

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

PATRICK JOSEPH
TURNER, ET AL

Docket No. 05-CV-4206
New Orleans, Louisiana
Tuesday, January 31, 2006

v.

MURPHY OIL USA, INC.

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

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19 Proceedings recorded by mechanical stenography, transcript
20 produced by computer.
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P R O C E E D I N G S

(STATUS CONFERENCE)

(TUESDAY, JANUARY 31, 2006)

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6 THE COURT: Good morning, ladies and gentlemen, be seated,
7 please. Call the case.

8 THE DEPUTY CLERK: Civil action 05-4206, Patrick Joseph
9 Turner v. Murphy Oil USA, et al.

10 THE COURT: Counsel make your appearance for the record,
11 please.

12 MR. TORRES: Sidney Torres on behalf of plaintiffs.

13 MR. MILLER: Kerry Miller on behalf of defendant Murphy
14 Oil USA.

15 THE COURT: We're here today in connection with the status
16 conference in this matter. I try to have a status conference at
17 least once a month, I meet in the interim with liaison counsel or
18 the members of the committees to have the case develop in some
19 logical fashion.

20 I have had an opportunity to reflect on the matter, I've
21 had an opportunity to write an order dealing with the class
22 certification. I certified the class, I issued the order in an
23 opinion yesterday with a map showing the court's area of
24 certification.

25 I met with liaison counsel for each side, and I'm

1 interested in severing the liability from the quantum in the case
2 and trying the liability. I set orders the 14th for the trial on
3 liability of this case, we will begin the trial at 8:30 and
4 anticipate liability will take about five to ten days to try, more
5 like five. And then we will proceed, if necessary, to the next
6 phases of the case.

7 I also set a status conference with liaison counsel for
8 February the 9th at two o'clock. At that time we'll focus a little
9 more on the liability aspects of the trial, and also I will seek
10 from them some suggestions as to cut off dates for discovery on
11 those issues.

12 I have received from the parties their suggested agenda
13 for this meeting. I dealt with the first one, the Motion For Class
14 Certification and Proposed Trial Plan. The next item that was
15 proposed by the plaintiff is an accounting of common benefit, and I
16 will hear from the plaintiff at this time.

17 MR. TORRES: Yes, your Honor. We have prepared an order,
18 which I would like to submit for your Honor's review. We also
19 presented it to the defendants and I talked to Kerry Miller about
20 it. I would like at this time to present it to the court for
21 consideration.

22 THE COURT: Okay. I will take a look at the order and if
23 necessary I will post it on the web site, get any input. I will
24 also have an open meeting if anybody has any objection to it they
25 may make their objection at that time, but I will look at the order.

1 The next item was the Defendant's Request For Modification
2 of the Court's November 2005 Order regarding communications with
3 putative class members. That matter is moot at this time, but I
4 understand that there are some issues regarding clean up. My
5 understanding is that Murphy is willing or available to do some
6 clean up work if requested to do so or if the EPA moves in that
7 area; and we may have to deal with those issues, either the court or
8 counsel. I suggest that counsel first try to attempt to resolve
9 those matters in an amicable manner, and if necessary the court will
10 get involved in them.

11 From the defendant's standpoint, do you see any particular
12 problems that you need to deal with now?

13 MR. MILLER: No, your Honor, not other than those that
14 were mentioned in chambers. And I think that's it. There is a lot
15 of regulatory oversight over the clean up process, so it's possible,
16 probably likely that in the coming days we will have to work with
17 the plaintiffs to develop a procedure protocol to go ahead and clean
18 up private properties of putative class members pursuant to
19 directives or instructions from the EPA and LDEQ.

20 THE COURT: In a matter of this sort I looked at the
21 evidence and the material that was presented to me and I drew
22 certain boundaries. But as I said in the order, that doesn't mean
23 that everybody within that boundary has a case or a claim, they may
24 not. They may not have gotten any oil on their land, they may not
25 have sustained any injuries. So it's going to be incumbent upon the

1 plaintiffs to demonstrate those items. So you may have to engage
2 immediately or begin immediately to do some testing.

3 I suggest that be coordinated with the defendant so that
4 we don't have a situation where you say you tested it and they say
5 you didn't test, and it's a question of whether or not you did test
6 and who tested and when it was tested and how it was tested. It's
7 better to coordinate and have a test done, either by one party or by
8 two people at the same time so that we remove any 901 problems,
9 evidentiary 901 problems, authenticity of a particular test. We
10 have enough issues in this case. I want to try to not make anymore
11 issues if necessary.

