

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

March 11, 2009

\_\_\_\_\_  
No. 08-30236  
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Charles R. Fulbruge III  
Clerk

FRANKS INVESTMENT COMPANY LLC,

Plaintiff-Appellant

vs.

UNION PACIFIC RAILROAD CO,

Defendant-Appellee

- - - - -  
Appeal from the United States District Court for the  
Western District of Louisiana  
- - - - -

ON PETITION FOR REHEARING  
AND  
PETITION FOR REHEARING EN BANC

(Opinion July 3, 2008, 5 Cir., 2008, \_\_\_\_F.3d\_\_\_\_)

(March 11, 2009)

BEFORE: JONES, Chief Judge, KING, JOLLY, DAVIS, SMITH,  
BARKSDALE, GARZA, BENAVIDES, STEWART, CLEMENT, PRADO,  
OWEN, ELROD, SOUTHWICK and HAYNES, Circuit Judges.<sup>1</sup>

BY THE COURT:

A member of the Court in active service having requested a poll on the petition for rehearing en banc and a majority of the judges in active service having voted in favor of granting a rehearing en banc,

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.

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<sup>1</sup>Judges Wiener and Dennis are recused in this case and did not participate in this decision.