

**BEFORE THE JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION**

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**IN RE OIL SPILL BY THE OIL RIG )**  
**“DEEPWATER HORIZON” IN THE ) MDL Docket No. 2179**  
**GULF OF MEXICO, ON APRIL 20, 2010 )**

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**BRIEF OF CERTAIN PLAINTIFFS IN RESPONSE TO MOTION TO  
TRANSFER ACTIONS FOR COORDINATED OR CONSOLIDATED  
PRETRIAL PROCEEDINGS AND URGING TRANSFER TO THE SOUTHERN  
DISTRICT OF ALABAMA**

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Billy Wilkerson and others<sup>1</sup> respectfully join in the motion under 28 U.S.C.§1407 for a transfer for coordinated or consolidated pretrial proceedings of certain actions related to the oil spill caused by the failure of the Deepwater Horizon, but urge transfer to the Southern District of Alabama. A large number of lawsuits have been, and continue to be, filed in various United States District Courts from Florida through Alabama and Mississippi to, on the far western end of the events, Louisiana. Respondents agree that all related actions, other than those for personal injury

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<sup>1</sup> In the Southern District of Alabama, this firm represents plaintiffs in six filed lawsuits, each with multiple plaintiffs, and also many clients who have not yet filed suit. The lawsuits filed by this firm in the Southern District of Alabama at the time of preparation of this document are (1) Original Oyster House, Inc., et al. v. Transocean Holdings, Inc., Civ. No. 10-223-KD; (2) Fishtrap Charters LLC, et al. v Transocean Holdings, Inc., Civ. No. 10-202-CB, (3) Orange Beach Marina, et al. v. Transocean Holdings, Inc., Civ. No. 10-217-B; (4) Fort Morgan Sales, Rentals & Development, Inc., et al. v. Transocean Holdings, Inc., Civ. No. 10-203-KD; (5) Billy Wilkerson, et al. v. Transocean Holdings, Inc., Civ. No. 10-201-CB, and (6) Blue Water Yacht Sales, et al. v. Transocean Holdings, Inc., Civ. No. 10-224-KD. The firm also represents plaintiffs in two cases filed in the Northern District of Florida: (1) Ocean Reef Realty, Inc. v. Transocean Holdings, Inc., Civ. No. 10-132-LC and (2) Michael Salley v. Transocean Holdings, Inc., Civ. No. 10-133-MCR.

or death of those individuals on the oil platform, should be transferred to a single district for consolidated or coordinated proceedings.

An examination of the factors used by the Panel in previous cases leaves little doubt that the Southern District of Alabama is the best forum for these proceedings.

## **I. PROCEEDINGS BEFORE THE JPML AND THE DISTRICT COURTS**

On May 6, 2010, certain plaintiffs filed a motion for coordinated or consolidated proceedings and a transfer to the Eastern District of Louisiana for certain filed cases and “other additional related actions.” On May 7, 2010, Defendants BP, PLC, BP Products North America, Inc., BP Exploration & Production, Inc., and BP America, Inc. (“BP”) filed motions to stay proceedings in the various district courts where they have been named, based on BP Exploration and Production seeking to transfer of all actions arising from the Deepwater Horizon explosion to the Southern District of Texas, Houston Division.<sup>2</sup> Respondents here agree that transfer is appropriate for all related cases seeking loss of revenue, damage to real property, and damage to the natural resources resulting from the Deepwater Horizon catastrophe; however, Respondents believe the Southern District of Alabama is the most appropriate court to handle this matter.

Respondents note pursuant to JPML Rule 7.2(a)(ii) that on or about April 20, 2010, the semi-submersible oil rig Deepwater Horizon operating in the Gulf of Mexico exploded, burned and sank in the Gulf, releasing large amounts of crude oil and diesel fuel which is currently floating in the Gulf of Mexico.

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<sup>2</sup> The motion attached to BP’s district court motion to stay was a second motion to transfer. At the time of filing this Memorandum, it was uncertain if BP’s motion had been accepted by the clerk, although BP represents that it was filed May 7, 2010.

The catastrophe has led to the filing of at least 82 lawsuits seeking the recovery of damages, excluding suits for personal injury or death for workers and contractors who were on the Deepwater Horizon at the time of the explosion and resulting fire. Respondents believe that these transfer motions should not interfere with the personal injury and death cases filed (and to be filed), but all other related actions should be transferred for consolidated or coordinated proceedings.

