

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV15-4113 PSG (JEMx)	Date	February 25, 2016
Title	Stace Cheverez v. Plains All American Pipeline, LP		

Present: The Honorable	Philip S. Gutierrez, United States District Judge		
Wendy Hernandez	Not Reported		
Deputy Clerk	Court Reporter		
Attorneys Present for Plaintiff(s):	Attorneys Present for Defendant(s):		
Not Present	Not Present		

Proceedings (In Chambers): Order DENYING Defendants' Motion to Stay

Before the Court is Defendant Plains All American Pipeline, L.P. and Plains Pipeline, L.P.'s (together, "Defendants") motion to stay. Dkt. # 51. The Court finds this matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78(b); L.R. 7-15. After considering the supporting, opposing and reply papers, the Court DENIES the motion.

I. Background

On May 19, 2015 a pipeline owned by Defendants ("Line 901") leaked in Santa Barbara County, California, releasing 2,934 barrels of crude oil ("Line 901 spill"). *Mot.* 3. Pursuant to a statutory obligation to set up a claims process for victims of the spill, Defendants established a telephone hotline to allow affected individuals and businesses to present claims for damages and costs directly to Defendants. *Id.* at 6. Defendants advertised the availability of the statutory claims process through local print publications, electronic newsletters and online. *Id.*

Defendants retained Worley Catastrophe Response ("Worley"), an experienced claims management and administration company, to administer the claims process. *Id.* Upon submission, each claim is assigned to a Worley claims representative, who investigates and evaluates the claim. *Id.* at 7. The claims representative contacts the claimant, schedules a convenient time to discuss the claim, and requests documentation to substantiate the claim. *Id.* The claims representative then makes a determination on how to proceed. *Id.* If the claim is approved, Defendants pay the claimant and then have the claimant execute a settlement agreement and release. *Id.* The claims process may take anywhere from one week to several months, depending on the claim. *Id.*

At the time Defendants filed their motion, they had received a total of 411 claims and resolved 175 of those claims. *Id.* The amount Defendants paid those claimants depended on the financial documentation claimants included in support of their claim. *Reply* 11, n. 7. In addition

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to the 175 resolved claims, Defendants denied 61 claims. *Id.* Defendants are still in the process of evaluating the remaining 175 claims, and allege that they continue to receive claims. *Id.* at 7-8.

Plaintiffs filed a consolidated amended class action complaint on December 15, 2015 asserting various claims under California statutory and common law on behalf of all persons and businesses who suffered economic losses or damages to their occupations, businesses, and/or property as a result of the Line 901 spill. *See* Dkt. # 50. In addition to damages, Plaintiffs seek various forms of injunctive relief to prevent ongoing and future harm. *See id.* Defendants move to stay the case for six months while they continue to administer the statutory claims process. *See* Dkt. # 51.

II. Legal Standard

A district court may exercise its discretion to stay a proceeding as part of its inherent power “to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936). In the Ninth Circuit, courts determining whether to stay a proceeding must weigh the competing interests affected by granting or refusing the stay. *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005) (quoting *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962)). Those interests include: “the possible damage which may result from the granting of a stay, the hardship or inequity which a party may suffer in being required to go forward, and the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay.” *Id.* If a court finds that “there is even a fair possibility that the stay will work damage” to the nonmoving party, “the stay may be inappropriate absent a showing by the moving party of ‘hardship or inequity.’” *Dependable Highway Express, Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007) (quoting *Landis*, 299 U.S. at 255). “The proponent of a stay bears the burden of establishing its need.” *Clinton v. Jones*, 520 U.S. 681, 709 (1997) (citing *Landis*, 299 U.S. at 255).

III. Discussion

Defendants ask the Court to stay the case for six months while they process claims submitted pursuant to the Oil Pollution Act of 1990, 33 U.S.C. § 2701-2720 (“OPA”).

A. OPA

Congress passed OPA following the Exxon Valdez oil spill in 1989. *In re Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico, on April 20, 2010*, 808 F.Supp.2d 943, 959

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(E.D. La. 2011). OPA was intended to provide a “prompt, federally-coordinated response to oil spills in navigable waters of the United States and to compensate innocent victims.” *Gaitlin Oil Co. v. United States*, 169 F.3d 207, 209 (4th Cir. 1999). Under OPA, the responsible party is liable for removal costs and damages that result from the release of oil. *See* 33 U.S.C. § 2702(a). The responsible party must “establish a procedure for the payment or settlement of claims for interim, short-term damages,” but OPA makes explicit that such payments “shall not preclude recovery by the claimant for damages not reflected in the paid or settled partial claim.” 33 U.S.C. § 2705(a).

