

May 29, 2003

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 02-30655

KENT ACOSTA; ET AL,

Plaintiffs,

MERCEDES ADAMS; BRIAN ALLRED; EVE BARRAS, on behalf of Cody Barras, on behalf of Layne Barras; BLAKE BOUDREAUX, on behalf of Austin Boudreaux; LEE BOUDREAUX, SR; ET AL CHAD P ARVEL, on behalf of Leslie Arvel; CHRISTY ARVEL; SAMUEL LEE CANEZARO, on behalf of Chad Canezaro; HENRY J CHIRO, SR; JACQUELINE B CHIRO; ET AL,

Plaintiffs-Appellants,

and

JOHNNY CARLINE JR; JOHNNY CARLINE SR; LINDA CARLINE; BRENT CARLINE; RANDY GARVIN; JULIUS WEATHERFORD; DARLA WEATHERFORD; LATRELLE ESTER; GARILYN ESTER; TIERA ESTER; GARY ESTER JR; JANEA ESTER; RONALD GAUDET; MELISSA READY; RUSTON GEORGE; DERRIK GEORGE; LLOYD ALBERADO; GAIL ALBERADO; DAVID DUNN; DANIEL DUNN; FRANCINE DUNN; BREANNA MARIE STEIB; RICKY BERTHELOT SR; RICKY BERTHELOT JR; CLIFTON SANCHEZ SR; PAUL ARMSTEAD; EDWARD ARMSTEAD; SHAWN ARMSTEAD; GERALDINE ARMSTEAD; CHRISTIN BLANCHARD; KEVIN BLANCHARD; TAMMY BLANCHARD; JOHN BUCHER; KIMBERLY BOUDREAUX; TASHA BRAZAN; NATALIE BUGGAGE; NATHANIEL BUGGAGE III; ALEXIA BOURQUE; RACHEL BRADLEY; DEIDRA BRADLEY; CIVI BRODEN; NATHANIEL BUGGAGE JR; LUCILLE CARTER; TONY COLAR; SAMUEL CURETON; MATTHEW CURETON; MADELINE CURETON; DE'ANNA DENHAM; JACE DICKERSON; JAMIE DICKERSON; JORDAN DICKERSON; DANYELL DICKERSON; THOMAS DONALDSON; DIANE DONALDSON; BRIANNE DONALDSON; NICOLE DONALDSON; DEREK EDWARDS; BOBBY ELLIS; TRACY FOUNTAIN; GEORGE FOUNTAIN IV; AMANDA GARDENER; JUSTIN GILLIPSIE; NICK GILLIPSIE; ANDREW GOMEZ; RYAN GROS; AMANDA GROS; MICHELLE HALL; DAWN HART; HEATHER HEATH; SHANNON HEATH; MICHELLE HUBBELL; DANIEL HUSZAR; KYLIE JONES; JENA JONES; ADRAINETTA JOSEPH; COURTNEY JOSEPH; NIQUALETTE JOSEPH; JAKE LATIOLAIS; ASHLEY LEONARD; HAROLD LEONARD; BETTY LEONARD; OLAJUWUN LEWIS; KERWIN MADISON; PAULA MADISON; TERENCE MADISON; DONALD MARRIONEUX; HANA MARRIONEUX; DEULIN MARRIONEUX; JACKIE MCCOY; MELISSA

