

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**IN RE: OIL SPILL BY THE OIL RIG
"DEEPWATER HORIZON" IN THE
GULF OF MEXICO ON APRIL 20, 2010**

MDL No.: 2179

Section "J"

Judge Barbier

This Document Relates to:

Magistrate Judge Shushan

2:12-cv-02048-CJB-SS

2:12-cv-02155-CJB-SS

2:12-cv-00988-CJB-SS

2:12-cv-01295-CJB-SS

2:12-cv-0038-CJB-SS

2:12-cv-01483

2:12-cv-01484

12-cv-2194

2:12-cv-01485 and

Unfiled Economic and Property Damages

Class Members

Unfiled Medical Benefits Class Members

DECLARATION OF MICHAEL ROBICHAUX, MD

1. My Name is Michael Robichaux, MD. I am a licensed doctor in the State of Louisiana and I am board certified in Otolaryngology. My resume is attached. I have not been retained as an expert in this case. I am an independent investigator of the medical consequences of exposure to the BP oil/dispersant mixture. I have been interviewed about this issue on numerous occasions by local and national media.
2. Several days ago I received a copy of a document titled "Declaration of Robin L. Greenwald." This document was submitted to you and to Magistrate Judge Shushan on August 13, 2012. In her document, Ms. Greenwald describes herself as being a member of the "Plaintiff Steering Committee" and a negotiator for the "medical benefits class settlement." She provided an 8 page discussion of her role and that of Matthew Lundy in their negotiations with BP on behalf of the citizens of Louisiana who were entitled to compensation for illnesses they incurred from exposure to chemicals from the BP disaster.
3. In reviewing Ms. Greenwald's "Declaration," I was rather surprised by some of her comments and observations as they differ considerably from my experiences in many of the same areas. Before I discuss my exceptions with the document submitted by Ms. Greenwald, I would like to give a short background on my recent association with this issue.

4. On July 10, my wife, Brenda, and I accompanied Shanna Divine and her father, Tom Devine, to meet with representatives of BP at BP's headquarter building in Houston. Shanna and Tom are individuals who have been working in our community and who represent an organization called the "Government Accountability Project. (GAP)" This organization has worked in our area for several years and is preparing a report discussing its' experiences in our community and outlining problems that it has observed in various areas of the Deepwater Horizon crisis.
5. The primary purpose of the Houston meeting was to request that BP discontinue the use of Corexit as a dispersant, as we felt that there was a distinct possibility, if not probability, that this chemical was responsible for the illnesses we had been encountering.
6. There were 13 individuals representing BP at the meeting and a very orderly and considerate exchange of opinions was undertaken. I explained to the assembled group that I had grown up on the Louisiana coast and in 67 years of swimming, fishing and walking on beaches, I could not recall a single instance in which anyone became ill from these chemicals. While I realize that the quantity of oil released in the DWH crisis was unprecedented, the duration of exposure of some very ill individuals was extremely brief and the consequences of their exposure was quite severe.
7. There was something new and different in the Deepwater Horizon experience and the dispersant Corexit had become the leading suspect in causing many of the problems we had been encountering.
8. Our first request of BP was that they provide us with a commitment that they would no longer use this dispersant in any future spills.
9. Their position was that as long as Corexit was approved by U.S. regulations, they had the right to use the chemical in responding to an oil spill.
10. The second request we wished for BP to consider was the following; If BP refused to discontinue using Corexit as a dispersant, would they agree to notify the public before Corexit or any other dispersants were used.
11. BP America Vice President, Mr. Keller, stated that he would bring our request for public notification to BP for consideration. Although I was not prepared to speak on the subject, the representatives of BP began the meeting by discussing the medical aspects of the agreement with the Plaintiff Steering Committee. There were two individuals at the meeting who stated that they represented BP in shaping the agreement with the PSC. I had read enough of the agreement to know that, in my opinion, the PSC had done a poor job of representing the victims of the spill and I brought up a few examples to the assembled group.
12. The first point involved the creation of Zones that would include people who were eligible for compensation by BP. From my perspective, the zone designation was somewhat difficult to interpret and probably unfair to the citizens of the State of Louisiana.

