

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS

PATRICK JOSEPH TURNER, ET AL : CIVIL ACTION 05-4206 "L"
:
VERSUS : New Orleans, Louisiana
:
MURPHY OIL USA, INC. : April 26, 2006
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: : : : : 9:00 a.m.
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MOTION
TAKEN BEFORE THE HONORABLE ELDON E. FALLON
UNITED STATES DISTRICT JUDGE

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Proceedings recorded by mechanical stenography;
transcript produced by dictation.

P R O C E E D I N G S

MORNING SESSION

(April 26, 2006)

(The following is a transcript of the Motion taken on April 26, 2006.)

(Open court.)

THE COURT: Be seated, please. Good morning, ladies and gentlemen. Let's call the case.

THE CLERK: Civil Action 05-4206, Patrick Joseph Turner versus Murphy Oil.

THE COURT: Counsel, make your appearances for the record, please.

MR. BRUNO: Good morning, Your Honor. Joseph Bruno for plaintiffs.

MR. KROUSE: A.J. Krouse and Kerry Miller on behalf of Murphy Oil.

THE COURT: I have a Motion for an Expedited Hearing in this particular matter. The plaintiffs have filed a 30(b)(6) Deposition. The issue is the scope of the 30(b)(6) Deposition.

Before we start, let me mention to counsel for both sides, in matters of this sort we may need expedited motions, formal motions, but the easiest way for me to handle it is for you to give me a call, either side, when you have a

1 problem and just tell me what the issue is and I will set it
2 two hours later for a hearing and we will do it on the phone.
3 I will get a court reporter, everybody will be protected and
4 we will deal with it. We really have to move these things a
5 little faster in an expedited matter.

6 Now if you need briefing, if you need more time,
7 then tell me, I understand that, and then I will set an
8 expedited hearing and give you time for briefing. But
9 matters of this sort, we're close enough, all of us are close
10 enough to litigation that I don't need a lot of briefing in
11 the matter like this. I understand the issue and I am ready
12 to rule on it.

13 MR. BRUNO: I apologize, Judge.

14 THE COURT: No, I am not fussing. I am just
15 saying hence forth.

16 MR. BRUNO: Of course.

17 THE COURT: And I didn't tell you before now. But
18 hence forth it's easier for me and it's easier for you all.
19 I don't need to get everybody down to court to talk about an
20 issue of discovery. I can deal with it. Just give me the
21 problem and give me a little time to look at it and consider
22 it, I will get everybody on the phone and the court reporter
23 and your rights will be protected and we will move on. It's
24 the easiest way for everybody.

25 The other issue that I wanted to mention is we

1 talked yesterday about what was termed a Proof of Claim File.
2 I really would like to look upon that more as a Plaintiff
3 Profile Form than Proof of Claim. I think Proof of Claim may
4 be a misnomer in a matter of this sort. I really don't see
5 it as proof of anything. I see it as informational material.
6 I think the plaintiffs not only have a right, they have a
7 duty to collect the information in a Plaintiff Profile Form.
8 They need to know who their plaintiffs are. But the
9 defendants also need to know who the plaintiffs are.

10 As I talked yesterday with counsel, the plaintiffs
11 are willing to get some input from the defendants. I suggest
12 the defendants take advantage of that. They're not stuck
13 with it, they're not irrevocably bound by it, it's just an
14 information form. If they want the plaintiffs to get some
15 information within reason, they ought to tell the plaintiff
16 attorneys, liaison counsel, this information would be helpful
17 to us and then get it. If you're not satisfied with it, that
18 doesn't stop you from pursuing other matters. But it might
19 be an easier way of doing it. But the point that I make is
20 it's not proof of anything, it's not proof of plaintiffs'
21 claims. It's really a Profile Form and I think it will help
22 and advance the litigation.