OPA provides that with a few exceptions, claims for removal costs or damages must be presented first to the responsible party (“presentment requirement”). 33 U.S.C. § 2713(a). If the responsible party denies liability or the claim is not settled within 90 days, the claimant may either commence an action in court, or else may present the claim to an Oil Spill Liability Trust Fund (“Federal Fund”).¹ 33 U.S.C. § 2713(c). The presentment requirement only applies to claims arising under OPA. *Russo v. M/T Dubai Star*, No. C09-05158 SI, 2010 WL 1753187, at *3 (collecting cases). Moreover, OPA explicitly preserves state law remedies for violations of law relating to the discharge (or threat of discharge) of oil. *See* 33 U.S.C. § 2718; *see also United States v. Locke*, 529 U.S. 89, 105 (2000) (“The evident purpose of the saving clauses is to preserve state laws which...establish liability rules and financial requirements relating to oil spills.”).

B. Stay Factors

As stated above, in deciding whether to grant the stay, the Court must consider (1) the possible damage resulting from the stay; (2) the hardship Defendants will suffer if they are required to go forward; and (3) the orderly course of justice. *Lockyer*, 398 F.3d at 1110. Because Defendants are proponents of the stay, they bear the burden of establishing that it is necessary. *See Clinton*, 520 U.S. at 709. Defendants argue that each consideration weighs in favor of granting the stay.

i. The Orderly Course of Justice

First, Defendants argue that a stay would promote judicial economy. *Mot.* 9. Defendants note that as a general legal principle, plaintiffs are not entitled to double recovery for the same harm. *Id.* at 10. Defendants argue that because “any putative class member compensated through the statutory claims process cannot recover for the same harm in this class action litigation,” allowing the statutory claims process to run its course “could negate the need for this

¹ The Federal Fund consists of petroleum tax receipts and funds recovered by the federal government for damage to natural resources. *See* 26 U.S.C. § 9509.

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class action litigation or, at the very least, significantly reduce its scope, size and burden on this Court.” *Id.* at 10.

Defendants may be correct that plaintiffs who have already recovered costs and damages through the statutory claims process cannot recover for the *same* harm through litigation. Defendants do not explain why plaintiffs who have recovered *some* of their costs and damages through the claims process cannot and will not participate in the class action litigation, with the Court offsetting the amount of recovery by the amount already claimed. *See In re Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico, on April 20, 2010*, 910 F.Supp.2d 891, 950 (E.D. La. Dec. 21, 2012) (concluding that a “fair and reasonable method to avoid double compensation” was to deduct claim payments from payments received through the court-supervised settlement process).

Instead, Defendants seem to suggest that all – or at least a significant amount – of putative class members who have submitted statutory claims will be excluded from the class action litigation, significantly diminishing the size of the class. OPA’s language suggests that Congress expected otherwise. For example, the requirement that responsible parties establish a claims process merely “for the payment or settlement of claims for interim, short-term damages” suggests that claimants will have damages *beyond* those which are interim and short-term, and that those damages will be resolved through alternative means. *See* 33 U.S.C. § 2705(a). In fact, OPA explicitly contemplates that recovery through the claims process will not represent a claimant’s full recovery. *See id.* (payments recovered from the responsible party during the claims process “shall not preclude recovery by the claimant for damages not reflected in the paid or settled partial claim”).

Moreover, Defendants provide no basis for assuming that a significant amount of putative class members will fully resolve their claims through the statutory process so as to render their participation in the litigation unnecessary. Although Defendants assert that they have resolved 175 of the 411 claims submitted thus far, Defendants do not allege that those resolutions represent the entire amount of those claimants’ potential recovery. To the contrary, Defendants indicate that for payments which have already been distributed, Defendants based the payment amounts solely on the financial support documentation which claimants had available to them at the time they filed their claims. *See Reply* 11, n. 7. Because Plaintiffs allege that the damage is ongoing, the Court expects that many claimants will seek relief beyond the damages they were able to prove at the time they filed their statutory claims. It therefore seems likely that even claimants who have already been paid through the claims process will participate in the class litigation. That participation is even more likely for the 61 claimants whose claims were denied. In short, Defendants have done little to convince the Court that allowing the statutory claims

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process to run its course will “negate the need for this class action litigation” or “significantly reduce its scope [or] size[.]” *Mot.* 10.

