

centralize more than 80 actions (the “Actions”) currently pending in five states, as well as anticipated actions, for coordination of all pre-trial proceedings.¹ In support thereof, HESI states:

BACKGROUND

1. This case is one of more than 80 virtually identical individual and class actions pending in various state and federal courts in the southeastern United States. Each action arises out of an explosion and fire onboard Transocean’s Deepwater Horizon drilling rig on April 20, 2010, and the ensuing oil spill from the BP well located on Mississippi Canyon Block 252 (the “Deepwater Horizon Incident”).

2. In light of the common factual and legal issues presented in the Actions, an MDL transfer action was initiated for consolidated pre-trial proceedings pursuant to 28 U.S.C. § 1407. On May 6, 2010, Plaintiffs, in an action filed in the Eastern District of Louisiana, No. 2:10-CV-01229-KDE-SS, captioned: *Acy J. Cooper and Ronnie Louis Anderson, individually and on behalf of themselves and all others similarly situated, Plaintiffs v. BP, plc, BP Products North America, Inc., BP America, Transocean, Ltd., Transocean Offshore Deepwater Drilling, Inc., Transocean Deepwater, Inc., Halliburton Energy Services, Inc., and Cameron International Corporation f/k/a Cooper-Cameron Corporation*, filed a Motion for Transfer of Actions pursuant to 28 U.S.C. § 1407. On May 7, 2010, Defendants BP Exploration & Production, Inc., BP America, Inc., and BP Products, North America, Inc., filed their Motion to Transfer pursuant to 28 U.S.C. § 1407. A true and correct copy of the Motions to Transfer are attached hereto as

¹ In filing this motion, HESI reserves all defenses, including its rights to object to jurisdiction, service of process, and any other issues in this matter, and all other defenses available pursuant to Federal Rule of Civil Procedure 12(b), including lack of subject matter jurisdiction, lack of personal jurisdiction, improper venue, insufficient process, insufficient service of process, failure to state a claim upon which relief can be granted, and failure to join necessary parties. Without waiving such rights, HESI files this motion in the interests of judicial efficiency and economy.

Exhibits A and B. On May 6, 2010, the MDL Panel issued a Briefing Schedule in MDL-2179 to allow all parties to respond to the MDL Motion. A true and correct copy of the MDL Panel's Briefing Schedule in MDL 2179 is attached hereto as Exhibit C. On May 11, 2010, HESI filed a Notice of Potential "Tag-Along Actions" with the MDL Panel. A true and correct copy of HESI's Notice of Potential "Tag-Along Actions" is attached hereto as Exhibit D. The MDL Motion is scheduled to be fully briefed and ripe for decision in May 2010, when responses to the MDL Motions are due. The MDL Panel is expected to hear oral argument on the MDL Motion in July 2010. *See* Exhibit C.

3. Under 28 U.S.C. § 1407, when actions involving one or more common questions of fact are pending in different districts the MDL Panel may transfer the cases to a single district for consolidated pre-trial proceedings. 28 U.S.C. § 1407(a). The MDL Panel must order such transfers whenever it determines that they “will be for the convenience of the parties and witnesses and will promote the just and efficient conduct of such actions.” *Id.* In the present case, transfer and consolidation are appropriate and will eliminate duplicative discovery and motion practice, thus preventing potentially inconsistent pre-trial rulings and serving the interest of the parties and judicial economy.

4. A stay of proceedings in this case pending the MDL Panel's decision on the MDL Motion will serve § 1407's goals of efficiency and consistency by eliminating the need for the Court and the parties to litigate issues that will ultimately be resolved by the transferee court if the MDL Motion is granted. 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 E. Additionally, on May 13, 2010, the Honorable M. Casey Rogers of 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 F and G, respectively.

ARGUMENT & AUTHORITIES

5. This case should be stayed pending the MDL Panel's final determination of the MDL Motion in order to prevent a waste of judicial and party resources. In evaluating whether to issue a stay, a court may consider three factors: (1) potential prejudice to the non-moving party; (2) hardship and inequity to the moving party without a stay; and, (3) judicial economy. *La. Stadium & Exposition Dist. v. Fin. Guar. Ins. Co.*, No. 09-235c/w09-2738, 2009 U.S. Dist. LEXIS 35004, at * 4-5 (E.D. La. April 2, 2009); *U.S. Bank, N.A. v. Royal Indem. Co.*, No. 3:02-CV-0853-P, 2002 U.S. Dist. LEXIS 17837, at *4 (N.D. Tex. Sep. 23, 2002); *Ramos-Martir v. Astra Merck, Inc.*, No. 05-2038 (PG), 2005 U.S. Dist. LEXIS 30247, at *1 (D.P.R. Nov. 16, 2005); *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1360 (C.D. Cal. 1997). Courts frequently grant stays pending a decision by the MDL panel regarding whether to transfer a case. *Good v. Altria Group, Inc.*, 624 F. Supp. 2d 132, 134 (D. Me. 2009) (quoting *Good v. Prudential Ins. Co. of Am.*, 5 F. Supp. 2d 804, 809 (N.D. Cal. 1998)); *see also Doan v. Smithkline Beecham Corp.*, No. 09-0260-CG-N, 2009 U.S. Dist. LEXIS 49409, at *1 (S.D. Ala. June 11, 2009) (granting motion to stay pending MDL Panel's transfer order); *La. Stadium & Exposition Dist.*, 2009 U.S. Dist. LEXIS 17837, at *5-6 (granting stay pending MDL determination); *Lucas v. Springhill Hosps., Inc.*, No. 08-0520-CG-C, 2009 U.S. Dist. LEXIS 4527, at *2 (S.D. Ala. Jan. 22, 2009) (noting that the court commonly stays cases pending MDL transfer); *Gavitt v. Merck & Co., Inc.*, No. 2:08-CV-755-FTM-UA-DNF, 2008 U.S. Dist. LEXIS 88421, at *2 (M.D. Fla. Oct. 20, 2008) (granting stay of proceedings pending MDL transfer); *Conroy v. Fresh Del*

