

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U.S. COURT OF APPEALS

FILED

FEB 26 2010

No. 07-60756

CHARLES R. FULBRUGE III
CLERK

NED COMER; BRENDA COMER; ERIC HAYGOOD, husband of Brenda Haygood; BRENDA HAYGOOD; LARRY HUNTER, husband of Sandra L Hunter; SANDRA L HUNTER; MITCHELL KISIELWESKI, husband of Johanna Kisielweski; JOHANNA KISIELWESKI; ELLIOTT ROUMAIN, husband of Rosemary Roumain; ROSEMARY ROUMAIN; JUDY OLSON; DAVID LAIN

Plaintiffs - Appellants

versus

MURPHY OIL USA; UNIVERSAL OIL PRODUCTS (UOP); SHELL OIL COMPANY; EXXONMOBIL CORP; AES CORP; ALLEGHENY ENERGY INC; ALLIANCE RESOURCE PARTNERS LP; ALPHA NATURAL RESOURCES INC; ARCH COAL INC; BP AMERICA PRODUCTION COMPANY; BP PRODUCTS NORTH AMERICA INC; CENERGY CORP; CONOCOPHILLIPS COMPANY; CONSOL ENERGY INC; THE DOW CHEMICAL COMPANY; DUKE ENERGY CORP; EON AG; E I DUPONT DE NEMOURS & CO; ENTERGY CORP; FIRSTENERGY CORP; FOUNDATION COAL HOLDINGS INC; FPL GROUP INC; HONEYWELL INTERNATIONAL INC; INTERNATIONAL COAL GROUP INC; MASSEY ENERGY CO; NATURAL RESOURCE PARTNERS LP; PEABODY ENERGY CORP; RELIANT ENERGY INC; TENNESSEE VALLEY AUTHORITY; WESTMORELAND COAL CO; XCEL ENERGY INC; CHEVRON USA INC; THE AMERICAN PETROLEUM INSTITUTE

Defendants - Appellees

Appeal from the United States District Court for the
Southern District of Mississippi

ON PETITIONS FOR REHEARING EN BANC

(Opinion October 16, 2009, 5 Cir., 2009, _____ F.3d _____)
(Revised Opinion October 22, 5 Cir., 2009, _____ F.3d _____)

(February 26, 2010)

BEFORE: JOLLY, DAVIS, SMITH, STEWART, DENNIS, CLEMENT, PRADO
OWEN and ELROD, Circuit Judges.¹

BY THE COURT:

A member of the court having requested a poll on the
petitions for rehearing en banc, and a majority of the circuit

¹Chief Judge Jones, and Judges King, Wiener, Garza, Benavides, Southwick and Haynes are recused and did not participate.

judges in regular active service and not disqualified having voted in favor,

It is ordered that this cause shall be reheard by the court en banc with oral argument on a date hereafter to be fixed. The Clerk will specify a briefing schedule for the filing of supplemental briefs.

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

March 01, 2010

TO COUNSEL LISTED BELOW:

No. 07-60756 - Comer, Et Al. vs. Murphy Oil USA, Et Al.

Dear Counsel:

Enclosed is the court's order filed February 26, 2010, directing this case be reheard en banc with oral argument.

Under Fifth Circuit Local Rule 41.3 this order vacates the previous opinion and judgment of this court and stays the mandate.

Appellants will have until March 31, 2010, to file an en banc brief, with a blue cover, with appellees' en banc brief, with a red cover, due in this office not later than April 30, 2010. The case will be heard during the week of May 24, 2010. Counsel for the parties will receive adequate notice as to the exact date and time for the presentation of the oral argument.

All parties are requested to furnish twenty (20) copies of en banc briefs, and opening briefs and Record Excerpts previously filed, for the use of the en banc court. As you did previously, we request that all copies be spirally bound.

Very truly yours,

CHARLES R. FULBRUGE III, Clerk

By: _____
Geraldyn A. Maher
Calendar Clerk
504-310-7630

/gam

Enclosure

Mr. F. Gerald Maples
Mr. Michael R. Phillips
Mr. Richard L. Forman
Mr. Richard R. Fontan
Mr. Michael B. Gerrard
Mr. Kenneth W. Barton
Mr. Raymond M. Ripple
Mr. Edwin W. Small
Mr. Robert E. Meadows

Mr. Kerry J. Miller
Ms. Mary S. Johnson
Mr. Thomas L. Carpenter
Ms. Kathleen T. Sooy
Mr. Peter D. Keisler
Mr. Timothy S. Bishop
Mr. Charles E. Ross
Mr. Thomas E. Fennell
Mr. Robert A. Long, Jr.

cc: Hon. Louis Guirola, Jr.
Mr. Edgar R. Haden

Mr. Raymond B. Ludwiszewski
Mr. Douglas A. Henderson