

FILED
IN SUPREME COURT
OF TEXAS

NOV 30 2004

Misc. Docket No. 04-9270

ANDREW WEBER, Clerk
By _____ Deputy

In

THE SUPREME COURT OF TEXAS

RESPONSE TO MOTIONS TO TRANSFER APPEALS

FROM THE FOURTH COURT OF APPEALS AND
THE THIRTEENTH COURTS OF APPEALS

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RESPONSE TO MOTIONS TO TRANSFER APPEALS

TO THE HONORABLE SUPREME COURT OF TEXAS:

NOW COME the Respondents/Plaintiffs/Appellants, in nineteen separate appeals pending in the Fourth and Thirteenth Courts of Appeals of Texas, respectively, and file this Response to the Motions to Transfer Related Appeals filed by the Movants in the Supreme Court of Texas. The Movants have requested that this Court:

- a. Order the transfer of all the related cases pending in the Fourth Court of Appeals and the Thirteenth Court of Appeals to either the First or Fourteenth Courts of Appeals in Houston.
- b. Order all the related appeals consolidated;
- c. Alternatively, Movants have asked that Court transfer the cases pending in the Thirteenth Court of Appeals to the Fourth Court of Appeals and that the cases be consolidated there.

The Relevant Appeals

Movants have requested that this Court exercise its authority to transfer appellate cases under Section 73.001 of the Government Code. The following cases have been filed for appeal to the Thirteenth Court of Appeals:

1. Cause No. 13-04-00556-CV, Edcouch-Elsa Independent School District v. Chevron U.S.A., Inc. et al.
2. Cause No. 13-04-00543-CV, E.C.I.S.D. v. Fina Oil & Chemical Co., et al.
3. Cause No. 13-04-00542-CV, Hidalgo County v. Texaco, Inc., et al.
4. Cause No. 13-04-00557-CV, Kenedy County v. El Paso Production Oil & Gas Company, et al.
5. Cause No. 13-04-00554-CV, Kleberg County, et al. v. El Paso Production Oil & Gas Company, et al.
6. Cause No. 13-04-00553-CV, Kleberg County, et al. v. Atofina Petrochemicals, Inc., et al.

7. Cause No. 13-04-00544-CV, McAllen ISD v. Fina Oil and Chemical Company, et al.
8. Cause No. 13-04-00555-CV, Willacy County v. El Paso Production Oil & Gas Company, et al.

The following cases are pending in the Fourth Court of Appeals:

1. 04-04-00726-CV, Brooks County v. El Paso Oil & Gas Company, et al.
2. Cause No. 04-04-00727-CV, Brooks County, et al. v. Texaco E&P, Inc. et al.
3. Cause No. 04-04-00728-CV, Duval County, et al. v. Shell Western E&P, Inc.
4. Cause No. 04-04-00729-CV, Duval County, et al. v. Conoco, Inc. et al.
5. Cause No. 04-04-00730-CV, Jim Hogg County, et al. v. Chevron U.S.A., Inc., et al.
6. Cause No. 04-04-00725-CV, Jim Wells, et al. v. El Paso Production Oil and Gas Company, et al.
7. Cause No. 04-04-00731-CV, Jim Wells, et al. v. Anadarko Petroleum Corporation, et al.
8. Cause No. 04-04-00732-CV, Webb County v. Chevron U.S.A., Inc. et al.
9. Cause No. 04-04-00733-CV, Webb County v. Conoco, Inc. et al.
10. Cause No. 04-04-00734-CV, Zapata County, et al. v. Conoco, Inc. et al.
11. Cause No. 04-04-00735-CV, Zapata County, et al. v. Chevron U.S.A., Inc. et al.

Respondents Have Sought Consolidation in the Two Courts of Appeal

Plaintiffs/Appellants/Respondents have sought, separately in the Fourth and Thirteenth Courts of Appeal, to consolidate the appeals that are pending in those Courts within those Courts. Such consolidation was sought prior to the filing by the Movants of the current motion pending before this Court.

