. McKay. I think there are a range of estimates and it is impossible to measure. That is the reality. What we have been doing with government officials, government experts, industry experts, is trying to come up with the best estimate, and that has been done essentially by understanding what is happening at the surface and trying to understand volume there, adding to it what we believe the oil properties, how it would disperse in a water column as it moves to the surface. And those two added together is the estimated volume. It has been clear from day one there is a large uncertainty range around that.

Ms. Richardson. Is it possible it could possibly be the larger number that has been reported?

Mr. McKay. It is theoretically possible. *I don't think anyone believes it is quite that high that has been working on this. I believe the uncertainty range is around that 5,000 number, and it could be higher. But if the number you are talking about is 70,000 barrels a day, I don't know this, but I don't think people that are working with it believe that that is a possibility.*

412. The foregoing statements, which caused BP Shares to trade at artificially inflated prices, were materially false and misleading because Defendants knew or recklessly disregarded the truth. McKay omitted from this statement the material fact that, by that date, BP's own engineers and scientists had generated or received numerous pieces of data, estimates, and calculations regarding the oil flow rate estimates that far exceeded the 5,000 barrels per day figure. For the same reasons, McKay also failed to disclose that, based on the internal data, estimates, and calculations, it was not accurate to continue to assert that 5,000 barrels per day was the best estimate of the amount of oil flowing into the Gulf of Mexico. In reality, BP's own internal estimates were significantly closer to the 70,000 barrels per day.

AA. May 20, 2010

413. On May 20, 2010, BP filed a Form 6-K with the SEC entitled “Update On Gulf Of Mexico Oil Spill Response.” In it, BP provided an update on containment measures aimed at reducing the amount of leaking oil that escaped into the Gulf. BP stated, “The volume of oil and gas being collected by the riser insertion tube tool (RITT) containment system at the end of the leaking riser is estimated to be about 3,000 barrels a day (b/d) of oil and some 14 million standard cubic feet a day of gas. The oil is being stored and gas is being flared on the drillship Discoverer Enterprise, on the surface 5,000 feet above.”

414. The foregoing statement, which gave the impression that BP was capturing sixty percent (60%) of the oil leaking from the blown well given its publicly stated 5,000 barrel per day flow rate, caused BP Shares to trade at artificially inflated prices, was materially false or misleading when made, and was known by Defendant BP to be so at that time or was made with reckless disregard for the truth. BP omitted from this statement the material fact that, by that date, BP’s own engineers and scientists had generated or received numerous pieces of data, estimates, and calculations regarding the oil flow rate estimates that far exceeded the 5,000 barrels per day figure. For the same reasons, BP also failed to disclose that, based on the internal data, estimates, and calculations, it was not accurate to continue to assert that 5,000 barrels per day was the best estimate of the amount of oil flowing into the Gulf of Mexico, and that, as a result, the amount of oil being captured by BP’s RITT containment system was a negligible amount as compared to the oil flow actually leaking.

BB. May 21, 2010

415. On May 21, 2010, Suttles appeared once again on ABC’s “Good Morning America,” where he was asked point-blank as to whether he and BP were being truthful in their oil flow estimates. Specifically, this exchange occurred:

Q: People have really had enough of this. You know, initially, you were saying 5,000 barrels were leaking. Now we can see for ourselves that it's far more than that. Could be – approaching 100,000. Did you deliberately underestimate the size of the spill and mislead the public?

Suttles: Robin, you know, from the beginning, we've, we, we've worked with the government on this estimate. In fact, I should actually point out that the 5,000 barrels a day . . . That was not just BP's estimate. That was the estimate of the Unified Command, including NOAA and the Coast Guard. ***And that's the best estimate we have.*** We can't put a meter on this thing. We can see what you can see. We can see what's on the surface.

416. Also on May 21, 2010, Suttles appeared at a Unified Command press briefing, where in response to a question he stated in part:

[W]e have done analysis since the beginning about what we believe the rate is and we've talked about that on numerous times. And we've said since quite early on in this that ***our best estimate was*** around 5,000 barrels a day. . . . ***So at the moment, that's our best estimate.***

417. The foregoing misrepresentations, which caused BP Shares to trade at artificially inflated prices, were materially false or misleading when made, and were known by Suttles to be false at that time, or were made with reckless disregard for the truth. Suttles omitted from his statements the material fact that, by that date, BP's own engineers and scientists had generated or received numerous pieces of data, estimates, and calculations regarding the oil flow rate estimates that far exceeded the 5,000 barrels per day figure, as set forth in Sections U. and CC. herein. For the same reasons, Suttles also failed to disclose that, based on the internal data, estimates, and calculations; it was not accurate to continue to assert that 5,000 barrels per day was the best estimate of the amount of oil flowing into the Gulf of Mexico. Likewise, for the same reasons, it was utterly misleading to use NOAA's 5,000 barrels per day as the "best estimate" as the basis of any public disclosure, or to reference the Unified Command, NOAA, and the Coast Guard as evidence of the validity of such a statement, when BP itself had its own, higher range of flow rate estimates.

CC. May 22, 2010

418. On May 22, 2010, Suttles was interviewed on NPR's "Weekend Edition." During the course of the interview, Suttles made repeated misrepresentations about the oil flow rate from the Macondo well, including among others:

Q: And how much oil is billowing into the Gulf right now?

Suttles: Well, Scott, I precisely don't know. We've been trying to estimate the flow since very early on in the spill, and when I say we, it's actually BP, NOAA, the Coast Guard and others. We can monitor what comes out of that pipe, but that's visual. It's very difficult to measure that. There's no meter. But what we can also do is actually look at the expression of it on the surface, 'cause we can use aerial techniques to try to map how much oil is there and then see how much we collect or burn and the other techniques and look at the difference. ***And those are the techniques we use to give an estimate, and 5,000 barrels a day was the best estimate we could do...***

Q: Now . . . there's independent scientists who've made their own estimates at NPR's request, and they've come up with a substantially higher figure than 5,000. They say as much as 70,000 barrels a day.

Suttles: ***I've heard those [70,000 barrels a day] estimates and seen them and I don't believe it's possible that it's anywhere near that number . . . since I can't meter it, I can't actually say it couldn't be. But all of our techniques say that that's highly unlikely.*** And I think some of the reasons these estimates may not be able to accurately calculate is there's a large volume of gas coming out of the end of that pipe with the oil.

And in addition to that, we, particularly over the last few days, when we've had good weather, we've actually seen the size of the spill and the amount of the oil on the surface go down. ***So those are the things that lead me to believe that those estimates are way too high.***

Q: What I'm trying to understand is if, and I will split the difference, but let's say that it's 30,000 barrels a day that are spilling - if you try to top kill . . . do you risk using a technique that could make the spill even worse?

Suttles: No, I don't believe that's the case, Scott, and ***we don't think the rate's anywhere near that high.***

419. The foregoing misrepresentations, which caused BP Shares to trade at artificially inflated prices, were materially false or misleading when made, and were known by Suttles to be false at that time, or were made with reckless disregard for the truth. Suttles omitted from his

statements the material fact that, by that date, BP's own engineers and scientists had generated or received numerous pieces of data, estimates, and calculations regarding the oil flow rate estimates that far exceeded the 5,000 barrels per day figure. For the same reasons, Suttles also failed to disclose that, based on the internal data, estimates, and calculations, it was not accurate to continue to assert that 5,000 barrels per day was the best estimate of the amount of oil flowing into the Gulf of Mexico. Likewise, for the same reasons, it was misleading to reference NOAA and the Coast Guard's role in estimating the oil flow rate as evidence of the validity of Suttles' statements reaffirming the 5,000 barrels per day figure and refuting the 30,000 and 70,000 barrels per day figures, when BP itself had its own, higher range of flow rate estimates.

DD. May 24, 2010

420. On May 24, 2010, BP filed a Form 6-K with the SEC entitled "Update On Gulf Of Mexico Oil Spill Response." In it, BP provided an update on containment measures aimed at reducing the amount of leaking oil that escaped into the Gulf. BP stated:

In the period from May 17th to May 23rd, the daily oil rate collected by the RITT has ranged from 1,360 barrels of oil per day (b/d) to 3,000 b/d, and the daily gas rate has ranged from 4 million cubic feet per day (MMCFD) to 17 MMCFD. In the same period, the average daily rate of oil and gas collected by the RITT containment system at the end of the leaking riser has been 2,010 barrels of oil per day (BOPD) and 10 MMCFD of gas. The oil is being store and gas is being flared on the drillship Discoverer Enterprise, on the surface 5,000 feet above.

421. The foregoing statements, which gave the impression that BP was capturing between twenty-seven and two-tenths percent (27.2%) and sixty percent (60%) of the oil leaking from the blown well given its publicly stated 5,000 barrel per day flow rate, caused BP Shares to trade at artificially inflated prices, was materially false or misleading when made, and was known by Defendant BP to be so at that time or was made with reckless disregard for the truth. BP omitted from this statement the material fact that, by that date, BP's own engineers and scientists had generated or received numerous pieces of data, estimates, and calculations regarding the oil

flow rate estimates that far exceeded the 5,000 barrels per day figure, as set forth in Sections U and DD herein. For the same reasons, BP also failed to disclose that, based on the internal data, estimates, and calculations, it was not accurate to continue to assert that 5,000 barrels per day was the best estimate of the amount of oil flowing into the Gulf of Mexico, and that, as a result, the amount of oil being captured by BP's RITT containment system was a negligible amount as compared to the oil flow actually leaking.

