Drilling oil and natural gas off our shores will mean daily air and water pollution problems, and a constant risk of oil spills.

Ignoring Federal Rule 37(c) Can Cause an Uphill Legal Battle

By Rex S. Heinke and Kathleen J. Galston

A defendant’s failure to comply with a district court’s pretrial disclosure schedule can have very serious consequences. Failing to disclose evidence can ultimately lead to adverse inferences, dismissal of the entire case, and sanctions against the noncompliant party. Rule 37 provides a framework for addressing compliance failures. Rule 37(c) requires a party to stipulate to the deadlines set in the court’s original scheduling order or, if no deadlines are set, to agree to the deadlines established by the court.

The 9th Circuit has recognized that Rule 37(c)’s sanction remedy is “well-founded” and “reasonable.” In United States v. Hruby, 200 F.3d 1096 (9th Cir. 2000), the court held that a defendant, who did not have an accurate idea of the amount of lost oil and failed to provide discovery, risked sanctions under Rule 37. The court noted that the defendant was substantially justified or is harmlessness.

The 9th Circuit upheld the district court’s sanctions order and found that the defendant’s failure to respond to the plaintiff’s discovery requests constituted an “immediate impact” because it allowed the plaintiff to proceed with its suit. The defendant was “substantially justified or is harmlessness.”

In fact, Amy Myers Jaffe, an oil expert at the Rice University, told the New York Times, “The 9th Circuit held that a defendant’s failure to respond to the plaintiff’s discovery requests constituted an “immediate impact” because it allowed the plaintiff to proceed with its suit. The defendant was “substantially justified or is harmlessness.”

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