

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE:)
OIL SPILL BY THE OIL RIG)
“DEEPWATER HORIZON” IN THE)
GULF OF MEXICO ON APRIL 20,)
2010)
_____)

MDL Docket No. 2179

**SUPPLEMENTAL INFORMATION TO INTERESTED PARTY RESPONSE OF
PLAINTIFFS JESCO CONSTRUCTION CORPORATION OF DELAWARE, ET AL. TO
BP AMERICA INC.’S MOTION AND SUPPORTING BRIEF TO TRANSFER
RELATED ACTIONS TO EASTERN DISTRICT OF LOUISIANA
FOR INCLUSION IN MDL PROCEEDINGS**

Plaintiff JESCO Construction Corporation of Delaware (hereinafter “JESCO”), represented by Brent Coon & Associates, in conjunction with Plaintiffs Bridget Sprinkle, David Secor, Joseph Cain, Sean Johnson, Tommy G. Cain, William R. Sprinkle, William Clay McClain, Somvang Pakhamma, Kimberly Johnson, and Vannalinh Pakhamma, represented by Taylor • Martino, P.C. (hereinafter “VoO Plaintiffs”)¹, respectfully submit this Supplemental Information to its Interested Party Response to BP America Inc.’s Motion and Supporting Brief to Transfer Related Actions to Eastern District of Louisiana for Inclusion in MDL Proceedings, and in support of which would show the Panel the following:

ARGUMENT

1. In its Interested Party Response, JESCO and the VoO Plaintiffs argued, “Judge Barbier’s **intradistrict transfer decisions** should not unduly influence the JPML’s decision whether to transfer the JESCO and the other VoO Plaintiffs’ claims into MDL 2179, because the question of

¹ Please see **Exhibit 1** of ECF Doc. #473 for complete party names and case styles.

OCSLA jurisdiction over contractual disputes from oil spill cleanup operations has not been adequately presented to and ruled on by the Courts.” ECF Doc. #473, para. 5. The only new case that the BP Defendants cite to in their Reply is C.A. No. 2:11-cv-00054, *DiStefano et al. v. BP Am. Prod. Co. et al.*, In the District Court of the Eastern District of Louisiana, which is yet another intradistrict transfer decision.

A. *DiStefano* Plaintiffs Consented to Consolidation by Filing in the Eastern District of Louisiana

2. The *DiStefano* plaintiffs have not only filed their case in federal court as an original filing and thereby submitted to federal jurisdiction, but they have also originally filed that case in the Eastern District of Louisiana. This original filing allowed Judge Barbier to consolidate their case with MDL 2179 at his sole discretion, in accordance with Federal Rule of Civil Procedure 42(a). *See also Frazier v. Garrison ISD*, 980 F.2d 1514, 1531 (5th Cir. 1993) (standard of review for district court’s consolidation decision is abuse of discretion). Additionally, Judge Barbier gave notice of his intent to transfer any oil spill cases filed in the Eastern District of Louisiana into MDL 2179 in Pretrial Order #1. Consequently, the *DiStefano* plaintiffs were not given the opportunity to address the propriety of consolidation of their breach-of-contract claims into MDL 2179.

3. It also should be noted from the *DiStefano* complaint that these plaintiffs chose federal court as their preferred forum to litigate their admiralty and maritime claim, as is their right pursuant to the Savings to Suitors Clause. The same is true of all of the Vessels of Opportunity plaintiffs who chose to file their case in the Eastern District of Louisiana, and whose cases Judge Barbier has unilaterally consolidated into MDL 2179: these plaintiffs voluntarily chose not only a federal forum, but the Eastern District of Louisiana as the court of original jurisdiction.

4. JESCO and the VoO Plaintiffs did *not* file their claims in federal court. JESCO filed under the laws of the state of Texas, and the VoO Plaintiffs filed under general admiralty and maritime law, saving to themselves all remedies available through the state law of Alabama pursuant to the Savings to Suitors Clause, which allows admiralty and maritime claimants to pursue “all other remedies to which they are otherwise entitled.” 28 U.S.C. § 1333(1). The jurisdictional issues presented separately by JESCO’s state-law claim and the VoO plaintiffs’ maritime claim, both for breach of contract and related actions, have not adequately been addressed by the federal district courts.²

B. Transfer to MDL 2179 Will Not Promote the Purposes of Section 1407

5. The BP Defendants assert that JESCO and the VoO Plaintiffs’ prior arguments against transfer based on the goals of 28 U.S.C. § 1407 are “unavailing,” but the BP Defendants agree with these Plaintiffs’ assertion on one crucial fact: the **only** common question of fact between the out-of-district VoO claims and the MDL 2179 claims is that, in April of 2010, an oil spill happened.

6. “Cases should not be consolidated if it would result in increased delay and other unnecessary burdens on parties, **such as having to participate in discovery irrelevant to their cases.**” Manual for Complex Litigation, Fourth, § 20.11. The Plaintiffs reiterate that the JESCO and VoO cases require significantly different discovery than the personal injury and economic loss claims brought by the MDL 2179 plaintiffs. While MDL 2179 seeks to apportion liability for the spill itself among numerous corporate defendants, JESCO and the VoO Plaintiffs bring suit against the BP Defendants only. The MDL 2179 plaintiffs seek damages resulting from the

² The BP Defendants point to Cause No. 2:10-cv-01864 (*Sevin*) (property owner’s claim for breach of rental agreement, consolidated in MDL 2179) as further evidence that the Vessels of Opportunity cases should be consolidated. However, because the contract was to be performed on land instead of in vessels on open water, it does not raise the same jurisdictional concerns under the Fifth Circuit’s “focus-of-the-contract test,” enumerated in *Grand Isle Shipyard, Inc. v. Seacor Marine, LLC*, 589 F.3d 778, 781 (5th Cir. 2009).

spill itself, whereas JESCO and the VoO Plaintiffs seek damages for the BP Defendants' breach of their post-spill contractual obligations. These Plaintiffs have no stake or interest in either the Limitation of Liability or "bellwether" economic loss claims currently set for trial in MDL 2179 in the year 2012. Instead, JESCO and the VoO Plaintiffs' discovery will focus on the BP Defendants' post-spill actions in contract formation, execution, and breach. The practical effect of transfer of these cases to MDL 2179 will be unreasonable delay for Plaintiffs in conducting the necessary discovery to prove up their unique claims, and unnecessary participation by Plaintiffs in discovery which has nothing to do with their cases.

CONCLUSION

7. For the foregoing reasons, Plaintiff JESCO Construction Corporation of Delaware and the VoO Plaintiffs respectfully request that the Panel decline to transfer these cases into MDL 2179.

Respectfully submitted,

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Certificate of Service

I certify that a copy of the foregoing has been served on all counsel of record who have consented to electronic notification via the CM/ECF system, pursuant to Rule 4.1 of the Rules of Procedure of the United States Judicial Panel on Multidistrict Litigation.

/s/ Jessica W. Juren

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