

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

**WILLIAM D. GREGOIRE; VERONICA G.
STELLY; TOBY J. STELLY**

versus

**TRANSOCEAN, LTD.; TRANSOCEAN
OFFSHORE DEEPWATER DRILLING, INC.;
TRANSOCEAN DEEPWATER, INC.; BP,
PLC; BP PRODUCTS NORTH AMERICA,
INC.; BP EXPLORATION & PRODUCTION,
INC.; HALLIBURTON ENERGY SERVICES,
INC.; HALLIBURTON COMPANY;
CAMERON INTERNATIONAL
CORPORATION; ABC INSURANCE
COMPANY; DEF INSURANCE COMPANY;
GHI INSURANCE COMPANY; JKL
INSURANCE COMPANY; MNO
INSURANCE COMPANY; PQR INSURANCE
COMPANY; STU INSURANCE COMPANY;
XYZ INSURANCE COMPANY**

* CIVIL ACTION
* NO. 10-CV-01351
* SECTION "K"
* DIVISION "5"
* JUDGE STANWOOD R. DUVAL
* MAGISTRATE
ALMA CHASEZ
*
*
*
*

THE BP DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO STAY

The more than 175 state and federal cases filed in the wake of the Deepwater Horizon explosion and ensuing oil spill present a classic case for a stay pending transfer and consolidation by the Joint Panel on Multidistrict Litigation ("JPML"). There are now scores of cases before more than seven different U.S. District Courts and numerous other state courts, inconsistent orders issued to date, and duplicative and overlapping discovery propounded. Plaintiffs' response only further demonstrates why a stay should be granted here: with more than 175 different related cases now involving different plaintiffs' counsel, judges, local rules and

standing orders, plaintiffs' Opposition suggests that courts should enter competing discovery orders and contradictory injunctions without awaiting JPML 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 short stay pending the JPML's decision would prejudice them. Accordingly, entering an Order staying this case is both necessary and appropriate here.

ARGUMENT

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

The defendants face substantial prejudice if a stay is not granted in this case. 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, N.A. 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 tie, 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.").

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.) (Exhibit [1]) *with Protective Order entered in Stone et al. v. BP plc et al.*, No. 2010-25245 (Harris County, Texas) (Exhibit [2]). 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-HSO-JMR (S.D. Miss.) (Exhibit [3]). 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.) (Exhibit [4]); Order for Expedited Hearing in *Barisich v. BP p.l.c. et al.*, No. 10-cv-01316 (E.D. La.) (Exhibit [5]). Indeed, at least one group of *plaintiffs* has claimed that they are suffering “irreparable harm” as a result of competing and overlapping expedited motions and discovery procedures in uncoordinated cases, which will place the assigned MDL judge “in an unenviable position of having to deconstruct all the conflicting orders, discovery and other matters that were ruled on prior to the panel’s hearing.” Notice of Related Action & Request Reconsideration For Expedited Hrn’g at p. 7, filed in *In re Oil Spill By The Oil Rig “Deepwater Horizon” In The Gulf Of Mexico On April 20, 2010 Liability Litig.*, MDL No. 2179, Docket No. 11 (J.P.M.L.).

Rather than agreeing to refrain from actions that only create chaos between and among the related cases, plaintiffs would have defendants subject to such overlapping and inconsistent orders and discovery requests in more than 175 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. Plaintiffs also suggest that they may seek unspecified injunctive relief between now and July 29 (when the motions pending before the JPML will be heard), potentially subjecting defendant to contradictory injunctions that will set inconsistent standards and interfere with ongoing efforts to contain the oil spill. (Opp. at p. 4). Indeed, certain plaintiffs have already sought injunctive relief that would seriously impede the BP Defendants’ administration of an

orderly claims process under the Oil Pollution Act of 1990. (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.) (Exhibit [6]). Such interference would cause substantial prejudice to the defendant, the government's containment and relief efforts, and other plaintiffs (including potential OPA 90 fund claimants).