Additional Reasons Why The Statements On April 30-May 24, 2010, Were False And Misleading And Were Made With Scienter

422. Each of the misrepresentations in Sections V through CC above were materially false or misleading when made, and were known by the speaking Defendant(s) and those Defendant(s) to whom each such statement was attributable to be false at that time, or were made with reckless disregard for the truth, because they falsely represented that the amount spilling from the Macondo well was approximately 5,000 barrels of oil per day and/or rejected the idea that the flow rate could be higher. Indeed, as discussed herein, BP agreed on November 15, 2012, to pay the third-largest penalty in the SEC's history, \$525 million, to settle securities fraud charges arising, in part, from the misrepresentations described in Sections V through CC above.

423. In contrast to the misrepresentations in Sections V through CC above, Defendants failed to disclose that the Company's contemporaneous, internal "best estimate" of the amount of oil flowing from the well, unbeknownst to the market, was in fact *multiples* greater. When the statements set forth in Sections V through CC, which caused BP common stock and ADS to trade at artificially high prices were made, the speaking Defendant(s) and those Defendant(s) to whom each such statement was attributed knew them to be false or were severely reckless in not knowing them to be false. In addition to the five pieces of data, estimates, or calculations that BP possessed by April 28, 2010, showing flow rates significantly higher than 5,000 barrels per day, BP admitted

in its November 15, 2012 Consent with the SEC that between April 30, 2010 and May 24, 2010, BP generated or was aware of eleven additional pieces of data, estimates, and calculations – of which Suttles received at least six, Rainey received at least four, and Hayward knew of all eleven – showing a range of flow rates significantly higher than 5,000 barrels per day. They were:

(a) On April 30, 2010, an analysis performed by a BP engineer yielded a range of possible flow rates *from 5,000 barrels per day to 40,000 barrels per day*.

(b) In early May 2010, a video analysis by a BP engineer resulted in an estimate of *20,000 barrels per day*, attributable to just the riser pipe.

(c) On May 9, 2010, modeling done by a BP contractor led to a range of possible flow rates *from 37,000 to 87,000 barrels per day*.

(d) On May 10, 2010, a video analysis done by a BP contractor led to the conclusion that for just oil leaking from the riser pipe, it could not be “ruled out” that the flow rate was “in the order of *40,000 bopd*.”

(e) On or about May 10 and May 11, 2010, reservoir modeling done by a BP engineer yielded a range of potential flow rate estimates *from 14,000 bopd to 96,000 bopd*. This senior engineer shared his work internally with senior BP executives during the second week of May 2010. As described above, on May 15, 2010, the BP engineer expressed concerns in an email to a senior and a junior executive in BP’s Exploration and Production business regarding the Company’s public statements reaffirming the 5,000 barrels per day figure and refuting a professor’s calculated estimate of 70,000 barrels per day. In the email, this engineer stated that the flow rate could be anything up to 100,000 barrels per day.

(f) From May 14 to May 15, 2010, a BP engineer critiqued a Purdue University professor’s analysis estimating a flow rate of 70,000 barrels per day. The critique identified what

the BP engineer stated were potential errors made by that professor that, when corrected for, yielded a revised estimate of 15,000 barrels per day, just attributable to the riser pipe, from which the BP engineer stated that a further reduction appropriately could be made.

(g) On May 16, 2010, a reservoir-depletion/pressure-drop analysis done by a BP engineer yielded a flow rate calculation of 86,600 barrels per day, based on the then-estimated pressure.

(h) From May 19 to May 20, 2010, a collection of a portion of the oil from the riser pipe with the Riser Insertion Tube Tool (“RITT”) showed average collection rates of approximately 5,000 barrels per day for a 12-hour period, capturing only a portion of the oil leaking from the riser, therefore indicating that the total amount of oil leaking was in excess of 5,000 barrels per day.

(i) On May 22, 2010, an external surface expression analysis showed a range of estimated flow rate from 6,154 to 11,609 barrels per day.

(j) On May 23, 2010, an analysis created by a BP engineer of the flow rate attributable only to the flow coming from the “kink” in the riser pipe showed an estimate of 11,600 barrels per day.

(k) On May 24, 2010, the RITT collected approximately 6,100 barrels of oil during the 24-hour period from midnight to midnight, despite the fact that it was not collecting all of the oil flowing out from the well, therefore, indicating again that the total amount of oil leaking was in excess of 5,000 barrels per day.

424. On May 27, 2010, the Flow Rate Technical Group (“FRTG”), a group of scientists and engineers from federal agencies and universities charged with creating an estimate of the oil

flow rate from the Macondo well, issued its first public report and statement, setting forth a flow rate estimate range of 11,000 barrels per day to 25,000 barrels per day.

425. The same day, in a May 27, 2010 news conference, President Obama remarked that BP had failed to be fully forthcoming in describing the rate of the oil leak:

I think it is a legitimate concern to question whether BP's interests in being fully forthcoming about the extent of the damage is aligned with the public interest. I mean, [] their interest may be to minimize the damage, and to the extent that they have better information than anybody else, to not be fully forthcoming.

So my attitude is, we have to verify whatever it is they say about the damage.

This is an area, by the way, where I do think our efforts fell short. And I'm not contradicting (sic) my prior point that people were working as hard as they could and doing the best that they could on this front. But I do believe that, *when the initial estimates came, that there were – it was 5,000 barrels spilling into the ocean per day.*

That was based on satellite imagery and satellite data that would give a rough calculation. *At that point, BP already had a camera down there, but wasn't fully forthcoming in terms of what did those pictures look like . . .*

426. It is not surprising that BP, Suttles, and Rainey continuously misrepresented the known amounts of oil that were being released from the well. As noted in a *Rolling Stone* article dated June 8, 2010: “For BP, the motive [to downplay the amount of oil seeping into the Gulf] is financial: Under the Clean Water Act, the company could owe fines of as much as \$4,300 for every barrel [of oil] spilled, in addition to royalties for the oil it is squandering.”

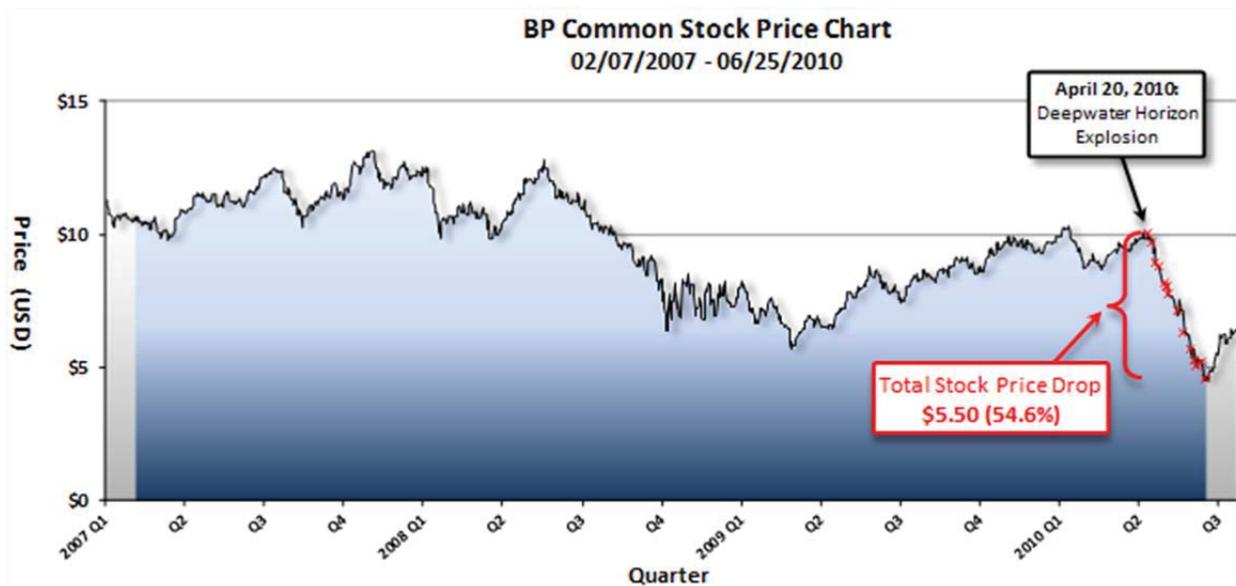
427. Additionally, information regarding the oil flow rate was material to BP's investors, because the amount of oil spilled would bear any consideration of the costs of offshore and onshore oil spill response, claims for natural resource damage under the Oil Pollution Act of 1990 [33 U.S.C. § 2701, *et seq.*], penalties for strict liability under the Clean Water Act [33 U.S.C. § 2701, *et seq.*], as well as other potential liabilities arising from claims, lawsuits, and enforcement actions related to the explosion and sinking of the Deepwater Horizon rig and the resultant oil spill.

