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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

LONG BEACH OIL DEVELOPMENT COMPANY, a Nevada corporation,

Plaintiff,

v.

CITY OF LONG BEACH, a California municipal corporation,

Defendant.

NO. CV 03-6655 GPS (AJWx)

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

The Court, having heard oral argument and after fully considering the papers filed in support of and in opposition to Defendant City of Long Beach's ("City's") Motion for Summary Judgment, hereby **GRANTS** the Motion for the reasons stated below.

I. BACKGROUND

This action arises out of a conflict over environmental remediation payments as a result of the disposal of waste from oil fields owned by Defendant City. From 1939 to 1989, Plaintiff Long Beach Oil Development Company ("LBOD") operated oil fields at the

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Wilmington Oil Field[1] on behalf of the City.

In the late 1980s, federal and California environmental agencies commenced environmental cleanup activities at two disposal sites in Southern California – the Operating Industries Inc. Site in Monterey Park (the "OII Site") and the Cal-Compact Site in Carson (the "Cal-Compact Site"). In the course of the cleanup activities at the two sites, LBOD was identified as a Potentially Responsible Party ("PRP") for disposing waste from the oil fields owned by the City of Long Beach.

In 1939, the City and LBOD first entered into a drilling and operating contract that expired in 1964. In 1964, LBOD joined oil companies to form a consortium to enter into a new contract with the City ("the 1964 Contract"). The consortium was made up of the following parties: (1) LBOD, (2) Signal Oil & Gas Co., (3) Standard Oil of California, (4) Humble Oil & Refining Co. , (5) Continental Oil Co., and (6) CM Oil Co. Over time, three members of the consortium changed their names. Signal Oil & Gas Co. became Phillips Oil Co., and later Conoco-Phillips. Standard Oil of California changed its name to Chevron Corp. Humble Oil & Refining Co. changed its name to Exxon Corp., and later ExxonMobil Corp. These three companies will be referred to herein as "Phillips," "Chevron," and "Exxon."

As allowed in the 1964 Contract, the six members of the consortium designated LBOD to serve as the "Contractor," meaning it would perform all of the activities to develop and produce the City's crude oil interests in the Wilmington Oil Field. Nevertheless, Section 39 of the 1964 Contract provided that each member of the consortium would "be

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[1] The Wilmington Oil Field is the third largest oil field in the contiguous United States. The field is 13 miles long and 3 miles wide from southeast to northwest, stretching from the middle of San Pedro Bay through Long Beach to east of the Palos Verdes Peninsula. Department of Oil Properties of the City of Long Beach, *DOP Brochure*, *at* http://cms.longbeach.gov/oil/brochure.html.

jointly and severally obligated to perform all the obligations of the Contractor under this agreement."

Although LBOD was named as a PRP in connection with the environmental cleanup activities by the state and federal governments at the OII Site and the Cal-Compact Site, the five remaining members of the consortium (including Phillips and Chevron) were not specifically named as PRPs with respect to the disposal of wastes from the Wilmington Oil Field.

In 1987, after deciding that they would not pursue an extension of the 1964 Contract, Phillips and Chevron agreed to sell their interests in the consortium's 1964 Contract to American Energy Operations, Inc. ("AEO"). Section 33 of the 1964 Contract required Phillips and Chevron to obtain written consent to such an assignment from both the California State Lands Commission ("SLC") and the City. The City and State were both concerned about how to ensure that Phillips and Chevron remained accountable for any dumping of oil field wastes by LBOD (as the Contractor for the consortium) at the OII and Cal-Compact Sites. The City's and State's concern on this issue was mirrored by AEO, which demanded indemnification in the agreements documenting the sale of assets from Phillips and Chevron to AEO.

In May 1988, Phillips and Chevron sent letters to the SLC and the City in which they provided excerpts of the assignment documents to alleviate the concerns of the City, the State, and AEO. Phillips expressly promised: "to indemnify ... LBOD ... from any and against all claims, liabilities, damages, costs, expenses (including, without limitation, reasonably attorneys' fees and expenses), [and] cleanup costs ... incurred as a result of being found to be a PRP [to the extent of the interests being assigned to American Energy]." In addition, in its letter to the City and the SLC, Phillips gave assurances it would "bear all costs in connection with the ... defense and representation of Phillips and ... Long Beach Oil Development Company as potentially responsible parties" at "the Cal-Compact and the Operating Industries, Inc. site." Likewise, Chevron agreed to "bear all costs in connection with ... the defense and representation of [Chevron] and LBOD as Potentially

Responsible Parties" at "the Cal-Compact site ... and the Operating Industries, Inc. site."