Recognizing the significant prejudice to the defendants and waste of judicial resources inherent in the simultaneous prosecution of more than 175 lawsuits, many of the courts that have already ruled on the BP Defendants' motions to stay have granted the stays. See Stay Orders entered in *Vath, et al. v. BP, PLC et al.*, No. 2:10-cv-01273 (E.D. La.), Exhibit [7]; *Cajun Offshore Charters, LLC v. BP, PLC et al.*, No. 2:10-cv-01341 (E.D. La.), Exhibit [8]; *T&D Fishery, et al. v. BP, PLC, et al.*, No. 10-cv-1332 (E.D. La.), Exhibit [9]; *Gulf Crown Seafood, Inc. v. BP PLC, et al.*, No. 10-cv-1344 (E.D.La.), Exhibit [10]; *Friloux, et al. v. BP, PLC, et al.*, 10-cv-1246 (E.D. La.), Exhibit [11]; *Fishing Magicians Charters, LLC, et al. v. BP, PLC, et al.*, No. 10-cv-1338 (E.D. La.), Exhibit [12]; *Schouest et al. v. BP Products North America Inc. et al.*, No. 6:10-cv-00727-TLM-CMH (W.D. La.), Exhibit [13]; *Gaskins v. BP, PLC, et al.*, 10-cv-738 (W.D. La.), Exhibit [14]; *Ward et al. v. BP plc et al.*, No. 4:10-cv-00157-SPM-WCS (N.D. Fla.), Exhibit [15]; *Joe Patti Seafood Co., et al. v. Transocean, Ltd., et al.*, No. 3:10-cv-137 (N.D. Fla.), Exhibit [16]; *Stacy P. Walsh v. British Petroleum, et al.*, 3:10-cv-143 (N.D. Fla.), Exhibit [17]; *Douglass et al. v. Transocean Holdings, Inc., et al.*, No. 10-cv-00136 (N.D. Fla.), Exhibit [18]; *Water Street Seafood Inc. et al. v. BP plc et al.*, No. 4:10-cv-00162-SPM-WCS (N.D. Fla.), Exhibit [19]; *Harris, et al. v. Transocean, Ltd., et al.*, 3:10-cv-129 (N.D. Fla.), Exhibit [20]; *Dewey Destin, et al. v. BP, PLC, et al.*, 3:10-cv-141 (N.D. Fla.), Exhibit [21]; *Sevel, et al. v. BP, PLC, et al.* 10-cv-179 (S.D. Miss.), Exhibit [22]; *Hopper, et al. v. Cameron International Corporation, et al.*, 10-cv-173 (S.D. Miss), Exhibit [23]; *Cajun Maid, LLC v. BP,*

PLC, et al., 10-cv-176 (S.D. Miss.), Exhibit [24]; *Trieu, et al. v. BP Exploration & Production Inc., et al.*, 10-cv-177 (S.D. Miss.), Exhibit [25]; *Staley v. Cameron International Corporation, et al.*, 10-cv-181 (S.D. Miss.), Exhibit [26]; *Daniels, et al. v. Cameron International Corporation, et al.*, 10-cv-182 (S.D. Miss.), Exhibit [27]; *Van Duyn, et al. v. Cameron International Corporation, et al.*, 10-cv-183 (S.D. Miss.), Exhibit [28]; *Grieshaber, et al. v. BP Products North America Inc., et al.*, 10-cv-185 (S.D. Miss.), Exhibit [29]; *Montagnet v. Transocean, Ltd., et al.*, 10-cv-201 (S.D. Miss.), Exhibit [30]; *Nguyen v. Transocean, Ltd.*, 10-cv-236 (S.D. Miss.), Exhibit [31]; *Brian Howard's Charter Fishing, LLC v. Transocean, Ltd., et al.*, 10-cv-207 (S.D. Miss.), Exhibit [32]; *Barker v. BP, PLC, et al.*, 10-cv-225 (S.D. Miss.), Exhibit [33]; *Mason v. Transocean, Ltd., et al.*, 10-cv-191 (S.D. Ala.), Exhibit [34]. 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 Order issued in *National Vietnamese American Fisherman Emergency Assoc. v. BP plc et al.*, No. 4:10-cv-01607 (S.D. Tx.) (Rec. Doc. 12). Such orders are necessary to facilitate the organized and efficient management of the more than 175 cases now pending in federal and state courts.

Under similar circumstances, courts in the Eastern District have repeatedly stayed cases pending JPML 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 JPML’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 v.*

Microsoft Corp., No. CIV.A. 00-0779, 2000 WL 462919, at * 2 (E.D. La. Apr. 19, 2000) (short stay to allow JPML 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 JPML.”).

The very real and significant prejudice to the defendants and the waste of judicial resources inherent in plaintiffs’ proposal to allow 175 different actions to proceed without coordination both weigh 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 real, 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 such limited duration as has been requested here. Instead, plaintiffs engage in speculation — arguing that that plaintiffs *might* develop an urgent need to participate in certain discovery, or that plaintiffs *might* require injunctive relief. (Opp. at p. 4). If any of these situations arises, plaintiffs may petition the Court for limited relief from the stay order at the appropriate time. At this juncture, however, plaintiffs’ efforts to demonstrate prejudice fail for at least three reasons.