VIII. LOSS CAUSATION

428. Defendants' wrongful conduct, as alleged herein, directly and proximately caused the economic loss suffered by Plaintiffs.

429. Throughout the Relevant Period, the market prices of BP Shares (including those purchased by Plaintiffs) were artificially inflated as a direct result of Defendants' materially false and misleading statements and omissions. For example, before the Deepwater Horizon explosion, securities analysts emphasized BP's renewed dedication to safety and BP's operations in the Gulf of Mexico as one of the main focuses for BP's future results. A February 28, 2008 report from JPMorgan stated that BP had "put much emphasis on the potential earnings uplift from the restructuring of their R&M [Refining and Marketing] business" and the Company expected to deliver increased performance relative to its key peers through "safety and operations." The JPMorgan analyst stated that "although BP has already made significant progress in this area through the implementation of the Baker panel recommendation and their 'six-point plan,' safety and operations remain one of BP's main priorities." Similarly, a February 1, 2010 analyst report from Dolmen Stockbrokers stated that "BP continues to remain one of our two preferred integrated oil companies" and "[w]e expect management to deliver . . . better production figures as a consequence of early restoration of operations at the company's US refineries and the ramping up of production in the Gulf of Mexico."

430. When the truth became known, the prices of BP Shares declined precipitously as the artificial inflation was removed from the prices of these securities, causing substantial damage to Plaintiffs, as reflected in the stock price chart below.



431. The relevant truth about BP's operations slowly emerged following the April 20, 2010 explosion on the Deepwater Horizon and BP's failed efforts to stop or contain the resulting oil spill. Immediately prior to the explosion, BP's ADS traded at approximately \$60.48 per ADS, and its common stock traded at 655.4 pence per share on the LSE. Following the explosion, BP ADS and common stock began a nearly continuous decline as the artificial inflation created by the Defendants' misrepresentations and material omissions dissipated from the price of the securities.

432. Specifically, on April 26, 2010, government officials announced that attempts to stop the spill had failed and that oil was flowing into the Gulf of Mexico. This news caused the price of BP Shares to plummet. Specifically, BP's ADS declined \$1.97 per ADS, from \$59.88 per ADS on Friday, April 23, 2010, to close at \$57.91 per ADS on Monday, April 26, 2010, while BP's common stock fell from 639.7 pence per share on the LSE on April 23, 2010, to close at 626.8 pence per share on April 26, 2010, a decline of 12.9 pence per share. The declines are directly related to the market absorbing information revealing risks BP concealed throughout the Relevant

Period, specifically, that the Company conducted its operations in the Gulf of Mexico without a legitimate spill response plan and that the Company's statements about reforming BP's safety profile were false.

433. After the market closed on April 28, 2010, NOAA held a press conference during which it increased its estimate of the amount of oil spewing into the Gulf of Mexico from 1,000 to 5,000 barrels per day – five-times greater than that previously estimated by BP. On April 29, 2010, Homeland Security Secretary Janet Napolitano declared the spill a crisis of “national significance.” This news caused the price of BP Shares to fall again. Specifically, BP ADS fell from a closing price of \$57.34 per ADS on April 28, 2010 to close at \$52.56 per ADS on April 29, 2010, a decline of \$4.78 per ADS or more than 8%, while BP common stock fell from 625.0 pence per share on the LSE on April 28, 2010, to 584.2 pence per share on April 29, 2010, a decline of 40.8 pence per share. The declines are directly related to the market absorbing information revealing risks BP concealed throughout the Relevant Period, specifically, that the Company conducted its operations in the Gulf of Mexico without a legitimate spill response plan, that the Company's statements about reforming BP's safety profile were false, and about the amount of oil believed to be spilling into the Gulf of Mexico on a daily basis.

434. On April 30, 2010, when it was reported that the oil slick caused by the disaster reached Louisiana's coastline, BP ADS closed at \$52.15 per ADS, a decline of over \$8.00 per ADS since April 20, 2010. BP's common stock had declined nearly 80 pence per share over the period. The declines are directly related to the market absorbing information revealing risks BP concealed throughout the Relevant Period, specifically, that the Company conducted its operations in the Gulf of Mexico without a legitimate spill response plan and that the Company's statements about reforming BP's safety profile were false.

435. In the days and weeks that followed, additional news and information emerged on a seemingly continuous basis further revealing BP's wanton disregard for conducting its operations in a safe manner and the lack of any legitimate spill response plan by BP. These revelations caused BP's ADS and common stock to plummet further.

436. On May 3, 2010, BP claimed responsibility for the cleanup efforts related to the spill, and Hayward stated: "This is not our accident, but it's our responsibility." The Company's ADS fell from \$52.15 to \$50.19, a decline of 3.8%. The Company's common stock was not traded on the LSE on May 3rd, due to a holiday, but closed at 575.5 pence per share on April 30, 2010, and opened at 546 pence per share on May 4, 2010, representing a decline of 5.1%. The decline is directly related to the market absorbing information revealing risks concealed by BP throughout the Relevant Period, specifically, that the Company conducted its operations in the Gulf of Mexico without a legitimate spill response plan and that the Company's statements about reforming BP's safety profile were false.

437. On May 6, 2010, BP commenced its attempt to contain the spill with a large domelike structure, to be placed over the Macondo well. On May 8, 2010, BP disclosed that the containment dome efforts had failed. At this time, tar had begun to wash up on the Alabama coast. On May 10, 2010, BP released a statement updating the public on the Gulf of Mexico oil spill response and revealed that oil spill costs to date had reached \$350 million. In reaction to this news, BP's ADS fell from \$49.06 per ADS on Friday, May 7, 2010, to close at \$48.75 on Monday, May 10, 2010, a decline of \$0.31 per ADS; BP's common stock fell from 553.9 pence per share to 549.2 pence per share over the same period. The decline is directly related to the market absorbing information revealing risks concealed by BP throughout the Relevant Period, specifically, that the

Company conducted its operations in the Gulf of Mexico without a legitimate spill response plan and that the Company's statements about reforming BP's safety profile were false.

438. On May 12, 2010, *Bloomberg* published an article entitled "BP Tells Congress Gulf Well Failed Pressure Tests Before Blast." The article stated, in relevant part:

A Gulf of Mexico oil well failed a pressure test hours before a drilling rig exploded last month, an executive for well owner BP Plc told the U.S. House Energy Committee that's investigating the incident.

Such pressure tests are aimed at ensuring the integrity of cement poured into the well to keep out natural gas, said Committee Chairman Henry Waxman, a California Democrat, citing a report to the panel from James Dupree, BP senior vice president for the Gulf. The tests before the April 20 blast showed "discrepancies" in pressure levels, Waxman said.

* * *

"BP, one of the largest oil companies, assured Congress and the public that it could operate safely in deep water and that a major oil spill was next to impossible," Waxman said. "We now know those assurances were wrong."

* * *

'Serious Questions'

"BP promised to make safety its number one priority," Stupak said. "This hearing will raise serious questions about whether BP and its partners fulfilled this commitment. The safety of its entire operations rested on the performance of a leaking and apparently defective blowout preventer."

439. These revelations caused BP ADS to close at \$48.50 per share on May 12, 2010, a decline of \$0.24 per ADS from the previous day's closing price and approximately \$11.98 per ADS since April 20, 2010. Similarly, BP's common stock in London closed at 541.6 pence per share that day – down 3.9 pence from the previous day and 113.8 pence per share (-17.4%) in comparison to April 20, 2010.

440. On May 13, 2010, *The Wall Street Journal* published an article entitled, "Red Flags Were Ignored Aboard Doomed Rig." This article stated, in relevant part:

Managers at oil giant BP PLC decided to forge ahead in finishing work on the doomed Deepwater Horizon rig despite some tests suggesting that highly combustible gas had seeped into the well, according to testimony released by congressional investigators and documents seen by *The Wall Street Journal*.

441. On May 13, 2010, as a result of these continuing revelations about BP's operations, BP ADS closed at \$48.10 per ADS, \$0.40 per share below the previous day's closing price. BP's common stock decreased on this date, but in an amount that was restrained by this disclosure. This decline is directly related to the market learning of BP's process safety deficiencies.

442. On May 14, 2010, *The Wall Street Journal* published an article entitled "BP Wasn't Prepared For Leak, CEO Says." This article stated, in relevant part:

BP has been particularly vulnerable to criticism because among the large oil companies it is by far the biggest player in deepwater oil exploration. Some in the industry have said a company with such a strong focus on deepwater drilling should have had much better contingency plans for dealing with an underwater oil leak at this depth.

Mr. Hayward, speaking to a small group of journalists Wednesday night in Houston, admitted that the oil giant had not had the technology available to stop the leak. He also said in hindsight it was "probably true" that BP should have done more to prepare for such an emergency.

"It's clear that we will find things we can do differently, capability that we could have available to deploy instantly, rather than be creating it as we go," he said.

443. On May 14, 2010, due to these revelations, BP's shares dropped \$1.23 per ADS to close at \$46.87 per share. BP's common stock suffered a similar decline. The decline is directly related to the market absorbing information revealing risks concealed by BP throughout the Relevant Period, specifically, that the Company conducted its operations in the Gulf of Mexico without a legitimate spill response plan and that the Company's statements about reforming BP's safety profile were false.