These Respondents support the motion to transfer the resultant lawsuits to the Southern District of Alabama.

**II. THE 2009 REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF U. S. COURTS DEMONSTRATES THAT THE SOUTHERN DISTRICT OF ALABAMA IS MUCH BETTER PREPARED TO HANDLE THE DEMANDS OF THIS MDL THAN OTHER PROPOSED DISTRICTS**

The Panel has in the past indicated that respective docket conditions of the Courts involved should appropriately be considered in selecting the appropriate court for transfer. *In re Teflon Prods Liability Lit.*, 416 F. Supp. 2d 1364, 1365 (J.P.M.L. 2006); *In re Xybernaut Corp. Securities Lit.*, 403 F. Supp. 2d 1354, 1355 (J.P.M.L. 2005); *In re Educational Testing Service PLT 7-12 Test Scoring Lit.*, 350 F. Supp. 2d 1363, 1365 (J.P.M.L. 2004); *In re Richardson-Merrell, Inc.*, 588 F. Supp. 1448, 1449 (J.P.M.L. 1984); *In re Corn Derivatives Antitrust Lit.*, 486 F. Supp. 929, 931 (J.P.M.L. 1980). Respondents believe this factor should be a primary issue in this case.

The relative status of the courts is a factor which *strongly* favors transfer to the Southern District of Alabama, particularly when compared to the Eastern District of Louisiana. The docket of the Southern District of Alabama is extremely well suited to take on the resolution of this case, and for this very significant reason the Panel should favor the Southern District of Alabama.

**A. Southern Alabama Has Fewer Old Cases Than Eastern Louisiana.**

In an MDL matter, “[t]he percentage of cases over three years old is an especially useful basis for comparing the various court dockets.” D. Herr, *Multidistrict Litigation Manual: Practice Before the Judicial Panel on Multidistrict Litigation* § 6:17 at 210-11 (2008). The Southern District of Alabama had only 3.4% of its civil cases pending for three years or more, *Judicial Business of the United States Courts, 2009 Annual Report of the Director (“Annual Report”)*, found at [www.uscourts.gov/judbususc/judbus.html](http://www.uscourts.gov/judbususc/judbus.html) at Table C-6,<sup>3</sup> which is compelling evidence of its ability to resolve this case in an expeditious and efficient manner. By comparison, the Eastern District of Louisiana has had 41.1% of its cases -- *almost half of them* -- which had been pending for three years or more. *Id.* That is a stark statistic that should inform the Panel; “figures speak, and when they do, Courts listen.” *Brooks v. Beto*, 366 F.2d 1, 9 (5<sup>th</sup> Cir. 1966).

**B. Southern Alabama Disposed of its Civil Cases Extremely Efficiently.**

The Panel has previously recognized the importance of the median time to disposition in the two districts being compared. *In re National Student Marketing Lit.*, 368 F. Supp. 1311, 1318 (J.P.M.L. 1972). The Southern District of Alabama has an extraordinarily efficient record of resolving cases. The Eastern District of Louisiana’s median time to disposition for all cases is 13.2 months, *Annual Report* at Table C-5, while the Southern District of Alabama’s median time to disposition is only 7.9 months, *Id.*, so cases in Southern Alabama take only 60% as long to be disposed as in Eastern Louisiana.

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<sup>3</sup> The court may take judicial notice of the records and statistics of the Administrative Office of Courts. See *U. S. v. Cannistraro*, 871 F.2d 1210, 1216 (3<sup>rd</sup> Cir. 1989).

C. **Each Southern Alabama Judge Has Only 18% of the Pending Civil Cases That Each Eastern Louisiana Judge Has.**

The efficiency shown by the Southern District of Alabama is demonstrated by a comparison of the number of cases per judge as well. The Southern District of Alabama, with three authorized judgeships, had 685 pending civil cases or 228 per judge. *Annual Report* at C-6. Again, by comparison, the Eastern District of Louisiana, with twelve authorized judgeships, had 14,815 pending civil lawsuits, *Annual Report* at Table C-6, or 1,235 per judge. So each Judge in the Eastern District of Louisiana has a startling five and a half times more pending civil cases than does his or her counterpart in the Southern District of Alabama.

Furthermore, the Southern District of Alabama had only about 60% as many *weighted* civil and criminal filings per judgeship as the Eastern District of Louisiana.<sup>4</sup> The Southern District of Alabama, with three authorized judgeships, *Id.*, had only 43% of the *un-weighted* civil filings per judge compared to the Eastern District of Louisiana. The Southern District of Alabama had 771 civil filings, *Annual Report* at Table C, or 257 per judge, while the Eastern District of Louisiana with twelve authorized judgeships, *Annual Report* at Table X-1A, had 7,111 civil filings, *Annual Report* at Table C, or 592 per judge.

