

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

HORNBECK OFFSHORE SERVICES, L.L.C.

Plaintiff

v.

KENNETH LEE “KEN” SALAZAR, in
his official capacity as Secretary, United
States Department of the Interior;
UNITED STATES DEPARTMENT OF
THE INTERIOR; ROBERT “BOB”
ABBEY, in his official capacity as Acting
Director, Minerals Management Service;
and MINERALS MANAGEMENT
SERVICES

Defendants

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

SECTION F

JUDGE FELDMAN

MAGISTRATE 2
MAGISTRATE WILKINSON

**DIAMOND OFFSHORE’S BRIEF IN SUPPORT OF
EMERGENCY MOTION TO INTERVENE**

MAY IT PLEASE THE COURT:

In support of Diamond Offshore Company and Diamond Offshore Management Company’s Emergency Motion to Intervene, they would respectfully show the Court the following:

A. Diamond Offshore is Entitled to Intervene in this Action as a Matter of Right Under Federal Rule of Civil Procedure 24(a).

1. Under the Federal Rules of Civil Procedure, upon “timely application anyone shall be permitted to intervene in an action . . . when the applicant claims an interest relating to the property or transaction which is the subject of the action and the

applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest." Fed. R. Civ. P. 24 (2005).

2. Courts generally construe Rule 24(a) broadly in favor of intervenors. *See U.S. v. City of Los Angeles, Cal.*, 288 F.3d 391, 397-98 (9th Cir. 2002). The applicant's interest in the litigation need not rise to the level of outright ownership interest in the disputed property nor even a primary role in the disputed transaction, so long as the outcome will significantly affect the claimant's interest. *Cascade Natural Gas Corp. v. El Paso Natural Gas Co.*, 386 U.S. 129, 133 (1970); *see also* *Trbovich v. UMW*, 404 U.S. 528, 538 n. 10 (1972) (stating that Federal Rule of Civil Procedure 24(a) "is satisfied if the applicant shows that representation of his interest 'may be' inadequate; and the burden of making that showing should be treated as minimal"). Diamond Offshore is directly affected by Defendants' actions in instituting the Moratorium and NTL-4, and the actions threatened by Secretary Salazar, as noted in Plaintiffs' Motion to Enforce Preliminary Injunction Order (Dkt. 69).

(i) *Diamond Offshore's Intervention is Timely.*

3. "Mere inconvenience is not in itself a sufficient reason to reject as untimely a motion to intervene as of right." *See McDonald v. E. J. Lavino Co.*, 430 F.2d 1065, 1074 (5th Cir. 1970). Federal Rule of Civil Procedure 24's timeliness requirement is meant to protect the parties to the lawsuit, not to punish an intervenor. *See Id.*

4. Plaintiffs' Hornbeck, *et al.* filed this matter less than 30 days ago. *See Dkt. 1*. Additionally, as further explained in the attached Proposed Complaint, Ex. 1,

and Proposed Brief in Support, Ex. 2, all injunctive relief sought by Diamond Offshore arises as a result of Defendants' arbitrary and capricious actions in issuing the Moratorium and NTL-4. Accordingly, Diamond Offshore's intervention will not create new issues in the lawsuit or cause undue delay.

(ii) Diamond Offshore has a Clear Interest in the Lawsuit.

5. An intervenor of right's interest in the case must be "direct, substantial, and legally protectable." *State of Tex. V. U.S. Dept. of Energy*, 754 F.2d 550, 551 (5th Cir. 1985).

6. Diamond Offshore's interest in this case is unquestionably "direct, substantial, and legally protectable." Diamond Offshore provides offshore drilling rigs to oil and gas exploration and production companies for use in deepwater drilling in the Gulf of Mexico. As such, the Moratorium, NTL-4 and the actions threatened by Secretary Salazar directly impact Diamond Offshore's rights and legal interests. See generally Ex. 1.

(iii) An Adverse Ruling Would Impair Diamond Offshore's Interests.