444. On May 24, 2010, BP announced that the costs for addressing the Gulf of Mexico oil spill had more than doubled, from \$350 million to \$760 million. Additionally, BP announced

that it was recovering less oil than it expected. Finally, pressure on BP continued to grow because the U.S. government threatened to take over the oil spill response effort because of BP's lack of progress. On this news, the Company's ADS fell from \$43.86 per ADS on Friday, May 21, 2010 to close at \$41.86 per ADS on Monday, May 24, 2010, a decline of \$2.00 per ADS; BP's common stock fell from 506.7 pence per share to close at 493 pence per share on May, 24, 2010.

445. On May 26, 2010, BP began its "top kill" efforts, the goal being to put heavy kill mud into the well so that it reduced the pressure and then the flow from the well.

446. However, on Saturday, May 29, 2010, while trading markets were closed, BP revealed that the "top kill" procedure it had begun a few days earlier had failed. The failure of the "top kill" indicated that BP would be unable to stop the oil spill and would have to rely on efforts to try to contain the spill while it completed the relief wells. The failed attempt to kill the well by using the "top kill" and "junk shot" efforts shocked investors. As noted by ABC News on Saturday, May 29, 2010: "We begin tonight with breaking news from the Gulf. After so much talk that Top Kill was the best bet to plug the oil spill in the Gulf, BP announced just a short time ago that the effort has failed. That live picture so many Americans have been keeping track of [i.e., the oil spewing from the Macondo well], us included, confirms that the oil is still gushing into the Gulf. This is another crushing blow when it comes on what is now day 40 of this crisis." Similarly, on that same day, the *Agence France Presse* reported, in part, that: "The announcement [that the top kill and junk short plans failed] is a stunning setback for efforts to halt what has become the worst oil spill in US history. . ." Moreover, *The Business Insider* made clear that the failure of the top kill would lead to BP's securities being "slaughtered in London trading on Monday."

447. Also on May 29, 2010, *The New York Times* published an article entitled “Documents Show Early Worries About Safety of Rig.” This article stated, in relevant part:

Internal documents from BP show that there were serious problems and safety concerns with the Deepwater Horizon rig far earlier than those the company described to Congress last week.

* * *

The documents show that in March, after several weeks of problems on the rig, BP was struggling with a loss of “well control.” And as far back as 11 months ago, it was concerned about the well casing and the blowout preventer.

448. On May 30, 2010, Dudley conducted a series of interviews with U.S. media outlets in which he admitted that BP’s original oil flow estimates – which he himself had personally reiterated just *two weeks prior* – were vastly understated. On these disclosures, the Company’s ADS fell from \$42.95 per ADS on Friday, May 28, 2010, to close at \$36.52 per ADS on Tuesday, June 1, 2010, a decline of \$6.43 per ADS or approximately 15%. BP’s common stock suffered a similar decline.

449. On June 1, 2010 (the first trading day since the failure of the “top kill” effort), United States Attorney General, Eric Holder, reported that the DOJ opened formal criminal and civil probes of BP. News of the Attorney General’s action and BP’s inability to cap the well with its “top kill” procedure sent its ADS tumbling nearly 15%, to close on June 1, 2010, at \$36.52 per ADS, on heavy trading volume. Likewise, the Company’s common stock fell 64.8 pence over the period to close at 430 pence. This closing price on June 1, 2010, represents a cumulative decline in the value of BP’s ADS of nearly \$24.00 per ADS since April 20, 2010, or approximately 40%. Moreover, the decline over this period in BP’s common stock was more than 225 pence, representing a decline of more than 34% since the closing price on April 20, 2010. These declines are directly related to the market absorbing information revealing risks concealed by BP throughout the Relevant Period, specifically that the Company conducted its operations in the Gulf

of Mexico without a legitimate spill response plan and that the Company's statements about reforming BP's safety profile were false.

450. Speaking to the *Financial Times* in Houston on June 2, 2010, Hayward admitted that it was "an entirely fair criticism" to blame BP for the disorganized and poor cleanup effort because "[w]hat is undoubtedly true is that we did not have the tools you would want in your tool-kit" to stop the leak from the Macondo well in the Gulf of Mexico in the aftermath of the explosion.

451. On June 9, 2010, fears that the Company would suspend dividends caused a further decline in BP Shares. On this news, the Company's ADS fell from \$34.68 per ADS on June 8, 2010, to close at \$29.20 per ADS on June 9, 2010, a decline of \$5.48 per ADS or almost 16%. BP's common stock suffered a similar decline.

452. Speculation regarding the possibility that BP would suspend dividend payments continued on June 9, 2010. An *Associated Press* article published on the afternoon of June 9, 2010, entitled "Dividend worries weigh on BP shares" explained, "[c]utting the dividend would have a big impact in Britain, as BP accounts for around 12-13 percent of payments from companies in the blue-chip FTSE 100 index"

453. On June 14, 2010, BP's Board of Directors officially met to discuss suspending the Company's dividend payments in light of the Company's agreement to set up a \$20 billion claim fund for damages caused by the Deepwater Horizon catastrophe. On that date, *The New York Times* reported, in part, as follows:

To make sure that all claims are paid, the Obama administration has stepped up the pressure on the company, demanding that it set aside money to pay for future liabilities before paying dividends to shareholders, which now amount to about \$10.5 billion annually. Senate Democrats are asking BP to set up a \$20 billion cleanup fund.

BP, which has spent about \$1.5 billion on the cleanup so far, has said it expects to be able to pay all spill costs from its regular operating funds.

But in response to the federal government's requests, BP's board met Monday to consider its options. A spokesman said the company did not expect to announce decisions about its dividend until after its chairman and its chief executive spoke with Mr. Obama on Wednesday at a meeting the president had called.

A person with direct knowledge of the discussions said the board was considering three options: suspending payment of the dividend for two quarters, paying the dividend in bonus shares rather than cash, or placing an amount equal to the dividend payment in escrow while continuing to pay for the cleanup separately.

According to another news source: "Shares in BP plunged again Monday [June 14, 2010] as the company's board discussed U.S. demands that it suspend dividend payments until it pays for the cleanup of the Gulf of Mexico oil spill." On this news, the Company's ADS fell from \$33.97 per ADS on Friday, June 11, 2010, to close at \$30.67 per ADS on Monday, June 14, 2010, a decline of \$3.30 per ADS or almost 10%. BP's common stock suffered a similar decline.

454. The next day, on June 15, 2010, the FRTG released its latest public report, revising its oil flow rate estimates upward again, to between 35,000 barrels per day and 60,000 barrels per day. On this news, the Company's common stock fell from 355.45 pence per share on June 14, 2010, to close at 342.00 pence per share on June 15, 2010, a decline of 13.45 pence per share or almost 3.8%. The FRTG maintained this estimate until August 2, 2010, when it issued its final report, estimating the oil flow rate at between 52,700 barrels per day and 62,200 barrels per day during the course of the leak, meaning a total of 4.9 million barrels of oil was spilled overall.

455. On June 21, 2010, at 2 a.m. EST, BP issued a press release updating the spill response and estimated the cost of the response to date to be approximately \$2 billion. The \$2 billion estimate is about \$33 million per day, compared with an estimate on June 14 of \$1.6 billion or about \$30 million per day. Also, on June 21, BBC interviewed a Deepwater Horizon worker,

Tyrone Benton (“Benton”), who claimed to have spotted a leak in safety equipment weeks before the explosion. Benton claimed the leak in the blowout preventer was not fixed at the time, but instead the faulty device was shut down and a second one used. Benton said: “We saw a leak on the pod, so by seeing the leak we informed the company men. . . . They have a control room where they could turn off that pod and turn on the other one, so that they don’t have to stop production.” He said to repair the control pod would have meant temporarily stopping drilling work on the rig at a time when it was costing BP \$500,000 per day to operate the Deepwater Horizon.

456. On this news, BP ADS fell \$1.43 or 4.5% and BP common stock fell 7.95 pence or 2.2% on June 21, 2010. On June 22, 2010, BP ADS fell an additional 65 cents or 2% and BP common stock fell 15.30 pence or 4%.

457. On June 25, 2010, at 2 a.m. EST, BP issued a press release updating the spill response and estimated the cost of the response to date to be approximately \$2.35 billion. There was also concern that tropical storm Alex may disrupt the clean-up response.

458. On this news, BP ADS fell \$1.72 or nearly 6% and BP common stock fell 20.65 pence or 6% on June 25, 2010.

IX. NO SAFE HARBOR

459. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the false and misleading statements pleaded in this Complaint. The specific statements pleaded herein were not identified as forward-looking statements when made.

460. To the extent there were any forward-looking statements, the statements were not accompanied by any meaningful cautionary language identifying important facts that could cause actual results to differ materially from those in the statements. Further, the statements complained

of herein were historical statements or statements of current facts and conditions at the time the statements were made.

461. Alternatively, to the extent the statutory safe harbor otherwise would apply to any forward-looking statements pleaded herein, Defendants are liable for those false and misleading forward-looking statements because at the time each of those statements was made, the speakers knew the statement was false or misleading, or the statement was authorized or approved by an executive officer of BP who knew that the statement was materially false or misleading when made.