23 The way I understand the issue is that the
24 plaintiffs have sought a 30(b)(6) Deposition of Murphy Oil
25 and they want three areas covered primarily. They want the

1 person to be able to talk about the nature and quantity of
2 materials stored, handled, processed or disposed of by Murphy
3 at the Meraux Tank Farm during August and September of 2005;
4 including exposures, assessments, ground water surveys and/or
5 ecological risks assessments. They also need the geographic
6 area that Murphy believes is likely to have been exposed to
7 these materials.

8 Secondly, they want the reports and correspondence
9 between Murphy and CTEH, Murphy and Alpha Woodshole Labs and
10 Murphy and other experts relative to cleanup, soil samples,
11 the data used to determine the cleanup of individual
12 properties, description of cleaned properties and description
13 of property evaluated for cleanup.

14 And, third, they want soil testing for individuals
15 who have opted out of the class and/or settled with Murphy.

16 Any other areas that you need that there is a
17 dispute on?

18 MR. BRUNO: I think you have covered it generally,
19 Judge. The only other thing that I might -- we have also
20 asked them to describe the method of cleanup. That's very
21 important to us. In other words, how they're going about it.

22 The second component part of that is how are they
23 determining which houses to clean versus which houses they're
24 saying they're not going to clean. Even though a particular
25 plaintiff may have settled, our thinking is that along with

1 our previous stated position that the entire area needs to be
2 constantly cleaned, that you have to know how you treated
3 Property A in order to understand how Property B may be
4 affected thereby.

5 THE COURT: Any response from the defendant on
6 those areas?

7 MR. KROUSE: Yes, Your Honor. First of all, Your
8 Honor, you are aware that yesterday Mr. Bruno began taking
9 testimony pursuant to a 30(b) Notice to a company
10 representative, Carl Zornes. We have provided a response and
11 a first supplemental response to the Plaintiffs' Steering
12 Committee with documents that are described in those
13 pleadings.

14 With respect to their requests, the overriding
15 objection here -- just so the Court is aware that we are
16 trying to limit the discovery as the Court has done to Phase
17 I, liability and fault issues. And as you can see, we have
18 51 areas of requests and inquiry that we have been asked to
19 produce documents and witnesses to respond. And we believe
20 that several of the areas that they have requested are simply
21 not appropriate and are premature at this stage of this
22 litigation. That's not to say that we're not going to get
23 there once we have a trial on the 14th of August. But for
24 the plaintiffs to come in and start talking about cleanup at
25 this portion, this point in time, really doesn't have any

1 relevancy to where we're going to liability and fault trial,
2 the Phase I trial in August. So that's the overriding
3 concern.

4 THE COURT: No, you don't need to convince me on
5 that. I agree with that. I think from the standpoint of the
6 damages I do think that there is a difference. But there are
7 some areas, all of us know there are some areas of overlap.
8 And I really have to rely upon your good judgments, both of
9 you, to touch on those overlapped areas without exhaustion.
10 There are some areas that are going to overlap. It's not
11 really a clear line. If it were, it would be more easily
12 dealt with. The plaintiffs should know when it's over the
13 line. You should know, too. But when it gets close to the
14 line, I think you're going to have to be a little flexible
15 and let them pursue it a bit.

16 MR. KROUSE: Your Honor, I guess our position is,
17 we're not even close to the line. We're like at the 50 yard
18 line and not even to the goal line. That's the analogy.

19 THE COURT: I do understand the areas. This is my
20 feeling on it. I think that the plaintiffs ought to be able
21 to pursue the nature and quantity of materials stored,
22 handled, processed or disposed of by Murphy at the Meraux
23 Tank Farm during August and September of 2004; including the
24 exposures, assessments, ground water surveys and/or
25 ecological risk assessments.