Defendants briefly allude to one fact which may demonstrate why they believe the claims process will significantly diminish the size of the litigation. Without providing any details, Defendants admit that once a claim is approved, Defendants pay the claimant and then have the claimant execute a settlement agreement and release. *Id.* Referring to the release attached to their Rule 23 motion (Dkt. # 52-2, Ex. 6), Plaintiffs assert that Defendants are requiring claimants to release *all* claims related to the Line 901 spill before rendering payment. *Opp.* 13. If Plaintiff’s allegations are correct, Defendants’ arguments regarding judicial economy are more cogent because such claimants may well be excluded from participating in this litigation. To the extent that is the case, however, it heightens the risk of harm to unrepresented putative class members who are forced to release their claims without fully comprehending the scope of their rights to recovery or the potential effect of signing a release. *See In re Oil Spill by Oil Rig Deepwater Horizon*, 910 F. Supp. at 928-929 (noting that the claims process lacks the protections of a settlement process administered under court supervision). If Defendants are correct that continuing the claims process will diminish the size of the class, they have also demonstrated an increased risk of harm to putative class members. Moreover, even if Defendants are correct that the class size will be lessened, they have not addressed why that would significantly reduce the Court’s burden. In sum, Defendants have done little to convince the Court that a stay would substantially benefit the interests of judicial economy.

ii. Hardship to Defendants

Next, Defendants offer a cursory and unconvincing explanation for why they will suffer hardship if forced to proceed with the litigation. *See Mot.* 12. Defendants argue that they will be prejudiced in the absence of a stay “because they will be forced to spend significant time and money on discovery and class certification issues that may have no relevance to these proceedings if certain claims are resolved through OPA.” *Id.* For the reasons just stated, the Court is uncertain whether continuing the OPA claims process will significantly decrease Defendants’ burden with respect to the current litigation. Regardless, the Ninth Circuit has made clear that “being required to defend a suit, without more, does not constitute a ‘clear case of hardship or inequity’ within the meaning of *Landis*.” *Lockyer*, 398 F.3d at 1112; *see also California Trout, Inc. v. United States Bureau of Reclamation*, 115 F.Supp.3d 1102, 1117 (C.D. Cal. 2015) (“Diverting staff attention from other activities does not sufficiently satisfy the requirement or hardship or inequity.”).

iii. Possible Damage to Plaintiffs

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Finally, Defendants argue not only that Plaintiffs will not be damaged by a stay, but that Plaintiffs may be damaged if a stay is *not* granted. *Mot.* 13.

Plaintiffs point out that the putative class, comprised of hundreds of businesses and individuals living or working near the coastline, “have suffered palpable and continuing economic harm.” *Opp.* 11. Plaintiffs assert not only that many putative class members are unemployed as a result of the Line 901 spill, but that many now risk going out of business in the future. *Id.* Plaintiffs argue that “a delay cannot be justified in light of the...continuing lack of full compensation to the putative class members.” *Opp.* 11.

Defendants respond that a “delay in recovering monetary damages, if any, is not the type of harm sufficient to preclude the requested stay.” *Reply* 9. However, *Lockyer*, which Defendants cite in support of their proposition, demonstrates that granting a stay in this case *would* risk damaging putative class members. There, the Ninth Circuit reflected on cases where it had granted a stay and noted that plaintiffs in those cases were unlikely to be prejudiced by delayed compensation because they sought only damages for past harm. *Id.* In contrast, a stay threatened to prejudice the *Lockyer* plaintiffs because in addition to damages for past harm, the plaintiffs sought injunctive relief against ongoing and future harm. *Id.* Because Defendants had not “made out a clear case of hardship or inequity,” the balance of hardships between the parties militated against a stay. *Id.* (“If there is even a fair possibility that the stay...will work damage to someone else,’ the party seeking the stay ‘must make out a clear case of hardship or inequity.’”) (quoting *Landis*, 299 U.S. at 255).

That same logic applies here, where, in addition to past damages, Plaintiffs seek various forms of injunctive relief to remedy ongoing harm and to prevent future harm from occurring.² *Compl.* at 60-61. The *Lockyer* court’s reasoning also explains why *Fitzer v. American Institute of Baking, Inc.*, No. CV 209-169, 2010 WL 1955974 (S.D. Ga. May 13, 2010), on which Defendants rely heavily, is similarly unpersuasive.