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<sup>4</sup> The *Annual Report* shows that the Eastern District of Louisiana had 614 weighted civil filings per judgeship, and 37 weighted criminal filings, and [counting supervision hearings] a total of 651 weighted filings per judgeship. By comparison the Southern District of Alabama had only 274 weighted civil filings per judgeship, and 109 weighted criminal filings per judgeship, and [counting supervision hearings] only 390 weighted filings per judgeship. See Table X-1A.

**D. Eastern Louisiana Is Already Burdened with Substantial MDL Work, While Southern Alabama Has None.**

The Panel has in the past often considered the relevance of a higher or lower number of MDL cases in the respective districts being considered, *In re Teflon Prods. Liability Lit.*, 416 F. Supp. 2d 1364 (J.P.M.L. 2006), and it has expressly stated that if a court has no MDL cases, then that is a clear factor suggesting transfer to that under-used district. E.g., *In re Pilgrim's Pride Fair Labor Standards Litigation*, 489 F. Supp. 2d 1381 (J.P.M.L. 2007); *In re Teflon Prods Liability Lit.*, 416 F. Supp. 2d 1364 (J.P.M.L. 2006); *In re FedEx Ground Package System, Inc., Employment Practices Lit.(No.II)*, 381 F. Supp. 2d 1380, 1382 (J.P.M.L. 2005); *In re Farmers Ins. Co., Inc. Insurance Premiums Litigation*, 295 F. Supp. 2d 1375, 1377 (J.P.M.L. 2003); *In re Wireless Telephone Federal Cost Recovery Fees Lit.*, 293 F. Supp. 2d 1378, 1380 (J.P.M.L. 2003); *In re Pressure Sensitive Labelstock Antitrust Lit.*, 290 F. Supp. 2d 1374, 1376 (J.P.M.L. 2003). The records of the Judicial Panel for Multidistrict Litigation indicate there are six MDL proceedings assigned to four judges in the Eastern District of Louisiana, with a total of 10,450 civil actions now pending. By comparison, the Southern District of Alabama has *NONE*. The judges sitting in the Eastern District of Louisiana have more than handled their share of MDL cases, and should not be called upon to do so again in this case. The Southern District of Alabama clearly has the resources available to bring to bear to handle this matter.

### **III. ALABAMA IS THE CENTER OF GRAVITY OF THIS EVENT AND THESE LAWSUITS**

The Panel has often expressed a concern for what might be called “centrality,” for the selection of a centrally-located transferee district. E.g., *In re TJX Companies, Inc.*, 505 F. Supp. 2d 1379, 1380 (J.P.M.L. 2007); *In re Merck & Co. Securities, Derivative & ERISA Lit.*, 360 F. Supp. 2d 1375, 1377 (J.P.M.L. 2005); *In re Federal Nat Mort. Ass’n Securities Derivative & ERISA Lit.*, 370 F. Supp. 2d 1359, 1361 (J.P.M.L. 2005); *In re Express Scripts, Inc. Pharmacy Benefits Management Lit.*, 368 F. Supp. 2d 1356, 1357 (J.P.M.L. 2005).<sup>5</sup> Using a variety of methods to test the issue, Mobile, located in the Mid-Gulf, is the obvious center of gravity of this case.

#### **A. Mobile Is the Geographic Center of the Event.**

New Orleans is on *the far West end* of the several states where the damage from this spill is currently expected to take place. Texas is so far west it will likely not be directly impacted by the landfall of any oil or other contaminants. At the time of the filing of this Memorandum, oil is certain to reach the beaches of Louisiana, Mississippi, and Alabama. While the spill, as it exists as of May 10, 2010, has moved somewhat to the west, the fact is that over 200,000 gallons of oil a day is expected to gush from the drill site for up to 75-80 more days such that the entire Gulf Coast is likely