12 One last thing. Also I said that I drew the boundaries,
13 that doesn't mean that people outside of those boundaries do not
14 have a case, they may well have a case. But I looked at the
15 evidence and drew the boundaries the way that I saw the evidence
16 supported it at this time. Mr. Frilot.

17 MR. FRILOT: Your Honor, I think it would be helpful to
18 everyone if we could have an order setting out some kind of notice
19 sampling so that everybody could have an opportunity, because I
20 think your Honor is absolutely correct, if we do it jointly there
21 will be a lot less difficulty in terms of the trial.

22 THE COURT: Liaison counsel for both sides get together
23 and prepare an order. If you can prepare an order that you can both
24 live with, that's significant to me and in all likelihood I will
25 sign it. If you can't, give me two orders and I will deal with it

1 in that fashion.

2 But I do think it's helpful, at least in the beginning, if
3 not throughout this litigation, to involve the court in these
4 matters and I will issue certain matters so that you don't have to
5 be concerned about what you said and what the other person heard.
6 When I issue an order that will be it and it will give you some
7 direction, I think that's the best way to handle it.

8 Any other item that we need to take up at this time?
9 Since I just issued that opinion, I know that you haven't had an
10 opportunity to study it and look at it, so some of the items that
11 may be on your mind or you may be thinking about now you don't want
12 to discuss them at the present time, so this meeting may well be
13 short. But this is an issue, class certification, that is
14 immediately appealable, so both sides take a look at that and see
15 whether or not you need to appeal it. If you do, you have a period
16 of time within which to do it, ten days.

17 And logistically, the court will be of assistance to you
18 in that regard if you need excerpts from the record. We should have
19 a transcript of our last conference. All of these conferences of
20 course are taken down and the transcripts posted on the web site for
21 your access. But if you need any documents to support your appeal
22 or any exhibits to support your appeal, get with the court and I'll
23 make sure we have them. Mr. Bruno.

24 MR. BRUNO: I just have a question. I am wondering if
25 your Honor would consider in view of your comment that you are

1 talking about a bifurcation between liability and damage, could you
2 consider an amendment to the trial plan that might include possibly
3 common damages in Phase I along with liability for the entire class?

4 THE COURT: I'll talk with the parties about that at our
5 status conference to see whether or not that's necessary. There is
6 a question of whether during the Phase I aspect of the case for
7 standing purposes, if not for other purposes, some demonstration be
8 made as to damages. So we will be dealing with that.

9 My thought about putting liability or questions of
10 liability first is that we may not get to damages. If liability is
11 determined from the standpoint of the defendants, that's the end of
12 the case. If it is determined from a standpoint of the plaintiffs,
13 then we move into the liability of each individual person and then
14 we focus on how to deal with that, whether we deal with it
15 geographically from the standpoint of closest to furthest or whether
16 we deal with it with groupings or types of damage, physical damage,
17 business damage, personal injury damage and see whether or not
18 within those subgroups there is some further categorization that can
19 be made so that we don't need to try every case in that whole area.

20 And from the standpoint of damages, I would think
21 particularly the property damage, if we get that far in the case,
22 could be handled in a way where we could try several cases in the
23 morning and several cases in the afternoon. The jury would simply
24 be one, one or two witnesses would be able to take the stand and
25 explain the presence of oil, the type of oil, where it was, what

1 they did and then somebody, an appraiser could get on the stand and
2 say what the damages are.

3 And I don't see that as being a difficult issue or
4 difficult case to try, if we get that far in the case. But there
5 are several ways of doing it, I can also elicit the help of my
6 colleagues around here and we can try ten at a time if that's
7 necessary. So there are several ways of doing it, but I will be
8 visiting with you as the time goes on.

9 MR. FRILOT: Your Honor, from the time standpoint, the
10 order we received yesterday was dated the 30th. Did you sign it on
11 that date?

12 THE COURT: Yes, I did. Anything further? Anything from
13 either members of the committee, liaison counsel or anybody in the
14 audience?

15 I have these matters in open court, I want everybody to
16 feel free to attend and to ask any questions or make any
17 observations if you have any.

18 Okay. I will set the next status conference. The next
19 status conference, we will do it March 2nd and it will be at 8:30 I
20 will meet with liaison counsel and at nine o'clock I will have an
21 open meeting. Thank you very much. The court will stand in recess.

22 THE DEPUTY CLERK: Everyone rise.

23 (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

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