

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

COTTON BAYOU MARINA, INC.)
d/b/a TACKY JACK’S RESTAURANT,)
individually and on behalf of themselves)
and all others similarly situated,)
)
Plaintiffs,)
)
vs.)
)
HALLIBURTON ENERGY SERVICES,)
INC., et al.,)
)
Defendants.)

Civil Action No. 1:10-cv-00243-C

**HALLIBURTON ENERGY SERVICES, INC.'S
REPLY IN SUPPORT OF ITS MOTION TO STAY**

Defendant Halliburton Energy Services, Inc. ("HESI") hereby replies to Plaintiffs' Response to HESI's Motion for Stay of Proceedings Pending Transfer By The Judicial Panel on Multidistrict Litigation (the "Motion to Stay"). In support thereof, HESI states:

BACKGROUND

More than 100 state and federal cases have been filed following the Deepwater Horizon explosion and ensuing oil spill. As a result, Halliburton filed the Motion to Stay pending transfer and consolidation by the Judicial Panel on Multidistrict Litigation (the "MDL Panel"). Nonetheless, these cases remain active in seven states, to be heard in different U.S. District Courts, and numerous state courts. These courts have already started issuing inconsistent orders, and Plaintiffs have already started propounding duplicative and overlapping discovery.

Plaintiffs' response suggests that courts should enter competing discovery orders without waiting on the MDL Panel's decision on transfer and consolidation. Plaintiffs' suggestion is

unworkable and inefficient. While the conflicting orders and duplicative discovery demands would be highly prejudicial to the Defendants and an inefficient use of the Court's resources if a stay is not granted, Plaintiffs have failed to demonstrate that a relatively short stay pending the MDL Panel's decision would prejudice them. Accordingly, entry of an Order staying this case is both necessary and appropriate.

ARGUMENT

I. A STAY IS NECESSARY TO AVOID PREJUDICE TO DEFENDANTS AND WASTE OF JUDICIAL RESOURCES.

The Defendants will be prejudiced if the Court does not grant the Motion to Stay. Absent a stay, Defendants will waste an enormous amount of time, money and judicial resources on repetitive and overlapping discovery requests and conflicting discovery and pretrial orders. *See, e.g., U.S. Bank, NA. v. Royal Indemnity Co.*, No. CIV. A 3:02-cv-0853-P, 2002 WL 31114069, at *2 (N.D. Tex. Sept. 23, 2002) (granting stay where defendant would suffer undue hardship of “enormous waste of time, money and judicial resources associated with repetitive and overlapping discovery . . .”); *Falgoust v. Microsoft Corp.*, No. CIV. A. 00-0779, 2000 WL 462919, at *2 (E.D. La. Apr. 19, 2000) (granting stay where defendant “would suffer a considerable hardship and inequity if forced to simultaneously litigate multiple suits in multiple courts.”); *see also Vath, et al. v. BP p.l.c., et al.*, Case No. 2:10-cv-1273 (E.D. La. May 25, 2010), Order and Reasons, a true and correct copy is attached hereto as Exhibit A (“ . . . between the various lawyers and judges on the cases, there is a grave potential for conflicting discovery orders. This poses not only a hardship for the defendants, but mocks an efficient and orderly judicial system.”).

This prejudice is neither hypothetical nor speculative – duplicative and overlapping discovery has already been propounded and inconsistent discovery orders have already been

entered. *Compare, e.g.,* Protective Order entered in *Cooper et al. v. BP plc et al.*, No. 10-cv-1229 (E.D. La.), a true and correct copy is attached hereto as Exhibit B, *with* Protective Order entered in *Stone et al. v. BP plc et al.*, No. 2010-25245 (Harris County, Texas), a true and correct copy is attached hereto as Exhibit C. Plaintiffs in some related cases have filed “expedited” motions seeking additional inconsistent and overlapping preservation and discovery orders. *See, e.g.,* Motion for Interim Order Regarding Preservation of Evidence filed in *Cajun Maid, LLC v. BP plc, et al.*, No. 1:10-cv-00176 (S.D. Miss.), a true and correct copy is attached hereto as Exhibit D. Conference dates and expedited motion hearings have been set to address such competing and contradictory requests. *See, e.g.,* Order issued in *Creppel v. BP plc et al.*, No. 10-cv-01346 (E.D. La.), a true and correct copy is attached hereto as Exhibit E; Order for Expedited Hearing in *Barisich v. BP p.l.c. et al.*, No. 10-cv-01316 (E.D. La.) a true and correct copy is attached hereto as Exhibit F.