Procedural Background

The above referenced cases are lawsuits filed by counties and school districts as taxing entities against various oil and gas production company defendants, alleging claims and causes of action for fraud arising out of what Plaintiffs allege was a scheme by the various Defendants to fraudulently undervalue mineral interests for real property tax purposes; thereby resulting in an undervaluation of the property for real property tax appraisal purposes with the result that the various Defendants under paid the amount of real property taxes which should have been paid to the various Plaintiffs. The same claims were made not only in cases filed by various taxing entities in West Texas (undersigned counsel does not represent the West Texas counties and school districts and they are not involved in the instant proceeding). The presiding judges of the Fourth, Fifth, Sixth and Seventh Judicial Administrative Regions were asked to consolidate all of the South Texas and West Texas cases under Rule 11 of the Texas Rules of Judicial Administration before a single pre-trial judge. Following a hearing in Austin, the Judges determined that the West Texas cases should be consolidated for hearing before one pre-trial judge and that the South Texas cases pending in the Fourth and Fifth Administrative Judicial Regions should be consolidated before a different pre-trial judge.

The Honorable Tracy Christopher, Judge of the 295th Judicial District Court of Harris County was assigned to the South Texas Cases as the pre-trial judge. The Defendants in each of those cases filed Pleas to the Jurisdiction asserting that exclusive jurisdiction of the Plaintiffs' claims was provided for in the Texas Tax Code and that the Plaintiffs had failed to exhaust administrative remedies by not availing themselves of the procedures set forth in the Texas Tax Code, including going before the local appraisal review board with their complaints.

On the 10th day of September 2004, Judge Christopher signed Orders in each of the above

referenced cases which have been appealed to the Fourth and Thirteenth Courts of Appeal, granting the pleas to the jurisdiction and dismissing the Plaintiffs' claims.

No Basis for Transfer to Houston Courts of Appeals

The Movants' request that the related appeals be transferred to the First or Fourteenth Courts of Appeals is completely without basis. They appear to claim that because the pretrial judge who was assigned under Rule 11 of the Texas Rules of Judicial Administration was a State District Judge who happens to sit in Harris County, Appellate Court jurisdiction would be appropriate in the First or Fourteenth Courts of Appeal. Such argument misstates the procedure that was followed in this case.

**The Cases Were Not Assigned to Judge Christopher,
But Rather, Judge Christopher Was Assigned to the Cases**

In this case the Presiding Judges of the Fourth and Fifth Administrative Judicial Regions within which these South Texas cases were pending determined that it would be appropriate under Texas Rule 11, as it existed prior to September 1, 2003, to assign a single pretrial judge to these cases. They could have assigned any judge within the State of Texas (with the approval of the Chief Justice of the Supreme Court) they happened to select the Honorable Tracy Christopher who happens to be the Presiding Judge of the 295th Judicial District Court of Harris County, Texas. It is significant to note that the presiding judges of the Judicial Administrative Regions did not assign these cases to the 295th Judicial District Court of Harris County, but rather, assigned Judge Christopher to the cases. The cases remained pending under the style and cause numbers and in the original district courts in which they were filed. The cases were never transferred from the respective counties and district courts in which they were originally filed by the Plaintiffs.

This is significant as no trial court within the jurisdiction of the First and Fourteenth Courts

of Appeals ever had jurisdiction of these cases and none of these cases were ever filed in or assigned to a trial court sitting within the jurisdiction of the First and Fourteenth Courts of Appeals. It is clear in the orders of the presiding judges of the Fourth and Fifth Administrative Judicial Regions attached as Exhibits "A" through "E" to the Motion to Transfer Appeals Pending Before the Fourth Court of Appeals and the Thirteenth Court of Appeals filed on behalf of Chevron U.S.A., Inc. et al. that Judge Christopher was assigned to the cases, rather than the cases being assigned to Judge Christopher. This is significant because the cases remain pending under the same cause number and in the same courts in which they were originally filed by the Plaintiffs. This is further evidenced by the final orders of dismissal entered by Judge Christopher in each of the cases, copies attached as Exhibit "G" to the Motion to Transfer Appeals filed by Chevron U.S.A., Inc. et al. and Exhibit "A" to the Motion to Transfer Related Appeals and Brief in Support filed on behalf of El Paso Production Oil & Gas Company, et al. Rather than filing a single order of dismissal for all the cases or two orders of dismissal relating to the cases which came from the Fourth Administrative Judicial Region and from the Fifth Administrative Judicial Region, Judge Christopher signed separate orders of dismissal in each separate case under the original case number and the court designation as they were originally filed by the Plaintiffs. All these cases have always remained within the jurisdiction of the original trial court which ly within the jurisdiction of the Fourth and Thirteenth Courts of Appeals respectively.

