UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: MOTOR FUEL TEMPERATURE SALES PRACTICES LITIGATION MDL No. 1840

ORDER VACATING CONDITIONAL REMAND ORDER

Before the Panel:[*] Pursuant to Panel Rule 10.2, plaintiffs have moved to vacate our order, entered at the suggestion of the transferee judge, conditionally remanding the claims and parties in 24 actions listed on the attached Schedule A to their respective transferor courts.[1] Defendant Chevron U.S.A., Inc. ("CUSA") brings a similar motion with respect to 20 actions on Schedule A that involve CUSA. No responses to the motions were filed.

After considering all arguments of counsel and recent developments in the transferee court, the Panel finds that separation and remand of the foregoing claims under Section 1407 is not currently warranted. On March 24, 2014, the transferee judge, the Honorable Kathryn H. Vratil, issued a Supplement to Suggestion of Remand advising the Panel that she had revised her recommendation in light of recent developments with respect to class settlements. Specifically, on March 15, 2014, plaintiffs filed a motion for preliminary approval of class action settlements with 18 newly settling defendants, including CUSA, in the transferee court, and separately reached non-class resolutions with certain other defendants. Plaintiffs represent – and no party disputes – that all actions listed on Schedule A now only include defendants that have proposed class settlements pending approval in the MDL. Judge Vratil recommends that, in light of the pending motion for preliminary approval of

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[*] Two of the four Panel members present at the hearing have interests that would normally disqualify them under 28 U.S.C. § 455 from participating in the decision of this matter. Accordingly, the Panel invoked the Rule of Necessity and all Panel members present at the March 2014 hearing participated in the decision of this matter in order to provide the forum created by the governing statute, 28 U.S.C. § 1407. *See In re Adelphia Commc'ns Corp. Sec. & Derivative Litig. (No. II)*, 273 F. Supp. 2d 1353 (J.P.M.L. 2003); *In re Wireless Telephone Radio Frequency Emissions Prods. Liability Litig.*, 170 F. Supp. 2d 1356 (J.P.M.L. 2001). Judge Marjorie O. Rendell and Judge Lewis A. Kaplan took no part in the decision of this matter.

[1] Plaintiffs' motion originally covered 26 actions, but their supplemental brief excludes two actions from the motion based on changed circumstances. *See* Pls.' Supplement, Doc. No. 245 (J.P.M.L. Feb. 14, 2014). One action (*Heather Rutherford*) was completely resolved and dismissed on February 6, 2014; thus, the Panel vacated the conditional remand order with respect to that action. *See* MDL No. 1840, Order, Doc. No. 247 (J.P.M.L. Mar. 7, 2014). Plaintiffs' supplemental brief also states that they no longer seek vacatur of the conditional remand order with respect to the *Craft* action.

class settlements, retention of those actions in MDL No. 1840 is appropriate. We therefore conclude that vacatur as to the actions listed on Schedule A is warranted.[1]

IT IS THEREFORE ORDERED that the Panel's separation of claims and conditional remand order filed on December 12, 2013, is vacated insofar as it relates to the actions listed on Schedule A.

PANEL ON MULTIDISTRICT LITIGATION

John G. Heyburn II
Chairman

Charles R. Breyer
Ellen Segal Huvelle
Sarah S. Vance

[1] The transferee court continues to recommend remand as to the unsettled claims in *Craft v. The Kroger Co.*, C.A. No. 1:07-00271 (E.D. Tex.), which plaintiffs have excluded from their motion to vacate. *See* Pls.' Supplement, Doc. No. 245 (J.P.M.L. Feb. 14, 2014). Thus, the stay of the conditional remand order with respect to *Craft* will be lifted by separate order.