MCMORRIS; RANDY LEE MCMORRIS; CRYSTAL MCMORRIS; WILLIAM MCMORRIS; VICKY MCSWAIN; CHRISTOPHER MCSWAIN; VICKY MCSWAIN JR; TERRI MCSWAIN; JESSICA MICHELLI; SHAWN MICHELLI; CHARLES MICHELLI JR; TINA MICHELLI; HUNTER MICHELLI; TIMOTHY NELSON JR; BASMATEE PERSAD; DENISE QUEZAIRE; NORBERT RINK JR; HEIDE RINK; MARSHA RINK; APRIL ROBINSON; JESSICA ROBINSON; DANIELLE ROSS; DEVYN ROSS; BO ROSS; KAYLIN ROSS; JAMIE ROSS; BARET SANCHEZ; DELPHINE SANCHEZ; VINCE SANCHEZ JR; VICTOR SANCHEZ; JEFFREY SCHARWATH; PRISCILLA SENECA; DALTON SENECA; MEGAN SENECA; SCOT SINANAN; ELIZABETH SMITH; ADAM SOUTHERLAND III; JESSICA STEPP; ALBERT SWARTS JR; RANDI NICOLE SWARTS; DANIELLE THOMAS; AUSTIN TOWLE; ASHLEIGH TOWLE; SUNRISE WALKER; ERICA WATSON; RANDI WATSON; RYAN WATSON; ASHLEY WEBER; MICHELLE WEBER; JOSEPH WINCHESTER; CHARLES WEATHERFORD; TRELLE YOUNG; JOSHUA YOUNG; NICOLE YOUNG; PHILIP YOUNG; TEYA YOUNG; VICTORIA YOUNG; JAMIE YOUNG; CHAD ARVEL; CRISTY ARVEL; ZACHARY B SMITH III; MARGUERITE E SMITH; JONATHAN SMITH; JACQUELINE CHIRO; DWAYNE STEVENS; HENRY STEVENS; CINDY STEVENS; LANCE STEVENS; MUNSIE COX; SAMUEL CANEZARO; WENDELL VERRET; KAREN VERRET; HENRY J CHIRO, JR; BRIDGET CHIRO; STACEY LYNN MASCARELLA; LEONARD BRACKEN,

Appellants,

v.

MASTER MAINTENANCE AND CONSTRUCTION INC; ET AL,

Defendants,

and

LEWIS O UNGLESBY; JOSEPH JERRY MCKERNAN; ROBERT H SCHMOLKE; DONALD T CARMOUCHE; MICHAEL V CLEGG,

Appellees,

ALBERT ADAMS; ET AL,

Plaintiffs,

GEORGE CARROL LATIOLAIS JR; TINA L LATIOLAIS; BRAD ALLEN; SHIRLEY BLAKE; SAMUEL CANEZARO,

Plaintiffs-Appellants,

v.

GEORGIA GULF CORP; ET AL,

Defendants,

and

LEWIS O UNGLESBY; JOSEPH JERRY MCKERNAN;
ROBERT H SCHMOLKE; DONALD T CARMOUCHE;
MICHAEL V CLEGG

Appellees,

BRAD ALLEN; ET AL,

Plaintiffs,

BRAD ALLEN,

Plaintiff-Appellant,

v.

GEORGIA GULF CORP; ET AL,

Defendants,

and

LEWIS O UNGLESBY; JOSEPH JERRY MCKERNAN; ROBERT H SCHMOLKE;
DONALD T CARMOUCHE; MICHAEL V CLEGG,

Appellees,

ANGELINA C ANTHONY; ET AL,

Plaintiffs,

MICHAEL J DICKERSON; JOHN A WINCHESTER III,

Plaintiffs-Appellants,

v.

MASTER MAINTENANCE AND CONSTRUCTION INC; ET AL,

Defendants,

and

LEWIS O UNGLESBY; JOSEPH JERRY MCKERNAN; ROBERT H SCHMOLKE;
DONALD T CARMOUCHE; MICHAEL V CLEGG,

Appellees,

KEVIN BABIN; ET AL,

Plaintiffs,

CLIFTON SANCHEZ ,

Plaintiff-Appellant,

v.

PAYNE & KELLER COMPANY INC; ET AL,

Defendants,

and

LEWIS O UNGLESBY; JOSEPH JERRY MCKERNAN; ROBERT H SCHMOLKE;
DONALD T CARMOUCHE; MICHAEL V CLEGG,

Appellees,

GARY BARBER; ET AL,

Plaintiffs,

ROGER ELLIS; LEROY GARVIN; PATRICIA GARVIN; DONALD GONZALES;
JUDY GONZALES; ET AL,

Plaintiffs-Appellants,

v.

HYDROCONTROL INC; ET AL,

Defendants,

and

LEWIS O UNGLESBY; JOSEPH JERRY MCKERNAN; ROBERT H SCHMOLKE;
DONALD T CARMOUCHE; MICHAEL V CLEGG,

Appellees,

JONATHAN BATTISTE; ET AL,

Plaintiffs,

SAMUEL CURETON; SONYA CURETON; TIMOTHY J NELSON Sr;
BRANDON SENECA; JEAN SENECA,

Plaintiffs-Appellants,

v.

