UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

CRYSTAL TRUONG, *et al.*,	§	
	§	
Plaintiffs,	§	
	§	
VS.	§	CIVIL ACTION NO. 2:24-CV-00310
	§	
FLINT HILLS RESOURCES, LLC, *et al.*,	§	
	§	
Defendants.	§	

SECOND SHOW CAUSE ORDER

On February 10, 2025, Plaintiffs filed their response (D.E. 38) to Defendants' motion to dismiss (D.E. 35). A week later, Defendants filed a reply (D.E. 42) detailing a number of errors in Plaintiffs' briefing that appear inaccurate or misleading at best and the invention of authorities out of whole cloth at worst.[1] While Plaintiffs filed a sur-reply, they did not defend their briefing. Neither did they withdraw any part of it.

This Court is no stranger to overreaching advocacy and human fallibility. However, the number and types of errors involved here, along with Plaintiffs' failure to address them when called out, implicate serious matters of ethics, competency, and abuse of judicial resources. This Court has the power to address these matters under Federal Rule of Civil Procedure 11, the federal courts' inherent powers, the Local Rules of the United States

[1] The Court does not agree with every complaint that Defendants assert about Plaintiffs' briefing. However, there are sufficient remaining complaints to require this Second Show Cause Order. Only the complaints that the Court has confirmed are included here.

District Court for the Southern District of Texas, and the Texas Disciplinary Rules of Professional Conduct.

AUTHORITY

A. Federal Rule of Civil Procedure 11

Rule 11 imposes limits on zealous advocacy. It states in relevant part:

> **Representations to the Court**. By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> > (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
> >
> > (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law . . . .

Fed. R. Civ. P. 11(b).

"On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b)." Fed. R. Civ. P. 11(c)(3).

> If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

Fed. R. Civ. P. 11(c)(1). Appropriate sanctions include nonmonetary directives, an order to pay a penalty into court, and—upon motion—the opponent's attorney's fees and expenses related to the violation. Fed. R. Civ. P. 11(c)(4).

B. Inherent Powers

"Federal courts possess certain 'inherent powers,' not conferred by rule or statute, 'to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.'" *Matter of Highland Cap. Mgmt., L.P.*, 105 F.4th 830, 839 (5th Cir. 2024) (citations omitted). The court's inherent powers have been described as potent and calling for restraint and discretion, which gives courts "the ability to fashion an appropriate sanction for conduct which abuses the judicial process." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44–45 (1991). Dismissal of the case and assessment of attorney's fees are two such sanctions available under the court's inherent powers. *Id.*

The assessment of attorney's fees when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons is an important part of addressing a finding that "fraud has been practiced upon [the court], or that the very temple of justice has been defiled." *Id.* at 45-46 (citations omitted).

> The imposition of sanctions in this instance transcends a court's equitable power concerning relations between the parties and reaches a court's inherent power to police itself, thus serving the dual purpose of vindicating judicial authority without resort to the more drastic sanctions available for contempt of court and making the prevailing party whole for expenses caused by his opponent's obstinacy.

Id. at 46 (cleaned up; citations omitted).

C. Southern District of Texas Local Rules

The Local Rules govern admission to practice law in this district. Rule 83 provides the procedure for gaining admission and it refers to Appendix A for the Rules of Discipline that can support suspending or terminating admission. Rule 1 of the Rules of Discipline states:

> A. Lawyers who practice before this court are required to act as mature and responsible professionals, and the minimum standard of practice shall be the Texas Disciplinary Rules of Professional Conduct.
>
> B. Violation of the Texas Disciplinary Rules of Professional Conduct shall be grounds for disciplinary action, but the court is not limited by that code.

Upon referral of charges to the chief judge, and after notice and opportunity for a hearing before another judge of this district as prescribed by Rule 5, the hearing judge may determine the disciplinary action to be taken, including permanent disbarment, a suspension, a written or oral reprimand and whether such should be public or private with such conditions as the judge may order. This Court may refer the attorneys involved in this matter for such discipline. However, "The existence of these rules shall not limit the power of district judges to exercise their inherent powers over lawyers who practice before them . . . ." Rule 10.

