

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 00-10063

In The Matter Of: WESTERN FIDELITY MARKETING, INC; WESTERN
FIDELITY FINANCIAL CORP

Debtors.

GARY R STILL,

Appellant,

VERSUS

WESTERN FIDELITY MARKETING, INC; WESTERN FIDELITY FINANCIAL CORP,

Appellees.

No. 00-10218

In the Matter of: JMJ FINANCIAL CORP

Debtor

GARY R STILL

Appellant

VERSUS

WESTERN FIDELITY INSURANCE CO; WESTERN FIDELITY MARKETING, INC;
WESTERN FIDELITY HOLDING CO, INC; JMJ FINANCIAL CORP; ESTATE OF
ERICSON BERG

Appellees.

Appeals from the United States District Court
for the Northern District of Texas

ON PETITION FOR REHEARING AND REHEARING EN BANC

April 12, 2001

(Opinion 2/15/01, 5th Cir. _____, _____ F.3d _____)

Before DUHÉ and PARKER, Circuit Judges and FOLSOM*, District Judge.
PER CURIAM:

Western Fidelity Marketing, Inc. petitions for rehearing and rehearing en banc, arguing that we must address the validity of the district court's application of judicial estoppel.

Our opinion assumes that the district court was correct on judicial estoppel and holds that the district court was correct on equitable estoppel, then concludes (as clarified by footnote 3 in the substituted opinion) that neither type of estoppel can be employed to destroy Still's causes of action that are unrelated to the subject matter of his representations to the IRS in the offer of compromise. An additional holding that judicial estoppel was or was not correctly applied would be dicta - unnecessary and ill advised given the difficulty of that question that no party briefed or argued in this case.

We therefore vacate the original opinion, substitute the attached opinion and DENY the Petition for Rehearing.

No member of this panel nor judge in regular active service on the court having requested that the court be polled on Rehearing En

*District Judge of the Eastern District of Texas, sitting by designation.

Banc (FED.R.APP.P and 5TH CIR. R. 35) the Petition for Rehearing En
Banc is also DENIED.