

CAUSE NO. \_\_\_\_\_

SAMUEL CHARLES BOYD, JR, ROGER §  
ALFRED, EDGAR HERNANDEZ, ESCO §  
HORNSBY, EURIPIDES LOPEZ, §  
ROGER JNMARIE, ANTHONY GREEN, §  
LAFE GREEN, MARGARITA NINO, §  
ALEJANDRO CASTILLO, VICTOR §  
VENTURA, VICTOR SANCHEZ, §  
REGINO BRIONES, LELAND VANN, §  
ASHTON WHITBY, MARCUS GARY, §  
JOHN BENNETT, MARTIN MARTINEZ, §  
ADRIAN VILLAREAL, MITCHELL §  
SIMPSON, MICHAEL FLORES, CARLOS §  
MENDOZA, EDDY MATAMOROS, §  
CHARLES COFFER, ERIC MASSINGILL, §  
EDGAR CERVANTES, ELWOOD DAVLIN, §  
GASPAR SALAZAR, LEE RODRIGUEZ, §  
JONATHAN VASQUEZ, NICOLAS §  
SARABIA, ESTEBAN DURAN, MARCUS §  
COTTON, DENNIS HUMPHREY, RICHARD §  
SYLVESTER, RAMIRO RODRIGUEZ, SAUL §  
GARCIA, PEDRO ALANIS, SALVADOR §  
FARIAS, GUADALUPE CAMACHO, §  
RICHARD CAMPBELL, MIGUEL ORTIZ, §  
ANGEL MEDRANO, JESUS PANIAGNA, §  
JOSE SALCEDO, LASHAWN JONES, §  
RODOLFO HUERTA, DAVID MAGALLAN, §  
JAIME LOUBET, YATISHA GARDNER, §  
CARLTON SMITH, COURTNEY SMITH, §  
CARLTON SMITH, JR., GINGER LUNDY, §  
LATONJA WASHINGTON, JAMES EARLS, §  
DUSTIN PERDEW, MARK NORRIS, JAMES §  
WALKER, PERCY PAGE, ROY BARNES, III, §  
CHAUNCEY GEORGE, JESUS CEJA, §  
GERALD PERRY, JESUS ROJAS, VERNON §  
DAVIS, LOUIS SIMMONS, FRANCINE §  
TURNER, MANUEL ALEGRIA, DEBORAH §  
SMITH, SHARON WEEDE, JOSEPH §  
LEWIS, JUANITA BELL, ERNEST BROW, §  
REGINALD ROWE, SHARON BRYANT, §  
MARVIN TOLDEN, KEITH MANNING, §  
JOHNNIE MOORE, LAQUISIA HATCHER, §  
BENJAMIN REYNA, RAFAEL GUAJARDO, §  
ROSA GARCIA, CHASIDY GOBART, §  
BOBBIE JEAN BEOWN SALTER, §

IN THE DISTRICT COURT OF

GALVESTON COUNTY, TEXAS

\_\_\_\_\_ JUDICIAL DISTRICT

**JURY TRIAL DEMANDED**

JACRESHA LEWIS, VANESSA BOGAN, §  
 VICTOR POOL, EDUARDO GARZA, §  
 RAMON CARDENAS, PAUL CUEVAS, §  
 BREILLE WASHINGTON, WILL MYERS, §  
 EDDIE EVANS, ELBERT JOSEPH, RALPH §  
 WILLIAMS, LASHANDRA BROWN, §  
 JASMINE EPPS, RHONDA COTTON, §  
 LYNELL DELMAN HART, ALICE PERRY, §  
 JOHN BRIDGES, FELICIA WARD, TODD §  
 HARRIS,; ANTHONY O'NEAL, §  
 NATHANIAL VALLERY, AULVEY §  
 CAMPBELL, GILBERT BENNETT, JAMES §  
 PETTEWAY, VERNON ROY, JERMEL §  
 LEWIS, DARREON MILLER, LA GLORIA §  
 WILLIS, TRAKELL WILLIS, BELINDA §  
 JOHNSON, LEE MATTA, LINDA COLLINS, §  
 DEIMY CRUCES, MICHAEL DOXEY, §  
 MONTRECE ELAM, DA'LIN COLLINS, §  
 WILLIE DIMES, ARIEL VILLAVICIENDO, §  
 BOBBY MOORE, JIMMY SPURLOCK, §  
 EDWARD ALFRED, TIWANA BILLIOT- §  
 BARON, VONDA BAILEY, LESTER §  
 JULIAN, CHARLES WALKER, DOROTHY §  
 WALKER, REGINALD WARREN, GEORGE §  
 WEBB, LULA SMITH, VERNA BLEDSOE, §  
 ERVINE DOUGLAS, WILLIAM LETROSIE, §  
 RALPH BELL, ELIGAH SMITH, RONNIE §  
 JONES, RAMON CABRERA, LATARON §  
 ELAM, FREDDIE STEWART, JERALD §  
 JOHNSON, WILLIAMS MCGILL, LINDA §  
 SPURLOCK, OSCAR SPURLOCK, RUDDIE §  
 DRAKE, RAFAEL GUAJARDO, JR., §  
 RICHARD EVORS, EUGENE SCOTT, §  
 JOHNNY JONES, RAUL MALDONADO, §  
 LADISLAO RAYAS, PHILLIP GREEN, §  
 KATHY DORSEY, OCTAVIA BOSTON, §  
 TEDRIC COTTON, GENARO HERRERA, §  
 LAFE GREEN, JAMES SMITH, JUANITA §  
 BLAND, JOHN JONES, JR., BRANDON §  
 SCOTT, LISA MARIE GOBERT, §  
 CHESTER GOBERT, LINDA GOBERT, §  
 MICHAELA RANDLE, ROBERTO LOPEZ, §  
 SHIRLEY WHITE, SHAMEIKA PLEASANT, §  
 DELISA YOUNG, LARRY TURNER, §  
 SALVADOR JUAREZ, KELVIN SIMS, JOE §  
 CARDENAS, FELIPE HURTADO, FREDDIE §

MACIAS, JORGE AYALA, TIMOTHY	§
BOGGS, GABINO MONTOYA, ELENO	§
BUSTIO, MISAEL GONZALEZ-VALLES,	§
ALEXIS WITTGREEN, RAMON VILLA,	§
JUAN HERNANDEZ, JEREMY VILLA,	§
ALFREDO SANCHEZ, DANIEL MARTINEZ,	§
EDUARDO GONZALEZ, BLAS	§
GOMEZ, EARNEST CHASE, GERARDO	§
GARCES, LUIS SANCHEZ, JOSE	§
DELGADO, BRIAN CIS, GERMAYNE	§
TEALER, FERNANDO GARZA, RODNEY	§
CRAWFORD, JESUS GONZALEZ,	§
ARGARITO REYES, CARLOS MATA,	§
JULIO ARTEAGA, SPENCER ROBERSON,	§
JORGE GARCES, EDWARD SMITH,	§
EDWARD GONZALEZ, JULIO IBARRA,	§
GREG HERNANDEZ, JUAN SANTIAGO,	§
LUIS RAMIREZ, JOSE SANCHEZ, JOHN	§
SONNIER, PETE MARTINEZ, DAVID	§
NULL, JULIE ESTREDA, ROGELIO	§
ESTREDA, JUAN ZEPEDA, JESUS ZEPEDA,	§
LEONEL HINOJOSA, MARCOS LAZO,	§
OSCAR SANCHEZ, JOSE SALINAS,	§
SERGIO SANCHEZ, TIARA TURNER, IRA	§
LEIGH, JULIAN CHARLEY, DIANA	§
MARTINEZ, TIFFANY TAYLOR, ALBERTO	§
MEJIA, ORLANDO GARCIA, NORRIS	§
GAINES, STEPHANIE BERNARD, PATRICK	§
TRIGG, FERNANDO SEPULVEDA,	§
KRYSYNTHIA KELLER-RIDO, JAIME	§
CUELLAR, JANICE SIMPSON, MARVIN	§
BROOKS, JAIME CASTREJON, FELICIA	§
HATTER, BELFORD JOHNSON, BENJAMIN	§
QUIROZ, GIOVANNY GOMEZ, JUAN	§
LAZO, DEMETRIUS SANDFORD, MARTIN	§
BUSTOS, KEVEN BELL, JEANETTE	§
ALEGRIA, MIGUEL SOLANO, HECTOR	§
LONGORIA, JOSE CASAS, VICTOR	§
ENRIQUEZ, JESUS GONZALEZ,	§
SALVADOR DUQUE, JARED WILLIAMS,	§
EFRAIN SANCHEZ, ERIK HERNANDEZ,	§
DEBORAH CHARLES, MIGUEL TREJO,	§
DIANA CHHUON, RAFAEL HUERTA,	§
ROBERTO URBINA, PASCUAL LEDESMA,	§
DAMIEN HILL, ENRIQUE MACIEL, ALVIN	§
WHITFIELD, WILLIE MYERS, JAMES	§