1 The reason for that is it seems to me to coincide
2 with the first area of inquiry, the liability aspect of it.
3 I said in my order that the common issues to be tried in the
4 Phase I are the Proof of Liability for any oil spill in
5 August and September 2005. And this will include liability
6 of any third parties for the spill, comparative fault, total
7 amount of quantity of oil and/or chemicals spilled in
8 connection with the August or September incident, the
9 composition and contents of the oil. That seems to go into
10 the first area of inquiry. They also ought to be able to
11 pursue the geographic area that Murphy believes is likely to
12 have been exposed by these materials. So the first area,
13 namely, Paragraph 16, I think it's appropriate that the
14 plaintiff pursue. But Paragraph 42 through 45, I don't
15 think. I think that has to do more with the damages. 42
16 through 45 includes reports and correspondence between Murphy
17 and CTEH, Murphy and Alpha Woodshole Labs, and Murphy and
18 other experts relative to cleanup, soil samples, and data
19 used to determine the cleanup of individual properties,
20 descriptions of cleaned properties and descriptions of
21 property evaluated for the cleanup. We may get there, but I
22 don't think we're there yet.

23 And the same way with Paragraphs 49 through 51,
24 soil samples, soil testing of individuals who have opted out
25 of the class and/or settled with Murphy, I don't think we're

1 there yet so I don't think that's appropriate.

2 Now, lastly, plaintiffs mentioned this morning
3 about cleanup and how to determine which houses were cleaned
4 up. To some extent, I think that's relevant. I don't think
5 you need to go too far into that but there ought to be some
6 feeling as to what criteria you used because that may
7 interface as to what material is there, what was there, what
8 amounts were there and what geographical areas have been
9 focused on. But with specificity I see that as being damage
10 related. But to some extent it does go into fault in the
11 sense of what material is there, what they're looking for,
12 what areas they're looking for, why they're looking for it,
13 what they do to find it. I think some of that may be
14 relevant.

15 MR. KROUSE: Your Honor, with respect to the
16 latter issue that you have raised, as I understand it, if
17 Murphy was to produce a witness that would be able to explain
18 to the PSC, their representatives, the process of the cleanup
19 and exactly as you said in terms of how did you reach this
20 house, what are you looking for, all those things is what we
21 would be required to do. But in terms of all of the
22 documents and houses and all of that, we're not there yet.

23 THE COURT: I agree with that.

24 MR. KROUSE: We can do that. I can produce
25 somebody within the next week or two on that issue.

1 THE COURT: Let me also say to the parties that
2 there may be some situations where you need to tweak it. For
3 example, if you have got somebody that may be useful in the
4 damage phase of the case but either you know or have reason
5 to believe that they're not going to be here in a couple of
6 months or thereabouts, you have to tell the plaintiffs and
7 say, look, this is outside of the situation but take this
8 fellow while he's here. And the same way from the
9 plaintiffs' standpoint, if you are taking somebody and it
10 looks like that they're on their last leg or something, you
11 have got to bring that up to the Court. I mean, I am not
12 drawing something that you can't get over one way or the
13 other. If it's going to help you all, either side, you have
14 got to talk to me about it but first talk to each other. It
15 seems to me it's going to be clear. You are going to say, of
16 course, do it, just put it in the can, we're not going to use
17 it now, we will stipulate it's not going to be used, we're
18 going to use it later on, but let's do it while we're here.
19 I mean, folks, we're going to try this case in about four
20 months. We really have to pick up the pace and I am willing
21 to work with you on it. So let's see if we can. Let's get
22 focused.

23 MR. KROUSE: Your Honor, can I just bring up a
24 couple of issues on Request Number 16 in particular?

25 THE COURT: Yes.

1 MR. KROUSE: Just so the Court is aware, we filed
2 the First Supplemental Response to Request Number 16 and in
3 that supplemental response we have provided a CD of documents
4 that are produced with that. That answer is in part and
5 we're going to follow up on the roll out scheme that we have
6 talked about earlier how many of the things that are
7 requested there.

8 We have also produced, and this is going back to
9 the last certification hearing, that area which Murphy
10 believes had been affected. That's not any secret. So, you
11 know, I am just trying to big picture it here in terms of
12 what has been produced to date. We will continue to do that.
13 We will produce somebody to discuss that from our
14 environmental section and move forward from there.

15 There are a couple of other issues I wanted to
16 raise outside the scope of this since we're here today, Your
17 Honor.