D. Texas Disciplinary Rules of Professional Conduct

The Texas Disciplinary Rules of Professional Conduct (TDRPC) provide appropriate limits on legal advocacy before the courts.

- A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless the lawyer reasonably believes that there is a basis for doing so that is not frivolous. TDRPC Rule 3.01.

- In the course of litigation, a lawyer shall not take a position that unreasonably increases the costs or other burdens of the case or that unreasonably delays resolution of the matter. TDRPC Rule 3.02.

- A lawyer shall not knowingly: (1) make a false statement of material fact or law to a tribunal. TDRPC Rule 3.03(a).

- A lawyer shall not: (1) violate these rules, knowingly assist or induce another to do so, or do so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship; . . . (3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; (4) engage in conduct constituting obstruction of justice. TDRPC Rule 8.04(a).

Because these rules apply to all tribunals and because this district's disciplinary rules incorporate the Texas rules, this Court may refer a complaint regarding a violation of these rules to the district's chief judge and/or the Chief Disciplinary Counsel for the State Bar of Texas. *See* Tex. R. Disc. Proc. Rule 2.10 (receiving grievances that amount to complaints seeking discipline or referrals invoking the Client Attorney Assistance Program).

ADVOCACY UNDER REVIEW

Plaintiffs' briefing has raised concerns that are of sufficient magnitude to invoke the Court's power to sanction or otherwise discipline the attorneys and law firms responsible. The complaints are set out here in Defendants' words in order to illustrate the clarity of each complaint previously made against their briefing, to which Plaintiffs previously failed to respond. The Court's concerns extend to both the representations of the law in Plaintiffs'

response to the motion to dismiss and to Plaintiffs' counsel's failure to defend or withdraw the briefing, leaving it to the Court to expend judicial resources to confirm the inaccuracy of Plaintiffs' statements. The Court's initial assessment of each indictment of Plaintiff's briefing is set out below so as to give notice of the matters on which this Court requires Plaintiffs' counsel to be heard.

1. **Pleading Standard: Unlocatable Case on Group Pleading**

> Defendants were unable to locate Plaintiffs' cited case *New Orleans Louisiana Saints, L.L.C. v. NFL*, 2021 WL 1565756, at *4 (E.D. La. Apr. 21, 2021). The case could not be identified by the listed Westlaw number, case name, or date and court of decision.

D.E. 42, p. 9 n.3. This case is cited at Plaintiff's response, D.E. 38, p. 13, for the proposition that merely alleging joint conduct of related companies is sufficient under the pleading standards because discovery can be used to test whether there are any facts to support it.

Like Defendants, the Court could not locate this case. And Plaintiffs use it to undermine the *Twombly*/*Iqbal* requirement for fact pleadings that make a claim plausible before the gates to discovery may be opened. If this case does not exist, then it appears to have been invented to misrepresent the pleading standard to be applied in this case. If it does exist, then the parties and the Court need to be able to read it to determine the truth of Plaintiffs' assertions.

2. **Group Pleading Standards**

> Plaintiffs' response contains the following parentheticals that have no basis in the underlying case:

> ● DE 38 at 13: "*Brooks v. Ross*, 578 F.3d 574, 582 (7th Cir. 2009) (explaining that a plaintiff may plead collective conduct when the defendants are 'similarly situated and engaged in similar conduct')." The quoted language is not found in the case. In addition, the court held that vague and conclusory allegations were insufficient to state a claim.
>
> ● DE 38 at 13: "*Krys v. Pigott*, 749 F.3d 117, 132 (2d Cir. 2014) (holding that collective allegations against defendants are permissible when the complaint details how each contributed to the wrongful conduct)." This case does not discuss the permissibility of group pleading. In addition, the court granted a 12(b)(6) motion, finding that the allegations in the complaint were conclusory.
>
> ● DE 38 at 14: "*In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Prods. Liab. Litig*., 754 F. Supp. 2d 1145, 1189 (C.D. Cal. 2010) (allowing corporate defendants to be held accountable collectively when their operations are intertwined)." Plaintiffs' cited page discusses compliance with the Magnuson-Moss Warranty Act's informal dispute settlement procedures. This case does not discuss collective group pleading.
>
> ● DE 38 at 15: "*In re Deepwater Horizon*, 739 F.3d 790, 808 (5th Cir. 2014) (holding that plaintiffs adequately pled specific conduct by multiple BP-related entities involved in the Deepwater Horizon spill)." Plaintiffs' cited page does not discuss whether plaintiffs adequately pled specific conduct by multiple BP-related entities. Rather, the court analyzes whether plaintiffs satisfied Rule 23 requirements for class certification.

D.E. 42, p. 9 n.4.

The first two cases discussed here were cited for the proposition, "a complaint need not 'isolate each defendant's conduct' when the alleged conduct was jointly undertaken." D.E. 38, p. 13. The Court has confirmed Defendants' concerns about Plaintiffs' citation of *Brooks* and adds that the case identified the impropriety of relying on parallel conduct as evidence of wrongdoing when each party's conduct is equally consistent with inferences

of lawful acts. Thus, *Brooks* appears to contradict the statement for which Plaintiffs cited it. Likewise, the *Krys* opinion condemned relying on improper inferences to extend wrongdoing to actors who were on the periphery of the alleged wrongdoing and those claims were dismissed.

In *Toyota*, the court was not concerned with improper inferences between defendants or group pleading defects. It noted at the outset that it referred to the two Toyota defendants jointly (Toyota Motor Corporation, "TMC" and Toyota Motor Sales, USA "TMS") unless the circumstances required individual treatment. 754 F. Supp. 2d at 1155 n.1. The only separate reference to either was a holding that the plaintiffs' notice to TMC was sufficient to give notice to both. *Id*. at 1175. Nothing in the case indicates that either of the two corporations sought dismissal for being improperly named. The case does not appear to discuss intertwined operations or group pleading, as Plaintiffs here argue.

The Court concurs with Defendants' complaint regarding the use of the *Deepwater Horizon* case. The only discussion of the adequacy of the pleadings had to do with the allegations of injuries suffered by the plaintiffs and their ability to certify a class for proceeding under a Rule 23 class action. The case does not appear to stand for the proposition, as Plaintiffs' parenthetical would indicate, that the pleading standard permits group pleading against multiple Defendants without specific facts supporting individual wrongdoing for each.

3. Group Pleading

Plaintiffs construe the holding in *In re BP p.l.c. Sec. Litig.*, 852 F. Supp. 2d 767 (S.D. Tex. 2012), as the court "denying motion

> to dismiss where complaint alleged that multiple BP entities were involved in misrepresentations following the Deepwater Horizon spill." DE 38 at 13. In reality, the court granted the motion to dismiss in this case. *BP*, 852 F. Supp. at 820. In doing so, the court explained that "[g]eneral allegations, which lump all defendants together and fail to segregate the alleged wrongdoing of one from those of another, do not meet the requirements of Rule 9(b)." *Id*. at 788.

Id., p. 9 n.5. After review, the Court concurs with Defendants' assessment of Plaintiffs' assertions and the fact that they are contrary to the relevant holding in the *BP* case.

Additionally, the Court notes that Plaintiffs cited the *BP* case for the proposition that "courts recognize that allegations of corporate wrongdoing often involve multiple corporate entities, and specific attribution can be developed further in discovery." D.E. 38, p.13. It is clear that, in *BP*, the plaintiffs had identified multiple specific statements by multiple speakers, on which they predicated their claims. Many of those statements were matters of public record and fully documented in the pleading.