MITCHELL, MARTIN MARTINEZ, CARLA §  
LUNDY, ANTHONY ZEPEDA, VICTOR §  
GARCIA, CUAHTEMOC RODRIGUEZ, §  
MIGUEL OCTAVIANO, MICHAEL §  
CARTER, JOEL SALINAS, TERRY UTTON, §  
ROY GARCIA, JOHN JONES III, CARMEN §  
MARTINEZ, ALVIN ANTOINE, KELVIN §  
CAGAN, EDUARDO LOZANO, LAFAYE §  
PORTER, LUIS DE LA GARZA, LUIS §  
MADRIZ, DAVID WHITAKER, ALEX §  
GONZALEZ, ANTONIO SALGADO, §  
HAROLD JOSEPH, WILLIE PORTER, §  
DANIEL MIRELES, RONALD FINISTER, §  
LARRY HOLLAND, JESSE JUAREZ, §  
MICHAEL OSBERRY, ROBERT ALFRED, §  
JAMES TURNER, NERY LUNA, LEJANDRO §  
HERNANDEZ, KRISTI DURAN, ALLAN §  
UGARTE-MEJIA, DAVID AYALA, FERMIN §  
MORALES, AARON EDWARDS, §  
HERACLIO CONDE, HEYNZ LISZT, §  
GERARDO CONDE, LUIS CANTU, §  
EDELMIRO GARCIA, ELIUD PERALTA, §  
RUSSELL KRAUSE, HECTOR PEREZ, §  
ISRAEL ESQUEDA, JOSE PORTILLO, PAUL §  
BOLINS, FELIX GALLARDO, MARIO §  
CHAVIRA, LEONARD "L.J." HUGHLING, §  
JOSE ROMEO, FRANCISCO GONZALEZ, §  
KYLE REYNOLDS, DEBRA GOODSON, §  
RON GREELY, PATRICK WARFORD, §  
JODIS LEMON, PEDRO MORENO, JUAN §  
PABLO ROJAS, JUAN TELLEZ, CARLOS §  
CHAVEZ, YNOSENCIA WILTSEY, KELTON §  
JONES, CURTIS JONES, TIFFANY SMITH, §  
KATHY PUGH-POWELL, BRITNEY §  
UTEMS, FREDERICA RAY, SHIRLEY §  
MOORE, CHRISTOPHER MOORE, FRANK §  
GUARJADO, JESSE JAMES, KENNETH §  
RAY BUCK, EDDIE ELAM, ELIZABETH §  
ELAM, WILLIE MOORE, JESSE MAE §  
FIELDS, EARNESTINE SMITH, COLLIN §  
SMITH, ERICA HILL, ROSE SMITH, JESSE §  
VILLAREAL, TRACI JONES, WADE §  
BLAKE, JOHN COLEMAN, KENDRICK §  
COOPER, PAMELA COTTON, RAFAEL §  
MORALES, MARK SISTER, ADAM §  
FERRER, KEITH WILLIAMS, ROBERT §

SYKES, ANDRES LUNA, JUAN GIRON, §  
 CESEAR CONTRERAS, JERMALL LUSK, §  
 PABLO HERNANDEZ, GERARDO SOSA, §  
 JESUS LOSOYA, DEWEY MORRIS, §  
 MICHAEL GONZALEZ, ENGHELL §  
 TENORIO-CASTILO, ARTURO SNYDER, §  
 JESUS VALDEZ, ALFONSO GUERRA, §  
 LEON WILSON, ISSAC MEZA, TENTON §  
 DAVIS, TEMIELLO DAVIS, MATTIE §  
 HUMPHREY, AMOS HUMPHREY, DONTA §  
 EVANS, CARLAMETRIUS GAMBLE, §  
 NICOLE MILLER, JOHNNY WEBBER, §  
 CHRISTINA WEBBER, CHARLIE SALTER, §  
 TIFFANY SOWELL, ROBERT GROGAN, §  
 AHEEM WHITE, LIONEL JACKSON, §  
 KENNETH ABSHIRE, FRANCIS HATCHER, §  
 TONY HALL, ELIJAH JONES, JULIO §  
 ARTEAGA, KEITH FALKS, JOE LOPEZ, §  
 MICAH RICHARDSON, DONALD §  
 WESTBROOK, SOKUN YEN, MIGUEL §  
 ALFARO, RENE ARRIAGA, ALEJANDRO §  
 FLORES, ELLEN NORRIS, FRED BULPITT, §  
 BAUDELIO DEL RIO, SANTOS ALVAREZ, §  
 JOSE HERRERA, JOHN ORTIZ, ISMAEL §  
 ROBLES, SERGIO SANCHEZ, JUAN §  
 RODRIGUEZ, SAUL CRUCES, MARTIN §  
 GARZA, FENTON DAVIS, TAMIELLO §  
 DAVIS, RANDY FARIAS, JESSE JUAREZ, §  
 CARLA LUNDY, CALVIN MCNEAL, OZIEL §  
 GARCIA, JORGE FLORES, YVETTE §  
 LOVE,FRANK NORRIS, ROBERTO §  
 PADILLO, JULIO PEREZ, MAXIMO SOTO, §  
 MIGUEL HERNANDEZ, IVAN SOSA, §  
 DAVID WESTON, ELIJAH SMITH, Omero §  
 PERALTA, LEONARD FLETCHER, §  
 STANLEY BROWN, JOHNNY AND §  
 CHRISTINA WEBBER ON BEHALF OF §  
 MINOR, N. W.; JOHNNY AND CHRISTINA §  
 WEBBER ON BEHALF OF MINOR, A.W.; §  
 JOHN JONES, III ON BEHALF OF MINOR, §  
 J.J., IV; CHARLIE SALTER AND BOBBIE §  
 JEAN SALTER ON BEHALF OF MINOR, §  
 S.S.; TIFFANY SMITH ON BEHALF OF §  
 MINOR, A.S.; TIFFANY SMITH ON §  
 BEHALF OF MINOR, A.S.; FELICIA WARD §  
 ON BEHALF OF MINOR; C.E.; FELICIA §

WARD ON BEHALF OF MINOR, C.E.; §  
 FELICIA WARD ON BEHALF OF MINOR, §  
 C.E.; DEIMY AND SAUL CRUCES ON §  
 BEHALF OF MINOR, A.C.; DEIMY AND §  
 SAUL CRUCES ON BEHALF OF MINOR, §  
 A.C; DEIMY AND SAUL CRUCES ON §  
 BEHALF OF MINOR, G.C.; DEIMY AND §  
 SAUL CRUCES ON BEHALF OF MINOR, §  
 S.C., JR.; MONTRECE ELAM ON BEHALF §  
 OF MINOR, P.H.; MONTRECE ELAM ON §  
 BEHALF OF MINOR, P.H.; JUANITA §  
 BLAND ON BEHALF OF MINOR, §  
 D.J.; MICHAELA RANDLE ON BEHALF OF §  
 MINOR, J.H.; TIARA TURNER ON BEHALF §  
 OF MINOR, K.T.; TIARA TURNER ON §  
 BEHALF OF MINOR, N.K.; KATHY PUGH- §  
 POWELL ON BEHALF OF MINOR, J.P.; §  
 DAMIEN HILL ON BEHALF OF MINOR, §  
 D.H.; DAMIEN HILL ON BEHALF OF §  
 MINOR, K.T.; BOBBY MOORE ON BEHALF §  
 OF MINOR, S.M; EDDIE ELAM AND §  
 LATAROM ELAM ON BEHALF OF MINOR, §  
 T.E.; EDDIE ELAM AND LATAROM ELAM §  
 ON BEHALF OF MINOR; T.J.; EDDIE ELAM §  
 AND LATAROM ELAM ON BEHALF OF §  
 MINOR, T.E.; EDDIE ELAM AND §  
 LATAROM ELAM ON BEHALF OF §  
 MINOR, T.W.; LYNELL DELMANN HART §  
 ON BEHALF OF MINOR, T.R.H.; LYNELL §  
 DELMANN HART ON BEHALF OF MINOR, §  
 D.H.; LYNELL DELMANN HART ON §  
 BEHALF OF MINOR, T.H.; LYNELL §  
 DELMANN HART ON BEHALF OF MINOR, §  
 M. H.; TA'MIEKO DAVIS ON BEHALF OF §  
 MINOR, R. F.; TA'MIEKO DAVIS ON §  
 BEHALF OF MINOR, C.P.; NICOLE MILLER §  
 ON BEHALF OF MINOR, K.L.; §  
 SHARNELL SMITH ON BEHALF OF §  
 MINOR, K.J.S.; SHAMEIKA PLEASANT ON §  
 BEHALF OF MINOR, J.T.; SHAMEIKA §  
 PLEASANT ON BEHALF OF MINOR, B. B.; §  
 SHARON BRYANT ON BEHALF OF §  
 MINOR, Y. C.; AND MONTRECE ELAM ON §  
 BEHALF OF MINOR, D. C. §  
 §  
 §  
 Plaintiffs, §



enormous – so large that Texas City and Galveston County may very well never recover from the harm done to the area environment.

This case focuses on a single pollution event perpetrated by BP among the thousands of similar acts that occurred during its time in Texas City. In November of 2011, BP released various toxic chemicals for approximately fifteen days. BP was aware of the release, knew of the harm the release could cause, but failed to take proper action to stop or control the release. This is not an unfamiliar story with BP. This story has been told and written many, many times—far too many times. For example:

For decades, BP, as operator of its BP Texas City Facility (the “Refinery” or the “Facility”), has repeatedly, wantonly, and recklessly exposed unsuspecting workers and nearby residents to millions, if not billions, of pounds of toxic chemicals. Over the past twenty-two years, BP—by its own grossly minimized reports—has released more than *500 million pounds* of chemicals into the atmosphere. The true amount is much higher. In the past several years, there have been at least eighty-five reported chemical releases at the Refinery. Many others have occurred that went unreported—unreported emission events at BP number in the hundreds if not thousands of the last decade.

