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

HORNBECK OFFSHORE SERVICES, LLC, *et al.*,	)	
Plaintiffs,	)	2:10-cv-01663-MLCF-JCW
v.	)	SECTION F
SALAZAR, *et al.*,	)	JUDGE FELDMAN
Defendants.	)	MAGISTRATE WILKINSON
and	)	
DEFENDERS OF WILDLIFE, *et al.*,	)	
Defendants-Intervenors.	)	

DEFENDANT-INTERVENORS' MEMORANDUM IN SUPPORT OF THIER MOTION FOR RELIEF FROM PRELIMINARY INJUNCTION ORDER AND THEIR REQUEST THAT THE COURT INDICATE IT WOULD VACATE SUCH ORDER UPON REMAND

Defendant-Intervenors respectfully submit this memorandum in support of their motion for relief from this Court's June 22, 2010 Preliminary Injunction Order (Docs. 67 & 68).

MEMORANDUM IN SUPPORT

Federal Rule of Civil Procedure 60(b) authorizes this Court to relieve Defendant-Intervenors from an order on the basis of "newly discovered evidence" or for "any other reason

that justifies relief." The facts and law set forth in Defendant-Intervenors' Motion for Disqualification (filed July 2, 2010) show that both grounds are met in this case. Because that Motion shows that Judge Feldman must recuse under 28 U.S.C. § 455, this Court should vacate the Preliminary Injunction Order. *See Liljeberg v. Health Servs. Acquisition Corp*., 486 U.S. 847, 867-868 (1988). At this time, however, the Court's jurisdiction to provide affirmative relief is limited to indicating that it would vacate the order upon remand. Fed. R. Civ. P. 62.1(a)(3); *Lopez Dominguez v. Gulf Coast Marine & Assocs., Inc.*, — F.3d. —, 2010 WL 2139425, at * 5 (5th Cir., May 28, 2010).

After the Court issued the Preliminary Injunction Order on June 22, 2010, Defendant-Intervenors became aware of a 2008 Financial Disclosure Report which disclosed that Judge Feldman then held stock in several oil and offshore energy companies. Defendant-Intervenors promptly moved on June 23, 2010 for a disclosure of current interests. (Doc. No. 73) The Court granted that Motion on June 24, 2010 (Doc. No. 82), providing that "the Court's most current Financial Disclosure Report will be released by the Administrative Office of the United States Courts as soon as their security protocol on the release of federal judges' Financial Disclosure Reports has been satisfied." Upon analyzing the Court's current disclosure, the Defendant-Intervenors promptly filed their Motion for Disqualification on July 2, 2010, alleging a violation of 28 U.S.C. § 455.

The U.S. Supreme Court has explained that to determine whether to vacate a judgment after violation of § 455(a), "it is appropriate to consider the risk of injustice to the parties in the particular case, the risk that the denial of relief will produce injustice in other cases, and the risk of undermining the public's confidence in the judicial process." *Liljeberg*, 486 U.S. at 864. Courts "must continuously bear in mind that to perform [their] high function in the best way

justice must satisfy the appearance of justice." *Id*. (internal quotation marks and citations omitted).

In the *Liljeberg* case, the Court accepted that the judge had made an honest mistake. *Id.* Nonetheless, the case presented facts "that might reasonably cause an objective observer to question [the judge's] impartiality." *Id*. at 865. Here, the facts set forth in the Defendant-Intervenors' Motion for Disqualification (incorporated by reference) similarly could reasonably cause an objective observer to question the Court's impartiality. Especially in light of the extensive public interest in the instant case, this Court should not allow such a question of impartiality to persist. Accordingly, the Preliminary Injunction order must be vacated.

The Defendant-Intervenors note that it would not be appropriate for this Court to vacate the order while the Fifth Circuit has jurisdiction of the Preliminary Injunction Order. But this Court has authority to "indicate[ ] that it will grant the motion" and "the appellant [may] then make a motion in the Court of Appeals for a remand of the case in order that the district court may grant such motion." *Lopez Dominguez*, — F.3d. —, 2010 WL 2139425, at * 5; *Ferrell v. Trailmobile, Inc.*, 223 F.2d 697, 699 (5th Cir. 1955) ("[I]f [the district court] indicates that it will grant the motion, the appellant should then make a motion in the Court of Appeals for a remand of the case in order that the district court may grant such motion."); *see also* Fed. R. Civ. P. 62.1(a)(3).

CONCLUSION

For all the foregoing reasons, this Court should indicate that it would GRANT the instant motion and vacate the Preliminary Injunction order upon remand.

Respectfully submitted this 2nd day of July, 2010,

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CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2010, I caused as copy of the foregoing to be served through the Court's CM/ECF system to all parties.

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Attorney