13. The second concern I expressed had to do with the definition of "Chronic Conditions," as defined in the agreement between the PSC and BP.
14. For an illness to be defined as chronic it had to qualify under the following criteria:
(The following is taken from a published overview of the Medical Settlement between BP and the PSC)

Chronic Conditions:

Ocular: Sequelae; damage to cornea
Respiratory: Chronic rhinosinusitis, OR
 Two of the following – nasal obstruction; facial
 Pressure; decreased sense of smell
Dermal: Contact dermatitis
 Eczematous reaction

15. Having taken histories and performed physicals on approximately 150 patients who were most likely rendered ill by Deepwater Horizon chemical exposures, I feel I have a unique and comprehensive perspective of these problems and the following comments are my reasons for concern. I will discuss each of the "Conditions" cited above from my perspective.
16. **Sequelae; damage to cornea**
I have not seen a single person with damage to his or her cornea.

Chronic rhinosinusitis,– nasal obstruction; facial Pressure; decreased sense of smell
Although this condition can be caused by toxic exposure, this has not been a common problem for many of the BP oil spill exposed patients who I have treated.

Contact dermatitis and Eczematous reaction
Although a history of "rashes" has been common in many of our ill patients, skin problems have not been a significant disorder for the vast majority of the people I have examined and treated.

17. With the myriad of major symptoms of a chronic nature being experienced by victims of the spill, why would the PSC choose these rather obscure or less significant conditions to qualify as Chronic Conditions?
18. Although I did not discuss the following issue with the BP representatives (because I did not have the appropriate document available) the next subject is definitely of significance, as it is part of the BP-PSC settlement.
19. **"What are the levels of proof required for chronic conditions?"**
"Claimants that have a specified chronic physical condition (B1) must submit:


A declaration under penalty or perjury setting forth the condition and the location and time of exposure; AND Medical records supporting the claim and ongoing care for the asserted condition."

- 20. Since the majority of the individuals who were affected by this event did not have health insurance and since many of them were too ill to work, very few of them were able to obtain medical care and they have no records to qualify for these benefits.**
- 21. Referring back to Ms. Greenwald's "Declaration," she contends that she and her PSC associate, Matthew Lundy, consulted regularly with their medical consultant and "solicited input from other PSC members, as well as other counsel who represented plaintiffs alleging personal injury from post-explosion activities." Despite my meeting with BP and despite my meetings with members of the PSC, no one from the PSC ever called me about the terms of the settlement before they agreed to the settlement.**
- 22. It will be interesting to read the pleadings of each member of this group of attorneys as they make their cases for their individual clients who have opted out of the class action suit. I suspect that the "Chronic Conditions" being suffered by their clients will be considerably different from the "Chronic Conditions" that they allege exists for members of the class action suit.**
- 23. Ms. Greenwalt goes to great lengths to describe the credentials of her medical consultant, Dr. Michael Harbut. While Dr. Harbut has a impressive resume, it would be interesting to see if he considers the neurological and other health problems associated with oil/dispersant exposures to be acute problems and not problems with chronic manifestations. It would also be interesting to see if their medical consultant(s) agree with the PSC's stated position on the types of illnesses that qualify for "Chronic" status. Lastly, it would be quite informative to see how many victims he and BP's medical experts have clinically evaluated.**
- 24. As you may recall, Judge Barbier, I am affiliated with a group of distinguished scientists who would love to perform objective studies on the victims of this spill. (Please understand that I am not a scientist and I do not consider myself to be distinguished. However, my associates certainly fall into those categories.) Of the \$100 plus million dedicated to medical care in this settlement, not a nickel of that money has been assigned to treat the victims of the spill. Additionally, none of the proposed studies will be looking into the relative effectiveness of the treatment protocols that are being proposed and, in some cases, are being used, to help the people lucky enough to receive medical care. During our conversations in Houston, the two BP representatives who negotiated the settlement with the PSC acknowledged that the medical funds provided by BP were not assigned or designed to treat victims of the spill.**
- 25. Probably because of a request from you, Mr. Lundy contacted me recently about meeting with potential funders regarding our appeal for assistance for our proposed studies. I requested that Mr. Lundy allow me to put him in contact with my associate, Dr. Kaye Kilburn, who lives in Pasadena, California. Dr. Kilburn is one of the distinguished scientist**

with whom I have been working. We agreed that Dr. Kilburn and Mr. Lundy would arrange a meeting whereby Dr. Kilburn would travel to New Orleans to discuss these issues with one of the recipients of the health related money to see if they would assist us in this endeavor. Dr. Kilburn stated to me that soon after their conversations began, Mr. Lundy no longer answered his calls and did not return calls that were made to him.