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<sup>5</sup> See also *In re Insurance Brokerage Antitrust Lit.*, 360 F. Supp. 2d 1371 (J.P.M.L. 2005); *In re Compression Labs, Inc. Patent Lit.*, 360 F. Supp. 1367 (J.P.M.L. 2005); *In re Ocwen Fed’l Bank FSB Mortgage Servicing Lit.*, 314 F. Supp 2d 1376, 1379 (J.P.M.L. 2004); *In re Farmers Ins Co., Inc. Insurance Premiums Lit.*, 295 F. Supp. 2d 1375 (J.P.M.L. 2003); *In re National Century Financial Enterprises, Inc.*, 293 F. Supp. 2d 1375 (J.P.M.L. 2003); *In re Sulfuric Acid Antitrust Lit.*, 270 F. Supp. 2d 1379, 1380 (J.P.M.L. 2003); *In re New Motor Vehicles Canadian Export Antitrust Lit.*, 269 F. Supp. 2d 1372, 1373 (J.P.M.L. 2003); *In re Wireless Telephone 911 Calls Lit.*, 259 F. Supp. 2d 1372, 1374 (J.P.M.L. 2003).

to be directly affected. (See animated spill trajectory forecast developed by the University of South Florida at <http://ocg6.marine.usf.edu>). By the time this Panel has the opportunity to hear this matter in late July, the actual path of the spill will be better known, but the full impact of the landfall may still be in doubt. If the path is as projected, the spill will impact more Alabamians and Floridians than people living in Louisiana and points west. New Orleans will be a location far more difficult for Floridians to reach than Mobile. It is 250 miles from Destin, Florida to New Orleans, but it is only 107 miles to Mobile. It is 363 miles from Apalachicola, Florida to New Orleans [ever tried to fly from Apalachicola to New Orleans?], but it is only 220 miles to Mobile.<sup>6</sup> Mobile is “the mid-Gulf,” and New Orleans is not.

Centrally locating this case in Mobile will allow scores of impacted plaintiffs, and their attorneys, the opportunity to attend status conferences and other one day court proceedings by car, and return home without an overnight stay. That possibility does not exist if the matter is transferred to New Orleans, or worse yet, Houston. Mobile is the dead center of the currently projected impact zone of this oil spill. Mobile is the center of gravity of the spill.

The New Orleans movants’ primary “convenience” argument is that New Orleans has acceptable and typical metropolitan resources. That is, at a minimum, a neutral factor. The Mobile Bay area is served by two airports, Mobile and Pensacola. There are frequent direct flights from many cities on the Florida Gulf Coast to Pensacola, an easy drive to downtown Mobile.

Further, Mobile has all the hotel and other infrastructure necessary to handle the litigants and their attorneys.

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<sup>6</sup> Courts often and appropriately take judicial notice of maps, e.g., *Jaffe v. Pallotta Teamworks*, 374 F.3d 1223, 1228 (D.C. Cir. 2004).



**B. Mobile Is the Center of Gravity of the Response Efforts.**

**1. Unified Command Joint Information Center Is in Mobile.**

The Deepwater Horizon Incident National Response Team [“NRT”] -- some 16 Federal Agencies in charge of emergency response -- has set up a Unified Command Office Joint Information Center in the Outlaw Convention Center in downtown Mobile, Alabama.<sup>7</sup>

**2. One of BP’s Response Sites Is in Mobile.**

BP announced that it was setting up response activity focusing on five locations in the potentially-affected states: Venice, Louisiana; Pascagoula and Biloxi, Mississippi; Mobile, Alabama, and Pensacola, Florida.<sup>8</sup> Mobile is in the middle of those.

**C. Mobile Is the Center of Gravity of the Recreational and Commercial Fishing Industry Threatened by this Spill.**

The fishing in this case is not just Louisiana fishing. Mobile, again, is the center of gravity of the fishing businesses threatened by this spill.

As of May 7, 2010, the federal waters closed for fishing extends from the eastern Louisiana coast to an area south of Pensacola Bay, Florida. (See Fishing Closure Boundary map below). Should the spill move as expected further to the east, the affected closed fishing area will also move

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<sup>7</sup> <http://www.deepwaterhorizonresponse.com/go/doc/2931/535679/>.

