

MINUTE ENTRY
FALLON, J.
OCTOBER 4, 2005

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

PATRICK JOSEPH TURNER, ET AL. * CIVIL ACTION
VERSUS * NO. 05-4206
MURPHY OIL USA, INC. * SECTION "L"(2)

THIS DOCUMENT RELATES TO ALL CASES, INCLUDING
NOS. 05-4160, 05-4164, 05-4190, 05-4210, 05-4211, 05-4125, 05-4227, and 05-4427

A telephone status conference was held on this date in the Chambers of Judge Eldon E. Fallon. The conference was called for counsel in the nine cases filed as of the morning of October 4, 2005. Several new cases have been filed today and more are anticipated. Kerry Miller and George Frilot attended on behalf of Defendant, Murphy Oil USA, Inc. Attending on behalf of the various plaintiffs were the following attorneys: Sidney Torres, Roberto Burns, Val Exnicios, Madro Bandaries, Gilbert Andry, Scott Bickford, John Martzell, Phil Bohrer, Hugh Lambert, Joseph Bruno, Mike Stag, Jay Andry, Conrad Williams, Richard Arsenault, Dawn Barrios, Bruce Kingsdorf, Mickey Landry, Rebecca Cunard, William Bradley, Roy Amedee, Robert Creely, Gerald Meunier, Donni Young, Ron Motley, Anthony Irpino, Gordon Crawford, Mike Calogero, Daniel Becnel, Wiley Beevers, Sean Alfortish, Van Robichaux, and Ronnie Penton.

The Court addressed five motions filed by Plaintiffs in the *Duckert* case, No. 05-4210. These motions are as follows: 1) Motion to Consolidate Cases, 2) Motion to Appoint Plaintiffs' Committee, 3) Motion to Appoint Special Master, 4) Motion to Enjoin Ex Parte Communication

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Between Murphy Oil and Putative Class Members, and 5) Motion for Expedited Hearing of all motions filed. The Motion for Expedited Hearing is GRANTED. The other motions were addressed seriatim.

I. Motion to Consolidate Cases

The Motion to Consolidate Cases is hereby GRANTED. The nine complaints that have been filed are against a single defendant for an incident or incidents that occurred in the same area during the same time period – an alleged oil spill that occurred in St. Bernard Parish during and/or after Hurricane Katrina. The Court is satisfied that the cases are related. The Court notes that two cases, *Maus*, No. 05-4160, and *Gaspard*, No. 05-4164, were originally assigned to Section “F.” In separate orders, these two cases have now been transferred to Section “L.” Accordingly, in order to promote judicial efficiency and consistent verdicts, IT IS ORDERED that the above nine matters are hereby CONSOLIDATED. The Court will issue a separate Order that automatically consolidates any future related cases.

Pursuant to the Court's directive, all pleadings hereafter filed in this consolidated proceeding shall bear the caption of the lead consolidated case together with the docket number of all cases within the consolidation to which the document applies or the notation "ALL CASES" if it applies to all cases.

The clerk of court is directed to establish a master file and a master docket sheet for the consolidated group of cases.

All entries shall be made on the master docket sheet only, with a notation listing the cases to which the document applies, except that orders and documents terminating a party or disposing of a case will also be entered on the individual docket sheet. All documents shall be

filed in the master file only, except that orders and documents terminating a party or disposing of a case will also be filed in the record of the individual case.

In the event that a case is separated from the consolidated group it shall be the responsibility of counsel to jointly designate the documents necessary to the continued litigation of the case and to file such designation and copies of the documents with the clerk within five days of the deconsolidation order.

II. Motion to Appoint Plaintiffs' Committee

The Motion to Appoint Plaintiffs' Committee is hereby GRANTED. The Court has been advised by plaintiffs' counsel that there are twelve pending cases in the Eastern District of Louisiana as of October 4. Accordingly, IT IS ORDERED that a Plaintiffs' Committee shall be formed comprising thirteen members. Plaintiffs' counsel shall appoint one attorney for each of the twelve filed cases to the committee. Regarding the thirteenth member of the committee, several attorneys attended the October 4 conference and indicated that they plan or expect to file cases soon – Donni Young, Gordon Crawford, Sidney Torres, Roberto Burns, and Gerry Meunier. This group shall select one member of the committee to represent the remaining cases. The Plaintiffs' Committee shall be formed by Thursday, October 6, 2005, and shall advise the Court on that date regarding the membership and contact information of the committee.