Rather than agreeing to a stay, which would avoid chaos between and among the related cases, Plaintiffs would have Defendants subject to overlapping and inconsistent orders and discovery requests in more than 100 cases, and subject to the varying requirements of different local rules and standing orders in more than seven federal judicial districts and several state jurisdictions. Indeed, certain plaintiffs have already sought injunctive relief that would seriously impede the administration of an orderly claims process under the Oil Pollution Act of 1990 (“OPA”). *See, e.g.,* Motion To Appoint Special Master filed in *Vath et al. v. BP p.l.c. et al.*, No. 10-cv-01273 (E.D. La.), a true and correct copy is attached hereto as Exhibit G; Motion for Court Supervision Or, Alternatively, To Appoint Special Master filed in *Robin, et al. v. BP, p.l.c., et al.*, No. 10-cv-01295 (E.D. La.), a true and correct copy is attached hereto as Exhibit G1. Such

interference would cause substantial prejudice to the Defendants, the government's containment and relief efforts, and other Plaintiffs (including potential OPA fund claimants).

Recognizing the significant prejudice to the Defendants and waste of judicial resources inherent in the simultaneous prosecution of more than 100 lawsuits, several of the courts that have already ruled on HESI's or BP p.l.c., BP Exploration & Production, Inc., BP Products North America, Inc., BP America, Inc's ("BP Defendants") motions to stay have granted the stays. For example, on May 12, 2010, the Honorable C. Michael Hill of the United States District Court for the Western District of Louisiana granted BP Defendants' Motion for Stay in Cause No. 6:10-cv-00727. A true and correct copy of the Order is attached hereto as Exhibit H. Additionally, on May 13, 2010, the United States District Court for the Northern District of Florida granted identical Motions for Stay by the BP Defendants in two pending actions, Case No. 4:10-cv-157 and Case No. 3:10-cv-136. A true and correct copy of those Orders are attached hereto as Exhibits I and J, respectively. On May 18, 2010, the Honorable Chief Judge Stephan P. Mickle for the Northern District of Florida granted a stay in Case No. 4:10-CV-00162. A true and correct copy of the Order is attached hereto as Exhibit K. On May 19, 2010, the Honorable Callie V. S. Granade of the United States District Court for the Southern District of Alabama granted BP Defendants' motion for stay of proceedings in Civil Action No. 10-0191-CG-B. A true and correct copy of the Order is attached hereto as Exhibit L. On May 26, 2010, the Honorable M. Casey Rodgers of the United States District Court for the Northern District of Florida granted identical motions to stay in four pending actions, Case No. 3:10cv129; Case No. 3:10cv133, Case No. 3:10cv137, and Case No. 3:10:cv141. A true and correct copy of those Orders are attached hereto as Exhibit M, Exhibit N, Exhibit O, and Exhibit P, respectively. On May 27, 2010, the Honorable Judge Halil Suleyman Ozerden of the United States District Court

for the Southern District of Mississippi, granted BP Defendants' motion for stay of proceedings in Civil No. 1:10-cv-176. A true and correct copy of the Order is attached hereto as Exhibit S. On May 28, 2010, the Honorable Judge Roger Vinson of the United States District Court for the Northern District of Florida granted BP Defendants' motion for stay of proceedings in Case No. 3:10-cv-143. A true and correct copy of the Order is attached hereto as Exhibit S1.¹

On May 25, 2010, the Honorable Martin L.C. Feldman granted a similar motion to stay filed by the BP Defendants to stay proceedings in Case No. 2:10-cv-1273. Judge Feldman specifically held:

The present litigation compels a stay. A delay of a few months ... is ... slight when compared to the hardship to the defendants and the interests of judicial economy. The Court notes that there is no evidence of spoliation of evidence, and sanctions will remain available if the defendants engage in prohibited conduct. Further, if emergency relief is needed, a stay can always be lifted. With at least seventy lawsuits in different districts, the defendants face the burden of litigating in multiple jurisdictions. More importantly ... there is a grave potential for conflicting discovery orders. This poses not only a hardship for the defendants, but mocks an efficient and orderly judicial system. The Court finds that the prejudice to the plaintiffs caused by a delay of months is outweighed by the hardship to the defendants and the interests of judicial economy.