The Refinery, with a capacity of more than 460,000 barrels per day, is the third largest petroleum refinery in the United States. It has also been found to be the largest single polluter in the United States. On March 23, 2005, a series of fires and explosions at the Refinery killed fifteen workers and injured more than 1,000 people. The incident was investigated by the United States Chemical Safety Board (“CSB”), which found that the explosion was caused by organizational and safety deficiencies at all levels of BP and multiple problems with PSM. The various investigations that occurred also resulted in an enforcement action by OSHA, resulting in a \$21 million fine, and an OSHA settlement agreement. As part of BP’s settlement with OSHA in 2009, BP was to undergo a process safety management audit and to incorporate the recommendations of the auditor.<sup>1</sup> Further, as a result of the explosion, BP also ultimately pled guilty to one violation of the Clean Air Act, and agreed to a \$50 million fine.

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<sup>1</sup> BP later agreed to pay \$50.6 million in fines for violating this 2009 settlement agreement.



Since the 2005 explosion, *four more* people have died at the Refinery: one in 2006, one in 2007, and two in 2008. All of these deaths were related to failure to implement and follow proper procedures, failure to inspect and maintain equipment, or failures of PSM. BP's historic failure to inspect and maintain the Refinery and their failure at PSM have continued unabated. For example:

- In just a four-year period, there were over 500 hundred leaks, spills, and releases at the Refinery. The great majority of these leaks, spills, or releases were the result of improper operation, poor maintenance, and lack of inspection of BP's piping and pumping system.
- According to BP's own Fire Chief, the Refinery averages one fire per week.
- From its own internal documents, BP averages 200 leaks and releases per year from valves, pumps, and connectors at the Refinery. These are just the leaks and releases that BP chooses to report.
- On April 19, 2007, 110 workers were sent to the hospital following a release in or around the CAT3B and SRU Units at the Facility, yet BP never identified what was released. At the conclusion of a three-week trial, a federal jury assessed \$100 million in punitive damages against BP.
- In 2009, the Texas Attorney General, on behalf of the Texas Commission of Environmental Quality ("TCEQ") sued BP for a series of 72 excessive chemical emissions dating back to 2005. In 2011, BP agreed to pay \$50 million in fines for these emissions. The fine was the largest for Texas Clean Air Act violations at a single facility.

BP has an especially significant problem at its Refinery with toxic releases and exposures. Following the 2005 explosion and fire at the Refinery, the Environmental Protection Agency ("EPA") conducted a series of inspections to determine BP's compliance with the terms of a 2001 Consent Decree, requiring the Refinery to comply with portions of the Clean Air Act. The EPA concluded that BP had completely failed to live up to the terms of the 2001 Decree. The EPA began another enforcement action, reaching yet another agreement with BP in 2009. The 2009 agreement dealt specifically with the violations related to the mismanagement of carcinogenic waste & by-products. In addition to a \$12 million

fine, the 2009 settlement required BP to improve management controls to minimize waste and implement major upgrades to its Texas City facility and equipment. As the incidents in this case prove, BP failed to live up to this agreement, like it has failed to live up to other agreements it has made with other authorities in the past.

BP's 2009 settlement with the EPA recognized the extremely dangerous nature of toxic chemicals at its facilities. The chemicals at BP's Facility are hazardous air pollutants and byproducts of the petroleum refining process. The health effects related to being exposed to these toxic chemicals are many. The acute effects are drowsiness, dizziness, headaches, as well as eye, skin, and respiratory tract irritation, and, at high levels, unconsciousness.

Multiple studies show that long-term inhalation exposure in occupational settings causes various disorders in the blood, including reduced numbers of red blood cells and anemia. Further, reproductive effects have been reported for women exposed by inhalation, and adverse effects on the developing fetus have been observed in animal studies. Increased incidences of leukemia have also been observed in humans occupationally exposed to multiple toxic chemicals. Studies have shown that individuals exposed to high levels of toxic chemicals released by the petroleum refining process may develop cancer years later as a result of a single exposure.

However, as this case demonstrates, despite BP's promises to prevent chemical exposure, such exposures routinely continue to occur at the Refinery. On August 19, 2009, a group of contract workers were working at the Refinery when a vapor and strong odor completely enveloped their work area. Attempting to locate the source of the vapor, the workers discovered chemicals spewing out of a broken pipe like water from a fire hydrant. The workers quickly evacuated the area. After experiencing various symptoms, the workers sought medical treatment and were taken to a hospital. It was only then that the workers learned that they were exposed to Benzene and other toxic chemicals and byproducts.

In late 2009, BP was again cited by OSHA for more than 700 safety, health and PSM violations, many of which had been outstanding for more than four years. These violations included 411 instances of "individual relief device deficiencies," 28 instances of "failure to provide operating limits in procedures," and 28 instances of "failure to perform relief device studies." Several of these violations dealt specifically with underreporting or failing

to report leaks, spills, and releases. The majority of the violations dealt with the failure to inspect and maintain piping at the Refinery. Based on BP's conduct and failure to comply with the earlier settlement agreement, OSHA levied a fine of more than \$87 million, by far the largest in the agency's history. BP recently agreed to pay \$50 million of this fine, and continues to fight the remainder.

Despite the efforts of the EPA, OSHA, TCEQ, and other federal and state agencies, including even the United States Justice Department, and despite the massive fines that these agencies have assessed, BP simply never changed. It continued to pollute the ground, water, and air, putting both the onsite personnel and nearby residents and workers at risk. As a clear example, many of the schools in the Texas City Independent School District were found to have among the worst air quality in the country when compared to other schools.<sup>2</sup> Plaintiffs have all experienced the symptoms classically associated with exposure to Sulfur Dioxide and other toxic chemicals that have been released by BP over the past two years. Many of them now experience the helpless fear that comes from repeated exposure to deadly carcinogens. More importantly, Plaintiffs bring this case to recover damages, but also bring light to BP's conduct and the devastating harm the company did to this community while doing business here.

As stated, this case arises from a *single event*. From November 10, 2011 through possibly early December 2011, BP reportedly released *Sulfur Dioxide*, *Methyl Carapaptan*, *Dimethyl Disulfide* and other toxic chemicals into the atmosphere. It was reported that a tank on the western side of the facility had a pin-hole leak, which was the root of the toxins being released into the atmosphere. Despite that the leak had been reported, BP denied the dangerousness of the leak, or that any harm could be caused from it. To the public, BP said the following:

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<sup>2</sup> USA TODAY SPECIAL REPORT, The Smokestack Effect: Toxic Air and America's Schools, available at <http://content.usatoday.com/news/nation/environment/smokestack/index>. Texas City High School and Fry Intermediate School were both in the 1<sup>st</sup> Percentile (lower percentiles have lower air quality) and Heights Elementary, Kohfeldt Elementary and Our Lady of Fatima Catholic School were all in the 2<sup>nd</sup> percentile. *Id.* at <http://content.usatoday.com/news/nation/environment/smokestack/search/TX/~Texas+City/~name/~1/>.

*BP Texas City continues to address an odor event that occurred Tuesday evening at its Texas City Refinery.*

*The source of the odor was mercaptan, the odor additive placed in natural gas, which is used because of its strong odor at very low concentrations.*

*The site dispatched and is maintaining mobile environmental monitors into the community.*

*While there was a mercaptan smell in parts of the community on Tuesday evening, environmental monitors have not registered any readings above detectable limits.*

*The site has identified a tank on the western side of the plant as the source of the odor. The tank has been isolated and site personnel are taking steps to eliminate the odor.*

*There have been no new odor complaints since the tank was isolated.*

*BP has maintained regular contact with the City of Texas City and with neighboring Dow site personnel.”*

In its statement, BP purposely mislead the public regarding air monitors in the community. Such monitors DO NOT detect the presence of mercaptan. Further, BP failed to inform the public that monitors at neighboring Dow had indeed detected the presence of Sulfur Dioxide--despite the fact that BP refused to admit that such compound had even been released. Perhaps more egregious, in its statement, BP completely mislead the public about the dangers of mercaptan, implying that it was not dangerous, and could not cause symptoms.

According to the Agency for Toxic Substances and Disease Registry, methyl mercaptan is a colorless flammable gas with unpleasant odor described as rotten cabbage. It is easily ignited. Methyl mercaptan is highly irritant when it contacts moist tissues such as the eyes, skin, and upper respiratory tract. It can also induce headache, dizziness, nausea, vomiting, coma, and death. Inhalation is the major route of exposure to methyl mercaptan. An odor threshold of 0.002 ppm has been reported for methyl mercaptan, but olfactory fatigue may occur and thus, it

may not provide adequate warning of hazardous concentrations. Children exposed to the same levels of methyl mercaptan as adults may receive a larger dose because they have a greater lung surface area--body weight ratios and higher minute volume--weight ratios. In addition, they may be exposed to higher levels than adults in the same location because of their short stature and the higher levels of mercaptan lower to the ground.

The leak was substantial enough that it was purportedly detected at other facilities located as far as two miles away. Bruce Clawson, Texas City's director of homeland security was quoted as follows:

“So far the amount being leaked given the wind speed and the height it's being released at. Certainly unpleasant and a quality of life issue... A small amount of [M]ercaptan goes a long way. It's an extremely unpleasant odor... Leak has been noticed by local population....”