IT IS FURTHER ORDERED that the Plaintiffs' Committee shall name an Executive Committee comprised of three members. This committee shall also be formed by Thursday, October 6. The Executive Committee shall submit their curricula vitae to the Court, and the Court will approve the Executive Committee and select one attorney to serve as Plaintiffs' liaison counsel.

Defendants stated that Kerry Miller shall serve as Defendant's liaison counsel.

III. Motion to Appoint Special Master

The Motion to Appoint Special Master is hereby DENIED. For the present, the Court will serve as Special Master in the consolidated cases.

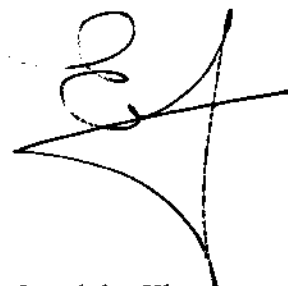
IV. Motion to Enjoin Ex Parte Communication Between Murphy Oil and Putative Class Members

The Motion to Enjoin Ex Parte Communication Between Murphy Oil and Putative Class Members (other than named class representatives) is hereby DENIED, while Plaintiffs reserve their rights to challenge communications between Murphy Oil and class members on a case-by-case basis. In the motion, the *Duckert* plaintiffs seek an order prohibiting ex parte communication between Murphy Oil and putative class members because Murphy Oil allegedly has been making settlement offers to putative class members to buy out their homes. Plaintiffs were concerned that such offers would be unfair given the dire financial circumstances in which many putative class members find themselves after Hurricane Katrina.

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, district courts may make appropriate orders imposing conditions upon the parties for the protection of the members of the class. Fed. R. Civ. P. 23(d); *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 100 (1981). However, orders limiting communication between parties and putative class members raise significant First Amendment concerns, as these orders may constitute prior restraints on free speech. *Gulf Oil*, 452 U.S. at 101-02. Under Rule 23, a district court may impose such an order only if it “is based upon a clear record and specific findings that reflect a weighing of the need for a limitation and the potential interference with the rights of the parties.” *Id.* at 101; *Gates v. Cook*, 234 F.3d 221, 227 (5th Cir. 2000).

In *Kleiner v. First National Bank of Atlanta*, 751 F.2d 1193 (11th Cir. 1985), the Eleventh Circuit articulated a test to determine whether an order limiting ex parte communication between parties and putative class members is appropriate.¹ The Eleventh Circuit found that an order limiting communications between a class and class opponents will satisfy First Amendment concerns if it is grounded in good cause. *Id.* at 1205-06. Four criteria determine the existence of good cause: the severity and likelihood of the perceived harm, the precision with which the order is drawn, the availability of a less onerous alternative, and the duration of the order. *Id.* When a form of speech is inherently conducive to abuse and duress, the district court need not make particularized findings that the order is necessary to protect the class. *Id.* at 1206. Oral, unsupervised solicitations are considered particularly prone to abuse. *Id.*

The Court finds that an order enjoining ex parte communications between Murphy Oil and putative class members is not needed at this time. The Court notes that Murphy Oil should not approach represented class members except through their counsel, pursuant to Rule 4.2 of the Louisiana Rules of Professional Conduct. Plaintiffs reserve their rights to challenge individual communications on a case-by-case basis, and the Court will police these communications for potential abuses. Accordingly, the plaintiffs' motion is DENIED.

A handwritten signature in black ink, appearing to be 'S. J.', is written over a horizontal line.

¹ Several district courts in the Fifth Circuit have found the *Kleiner* test useful in similar circumstances. See *Belt v. Emcare Inc.*, 299 F. Supp. 2d 664, 668 (E.D. Tex. 2003); *Lee v. American Airlines, Inc.*, 2002 WL 226347 *2 (N.D. Tex. Jun. 19, 2001).