Not surprisingly, the City and State conditioned their consent to the assignment of Phillips's and Chevron's interests in the 1964 Contract upon their willingness to remain responsible for paying their share of the costs related to the environmental cleanup of oil field waste at the two sites. Based on representations by Phillips and Chevron that they would continue to bear responsibility and indemnify AOE, the City and State agreed to the assignments of Phillips's and Chevron's interests in the 1964 Contract to AEO.

On July 15, 1988, the City, AEO, Phillips, and Chevron entered into an "Assignment Consent Agreement," which provided that Phillips and Chevron would indemnify AEO for all "pre-closing obligations, including, but not limited to the following:"

> To defend and represent Assignors and (to the extent of Assignors share of Long Beach Oil Development Company's interest in the City Contract) Long Beach Oil Development Company as potentially responsible parties (PRPs) as generators of oil field waste, heretofore disposed of on two specific sites which are the subject of Notices by certain government entities; to wit: (1) The Cal-Compact Site; and (2) The Operating Industries, Inc. Site.
> *Assignment Consent Agreement,* § 3(b).

Plaintiff LBOD filed this lawsuit on September 16, 2003, seeking payment from the City for its environmental cleanup costs. In its First Amended Complaint ("FAC"), LBOD claimed it suffered injury by having to pay significant environmental costs. (FAC ¶ 113). However, according to Defendant City, Phillips has paid all of the environmental costs charged to LBOD.[2] Thus, on April 18, 2005, the City filed its Motion for Summary Judgment challenging the standing of Plaintiff LBOD.

II. LEGAL STANDARD

Summary judgment is appropriate if there is "no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56. A fact is material if it might "affect the outcome of the suit under the governing law."

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[2] The evidence indicates that Chevron, Exxon, and other consortium members may have contributed to the payments made by Phillips to LBOD.

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is genuine if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.*

The moving party in a summary judgment motion bears the burden of showing the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). To meet this burden, the moving party may either submit evidence that negates an essential element of the nonmoving party's claim or may demonstrate that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. *Id.*, at 330. If the moving party makes this initial showing, the burden shifts to the nonmoving party to "designate specific facts showing there is a genuine issue for trial." *Id.* at 324 (internal citation omitted). The nonmoving party must produce evidence that could cause a reasonable juror to disagree as to whether the facts claimed by the moving party are true.

In resolving a summary judgment motion, the court must view all the evidence presented in the light most favorable to the nonmoving party, drawing "all justifiable inferences ... in his favor." *Anderson*, 477 U.S. at 255. When the non-moving party presents direct evidence refuting the moving party's motion for summary judgment, the Court must accept that evidence as true. *McLaughlin v. Liu*, 849 F. 2d 1205, 1207 (9th Cir 1988). Any evidence on which the jury could rely to reasonably find in favor of the non-moving party must be admissible evidence. *Anderson*, 477 U.S. at 250-51.

III. DISCUSSION

In its Motion for Summary Judgment, Defendant City contends that Plaintiff lacks standing to bring this lawsuit because LBOD cannot prove it incurred any costs in connection with the cleanup of oil field waste. Rather, according to the City, Phillips paid these costs based on its preexisting duty to indemnify LBOD. In the alternative, Defendant City argues that summary judgment should be granted against Plaintiff because LBOD has failed to offer *admissible evidence* that it incurred costs or suffered damages. In its

opposition papers, LBOD argues that it has offered sufficient evidence to demonstrate that it has standing to bring this action. After a careful examination of the undisputed facts, the competing arguments, and the relevant law, this Court agrees with Defendant City that Plaintiff LBOD has neither established standing under Article III of the United States Constitution, nor offered evidence of incurred response costs or contractual damages.

A. Plaintiff has the Burden to Show Standing

Standing is a threshold requirement in every federal case. *Warth v. Seldin*, 422 U.S. 490, 498 (1975). The doctrine of standing focuses on the party seeking to invoke federal jurisdiction rather than the issue at stake in the litigation. *Fulani v. Bentsen*, 35 F.3d 49, 51 (2d Cir. 1994). In *Warth*, the Supreme Court explained standing "is founded in concern about the proper – and properly limited role – of the courts in a democratic society." *Warth*, 422 U.S. at 498. While standing includes purely prudential limitations, "the core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561, 119 L. Ed. 2d 351, 112 S. Ct. 2130 (1992).