Additionally, a TDC alarm at the DOW Chemical facility picked up a reading of Sulfur Dioxide on November 12, 2011. The end result for the DOW facility was that it had to shut down most of its operations for that time period and send all non-essential employees home, all essential employees had to be given respirators, and 30-40 employees sought medical treatment and a number of these employees had to be taken off site for medical treatment. All of this occurred, despite BP reporting to its neighbors and the community that no dangerous chemicals were being released.

BP has a tortured history of failure in the area of PSM. Over the past few years, tens of thousands of individuals were injured and had their long-term health put in jeopardy after being exposed to extremely high levels of carcinogens and other toxic chemicals while working at the Refinery or by simply living or working near the Refinery.

Plaintiffs seek remedy for the repeated exposures that have occurred as result of the release of chemicals from the Refinery, and also to send a message to BP, its officers and its Board of Directors – that the wanton poisoning of an entire community is not an acceptable business practice. In this effort, Plaintiffs seek punitive damages against BP in excess of **\$1 billion**.

## **II. PARTIES**

The Plaintiffs in this case are responsible, productive members of Galveston County, Texas. Each Plaintiff in this case was directly affected and harmed by the release in question. Each Plaintiff is bringing suit to recover not only damages from this release, but also to force BP to accept responsibility for the harm it did to this community during its “stay” in Texas City.

There are 474 Plaintiffs in this case. Many of these people were severely harmed and made sick by BP’s conduct. Some Plaintiffs were even hospitalized for their illnesses.

*Samuel Charles “Chuck” Boyd:* Mr. Boyd was an employee at Dow Chemical. On November 15, 2011, he became very ill at work due to the release coming from BP. Mr. Boyd began vomiting and coughing violently. He was in a state of physical collapse when EMS arrived at his location. EMS transported Mr. Boyd to Mainland Medical Center. It was found in the ER that Mr. Boyd was suffering from chemical exposure related symptoms—his condition was and continues to be very serious. Since his exposure, Mr. Boyd is permanently impaired. His impairments include irreversible damage to his vocal cords. He has not been allowed to return to work at the Dow facility due to his condition, especially because of the harm done to his lungs and respiratory system. Mr. Boyd, once a fit, young, competent worker, is now on permanent disability—and forever out of work in the refinery business.

Other co-workers of Mr. Boyd were also sent to the hospital and suffered similar harm. This list includes Delisa Young, Reginald Rowe, Brian Cis, Ted Brouddus and David Null. The harm done to Mr. Boyd and his co-workers is typical of the “worker” claims in this litigation. Workers’ symptoms include violent coughing, vomiting, difficulty breathing, airway constriction, dizziness, vision impairment, itchy eyes, stomach irritation, and the like.

*Julio Perez:* Mr. Perez is a member of the community of Texas City. During the time period of the exposure, Mr. Perez got very sick as he was working outside across the street from the Refinery. Due to the exposure, he noticed a variety of symptoms, including shortness of breath. His doctors have found that he now has permanent breathing limitations. Additionally, shortly after the exposure, Mr. Perez had a chest x-ray done, which presented evidence of exposure to toxic chemicals.

Other community members in addition to Mr. Perez also suffered similar harm. This includes Jessie Mae Fields, Kenneth Buck, Belinda Johnson, Verna Bledsoe, and Vanessa Bogan. The harm done to Mr. Perez and other community members is typical of the “community” claims in this litigation. Symptoms include violent coughing, vomiting, difficulty breathing, airway constriction, dizziness, vision impairment, itchy eyes, stomach irritation, and the like.

Plaintiffs in this case are:

1. Samuel Boyd, a resident of the State of Texas;
2. Rogers Alfred, a resident of the State of Texas;
3. Edgar Hernandez, a resident of the State of Texas;
4. Esco Hornsby, a resident of the State of Texas;
5. Euripides Lopez, a resident of the State of Texas;

6. Roger JnMarie, a resident of the State of Texas;
7. Anthony Green, a resident of the State of Texas;
8. Lafe Green, a resident of the State of Texas;
9. Margarita Nino, a resident of the State of Texas;
10. Alejandro Castillo, a resident of the State of Texas;
11. Victor Ventura, a resident of the State of Texas;
12. Victor Sanchez, a resident of the State of Texas;
13. Regino Briones, a resident of the State of Texas;
14. Leland Vann, a resident of the State of Texas;
15. Ashton Whitby, a resident of the State of Texas;
16. Marcus Gary, a resident of the State of Texas;
17. John Bennett, a resident of the State of Texas;
18. Martin Martinez, a resident of the State of Texas;
19. Adrian Villareal, a resident of the State of Texas;
20. Mitchell Simpson, a resident of the State of Texas;
21. Michael Flores, a resident of the State of Texas;
22. Carlos Mendoza, a resident of the State of Texas;
23. Eddy Matamoros, a resident of the State of Texas;
24. Charles Coffey, a resident of the State of Texas;
25. Eric Massingill, a resident of the State of Texas;
26. Edgar Cervantes, a resident of the State of Texas;
27. Elwood Davlin, a resident of the State of Texas;
28. Gaspar Salazar, a resident of the State of Texas;



29. Lee Rodriguez, a resident of the State of Texas;
30. Jonathan Vasquez, a resident of the State of Texas;
31. Nicolas Sarabia, a resident of the State of Texas;
32. Esteban Duran, a resident of the State of Texas;
33. Marcus Cotton, a resident of the State of Texas;
34. Dennis Humphrey, a resident of the State of Texas;
35. Richard Sylvester, a resident of the State of Texas;
36. Ramiro Rodriguez, a resident of the State of Texas;
37. Saul Garcia, a resident of the State of Texas;
38. Pedro Alanis, a resident of the State of Texas;
39. Salvador Farias, a resident of the State of Texas;
40. Guadalupe Camacho, a resident of the State of Texas;
41. Richard Campbell, a resident of the State of Texas;
42. Miguel Ortiz, a resident of the State of Texas;
43. Angel Medrano, a resident of the State of Texas;
44. Jesus Paniagna, a resident of the State of Texas;
45. Jose Salcedo, a resident of the State of Texas;
46. Lashawn Jones, a resident of the State of Texas;
47. Rodolfo Huerta, a resident of the State of Texas;
48. David Magallan, a resident of the State of Texas;
49. Jaime Loubet, a resident of the State of Texas;
50. Yatisha Gardner, a resident of the State of Texas;
51. Carlton Smith, a resident of the State of Texas;

52. Courtney Smith, a resident of the State of Texas;
53. Carlton Smith, Jr., a resident of the State of Texas;
54. Ginger Lundy, a resident of the State of Texas;
55. LaTonja Washington, a resident of the State of Texas;
56. James Earls, a resident of the State of Texas;
57. Dustin Perdew, a resident of the State of Texas;
58. Mark Norris, a resident of the State of Texas;
59. James Walker, a resident of the State of Texas;
60. Percy Page, a resident of the State of Texas;
61. Roy Barnes, III, a resident of the State of Texas;
62. Chauncey George, a resident of the State of Texas;
63. Jesus Ceja, a resident of the State of Texas;
64. Gerald Perry, a resident of the State of Texas;
65. Jesus Rojas, a resident of the State of Texas;
66. Vernon Davis, a resident of the State of Texas;
67. Louis Simmons, a resident of the State of Texas;
68. Francine Turner, a resident of the State of Texas;
69. Manuel Alegria, a resident of the State of Texas;
70. Deborah Smith, a resident of the State of Texas;
71. Sharon Weede, a resident of the State of Texas;
72. Joseph Lewis, a resident of the State of Texas;
73. Juanita Bell, a resident of the State of Texas;
74. Ernest Brow, a resident of the State of Texas;

75. Reginald Rowe, a resident of the State of Texas;
76. Sharon Bryant, a resident of the State of Texas;
77. Marvin Tolden, a resident of the State of Texas;
78. Keith Manning, a resident of the State of Texas;
79. Johnnie Moore, a resident of the State of Texas;
80. Laquisia Hatcher, a resident of the State of Texas;
81. Benjamin Reyna, a resident of the State of Texas;
82. Rafael Guajardo, a resident of the State of Texas;
83. Rosa Garcia, a resident of the State of Texas;
84. Chasidy Gobart, a resident of the State of Texas;
85. Bobbie Jean Beown Salter, a resident of the State of Texas;
86. JaCresha Lewis, a resident of the State of Texas;
87. Vanessa Bogan, a resident of the State of Texas;
88. Victor Pool, a resident of the State of Texas;
89. Eduardo Garza, a resident of the State of Texas;
90. Ramon Cardenas, a resident of the State of Texas;
91. Paul Cuevas, a resident of the State of Texas;
92. Breille Washington, a resident of the State of Texas;
93. Will Myers, a resident of the State of Texas;
94. Eddie Evans, a resident of the State of Texas;
95. Elbert Joseph, a resident of the State of Texas;
96. Ralph Williams, a resident of the State of Texas;
97. Lashandra Brown, a resident of the State of Texas;