18 THE COURT: Right.

19 MR. KROUSE: I talked to Ronnie and Joe this
20 morning, and yesterday, about the tank inspection and I'm
21 trying to get the tank to be situated so that we can began
22 the inspection with all experts and attorneys on the 22nd of
23 May. That looks like about the earliest spot. So we're
24 trying to move it up in a week. What I want to try to do
25 with the Court's consent and with the plaintiffs' consent is

1 to try to get in and out in a week. Five days. Start a
2 Monday, get out on a Friday. I don't want to turn this into
3 an archaeological dig.

4 THE COURT: It seems reasonable.

5 MR. KROUSE: And, you know, if we need to come
6 back, we can partition the Court or whatever but I would just
7 like to set those kind of parameters for my experts as well
8 as for Murphy.

9 THE COURT: Do the plaintiffs have any problem
10 with that?

11 MR. BRUNO: No, Your Honor, we don't. We need
12 that too in order to properly finalize our report. We have
13 done everything external on the site but not inside.

14 THE COURT: That's fine. Why don't you get with
15 each other. I think that he is right, you can't have this
16 open ended. We have to have a period of time where he's
17 comfortable, you're comfortable, get in and out, everybody
18 does it. If there is something that comes up afterwards and
19 we have to look at it again, that's open.

20 MR. PENTON: We're going to get on the phone today
21 with our experts and I think we can get that done.

22 THE COURT: And the discovery, the question of
23 interrogatories, you really ought to think about doing it an
24 easier way. From the plaintiffs' standpoint, get together
25 whatever interrogatories you need, the defendants get

1 together any interrogatories you need and rather than filing
2 them really meet with each other and say this is what we
3 need. If you have any problems and the defendants say we
4 can't provide it, you have to get me on the phone and I'll
5 handle it immediately. Same way from the standpoint of the
6 defendants, if the defendants ask the plaintiffs and they say
7 we're not going to do it, let me hear from you so I can deal
8 with it.

9 MR. BRUNO: If you will remember, Judge, just to
10 refresh your recollection, that this arises out of the last
11 status conference wherein we told you that they have received
12 from us a draft, 30(b)(6), for the very purposes you just
13 described. You directed us to meet, which we did, so we
14 tried to comply with your request. And the only thing we
15 missed was the necessity for an actual motion. But we're
16 there and actually, Judge, we have been cooperating very very
17 well with each other.

18 THE COURT: I have that feeling.

19 MR. BRUNO: Like I said, the only issues have been
20 the breath and, if you would, allow me to in my feeble brain
21 to make sure I understand it. That what we're doing is
22 rather a global approach to the issue rather than a person by
23 person approach. You will remember that you directed the
24 parties to come up with a protocol relative to inspections.
25 We have not succeeded. So part of this discovery, obviously,

1 goes there. And I am understanding that is okay as long as
2 it's broad, not specific to John Doe, Jane Doe, et cetera.
3 And then the cleanup, the same thing, broad brush as opposed
4 to the specific individual people.

5 THE COURT: Yes.

6 MR. BRUNO: And then, finally, just so you will be
7 reminded that the defendants have given us the data. They
8 have given us the names of settled parties, names of the
9 opted out parties and they have given us the actual
10 information on each person where they have done sampling. So
11 we have got that much already, so that's part of the effort.
12 That will help us tremendously.

13 THE COURT: That's fine. And you need to know
14 that the Court is aware that you are getting along and
15 working together and I appreciate that. I think that that's
16 very helpful not only to each side but it's helpful to the
17 Court and helpful to the litigation. I can focus on specific
18 things and bones of contention. And they're going to come
19 up. Everything is not going to be agreeable to everybody. I
20 understand that. All of us have dealt in litigation long
21 enough. But the area that you can work out, work out. The
22 ones you can't, just give it to me as quickly as you can and
23 I will resolve them as quickly as I can. I am not going to
24 take things under advisement and whenever I can I am going to
25 dictate my findings immediately and not take up your time in

1 waiting for something. Go ahead, A.J.