26. At this point I would like to include an issue that I feel is pertinent to this discussion. A few days before I drove to the state capitol for a Louisiana House of Representatives committee meeting last year, I called Leah Guerry of the Louisiana Trial Lawyers Association and offered to speak to any members of the trial lawyers association that might be interested in learning from my experiences in treating people affected by the oil spill.
27. Following the committee hearing I went to the Trial Lawyers headquarters and met with Matthew Lundy. I introduced him to one of my patients who was in need of legal assistance. At the time I explained to Mr. Lundy that I had been seeing a large number of people who were ill from the BP disaster and offered to speak to other members of the PSC about those experiences. I made a similar offer to another PSC member, Conrad "Duke" Williams III, at a meeting in Cut Off, Louisiana and he offered to meet with me on the subject. He suggested that we arrange to get together when an individual named "Robin" (I don't recall the last name) came into town in a few days. I later tried to reach Mr. Williams by phone and he did not return my calls.
28. With regard to BP's "Medical Encounters Database" mentioned in Robin Greenwald's sworn declaration, the patient who accompanied me to Baton Rouge and who I believe is represented by Mr. Lundy, gave me a significant amount of interesting insight. Prior to transferring to Grand Isle with his family, this gentleman began his work in the VOO program as a boat captain working out of Venice, Louisiana. Every afternoon, after their day's work was completed, they returned to their homeport and reported on the day's activities.
29. Mr. Lundy's client has piloted boats all of his adult life and when he became ill, he was referred to a medical tent where he described his complaints. To the best of my recollection, he was told that he was either seasick, had the flu or was dehydrated. As an experienced boat captain who had worked in the Gulf all of his life and endured rough seas and hot weather, my patient realized immediately that he was being given false information. At no time did the personnel from the medical tent indicate to my patient that he might be ill from the materials he was exposed to in his Vessel of Opportunity work environment.
30. It would be interesting to interview some of the other people who received these medical services to determine if the responses given to my patient were uniform for everyone who trusted these health workers with their medical care. If I am correct in my understanding of this situation, the information gleaned from BP's "Medical Encounters Database" is probably useless.

31. It has been over two years since the Deepwater Horizon explosion marked the beginning of the most serious public health crisis in the history of the United States. I perform a history and physical and exit exam on each patient that comes through our treatment center. My exit examination on a patient yesterday resulted in her description of the chronic symptoms that characterize many of the victims of this tragedy. Headaches, memory loss, irritability, extreme fatigue, insomnia and an inability to concentrate characterized this patients symptoms. I'm pleased to state that she she improved in each of these areas following her treatment. Because she lives much of the time on Grand Isle, it will be interesting to determine if she will continue to have problems on the Island in the future.
32. We have been administering treatment to enough people that we have learned that while most of these symptoms improve with treatment, there are some residual problems that remain in the majority of cases and I suspect that many of these problems will be permanent.
33. One of the classic problems seen with individuals with toxic exposures is their development of multiple chemical sensitivities. A large percentage, if not a majority, of the people who have entered our program return home only to realize that chemicals they readily tolerated before their illness now cause major problems. One of my patients worked with diesel fuel all of his life and now cannot afford to get close to diesel fumes. Many other patients are intolerant of fingernail polishes. Still others find perfumes problematic and another of my patients can no longer put gasoline into his automobile and requires that his wife undertakes this chore.
34. I would like to expand this discussion, as there are other areas of the BP-PSC agreement with which I take issue. However, I need to complete this note today to be able to get it in the mail in time to qualify for your September 7, 2012 date for comments. If your or anyone else wishes a more compresensive discussion of the chronic conditions associated with this illness, I would be glad to abstract information from each of the 100 cases I have and do a statistical breakout of the frequency and relative severity of each of my patient's symptoms.
35. I would like for this note to be reflected as my comments on the BP-Plaintiff Steering Committee agreement.
36. I swear under penalty of perjury that these statements are true and correct to the best of my knowledge, information and belief this 7th day of September, 2012.


Michael Robichaux, MD