98. Jasmine Epps, a resident of the State of Texas;
99. Rhonda Cotton, a resident of the State of Texas;
100. Lynell Delman Hart, a resident of the State of Texas;
101. Alice Perry, a resident of the State of Texas;
102. John Bridges, a resident of the State of Texas;
103. Felicia Ward, a resident of the State of Texas;
104. Todd Harris, a resident of the State of Texas;
105. Anthony O'Neal, a resident of the State of Texas;
106. Nathaniel Vallery, a resident of the State of Texas;
107. Aulvey Campbell, a resident of the State of Texas;
108. Gilbert Bennett, a resident of the State of Texas;
109. James Petteway, a resident of the State of Texas;
110. Vernon Roy, a resident of the State of Texas;
111. Jermel Lewis, a resident of the State of Texas;
112. Darreon Miller, a resident of the State of Texas;
113. La Gloria Willis, a resident of the State of Texas;
114. Trakell Willis, a resident of the State of Texas;
115. Belinda Johnson, a resident of the State of Texas;
116. Lee Matta, a resident of the State of Texas;
117. Linda Collins, a resident of the State of Texas;
118. Deimy Cruces, a resident of the State of Texas;
119. Michael Doxey, a resident of the State of Texas;
120. Montrece Elam, a resident of the State of Texas;

121. Da'Lin Collins, a resident of the State of Texas;
122. Willie Dimes, a resident of the State of Texas;
123. Ariel Villaviciendo, a resident of the State of Texas;
124. Bobby Moore, a resident of the State of Texas;
125. Jimmy Spurlock, a resident of the State of Texas;
126. Edward Alfred, a resident of the State of Texas;
127. Tiwana Billiot-Baron, a resident of the State of Texas;
128. Vonda Bailey, a resident of the State of Texas;
129. Lester Julian, a resident of the State of Texas;
130. Charles Walker, a resident of the State of Texas;
131. Dorothy Walker, a resident of the State of Texas;
132. Reginald Warren, a resident of the State of Texas;
133. George Webb, a resident of the State of Texas;
134. Lula Smith, a resident of the State of Texas;
135. Verna Bledsoe, a resident of the State of Texas;
136. Ervine Douglas, a resident of the State of Texas;
137. William Letrosie, a resident of the State of Texas;
138. Ralph Bell, a resident of the State of Texas;
139. Eligah Smith, a resident of the State of Texas;
140. Ronnie Jones, a resident of the State of Texas;
141. Ramon Cabrera, a resident of the State of Texas;
142. Lataron Elam, a resident of the State of Texas;
143. Freddie Stewart, a resident of the State of Texas;

144. Jerald Johnson, a resident of the State of Texas;
145. Williams McGill, a resident of the State of Texas;
146. Linda Spurlock, a resident of the State of Texas;
147. Oscar Spurlock, a resident of the State of Texas;
148. Ruddle Drake, a resident of the State of Texas;
149. Rafael Guajardo, Jr., a resident of the State of Texas;
150. Richard Evors, a resident of the State of Texas;
151. Eugene Scott, a resident of the State of Texas;
152. Johnny Jones, a resident of the State of Texas;
153. Raul Maldonado, a resident of the State of Texas;
154. Ladislao Rayas, a resident of the State of Texas;
155. Phillip Green, a resident of the State of Texas;
156. Kathy Dorsey, a resident of the State of Texas;
157. Octavia Boston, a resident of the State of Texas;
158. Tedric Cotton, a resident of the State of Texas;
159. Genaro Herrera, a resident of the State of Texas;
160. Lafe Green, a resident of the State of Texas;
161. James Smith, a resident of the State of Texas;
162. Juanita Bland, a resident of the State of Texas;
163. John Jones, Jr., a resident of the State of Texas;
164. Brandon Scott, a resident of the State of Texas;
165. Lisa Marie Gobert, a resident of the State of Texas;
166. Chester Gobert, a resident of the State of Texas;

167. Linda Gobert, a resident of the State of Texas;
168. Michaela Randle, a resident of the State of Texas;
169. Roberto Lopez, a resident of the State of Texas;
170. Shirley White, a resident of the State of Texas;
171. Shameika Pleasant, a resident of the State of Texas;
172. Delisa Young, a resident of the State of Texas;
173. Larry Turner, a resident of the State of Texas;
174. Salvador Juarez, a resident of the State of Texas;
175. Kelvin Sims, a resident of the State of Texas;
176. Joe Cardenas, a resident of the State of Texas;
177. Felipe Hurtado, a resident of the State of Texas;
178. Freddie Macias, a resident of the State of Texas;
179. Jorge Ayala, a resident of the State of Texas;
180. Timothy Boggs, a resident of the State of Texas;
181. Gabino Montoya, a resident of the State of Texas;
182. Eleno Bustio, a resident of the State of Texas;
183. Misael Gonzalez-Valles, a resident of the State of Texas;
184. Alexis Wittgreen, a resident of the State of Texas;
185. Ramon Villa, a resident of the State of Texas;
186. Juan Hernandez, a resident of the State of Texas;
187. Jeremy Villa, a resident of the State of Texas;
188. Alfredo Sanchez, a resident of the State of Texas;
189. Daniel Martinez, a resident of the State of Texas;

190. Eduardo Gonzalez, a resident of the State of Texas;
191. Blas Gomez, a resident of the State of Texas;
192. Earnest Chase, a resident of the State of Texas;
193. Gerardo Garces, a resident of the State of Texas;
194. Luis Sanchez, a resident of the State of Texas;
195. Jose Delgado, a resident of the State of Texas;
196. Brian Cis, a resident of the State of Texas;
197. Germaine Tealer, a resident of the State of Texas;
198. Fernando Garza, a resident of the State of Texas;
199. Rodney Crawford, a resident of the State of Texas;
200. Jesus Gonzalez, a resident of the State of Texas;
201. Margarito Reyes, a resident of the State of Texas;
202. Carlos Mata, a resident of the State of Texas;
203. Julio Arteaga, a resident of the State of Texas;
204. Spencer Roberson, a resident of the State of Texas;
205. Jorge Garces, a resident of the State of Texas;
206. Edward Smith, a resident of the State of Texas;
207. Edward Gonzalez, a resident of the State of Texas;
208. Julio Ibarra, a resident of the State of Texas;
209. Greg Hernandez, a resident of the State of Texas;
210. Juan Santiago, a resident of the State of Texas;
211. Luis Ramirez, a resident of the State of Texas;
212. Jose Sanchez, a resident of the State of Texas;



213. John Sonnier, a resident of the State of Texas;
214. Pete Martinez, a resident of the State of Texas;
215. David Null, a resident of the State of Texas;
216. Julie Estreda, a resident of the State of Texas;
217. Rogelio Estreda, a resident of the State of Texas;
218. Juan Zepeda, a resident of the State of Texas;
219. Jesus Zepeda, a resident of the State of Texas;
220. Leonel Hinojosa, a resident of the State of Texas;
221. Marcos Lazo, a resident of the State of Texas;
222. Oscar Sanchez, a resident of the State of Texas;
223. Jose Salinas, a resident of the State of Texas;
224. Sergio Sanchez, a resident of the State of Texas;
225. Tiara Turner, a resident of the State of Texas;
226. Ira Leigh, a resident of the State of Texas;
227. Julian Charley, a resident of the State of Texas;
228. Diana Martinez, a resident of the State of Texas;
229. Tiffany Taylor, a resident of the State of Texas;
230. Alberto Mejia, a resident of the State of Texas;
231. Orlando Garcia, a resident of the State of Texas;
232. Norris Gaines, a resident of the State of Texas;
233. Stephanie Bernard, a resident of the State of Texas;
234. Patrick Trigg, a resident of the State of Texas;
235. Fernando Sepulveda, a resident of the State of Texas;

236. Krysynthia Keller-Rido, a resident of the State of Texas;
237. Jaime Cuellar, a resident of the State of Texas;
238. Janice Simpson, a resident of the State of Texas;
239. Marvin Brooks, a resident of the State of Texas;
240. Jaime Castrejon, a resident of the State of Texas;
241. Felicia Hatter, a resident of the State of Texas;
242. Belford Johnson, a resident of the State of Texas;
243. Benjamin Quiroz, a resident of the State of Texas;
244. Giovanni Gomez, a resident of the State of Texas;
245. Juan Lazo, a resident of the State of Texas;
246. Demetrius Sandford, a resident of the State of Texas;
247. Martin Bustos, a resident of the State of Texas;
248. Keven Bell, a resident of the State of Texas;
249. Jeanette Alegria, a resident of the State of Texas;
250. Miguel Solano, a resident of the State of Texas;
251. Hector Longoria, a resident of the State of Texas;
252. Jose Casas, a resident of the State of Texas;
253. Victor Enriquez, a resident of the State of Texas;
254. Jesus Gonzalez, a resident of the State of Texas;
255. Salvador Duque, a resident of the State of Texas;
256. Jared Williams, a resident of the State of Texas;
257. Efrain Sanchez, a resident of the State of Texas;
258. Erik Hernandez, a resident of the State of Texas;

259. Deborah Charles, a resident of the State of Texas;
260. Miguel Trejo, a resident of the State of Texas;
261. Diana Chhuon, a resident of the State of Texas;
262. Rafael Huerta, a resident of the State of Texas;
263. Roberto Urbina, a resident of the State of Texas;
264. Pascual Ledesma, a resident of the State of Texas;
265. Damien Hill, a resident of the State of Texas;
266. Enrique Maciel, a resident of the State of Texas;
267. Alvin Whitfield, a resident of the State of Texas;
268. Willie Myers, a resident of the State of Texas;
269. James Mitchell, a resident of the State of Texas;
270. Martin Martinez, a resident of the State of Texas;
271. Carla Lundy, a resident of the State of Texas;
272. Anthony Zepeda, a resident of the State of Texas;
273. Victor Garcia, a resident of the State of Texas;
274. Cuahatemoc Rodriguez, a resident of the State of Texas;
275. Miguel Octaviano, a resident of the State of Texas;
276. Michael Carter, a resident of the State of Texas;
277. Joel Salinas, a resident of the State of Texas;
278. Terry Utton, a resident of the State of Texas;
279. Roy Garcia, a resident of the State of Texas;
280. John Jones III, a resident of the State of Texas;
281. Carmen Martinez, a resident of the State of Texas;