See Exhibit A, at pp. 4-5. Indeed, even a Southern District of Texas Order “denying” the Motion to Stay defers responsive pleading and compliance with Rule 26 indefinitely by suspending “all deadlines” until further notice. See, e.g., Order issued in *National Vietnamese American Fisherman Emergency Assoc. v. BP p.l.c., et al.*, No. 4:10-cv-01607 (S.D. Tx.), attached hereto as Exhibit T. Such orders are necessary to facilitate the organized and efficient management of the more than 100 cases now pending in various federal and state courts.

¹ HESI does note, however, that some district courts have denied similar motions to stay proceedings pending a determination from the Judicial Panel on Multidistrict Litigation. Nonetheless, many of those orders were denied on the basis that the motion was "premature" or with "leave to re-file after responsive pleadings have been filed." See e.g., May 25, 2010 Order Denying Motion to Stay, CIVIL ACTION 10-0221-WS-C, pending in the Southern District of Alabama (Judge William Steele presiding); May 26, 2010 Order Denying Motion to Stay, CIVIL ACTION 10-00201-KD-C, pending in the Southern District of Alabama (Judge Kristi DuBose presiding). A true and correct copy of these orders are attached hereto as Exhibit Q and Exhibit R, respectively.

Under similar circumstances, courts have repeatedly stayed cases pending MDL Panel action. See e.g., *Louisiana Stadium & Exposition Dist. v. Financial Guaranty Ins. Co.*, No. 09-235, 2009 WL 926982, at * 1 (E.D. La. Apr. 2, 2009) (granting stay pending MDL Panel's disposition of motion to transfer and consolidate); *Kennedy v. Novartis Pharmaceuticals, Corp.*, No. CIV. A. 02-2331, 2002 WL 31051601, at *1 (E.D. La. Sept. 12, 2002) (“[T]he interests of judicial economy will best be served by a temporary stay in these proceedings pending a ruling by the Judicial Panel on Multidistrict Litigation.”); *Falgoust*, 2000 WL 462919, at * 2 (short stay to allow MDL Panel to consider transfer motion would best promote “the interests of judicial economy”); *Aikins v. Microsoft Corp.*, No. Civ. A. 00-0242, 2000 WL 310391, at * 1 (E.D. La. Mar. 24, 2000) (“Consistency and economy are both served by resolution of [common] issues by a single court after transfer by the MDL Panel.”); *Maiben v. CSX Transp., Inc.*, No. 09-0125-WS-B, 2009 WL 1211186, at *1 (S.D. Ala. May 1, 2009) (“[S]taying this action pending transfer by the MDL Panel would promote the interest of efficiency and judicial economy, would mitigate the possibility of inconsistent results between sister courts, and would not prejudice the parties in any respect.”); *Boudin v. Residential Essentials, LLC*, No. 07-0018-WS-C, 2007 WL 2609510, at *2 (S.D. Ala. Sept. 6, 2007) (declining to rule on motion to dismiss until after MDL Panel decided transfer motion); *Thomas v. Ameriquest Mortg. Co.*, No. 07-0652-WS-C, 2007 WL 3287842, at *1 (S.D. Ala. Nov. 5, 2007) (granting motion to stay and noting that “the interests of promoting judicial efficiency, avoiding inconsistent results between sister courts, and avoiding prejudice to the parties” weighed in favor of allowing the MDL Panel to decide pending motions).

The very real and significant prejudice to the Defendants and the waste of judicial resources inherent in Plaintiffs' proposal weighs heavily in favor of granting the stay requested here.

II. PLAINTIFFS WILL SUFFER LITTLE OR NO PREJUDICE AS A RESULT OF THE STAY.

In contrast to the substantial harm to the Defendants and the judicial system that will result absent a stay, Plaintiffs have not demonstrated that they would be prejudiced by a stay of limited duration as has been requested here. Indeed, if, for example, Plaintiffs develop an urgent need to participate in certain discovery, they may petition the Court for limited relief from the stay order at the appropriate time. In fact, according to Judge Feldman of the Eastern District of Louisiana, who recently issued an order granting a stay in one of the more than 100 cases that is now pending:

[a] pending transfer motion before the MDL panel does not deprive the district court in which the action is then pending of jurisdiction over pretrial matters. J.P.M.L R. PROC. 1.5.; see *In re Air Crash Disaster at Paris, France, on Mar. 3, 1974*, 376 F. Supp. 887, 888 (J.P.M.L. 1974) (“[T]he mere pendency of a motion before the Panel does not affect or suspend orders and discovery proceedings in the transferor district court . . .”).

