

CLIENT ALERT

CITIZEN SUIT WATCH: Court Dismisses a Master Complaint in the Deepwater Horizon Multi-District Litigation

July 14, 2011

In mid-June, 2011, a federal district judge dismissed one of several master complaints in the multi-district litigation styled *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, No. MDL 2179. The dismissed master complaint alleged a total of ten claims under several federal environmental statutes, General Maritime Law and state law. The Court dismissed all eight claims brought under the citizen suit provisions of the Clean Water Act, the Comprehensive Environmental Response, Compensation, and Liability Act, the Emergency Planning and Community Right-to-Know Act, and the Endangered Species Act for lack of standing, mootness, and failure to allege ongoing violations as required by each of these statutes. In dismissing the claims on these three grounds, the Court repeatedly emphasized that there is no ongoing release of oil resulting from the Deepwater Horizon incident and that there is "no viable offshore facility from which any release could possibly occur."

In re Oil Spill by the Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010, No. MDL 2179, is a multi-district litigation consisting of hundreds of cases involving over 100,000 individual claimants. These cases arose out of the Deepwater Horizon explosion and the resulting spill from the Macondo well in the Gulf of Mexico. To manage this complex litigation, the federal district court in the Eastern District of Louisiana established several "pleading bundles" for the filing of master complaints. In an opinion dated June 16, 2011, the Court dismissed the master complaint for Pleading Bundle D1 for lack of standing, mootness, and lack of subject matter jurisdiction.

Overview of the D1 Master Complaint

The Pleading Bundle D1 master complaint, brought by various individual and organizational plaintiffs, alleged ten claims for injunctive relief in all, eight of which were brought pursuant to the citizen suit provisions of the Clean Water Act ("CWA"), the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), the Emergency Planning and Community Right-to-Know Act ("EPCRA"), and the Endangered Species Act ("ESA"). Specifically, the master complaint alleged five claims under the CWA's citizen suit provision for violations of several sections of the Act. The plaintiffs alleged unlawful discharges of pollutants under Section 301,¹ unlawful discharges of oil and hazardous substances under Section 311,² unlawful discharges of toxic pollutants under Section 307,³ and unlawful discharges of pollutants in violation of national standards of performance for new sources under Section 306.⁴ The plaintiffs also sought civil penalties under Section 311(b)(7)(D),⁵ asserting that the defendants' actions constituted gross negligence or willful misconduct. In addition, the plaintiffs alleged violations of CERCLA Section 103⁶ and EPCRA Section 304⁷ for the release of hazardous substances into the Gulf of Mexico in excess of the applicable reportable quantities under these statutes and the failure to report, or adequately report, such releases. The plaintiffs also alleged unlawful takings under ESA Section 9⁸ based on the rig explosion and resulting spill. The plaintiffs' remaining two claims in the master complaint arose under General Maritime Law and/or state law.

Summary of the Dismissal Order

The Court dismissed the D1 master complaint in its entirety on June 16, 2011.⁹ First, the Court reasoned that the plaintiffs did not have standing to bring their CWA, CERCLA and ESA claims because the plaintiffs could not show that their alleged injuries would be redressed by a favorable decision on the merits of their claims. After finding that "there is no ongoing release from the well" and that "there is no viable offshore facility from which any release could possibly occur," the Court concluded that an "injunction at this stage would be useless." The Court further found that because the plaintiffs' claimed injury is already being redressed by ongoing remediation efforts, that injury cannot be redressed through a citizen suit. Notably, the plaintiffs did not assert in their master complaint that the ongoing federal and state remediation efforts were deficient in any way.

Last, the Court ruled that an injury cannot be redressed for standing purposes "when a claim depends on the actions of actors not before the court." Because the remediation activities in the Gulf of Mexico are controlled by several entities that are not parties to the lawsuit, *e.g.*, the Coast Guard and other federal agencies, the Court found that the plaintiffs simply could not show that a favorable ruling would actually resolve any potential deficiency in the ongoing remediation efforts. As for the EPCRA claim, the Court explained that the plaintiffs' requested injunctive relief under that statute would not redress the claimed injury because there is no ongoing release of oil and because data regarding the past spill and ongoing cleanup are readily accessible to the plaintiffs.

In addition to dismissing the master complaint for lack of standing, the Court found that the claims asserted in the master complaint are moot. According to the Court, the plaintiffs had to demonstrate an ongoing violation of one or more of the statutes upon which their claims are based in order to obtain the requested injunctive relief. Again emphasizing that there is no ongoing discharge of oil, the Court held that "no future-oriented injunction can provide any meaningful relief for Plaintiffs in terms of stopping discharges that already concluded in mid-July 2010."

Finally, the Court dismissed the claims in the master complaint for lack of subject matter jurisdiction upon finding that the plaintiffs failed to show any ongoing violations – or a reasonable likelihood of recurrence – as required by the citizen suit provisions of the CWA, CERCLA, EPCRA, and the ESA. Although the plaintiffs asserted ongoing violations in alleging claims under each of these statutes in their master complaint, the Court declared that the plaintiffs' "mere assertion of possible recurrence is insufficient" to confer subject matter jurisdiction. Once again, the Court based its holding on: (i) the lack of a facility from which an unlawful release could occur; (ii) the fact that the well at issue already had been subject to multiple closures; and (iii) its determination that there is no reasonable possibility of future releases from the well. Accordingly, the Court concluded that it had to dismiss all of the CWA, CERCLA, EPCRA, and ESA claims in the master complaint.

¹ 33 U.S.C. § 1311.

² 33 U.S.C. § 1321.

³ 33 U.S.C. § 1317.

⁴ 33 U.S.C. § 1316.

⁵ 33 U.S.C. § 1321(b)(7)(D).

⁶ 42 U.S.C. § 9603.

⁷ 42 U.S.C. § 11004.

⁸ 16 U.S.C. § 1538.

⁹ The Court clarified that it was deferring its ruling on the defendants' motion to dismiss the General Maritime Law and/or state law claims in the master complaint for Pleading Bundle D1 until it decides several pending motions to dismiss the master complaint for Pleading Bundle B1.

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