To the extent that the statements were not matters of public record,

> Plaintiffs can only rely on information obtained from unnamed confidential witnesses if the witnesses "are identified through general descriptions in the complaint with sufficient particularity to support the probability that a person in the position occupied by the source as described would possess the information pleaded to support the allegations of false or misleading statements."

BP, 852 F. Supp. 2d at 795. According to this case, if the *BP* plaintiffs pled sufficient facts (on the record or from identifiable sources) to support liability based on the allegation of wrongdoing, discovery was permissible to determine the truth of the facts alleged. This is quite different from making allegations without facts and treating discovery as a fishing

expedition to substantiate those otherwise baseless allegations. Plaintiffs' use of this case appears to be directly contrary to *Twombly*/*Iqbal* and the holding in *BP*.

4. Fraud by Nondisclosure: Incorrect Cite, Different Jurisdiction, Different Date

> Defendants did not locate the case as cited by Plaintiffs, *Horizon Shipbuilding, Inc. v. Blyn II Holding, LLC*, 324 F. Supp. 3d 933, 953 (S.D. Tex. 2018). *See* DE 40 ¶ 99. Defendants assume Plaintiffs intended to direct the court instead to *Horizon Shipbuilding, Inc. v. BLyn II Holding, LLC*, 324 S.W.3d 840, 851 (Tex. App.—Houston [14th Dist.] 2010, no pet.).

Id., p. 16 n.8. The issue for which Plaintiffs cited the *Horizon Shipbuilding* case was the duty to disclose element of a fraud by nondisclosure claim. D.E. 40, ¶ 99. Neither case that appears at the main cite or at the alleged jump page offered by Plaintiffs addressed this issue. Defendants' substitute cite does address the elements of a fraud by nondisclosure claim and therefore appears to be consistent with Plaintiffs' assertion. *See Horizon Shipbuilding*, 324 S.W.3d at 850 (correcting Defendants' jump page cite).

Otherwise, the case does not add anything to the analysis of the particular facts here. It was, instead, concerned with personal jurisdiction and where the events occurred. Consequently, the Court's concern is how the Texas case—if it was the intended case—was cited inaccurately, misrepresenting the reporter, the pages, the jurisdiction, and the date of the case. Defendants and the Court expended limited resources to find a potentially correct case to determine its relevance.

5. Strict Liability

Plaintiffs argue that a number of cases support their contention that they have a cognizable claim for strict liability against Defendants. Defendants address those cases in table form. For ease of reference, the Court has split the table by case row and inserts its analysis in-between.

Plaintiffs' Cited Authority	**Plaintiffs' Claimed Premise from the Authority**	**Reality**
Rubin v. Yellow Cab Co., 154 S.W.2d 121, 123 (Tex. 1941)	"[T]he Texas Supreme Court reaffirmed that a party engaged in an ultrahazardous activity may be held strictly liable when harm results, even in the absence of negligence." DE 38 at 25.	The reporter citation of 154 S.W.2d 121 does not populate a case. The proper citation for *Rubin v. Yellow Cab Co.* is 507 N.E.2d 114 (Ill. 1987). This case from Illinois, not the Texas Supreme Court, involved the vicarious liability of a taxicab company for the negligence of its driver and did not address strict liability.

D.E. 42, p. 17.

The cite, 154 S.W.2d 121, brings up *Bebout v. Kurn*, 154 S.W.2d 120 (Mo. 1941), a personal injury case against a railroad company arising out of a collision with an automobile. Issues involve qualification of an expert, jury instructions, negligence, contributory negligence, and the imminent peril doctrine. It does not address strict liability. Neither is it a Supreme Court of Texas case.

With the exception that the substituted Illinois case should be cited as an intermediate appellate case in that state, the Court concurs with Defendants' assessment

that it does not involve strict liability and has no application to the case now before the Court. The Court's independent search for cases involving "Rubin" "yellow" and "strict liability" yielded no case relevant to the issues in this action. Plaintiff's case appears to have been invented.