The Supreme Court "established that the irreducible constitutional minimum of standing constitutes three elements." *Lujan*, 504 U.S. at 561 (citations omitted). "First, the plaintiff must have suffered an injury in fact – an invasion of a legally-protected interest which is (a) concrete and particularized; and (b) actual or imminent, not conjectural or hypothetical." *Id.* (internal quotations and citations omitted). Second, there must be a causal connection between the injury and the conduct complained of – the injury has to be fairly traceable to the challenged action of the defendant, and not the result of some third party not before the court. *Id.* at 560-61. Finally, "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Id.* (internal quotations and citations omitted).

"The party seeking to invoke the jurisdiction of the court has the burden of alleging *specific facts* sufficient to satisfy these three elements." *Schmier v. United States Court of Appeals*, 279 F.3d 817, 821 (9th Cir. 2002) (emphasis added). "It is the responsibility of

the complainant clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute and the exercise of the court's remedial powers." *Renne v. Geary*, 501 U.S. 312, 316 (1991).

B. Plaintiff Has Not Shown an Injury In Fact

Plaintiff claims that it has made payments for environmental cleanup costs as a result of the disposal of waste from oil fields owned by Defendant City. Accordingly, in this lawsuit, Plaintiff is now seeking recovery of these costs from the City. Yet, Defendant argues persuasively that Plaintiff has no standing for the following three reasons. First, there is no evidence of any payments submitted by Plaintiff. Second, as an alternative to the first point, even if Plaintiff did provide some evidence of payments by LBOD, they were either made after the Complaint was filed in this case or otherwise do not provide Plaintiff with standing. Third, Plaintiff does not have standing to recover for future costs or liability which LBOD *may* pay for in the future.

(1). Plaintiff has Failed to Offer Admissible Evidence that it Suffered An Injury in Fact Sufficient to Establish Article III Standing

Plaintiff LBOD may not pursue its claims in this Court unless it offers admissible evidence of specific facts showing that it has suffered an "injury in fact" fairly traceable to actions allegedly taken by the City. *Friends of the Earth, Inc. v. Laidlaw*, 528 U.S. 167, 180-81 (2000). Yet Plaintiff has failed to offer any admissible evidence that it actually paid the costs for which it seeks to recover in this action, or personally committed its own resources to cover them. Instead, the City provided evidence that Phillips paid the costs now sought by LBOD. Moreover, LBOD's Chief Executive Officer and President, Lee Ross of AEO, admitted at his deposition that LBOD has not expended any money on any of the costs for which it seeks reimbursement because Phillips paid LBOD's share of the costs. Thus, based on the testimony of Ross and in light of Plaintiff LBOD's failure to come forward with evidence that it made the payments to cleanup the waste, LBOD has no injury traceable to the City's conduct and therefore no standing.

(2). Any Evidence of Plaintiff's Payments Post-Filing of this Lawsuit Does

Not Confer Standing

Ninth Circuit precedent holds that Article III standing is determined as of the commencement of litigation. *Biodiversity Legal Foundation v. Badgley*, 309 F.3d 1166, 1171 (9th Cir. 2002). Because the only payment by LBOD, that could confer standing, was made a year after the Complaint was filed in this case, the payment does not provide standing to Plaintiff. In December 2004, LBOD made a $165 payment of a response cost pursuant to the Comprehensive Environmental Response, Compensation Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 et seq. Although LBOD also seems to have paid $565.76 in attorneys' fees between May 2001 and February 2005, these payments do not confer Article III standing because LBOD has stipulated with the City that such attorneys' fees are not a recoverable response cost under CERCLA. Thus, evidence LBOD may have that it made payments still does not confer standing on Plaintiff in these instances.

(3). Plaintiff Does Not Have Standing to Recover for Future Costs or Liability

As discussed above, Article III standing is determined as of the commencement of litigation. *Biodiversity Legal Foundation*, 309 F.3d, at 1171. Accordingly, just as Plaintiff lacks standing to pursue reimbursement for any payments made after the Complaint was filed, Plaintiff similarly lacks standing to recover future costs or liability. Although there may be future cleanup costs, until LBOD is forced to cover them, it cannot show any "injury in fact." If LBOD is forced to make payments in the future, it might be able, at that time, to pursue a claim.

C. Legal Doctrines of Subrogation, Assignment, and Ratification Do Not Provide LBOD with Standing

In spite of the absence of evidence that LBOD actually paid the costs it alleged to have paid, LBOD contends that its standing to bring this action can be demonstrated through the legal doctrines of subrogation, assignment, or ratification. The Court does not agree.