Monte Produce, Inc., 325 F. Supp. 2d 1049, 1053 (N.D. Cal. 2004) (“deference to the MDL court for resolution of a motion to remand provides the opportunity for the uniformity, consistency, and predictability in litigation that underlies the MDL system”); *Rivers*, 980 F. Supp. at 1360 (granting stay and noting that a “great deal of this Court’s time and energy that could be saved by staying the instant case pending the MDL Panel decision”).

A. The Court Has Broad Discretion to Stay Proceedings

6. The decision whether to grant a stay of a particular action pending the MDL Panel's ruling is discretionary and within the inherent power of the Court. *La. Stadium & Exposition Dist.*, 2009 U.S. Dist. LEXIS 35004, at *3; *Anderson v. Merck & Co.*, No. V-06-114, 2007 U.S. Dist. LEXIS 1261, at *3 (S.D. Tex. Jan. 5, 2007); *Coward v. Wyeth*, No. 03-2458, 2003 U.S. Dist. LEXIS 26246, at *9 (S.D. Tex. Sept. 17, 2003); *Altria Group, Inc.*, 624 F. Supp. 2d at 134 (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936)). Generally, “the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *La. Stadium & Exposition Dist.*, 2009 U.S. Dist. LEXIS 35004, at *3 (quoting *Landis*, 299 U.S. at 254)).

B. A Stay Will Promote Judicial Economy

7. In order to serve judicial economy and efficiency, courts routinely stay matters while motions to consolidate are before the MDL Panel. *Id.* at *5 (granting a stay pending MDL determination because the waste of judicial resources would be substantial); *Thomas v. Ameriquest Mortg. Co.*, No. 07-0652-WS-C, 2007 U.S. Dist. LEXIS 82468, at *3 (S.D. Ala. Nov. 5, 2007) (granting motion to stay and noting that “the interests of promoting judicial efficiency” weighed in favor of allowing the MDL to decide pending motions); *Gavitt*, 2008

U.S. Dist. LEXIS 88421, at *4 (granting stay pending MDL transfer in an effort to preserve judicial resources); *Smith v. Merck & Co.*, No. 06-CV-0931-DRH, 2006 U.S. Dist. LEXIS 94189, at *2 (S.D. Ill. Dec. 29, 2006) (judicial economy weighs in favor of granting a stay); *Bd. of Trs. of the Teachers' Ret. Sys. of the State of Ill. v. WorldCom, Inc.*, 244 F. Supp.2d 900, 902 (N.D. Ill. 2002) (district court may stay proceedings pending MDL transfer, even where subject matter is uncertain).

8. A stay is appropriate where the action has not progressed beyond the early stages of litigation, and discovery has only just begun. *Glazer v. Whirlpool Corp.*, No. 1:08-CV-1624, 2008 U.S. Dist. LEXIS 85799, at *5 (N.D. Ohio Oct. 6, 2008). Even if the same discovery is necessary, regardless of whether the case is transferred, the possibility of duplicative judicial effort counsels against proceeding. *See id.* at *6.

9. The risk of inconsistent pre-trial rulings supports a stay of this matter. *See Anderson*, 2007 U.S. Dist. LEXIS 1261, at *3 (“Staying this case in order to give the MDL court the opportunity to transfer it would promote judicial efficiency and help to avoid the possibility of inconsistent decisions.”). If a defendant will suffer hardship by having to simultaneously litigate multiple suits in different courts, which could yield inconsistent judgments, and the plaintiff would only incur a slight delay, the interests of judicial economy are best served by granting a stay pending the MDL Panel’s decision. *See Thomas*, 2007 U.S. Dist. LEXIS 82468, at *3 (avoiding inconsistent results weighs in favor of granting a stay to allow the MDL Panel to decide pending motions); *Boudin v. Residential Essentials, LLC*, No. 07-0018-WS-C, 2007 U.S. Dist. LEXIS 66128, at *3-4 (S.D. Ala. Sept. 6, 2007) (noting the danger of inconsistent results in declining to rule on a motion to dismiss until after JPML decided on the pending motion to transfer); *Gavitt*, 2008 U.S. Dist. LEXIS 88421, at *4 (granting stay pending MDL transfer to