See Exhibit A at p. 2.

Plaintiffs' efforts to demonstrate prejudice fail. Defendants have requested a stay that is very limited and no longer than necessary for the MDL Panel to rule on pending motions. Furthermore, both the BP Defendants and two separate groups of Plaintiffs have filed motions before the MDL Panel seeking to transfer and consolidate some or all of the related cases. Given the scope of the litigation and the consensus among Defendants and certain Plaintiffs that transfer and consolidation are appropriate, there is an increased likelihood that the MDL Panel will transfer and consolidate the related cases.

A stay that is expected to last no more than three months is hardly prejudicial to Plaintiffs. In fact, according to Judge Feldman in his recent order granting a stay in a related action,

District courts have granted motions to stay after finding that the plaintiff would not be prejudiced by a slight delay. *Falgoust v. Microsoft Corp.*, No. 00-779, 2000 WL 462919, at *2 (E.D. La. Apr. 19, 2000); see *La. Stadium & Exposition Dist. v. Fin. Guar. Ins. Co.*, No. 09-235, 2009 WL 926982, at * 1 (E.D. La. Apr. 2, 2009) (responsive pleadings due to MDL panel eighteen days after district court decision); *Kennedy v. Novartis Pharm., Corp.*, No. 02-2331, 2002 WL 31051601 (E.D. La. Sept. 12, 2001) (MDL panel had already ordered a conditional order of transfer, Court anticipated a three to four week delay); *Tench v. Jackson Nat'l Life Ins. Co.*, No. 99-5182, 1999 WL 1044923, at *2 (N.D. Ill. Nov. 12, 1999) (MDL panel hearing only one week away); *Good v. Prudential Ins. Co. of Am.*, 5 F. Supp. 2d 804, 809 (N.D. Cal. 1998) (MDL panel had already ordered a conditional order of transfer).

See Exhibit A, at pp. 3-4.

Judge Feldman's order notes that the present litigation "compels" a stay. *Id.* at p. 4. According to him, a "delay of a few months, while longer than some of the cases cited by the parties, is, nonetheless, slight when compared to the hardship to the defendants and the interests of judicial economy." *Id.*

Moreover, the stay requested here does not cause significant incremental prejudice to the Plaintiffs because at least part of this case is already stayed. On May 13, 2010, the Transocean Defendants filed an action to limit their liability pursuant to 46 U.S.C. § 30505 *et seq.*, in the U.S. District Court for the Southern District of Texas. See Transocean Complaint, a true and correct copy attached hereto as Exhibit U. As the rules governing Limitation of Liability actions require, the Southern District of Texas entered an Order staying all pending or new claims against Transocean - including those in this case. See Fed. R. Civ. P. Admiralty & Maritime

Supp. Rule F(3) (upon filing of a Limitation action “all claims and proceedings against the owner or the owner’s property with respect to the matter in question shall cease.”); S.D. Tex. Stay Order, a true and correct copy attached hereto as Exhibit V. Accordingly, Plaintiffs cannot obtain global discovery regardless of the timing of the MDL Panel’s ruling.² With this case already stayed as to certain Defendants, there is little incremental prejudice to granting a stay of such limited duration to the remaining Defendants.

Further, the BP Defendants have established a claims process that will prevent Plaintiffs from suffering any harm or prejudice during the short stay requested. Pursuant to the OPA, the BP Defendants have established a claims management process, which will allow legitimate claims to be processed. Private citizens and other entities impacted by the Deepwater Horizon incident may bring claims under OPA for, *inter alia*, private property damage, loss of subsistence use of natural resources, and lost private profits or earnings resulting from the oil spill. *See* 33 U.S.C. § 2702(b)(2)(B), (C), (E). The BP Defendants have committed to paying clean-up costs and legitimate claims for other losses resulting from the oil spill. The BP Defendants have also asserted that they will comply with the requirements of the statute and will be guided by U.S. Coast Guard regulations regarding the administration of OPA claims. Because Plaintiffs can utilize the BP Defendants’ process to seek payment for their legitimate claims during the stay, they will not be prejudiced during the short three-month time period in