As a threshold matter, the alleged facts upon which LBOD builds its theories of

subrogation, assignment, and ratification contradict the allegations in its original complaint and the FAC. In the FAC, LBOD alleged unambiguously that it made the payments for which it now seeks recovery. (FAC ¶ 113). LBOD never alleged in the complaint that the oil companies made the payments at issue. LBOD never alleged or indicated that the oil companies had ratified or assigned any cause of action to LBOD.

To prevail on these three newly raised theories, therefore, LBOD would be required to amend the FAC to include allegations that the oil companies made the payments at issue, and there had been an assignment or ratification. The Court, therefore, holds that because Plaintiff's theories of subrogation, ratification, and assignment could only be based on alleged facts that contradict the factual allegations in the FAC, they cannot provide LBOD with standing to bring this action.

Although this threshold reason alone supports this Court's granting of the City's summary judgment motion, the Court also rejects LBOD's arguments for standing based on the reasons discussed below.

(1). LBOD's Reliance on the Subrogation Doctrine is Misplaced

Subrogation is an equitable doctrine holding that when a third party pays a creditor, the third party succeeds to the creditor's rights against the debtor. Plaintiff's subrogation argument is confusing, but seems to be that the oil companies, such as Phillips did make environmental cleanup payments, but these were only "advances." Plaintiff claims that it should be allowed to bring this lawsuit to recover these advances by the oil companies under theory of subrogation because LBOD would transfer the money recovered back to the oil companies.

However, this theory and the evidence offered does not invoke the legal principle of subrogation. Phillips, Chevron, Exxon, and the other oil companies were not innocent third party contractual subrogees. Rather, they were unnamed PRPs who paid response costs and therefore would have had their own direct claim against the City before the statute of limitations ran. In fact, the oil companies acknowledged that they were PRPs with respect to the Cal-Compact and OII sites. *See Assignment Consent Agreement*. This

fact is fatal to Plaintiff's subrogation claim because a required element of subrogation is that the debt paid must be one for which the subrogee was *not* primarily liable. *In re Hamada*, 291 F.3d 645, 653 (9th Cir. 2002) ("California courts have yet to extend the doctrine to cases in which the purported subrogee is primarily liable on the debt."). Accordingly, the legal principle of subrogation does not provide standing to Plaintiff.

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(2). LBOD's Reliance on the Theory of Assignment is Misplaced

LBOD's argument that it has standing because the oil companies assigned their rights to LBOD is not supported by the facts or law in this case. First, as mentioned above, LBOD never alleged until now that it was bringing suit based on the oil companies' assignment of their claims to LBOD. In fact, LBOD has alleged no facts in either the original complaint or the FAC that would provide any basis for claims that the oil companies might have against the City.

Second, the oil companies have never filed any claims against the City as required by the Government Tort Claims Act. (Cal. Gov. Code §§ 810-1000). Furthermore, by the time the original Complaint was filed, the statute of limitations under federal and California law prohibited potential CERCLA and contract claims the oil companies may have had. *See* 42 U.S.C. § 9613(g)(3); Cal. Code Civ. Proc. § 337. The oil companies could not have assigned any claims against the City when such claims were no longer viable. Accordingly, the legal theory of assignment does not provide standing to Plaintiff.

(3). LBOD's Reliance on the Theory of Ratification is Misplaced

LBOD's contention that its action can survive because Phillips, Chevron, and Exxon have ratified LBOD's lawsuit is equally unavailing. Ratification can only be effective if the party purporting to ratify the action (in this case the oil companies), has an existing viable claim. As noted in subsection (C)(2), above, the oil companies have never filed any claims with the City as required by the Government Tort Claims Act. (Cal. Gov. Code §§ 810-1000). Again, by the time the original Complaint was filed, the statute of limitations under federal and California law prohibited potential CERCLA and contract claims the oil

companies may have had. *See* 42 U.S.C. § 9613(g)(3); Cal. Code Civ. Proc. § 337. Again, the oil companies could not have assigned any claims against the City when such claims were no longer viable. Accordingly, the legal theory of ratification does not provide standing to Plaintiff either.

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IV. CONCLUSION

Because Plaintiff LBOD lacks the standing required by Article III of the United States Constitution to bring each of its claims against the City, the Defendant's Motion for Summary Judgment is **GRANTED**. Accordingly, Plaintiff's pending motions for partial summary judgment are **DENIED AS MOOT** and judgment is **GRANTED** for the Defendant.

IT IS SO ORDERED

Dated this 6th day of July, 2007.

GEORGE P. SCHIAVELLI
UNITED STATES DISTRICT JUDGE