

Case No. 10-30585

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

HORNBECK OFFSHORE SERVICES, LLC, et al.,

Plaintiff-Appellee,

v.

KENNETH LEE “KEN” SALAZAR, et al.,

Defendant-Appellants,

On Appeal from the U.S. District Court for the Eastern District of Louisiana, No.
10-CV-1663(F)(2)
(Hon. Martin Feldman)

***Amicus Curiae* Brief Filed on Behalf of the State of Louisiana, Through the
Louisiana Attorney General, James D. “Buddy” Caldwell In Opposition to the
U.S. Department of Justice’s Motion for Stay**

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INTEREST OF AMICUS CURIAE

The Attorney General of the State of Louisiana, in his capacity as chief legal officer of the State of Louisiana has a duty to protect the interests of the State and its citizens. Implicit in that duty is the obligation to protect the economic wellbeing of the State and its citizens, as well as the environment and natural resources of the State.

The State believes that these objectives can be achieved with a balanced approach to deepwater drilling that includes inspection, detection, and correction of any threats, without the necessity of shutting down an entire industry segment. The proposed stay order will effectively restore a moratorium on deepwater drilling in the Gulf of Mexico that will have a severe impact on the economy of the State of Louisiana in both the short term and long term, an effect completely ignored in Defendants' decision-making process to date.

The State files the instant Amicus Curiae Brief pursuant to FRAP 29(a).

ARGUMENT

As tragic as the current Deepwater Horizon disaster is, the fact is that no order or moratorium of the federal government will stop the oil presently gushing into the Gulf. As the court below observed, the federal government has not made a showing that a complete shutdown of deepwater drilling in the Gulf of Mexico for six months will prevent it in the future. In essence, the court below found that the

government's moratorium was arbitrary and capricious, and refused to issue a stay of his injunction.

As a practical matter, if deepwater drilling was to begin today, it would be months before any well reached producing sands miles beneath the surface of the seabed. Witness the relief wells being drilled to stop the Deepwater Horizon gusher. The first relief well began drilling almost two months ago and is presently reported to be at a depth of 10,968 feet below the seabed. When asked about the risk of an approaching tropical depression, Admiral Thad Allen said on Friday that there is no danger in abandoning the relief wells because they haven't made contact with the original well and aren't near any reservoirs of oil and gas.

The federal government's "Chicken Little" sense of urgency falls apart when viewed in the real world. If the injunction of this moratorium was left in place for two months, there would be absolutely no risk of another well blowout, as drilling would take longer than that to reach the oil.

The Public Interest:

Defendants pronounce in their motion that the "public interest ... demands a stay". One must wonder which "public interest" they are talking about. It is certainly not the State of Louisiana's interest.

The oil and gas industry is one of the leading industries in Louisiana in terms of economic impact, taxes paid, and people employed. Louisiana is the third

leading producer of natural gas and the fourth leading producer of crude oil in the country. When OCS production is included, Louisiana ranks second in natural gas and third in crude oil production.

The offshore oil and gas industry, operating in the Gulf of Mexico outside of the territorial boundaries of Louisiana, has a tremendous economic impact on the State, estimated to be approximately \$3 billion per year. This comes not only from salaries and wages of workers on the rigs, but also from the myriad of Louisiana companies doing business with the offshore industry, including contract employment companies, boat companies, tool rental companies, equipment servicing companies, and offshore food service companies, among many others. Because of the pervasiveness of the oil and gas industry in Louisiana, the entire economy is affected, from grocery stores and restaurants to banks and schools.

According to the Louisiana Mid-Continent Oil and Gas Association, the moratorium, if restored, would take 33 floating rigs out of commission for at least six months.¹ Each of those rigs employs Louisiana workers and is supplied and serviced by Louisiana companies.

The impact of the moratorium is neither speculative nor remote. Each day it is in place, millions of dollars of income are lost to the citizens of Louisiana, and by the State. A “short” stay, pending this appeal, would cost the State and its

¹ See Louisiana Mid-Continent Oil and Gas Assn. fact sheet, at <http://www.crt.state.la.us/GEST/FactsFigures.aspx>

citizens untold millions of dollars. Restoring the moratorium for even a few days would add additional strain to systems that are already overloaded by the ongoing crises, all while the federal government schedules more meetings.

The Requirements for the Issuance of a Stay have not been met:

Defendants suggest that the “Plaintiffs’ concerns appear limited to the next financial quarter.”² No matter the accuracy of that statement, the State is equally concerned with its very economic survival, that with each passing day grows more grim. Each day of this moratorium represents an unnecessary obstacle to the State’s survival and recovery during this critical time.

Nowhere in the Defendants’ documents or in any of the papers filed with the District Court, is there any mention, much less consideration, of the potential adverse economic impact this drilling moratorium may have on the State of Louisiana and its citizens. Recitation of regulations and platitudes in briefs, do not raise the quality of Defendants’ analysis beyond the level of pure speculation.

The Defendants certainly knew that Louisiana was the state most affected by this moratorium. They had a legal obligation under OCSLA to consult with the State. Yet they never contacted the State about the moratorium, nor did they seek any information about the potential negative effects of the moratorium on the State. In other words, **Defendants never considered the most relevant factor of all,**

² Defendants’ Motion for a Stay Pending Appeal, at pg. 19.

namely, how will this action affect the State of Louisiana and its citizens. Now they want to continue the agony.

The “public interest” which Defendants suggest “demand a stay” is the very public denied the opportunity to participate in the unilateral decisions forming the subject of the instant debate and the very public being deprived of the right to make an honest living.

Conclusion:

The State of Louisiana, more than any other public or private entity, has been most adversely affected by the Deepwater Horizon disaster. Should the Court extend the drilling moratorium for even a day longer, the State’s economic problems will only get worse, effectively turning an environmental disaster into an economic catastrophe for the State.

The State of Louisiana encourages Defendants to undertake a comprehensive analysis of what went wrong on the Deepwater Horizon rig in order to ensure the future safety of OCS activity. However, that can be done while relatively safe deepwater drilling continues under close supervision of the DOI.

For these reasons, the State of Louisiana requests that this Court deny Defendants’ request for the issuance of a stay order.

Respectfully submitted,

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June 26, 2010

CERTIFICATE OF SERVICE

On June 26, 2010 I served copies of the foregoing motion and attachment on the following counsel via electronic filing with the Court's CM/ECF system, and via U.S. mail and electronic mail:

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