CAUSE NO. 05CV0337

05 APR 18 AM 9:04
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GALVESTON COUNTY, TX.

MIGUEL ARENAZAS AND	*	IN THE DISTRICT COURT OF
ELIZABETH RAMON	*	
	*	
VS	*	
	*	
BP AMOCO CHEMICAL COMPANY	*	GALVESTON COUNTY, TEXAS
BP AMOCO POLYMERS, INC.,	*	
BP CORPORATION NORTH	*	
AMERICA INC., DON PARUS,	*	
and JE MERIT CONTRACTORS,	*	
INC.	*	212TH JUDICIAL DISTRICT

BP AMOCO CHEMICAL COMPANY'S
ANSWER TO PLAINTIFFS' ORIGINAL PETITION

Comes now Defendant BP AMOCO CHEMICAL COMPANY and makes and files this its Original Answer to Plaintiffs' Original Petition, on file herein, and as grounds therefore would respectfully show unto this Court as follows:

I.

This Defendant enters its general denial of the allegations contained in Plaintiffs' Original Petition, as permitted by the Texas Rules of Civil Procedure, and demands strict proof thereof.

II.

Defendant alleges that the occurrence made the basis of this suit was caused in whole or in part by third persons or parties over whom this Defendant had no control, and for whose

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acts and/or omissions it was neither in fact nor in law responsible, and said negligence was the sole proximate cause of the incident in question.

III.

Defendant alleges that Plaintiffs' claim for punitive or exemplary damages is barred in whole or in part under both Texas and federal law. Permitting recovery of punitive or exemplary damages in this action would contravene Defendant's rights as reserved by the Fifth, Seventh, Eighth, and Fourteenth Amendments to the United States Constitution and other provisions of the United States Constitution and the Texas Constitution and would be contrary to law under, among other cases, *State Farm Mutual Insurance Co. v. Campbell*, 538 U.S.408 (2003), and *BMW of North America v. Gore*, 517 U.S. 559 (1996).

IV.

Unless Defendant's liability for punitive damages and the appropriate amount of punitive damages are required to be established by clear and convincing evidence, any award of punitive damages would violate Defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution under, among other cases, *State Farm Mutual Insurance Co. v. Campbell*, 538 U.S. 408 (2003), and *BMW of North America v. Gore*, 517 U.S. 559 (1996), and by the Texas Constitution, Texas common law, and public policy.

V.

Plaintiffs' claim for punitive damages against Defendant cannot be maintained because an award of punitive damages would be void for vagueness, both facially and as

applied. Among other deficiencies, there is an absence of adequate notice of what conduct is subject to punishment; an absence of adequate notice of what punishment may be imposed; an absence of a predetermined limit, such as a maximum multiple of compensatory damages or a maximum amount, on the amount of punitive damages that a jury may impose; a risk that punitive damage will be imposed retrospectively based on conduct that was not deemed punishable at the time the conduct occurred; and it would permit and encourage arbitrary and discriminatory enforcement, all in violation of the due process clause of the Fourteenth Amendment to the United States Constitution, the Texas Constitution, and Texas common law and public policy.

VI.

Plaintiffs' claim for punitive damages against Defendant cannot be maintained because any award of punitive damages would be by a jury that: (1) is not provided standards of sufficient clarity for determining the appropriateness, and the appropriate size, of a punitive damages award; (2) is not adequately instructed on the limits on punitive damages imposed by the applicable principles of deterrence and punishment; (3) is not expressly prohibited from awarding punitive damages, or determining the amount of an award of punitive damages, in whole or in part, on the basis of invidiously discriminatory characteristics, including the residence, wealth, and corporate status of Defendant; (4) is permitted to award punitive damage under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes punitive damages permissible; and (5) is not subject to adequate

trial court and appellate judicial review for reasonableness and furtherance of legitimate purposes on the basis of objective standards. Any such verdict would violate Defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the Texas Constitution, and also would be improper under Texas common law and public policy.

VII.

To the extent that Texas law permits punishment to be measured by the net worth or financial status of Defendant and imposes greater punishment on defendants with larger net worth, such an award would be unconstitutional because it permits arbitrary, capricious, and fundamentally unfair punishments, allows bias and prejudice to infect verdicts imposing punishment, and allows dissimilar treatment of similarly situated defendants, in violation of the due process and equal protection provisions of the Fourteenth Amendment to the United States Constitution, the Commerce Clause of the United States Constitution, and the Texas Constitution.

VIII

With respect to Plaintiffs' demand for punitive or exemplary damages, Defendant specifically incorporates by reference any and all standards or limitations regarding the determination or enforceability of punitive or exemplary damages awards under federal law, including, among other cases *State Farm Mutual Insurance Co. v. Campbell*, 538 U.S. 408 (2003), and *BMW of North America v. Gore*, 517 U.S. 559 (1996), and Texas law.

IX.

No act or omission of Defendant was willful, unconscionable, oppressive, fraudulent, wanton, malicious, reckless, intentional, or with actual malice, with reckless disregard for the safety of Plaintiffs, and therefore Plaintiffs' Petition fails to state a claim upon which relief can be granted for punitive or exemplary damages. Plaintiffs' Petition seeks damages in excess of those permitted by law. Defendant asserts any statutory or judicial protection from punitive or exemplary damages which is available under the applicable law, and any award of punitive or exemplary damages is barred.

X.

Further, the assessment of punitive damages, a remedy that is essentially criminal in nature, without the safeguards greater than that afforded by Texas Civil Procedure and law, constitutes infliction of a criminal penalty without the safeguards guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments of the Constitution of the United States.

XI.

Defendant specifically reserves its right to amend its pleadings as it deems necessary.

XII.

Defendant demands a trial by jury.

WHEREFORE, PREMISES CONSIDERED, having fully answered, Defendant BP AMOCO CHEMICAL COMPANY prays judgment of the Court that Plaintiffs take nothing by reason of their suit; that Defendant recover its costs of suit herein; and for such other and further relief as the Court deems just.

Respectfully submitted,

McLEOD, ALEXANDER, POWEL
& APFFEL, P.C.

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ATTORNEYS FOR DEFENDANT
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* Signed with permission

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the above and foregoing were forwarded to counsel for Plaintiffs, by certified mail, return receipt requested, and to all other now known interested parties, by regular mail, on this the 18th day of April, 2005.

James B. Galbraith (cyk)
James B. Galbraith