IN RE: MOTOR FUEL TEMPERATURE SALES PRACTICES LITIGATION MDL No. 1840

SCHEDULE A

Middle District of Alabama

WILLIAMS, ET AL. V. BP CORPORATION NORTH AMERICA, INC., ET AL., C.A. No. 2:07-00179 (D. Kansas, C.A. No. 2:07-02355)
COOK, ET AL. V. HESS CORPORATION, ET AL., C.A. No. 2:07-00750 (D. Kansas, C.A. No. 2:07-02492)

Eastern District of Arkansas

JONES, ET AL. V. EZ MART STORES INC., ET AL., C.A. No. 4:07-00246 (D. Kansas, C.A. No. 2:07-02518)

District of Arizona

PAYNE, ET AL. V. CHEVRON USA, INC., ET AL., C.A. No. 2:07-00478 (D. Kansas, C.A. No. 2:07-02366)

Southern District of Florida

REDSTONE, ET AL. V. CHEVRON USA, INC., ET AL., C.A. No. 1:07-20751 (D. Kansas, C.A. No. 2:07-02375)

Northern District of Georgia

RUTHERFORD, ET AL. V. MURPHY OIL USA, INC., ET AL., C.A. No. 4:07-00113 (D. Kansas, C.A. No. 2:07-02389)

Western District of Kentucky

KEEN EXPLORATION, LLC, ET AL. V. AMOCO OIL COMPANY, ET AL., C.A. No. 5:07-00014 (D. Kansas, C.A. No. 2:07-02294)

Eastern District of Louisiana

LALOR V. BP CORPORATION NORTH AMERICA, INC., ET AL., C.A. No. 2:07-03985 (D. Kansas, C.A. No. 2:07-02483)

District of Maryland

SAGALYN V. CHEVRON USA, INC., ET AL., C.A. No. 8:07-00430 (D. Kansas, C.A. No. 2:07-02374)

Southern District of Mississippi

WASH V. CHEVRON USA, INC., ET AL., C.A. No. 4:07-00037
(D. Kansas, C.A. No. 2:07-02361)

Western District of Missouri

DONALDSON, ET AL. V. BP CORPORATION NORTH AMERICA, INC., ET AL.,
C.A. No. 4:07-00093 (D. Kansas, C.A. No. 2:07-02280)

District of Nevada

KOHUT, ET AL. V. CHEVRON USA, INC., ET AL., C.A. No. 2:07-00285
(D. Kansas, C.A. No. 2:07-02371)

District of New Mexico

BARKER, ET AL. V. CHEVRON USA, ET AL., C.A. No. 2:07-00293
(D. Kansas, C.A. No. 2:07-02345)

Eastern District of North Carolina

NEESE, ET AL. V. ABERCROMBIE OIL CO. INC., ET AT., C.A. No. 5:07-00091
(D. Kansas, C.A. No. 2:07-02358)

Western District of Oklahoma

MASSEY, ET AL. V. BP CORPORATION NORTH AMERICA INC., ET AL.,
C.A. No. 5:07-00102 (D. Kansas, C.A. No. 2:07-02289)
CARY, ET AL. V. BP CORPORATION NORTH AMERICA INC., ET AL.,
C.A. No. 5:07-00155 (D. Kansas, C.A. No. 2:07-02298)
BOWER, ET AL. V. 7-ELEVEN, INC., ET AL., C.A. No. 5:07-00779
(D. Kansas, C.A. No. 2:07-02430)

District of South Carolina

KORLESKI V. BP CORPORATION NORTH AMERICA INC., ET AL.,
C.A. No. 6:07-03218 (D. Kansas, C.A. No. 2:07-02531)

Eastern District of Tennessee

SHIELDS, ET AL. V. RACETRAC PETROLEUM, INC., ET AL., C.A. No. 1:07-00169
(D. Kansas, C.A. No. 2:07-02416)

Middle District of Tennessee

CONLIN, ET AL. V. CHEVRON USA, INC., ET AL., C.A. No. 3:07-00317
(D. Kansas, C.A. No. 2:07-02359)

Western District of Tennessee

FOSTER, ET AL. V. BP NORTH AMERICA PETROLEUM, INC., ET AL.,
C.A. No. 2:07-02059 (D. Kansas, C.A. No. 2:07-02296)

Eastern District of Texas

COUCH, ET AL. V. BP PRODUCTS, ET AL., C.A. No. 6:07-00291
(D. Kansas, C.A. No. 2:07-02397)

District of Utah

JENKINS, ET AL. V. AMOCO OIL, C.A. No. 2:07-00661
(D. Kansas, C.A. No. 2:07-02508)

Eastern District of Virginia

GRAHAM V. CHEVRON USA, INC., ET AL., C.A. No. 1:07-00193
(D. Kansas, C.A. No. 2:07-02399)