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UNITED STATES DISTRICT COURT.
EASTERN DISTRICT OF LOUISIANA

PATRICK JOSEPH
TURNER, ET AL

v.

Docket No. 05-CV-4206
New Orleans, Louisiana
Wednesday, April 18, 2007

MURPHY OIL USA, INC.

TRANSCRIPT OF STATUS CONFERENCE
HEARD BEFORE THE HONORABLE ELDON E. FALLON
UNITED STATES DISTRICT JUDGE

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Proceedings recorded by mechanical stenography, transcript produced by computer.

1 Thirdly, I am thinking about issuing some Lone Pine
2 Orders; that is to say, orders that require cases, all of the cases
3 to produce within a certain period of time, 60 days is what I'm
4 focused on, a report from an expert indicating the presence of oil
5 and an estimate of the damage. I will give you enough time to get
6 those reports. Those cases that have not delivered the report, I'll
7 entertain an order from the defendants to dismiss the cases with
8 prejudice after an appropriate period of time.

9 Once I get the Lone Pine Orders from the cases, then I am
10 going to try the cases but I am going to flip them and try damage
11 first. I will empanel juries, that's where the zone will come in.
12 I will try to see if we can try four cases a day, four to six cases
13 a day, three in the morning and three in the afternoon, with the
14 same jury. I think we could do it because we're going to be dealing
15 only with damage in those cases. Damage indicating the presence of
16 oil or the presence of damage and the amount of damage. And when
17 the damage aspect of the case is finished, then I will try the
18 negligence and maybe the negligence issue can be tried to one jury.

19 We will need separate juries to determine the damages, and
20 that's where I think the zones will help us because I will try, we
21 will pick, say, six cases in a particular zone and we will try to
22 piece them out so that they're at the ends and some in the middle
23 and you'll see what that type of case brings. And then perhaps that
24 can be expanded for the entire zone or the cases in that zone. That
25 approach may make the possibility of resolving the cases a little

1 easier, at least in that particular zone.

2 That seems to me to be the best method of resolving these
3 matters. So the first step will be to zone the cases, and I am
4 going to ask that the parties meet and confer, meaning defense
5 counsel and plaintiff counsel, if you can designate some, one or two
6 or three or four zones, that might make it easy; if not, everybody
7 can participate and see if we can come up with some zones. I know
8 many of you are very familiar with the parish, you've lived there
9 all of your lives, so I am going to be looking to you for some
10 guidance on the zones, the zones that make some sense,
11 geographically or the distance wise, something that makes some sense
12 that we can say that this is an appropriate zone and then we'll slot
13 some cases in that zone, representative cases. That seems to me to
14 be the way of handling it.

15 I think the Lone Pine Orders will help us determine which
16 cases want to be in that number, so to speak. And that's an
17 admission to the ball game, so I will be requiring Lone Pine Orders.
18 I will give you an appropriate time to comply with the Lone Pine
19 Orders, but at end of the appropriate time, I expect the appropriate
20 orders of dismissal for those cases that have not been filed.

21 I know I'm catching you cold, so I don't expect any
22 detailed response, but if anybody has any observation or comments or
23 anything at all to offer me, I'm willing to listen to you.

24 MR. MILLER: Your Honor, Kerry Miller on behalf of Murphy
25 Oil. Just a couple of observations. In terms of when we really go

1 active on these things --

2 THE COURT: Before you start, let me just also say that I
3 really want to try to resolve this by the end of this year, so
4 hopefully we can tee this up and get these cases tried and finished
5 up by December so that we can get this matter over with. There may
6 be a straggler or two or some peculiar case that doesn't fit into
7 this grouping that we might have to carve out, but I don't want to
8 just sit on this and wait a long period of time. It's not fair to
9 you, it's not fair to the litigants, these folks have so get some
10 resolution of their controversy. They have been through an awful
11 lot and I want to give them that, whether it's good or bad I can't
12 say, but it's going to be resolved. Go ahead.

13 MR. MILLER: Yes, your Honor, my comments are really not
14 towards when we try and end the process but when do we begin this
15 next phase, if you will, of trying to make resolution of the whole
16 situation. And I have some observations that I wanted to share with
17 the court, just sort of thinking through the issues and when it
18 might make the most sense almost administratively to begin the
19 process based upon what's going on right now.

20 As your Honor is aware, the settlement is still involved
21 in the distribution process. We spent the last two mornings in this
22 courtroom full of claimants from St. Bernard, lawyers from Murphy,
23 lawyers from the PSC, and lawyers from various banks and working
24 through issues related to situations where mortgage companies claim
25 rights in the settlement proceeds. Those were successful efforts, I

1 think we resolved the majority of the claims that we saw; but as
2 your Honor knows, we have more to deal with and we want to deal with
3 those first to get those done.