X. DEFENDANTS INTENT TO INDUCE PLAINTIFFS' RELIANCE

462. During the Relevant Period, Defendants intended for Plaintiffs to rely on their false and misleading statements and omissions alleged herein. Specifically, Defendants must have known, or appreciated, that the natural consequence of their false and misleading statements made in communications directed to investors, at industry conferences, and in the public media concerning post-spill estimates would induce Plaintiffs to rely on them when deciding to invest in BP Shares.

463. Defendants' false and misleading statements and omissions in corporate reports, meetings, industry conferences, and conference calls were expressly aimed at the investing public, including Plaintiffs. Defendants were aware of the public documents or settings in which their false and misleading statements were made, and they anticipated that those statements would affect the investing public's and Plaintiffs' investment decisions in BP Shares.

464. For example, Defendants BP and Hayward made false and misleading statements during conference calls with analysts and investors, in Annual Reports (which were filed with the SEC and other regulatory authorities), Sustainability Reviews and Sustainability Reports (which were made available to the investing public on BP's website), during Annual General Meetings

with shareholders (which were also made available to the investing public on BP's website and were filed with the SEC and other regulatory authorities). Likewise, Defendants BP, Hayward and Inglis made false and misleading statements at the HRH Prince of Wales's 3rd Annual Accounting for Sustainability Forum, the 2010 Howard Weil Energy Conference in New Orleans, and the Peterson Institute for International Economics in 2010, all of which were subsequently made available to the investing public on BP's official website. Moreover, the Howard Weil Energy Conference billed itself as "one of the premier investor conferences in the energy industry."

465. Defendants' false and misleading statements and omissions after the Deepwater Horizon explosion concerning the amount of oil that was spilling into the Gulf of Mexico were also expressly aimed at the public, including Plaintiffs. Defendants were aware of the public settings in which their false and misleading statements were made, and they anticipated that those statements would affect the investing public's and Plaintiffs' investment decisions in BP Shares. For example, as alleged herein, Defendants BP, Hayward, and Suttles, as well as relevant non-parties Dudley and McKay made false and misleading statements, on nationally and internationally-broadcast television shows, to nationally and internationally-distributed newspapers, in news releases publicly filed with the SEC, on BP's website, during Unified Command press conferences, and during public hearings before Congress.

466. Additionally, Defendants' false and misleading statements and omissions during in-person and telephonic meetings with Plaintiffs' investment managers were made for the specific purpose of encouraging large institutional investors, including Plaintiffs, to purchase BP Shares and to maintain their holdings of BP Shares. These statements were made directly to Plaintiffs' investment managers (and other large institutional investors) during formal presentations and follow-up question and answer sessions at the private meetings. Defendants were aware of the fact

that Plaintiffs' investment managers were attending and participating at the meetings as part of their independent research and due diligence to collect information that would inform their investment decisions in BP Shares, including with respect to Plaintiffs' investment portfolios. Defendants anticipated that these statements would affect Plaintiffs' investment managers' investment decisions in BP Shares, and made the statements with the intent to induce Plaintiffs' investment managers to purchase and continue holding BP Shares.

XI. PLAINTIFFS' RELIANCE

467. During the Relevant Period, Plaintiffs relied on the false and/or misleading statements alleged herein when purchasing BP common stock on the LSE and BP ADS on the NYSE.

A. Presumption Of Reliance

468. To the extent available, Plaintiffs rely upon the presumption of reliance established by the fraud-on-the-market doctrine in that, among other things:

(a) The Defendants made public misrepresentations or failed to disclose material facts during the Relevant Period;

(b) The misrepresentations and omissions were material;

(c) The Company's ADS and common stock traded in efficient markets;

(d) The misrepresentations and omissions alleged would induce a reasonable investor to misjudge the value of the Company's ADS and common stock; and

(e) Plaintiffs purchased BP ADS and common stock between the time Defendants misrepresented or failed to disclose material facts, and the time the true facts were disclosed, without knowledge of the misrepresented or omitted facts.

469. At all relevant times, the markets for BP ADS and common stock were efficient for the following reasons, among others: (a) BP's ADS were listed and actively traded on the NYSE,

and BP's common stock was listed on both the NYSE and LSE and actively traded on the LSE; (b) BP filed periodic reports with the SEC and LSE; (c) BP regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the major news wire services and through other wide-ranging public disclosures, such as communications with the financial press, securities analysts and other similar reporting services; and (d) BP was followed by numerous analysts who wrote reports that were published, distributed and entered the public market. As a result of the foregoing, the market for BP's publicly traded ADS and common stock promptly digested current information with respect to the Company from publicly available sources and reflected such information in the price of BP ADS and common stock. Plaintiffs relied on the price of BP ADS and common stock, which reflected all the information in the market, including the misstatements by Defendants.

470. Further, in the Securities Class Action, Defendants conceded market efficiency with respect to the vast majority of the publicly available false statements and omissions alleged herein.⁵⁰

471. Plaintiffs are also entitled to a presumption of reliance under *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972) and its English-law analogues, because the claims asserted herein against Defendants are also predicated upon omissions of material fact which there was a duty to disclose.

B. Direct Reliance

472. Plaintiffs directly relied on Defendants' false and/or misleading statements alleged herein when deciding whether to purchase, sell, or hold BP Shares. Plaintiffs each employed

⁵⁰ Certain of the publicly available false statements and omissions alleged herein were not alleged by Lead Plaintiffs in the Securities Class Action.

investment managers to manage their respective investment portfolios. As discussed below, many of these investment managers took an analytical, research-based approach to investing Plaintiffs' assets, which included reading and relying on publicly available information concerning BP in deciding whether to purchase, sell, or hold BP Shares, and managed portfolios for Plaintiffs containing BP Shares that were damaged by the alleged fraud (collectively, "Plaintiffs' Investment Managers").

1. LASERS

473. During the Relevant Period, LASERS employed investment managers to manage its investment portfolios and make investment decisions on its behalf. Certain of these investment managers relied upon Defendants' false and misleading statements alleged herein in making decisions to buy, sell, or hold BP Shares on LASERS's behalf, and managed portfolios containing BP Shares that were damaged by the alleged fraud (collectively, "LASERS's Investment Managers" and each a "LASERS Investment Manager").

474. For example, one of LASERS's Investment Managers utilized a value-oriented, analytical, research-based approach to investment in order to determine whether LASERS should buy, sell, or hold BP Shares. Throughout the Relevant Period, this investment manager undertook comprehensive valuation analyses and performed rigorous independent and fundamental research that included reading and relying upon publicly available information concerning BP, such as SEC filings, analyst reports, news releases, media reports, and other public information. The publicly available information considered by LASERS's Investment Manager included, among other things, activities with respect to safety at BP, the explosion of Deepwater Horizon oil rig, the resulting oil spill into the Gulf of Mexico, and BP's spill response and severity estimates. In addition, throughout the Relevant Period, LASERS's Investment Manager met directly with BP senior management, Board members, and investor relations officials, including on at least five

separate occasions at BP's offices or in telephonic conference calls. During these meetings, BP officials discussed a variety of issues facing the Company, including prior safety failures at the Company, risk assessment, and purported improvements in the Company's safety systems in response to these failures and regulatory pressure. Pursuant to its due diligence, LASERS's Investment Manager relied on some or all of the false and/or misleading statements alleged herein when deciding that LASERS should buy, sell, or hold BP Shares.

475. Another of LASERS's Investment Managers used an actively-managed, quantitative investment process in order to determine whether LASERS should buy, sell, or hold BP Shares. The quantitative investment process used by this investment manager incorporated a diverse set of information, including industry, financial and market data such as valuation metrics, analyses of balance sheet and income statements, analyst reports, earnings conference calls, BP's securities filings, media reports about BP, as well as technical factors. In addition, the quantitative investment process allowed for manual overrides, and the quantitative model allowed for manual adjustments based on Company-specific information. One such manual override and several manual adjustments occurred after the explosion of the Deepwater Horizon oil rig and oil spill into the Gulf of Mexico, and BP's spill response and severity estimates. Pursuant to this due diligence, LASERS's Investment Manager relied on some or all of the false and/or misleading statements alleged herein when deciding that LASERS should buy, sell, or hold BP Shares.

476. Defendants' false and/or misleading statements alleged herein had a material influence and were a substantial factor in bringing about LASERS's Investment Managers' investment decisions with respect to BP Shares. LASERS's Investment Managers did not, and in the exercise of reasonable diligence could not, have known of Defendants' false and/or misleading

statements alleged herein when deciding that LASERS should purchase, sell, or hold shares of BP common stock during the Relevant Period.

477. Pursuant to the actively-managed investment processes utilized by LASERS's Investment Managers, LASERS made nearly twenty purchases of BP common stock on the LSE from November 11, 2007 through March 17, 2010.

2. Texas Teachers

478. During the Relevant Period, Texas Teachers employed investment managers to manage its investment portfolios and make investment decisions on its behalf. Several of these investment managers relied upon Defendants' false and misleading statements alleged herein in making decisions to buy, sell, or hold BP Shares on Texas Teachers' behalf and managed portfolios containing BP Shares that were damaged by the alleged fraud (collectively, "Texas Teachers' Investment Managers" and each a "Texas Teachers Investment Manager").