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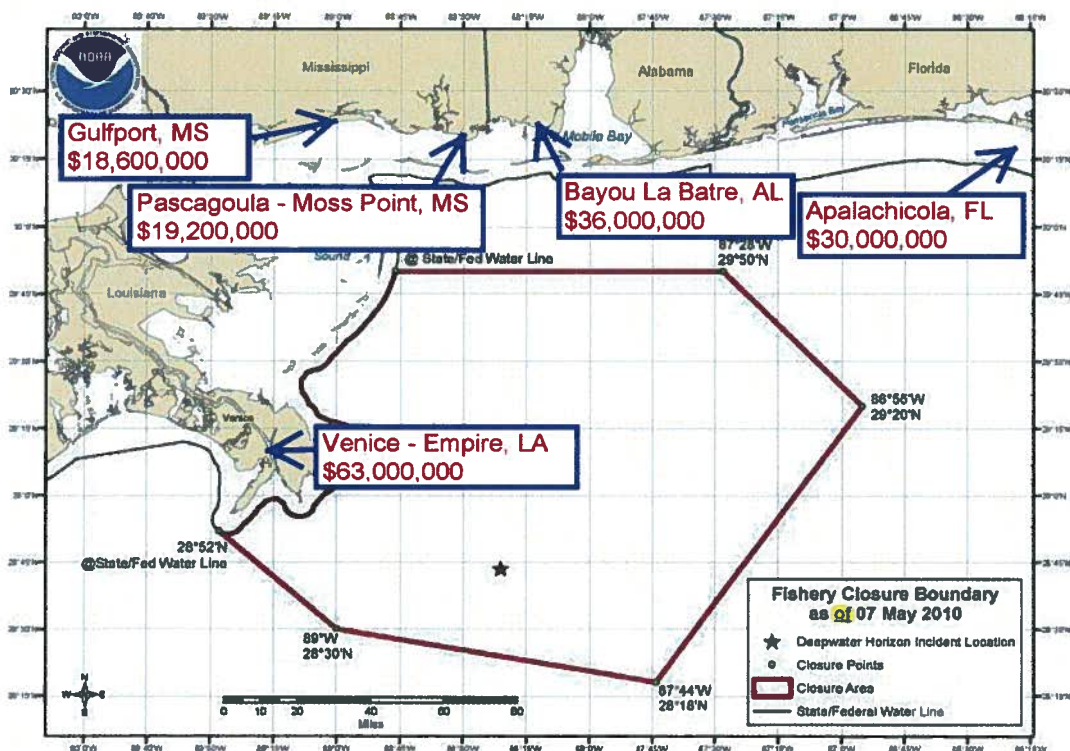
<http://www.bp.com/printsectiongenericarticle.do?catedortyId=90333573&contentID=7061712>.

east. Mobile is the center of the affected area and provides a convenient locale for residents of Louisiana through Florida who have claims for lost commercial fishing activities.

Both the seafood processing industry and sport fishing industry is spread out as far east as Florida, and both of those industries rely on harvesting from the closed fishing harvesting zone.

A large and diverse population from the Florida panhandle to Louisiana depends on the closed fishing waters for its livelihood. Based on NOAA statistics, the dollar value of seafood harvested and offloaded at major ports has been added to the NOAA Fishing Closure map and shows that the impact of the spill on the seafood industry is spread through the Gulf Coast region.

### **Dollar Value of Landings of Seafood Products 2008<sup>9</sup>**



<sup>9</sup> Data obtained from [http://www.st.nmfs.noaa.gov/st1/fus/fus08/02\\_commercial2008.pdf](http://www.st.nmfs.noaa.gov/st1/fus/fus08/02_commercial2008.pdf).

The point of the statistics is not which city or state has the largest amount of potential damage, but rather that the geographic dispersion of the losses extends from the eastern portions of Louisiana through to the central panhandle of Florida. Mobile, and the Southern District of Alabama, is in the center and provides the best access to all parties.

Further, coastal miles and population conclusively demonstrate this is not just a Louisiana event. Florida has by far the longest coastline (1,350 miles), longer than all of the Atlantic States combined from Georgia to Maine, with 8,000 miles of tidal shoreline. The 12 million coastal residents of Florida constitute 75% of Florida's population. It is estimated that by this year another 1.7 million will have moved to the coastal counties of Florida. Those coastal counties created 78% of the state's economic output, 77% of the State's jobs, and 79% of the state's income.<sup>10</sup> Again, even if the Panel were to assume an impacted coastal zone from Venice, Louisiana to Destin, Florida, the primary population affected lies east of Louisiana. Mobile is in the center of that area.

**D. Sport and Charter Fishing Is Directly Impacted and Is Centered East of Louisiana.**

According to NOAA, in 2008 there were 25 million fishing trips in the Gulf of Mexico, 67% of the trips originated in west Florida, followed by 18% in Louisiana, 7% in Alabama, and 4% in Mississippi.<sup>11</sup> The spill, and the resulting closure of waters for fishing, impacts all of the charter boat captains, deckhands, marinas, and associated industries. As indicated above, over 75% of those

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<sup>10</sup> <http://www.seagrant.oregonstate.edu/asgepl/FloridaExtProposalfinal.html>.