4 Secondly, your Honor, I will be bringing into the court's
5 registry this afternoon, you signed an order yesterday, which deals
6 with checks that were made jointly payable to class members and to
7 some attorneys who had contracts requested their name appear on the
8 check. Your Honor has said before that he would like to have a
9 process on that, similar to what we did with the banks, to try and
10 get resolution on those issues that the checks that have already
11 been cut can be deposited by the people and put to good use because
12 they do need the money.

13 On the issue of the mortgages, for example, we had the
14 hearings on Monday, we made resolution, we're cutting checks on
15 Friday. So that to me seems like it ought to be our near term
16 focus. What I mean by near term focus is the next couple of weeks
17 is to make sure the money is -- it's already out, it's kind of held
18 up, to get it out to the people so that they can use it. And what
19 we would like to do is continue to focus on those efforts --

20 THE COURT: I think we had about 40 that were that way,
21 and I think we did all but three or so.

22 MR. MILLER: Yea, it was pretty successful. Now, we have
23 some more in the second check run that just happened last week. We
24 got another check run, we got more than \$80 million out already. We
25 closed on more than 200 houses already in the buyout zone. We have

1 another check run scheduled for April the 30th, which is going to be
2 big again, I guess around \$100 million, out in the community, but it
3 is going to involve more checks being cut with some mortgage issues
4 and successions and deaths and private attorneys and those kind of
5 things.

6 And just in terms of we have a lot of resources put on
7 this case, and I think the court is aware of that dealing with this
8 for the last 18 months, but it just seems to us in the next couple
9 of weeks we would like to continue to focus our resources on those
10 issues, get that money out, get them into the people's hands and
11 then maybe June 1st really focus and deal with the remaining
12 litigation. It seems by June the 1st we will have all of that
13 cleared up.

14 Another thing that's I think significant of June the 1st,
15 your Honor, is the deadline to opt out. After your Honor certified
16 the litigation class in January of '06, you set a May 31st, '06 opt
17 out deadline. We still have some people who timely opted out who
18 have not yet filed suit. Prescription will run May 31st of '07,
19 it's a year from the date of the opt out, so you potentially have
20 another set of cases out there. It's not a whole lot, but it's on
21 the order of 40 potential cases of people who have opted out who are
22 unrepresented and who have not filed suit. So again, that all will
23 be resolved one way or the other by June the 1st and we will have a
24 lot clearer picture then.

25 One more observation for the court is, we've driven down

1 the number of opt out claims pretty successfully by an order that
2 you entered a couple of months ago, or maybe a month ago, in which
3 you can still rejoin the class as of June the 7th of '07 and get
4 paid. That's been successful, your Honor, we are down to 195 opt
5 out addresses comprising properties, some of the properties are
6 apartments, so it's 180 properties for remediation purposes and 195
7 addresses. I think it involves about 340 some odd individuals.
8 Some of them again have not exercised their legal rights by filing a
9 suit, so their claims may prescribe or there may be suits filed in
10 the next 30 days or so.

11 And I guess the last thing, as the court is aware, we are
12 trying to complete the remediation in the field. The last time we
13 brought the issue up with the court I think we were about, at about
14 700. We are down to about 300 left out of a total of about 4,000;
15 but the 300 left are the hardest 300 and it's consuming a lot of
16 effort and a lot of attention. Many of the attorneys in this room
17 have been very cooperative recently working with us and the
18 contractors directly, many times a day holding people's hands,
19 getting doors unlocked, getting places gutted, getting access to
20 fences and sheds and garages, all of the things that we need to do
21 to comply and get the parish cleaned up, get the whole parish
22 cleaned up.

23 So while we have knocked out 3,600, we would like to
24 continue to focus on these remaining 300 and see what progress we
25 can make.

1 So those are my observations, your Honor, just in terms of
2 housekeeping, administrative issues and resource allocation.

3 THE COURT: Anybody from the plaintiffs, any observation
4 from that standpoint from that time frame standpoint?

5 This is what we'll do then. By June the 11th I would ask
6 that the attorneys meet and confer, and I will meet with you on the
7 14th at nine o'clock.

8 THE DEPUTY CLERK: June? June or May?

9 THE COURT: June.

10 THE DEPUTY CLERK: You're here.

11 THE COURT: By June the 14th. At which time I am going to
12 be interested in setting zones. I will look to you for some
13 guidance on that, setting trial dates and selecting cases for trial.

14 My thinking on the selecting of cases is that I would like
15 to select several cases and try these cases within a particular
16 zone. I really think it would be helpful if we tried some
17 representative cases, and representative I think probably includes
18 location. If we're going to try a zone and we're looking for the
19 presence of oil and also the damage amount, it seems to me that the
20 ends of that zone and the middle of the zone and backs and fronts
21 will be where the cases should come from. And there ought to be
22 some representative cases that if we're dealing with slab cases, if
23 we're dealing with single story as opposed to two story, we ought to
24 have some mix in that or some brick and wood or something that you
25 can see how the juries take to this type of damage and how the

1 experts play on this type of damage.