479. For example, Texas Teachers employed the same investment manager utilized by LASERS referenced in paragraph 474 above, which utilized the same value-oriented, analytical, research-based approach to investment in order to determine whether Texas Teachers should buy, sell, or hold BP Shares as it applied with respect to LASERS's investment portfolio. Throughout the Relevant Period, this investment manager undertook comprehensive valuation analyses and performed rigorous independent and fundamental research that included reading and relying upon publicly available information concerning BP, such as SEC filings, analyst reports, news releases, media reports, and other public information. The publicly available information considered by Texas Teachers's Investment Manager included, among other things, activities with respect to safety at BP, the explosion of the Deepwater Horizon oil rig, the resulting oil spill into the Gulf of Mexico, and BP's spill response and severity estimates. In addition, throughout the Relevant Period, Texas Teachers's Investment Manager met directly with BP senior management, Board

members, and investor relations officials, including on at least five separate occasions at BP's offices or in telephonic conference calls. During these meetings, BP officials discussed a variety of issues facing the Company, including prior safety failures at the Company, risk assessment, and purported improvements in the Company's safety systems in response to these incidents and regulatory pressure. Pursuant to its due diligence, Texas Teachers's Investment Manager relied on some or all of the false and/or misleading statements alleged herein when deciding that Texas Teachers should buy, sell, or hold BP Shares.

480. Similarly, another of Texas Teachers' Investment Managers used an analytical, research-based approach to investment in order to determine whether Texas Teachers should buy, sell, or hold BP Shares. Throughout the Relevant Period, this investment manager undertook rigorous, security-specific research to identify companies with significant growth prospects likely to outperform the market. This investment manager's in-depth, fundamental research process included scrutiny of company reports and securities filings, other regulatory filings, analysts' reports, and information in trade publications, financial publications, government databases, and media reports. As part of its comprehensive, analytical, research-based investment process, this investment manager developed strong relationships with management of the companies it followed, including through direct, face-to-face meetings with senior management – which the investment manager viewed as a critical component of its investment approach. Likewise, several other Texas Teachers' Investment Managers participated in in-person meetings with BP management and investor relations representatives' during the Relevant Period, in which BP representatives discussed, among other topics, operations at the Texas City facility, the Macondo well/Deepwater Horizon explosion, the amount of oil flowing out of the Macondo well into the

Gulf of Mexico, the Company's efforts to stop the spill, and the costs to the Company in terms of clean-up, fines, penalties, and settlements.

481. Defendants' false and/or misleading statements alleged herein had a material influence and were a substantial factor in bringing about Texas Teachers' Investment Managers' investment decisions with respect to BP Shares. Texas Teachers' Investment Managers did not, and in the exercise of reasonable diligence could not, have known of Defendants' false and/or misleading statements alleged herein when deciding that Texas Teachers should purchase, sell, or hold BP Shares during the Relevant Period.

482. Pursuant to the due diligence, independent research and actively-managed investment processes utilized by Texas Teachers' Investment Managers, Texas Teachers made approximately over 90 purchases of BP common stock on the LSE from December 13, 2007 through June 4, 2010, and approximately 10 purchases of BP ADS on the NYSE from February 25, 2009 through June 10, 2010.

3. ING IM Funds

483. During the Relevant Period, all of the ING IM Funds included in this case were actively managed by in-house portfolio managers of ING Investment Management and/or its affiliated entities ("ING Investment Management"), with the assistance of in-house equity analysts. These equity research teams were responsible for following and analyzing companies in various sectors and industries, including BP. Under the analytical, research-based investment processes applicable to each of the ING IM Funds, the equity analysts produced regular reports on individual companies that they followed and were responsible for advising portfolio managers about whether to buy, sell, or hold shares in those companies. Factors considered by the equity analysts in providing advice included, among other things, the financial performance of the company and a review of the company's strengths, weaknesses and opportunities. The portfolio

managers, in turn, relied on the equity analysts' reports as an important factor in deciding whether to buy, sell, or hold shares in the company. Pursuant to this investment process, the portfolio managers for each of the ING IM Funds relied upon Defendants' false and misleading statements alleged herein in making decisions to buy, sell, or hold BP Shares that were damaged by the alleged fraud (collectively, "ING's Investment Managers" and each an "ING Investment Manager").

484. The ING IM Funds are managed using active strategies in an attempt to enhance performance and returns. In determining whether the ING IM Funds should buy, sell, or hold BP Shares, many of the portfolio managers employed by ING's Investment Managers utilized analytical, research-based approaches to investment. Throughout the Relevant Period, both the equity analyst and portfolio managers undertook comprehensive asset valuation analyses and performed rigorous independent and fundamental research that included reading and relying upon publicly available information concerning BP, including data and information from the following categories: (a) BP's public statements, plans and news releases; (b) BP's corporate website and materials posted on its website; (c) analyst reports and earnings conference calls; (d) BP's securities filings, including Annual Reviews; (e) other regulatory filings and reports regarding BP; (f) industry conferences and conference transcripts; (g) media reports about any and all of the foregoing; and (h) media reports concerning the explosion on the Deepwater Horizon and oil spill into the Gulf of Mexico, including BP's response to the spill and estimates of the spill severity. In addition, throughout the Relevant Period, certain ING Investment Management staff members met directly with BP senior management and Board members. During these meetings, BP senior management and Board members discussed a variety of issues facing the Company, including the Company's exploration, production, and refining activities within and outside the United States,

cost-cutting measures, project management, financial performance, and actual and projected growth. Information collected by ING Investment Management staff during meetings with BP senior management and Board members informed the investment decisions of ING's Investment Managers, and was a factor in their decisions whether to buy, sell, or hold BP Shares.

485. Defendants' false and/or misleading statements alleged herein had a material influence and were a substantial factor in bringing about ING Investment Managers' investment decisions with respect to BP Shares. ING's Investment Managers did not, and in the exercise of reasonable diligence could not, have known of Defendants' false and/or misleading statements alleged herein when deciding that the ING IM Funds should purchase, sell, or hold BP Shares during the Relevant Period.

486. Pursuant to the actively-managed investment processes utilized by ING's Investment Managers, ING IM Funds made over 110 purchases of BP common stock on the LSE from March 18, 2008 through June 22, 2010.

4. ABP

487. During the Relevant Period, ABP employed investment managers to manage its investment portfolios and make investment decisions on its behalf. ABP investment managers relied upon Defendants' false and misleading statements alleged herein in making decisions to buy, sell, or hold BP Shares on ABP's behalf and managed portfolios containing BP Shares that were damaged by the alleged fraud (collectively, "ABP's Investment Managers" and each a "ABP Investment Manager").

488. For example, one of ABP's Investment Managers utilized an analytical, research-based approach to investment in an attempt to enhance performance and returns while mitigating risk, including, specifically, in determining whether ABP should buy, sell, or hold BP Shares. During the Relevant Period, this investment manager performed rigorous independent and

fundamental research that included reading and relying upon publicly available information concerning BP, such as SEC filings, other regulatory filings, analyst reports, earnings conference calls, press releases, and newspaper and media reports, and other public information. In performing this research, senior portfolio managers and other investment staff at ABP's Investment Manager considered, among other things, BP's business operations and financial performance, production growth, cost-cutting, major operational issues (including the Texas City explosion and the partial sinking of the Thunderhorse platform), exploration in the Gulf of Mexico, safety practices and procedures before the Deepwater Horizon explosion and oil spill, the explosion on and sinking of the Deepwater Horizon, the resulting oil spill into the Gulf of Mexico, BP's response to the spill, estimates of the oil flow rate, congressional hearings on the spill, and the costs of the spill to the Company. This research was a substantial factor impacting the investment decisions of this ABP investment manager, including whether to buy, sell, or hold BP Shares.

489. Defendants' false and/or misleading statements alleged herein had a material influence and were a substantial factor in bringing about ABP's Investment Managers' investment decisions with respect to BP Shares. ABP's Investment Managers did not, and in the exercise of reasonable diligence could not, have known of Defendants' false and/or misleading statements alleged herein when deciding that ABP should purchase, sell, or hold BP Shares during the Relevant Period.

490. Pursuant to the active strategies employed by ABP's Investment Managers, ABP made over 125 purchases of BP common stock on the LSE from December 10, 2007 through June 22, 2010, and over 20 purchases of BP ADS on the NYSE from May 21, 2008 through February 19, 2010.

5. Norges Bank

491. During the Relevant Period, Norges Bank employed investment managers to manage its investment portfolios and make investment decisions. These investment managers relied upon Defendants' false and misleading statements alleged herein in making decisions to buy, sell, or hold BP Shares on Norges Bank's behalf, and managed portfolios containing BP Shares that were damaged by the alleged fraud (collectively, "Norges' Investment Managers" and each a "Norges Investment Manager").

