

**IN THE UNITED STATES COURT OF APPEALS**

**FOR THE FIFTH CIRCUIT**

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No. 13-30315

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IN RE: DEEPWATER HORIZON

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LAKE EUGENIE LAND & DEVELOPMENT, INCORPORATED; BON SECOUR FISHERIES, INCORPORATED; FORT MORGAN REALTY, INCORPORATED; LFBP 1, L.L.C., doing business as GW Fins; PANAMA CITY BEACH DOLPHIN TOURS & MORE, L.L.C.; ZEKES CHARTER FLEET, L.L.C.; WILLIAM SELLERS; KATHLEEN IRWIN; RONALD LUNDY; CORLISS GALLO; JOHN TESVICH; MICHAEL GUIDRY, on behalf of themselves and all others similarly situated; HENRY HUTTO; BRAD FRILOUX; JERRY J. KEE,

Plaintiffs - Appellees

v.

BP EXPLORATION & PRODUCTION, INCORPORATED; BP AMERICA PRODUCTION COMPANY; BP PIPE LINE COMPANY,

Defendants - Appellants

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No. 13-30329

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IN RE: DEEPWATER HORIZON

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LAKE EUGENIE LAND & DEVELOPMENT, INCORPORATED; BON SECOUR FISHERIES, INCORPORATED; FORT MORGAN REALTY, INCORPORATED; LFBP 1, L.L.C., doing business as GW Fins; PANAMA CITY BEACH DOLPHIN TOURS & MORE, L.L.C.; ZEKES CHARTER FLEET, L.L.C.; WILLIAM SELLERS;

KATHLEEN IRWIN; RONALD LUNDY; CORLISS GALLO; JOHN TESVICH;  
MICHAEL GUIDRY, on behalf of themselves and all others similarly situated; HENRY  
HUTTO; BRAD FRILOUX; JERRY J. KEE,

Plaintiffs - Appellees

v.

BP EXPLORATION & PRODUCTION, INCORPORATED; BP AMERICA  
PRODUCTION COMPANY; BP, P.L.C.,

Defendants - Appellants

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BP EXPLORATION & PRODUCTION, INCORPORATED; BP AMERICA  
PRODUCTION COMPANY

Plaintiffs - Appellants

v.

LAKE EUGENIE LAND & DEVELOPMENT, INCORPORATED; BON SECOUR  
FISHERIES, INCORPORATED; FORT MORGAN REALTY, INCORPORATED; LFBP  
1, L.L.C., doing business as GW Fins; PANAMA CITY BEACH DOLPHIN TOURS &  
MORE, L.L.C.; ZEKES CHARTER FLEET, L.L.C.; WILLIAM SELLERS;  
KATHLEEN IRWIN; RONALD LUNDY; CORLISS GALLO; JOHN TESVICH;  
MICHAEL GUIDRY, on behalf of themselves and all others similarly situated; HENRY  
HUTTO; BRAD FRILOUX; JERRY J. KEE,

Intervenor Defendants - Appellees

DEEPWATER HORIZON COURT SUPERVISED SETTLEMENT PROGRAM;  
PATRICK A. JUNEAU, in his official capacity as Claims Administrator of the Deepwater  
Horizon Court Supervised Settlement Program administering the Deepwater Horizon  
Economic and Property Damages Settlement Agreement, and in his official capacity as  
Trustee of the Deepwater

Defendants - Appellees

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Appeals from the United States District Court for the  
Eastern District of Louisiana, New Orleans

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Before DENNIS, CLEMENT and SOUTHWICK, Circuit Judges.

PER CURIAM:

We have considered the appellant's emergency motion, the appellee's opposition and the district court's orders of October 18, November 15, and November 22, 2013, holding that causation was not an issue for consideration on remand. The district court's refusal to consider causation, upon presentation of that issue by the appellant, contravenes the direction in the concurring opinion to "allow the parties on remand to give [the causation issue] the attention it deserves." *In re Deepwater Horizon*, 732 F.3d 326, 346 (5th Cir. 2013). The panel opinion and concurrence, read together, invited the parties to present arguments with respect to causation, Rule 23, the Rules Enabling Act, and Article III standing on remand. *See id.* This court's expressing its views through two different opinions may have created interpretive difficulties on the remand, but the district court erred by not considering the arguments on causation.

IT IS ORDERED that the issue of causation is again remanded for expeditious consideration and resolution in crafting "[a] stay tailored so that those who experienced actual injury traceable to loss from the Deepwater Horizon accident continue to receive recovery but those who did not do not receive their payments until this case is fully heard and decided through the judicial process," including by any other panel of this court that resolves these issues.

IT IS FURTHER ORDERED that appellants' emergency motion to enforce this Court's October 2, 2013 judgment and to enjoin any further payments to the BEL claimants whose injuries are not traceable to the spill, i.e., who did not suffer economic loss or property damage because of the spill, pending final disposition of the related

appeals is carried with this appeal pending further action by the district court in tailoring a stay.

IT IS FURTHER ORDERED that appellants' motion for leave to file their emergency motion in excess of the page limitation is GRANTED.

IT IS FURTHER ORDERED that appellants' motion to file exhibits in support of their emergency motion under seal is GRANTED to the extent that the same exhibits are under seal in the district court.

IT IS FURTHER ORDERED that appellants' motion to consolidate their new notice of appeal filed November 21, 2013, which has been docketed under appeal no. 13-31220, with these appeals is GRANTED.

IT IS FURTHER ORDERED that appellees' motion to file their response to appellants' emergency motion for injunction in excess of the page limitation is GRANTED.

IT IS FURTHER ORDERED that appellants' motion to file their reply to the opposition to the emergency motion for injunction in excess of the page limitation is GRANTED.

JAMES L. DENNIS, Circuit Judge, dissenting:

I respectfully dissent for the reasons patiently and painstakingly assigned by the district court. In my view, the issue of causation in fact of economic damages “resulting from” or “due to” the oil spill under the Oil Pollution Act of 1991, see 33 U.S.C. § 2702(b)(2), that BP belatedly seeks to raise in this court, clearly did not survive the parties’ settlement agreement, the district court’s consent decree, or BP’s failure to properly raise the issue in its initial proceeding before the district court. I agree with the majority, however, that its remand order should not be construed to interfere or conflict with the judgment of any other panel of this court that addresses or resolves this issue.