Plaintiffs' Cited Authority	**Plaintiffs' Claimed Premise from the Authority**	**Reality**
Turner v. Big Lake Oil Co., 128 Tex. 155, 96 S.W.2d 221, 228 (1936)	"suggesting that strict liability may apply when an oil company's operations create an unavoidable risk of harm to the public" DE 38 at 26.	Plaintiffs' premise misreads the case. The Court did not hypothesize that strict liability could apply to oil operations. It observed that English courts applied strict liability to the storage of explosives, and the Court refused to apply strict liability for the escape of wastewater from oil wells. This authority is cited in Defendants' Motion to Dismiss. DE 35 at 24.

D.E. 42, p. 18.

Plaintiffs' use of *Turner* to support the imposition of strict liability against the owner of a pipeline from which oil escaped—because it is an ultrahazardous activity—appears so contrary to *Turner's* analysis as to lack good faith. *See* D.E. 38, pp. 25-26. *Turner* involved the escape of salt water from artificial oil well waste ponds, which water injured the turf of nearby properties and contaminated water sources used for livestock. Putting aside the fact that *Turner* did not involve explosive petroleum products or ultrahazardous activities, what it did say about the transportation of oil is contrary to the adoption of a strict liability theory.

In particular, the Texas Supreme Court wrote:

> In [] *Cosden Oil Co.* [*v. Sides* 35 S.W.2d 815, 816, 818 (Tex. Civ. App.—Eastland 1991)], the Court of Civil Appeals had before it a case involving damage to land brought about by the ***flow of 'oils, waste oil and products***.' The court in an able opinion by Associate Justice Funderburk held, correctly we think, that ***no right of recovery was shown independently of the existence of negligence***.

Turner, 96 S.W.2d at 223 (emphasis added).

Turner also cited with approval *Houston & T.C.R. Co. v. Anderson*, 98 S.W. 440, 441 (Tex. Civ. App. 1906, no writ), which held that there was no liability for the escape of oil being transported by train without proof of negligence. *Id*. In *Anderson*, the train wreck occurred from a freak accident without any negligence. 98 S.W. at 440-41. Therefore, there was no liability for the initial flow of oil and the damage it wreaked during a heavy rain. The only potential liability was for negligence involved in not taking necessary action to halt the leak over several ensuing days. *Id*. at 441 (noting that the railroad company had managed to repair the track during that time but made no effort to mitigate the still-flowing oil).

The *Turner* court observed the following with respect to oil pipeline liability:

> The pipe line cases can have no application here, for the reason that these cases generally have some form of ***contract*** as a basis, or else the facts show injury due to an obvious ***nuisance***. ***Nor are we prepared to say that the conveyance of oil by pipe lines is an unnatural use of land, and that the rule of absolute liability should be applied to them***. Pipe lines are but a means of transportation, and certainly it was within the contemplation of the state and the original grantees of all lands that the latter could be used to carry transportation agencies. Besides, it appears that the opinion of Associate Justice Sharp in *Lone*

> *Star Gas Co. v. Hutton* (Tex. Com. App.) 58 S.W.(2d) 19, 20, strongly indicates that ***in that type of case the rule of negligence should be applied***. ***Nor is it necessary for us to discuss cases of the pollution of public waters or riparian streams, as these are predicated upon statutes or riparian rights protected by law from invasion.***

96 S.W.2d at 226.

With respect to explosives, the *Turner* court wrote:

> The storage and use of explosives is clearly within the rule of absolute liability laid down in [the English case of] *Rylands v. Fletcher*; ***but, as to these, we have also changed from the common-law rule, and predicate liability upon negligence,*** in the absence of controlling statutes or facts so obvious as to constitute a nuisance as a matter of law.

96 S.W.2d at 224 (emphasis added).

Given this analysis of the issue, it appears that Plaintiffs have misrepresented the import of the *Turner* case to the facts presented here.