² As courts have previously recognized, the stay entered under the Limitation of Liability Act may also prevent Plaintiffs from pursuing their claims against other Defendants where, as here, theories of joint and several liability and potential cross-claims for indemnity and contribution create a situation in which actions taken against other Defendants would improperly impact Transocean’s Limitation of Liability suit and violate the stay order. *See, e.g. Maryland Cas. Co. v. Cushing*, 347 U.S. 409 (1954) (direct action against marine liability insurer stayed pending completion of Limitation proceeding due to potential for res judicata effect of earlier adjudication on vessel owner); *Guillot v. Cenac Towing Co., Inc.*, 366 F.2d 898, 906-08 (5th Cir. 1966) (staying direct actions against insurers and corporate officers of vessel owner until after disposition of Limitations action to avoid exhaustion of insurance policy and potential res judicata effect).

which the MDL Panel is likely to hear and rule on the pending transfer and consolidation motions.

CONCLUSION

For the foregoing reasons, as well as those stated in its Motion to Stay, Halliburton Energy Services, Inc. respectfully requests that the Court enter an Order staying this case pending a ruling by the MDL Panel on the motions to transfer and consolidate.

Respectfully submitted this 1st day of June, 2010.

GODWIN RONQUILLO PC

DONALD E. GODWIN (GODWD 5022)
Attorney in Charge, pending pro hac vice admission
Email dgodwin@godwinronquillo.com
BRUCE W. BOWMAN, JR.
Email bbowman@godwinronquillo.com
JENNY L. MARTINEZ
Email jmartinez@godwinronquillo.com
1201 Elm Street, Suite 1700
Dallas, Texas 75270-2041
Telephone: 214.939.4400
Facsimile: 214.760.7332

and

R. ALAN YORK
Email ayork@godwinronquillo.com
1331 Lamar, Suite 1665
Houston, Texas 77010
Telephone: 713.595.8300
Facsimile: 713.425.7594

and

s/ John N. Leach

JOHN N. LEACH (LEACJ2634)

Email jnl@helmsinglaw.com

JOSEPH P. H. BABINGTON (BABIJ7938)

Email jpb@helmsinglaw.com

RUSSELL C. BUFFKIN (BUFFR6510)

Email rcb@helmsinglaw.com

**HELMSING, LEACH, HERLONG, NEWMAN
& ROUSE, P.C.**

Post Office Box 2767

Mobile AL 36652

Telephone: 251.432.5521

Facsimile: 251.432.0633

**ATTORNEYS FOR DEFENDANT,
HALLIBURTON ENERGY SERVICES, INC.**

CERTIFICATE OF SERVICE

I hereby certify that I have on this 1st day of June, 2010, a copy of the foregoing pleading was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all counsel of record registered to receive electronic service by operation of the court's electronic filing system. I also certify that I have mailed this filing by United States Postal Service to all counsel of record who are not registered to receive electronic service by operation of the court's electronic filing system.

Jere L. Beasley, Esquire
Rhon E. Jones, Esquire
David B. Byrne, III, Esquire
John E. Tomlinson, Esquire
J. Parker Miller, Esquire
BEASLEY, ALLEN, CROW, METHVIN, PORTIS
& MILES, PC
218 Commerce Street
Post Office Box 4160
Montgomery, AL 36103-4160
Counsel for Plaintiffs

John M. Johnson, Esquire
Adam K. Peck, Esquire
William H. Brooks, Esquire
Marchello D. Gray, Esquire
LIGHTFOOT, FRANKLIN & WHITE, L.L.C.
400 North 20th Street
Birmingham, AL 35203
*Counsel for BP America, Inc. and,
BP Products North America, Inc.*

Christopher D. Boutwell, Esquire
BEASLEY, ALLEN, CROW, METHVIN, PORTIS
& MILES, PC
415 East Commerce Street, Suite 215
Greenville, AL 36037
Counsel for Plaintiffs

A. Danner Frazer, Jr., Esquire
Robert J. Mullican, Jr., Esquire
FRAZER GREENE UPCHURCH & BAKER
Post Office Box 1686
Mobile, AL 36633
Counsel for Cameron International Corp.

BP, PLC
CT Corporation
1200 South Pine Island Road
Plantation, FL 33324

s/ John N. Leach

Of counsel