² Plaintiffs seek an order enjoining Defendants from operating a pipeline in Santa Barbara County without adequate safety and response measures and ongoing monitoring. Plaintiffs also request other appropriate injunctive relief, including public injunctive relief. For example, Plaintiffs request an order requiring Defendants to restore fisheries impacted by the spill and to repair reputational damage done to Santa Barbara’s seafood industry, an order requiring Defendant to restore property values impacted by the spill and to repair reputational damage done to oceanfront and beachfront real property along California’s Central Coast, and an order requiring Defendants to operate their pipelines in such a way to ensure no further spills and resulting loss of jobs. *Compl.* at 60-61.

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In *Fitzer*, a district court granted the defendant's motion for a six-month stay pending the resolution of an administrative claims process. Not only did *Fitzer* involve another claims resolution process altogether, but the facts underlying the court's decision render it inapposite. There, the plaintiffs sought damages for personal injury claims after contracting food poisoning from Defendant's salmonella-tainted food products. *Id.* at *1. The court found that neither party would be prejudiced – nor had either party argued that it would be prejudiced – by a six-month stay. *Id.* at *2. That finding is unsurprising, since plaintiffs sought damages for injuries which occurred in the past. The risk of prejudice is heightened here, where many putative class members are suffering ongoing harm as a result of losing their livelihoods and cannot afford to wait for compensation. Plaintiffs also risk suffering additional harm, such as further damages to their industries or property, if the injunctive relief they request is further postponed. *See California Trout*, 115 F.Supp.3d at 1117 (finding there was a possibility that a stay could damage plaintiff's interests because a risk of future harm would persist until the emergency and/or backup systems plaintiff requested were in place).

The Court is also unpersuaded by Defendants' argument that Plaintiffs will be harmed if a stay is not granted. Defendants argue that "once individuals and businesses become part of a certified class, they lose their rights to seek reimbursement directly from Plains Pipeline, from the Federal Fund, and, possibly, the State Fund." *Mot.* 14 (citing 33 U.S.C. § 2713(b)(2)). Defendants are wrong. The statutory provision which they cite prohibits claimants from pursuing claims against the Federal Fund during the pendency of litigation, but says nothing about a claimant's right to seek reimbursement directly from Defendants. *See* 33 U.S.C. § 2713(b)(2) ("No claim of a person against the Fund may be approved or certified during the pendency of an action by the person in court to recover costs which are the subject of the claim.") (emphasis added). OPA merely prevents Plaintiff from withdrawing from the federal fund while seeking to recover those same costs in court. *See Targa Midstream Serv's Ltd. Partnership v. K-Sea Transp. Partners, L.P.*, No. Civ.A. G-05-629, 2006 WL 2520914, at *4 (S.D. Tex. Apr. 20, 2006) (Rejecting defendant's argument that the case should be stayed pending resolution of the claims process because OPA "appears to be primarily concerned that a claimant cannot recover against the [federal fund] and then go out and recover again against a private party, thereby obtaining a double recovery").

Finally, the Court notes as persuasive that Defendants have not provided a single case where a court granted a similar stay pending resolution of an OPA claims process. The Court disagrees with Defendants that *Denehy v. Massachusetts Port Auth.*, 42 F.Supp.3d 301 (D. Mass. 2014) supports the proposition that OPA requires a stay. There, defendants moved to dismiss because in an effort to file his claim before the statute of limitations expired, the plaintiff filed an OPA claim without first meeting the presentment requirement. *Id.* at 307. The court reasoned that staying the timely filed action until the 90-day period for presentment had passed was the

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best way to harmonize OPA's statute of limitations with its presentment requirement. *Id.* at 309. The same concerns are not present here. The Court is not tethered to OPA's presentment requirement because Plaintiffs do not bring any OPA claims.

Finally, as the *Denehy* court recognized, the court's goal should be "to give practical effect to the beneficial goals that impelled Congress to enact the law," and the ultimate goal of OPA "was to provide appropriate relief to those injured by oil spills into the nation's waterways." *Id.* (citing *Johnson v. United States*, 529 U.S. 694, 710 n. 10 (2000)). Defendants have offered no plausible argument for why that goal would be better served by forcing those injured by the Line 901 spill to wait an additional six months, during which they risk prematurely releasing their claims without understanding the scope of their potential recovery.

IV. Conclusion

For the foregoing reasons, Defendants' motion to stay the case is DENIED.

IT IS SO ORDERED.