282. Alvin Antoine, a resident of the State of Texas;
283. Kelvin Cagan, a resident of the State of Texas;
284. Eduardo Lozano, a resident of the State of Texas;
285. LaFaye Porter, a resident of the State of Texas;
286. Luis De La Garza, a resident of the State of Texas;
287. Luis Madriz, a resident of the State of Texas;
288. David Whitaker, a resident of the State of Texas;
289. Alex Gonzalez, , a resident of the State of Texas;
290. Antonio Salgado, a resident of the State of Texas;
291. Harold Joseph, a resident of the State of Texas;
292. Willie Porter, a resident of the State of Texas;
293. Daniel Mireles, a resident of the State of Texas;
294. Ronald Finister, a resident of the State of Texas;
295. Larry Holland, a resident of the State of Texas;
296. Jesse Juarez, a resident of the State of Texas;
297. Michael Osberry, a resident of the State of Texas;
298. Robert Alfred, a resident of the State of Texas;
299. James Turner, a resident of the State of Texas;
300. Nery Luna, a resident of the State of Texas;
301. Alejandro Hernandez, a resident of the State of Texas;
302. Kristi Duran, a resident of the State of Texas;
303. Allan Ugarte-Mejia, a resident of the State of Texas;
304. David Ayala, a resident of the State of Texas;

305. Fermin Morales, a resident of the State of Texas;
306. Aaron Edwards, a resident of the State of Texas;
307. Heraclio Conde, a resident of the State of Texas;
308. Heynz Liszt, a resident of the State of Texas;
309. Gerardo Conde, a resident of the State of Texas;
310. Luis Cantu, a resident of the State of Texas;
311. Edelmiro Garcia, a resident of the State of Texas;
312. Eliud Peralta, a resident of the State of Texas;
313. Russell Krause, a resident of the State of Texas;
314. Hector Perez, a resident of the State of Texas;
315. Israel Esqueda, a resident of the State of Texas;
316. Jose Portillo, a resident of the State of Texas;
317. Paul Bolins, a resident of the State of Texas;
318. Felix Gallardo, a resident of the State of Texas;
319. Mario Chavira, a resident of the State of Texas;
320. Leonard "L.J." Hughling, a resident of the State of Texas;
321. Jose Romeo, a resident of the State of Texas;
322. Francisco Gonzalez, a resident of the State of Texas;
323. Kyle Reynolds, a resident of the State of Texas;
324. Debra Goodson, a resident of the State of Texas;
325. Ron Greely, a resident of the State of Texas;
326. Patrick Warford, a resident of the State of Texas;
327. Jodis Lemon, a resident of the State of Texas;

328. Pedro Moreno, a resident of the State of Texas;
329. Juan Pablo Rojas, a resident of the State of Texas;
330. Juan Tellez, a resident of the State of Texas;
331. Carlos Chavez, a resident of the State of Texas;
332. Ynosencia Wiltsey, a resident of the State of Texas;
333. Kelton Jones, a resident of the State of Texas;
334. Curtis Jones, a resident of the State of Texas;
335. Tiffany Smith, a resident of the State of Texas;
336. Kathy Pugh-Powell, a resident of the State of Texas;
337. Britney Utems, a resident of the State of Texas;
338. Frederica Ray, a resident of the State of Texas;
339. Shirley Moore, a resident of the State of Texas;
340. Christopher Moore, a resident of the State of Texas;
341. Frank Guarjado, a resident of the State of Texas;
342. Jesse James, a resident of the State of Texas;
343. Kenneth Ray Buck, a resident of the State of Texas;
344. Eddie Elam, a resident of the State of Texas;
345. Elizabeth Elam, a resident of the State of Texas;
346. Willie Moore, a resident of the State of Texas;
347. Jesse Mae Fields, a resident of the State of Texas;
348. Earnestine Smith, a resident of the State of Texas;
349. Collin Smith, a resident of the State of Texas;
350. Erica Hill, a resident of the State of Texas;

351. Rose Smith, a resident of the State of Texas;
352. Jesse Villareal, a resident of the State of Texas;
353. Traci Jones, a resident of the State of Texas;
354. Wade Blake, a resident of the State of Texas;
355. John Coleman, a resident of the State of Texas;
356. Kendrick Cooper, a resident of the State of Texas;
357. Pamela Cotton, a resident of the State of Texas;
358. Rafael Morales, a resident of the State of Texas;
359. Mark Sister, a resident of the State of Texas;
360. Adam Ferrer, a resident of the State of Texas;
361. Keith Williams, a resident of the State of Texas;
362. Robert Sykes, a resident of the State of Texas;
363. Andres Luna, a resident of the State of Texas;
364. Juan Giron, a resident of the State of Texas;
365. Cesear Contreras, a resident of the State of Texas;
366. Jermall Lusk, a resident of the State of Texas;
367. Pablo Hernandez, a resident of the State of Texas;
368. Gerardo Sosa, a resident of the State of Texas;
369. Jesus Losoya, a resident of the State of Texas;
370. Dewey Morris, a resident of the State of Texas;
371. Michael Gonzalez, a resident of the State of Texas;
372. Enghell Tenorio-Castiilo, a resident of the State of Texas;
373. Arturo Snyder, a resident of the State of Texas;

374. Jesus Valdez, a resident of the State of Texas;
375. Alfonso Guerra, a resident of the State of Texas;
376. Leon Wilson, a resident of the State of Texas;
377. Issac Meza, a resident of the State of Texas;
378. Tenton Davis, a resident of the State of Texas;
379. Temiello Davis, a resident of the State of Texas;
380. Mattie Humphrey, a resident of the State of Texas;
381. Amos Humphrey, a resident of the State of Texas;
382. Donta Evans, a resident of the State of Texas;
383. Carlametrius Gamble, a resident of the State of Texas;
384. Nicole Miller, a resident of the State of Texas;
385. Johnny Webber, a resident of the State of Texas;
386. Christina Webber, a resident of the State of Texas;
387. Charlie Salter, a resident of the State of Texas;
388. Tiffany Sowell, a resident of the State of Texas;
389. Robert Grogan, a resident of the State of Texas;
390. Aheem White, a resident of the State of Texas;
391. Lionel Jackson, a resident of the State of Texas;
392. Kenneth Abshire, a resident of the State of Texas;
393. Francis Hatcher, a resident of the State of Texas;
394. Tony Hall, a resident of the State of Texas;
395. Elijah Jones, a resident of the State of Texas;
396. Julio Arteaga, a resident of the State of Texas;



397. Keith Falks, a resident of the State of Texas;
398. Joe Lopez, a resident of the State of Texas;
399. Micah Richardson, a resident of the State of Texas;
400. Donald Westbrook, a resident of the State of Texas;
401. Sokun Yen, a resident of the State of Texas;
402. Miguel Alfaro, a resident of the State of Texas;
403. Rene Arriaga, a resident of the State of Texas;
404. Alejandro Flores, a resident of the State of Texas;
405. Ellen Norris, a resident of the State of Texas;
406. Fred Bulpitt, a resident of the State of Texas;
407. Baudelio Del Rio, a resident of the State of Texas;
408. Santos Alvarez, a resident of the State of Texas;
409. Jose Herrera, a resident of the State of Texas;
410. John Ortiz, a resident of the State of Texas;
411. Ismael Robles, a resident of the State of Texas;
412. Sergio Sanchez, a resident of the State of Texas;
413. Juan Rodriguez, a resident of the State of Texas;
414. Saul Cruces, a resident of the State of Texas;
415. Martin Garza, a resident of the State of Texas;
416. Fenton Davis, a resident of the State of Texas;
417. Tamiello Davis, a resident of the State of Texas;
418. Randy Farias, a resident of the State of Texas;
419. Jesse Juarez, a resident of the State of Texas;

420. Carla Lundy, a resident of the State of Texas;
421. Calvin McNeal, a resident of the State of Texas;
422. Oziel Garcia, a resident of the State of Texas;
423. Jorge Flores, a resident of the State of Texas;
424. Yvette Love, a resident of the State of Texas;
425. Frank Norris, a resident of the State of Texas;
426. Roberto Padillo, a resident of the State of Texas;
427. Julio Perez, a resident of the State of Texas;
428. Maximo Soto, a resident of the State of Texas;
429. Miguel Hernandez, a resident of the State of Texas;
430. Ivan Sosa, a resident of the State of Texas;
431. David Weston, a resident of the State of Texas;
432. Elijah Smith, a resident of the State of Texas;
433. Omero Peralta, a resident of the State of Texas;
434. Leonard Fletcher, a resident of the State of Texas;
435. Stanley Brown, a resident of the State of Texas;
436. Johnny and Christina Webber on behalf of minor, N. W.;
437. Johnny and Christina Webber on behalf of minor, A. W.;
438. John Jones, III on behalf of minor, J. J., IV;
439. Charlie Salter and Bobbie Jean Salter on behalf of minor, S.S.;
440. Tiffany Smith on behalf of minor, A. S.;
441. Tiffany Smith on behalf of minor, A. S.;
442. Felicia Ward on behalf of minor, C. E.;

