

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

HORNBECK OFFSHORE SERVICES, L.L.C.

CIVIL ACTION

VERSUS

NO. 10-1663

KENNETH LEE SALAZAR ET AL.

SECTION "F" (2)

ORDER AND REASONS

The "Emergency Motion to Intervene" of Diamond Offshore Company and Diamond Offshore Management Company (collectively "Diamond Offshore") is pending before me. Record Doc. No. 81. The Local Rule 7.6E certificate filed by Diamond Offshore states that the existing plaintiffs have no objection to the motion and that the intervening defendants "take no position" on the motion. Record Doc. No. 112. The original defendants ("the government") filed a response to the motion stating that they "do not oppose the inclusion of Diamond (Offshore) as an intervening plaintiff," but suggesting the imposition of certain case management restrictions on the intervention. Record Doc. No. 122 at p. 3. Having considered the record, the applicable law and the written submissions of counsel, **IT IS ORDERED** that the motion is GRANTED, subject to the condition contained herein.

As to intervention of right, Rule 24(a) states: "On timely motion, the court must permit anyone to intervene who: (1) is given an unconditional right to intervene by a

federal statute; or (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." "Federal courts should allow intervention where no one would be hurt and the greater justice could be attained." Sierra Club v. Espy, 18 F.3d 1202, 1205 (5th Cir. 1994). Thus, a party is entitled to an intervention of right if (1) the motion to intervene is timely; (2) the potential intervenor asserts an interest [which interest must be "direct, substantial [and] legally protectable"] that is related to the property or transaction that forms the basis of the controversy in the case into which it seeks to intervene; (3) the disposition of the case may impair or impede the potential intervenor's ability to protect its interest; and (4) the existing parties do not adequately represent the potential intervenor's interest. Heaton v. Monogram Credit Card Bank, 297 F.3d 416, 422 (5th Cir. 2002); Ford v. City of Huntsville, 242 F.3d 235, 239 (5th Cir. 2001); Edwards v. City of Houston, 78 F.3d 983, 1000 (5th Cir. 1996); Espy, 18 F.3d at 1204-05, 1207 (quoting Piambino v. Bailey, 610 F.2d 1306, 1321 (5th Cir. 1980)).

As to permissive intervention, Fed. R. Civ. P. 24(b) provides in pertinent part: "On timely motion, the court may permit anyone to intervene who: (A) is given a conditional right to intervene by a federal statute; or (B) has a claim or defense that shares with the main action a common question of law or fact. . . . In exercising its discretion, the court

must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b) (emphasis added).

Weighing the foregoing factors, it appears that the intervention may be one of right. Specifically, although the existing plaintiffs may adequately represent Diamond Offshore's interests, the remaining factors – timeliness, nature of the interest, and potential for impairment of the intervenor's ability to protect its own interests – all weigh in favor of a finding of intervention of right. In any event, Diamond Offshore's claims present questions of law and fact nearly identical – not just common – to those raised in the underlying lawsuit, so that permissive intervention is clearly warranted. Thus, for all of the foregoing reasons, **IT IS ORDERED** that leave to intervene is granted, and the Diamond Offshore parties are permitted to intervene as plaintiffs, but subject to the following condition:

The intervention complaint contains an "Application for Temporary Restraining Order" concerning the original moratorium. The grounds for the TRO asserted in the body of Diamond Offshore's complaint in intervention on the day it was originally filed were substantially the same as those rejected by Judge Feldman as "premature" in connection with a motion to enforce the previously issued preliminary injunction separately filed on that same date. Record Doc. Nos. 69 and 82. As to the new, subsequent moratorium that was apparently issued by the government within the past few days, the original TRO application contained in the intervening complaint is so vague,

anticipatory and lacking in specifics that it appears largely inapplicable. In granting leave to intervene, I, of course, express no dispositive opinion on the TRO application contained in the intervention complaint, a matter to be addressed solely by Judge Feldman. Under these circumstances, if the intervenors still seek temporary or preliminary injunctive relief of any kind, they must file a separate motion for such relief, noticing it for disposition in due course¹ in compliance with all applicable Local Rules, and direct it to Judge Feldman.

I decline at this time to impose the case management conditions on intervention suggested by the government in its response memorandum. Record Doc. No. 122. Cooperation and coordination among the original and intervening plaintiffs, whose interests appear aligned, is certainly encouraged. Although formal briefing restrictions and consolidation of pleadings, motions and live courtroom presentation, if any, may be the subject of future case management orders, I defer such matters to Judge Feldman, before whom they are likely to occur.

New Orleans, Louisiana, this 14th day of July, 2010.



JOSEPH C. WILKINSON, JR.
UNITED STATES MAGISTRATE JUDGE

**CLERK TO NOTIFY:
HON. MARTIN L.C. FELDMAN**

¹I note that a possibly related motion filed by defendants is already noticed without oral argument before Judge Feldman on July 28, 2010. Record Doc. No. 125.