Plaintiffs' Cited Authority	**Plaintiffs' Claimed Premise from the Authority**	**Reality**
Tanglewood E. Homeowners v. Charles-Thomas, Inc., 849 S.W.2d 806, 812 (Tex. App.— Houston [14th Dist.] 1993, writ denied)	"recognizing that oil-related activities present inherent risks and may warrant strict liability" DE 38 at 26.	The reporter citation of 849 S.W.2d 806 does not populate a case. The actual citation for a case named *Tanglewood E. Homeowners v. Charles- Thomas, Inc*. is 849 F.2d 1568, 1571 (5th Cir. 1988). This case involved the applicability of CERCLA strict liability to a toxic waste disposal site. The opinion does not address whether strict liability is generally applicable to oil operations.

D.E. 42, p. 18.

Using both the main cite and the jump cite that Plaintiffs provided, the Court could not locate the *Tanglewood* case. The Court reads the Fifth Circuit case of the same name to be limited to the application of liability pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as Defendants claim. CERCLA is a strict liability statute. And it is consistent with *Turner* to apply strict liability by statute because it is not available by way of the common law. However, Plaintiffs have not stated a CERCLA claim. Plaintiffs' use of *Tanglewood* to imply that the inherent danger of oil-related activities "may warrant" the application of strict liability under the common law appears to be misleading.

Plaintiffs' Cited Authority	**Plaintiffs' Claimed Premise from the Authority**	**Reality**
Pecos Valley Artesian Conservancy Dist. v. Tex. & N. O. R. Co., 166 S.W.2d 900, 903 (Tex. 1942)	"finding strict liability for water pollution caused by hazardous substances" DE 38 at 26.	Defendants cannot locate a case by the name of *Pecos Valley Artesian Conservancy Dist. v. Tex. & N. O. R. Co*. The reporter citation corresponds to a case by the name of *Tarrant v. Walker* which involved a trucking accident and did not address strict liability.

D.E. 42, p. 18.

Again, the Court could find no such case at the main or jump cites that Plaintiff provided. The only case responsive to a comprehensive nationwide search for "Pecos Valley Artesian" in the title and "strict!" in the body of the opinion are *Pecos Valley Artesian Conservancy Dist. v. Peters*, 173 P.2d 490 (N.M. 1945) and *State ex rel. Office of State Eng'r v. Lewis*, 150 P.3d 375, 394 (N.M. App. 2006). The former addresses the

drilling of an unlawful water well and the latter addresses water shortages. Neither case contains the term "strict liability." This case appears to have been invented to mislead the Court.

Plaintiffs' Cited Authority	**Plaintiffs' Claimed Premise from the Authority**	**Reality**
Alm v. Aluminum Co. of Am., 717 S.W.2d 588, 591 (Tex. 1986)	"noting that adherence to safety regulations does not preclude strict liability where hazardous materials are involved" DE 38 at 27.	Plaintiffs in *Alm* sought to hold defendant strictly liable and submitted a jury question on that issue, but the court disregarded the jury's finding on strict liability and refused to apply that standard to the bottle capping operation.

D.E. 42, p. 18.

Alm is a product defect case and any theory of strict liability was denied at trial and was not appealed. 717 S.W.2d at 595 (Gonzalez, J., dissenting). Moreover, it did not address "hazardous materials" or "safety regulations" but the danger of misapplied bottle caps blowing off the bottles. Plaintiffs' representations of this case appear to be misleading.

Plaintiffs' Cited Authority	**Plaintiffs' Claimed Premise from the Authority**	**Reality**
Missouri v. Illinois, 180 U.S. 208, 241 (1901)	"holding that entities responsible for pollution affecting other jurisdictions may be held strictly liable" DE 38 at 27.	Missouri sued Illinois and the Sanitary District of Chicago regarding sewage disposal. The Court denied an injunction for the alleged nuisance. The Court did not address strict liability at all.

D.E. 42, p. 19.

