

Shell's Suit Against Environmental Activists Moves Forward

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In February 2012, Shell Gulf Mexico, Inc., and Shell Offshore, Inc. (collectively Shell), took a rare step to protect their rights to drill in Alaska. They sued a collection of non-governmental environmental organizations for a declaration that relevant environmental statutes had been complied with in approving actions central to Shell's investment of billions of dollars in the exploration and development of energy resources on the Alaska Outer Continental Shelf.

The complaint asked for a declaration that the Department of Interior's Bureau of Safety and Environmental Enforcement approves of Shell's 2012 Oil Spill Response Plan. Shell alleged that the defendant organizations' long history of bringing challenges to Shell's exploration projects and their public statements that they would attempt to block all oil and gas exploration on the Alaska Outer Continental Shelf constitute a sufficient threat to declaratory relief.

Not surprisingly, the defendant organizations moved to dismiss Shell's suit, claiming the suit would infringe on their First Amendment rights (*e.g.*, to petition the government to challenge approval of the Oil Spill Response Plan). However, on June 26, 2012, Judge Ralph Beistline, a Bush II appointee, declined to dismiss the suit. The court held that Shell had a right to seek redress from the imminent threat of a lawsuit, especially given the considerable investment at stake. He also found that the defendants' right to petition the government was not inhibited because the organizations' right to challenge the Oil Spill Response Plan could be fully exercised during the pending suit.

Two weeks after the motion to dismiss was denied, several of the defendant organizations launched a separate challenge to the Oil Spill Response Plan by filing a lawsuit against the Department of the Interior. Shell's motion to consolidate the two cases was granted on July 25, 2012. Shell, the environmental organizations and the Department of Interior have all filed motions for summary judgment, which are currently pending before the court. Oral arguments have not been scheduled.