<sup>11</sup> [http://www.st.nmfs.gov/st1/fus/fus08/03\\_recreational2008.pdf](http://www.st.nmfs.gov/st1/fus/fus08/03_recreational2008.pdf).

trips, or 18,750,000 trips, originated from points east of Louisiana, and Mobile lies in the center of the affected zone.

**E. Mobile Is the Center of Gravity of the Tourism Industry Threatened by this Oil Spill.**

This disaster is not only about fish and fishermen. The damages from the spill -- and the suits filed -- will likely arise significantly from the tourism industry, and Alabama is right in the middle of it between Louisiana and Florida. It is reliably estimated that the spill threatens billions in the tourist industry in Alabama, Mississippi and Florida.<sup>12</sup> In Florida, tourism is a \$65 billion industry.<sup>13</sup> In Alabama, Reuters reports that tourists spent \$2.3 billion on Alabama's beaches in 2008, supporting 41,000 workers.<sup>14</sup> In Orange Beach, Alabama alone, from 2008-2009 there were 1.3 million visitors who spent and left behind \$533 million for food, lodging and recreation,<sup>15</sup> including charter fishing.

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<sup>12</sup> <http://www.realestatechannel.com/us-markets/vacation-leisure-real-estate-1/real-estate-news-gulf-oil-spill-oil-spill-ucf-visit-florida-florida-tourism-charlie-crist-sean-snaith-president-barack-obama-alex-sink-louisiana-oil-spill-palm-beach-2462.php>.

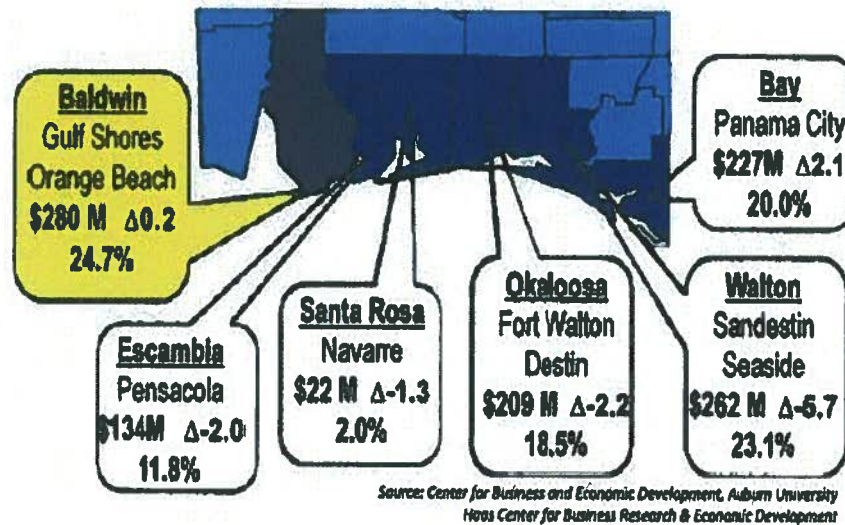
<sup>13</sup> <http://www.foxnews.com/politics/2010/04/29/massive-oil-slick-devastating-impact-economy-gulf-states/>.

<sup>14</sup> <http://www.alertnet.org/thenews/newsdesk/N2961998.htm>.

<sup>15</sup> <http://www.foxnews.com/politics/2010/04/29/massive-oil-slick-devastating-impact-economy-gulf-states/>.

Data from lodging tax records shows that the economic impact on coastal Alabama and the panhandle of Florida associated with vacation rentals will likely exceed damages to the fishing industry. As shown below, the impact on the area east of New Orleans is dramatic.<sup>16</sup>

**2009 Revenue From Short Term Lodgings in Alabama and Florida Panhandle**



In 2009, in these Alabama and Florida coastal counties, the revenue from condominium and hotel rentals totaled over \$1 billion. Again, the point is not that the states east of Louisiana will certainly suffer greater economic damages, but that Mobile lies in the middle of the impacted zone.

**IV. THE STATUS OF AND THE RELATIVE NUMBER OF PENDING CASES IN EACH APPLICABLE DISTRICT**

For a start, none of these cases are more than two weeks old; no court has any notable head start on any other.