9. Diamond Offshore's interests in enjoining Defendants would be impaired by an adverse ruling from this Court. Diamond Offshore would suffer irreparable harm if the Moratorium, NTL-4, and the actions threatened by Secretary Salazar were not permanently enjoined.

(iv) Diamond Offshore's Interests are Not Adequately Protected.

10. "The requirement of the Rule is satisfied if the applicant shows that representation of his interest 'may be' inadequate; and the burden of making that

showing should be treated as minimal.” *Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538, n. 10 (1972) (citing 3B J. Moore, Federal Practice § 24.09-1 [4] (1969)).

11. It is presumed that the Plaintiffs in this case have generally similar interests to Diamond Offshore, but the distinctions between the rights and legal interests of Diamond Offshore, a drilling services company operating offshore drilling rigs directly affected by the Moratorium and NTL-4, and the current Plaintiffs, offshore service entities affected by the Moratorium and NTL-4 by virtue of their loss of business from offshore drilling rigs, require that Diamond Offshore seek to intervene. The impact and irreparable harm suffered by Diamond Offshore as a result of Defendants’ violations of OCSLA and the APA, which include claims related to the Moratorium and NTL-4 not asserted by the current Plaintiffs – i.e. a “taking” of Diamond Offshore’s property rights in violation of the 5th Amendment to the United States Constitution – merit intervention here.

B. The Court Should Permit Diamond Offshore to Intervene.

12. As demonstrated above, Diamond Offshore is entitled to intervene in this proceeding as a matter of right. But the Court may also permit Diamond Offshore to intervene in the Court’s discretion. Permissive intervention is also appropriate, as Diamond Offshore’s claims involve common issues of fact and law with the other parties’ claims and defenses, and the intervention will not unduly delay or prejudice the adjudication of the rights of the original parties. Fed. R. Civ. P. 24(b)(2) (2005). As shown above, and also in the attached Proposed Complaint in Intervention, Diamond

Offshore's claims involve common, and in some cases identical, issues of fact and law with the other parties' claims and defenses. Further, the intervention will not unduly delay or prejudice the rights of the original parties.

C. The Court Should Grant Diamond Offshore's Motion on an Emergency Basis to Enable Diamond to Protect Rights that Are Under Immediate Threat

13. Diamond Offshore asks the Court to grant its motion to intervene immediately and to permit Diamond Offshore to present its Application for Temporary Injunctive Relief. The Court has authority to hear such a motion on an emergency basis to protect a legitimate interest. *See Doe v. KPMG, L.L.P.*, 325 F. Supp. 2d 746, 749 (N.D. Tex. 2004) (granting IRS' emergency motion to intervene to prevent running of statute of limitations). Defendant Salazar has made clear that he intends to circumvent this Courts authority by issuing a new moratorium order that will have the same damaging effect as the moratorium order this Court just enjoined. Dkt. 69. If the usual time is allowed for consideration of Diamond Offshore's motion to intervene, it is likely that Defendant Salazar will issue the new moratorium in the interim and Diamond Offshore's application for Temporary Restraining Order, which is designed to protect the *status quo ante* and to preserve this Court's authority, will be moot. In that case, Diamond Offshore, as well as numerous other interests in the Gulf Coast region will be irreparably harmed as resumption of legal and responsible oil exploration and production activities in the Gulf will be unnecessarily delayed. For these reasons, Diamond Offshore urges the Court to consider and grant this Emergency Motion to Intervene immediately.

WHEREFORE, Diamond Offshore moves for leave to intervene as plaintiffs in this action in order to assert the claims set forth in its attached Proposed Complaint and brief in support. Diamond Offshore respectfully requests this Court grant its Motion to Intervene and permit it to file the attached documents. Diamond Offshore respectfully requests this Court also grant it any further relief to which the Court deems Diamond Offshore justly entitled.

Respectfully submitted,

BAYNHAM BEST, L.L.C.

s/ T. Patrick Baynham

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of June, 2010, I electronically filed the foregoing with the Clerk of Court by 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 and manual notice to the following counsel:

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s/ T. Patrick Baynham