MASTER MAINTENANCE CORPORATION; ET AL,

Defendants,

and

LEWIS O UNGLESBY; JOSEPH JERRY MCKERNAN; ROBERT H SCHMOLKE;
DONALD T CARMOUCHE; MICHAEL V CLEGG,

Appellees,

NORRIS BATTISTE; ET AL,

Plaintiffs,

CHARLES WEATHERFORD,

Plaintiff-Appellant,

v.

GEORGIA GULF CORP; ET AL,

Defendants,

and

LEWIS O UNBLESBY; JOSEPH JERRY MCKERNAN; ROBERT H SCHMOLKE;
DONALD T CARMOUCHE; MICHAEL V CLEGG,

Appellees,

SHIRLEY BLAKE; ET AL,

Plaintiffs,

SHIRLEY BLAKE; TIMMY J GEORGE SR; PAMELA HAFFORD GEORGE;
STACEY LYNN ADAMS; TIMMY J GEORGE JR; ET AL,

Plaintiffs-Appellants,

v.

GEORGIA GULF CORP; ET AL,

Defendants,

and

LEWIS O UNGLESBY; JOSEPH JERRY MCKERNAN; ROBERT H SCHMOLKE;
DONALD T CARMOUCHE; MICHAEL V CLEGG,

Appellees,

DICK BROOKS; ET AL,

Plaintiffs,

DICK BROOKS; SHEILA BROOKS; ALVIN BLAKE; SHIRLEY MAE BLAKE;
ALPHONSE LEONARD; ET AL,

Plaintiffs-Appellants,

v.

GEORGIA GULF CORP; ET AL,

Defendants,

and

LEWIS O UNGLESBY; JOSEPH JERRY MCKERNAN; ROBERT H SCHMOLKE;
DONALD T CARMOUCHE; MICHAEL V CLEGG,

Appellees,

COREY DELATTE; ET AL,

Plaintiffs,

COREY DELATTE; TRUDY DELATTE,

Plaintiffs-Appellants,

v.

HYDROCHEM INDUSTRIAL SERVICES INC; ET AL,

Defendants,

and

LEWIS O UNGLESBY; JOSEPH JERRY MCKERNAN; ROBERT SCHMOLKE;
DONALD T CARMOUCHE; MICHAEL V CLEGG,

Appellees,

GARY ESTER; ET AL,

Plaintiffs,

GARY ESTER,

Plaintiff-Appellant,

v.

MASTER MAINTENANCE CORPORATION; ET AL,

Defendants,

and

LEWIS O UNGLESBY; JOSEPH JERRY MCKERNAN; ROBERT H SCHMOLKE;
DONALD T CARMOUCHE; MICHAEL V CLEGG,

Appellees,

JAMES JONES; ET AL,

Plaintiffs,

JAMES JONES; JULIE ANN JONES,

Plaintiffs-Appellants,

v.

HYDROCHEM INDUSTRIAL SERVICES; ET AL,

Defendants,

and

LEWIS O UNGLESBY; JOSEPH JERRY MCKERNAN; ROBERT H SCHMOLKE;
DONALD T CARMOUCHE; MICHAEL V CLEGG,

Appellees,

ROLAND J LANDRY SR; ET AL,

Plaintiffs,

DALE TOWLE; HENRY J CHIRO JR; BRIDGET I CHIRO,

Plaintiffs-Appellants,

v.

HYDROCHEM INC; ET AL,

Defendants,

and

LEWIS O UNGLESBY; JOSEPH JERRY MCKERNAN; ROBERT H SCHMOLKE;
DONALD T CARMOUCHE; MICHAEL V CLEGG,

Appellees,

JOHN ALWYN MITCHELL; ET AL,

Plaintiffs,

JOHN ALWYN MITCHELL,

Plaintiff-Appellant,

v.

GEORGIA GULF CORP; ET AL,

Defendants,

and

LEWIS O UNGLESBY; JOSEPH JERRY MCKERNAN; ROBERT H SCHMOLKE;
DONALD T CARMOUCHE; MICHAEL V CLEGG,

Appellees,

RONALD POCHE SR; ET AL,

Plaintiffs,

BRAD ALLEN,

Plaintiff-Appellant,

v.

HYDROCHEM INC; ET AL,

Defendants,

and

LEWIS O UNGLESBY; JOSEPH JERRY MCKERNAN; ROBERT H SCHMOLKE;
DONALD T CARMOUCHE; MICHAEL V CLEGG,

Appellees,

ANDERSON SMITH; ET AL,

Plaintiffs,

LEONARD C BRACKEN,

Plaintiff-Appellant,

v.

