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Streamlining Oil Spill Litigation in Federal Court

S. Beth Windham, J.D.1

BP Exploration and Production Inc. (“BP”) moved to centralize 70 lawsuits filed in federal court against them and others arising out of the April 20, 2010 explosion and fire onboard Transocean’s Deepwater Horizon drilling rig and the resulting oil spill before one Multidistrict Litigation Court.² The cases filed against BP range from claims for personal injuries, to claims for injury to business or commercial interests, to claims for injury to real or personal property and have been filed in more than seven jurisdictions including the Western District of Louisiana, the Eastern District of Louisiana, the Northern District of Florida, the Southern District of Mississippi and the Southern District of Alabama. According to BP, at least 59 of these oil spill cases are styled as class actions.³

The Multidistrict Litigation Panel is empowered by federal statutory authority to transfer civil actions involving one or more common questions of fact pending in different districts for coordinated or consolidated pretrial proceedings.⁴ Since its inception in 1968, the Panel has centralized 323,258 civil actions.⁵ After making the determination that there are common questions of fact in civil actions pending in different districts, the Panel selects which judge or judges and court will conduct the proceedings.⁶ Prior to transferring any actions, the Panel must first determine that the transfers will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions.⁷ The Panel can conduct proceedings for the transfer of an action upon its own initiative or by motion of a party in any action in which transfer may be appropriate.⁸ Notice of hearings on whether the transfer is to be made is given to the parties in all actions in which transfers are contemplated. At the hearing, material evidence may be offered by any party to an action that would be affected by the proceeding, and the Panel’s order of transfer is supported by findings of fact and conclusions of law based upon the record at the hearing.⁹

Transfer of the actions has the effect of placing them before a single judge whose role is to ensure that discovery on any non-common issues proceed at the same time as discovery on common issues and to conduct pretrial proceedings in a streamlined manner.¹⁰ Centralization eliminates duplicate discovery, prevents inconsistent pretrial rulings and conserves the resources of the parties, their counsel and the judiciary.¹¹ Once the pretrial proceedings are completed, each action is remanded to the district court from which it was transferred, unless it was previously terminated.¹²

BP requested that the Panel transfer the oil spill cases filed against it and others to the Southern District of Texas, Houston Division, with Judge Lynn N. Hughes presiding. According to BP, Judge Hughes was assigned the first oil spill case to be filed in the Southern District of Texas, Houston Division and is experienced in managing multidistrict litigation. The principle places of business of BP and Defendants Transocean, Halliburton Energy Services, Inc. and Cameron International Corporation are also within that district.¹³ Interestingly, Plaintiff Nova Affiliated, S.A.

has likewise moved for centralization of certain oil spill actions in the U.S. District Court for the Southern District of Texas, while some plaintiffs have moved for centralization of certain oil spill actions in the U.S. District Court for the Eastern District of Louisiana.¹⁴

Situating the oil spill cases in the Southern District of Texas could present a challenge to all parties seeking to appeal issues in the pretrial proceedings. On May 28, 2010, the U.S. Court of Appeals for the Fifth Circuit, the appellate court for the Southern District of Texas, held that it was

Appeals for the Fifth Circuit, the appellate court for the Southern District of Texas, held that it was unable to hear an appeal of a dismissal by the U.S. District Court for the Southern District of Mississippi in a class action by owners of lands and property along the Mississippi Gulf Coast. The action was against oil companies, including BP, and energy companies and the plaintiffs were alleging the companies' operations caused emission of greenhouse gasses that contributed to global warming and added to the ferocity of a hurricane that destroyed their property. Specifically, the Fifth Circuit held that it did not have a quorum to decide the case, after recusal of one of the nine judges, who had properly vacated the panel opinion and judgment.¹⁵ [For more information on this case, see *Fifth Circuit Dismisses Climate Change Lawsuit* on page 14]. It is unknown whether the same recusal would occur regarding cases in the oil spill litigation, but if so, the Fifth Circuit would be unable to address any appeals coming out of the Southern District of Texas.

While the situs may be in dispute, the Panel will likely consolidate the federal oil spill actions to streamline the proceedings, which will presumably result in a quicker and more economic resolution to the federal claims. The consolidated proceedings will also affect some cases filed in state courts where there is diversity of citizenship between the parties, and cases with certain types of claims, such as those involving a federal question, which may lead to removal to federal court, and thus transfer to the consolidated proceedings.¹⁶

Endnotes

1. Associate at the law firm of Aultman, Tyner & Ruffin, Ltd., in Hattiesburg, Mississippi.
2. BP's Motion to Transfer, In RE: Deepwater Horizon Incident Litg., MDL Docket No. ____.
3. BP's Motion for Stay of Proceedings Pending Transfer, Parker v. Transocean, No. 1:10CV174-HSO-JMR (D. Miss. May 7, 2010).
4. 28 U.S.C. §1407(a).
5. Judicial Panel on Multidistrict Litigation, Annual Statistics of the U.S. Judicial Panel on Multidistrict Litigation (2009).
6. Judicial Panel on Multidistrict Litigation, An Introduction to the Judicial Panel on Multidistrict Litigation.
7. 28 U.S.C. §1407(a).
8. *Id.* §1407 (c).
9. *Id.*
10. In Re Vonage Marketing and Sales Practices, Litigation, 505 F. Supp. 2d 1375 (J.P.M.L. 2007).
11. In re Imagitas, Inc., Drivers' Privacy Protection Act Litigation, 486 F. Supp. 2d 1371, 1372 (J.P.M.L. 2007).
12. 28 U.S.C. §1407(a).
13. Motion to Transfer, *supra* note 2, at 2.
14. U.S. Judicial Panel on Multidistrict Litigation, Notice of Hearing Session, June 23, 2010.
15. Comer v. Murphy Oil USA, ___F.3d ___, 2010 WL 2136658 (5th Cir. May 28, 2010).
16. 28 U.S.C. §§1332 and 1331.

Recommended citation: S. Beth Windham, *Streamlining Oil Spill Litigation in Federal Court*, 30:2 WATER LOG 5 (2010).

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