

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**HORNBECK OFFSHORE SERVICES,
L.L.C.,** * **CIVIL ACTION NO. 10-1663(F)(2)**
Plaintiff *

VERSUS * **SECTION F**

**KENNETH LEE “KEN” SALAZAR, IN HIS
OFFICIAL CAPACITY AS SECRETARY,
UNITED STATES DEPARTMENT OF
INTERIOR; UNITED STATES
DEPARTMENT OF INTERIOR;** * **JUDGE FELDMAN**
*

**ROBERT “BOB” ABBEY, IN HIS OFFICIAL
CAPACITY AS ACTING DIRECTOR,
MINERALS MANAGEMENT SERVICE;** * **MAGISTRATE 2**
AND MINERALS MANAGEMENT SERVICE, * **MAGISTRATE WILKINSON**
*

Defendants

* * * * *

**PLAINTIFFS’ MEMORANDUM IN SUPPORT OF
EX PARTE MOTION TO FILE APPENDIX UNDER SEAL**

NOW INTO COURT, through undersigned counsel, come Plaintiffs, Hornbeck Offshore Services, L.L.C., the Chouest Entities and the Bollinger Entities (“Plaintiffs”), which respectfully submit this memorandum in support of their ex parte motion to file appendix under seal. Plaintiffs’ motion is filed for the purpose of protecting from public disclosure the sensitive, confidential and/or privileged information contained in the billings of Jones Walker and Venable while facilitating full Plaintiffs’ compliance with Magistrate Judge Wilkinson’s Order of

February 4, 2011 (Rec. Doc. 228). Plaintiffs ask the Court to enter the proposed Order attached hereto authorizing the billings to be filed under seal as an appendix to Plaintiffs' Motion to Set the Amount of Attorneys' Fees and Costs owed by Defendants. As set forth below, the proposed Order would protect the confidentiality of the billings while still allowing the Court – as well as Defendants and Defendants-Intervenors – to review the documents, as necessary, in addressing the issue of quantum. *See* Rec. Doc. 227.

FACTUAL BACKGROUND

On December 3, 2010, Plaintiffs moved the Court to enter an Order entitling Plaintiffs to recover their attorneys' fees from Defendants. *See* Rec. Doc. 213. On February 2, 2011, the Court entered an Order holding Defendants in civil contempt. *See* Rec. Doc. 226. The Court subsequently referred "the issue of quantum" to Magistrate Judge Wilkinson. *See* Rec. Doc. 227. On February 4, 2011, Magistrate Judge Wilkinson ordered Plaintiffs to file their Motion to Set the Amount of Attorneys' Fees and Costs they seek as a civil contempt sanction against Defendants no later than February 18, 2011. *See* Rec. Doc. 228. Plaintiffs' Motion must comply with the requirements of Fed. R. Civ. P. 54(d)(2) and Local Rule 54.2 and attach all necessary evidence. *See Id.*

ARGUMENT

With their Motion, Plaintiffs urge the Court to authorize the filing of the billings of Jones Walker and Venable into the record under seal as an appendix. Counsel for Plaintiffs has conferred with counsel for Defendants and counsel for Defendants-Intervenors regarding Plaintiffs' Motion. Defendants-Intervenors take no position as to the Motion. Defendants oppose the Motion and present their position as follows:

Federal Defendants oppose the proposed motion to seal any records submitted by Hornbeck in support of its petition for fees. As courts in the Eastern District of

Louisiana have recognized, public access to such documents “serves important [judicial] interests, such as ‘to promote trustworthiness of the judicial process, to curb judicial abuses, and to provide the public with a more complete understanding of the judicial system, including a better perception of fairness.’” See Detroit Diesel Corp. v. Delta Launch Servs., Civil Action No. 06-10912, 2010 WL 1037974, at *3 (E.D. La. March 18, 2010) (quoting S.E.C. v. Van Waeyenberghe, 990 F.2d 845, 849 (5th Cir. 1993)). Thus, in determining “whether to disclose or seal a judicial record, the Court must balance the public’s common law right of access against interests favoring non-disclosure.” Id.; see also id. (“[T]he district court’s discretion to seal the record of judicial proceedings is to be exercised charily”) (quoting Van Waeyenberghe, 990 F.2d at 848). In this case, we understand that counsels’ contemporaneous billing records were not “intended for public disclosure,” but that does not outweigh the public’s interest in accessing documents relating to Plaintiffs’ petition for attorney fees, especially since the petition involves a demand for payment from the public fisc.

A copy of the email correspondence between counsel for Plaintiffs and counsel for Defendants is attached hereto as Exhibit “A”.