2 You might also give some thought to having similar
3 experts, it just makes more sense if you have one expert, assuming
4 the expert can carry the water in several cases as opposed to
5 different experts. But that's forensics, that's something that
6 lawyers have to decide, not judges.

7 But I don't see this as a hard case to try. It would seem
8 to me that we could do it with several witnesses as opposed to a lot
9 of other matters because we're dealing essentially with property
10 damage, not only, but essentially property damage and the amounts
11 and the cause of it.

12 I'll put a minute entry out on this, but I'll expect you
13 to meet and confer by June 11th, so that will give you a week or so
14 after June 1st, and establish the zones. I'll probably hear from
15 you sometime before June 14th, I'll check in with you, but I'll have
16 a meeting in open court on June the 14th to talk to you about
17 establishing the zones. I'll set the zones at that time, I'll set
18 some trial dates and we will select some cases. If you can, I would
19 look to you to agree on the cases. If you cannot agree on the
20 cases, then I'll get the plaintiffs to pick one, defendants to pick
21 one, and back and forth until we have a representative amount from
22 the group. But I would ask you to try to meet and confer and select
23 some cases that make some sense and give you some indication.

24 If we have four or five cases in each zone, that may help
25 you resolve the other cases in that particular zone if there is some

1 consistency. That makes some sense to me.

2 Anything from anybody?

3

4 MR. EXNICIOS: One point of clarification, if I may, your
5 Honor.

6 THE COURT: Sure. Please state your name for the record.

7 MR. EXNICIOS: I'm sorry, your Honor, Val Exnicios. When
8 your Honor refers to zones, is your Honor talking about -- I guess
9 there's two classifications of potential claimants left, those who
10 have opted out of your Honor's class boundaries and then those
11 outside of that.

12 THE COURT: Mainly the ones outside of that. Because the
13 ones inside that to me is a zone.

14 MR. EXNICIOS: Okay.

15 THE COURT: Now, the ones outside of that you may, it may
16 not, but you may find that it makes some sense to zone those out. I
17 don't know whether it does or not, but it seems to me that the ones
18 that are outside the class zone you may have some subzones. If you
19 tell me that you don't need subzones then that's fine. But it's a
20 big space and so you might need some subzones that help you deal
21 with it.

22

23 MR. EXNICIOS: Thank you, your Honor.

24 THE COURT: Anything else?

25 MR. KROUSE: A.J. Krouse for Murphy. Your Honor, I got a

1 phone call and I think a letter from Mark Plaisance who I believe is
2 a city court judge in Baker and also a plaintiff's attorney in this
3 case regarding one of his plaintiffs. He advised the court and
4 wanted me to advise the court that he was at a judicial conference I
5 believe in Atlanta, and he has a case that's somewhat unique than
6 the property damage cases that are involved here. Has the court
7 addressed that issue?

8 THE COURT: I really haven't. I recognized that there
9 might be some outliers, and that may be one of them, and we may
10 have to give special treatment to that type of case or it doesn't
11 fit in or it doesn't fit.

12 MR. KROUSE: Can I recommend to the court or at least a
13 suggestion would be that the same loan pine order would be in effect
14 for Mr. Plaisance's clients as every other client since it has to do
15 with personal injuries in this case?

16 THE COURT: Okay.

17 MR. KROUSE: Thank you.

18 THE COURT: I know that there's a dispute oftentimes in
19 the loan pine situation. The Fifth Circuit has spoken in Acuna, 200
20 F. 3d 335, I found helpful. There is some discussion in it on loan
21 pine and some other cases, one Steering Committee v. Exxon Mobil,
22 another Fifth Circuit, 461 F. 3d 598; there's some good discussion
23 on it in a Texas case, Lonnie Bell v. Exxon Mobil. I just have a
24 Westlaw on that one. There's a good article on it in some of the
25 journals that I found helpful that is from the American Bar

1 Association, 17 SPG Natural Resources & Environment 238, and it sets
2 out some material on it.

3 It's a way in a case like this of whittling the cases
4 down, frankly. There are some cases that are interested in pursuing
5 the matter and there are some cases that may not be after thinking
6 about it, and we just need to separate the weed from the shaft and
7 give the people who are interested in resolving the case an
8 opportunity to resolve them. Those that are no longer interested in
9 it, are not willing to expend money for expert reports and things of
10 that nature, then they need to be moved to the side. They can't
11 weigh us down in a case like this, and there are so many cases that
12 we have to find a method of dealing with them.

13 All right. Well, thank you for being here. The court
14 will stand in recess.

15 THE DEPUTY CLERK: Everyone rise.

16 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

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REPORTER'S CERTIFICATE

I, Karen A. Ibos, CCR, Official Court Reporter, United States District Court, Eastern District of Louisiana, do hereby certify that the foregoing is a true and correct transcript, to the best of my ability and understanding, from the record of the proceedings in the above-entitled and numbered matter.

Karen A. Ibos, CCR, RPR, CRR
Official Court Reporter