First, the very limited duration of the stay requested —no longer than necessary for the JPML to rule on pending motions following a July 29, 2010 hearing — demonstrates that there is little, if any, prejudice to the plaintiffs here. Both the BP Defendants and two separate groups of plaintiffs have filed motions before the JPML seeking to transfer and consolidate some or all of the related cases. *See* BPXP Motion to Transfer, Ex. [35]; Lanier Plaintiffs’ Motion to Transfer, Ex. [36]; Becnel Plaintiffs’ Motion to Transfer, Ex. [37]. The consensus among defendants and certain plaintiffs that transfer and consolidation are appropriate increases the likelihood that the

JPML will transfer and consolidate the related cases shortly after the July 29 hearing. A stay that is expected to last no more than three months is hardly prejudicial to plaintiffs in a case such as this one, where plaintiffs have only recently served the defendant, no responsive pleadings have been filed, and no schedules have been set.

Second, the stay requested here does not cause significant incremental prejudice to the plaintiffs because at least part of this case is *already* stayed. 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 on May 13, 2010. *See* Transocean Compl., Ex. [38]. 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, Ex. [39]. Accordingly, plaintiffs cannot obtain the global discovery orders and injunctions discussed in the Opposition, regardless of the timing of the JPML’s ruling.¹ 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.

Finally, a claims process established by BP will prevent plaintiffs from suffering any harm or prejudice during the short stay requested. Pursuant to the Oil Pollution Act of 1990 (“OPA 90”), 33 U.S.C. § 2701, *et seq.*, BP has established a claims management process, which

¹ 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).

will allow legitimate claims to be processed. Private citizens and other entities impacted by the Deepwater Horizon incident may bring claims under OPA 90 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). BP has committed to paying clean-up costs and legitimate claims for other loss resulting from the oil spill. BP will comply with the requirements of the statute and will be guided by U.S. Coast Guard regulations regarding the administration of OPA 90 claims.

BP has established a toll-free hotline and a website (www.bp.com/claims) accessible twenty-four hours a day, seven days a week, that claimants can use to report oil spill-related claims. BP has received more than 152,000 calls into its help lines to date. Alternatively, claimants may visit one of BP's local claims centers. BP is expediting the processing of "loss of income" claims, and is providing interim payments to claimants who are not receiving ordinary income or profit as a result of the oil contamination. Notably, a release or waiver of legal rights, including the ability to file or participate in legal action, is *not* required in exchange for asserting a claim or receiving interim benefits.

Here, plaintiffs seek to recover for alleged loss of income, therefore the claims can be dealt with efficiently through BP's OPA 90 claims handling process. So far approximately 37,000 claims have been submitted and more than 18,000 payments already have been made, totaling some \$48 million. Because plaintiffs can utilize this process to seek payment for legitimate claims during the stay, plaintiffs will not be prejudiced during the short three-month time period in which the JPML is likely to hear and rule on the pending transfer and consolidation motions.

CONCLUSION

For all of the foregoing reasons, as well as those stated in the BP Defendants' Motion For Stay, the BP Defendants respectfully request that the Court enter an Order staying this case pending a ruling by the JPML on the motions to transfer and consolidate.

Respectfully submitted,

/s/ Don K. Haycraft

Donald R. Abaunza (Bar #2273)
R. Keith Jarrett (Bar #16984)
Don K. Haycraft (Bar #14361)
Jonathan A. Hunter (Bar #18619)
Mark D. Latham (Bar #19673)
Robert E. Holden (Bar #6935)
LISKOW & LEWIS
One Shell Square
701 Poydras Street, Suite 5000
New Orleans, Louisiana 70139-5099
Telephone: (504) 581-7979
Facsimile: (504) 556-4108

and

Of Counsel:

Richard C. Godfrey, P.C.
John T. Hickey Jr., P.C.
J. Andrew Langan, P.C.
Matthew T. Regan, P.C.
Wendy L. Bloom, P.C.
Hariklia Karis, P.C.
Kirkland & Ellis LLP
300 North LaSalle Street
Chicago, IL 60654
312-862-2000 (Tel)
312-862-2200 (Fax)

**Attorneys for BP Exploration & Production Inc.
and BP Products North America Inc.**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 8, 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.

/s/ Don K. Haycraft