After review, the Court concurs with Defendants that the *Missouri* case does not address strict liability. It involves the request for an injunction against an ongoing public nuisance. It appears to have no application to this case and is misrepresented to the Court.

Plaintiffs' Cited Authority	**Plaintiffs' Claimed Premise from the Authority**	**Reality**
Illinois v. City of Milwaukee, 406 U.S. 91, 103 (1972)	"the Court reaffirmed that environmental damage caused by hazardous substances is subject to strict liability" DE 38 at 27.	The Court addressed the preemption of common law nuisance claims for alleged pollution of public waters. There is no discussion of strict liability.

D.E. 42, p. 19.

Again, *Illinois* is a public nuisance case, which presented a federal jurisdictional issue because it involved claims between states. It did not involve "hazardous substances" or any claim of strict liability. And any common law that applied was expected to be federal common law, not that of Texas. In the *Illinois* case history, the Supreme Court later held that any federal common law that might have applied to the *Illinois* case was eliminated by the Federal Water Pollution Act Amendments of 1972 and, in any event, could not impose more stringent pollution standards than those set forth under the statute and its regulations. *City of Milwaukee v. Illinois & Michigan*, 451 U.S. 304, 317 (1981) (disapproving of *Illinois* and finding the federal common law issue superseded by statute). Plaintiffs' use of this case appears to be misleading.

Plaintiffs' Cited Authority	Plaintiffs' Claimed Premise from the Authority	Reality
Boudreaux v. ExxonMobil Corp., No. 2:19-CV-00271, 2021 WL 619777, at *7 (S.D. Tex. Feb. 17, 2021)	"recognizing strict liability in cases involving hazardous materials affecting public waters" DE 38 at 28.	Defendants cannot find a case by this name or reporter. The case number corresponds to *Herod v. Powell*, No. 2:19-CV-271, 2020 WL 777302, at *1 (S.D. Tex. Feb. 18, 2020), which involved the dismissal of a frivolous Section 1983 suit.

D.E. 42, p. 19.

Like Defendants, the Court could not locate a case at the Westlaw cite Plaintiffs provide. And the court's case number is, indeed, assigned to a prisoner civil rights action. A nationwide search for the case name yielded four cites regarding two opinions arising from one action, neither of which involved the application of strict liability:

- *Boudreaux v. Exxon Co., U.S.A.*, 451 So. 2d 85 (La. Ct. App. 1984) [1](employee personal injury case predicated on negligence when crane operator swung a trash basket toward him in the course of emptying the basket into a bin), *writ denied*, 458 So. 2d 119 (La. 1984) [2];

- *Boudreaux v. Exxon Co., U.S.A.*, 441 So. 2d 79 (La. Ct. App. 1983) [3] (same, focusing on the definition of statutory employer), *writ granted, judgment set aside*, 445 So. 2d 429 (La. 1984) [4].

Plaintiffs' citation appears to have been invented and misleading.

6. Private Nuisance by Interference with Livelihood

Plaintiffs cite a third case, perhaps by accident, that is equally inapplicable. DE 40 ¶ 87 (citing *Canton-Carter v. Baylor College of Medicine*, 271 S.W.3d 928, 931 (Tex. App.—Houston [14th Dist.] 2008)). The *Canton-Carter* opinion has no applicability here because it involves informed consent in the context of medical procedures. 271 S.W.3d at 931.

D.E. 42, p. 22 n.10.

Plaintiffs argue that their negligence theory also supports a private nuisance claim. Defendants distinguish Plaintiffs' other authorities regarding a private nuisance theory by pointing out that they require injury to a real estate interest before including this footnote. Plaintiffs cite *Canton-Carter* in the context of emphasizing the extent of Defendants' actions interfering with their business operations. While Defendants appear to be correct that the case has no application here, it is not just because it was a medical malpractice case but also because it does not address any type or magnitude of injury. The entire case is about a plaintiff, appearing pro se, who failed to adequately brief her appeal or provide any evidence to preclude summary judgment. Plaintiffs' use of this case appears to be misleading.