**Chief Justice Phillip's Orders in these Cases Assigned Judge Christopher
to the Fourth and Fifth Administrative Judicial Regions**

The order of the Chief Justice of the Supreme Court of Texas approving the request of Judge David Peoples presiding judge of the Fourth Administrative Judicial Region to assign Judge Christopher to the cases that were pending in the Fourth Administrative Judicial Region is further

evidence supporting Respondents position. Chief Justice Phillips Order dated April 5, 2004, entered in Misc. Docket 04-9155 states in pertinent part as follows:

Therefore, pursuant to Judge Peoples requests, and to the authority vested in me as the Chief Justice of the Supreme Court by Rule 11.3(d) of the Rules of Judicial Administration, I assign the Honorable Tracy Christopher, Judge of the 295th District Court, to the Fourth Administrative Judicial Region, to be assigned as a pre-trial judge under Rule 11.3(a).

So, according to the rules to the order of this court Judge Christopher was assigned to the Fourth Administrative Judicial Region for the purpose of allowing her to serve as the assigned pre-trial judge in these cases. This is completely different from the situation where the cases would be assigned and transferred to the 295th District Court. An identical order was entered by Chief Justice Phillips in Misc. Docket No. 04-9059, assigning Judge Christopher to the Fifth Administrative Judicial Region on a request of Presiding Judge Darrell Hester.

Federal MDL Procedure is Inapplicable Here

There is no jurisdictional link between the instant related cases and the jurisdictional authority of the Fourth or Fourteenth Courts of Appeals. The Movants citation to 28 U.S.C. §1407 is not appropriate. The Federal Multi-District Litigation system involves the transfer of cases from one court to another court for determination. The assignment of Judge Christopher in the instant case was an assignment of a Judge to the various district courts in which the related cases were pending and in which they were filed originally by the Plaintiffs. None of the cases were ever transferred from one court to another court. Rule 11 which applies to the instant cases provides for an assignment of a pretrial judge to various cases, whereas Rule 13 which does not apply to the instant cases but on which Movants base much of their argument provides for the transfer of cases to a pretrial court. Throughout the proceedings in the instant case, all pleadings were filed in the various respective district courts within the various counties in which they were originally filed. No

pleadings were ever filed with the District Clerk in Harris County or with the Clerk of the 295th District Court of Harris County. This is a significant difference from Rule 13 in which the files of the cases are transferred to the pretrial court.

**Even If Rule 13 Applied, the Fourth and Thirteenth Courts of Appeals
Would Have Appellate Jurisdiction**

Further, contrary to the position of the Movants even if Rule 13 applied in this case it would require that the appeals go to the Fourth and Thirteenth Courts of Appeals. Rule 13.9b cited by the Movants provides as follows:

Orders by the Trial Court and Pretrial Court. Orders and judgments of the trial court and pretrial court may be reviewed by the appellate court that regularly reviews orders of **the court in which the case is pending** at the time review is sought...(emphasis added)

As previously shown the Court in which the cases were pending at the time review was sought is the original district court in which they were filed by the Plaintiffs. The cases have never been filed in or pending in the 295th District Court of Harris County, Texas, but rather, Judge Christopher who happens to be the presiding judge of the 295th District Court of Harris County, Texas has been assigned to the respective cases in their respective counties where they remained pending. So even if Rule 13 were to be applied to the cases here the proper courts of appeals would be the Fourth and Thirteenth Courts because those are the courts that regularly review orders of the Courts in which the cases have been pending.

Every pleading filed in the related cases is filed under the original case number, in the name of the original district court and has been filed with the District Court of the original county. There are no papers of this cause filed in Harris County.

Judge Christopher Has No Jurisdiction

Movants attempt to equate Judge Christopher's "assignment" to "jurisdiction". This is

incorrect. Rule 11 never states that the assignment of a pre-trial judge transfers jurisdiction. To the contrary, jurisdiction remained in each of the District Courts in which the cases were originally filed. The jurisdiction of District Courts is provided for in Section 24.007 of the Texas Government Code and Article V, Section 8 of the Texas Constitution. Both those provisions speak of the jurisdiction of the Court. They do not speak of the jurisdiction of the judge.

For the foregoing reasons the request to assign these cases to the First or Fourteenth Court of Appeals is entirely without merit and should be denied.

Respectfully submitted,

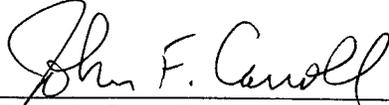
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing has been served pursuant to a method authorized by the Texas Rules of Civil Procedure on this the 29th day of November 2004, upon the following counsel of record:

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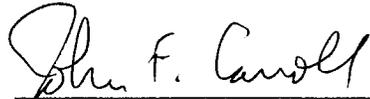
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