

FILED

July 26, 2007

Charles R. Fulbruge III
Clerk

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 04-40712

SEAN BREEN, as Administrator of the Estate of
Christopher Breen; CHRISTOPHER BREEN; JOHN E. BREEN;
MARIAN K. BREEN,

Plaintiffs-Appellants,

VERSUS

TEXAS A&M UNIVERSITY; ET AL.,

Defendants,

TEXAS A&M UNIVERSITY; J. MALON SOUTHERLAND, in his
individual capacity; RUSSELL THOMPSON, in his
individual capacity; RAY BOWEN,

Defendants-Appellees.

Consolidated with

No. 04-40713

JAMES KIMMEL, as representative of the Estate of Lucas
Kimmel (deceased); JAMES KIMMEL; WALIETA KIMMEL,

Plaintiffs-Appellants,

VERSUS

TEXAS A&M UNIVERSITY; ET AL.,

Defendants,

TEXAS A&M UNIVERSITY; J. MALON SOUTHERLAND, in his
individual capacity; RUSSELL J. THOMPSON, in his
individual capacity; RAY BOWEN, in his individual
capacity; WILLIAM L. KIBLER, in his individual
capacity, JOHN J. KOLDUS, III, in his individual
capacity,

Defendants-Appellees.

Consolidated with
04-40714

BILL DAVIS,

Plaintiff-Appellant,

VERSUS

TEXAS A&M UNIVERSITY; ET AL.,

Defendants,

TEXAS A&M UNIVERSITY; J. MALON SOUTHERLAND, in his individual capacity; RUSSELL THOMPSON, in his individual capacity; RAY BOWEN, in his individual capacity; WILLIAM L. KIBLER, in his individual capacity, JOHN J. KOLDUS, III, in his individual capacity,

Defendants-Appellees.

Consolidated with
04-40715

HOWARD SCANLAN; DENISE SCANLAN; LAUREN N. T. SCANLAN,
Plaintiffs-Appellants,

VERSUS

TEXAS A&M UNIVERSITY; ET AL.,

Defendants,

TEXAS A&M UNIVERSITY; J. MALON SOUTHERLAND, in his individual capacity; RUSSELL THOMPSON, in his individual capacity; RAY BOWEN, in his individual capacity; WILLIAM L. KIBLER, in his individual capacity, JOHN J. KOLDUS, III, in his individual capacity,

Defendants-Appellees.

Consolidated with
04-40780

JOHN ANDREW COMSTOCK; DIXIE ANN ZINNEKER,

Plaintiffs-Appellants,

VERSUS

TEXAS A&M UNIVERSITY; ET AL.,

Defendants,

TEXAS A&M UNIVERSITY; J. MALON SOUTHERLAND, in his individual capacity; RUSSELL THOMPSON, in his individual capacity; RAY BOWEN; WILLIAM L. KIBLER, in his individual capacity, JOHN J. KOLDUS, III, in his individual capacity,

Defendants-Appellees.

Consolidated with
04-40812

JAQUELYNN KAY SELF, Individually and as Administratrix of the estate of Jerry Don Self, Deceased; KATHY MCCLAIN ESCAMILLA, Individually and as Administratrix of the Estate of Bryan A. McClain, Deceased; PHILLIP MCCLAIN, ANDREA HEARD, Individually and as Administratrix of the Estate of Christopher Lee Heard, Deceased; LESLIE G. HEARD; GREGORY ANTHONY POWELL, Individually and as Administrator of the Estate of Chad A. Powell, Deceased; BEVERLY JILL POWELL, MATTHEW LYNN ROBBINS; DOMINIC M. V. BRAUS; NANCY BRAUS,

Plaintiffs-Appellants,

VERSUS

RAY M. BOWEN; J. MALON SOUTHERLAND; WILLIAM KIBLER; RUSSELL W. THOMPSON; JOHN J. KOLDUS, III; M. T. HOPGOOD, JR., Major General; DONALD J. JOHNSON; ZACK COAPLAND; KEVIN JACKSON; JAMES R. REYNOLDS; ROBERT HARRY STITELER, JR.; MICHAEL DAVID KRENZ,

Defendants-Appellees.

Appeals from the United States District Court
For the Southern District of Texas

Before HIGGINBOTHAM, WIENER, and DENNIS, Circuit
Judges.

PER CURIAM:

A majority of the panel having voted sua sponte to grant rehearing, in part, the opinion of the court in disposing of this appeal is as follows:

Section III. A, including its subsections 1 through 3, of the panel opinion, found at 485 F.3d 325, 332-38 (5th Cir. 2007), along with footnote 14, is hereby withdrawn and deleted from the opinion. Other than these withdrawals and deletions, the original panel opinion is reinstated.

DENNIS, Circuit Judge, concurs in the result for the reasons assigned by him in the original panel opinion.