492. Norges Bank's general investment goal is to invest in a wide range of countries, companies and assets to obtain the highest possible return with moderate risk. A large share of Norges Bank's equity investments are managed using active strategies in an attempt to enhance performance and returns, and each manager of Norges' investment portfolios analyses stocks to find investments with the potential for good returns over time. In determining whether Norges Bank should buy, sell, or hold BP Shares, many of Norges Investment Managers utilized analytical, research-based approaches to investment. Throughout the Relevant Period, these investment managers undertook comprehensive asset valuation analyses and performed rigorous independent and fundamental research that included reading and relying upon publicly available information concerning BP, including data and information from the following categories: (a) BP's public statements, plans and news releases; (b) BP's corporate website and materials posted on its website; (c) analyst reports and earnings conference calls; (d) BP's securities filings, including Annual Reviews; (e) other regulatory filings and reports regarding BP; (f) industry conferences and conference transcripts; (g) media reports about any and all of the foregoing; and (h) media reports concerning the explosion on the Deepwater Horizon and oil spill into the Gulf of Mexico, including BP's response to the spill and estimates of the spill severity.

493. In addition, throughout the Relevant Period, certain Norges Investment Managers met directly with BP senior management and Board members – including Defendants Hayward and Inglis – in at least ten in-person or telephonic meetings. During these meetings, BP senior management and Board members discussed a variety of issues facing the Company – including prior safety failures at the Company, risk assessment, and purported improvements in the Company’s safety systems in response prior safety failures – while assuring Norges Bank’s internal investment managers that BP’s operations in the Gulf of Mexico were a “key driver” of production growth with impressive production rates that were exceeding expectations. Norges Bank’s internal investment managers continued to meet with senior BP executives after the Deepwater Horizon explosion and oil spill, including in at least four face-to-face meetings at Norges Bank’s offices and in telephonic conference calls, wherein the BP executives made representations to Norges’ internal investment managers regarding the Company’s estimated spill rates and costs of the spill to the Company. Pursuant to this due diligence, these investment managers relied on some or all of the false and/or misleading statements alleged herein when deciding that Norges Bank should buy, sell, or hold BP Shares.

494. Defendants’ false and/or misleading statements alleged herein had a material influence and were a substantial factor in bringing about Norges’ Investment Managers’ investment decisions with respect to BP Shares. Norges’ Investment Managers did not, and in the exercise of reasonable diligence could not, have known of Defendants’ false and/or misleading statements alleged herein when deciding that Norges Bank should purchase, sell, or hold BP Shares during the Relevant Period.

495. Pursuant to the active strategies utilized by Norges’ Investment Managers, Norges Bank made approximately 250 purchases of BP common stock on the LSE from November 21,

2007 through May 20, 2010, and approximately 30 purchases of BP ADS on the NYSE from February 8, 2008 through May 26, 2010.

XII. PLAINTIFFS' CLAIMS ARE TIMELY

496. The claims asserted herein under the Exchange Act with respect to Plaintiffs' purchases of BP ADS on the NYSE are timely because the filing of the initial class action complaint in the first action, which would become Case No. 4:10-md-02185 (S.D. Tex.), served to toll the statute of limitations for all individual claims of putative class members. Plaintiffs benefitted from this tolling because they were absent class members of the putative class at issue in such case (and related putative class action cases) until the filing of this instant action. Such tolling continued with respect to claims based on BP ADS until at least December 6, 2013, when the Court denied Lead Plaintiffs' motion for class certification. The claims asserted herein under English law with respect to Plaintiffs' purchases of BP Shares are also timely because they were filed within six years from the date on which the cause of action accrued pursuant to U.K. Limitation Law 1980 Sections 2, 9 and 32.

XIII. CAUSES OF ACTION

COUNT I

VIOLATION OF SECTION 10(b) OF THE EXCHANGE ACT AND SEC RULE 10b-5 (Relating To ADS Purchases) (Against All Defendants)

497. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein.

498. This cause of action is brought by Plaintiffs Texas Teachers, ABP and Norges Bank against all Defendants for fraud under Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder. This cause of action relates solely to Plaintiffs Texas Teachers's, ABP's and Norges Bank's purchase of BP ADS.

499. During the Relevant Period, Defendants disseminated or approved the false statements specified herein (as attributed to them above), which they knew or recklessly disregarded were false and misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

500. Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 in that they: (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or (iii) engaged in acts, practices, and a course of business that operated as a fraud or deceit upon Plaintiffs Texas Teachers, ABP and Norges Bank in connection with their purchases or acquisitions of BP ADS during the Relevant Period. As detailed herein, the misrepresentations contained in Defendants' public statements included statements relating to BP's integration of the recommendations set forth in the Baker Report, the scope and progress of BP's OMS implementation, the Company's (and its divisions') statements about their ability to respond to a "worst case" spill in the Gulf far in excess of the amount of oil leaking from the Macondo well, and statements relating to the amount of oil leaking into the Gulf of Mexico from the Macondo well during the Relevant Period.

501. Defendants, individually and in concert, directly and indirectly, by the use of means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct that operated as a fraud and deceit upon Plaintiffs Texas Teachers, ABP and Norges Bank; made various false and/or misleading statements of material facts; made the above statements with knowledge or a reckless disregard for the truth; and employed devices, schemes, and artifices to defraud in connection with the purchase or sale of BP ADS, which were

intended to, and did deceive Plaintiffs Texas Teachers, ABP and Norges Bank, for the reasons set forth above.

502. Defendants are liable for the materially false and misleading statements attributed to them as set forth above.

503. As described above, Defendants acted with scienter in that they either had actual knowledge of the misrepresentations set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and disclose the true facts, even though such facts were available to them. Specifically, Defendants knew or were reckless in not knowing that BP was not, contrary to its public statements, implementing the recommendations set forth in the Baker Report, that OMS did not apply to all of BP's operations, that the Company's (and its divisions') statements about their ability to respond to a "worst case" spill in the Gulf far in excess of the amount of oil leaking from the Macondo well overstated BP's capabilities, and statements relating to the amount of oil leaking into the Gulf from the Macondo well during the Relevant Period were contradicted by BP's internal documents.

504. Plaintiffs Texas Teachers, ABP and Norges Bank have suffered damages in that, in direct reliance on the market price for BP ADS, and integrity of the market, they paid artificially inflated prices for BP ADS. Plaintiffs Texas Teachers, ABP and Norges Bank would not have purchased or otherwise acquired these ADS at the prices they paid, or at all, if they had been aware that the market price had been artificially and falsely inflated by Defendants' materially false and misleading statements.

505. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs Texas Teachers, ABP and Norges Bank suffered damages in connection with their purchases or acquisitions of BP ADS during the Relevant Period.

COUNT II

**VIOLATION OF SECTION 20(a) OF THE EXCHANGE ACT
(Relating To ADS Purchases)
(Against All Defendants)**

506. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

507. This cause of action is brought by Plaintiffs Texas Teachers, ABP and Norges Bank against all Defendants for control person liability under Section 20(a) of the Exchange Act. This cause of action relates solely to Plaintiff Texas Teachers's, ABP's and Norges Bank's purchase of BP ADS.

508. These Defendants acted as controlling persons within the meaning of Section 20(a) of the Exchange Act as alleged herein. Specifically:

(a) Hayward directly or indirectly controlled Defendant BP as alleged above;

(b) Defendants BP, Hayward, Malone, and Rainey directly or indirectly controlled Defendant BP America as alleged above; Defendants BP, BP America, Hayward, Inglis, Malone, Rainey and Suttles directly or indirectly controlled Defendant BP Exploration as alleged above; and/or

(c) BP, BP America and BP Exploration directly controlled the Individual Defendants who worked for them during the Relevant Period.

509. By virtue of their high-level positions, and their ownership and contractual rights, participation in and/or awareness of BP's, BP America's and/or BP Exploration's operations and/or intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of BP, BP America, and BP

Exploration, including the content and dissemination of the various statements which Plaintiffs Texas Teachers, ABP and Norges Bank contend are false and misleading and/or omitted material information. These Defendants were provided with or had unlimited access to copies of the statements alleged by Plaintiffs Texas Teachers, ABP and Norges Bank to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause them to be corrected.

510. In particular, each of these Defendants had direct and supervisory involvement in the day-to-day operations of BP, BP America, and/or BP Exploration and, therefore, is presumed to have had the power to control or influence the particular transactions, statements, and omissions giving rise to the securities violations as alleged herein, and to have exercised the same.

511. As set forth above, Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their positions as controlling persons, the Defendants named in this cause of action are liable pursuant to Section 20(a) of the Exchange Act.

512. As a direct and proximate result of these Defendants' wrongful conduct, Plaintiffs Texas Teachers, ABP and Norges Bank suffered damages in connection with their purchases of the BP ADS.

COUNT III

COMMON LAW DECEIT (Relating To ADS And Common Stock Purchases) (Against All Defendants)

513. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein.

514. This cause of action is brought by all Plaintiffs against all Defendants for deceit under English common law.

515. Defendants made the foregoing false and/or misleading statements of facts and/or failed to disclose or concealed information necessary to make such statements not misleading, including the challenged statements in BP's 2008 and 2009 Annual Reports. The foregoing false statements, misrepresentations and omissions of fact were material because reasonable shareholders, such as Plaintiffs, considered this information important in making their investment decisions. Had the true facts regarding the worth of BP's stock prior to and immediately following the Deepwater Horizon disaster been disclosed, reasonable investors such as Plaintiffs would have viewed such facts as having significantly altered the "total mix" of information made available.