443. Felicia Ward on behalf of minor, C. E.;
444. Felicia Ward on behalf of minor, C.E.;
445. Deimy and Saul Cruces on behalf of minor, A. C.;
446. Deimy and Saul Cruces on behalf of minor, A. C.;
447. Deimy and Saul Cruces on behalf of minor, G. C.;
448. Deimy and Saul Cruces on behalf of minor, S. C., Jr.;
449. Montrece Elam on behalf of minor, P. H.;
450. Montrece Elam on behalf of minor, P. H.;
451. Juanita Bland on behalf of minor, D. J.;
452. Michaela Randle on behalf of minor, J. H.;
453. Tiara Turner on behalf of minor, K. T.;
454. Tiara Turner on behalf of minor, N. K.;
455. Kathy Pugh-Powell on behalf of minor, J. P.;
456. Damien Hill on behalf of minor, D. H.;
457. Damien Hill on behalf of minor, K. T.;
458. Bobby Moore on behalf of minor, S. M.;
459. Eddie Elam and Latarom Elam on behalf of minor, T. E.;
460. Eddie Elam and Latarom Elam on behalf of minor, T.J.;
461. Eddie Elam and Latarom Elam on behalf of minor, T. E.;
462. Eddie Elam and Latarom Elam on behalf of minor, T. W.;
463. Lynell Delmann Hart on behalf of minor, T.R H.;
464. Lynell Delmann Hart on behalf of minor. D. H.;
465. Lynell Delmann Hart on behalf of minor, T. H.

- 466. Lynell Delmann Hart on behalf of minor, M. H.;
- 467. Ta'Mieko Davis on behalf of minor, R. F.;
- 468. Ta'Mieko Davis on behalf of minor, C.P.;
- 469. Nicole Miller on behalf of minor, K. L.;
- 470. Sharnell Smith on behalf of minor, K.J.S.;
- 471. Shameika Pleasant on behalf of minor, J. T.;
- 472. Shameika Pleasant on behalf of minor, B. B.;
- 473. Sharon Bryant on behalf of minor, Y.C.; and
- 474. Montrece Elam on behalf of minor, D.C..

Defendant BP PRODUCTS NORTH AMERICA, INC. is a Maryland corporation doing business in Texas and may be served process by serving its statutory agent for service of process, Prentice Hall Corp System, 211 E. 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701-3218.

Keith Casey was the plant manager at the time of the release. He resides in League City and can be personally served at his place of residence: 2800 F.M. 519, East Texas City, Texas 77590.

**III. REQUEST PURSUANT TO RULE 28**

To the extent that Defendant BP is conducting business pursuant to a trade name or assumed name, then suit is brought against Defendant BP pursuant to the terms of Rule 28 of the Texas Rules of Civil Procedure, and Plaintiffs demand that, upon answer to this petition, that Defendant BP answer in its correct legal and assumed name.

**IV. JURISDICTION AND VENUE**

Venue is proper in this matter, in that a substantial number of the actions complained of occurred in Galveston County.

The amount in controversy is within the jurisdictional limits of this Court.

**V. FACTUAL ALLEGATIONS**

This case arises from a single event. From November 10, 2011 through possibly early December 2011 (“November 2011 Release”), BP reportedly released sulfur dioxide, methyl carpaptan, dimethyl disulfide and other toxic chemicals into the atmosphere. It was reported that a tank on the western side of the Facility had a pin hole leak which was the root of the toxic chemicals being released into the atmosphere. The leak was substantial enough that it was purportedly detected at other facilities located as far as two miles away.

Additionally, a TDC alarm at the DOW Chemical facility picked up a reading of Sulfur Dioxide on November 12, 2011. The end result for the DOW facility was that it had to shut down most of its operations for that time period and send all non-essential employees home, all essential employees had to be given respirators, and 30-40 employees sought medical treatment and a number of these employees had to be taken to off site for the medical treatment. All of this occurred, despite BP reporting to its neighbors and the community that no dangerous chemicals were being released.

The above mentioned Plaintiffs are all individuals who were exposed to toxic chemicals from the release and had physical symptoms due to this release.

**VI. CAUSES OF ACTION**

**A. COMMON LAW ASSAULT AND BATTERY**

Plaintiffs re-allege each and every allegation set forth above.

Defendant exposed Plaintiffs to toxic chemicals during the November 2011 Release. Plaintiffs allege that Defendant’s conduct of releasing these chemicals was committed purposefully, or was committed with substantial knowledge that harm would result to Plaintiffs.

Defendant purposefully contacted Plaintiffs' bodies, or had substantial knowledge that its actions would cause such contact, and the resulting harm that occurred. Such contact harmed Plaintiffs. Plaintiffs seek all damages allowed by law for such assault and battery.

**B. NEGLIGENCE**

Plaintiffs re-allege each and every allegation set forth above.

Upon information and belief, Plaintiffs aver that the November 2011 Release, and the resulting injuries suffered by Plaintiffs were caused by the negligence and fault of the Defendant in the following non-exclusive particulars:

- a. Failure to maintain a safe work place;
- b. Failure to have a reliable system or device at its Refinery to prevent the release or warn of the release;
- c. Failure to perform work in a safe and prudent manner;
- d. Failure to exercise reasonable and prudent care in the operations which were occurring at the Refinery on the dates at issue;
- e. Failure to implement, follow and enforce proper operations procedures;
- f. Failure to implement, follow and enforce proper safety procedures;
- g. Failure to implement, follow, and enforce proper hazard analysis;
- h. Operating the Refinery with institutional ignorance of or defiance to a culture of safety and accountability;
- i. Failing to inspect and maintain the equipment associated with the refining process;
- j. Ignoring process safety hazard data related to past incidents and toxic/chemical releases at the Refinery;
- k. Causing and permitting to be caused a release of numerous toxic chemicals which resulted in a continuous toxic cloud over Texas City and other parts of Galveston County;

- l. Operating the Refinery without appropriate and trained staffing and supervision of refinery units;
- m. Operating the Refinery with equipment and processes that defy reasonable engineering, industry and regulatory practices;
- n. Managerial acceptance or encouragement of normalized deviation from appropriate refining procedures;
- o. Failing to implement, follow, enforce and/or train regarding proper hazard analysis;
- p. Failing to maintain a reliable system and/or device at the Refinery to prevent the release or to warn of the release of toxic and poisonous chemicals;
- q. Undertaking a conscious effort to reduce costs and staffing at the expense of safety;
- r. Continuing to operate damaged and dysfunctional equipment at the expense of safety and well being of the workers at the Refinery and the Texas City/Galveston County community;
- s. Failing to properly warn and evacuate contract workers from areas of danger;
- t. Failing to adopt proper operating procedures;
- u. Failing to comply with proper operating procedures;
- v. Improperly supervising and failing to supervise operation of the unit;
- w. With respect to the November 2011 Release, failing, purely out of consideration of costs and profits, to shut down the leaking tanks in a timely manner to make the necessary repairs for the protection of workers and community;
- x. Failing to warn and evacuate workers and residents of the nearby community after it was known that dangerous and toxic chemicals were being released into the atmosphere;
- y. Ratifying and approving improper and dangerous operating procedures, routines and practices;
- z. Failing to make proper modifications and perform appropriate maintenance;

- aa. Failing to budget proper maintenance and required modifications, improvements and updates to the equipment and facility;
- bb. Failing to properly warn and notify the neighboring residents regarding the release and emissions from prior and subsequent releasing events;
- cc. Such other acts and omissions which may be discovered through discovery and presented at trial.

As a result of these negligent acts and omissions, Plaintiffs have been damaged.

**C. NEGLIGENCE *PER SE***

Plaintiffs re-allege each and every allegation set forth above.

Defendant's actions leading up, during and after the November 2011 Release violate Texas and federal law (including without limitation, the Texas Clean Air Act, Chapter 382 of the Texas Health and Safety Code, Chapter 7 of the Texas Water Code, and TCEQ rules and orders promulgated under these statutes) which are intended to protect the public's health and safety by regulating refinery operations, emissions and the reporting of toxic chemical emissions, releases, leaks and spills. Plaintiffs are among those classes of persons intended to be protected by the environmental laws of this state and country.

As a result of these unprecedented acts and omissions by Defendant, such violations of state law have resulted in a breach of duty to Plaintiffs. The aforementioned flagrant, historic and continuous violations by the Defendant of state and federal laws and regulations presents the proximate cause of Plaintiffs' damages.

**D. *RES IPSA LOQUITUR***

Plaintiffs re-allege each and every allegation set forth above.

Plaintiffs also specifically plead the doctrine of *res ipsa loquitor*. Plaintiffs would show that the character of the November 2011 Release is such that it would not ordinarily happen in the absence of negligence and the acts or omissions of the equipment and personnel that led to



the releases were under the control of the Defendant, its agents, servants, employees and vice-principals at all relevant times.

**E. NEGLIGENCE TRAINING & SUPERVISION**

Plaintiffs re-allege each and every allegation set forth above.