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<sup>16</sup> [http://www.st.nmfs.gov/st1/fus/fus08/03\\_recreational2008.pdf](http://www.st.nmfs.gov/st1/fus/fus08/03_recreational2008.pdf).

At the time when Respondents had to stop counting in order to get this pleading filed, there were 32 non-injury and death cases in the Eastern District of Louisiana, 2 cases in the Western District of Louisiana, 11 cases in the Southern District of Mississippi, 25 cases in the Southern District of Alabama, and 11 cases in the Northern District of Florida. Many of those cases had multiple plaintiffs; some were class actions and some were not. Once again, Mobile is in the center of the litigation zone.

V. **MOBILE AND ITS FEDERAL COURT ARE WELL FAMILIAR WITH MARITIME AFFAIRS AND LAW**

The Panel has considered whether the potential transferee judges are familiar with the type of litigation at issue. E.g., *In re Dollar General Corp. Fair Labor Standards Act Lit.*, 346 F. Supp. 2d 1368, 1370 (J.P.M.L. 2004); *In re Amoxicillin Patent and Antitrust Lit.*, 449 F. Supp. 604 (J.P.M.L. 1978). This is actually a neutral factor, since all federal courts on the Gulf of Mexico probably have similar familiarity with maritime affairs and law. But, we address it just to mention the significant maritime experience of Mobile and the Mobile judges.

Mobile has a long history of being at the forefront of maritime matters. Actually, it was Mobile which according to the Harvard Business School web site “reinvented shipping.” *The Truck Driver Who Reinvented Shipping*, Harvard Business School Working Knowledge, <http://hbswk.hbs.edu/item/5026.html>, from Anthony J. Mayo and Nitin Hohria, *In Their Time: The Greatest Business Leaders of the Century*. One of the most influential doctrines of maritime law, “The Ryan Doctrine,” D. Bagwell, *Continued Problems After the Supposed Demise of Ryan Indemnity in U. S. Admiralty Law*, 1982 Lloyd’s Maritime and Comm’l Law Qtrly 556 (1982), was

named for a United States Supreme Court case, *Ryan Stevedoring Co. Pan-Atlantic S.S. Corp.*, 350 U.S. 124 (1956), involving a Mobile stevedoring business, Ryan Stevedoring. Mobile is where, at the Battle of Mobile Bay in 1864, Admiral Farragut is supposed to have said “damn the torpedoes; full speed ahead.”

Mobile is certainly a major port. During the last year, there were 1,295 vessel calls in the Port of Mobile, and the Alabama State Docks maintains 41 berths for ships,<sup>17</sup> in addition to private docking facilities. In 2003, the Port of Mobile reported operating revenue of over \$60,000,000, compared to \$33,000,000 for the Port of New Orleans.<sup>18</sup> Should the spill adversely impact shipping, a whole host of additional plaintiffs will emerge. The Federal Court in Mobile is fully familiar with maritime litigation and offshore drilling issues; there is extensive oil and gas drilling and production in Alabama waters. Drilling rigs have been manufactured and are stored in Mobile.

## **VI. HOUSTON IS NOT AN APPROPRIATE VENUE**

The BP Defendants have indicated their intention to seek transfer of these actions to the United States District Court for the Southern District of Texas, Houston Division. The primary, if not sole, basis for the BP Defendants’ position is that the various defendants are headquartered in Houston. While the location of “pertinent documents and witnesses” may be an appropriate consideration for this Panel, the BP Defendants fail to explain that any actual witnesses and/or pertinent documents are located at the headquarters of the Defendants, or that the volume of the said

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<sup>17</sup> <http://www.asdd.com/portfacts.html>.

<sup>18</sup> James C. Cato, *Gulf of Mexico: Origin, Waters, and Biota, Volume 2, Ocean and Coastal Economy*, at p. 23.

witnesses and documents are such that the Panel would be justified in transferring this matter far west of the impacted geographic zone.

The relative convenience to BP and the other Defendants of having this matter adjudicated in the home town of its corporate headquarters pales in comparison to the inconvenience that will be suffered by the thousands of injured parties in having to travel outside the geographic impact zone to litigate this matter.

Further, the existence of one identified state court matter pending in Harris County, Texas provides no reason to transfer this matter to the Southern District of Texas. There will likely be state court matters filed by many of the impacted plaintiffs throughout the Gulf region. Consequently, the identification of a single case in Texas provides no basis for this Court to transfer this action to the Southern District of Texas.