GEORGIA GULF CORP; ET AL,

Defendants,

and

LEWIS O UNGLESBY; JOSEPH JERRY MCKERNAN; ROBERT H SCHMOLKE;

DONALD T CARMOUCHE; MICHAEL V CLEGG,

Appellees,

DALE SUMMERS; ET AL,

Plaintiffs,

CHARLES ERIC HOOD, Etc; SADIE LEWIS HOOD; THOMAS COUVILLIER,

Plaintiffs-Appellants,

HYDROCHEM INC; ET AL,

Defendants,

and

LEWIS O UNGLESBY; JOSEPH JERRY MCKERNAN; ROBERT H SCHMOLKE;
DONALD T CARMOUCHE; MICHAEL V CLEGG,

Appellees.

Appeals from the United States District Court
for the Middle District of Louisiana
(99-CV-285-A)

Before WIENER and BARKSDALE, Circuit Judges, and FURGESON,*
District Judge.

PER CURIAM:**

The Defendants-Appellees are attorneys-at-law who were court-
appointed members of the Plaintiffs Steering Committee ("PSC") for

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

** Pursuant to 5TH CIR. R. 47.5, the court has determined that
this opinion should not be published and is not precedent except
under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

the myriad lawsuits filed by innumerable lawyers representing hundreds of plaintiffs on claims arising from a chemical plant accident in Louisiana. After years of intensive lawyering, a global settlement was reached. Settlement payments have been made; the lawyers representing plaintiffs — those who were clients of PSC lawyers and those who were clients of non-PSC lawyers — have received their substantial contingent fees via deductions from their respective clients' settlement payments; and the settlement payments to the clients of the non-PSC lawyers have been further reduced by an amount equal to 2.5% of their gross recoveries.¹ In turn, these deductions were remitted to the PSC lawyers pursuant to an unambiguous and unconditional provision of an agreement or agreements entered into by all plaintiffs' attorneys on behalf of their respective clients. The subject 2.5% deductions from the plaintiffs' gross recoveries were specified to cover costs and expenses incurred by the PSC attorneys and their firms for the common benefit of all plaintiffs, whether clients of the PSC attorneys or the non-PSC attorneys. Notably, the amounts deducted and paid to the PSC attorneys were not deposits against costs ultimately determined in the future but were agreed liquidated amounts in light of costs actually incurred, whether greater or lesser.

¹ Given the apparently universal contingent fee arrangement in this litigation that specified 40% fees for counsel, this 2.5% deduction represented 4.1667% of the 60% net settlement recoveries of the plaintiffs.

Nevertheless, some (but not all) of the plaintiffs who were represented by non-PSC lawyers became disgruntled, post hoc, with the deductions from their shares of the settlement proceeds in satisfaction of the obligations contracted on their behalf by their attorneys to cover the 2.5% payable to the PSC attorneys in reimbursement of common costs and expenses. Counsel for those disgruntled plaintiffs — some being the same counsel who had represented the subject plaintiffs and others being newly retained — instigated the instant, non-productive litigation, resulting in the needless expenditure of tens of thousands of dollars in additional legal fees and costs, not to mention the waste of very substantial judicial resources, both in the district court and on appeal, to address a collateral matter that has outlived by years the nine-figure settlement of the mass tort claims that underlie the instant quibbling over cost reimbursements. The lawyers for the plaintiffs in the instant litigation know, and their clients should be made aware, that in general, neither trial courts nor appellate courts look kindly on such tangential litigation, even when, as here, the dollars at issue are substantial.

The district court handled the instant litigation conscientiously, thoroughly, and in a truly commendable manner. The magistrate judge to whom the district judge referred the matter for findings and recommendations devoted enormous amounts of time and effort to assimilating evidence, conducting many days of hearings, analyzing a substantial number of documents, and

ultimately producing a lengthy, detailed, and logically reasoned report and recommendation. In turn, the district judge considered that report at length, analyzed it critically, and produced his own opinion agreeing with, accepting, and adopting the report of the magistrate judge.

On appeal, we have intently studied the magistrate judge's report and recommendation and the district court's opinion, as well as the record on appeal, the claims of error asserted by counsel for plaintiffs, the briefs of the parties, the applicable law, and, finally, the oral arguments of appellate counsel. As a result, we are convinced that the district court committed no reversible error.

AFFIRMED.