Defendants’ opposition to Plaintiffs’ Motion is legally incorrect and ignores the Court’s authority to permit a party to file billings under seal. The case quoted selectively by Defendants is of no moment given the nature of the documents Plaintiffs seek to seal and the procedural posture of the instant litigation. It did not deal with attorney billings. Instead, *Detroit Diesel Corp. v. Delta Launch Services, LLC*, 2010 WL 1037974 (E.D. La. March 18, 2010), concerned a motion for a protective order regarding the contents of a *settlement agreement* that the plaintiff was asking the Court to interpret and enforce. 2010 WL 1037974 at *1, 3.¹ The motion was denied because the plaintiff’s only support for its motion was a confidentiality clause in the settlement agreement. *Id.* at *4. In contrast, the billings Plaintiffs seek to have sealed are not

¹ *S.E.C. v. Van Waeyenberghe*, 990 F.2d 845 (5th Cir. 1993), the case quoted by the court in *Detroit Diesel Corp.*, is likewise not applicable here. In *Van Waeyenberghe*, wherein violations of federal securities laws were alleged, the Fifth Circuit reversed two district court orders sealing a transcript of proceedings and a final order of permanent injunction agreed to by the parties. 990 F.2d at 847. There, the court reversed the orders in part because “allowing access to the transcript and final order of permanent injunction . . . allows the public to verify disclosures that [the defendant] is required to make under the securities laws.” *Id.* at 850. Here, however, no law requires the public disclosure of the billings Plaintiffs seek to have filed under seal. Rather, “courts have held that time sheets and billing records are protected by the attorney-client privilege to the extent they reveal the nature of services performed and/or type of work performed by an attorney.” *C.J. Calamia Construction Co. v. ARDCO/Traverse Lift Company, L.L.C.*, 1998 WL 395130 at *3 (E.D. La. 7/14/1998).

open to interpretation and certainly do not constitute the underlying issue of this lawsuit. Moreover, as demonstrated below, Plaintiffs' Motion is supported by caselaw and the prejudice to Plaintiffs that will result absent entry of the proposed Order.

Defendants' position also conflicts with caselaw confirming the power of courts to seal attorney billings where, as here, a party must submit briefing on the amount of attorneys' fees owed. *See, e.g., Highmark, Inc. v. Allcare Health Management Systems, Inc.*, 706 F. Supp. 2d 713, 739 (N.D. Tex. 2010) (authorizing plaintiff to file under seal invoices reflecting relevant attorney and expert fees), *vacated*, 732 F. Supp. 2d 653 (N.D. Tex. 2010) (vacating sanctions); *see also Hall-Williams v. Allstate Ins. Co.*, 2009 WL 224700 at *3 (E.D. La. 1/28/2009) (attorney's contemporaneous time sheets filed under seal), *vacated*, 360 Fed. Appx. 574 (5th Cir. 2010) (vacating attorney's fees award); *Paris v. Dallas Automotive*, 2004 WL 2100227 at *10 n.3 (N.D. Tex. 9/21/2004) (directing clerk of court to file under seal notes submitted by plaintiff's counsel to support attorneys' fees request); *cf. Infant Swimming Research, Inc. v. Faegre & Benson LLP*, 335 Fed. Appx. 707, 718 (10th Cir. 2009) (appellate court unable to review district court's evaluation of attorney fee bill because plaintiff "did not move to have the unredacted bill filed under seal or otherwise cause the unredacted bills to be included in the appendix.").

Finally, Plaintiffs' Motion should be granted because absent an order authorizing the filing of Jones Walker's and Venable's billings under seal, Plaintiffs will suffer substantial harm. If their Motion is denied, Plaintiffs will be forced to either (a) file severely redacted copies of the billings with all sensitive, confidential and/or privileged information redacted, or (b) file the documents without such redaction. Either option will harm Plaintiffs' interests because production of severely redacted billings would prevent the Court from fully and fairly evaluating

the evidence supporting Plaintiffs' Motion to Set the Amount of Attorneys' Fees and Costs Owed, while filing unredacted billings would publicly disclose sensitive, confidential and/or privileged information. The billings evidence, for example, the legal research and litigation strategies of Jones Walker and Venable. Given the ongoing nature of the instant litigation and the related *Ensco Offshore Co. v. Kenneth Lee Salazar, et al.*, No. 10-1941, the public disclosure of such information would be severely prejudicial to Plaintiffs. In contrast, Defendants will suffer *no* harm if the billings are filed under seal because they will be able to review the documents for purposes of the reasonableness and necessity of the attorneys' fees and costs; they would just not be able to publicly disseminate the documents.

As set forth above, an order directing that the billings of Jones Walker and Venable be filed under seal is necessary to protect sensitive, confidential and/or privileged information contained therein. Therefore, Plaintiffs request that the Court authorize them to file the billings of Jones Walker and Venable into the record under seal as a separate appendix to their attorneys' fees motion.

Respectfully submitted,

s/ Carl D. Rosenblum

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CERTIFICATE OF CONFERENCE

I hereby certify that counsel for Plaintiffs has conferred with counsel for Defendants and counsel for Defendant-Intervenors regarding Plaintiffs' Ex Parte Motion to File Appendix Under Seal. Defendants-Intervenors take no position as to the Motion. Defendants do not consent to the motion and request that their position be included in Plaintiffs' Motion. Plaintiffs have honored Defendants' request and quoted their position in the foregoing memorandum in support. Signed this 9th day of February, 2011.

s/ Carl D. Rosenblum

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been served upon all parties by email or by using the CM/ECF system which will send a Notice of Electronic filing to all counsel of record, this 9th day of February, 2011.

s/ Carl D. Rosenblum
