

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

**HORNBECK OFFSHORE SERVICES,
LLC, et al.**

Plaintiffs,

and

DIAMOND OFFSHORE COMPANY,

Plaintiff-Intervenor,

v.

**THE CENTER FOR BIOLOGICAL
DIVERSITY, et al.,**

Defendant-Intervenors,

and

KENNETH LEE "KEN" SALAZAR, et al,

Defendants.

CIVIL ACTION No. 10-1663(F)(2)

SECTION F

JUDGE FELDMAN

MAGISTRATE 2

MAGISTRATE WILKINSON

**MEMORANDUM IN SUPPORT OF DEFENDANTS' CONSENT MOTION FOR
EXTENSION OF TIME TO ANSWER PLAINTIFFS' AND PLAINTIFF-INTERVENORS
COMPLAINTS**

Defendants, Kenneth Lee Salazar, United States Department of the Interior, Michael Bromwich, and the Bureau of Ocean Energy Management, Regulation, and Enforcement, ("Defendants"), hereby file this Motion for Extension of Time to Answer Plaintiffs' and Plaintiff-Intervenor's Complaints. Defendants have consulted with counsel for Plaintiffs and Plaintiff-Intervenor, and both have indicated that they do not oppose an extension of the deadline for Defendants to answer their respective complaints to October 6, 2010.

BACKGROUND

Plaintiffs filed their initial Complaint on June 7, 2010, challenging Defendants' May 28 Directive to suspend deepwater drilling operations in the Gulf of Mexico, and served it on the U.S. Attorney for the Eastern District of Louisiana on June 8, 2010. Dkt. #1; Dkt. #97. Pursuant to Federal Rule of Civil Procedure 12(a)(2), Defendants' Answer is due 60 days after service of the Complaint on the U.S. Attorney, on August 9, 2010. Fed. R. Civ. P. 12(a)(2). Plaintiffs filed their First Supplemental and Amended Complaint on June 9, 2010, and filed Motion for Preliminary Injunction that same day. Dkt. #5; Dkt. # 7. The parties submitted detailed briefs regarding their respective positions, including portions of the administrative record and substantive discussions of the likelihood of success on the merits of Plaintiffs' claims. Dkt. ## 27, 29, 33, 40. At oral argument on June 21, 2010, the parties provided additional substantive argument regarding their claims and defenses. Dkt. ##56, 72. The Court issued an order granting Plaintiffs' Motion for Preliminary Injunction on June 22, 2010. Dkt. #67. Defendants filed a Notice of Appeal of the preliminary injunction order, and moved for a stay of the preliminary injunction order pending appeal on June 23. Dkt. ##73, 74. The Fifth Circuit held oral argument on Defendants' Motion for Stay Pending Appeal on July 8, and denied the Motion, but set the appeal for expedited briefing and argument. Dkt. #121. On July 12, Defendants rescinded the May 28 Directive and issued a new Directive ordering the suspension of deepwater drilling operations. Upon the issuance of that Directive, Defendants filed a Motion to Dismiss Plaintiffs' Complaint as Moot. Dkt. #125.¹ The filing of Defendants' Motion to Dismiss tolled the deadline for Defendants' Answer until 14 days after the Court denied the motion or postponed its disposition until trial. Fed. R. Civ. P. 12(a)(4)(A). On August 1, 2010, this Court

¹ Defendants also filed a Motion to Vacate the preliminary injunction as moot in the Fifth Circuit Court of Appeals. After the parties submitted their briefs, the Fifth Circuit ordered limited remand to the district court on August 16. Dkt. #156.

entered an order denying Defendants' Motion to Dismiss as Moot. Dkt. #165. Defendants' Answer is therefore currently due September 15. Fed. R. Civ. P. 12(a)(4)(A).

Plaintiff-Intervenor, Diamond Offshore Company, filed an Emergency Motion to Intervene on June 24, 2010. Dkt. #81. The Court granted Plaintiff-Intervenor's Motion on July 14, and the Complaint in Intervention was filed that day. Dkt. ##129, 130. Defendants' Answer to the Complaint in Intervention would therefore be due September 13. Fed. R. Civ. P. 12(a)(2); 6(a)(1)(C).

On August 7, 2010 Plaintiffs filed a Motion to Enforce Preliminary Injunction, and noticed the hearing for September 22. Dkt. #167. Pursuant to Local Rule 7.5E, Defendants' Response to the Motion to Enforce is due September 14, 2010. In response to a partial remand order from the Fifth Circuit Court of Appeals, this Court submitted a supplemental record on September 3, 2010. Dkt. #166. Pursuant to the Fifth Circuit's order, the parties are to submit supplemental briefing within 10 days of the district court's submission of the supplemental record. Dkt. #156.

In a related proceeding pending before this Court, Ensco v. Salazar, Case No. 10-1941, the plaintiff filed its Motion for Partial Summary Judgment on August 5, 2010 (Ensco, Dkt. #20). Defendants lodged the Administrative Record with the Court on August 17, 2010 (Ensco, Dkt. #37), and Defendants filed their Response and Cross Motion for Partial Summary Judgment on August 26. Ensco, Dkt. #42. Ensco filed a Motion to Compel additional documents on September 1, 2010 (Ensco, Dkt. #50), and Defendants' Response is due September 9, 2010. The hearing on Ensco's Motion for Partial Summary Judgment and Defendants' Cross-Motion for Partial Summary Judgment is set for September 22, 2010. Ensco, Dkt. #29.

ARGUMENT

Defendants answer to Plaintiffs' Complaint is currently due September 15, and Defendants' Answer to Plaintiff-Intervenor's Complaint is due September 13. Given the pending Motion to

Enforce, and the hearing scheduled for September 22, as well as the still-pending proceedings in the Fifth Circuit Court of Appeals, Defendants believe it would be an inefficient use of the Government's time and resources to file an answer in this matter at this particular time. In addition, Defendants have been engaged in numerous substantive rounds of briefing and oral argument over the course of nearly three months in this case, the related appeal, and in a related matter pending before the Court in Ensco v. Salazar, Case No. 10-1941. As a result of these proceedings, the parties' positions on Plaintiffs' and Plaintiff-Intervenor's allegations have largely been addressed through briefing and argument, and Defendants' answer is unlikely to assist the Court, Plaintiffs, or Plaintiff-Intervenors with the resolution of the currently pending matters before the Court.

Accordingly, Defendants respectfully request that Defendants' deadline to answer Plaintiffs' and Plaintiff-Intervenor's complaints be extended 21 and 23 days respectively so that Defendants' Answer to both Complaints will be due October 6, 2010. Defendants have not previously sought extensions of time to answer. The requested extension will not prejudice the parties nor delay the other proceedings in this case. Defendants have consulted with counsel for Plaintiffs and Plaintiff-Intervenors, and both have indicated that they do not oppose an extension of the deadline for Defendants to answer their respective complaints to October 6, 2010.

Respectfully submitted this 10th day of September, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2010, I caused a copy of the foregoing to be served through the Court's CM/ECF System to all parties.

/s/Brian Collins
Brian Collins