promote consistency); *Lilak v. Pfizer Corp., Inc.*, No. 08-CV-02439-CMA-KLM, 2008 U.S. Dist. LEXIS 95535, at *7 (D. Colo. Nov. 13, 2008) (judicial economy promoted by transfer to MDL and a stay pending transfer); *Franklin v. Merck & Co., Inc.*, No. 06-CV-02164-WYD-BNB, 2007 U.S. Dist. LEXIS 5010, at *6 (D. Colo. January 24, 2007) (granting stay will promote judicial economy and ensure consistent pre-trial rulings pending transfer to MDL).

10. If the MDL Panel declines to transfer the case, pre-trial proceedings in this Court will recommence and no parties will have been prejudiced, with no significant time or effort wasted in the interim. A stay pending the MDL Panel's ruling will further judicial economy and ensure that the transferee court is able to execute its mandate to conduct coordinated proceedings.

C. HESI Will be Prejudiced Unless A Stay Is Granted

11. Absent a stay, the parties will face the burden of costly and duplicative discovery and motion practice in multiple jurisdictions. The common factual allegations underlying the Actions will lead to overlapping discovery requests pertaining to the Deepwater Horizon Incident. Without a stay, HESI will have to respond to duplicative written discovery and submit to multiple depositions on common factual issues—a result the MDL procedure was set up to avoid. *See, e.g., Thomas*, 2007 U.S. Dist. LEXIS 82468, at *3 (avoiding prejudice to the parties weighs in favor of allowing the MDL to decide pending motions); *U.S. Bank, N.A.*, 2002 U.S. Dist. LEXIS 17837, at *5; *Lundy v. C.B. Fleet Co., Inc.*, 09-CV-00802-WYD-KLM, 2009 U.S. Dist. LEXIS 62160, at *3-4 (D. Colo. July 6, 2009) (granting stay to avoid duplicative discovery efforts); *Glazer*, 2008 U.S. Dist. LEXIS 85799, at *2 (denying stay would prejudice defendant by requiring it to engage in extensive overlapping discovery simultaneously in different fora); *Carolus v. GE*, No. 07-CV-00714-WYD-MJW, 2007 U.S. Dist. LEXIS 90195, at *4 (D. Colo.

Nov. 28, 2007) (granting stay of any Rule 30(b)(6) depositions until after the MDL Panel ruled in order to prevent undue expense, the need for duplicative depositions); *Jackson v. Merck & Co.*, 06-1004-T/An, 2006 U.S. Dist. LEXIS 9635, at *4 (W.D. Tenn. Feb. 19, 2006) (granting stay due to significant risk of duplicative motions and discovery). Moreover, the costs and financial burden on a party having to defend itself in multiple fora is a factor that favors the entry of a stay pending a decision by a MDL Panel. *See The Hertz Corp. v. The Gator Corp.*, 250 F. Supp. 2d 421, 427 (D. N.J. 2003). Currently, over 80 cases are pending in five states. Requiring HESI to engage in extensive overlapping discovery will cause undue expense and will unnecessarily subject witnesses to multiple depositions.

D. A Stay Will Not Prejudice Plaintiffs

12. A stay will not prejudice Plaintiffs; in fact, it will benefit them by sparing them the costs of pre-trial motion practice and discovery that may later be repeated in the transferee court. Any prejudice associated with a short stay is outweighed by judicial economy. *See Maiben*, 2009 U.S. Dist. LEXIS 37875, at *2 (in determining whether a stay is appropriate, the court must assess and balance the nature and substantiality of the injustices claimed on either side.); *Fuller v. Amerigas Propane, Inc.*, Nos. C-09-2493/C-09-2616, 2009 WL 2390358, at *1 (N.D. Cal. Aug. 3, 2009) (because MDL Panel was expected to hear the matter within a few months, any delay caused by a stay would be of very short duration, and unlikely to cause the degradation of memories or the loss of material evidence); *Smith*, 2006 U.S. Dist. LEXIS 94189, at *3. The benefits to the Court and the parties clearly outweigh any minor inconvenience to Plaintiffs that may arise from a stay.

CONCLUSION

13. For the foregoing reasons, a stay is appropriate in order to preserve judicial economy and efficiency and to prevent a waste of resources and the accompanying prejudice to HESI. HESI respectfully requests that this Court enter an order staying all proceedings in this case pending a decision of the MDL Panel, without prejudice to the rights of any party to file a motion for leave in the case of an emergency or other exceptional circumstances.

Dated May 14, 2010.

Respectfully submitted this 17th day of May, 2010.

GODWIN RONQUILLO PC

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CERTIFICATE OF SERVICE

I hereby certify that I have on this 17th day of May, 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.

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