516. At the time Defendants made the foregoing false and/or misleading statements and omissions, each of these Defendants knew these statements to be untrue, or acted with severe recklessness such that the danger of misleading buyers or sellers of BP stock was either known to Defendants or was so obvious that Defendants must have been aware of it.

517. At the time Defendants made the foregoing false and/or misleading statements and omissions of fact, each of the Defendants intended to induce Plaintiffs' reliance on these statements because Defendants anticipated that the statements would reach investors such as Plaintiffs, and that these investors' investment decisions could be shaped in part by what Defendants said. Plaintiffs actually relied upon the foregoing false and/or misleading statements and omissions of fact because each statement had a material influence and was a substantial factor in causing Plaintiffs to purchase or retain the BP Shares.

518. Plaintiffs would not have acquired their BP Shares had they known the truth about the matters alleged herein, at least not at the prices that they paid, which were inflated by these

Defendants' misconduct. As a direct result of Plaintiffs' reliance on Defendants' false and misleading statements and omissions of fact, Plaintiffs suffered substantial damages, the amount of which will be proved at trial.

519. The misrepresentations and omissions of fact, as set forth herein, constitute deceit under English common law.

COUNT IV

**STATUTORY SECURITIES FRAUD UNDER SECTION 90A OF THE FSMA
(Relating To Common Stock Purchases)
(Against Defendant BP)**

520. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein.

521. This cause of action is brought by all Plaintiffs against Defendant BP for violation of Section 90A of the Financial Services And Markets Act 2000 (the "FSMA").

522. BP's 2008 and 2009 Annual Reports, which were published prior to October 1, 2010, are publications which fall within Section 90A (1) of the FSMA.

523. As described above, Defendant BP made untrue and/or misleading statements, or and/or omitted to disclose or concealed information necessary to make such statements true or not misleading in BP's 2008 and 2009 Annual Reports, which were published prior to October 1, 2010. The foregoing untrue and/or misleading published statements, or omissions of matters required to be published in BP's 2008 and 2009 Annual Reports, were material because investors such as Plaintiffs, considered this information important in making their investment decisions. Had the true facts regarding these untrue and/or misleading published statements, or omissions of matters required to be published in BP's 2008 and 2009 Annual Reports been known,

reasonable investors such as Plaintiffs would have viewed such facts as having significantly altered the “total mix” of information made available.

524. The persons discharging their managerial responsibilities in relation to these publications, including Hayward, knew that the challenged statements in BP’s 2008 and 2009 Annual Reports were untrue or misleading, were reckless as to whether the statements were true or misleading and/or knew that the omissions were dishonest concealments of material facts made the foregoing false and/or misleading statements and omissions.

525. Plaintiffs actually relied upon the foregoing false and/or misleading published statements and/or omissions of fact required to be published in BP’s 2008 and 2009 Annual Reports because each statement had a material influence and was a substantial factor in causing Plaintiffs to purchase the BP common stock. At the time Plaintiffs acquired the BP common stock, it was reasonable for Plaintiffs and/or their investment advisers to rely on the foregoing false and/or misleading statements and omissions in BP’s 2008 and 2009 Annual Reports because Plaintiffs believed BP to be a reputable company and Plaintiffs did not and in the exercise of reasonable diligence could not, have known of BP’s false and/or misleading statements and omissions in the 2008 Annual Report and 2009 Annual Report when deciding to purchase or retain BP common stock during the Relevant Period.

526. Plaintiffs would not have acquired their BP common stock had they known the truth about the matters alleged herein, at least not at the prices that they paid, which were inflated by Defendants’ misconduct. As a direct result of Plaintiffs’ reliance on Defendants’ false and misleading statements and omissions of fact, Plaintiffs suffered substantial damages, the amount of which will be proved at trial.

527. The misrepresentations and omissions of fact, as set forth herein, constitute a violation of Section 90A of the FSMA.

COUNT V

**NEGLIGENT MISSTATEMENT
(Relating To ADS And Common Stock Purchases)
(Against Defendants BP And Hayward)**

528. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein, except all allegations speaking only to any Defendants' subjective state of mind.

529. This cause of action is brought by Plaintiffs LASERS and Texas Teachers against Defendants BP and Hayward for negligent misstatement under English common law.

530. Defendants BP and Hayward made the foregoing false and/or misleading statements of facts and/or failed to disclose or concealed information necessary to make such statements not misleading during the February 7, 2007 and March 8, 2010 in-person meetings described above. The foregoing false statements, misrepresentations and omissions of fact were material because reasonable shareholders, such as Plaintiffs LASERS and Texas Teachers, considered this information important in making their investment decisions. Had the true facts regarding the worth of BP's stock prior to and immediately following the Deepwater Horizon disaster been disclosed, reasonable investors such as Plaintiffs LASERS and Texas Teachers would have viewed such facts as having significantly altered the "total mix" of information made available.

531. With regard to the February 7, 2007 and March 8, 2010 in-person meetings, Defendants BP and Hayward voluntarily assumed a duty to speak carefully to Plaintiffs LASERS and Texas Teachers. During these meetings, these Defendants provided information to Plaintiffs LASERS's and Texas Teachers's investment managers regarding BP's safety reform efforts and

continued risk exposure. These Defendants were aware of LASERS's and Texas Teachers' investment manager's identity and role as investment manager to a specific group of major institutional investors to which LASERS and Texas Teachers belonged at the time the statements were made. Given LASERS's and Texas Teachers' investment manager's role as investment advisor and the materiality of the information provided, these Defendants were or should have been aware that the information provided at these meetings would be used by Plaintiffs LASERS and Texas Teachers to determine whether to invest in BP stock.

532. During the February 7, 2007 and March 8, 2010 in-person meetings, Defendants BP and Hayward breached their duties to speak carefully by making materially false and misleading statements and omissions to Plaintiffs LASERS and Texas Teachers. These Defendants failed to exercise reasonable care or competence during the face-to-face meetings because when these Defendants made the materially false and misleading misstatements and omissions alleged herein, they had no reasonable belief in their truth.

533. Plaintiffs LASERS and Texas Teachers and/or their investment managers actually relied upon the foregoing false and/or misleading statements and/or omissions of fact made during the February 7, 2007 and March 8, 2010 in-person meetings because each statement had a material influence and was a substantial factor in causing Plaintiffs LASERS and Texas Teachers and/or their investment managers to purchase BP Shares. At the time Plaintiffs LASERS and Texas Teachers acquired BP Shares, it was reasonable for Plaintiffs LASERS and Texas Teachers and/or their investment managers to rely on the foregoing false and/or misleading statements and omissions made during these meetings. Plaintiffs LASERS and Texas Teachers believed BP to be a reputable company and Plaintiffs LASERS and Texas Teachers did not and in the exercise of reasonable diligence could not, have known of BP's false and/or misleading statements made

during these in-person meetings when deciding to purchase or retain BP Shares during the Relevant Period.

534. Plaintiffs LASERS and Texas Teachers would not have acquired their BP Shares had they known the truth about the matters alleged herein, at least not at the prices that they paid, which were inflated by Defendants BP's and Hayward's misstatements at the February 7, 2007 and March 8, 2010 in-person meetings. As a direct result of Plaintiffs LASERS's and Texas Teachers' reliance on these Defendants' false and misleading statements and omissions of fact, Plaintiffs suffered substantial damages, the amount of which will be proved at trial.

535. The misrepresentations and omissions of fact, as set forth herein, constitute negligent misstatement under English common law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

A. Awarding Plaintiffs compensatory damages against all of the Defendants, jointly and severally, for all losses and damages suffered as a result of Defendants' wrongdoing alleged herein, in an amount to be determined at trial;

B. Awarding Plaintiffs pre-judgment and post-judgment interest, as well as reasonable attorneys' fees, expert witness fees and other costs;

C. Awarding punitive and exemplary damages; and

D. Awarding such other relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues so triable.

Dated: April 18, 2014

Respectfully submitted,

AJAMIE LLP

/s/ Thomas R. Ajamie

Thomas R. Ajamie
Texas Bar No. 00952400
S.D. TX Bar No. 6165
Pennzoil Place - South Tower
711 Louisiana, Suite 2150
Houston, TX 77002
Tel: (713) 860-1600
Fax: (713) 860-1699

BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP

/s/ Blair A. Nicholas

Blair A. Nicholas
David R. Kaplan
Lucas E. Gilmore
12481 High Bluff Drive, Suite 300
San Diego, CA 92130
Tel: (858) 793-0070
Fax: (858) 793-0323

Jeroen Van Kwawegen
1285 Avenue of the Americas, 38th Floor
New York, NY 10019
Tel: (212) 554-1400
Fax: (212) 554-1444

Counsel for Plaintiffs

Tina Vicari Grant
Executive Counsel
8401 United Plaza Blvd.
Baton Rouge, LA 70809
Tel: (225) 922-0600
Fax: (225) 935-2856

*Counsel to Louisiana State Employees' Retirement
System*