2 MR. KROUSE: Just one other issue, Judge, and
3 that's expert report deadlines and we have been talking about
4 that. Since it looks as if the tank inspection on the
5 nondestructive testing in the tank would be after the
6 plaintiffs' deadline, what we have asked them to do is to
7 come up with something that -- an extension that is
8 mutually satisfactory to the Court and to us. We would have
9 the same length on the back side for our reports.

10 THE COURT: That's fine.

11 MR. KROUSE: And I would like to get something.

12 THE COURT: Let's do that, Joe. Get it together
13 and get me an amendment of my order.

14 MR. BRUNO: Right.

15 MR. MILLER: It's a discovery remand order. It
16 calls for a remand so it needs to be amended.

17 MR. BRUNO: We had worked on that but we knew that
18 we wanted to let you know exactly what we had contemplated,
19 but you blessed it, we're holding the trial date.

20 MR. EXNICIOS: Your Honor, just a point of
21 information. Val Exnicios. Judge, just so you know, the
22 cleanup issue is going to come before Your Honor. We are
23 going to be filing either a Motion to Enforce Certain
24 Settlements and/or Set Aside Certain Settlements and/or some
25 separate action that I suspect would be related and hence

1 assigned to Your Honor. And, obviously, from plaintiffs'
2 position, the issue of cleanup and discovery that we're
3 seeking vis-a-vis cleanup as to Murphy, I would respectfully
4 suggest it's going to be relevant to those motions or those
5 actions. So I didn't want Your Honor to think that we were
6 going to sandbag you. Essentially, I wanted you to be aware
7 of what we intended to do so the Court had a heads up about
8 it.

9 THE COURT: I understand. And we will deal with
10 that. But it may be a separate issue than what we're dealing
11 with now.

12 Also I wanted to mention that I got a call recently
13 and I got you all on the line and talked to you about it,
14 about the opted outs or people who are not --

15 MR. BRUNO: Were those the lawyers, Judge?

16 THE COURT: Yes.

17 MR. BRUNO: Our process is, and maybe it's my
18 fault because maybe this is what happened, I sent a draft out
19 to the defendants. I clearly didn't circulate that because
20 it was subject to change. It didn't have a date, it didn't
21 have a time and didn't know who the witnesses were going to
22 be. When we agreed, A.J. asked me to formalize it, which was
23 this past Monday. So to be truthful to you, we filed it on
24 Monday, it was circulated on Monday and so I would suppose
25 that there would be some complaints about the fact that the

1 deposition was taking place the next day. That's my fault
2 and it happened just in the nature of trying to cooperate
3 with the defendants. I understand the problem and we will
4 assure you that we will give ample notice to other counsel.

5 THE COURT: Roberta, let's keep an eye on this and
6 make sure they have adequate notice. That's important. I
7 told them that we were going to go forward with the
8 deposition and we're not going to take that deposition twice
9 so they have to go forward. But I would like them to get
10 appropriate notice.

11 MR. BRUNO: And, Your Honor, so you know, they
12 received the draft. The other lawyers got a draft yesterday.
13 We sent it to them. We covered a very narrow area. We were
14 only at work for about three hours. And I can assure you --

15 MR. KROUSE: On one document.

16 MR. BRUNO: I am slow, Judge.

17 THE COURT: Roberta, do you want to comment?

18 MS. BECNEL: I assure you that all the opted out
19 attorneys get notice, Your Honor.

20 THE COURT: Anything else? A.J., you have
21 anything?

22 MR. KROUSE: No.

23 THE COURT: Court stands in recess.

24 (End of proceedings.)

25

REPORTER'S CERTIFICATE

I, Arlene Movahed, Official Court Reporter, for the United States District Court for the Eastern District of Louisiana, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a full, true and correct transcript of proceedings had in the within-entitled and numbered cause on the date herein before set forth and I do further certify that the foregoing transcript has been prepared by me or under my direction.

ARLENE MOVAHED
Official Court Reporter
United States District Court
Eastern District of Louisiana