**VII. NEUTRAL FACTORS.**

**A. The Location of Evidence.**

While the Panel sometimes considers the location of the evidence as a factor, here all the physical evidence is in a huge and heavy burned, crumpled pile of tons and tons of scrap steel one mile down. We do not expect that any of the lawyers or judge or jurors will be taking a jury view or anything like that. Surviving rig workers are just about as likely to live in Mobile or Pensacola as New Orleans. This factor must be viewed as neutral or inapplicable.



**B. Locus Delicti, or Place of the Tort.**

The Deepwater Horizon at the time of its explosion was outside the bounds of any state, floating on the navigable waters of the United States. It was not in any state. In particular, it was not in Louisiana, or in Louisiana waters. It was upon United States waters, outside the boundaries of Louisiana. As a matter of fact, it was closer to Mobile, Alabama than it was to New Orleans. Look at the map of the spill on the web site of the Unified Command, which shows a map locating the well and the spill and the various potential impact areas, from Louisiana to Mississippi to Alabama to Florida. Mobile is right in the center of the thing, and closer to the rig than New Orleans is.<sup>19</sup>

**VIII. PERSONAL INJURY AND DEATH CASES SHOULD NOT BE TRANSFERRED AS PART OF THE MDL**

In its memorandum in support of its request to transfer this action to the Southern District of Texas, BP seeks to insure the transfer of all cases which in any way arise from the explosion of the Deepwater Horizon and resulting spill. Respondents here believe that it would be most appropriate to limit transfer and consolidation to those cases which seek recovery from damages from the oil spill itself and leave any cases dealing with the personal injury or death of those person who were on the Deepwater Horizon at the time of the explosion to other proceedings. The personal injury and death cases seek recovery under theories wholly different from the various legal theories asserted by the parties injured by the spill itself. Transfer and consolidation of the injury and death cases would only serve to delay adjudication of the compensation due to those injured parties and

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<sup>19</sup> <http://www.deepwaterhorizonresponse.com/go/doc/2931/529883/>.

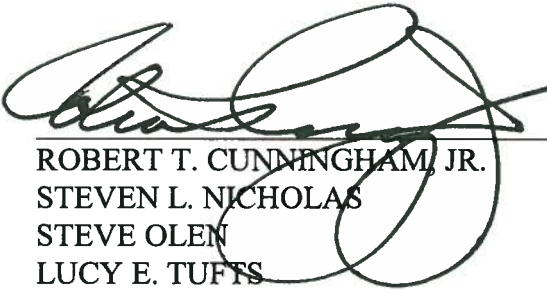
their families. Respondents here believe that because there are significant differences between the injury and death cases and the various groups of parties seeking compensation from the injury to their property and natural resources resulting from the oil spill, it would be most appropriate not to include injury and death cases in the transfer order entered by this Court.

**CONCLUSION**

Upon consideration of all these factors, the most appropriate forum is the Southern District of Alabama. For that reason these plaintiffs respectfully move under 28 U.S.C. §1407 for a transfer -- for coordinated or consolidated pretrial proceedings -- to the Southern District of Alabama of the large number of lawsuits filed in various United States District Courts from Florida through Alabama and Mississippi to, on the far Western end, Louisiana, or if other and still more remote districts, those too.

Dated: May 11, 2010

Respectfully submitted,



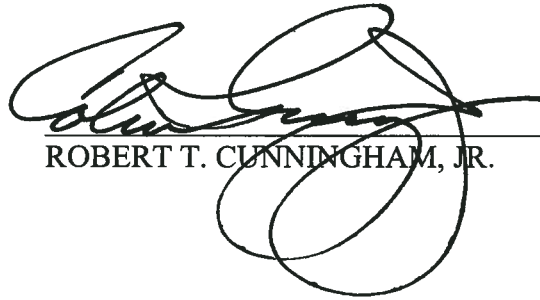
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**PROOF OF SERVICE**

I hereby certify that, as required by JPML Rule 5.2(a) and Rules 5 & 6 of Fed. R. Civ. P., a true and correct copy of this pleading was served on the following counsel, each of whom has filed Court papers in litigation in some court involving this event [because of the size and immediacy of this accident, new suits are constantly being filed, but the undersigned has made good faith efforts to compile a timely complete list]:

See Exhibit A attached hereto

I also hereby certify that as required by JPML Rule 5.2(b) I have this day mailed or otherwise had delivered for filing to the clerk of each district court in which an action is pending that will be affected by the motion.



ROBERT T. CUNNINGHAM, JR.

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