BP had a legal duty to use ordinary care in adequately training its employees. BP failed to provide adequate training to its employees. by, among other things, failing to properly/adequately train its employees in supervising and assisting third parties at the worksite, and/or failing to properly/adequately train its employees in preparation of required job safety analysis. A reasonably prudent employer would have provided adequate training to its employees beyond what was given; to the extent any training was given. As a result of its negligent training, BP's employees were negligent in their operation of the Refinery. BP's failure to adequately train its employees was a proximate cause of the injuries to Plaintiffs.

**F. STRICT LIABILITY FOR ULTRA-HAZARDOUS ACTIVITY**

Plaintiffs re-allege each and every allegation set forth above.

Plaintiffs further allege that the operation of the Refinery (leading up to, during and after the November 2011 Release) in its original and damaged/defective condition was extremely hazardous and fraught with danger, and therefore, constituted an ultra-hazardous activity under Texas law. Accordingly, Defendant is strictly liable for Plaintiffs' injuries and damages proximately caused by the release of toxic chemicals into the atmosphere.

**G. ASSAULT**

Plaintiffs re-allege each and every allegation set forth above.

Plaintiffs would show that Defendant's conduct during the November 2011 Release was deliberate and intentional or was committed with substantial knowledge that hundreds of people

would be exposed to toxic chemicals and severely harmed by Defendant's conduct. By deliberately and intentionally exposing Plaintiffs and others who worked or lived near the Refinery to the hazards of toxic chemicals, Defendant committed aggravated assault upon Plaintiffs and others, such conduct having proximately caused the November 2011 Release, and the resulting injuries and damages to Plaintiffs.

#### **H. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

Plaintiffs re-allege each and every allegation set forth above.

Plaintiffs would show that the conduct of Defendant as it is particularly described above, during the November 2011 Release was intentional, reckless, extreme and outrageous, and inflicted severe emotional distress on Plaintiffs.

#### **I. PUBLIC AND PRIVATE NUISANCE, NUISANCE AS A MATTER OF LAW**

Plaintiffs re-allege each and every allegation set forth above.

Plaintiffs include those who own or occupy land near the Refinery during the relevant time period.

Defendant's acts and omissions resulting in the November 2011 Release caused the Refinery to be a private and public nuisance and a nuisance *per se*.

The ongoing release of chemicals substantially trespassed upon, interfered with, and invaded the Plaintiffs' use and enjoyment of their land, as well as the interests of those owning or occupying land in or near the Refinery by Defendant's intentional conduct, negligence, gross negligence, and negligence as a matter of law. Defendant's acts and omissions clearly impair the comfortable enjoyment of life and property for those who own or occupy property near the Refinery and have caused such persons extreme annoyance, discomfort, fear and loss of peace of mind.

Further, the acts and omissions complained herein caused contamination of the one or more Plaintiffs' property, the soil on and adjacent to one or more of Plaintiffs' property, the air over one or more of Plaintiffs' property, and further caused the inside of one or more Plaintiffs' homes to be contaminated with toxins. This contamination was and is harmful to the health of one or more Plaintiff property owners, was and is offensive to their senses, and will obstruct the free use and enjoyment of their property, including the right to sell their property at its fair market value.

Further, the flagrant, historic and continuous violations by the Defendant of state environmental laws and regulations have made Texas City synonymous with a "superfund" site, causing the diminution of both residential and commercial property.

Defendant, for its own purpose and economic profit, chose to create, handle and maintain the afore-mentioned toxins at the Refinery. In doing so, Defendant released into the air "cancer clouds" that caused surface water and subsurface water to become contaminated which, as a matter of law, constitutes an abnormally dangerous activity.

Defendant's conduct in producing toxins and causing them to contaminate the property of one or more Plaintiffs is actionable under the rules controlling liability for negligent or reckless conduct, or for abnormally dangerous conditions or activities or instrumentalities.

Because Defendant created an abnormally dangerous condition and because Defendant engaged in an abnormally dangerous activity, Defendant is strictly liable to the Plaintiffs for any harm and injury caused by the abnormally dangerous toxins.

As a direct and proximate consequence of the nuisance created by Defendant, Plaintiffs have been damaged.

**J. TRESPASS**

Plaintiffs re-allege each and every allegation set forth above.

Plaintiffs would show that Defendants, in furtherance of their business interests, caused the aforementioned toxins to be produced and released during the conduct of their business at the Refinery during the November 2011 Release.

Defendant, at all relevant times, negligently, recklessly or intentionally, or as a result of the abnormally dangerous activity of producing toxins at the Refinery, caused the property of Plaintiffs to be invaded by the aforementioned toxins, causing great and substantial harm to the person, land and chattels of the property-owning Plaintiffs.

As a direct and proximate result of Defendant's trespass, Plaintiffs have been damaged.

**K. FRAUD AND CONSPIRACY TO COMMIT FRAUD--BP & CASEY**

Plaintiffs re-allege each and every allegation set forth above.

Plaintiffs further allege that Defendant has fraudulently reported the amount of toxins that were actually released at the Refinery and the type of toxins that were released at the refinery. As noted above, BP has a long history of underreporting or failing to report release events and this event is no different. Defendant Keith Casey has routinely misrepresented to officials in Texas City the quantity of releases and the potential harm from such releases. Casey is also aware that the monitoring system in Texas City is inadequate. Despite this knowledge, Casey specifically misrepresented to public officials and the public that the release in question was not harmful, and that the monitoring system sufficiently protected Texas City and La Marque.

**L. VICARIOUS/DERIVATIVE AND JOINT THEORIES OF LIABILITY**

Plaintiffs re-allege each and every allegation set forth above.

BP is legally responsible to Plaintiffs for the negligent conduct of its vice-principals, and for the negligent conduct of BP's other employees, agents, servants and representatives (collectively the "BP employees") under the legal doctrines of *respondeat superior*, agency and/or ostensible agency because BP's vice principals and the BP employees were at all times material hereto agents, ostensible agents, servants and/or employees of BP, and were acting within the course and scope of such agency, servitude or employment. As a result thereof, BP is vicariously liable for all negligence of its vice-principals and BP's other employees, agents, servants and representatives.

Pleading further, and in the alternative, and without waiving the foregoing, Plaintiffs would also show that, at all relevant times, BP's vice-principals were engaged in the performance of non-delegable duties of the business of BP. Further, BP authorized or ratified the conduct of its vice principals.

In light of the above, BP is liable to Plaintiffs for their damages under the doctrine of *respondeat superior*, traditional principles of agency law, "vice principal" liability, and any other applicable theory of law.

**M. GROSS NEGLIGENCE/MALICE**

Plaintiffs re-allege each and every allegation set forth above.

As set forth above, Defendant's acts and omissions, when viewed from the standpoint of the actors at the time of the occurrence at issue, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others.

Further, Defendant's conduct illustrates not only an attitude of conscious indifference to the rights, safety and welfare of Plaintiffs and others, but also shows Defendant's actual and subjective awareness of the dangers of such conduct.

Nevertheless, Defendant proceeded with a conscious indifference to the rights, safety or welfare of others, including Plaintiffs. Thus, Defendant's were grossly negligent and acted with malice and, as a result, Plaintiffs suffered damages.

## **VII. DAMAGES**

Plaintiffs re-allege each and every allegation set forth above.

As a direct and proximate result of Defendant's acts and omissions, as set forth above, Plaintiffs have incurred one or more of the following categories of damages:

- a. Conscious physical and mental pain and suffering and anguish, past and future;
- b. Disfigurement, past and future;
- c. Physical impairment, past and future;
- d. Loss of enjoyment of life and peace of mind, past and future;
- e. Loss of wages/earnings;
- f. Loss of earning capacity;
- g. Loss of household services, past and future;
- h. Loss of consortium, past and future;
- i. Loss of use and enjoyment of real property and homes, but not loss/diminution of property value, past and future from this one event;
- j. Fear of cancer/disease, past and future;
- k. Reasonable and necessary medical, counseling, psychiatric, therapeutic and related expenses, past and future; and
- l. Such other damages as will be shown at trial.

## **VIII. PUNITIVE DAMAGES**

Plaintiffs re-allege each and every allegation set forth above.

Defendant routinely underreported, or failed to report, to the authorities and victims, as it did with regard to Plaintiffs, the nature and quantity of chemical spilled at its Refinery. To avoid a more thorough investigation by authorities, Defendants falsified its own documents, and provided false information to the authorities to avoid formal investigations of the events leading

up to the leak or spill—such was what occurred with regard to Plaintiffs. The injuries sustained by Plaintiffs resulted directly from Defendant’s gross negligence, fraud and malice. *See* TEX. CIV. PRAC. & REM. CODE § 41.003(a).

Furthermore, BP is liable for the damages attributed to its vice principals because they have authority over the nondelegable responsibility of BP.

Any caps on punitive damages, under state or federal law, should not be applied because Defendant’s conduct disqualifies it from any caps on exemplary damages. Specifically, Defendant’s actions constitute the state law felony of aggravated assault, and further, Defendant’s actions arose as a result of securing a document by deception, a state law felony. *See id.* at § 41.008(c).

### **PRAYER**

WHEREFORE, Plaintiffs respectfully demand judgment against Defendants for economic, compensatory and special damages as set forth above; punitive damages; pre-judgment and post-judgment interest; attorneys’ fees and costs of litigation; and for such other and further relief available under all applicable state and federal laws and any relief the Court deems just and appropriate.

**PLAINTIFFS DEMAND A TRIAL BY JURY.**

Respectfully submitted,

**THE BUZBEE LAW FIRM**

/s/ Anthony G. Buzbee

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