7. Public Nuisance: Oil Pollution as a Specialized Injury

> Plaintiffs cite a 1973 case to claim that alleged persistent oil pollution is a specialized injury. DE 40 ¶ 92 (citing *Walker v. Tex. Elec. Serv. Co*., 499 S.W.2d 20, 24 (Tex. Civ. App.—Fort Worth 1973, no writ). The *Walker* case provides absolutely no support for Plaintiffs' proposition. In *Walker*, a pilot crashed his plane onto an electric company's towers and wires and sued the company claiming that the towers and wires constituted a public nuisance. 499 S.W.2d at 24. The *Walker* court granted summary judgment to the electric company because the towers and wires had not been shown to have a negative impact on the public and could not be a nuisance because they were lawfully erected. *Id*. at 27. The holding does not have any applicability to the instant dispute.

D.E. 42, p. 23.

Defendants' analysis appears to be correct. The case also appears to work against Plaintiffs because the power lines were placed in conformity with a statute and "[t]he Act does not contemplate the use of its enforcement procedures by an individual and quite obviously the Legislature has pre-empted any common law right to declare such a structure a public nuisance." *Walker*, 499 S.W.2d at 26. So the case involved plaintiffs who were not granted a private right of action. In addition, the *Walker* court wrote:

> In the case of *Lederman v. Cunningham*, 283 S.W.2d 108 (Beaumont Civ. App., 1955, no writ hist.) the court said: '***Before a nuisance may properly be said to exist, there must be an invasion of a public right or else of a right that arises from an interest in land***. . . . 20 Texas Law Review, 399, 411, 412. . . . *Soap Corporation of America v. Balis*, Tex. Civ. App., 223 S.W.2d 957, *er. ref. n.r.e.*; *Burditt v. Swenson*, 17 Tex. 489, 502. . . .'

Id. at 27. Thus, the case appears to stand against Plaintiffs' proposition that they may recover for nuisance based on injury to their individual business operations, unrelated to any real estate interest.

CONCLUSION

The Court has reviewed Defendants' complaints and Plaintiffs' briefing and finds cause to question Plaintiffs' counsel's accuracy, competency, ethics, and abuse of judicial resources as attorneys and officers of the Court. While a decision on subject matter jurisdiction remains pending, the Court makes no findings of fact or conclusions of law regarding the merits of the case.

The Court issues this Second Order to Show Cause in its capacity to police the conduct of the lawyers practicing before it and to evaluate whether Plaintiffs' counsel have briefed this action within the bounds of professional ethics and the rules of the Court.

The Court **ORDERS** all of the following to **APPEAR AND SHOW CAUSE** why they should not be sanctioned or disciplined to the fullest extent of the Court's powers enumerated herein for the reasons set out above:

- Ashkan Attar, Individually, as Lead Attorney for Plaintiffs and signatory on the response (D.E. 38) and sur-reply (D.E. 44);
- A representative for the Attar Law Group, PLLC (if other than Ashkan Attar);
- Alfonso Nevárez, Individually, as signatory on the response (D.E. 38) and sur-reply (D.E. 44);
- A representative for the Nevárez Williams law firm (if other than Alfonso Nevárez); and
- Any other attorney who was responsible to, or did in fact, draft Plaintiffs' response (D.E. 38), sur-reply (D.E. 44), or any part thereof.

Said attorneys are to appear in person at **9:00 o'clock a.m. on May 14, 2025,** at the United States District Court for the Southern District of Texas, Corpus Christi Division, Room 310, 1133 N. Shoreline Blvd., Corpus Christi, Texas. It is further **ORDERED** that, in the event that said attorneys or law firms desire to file a written response prior to the show cause hearing, they must do so no later than **seven (7) days prior to the hearing** and the response shall not exceed twenty (20) pages.

ORDERED on April 14, 2025.

NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE