

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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No. 12-20474

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United States Court of Appeals  
Fifth Circuit

**FILED**

September 15, 2015

EXXONMOBIL CORPORATION,

Plaintiff - Appellee

Lyle W. Cayce  
Clerk

v.

ELECTRICAL RELIABILITY SERVICES, INC., OLD REPUBLIC  
INSURANCE COMPANY,

Defendants - Appellants

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Appeals from the United States District Court  
for the Southern District of Texas  
USDC No. 4:10-CV-2258

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Before JOLLY and SOUTHWICK, Circuit Judges.\*

E. GRADY JOLLY, Circuit Judge:\*\*

Following oral argument, this action was held in abeyance while the Texas Supreme Court considered certified questions from this Court in a similar case, *In re Deepwater Horizon*, No. 13-0670. The Texas Supreme Court

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\* Judge DeMoss, the third judge on the panel that originally heard this case, retired before this decision was issued. Consequently, this decision and opinion is rendered by a quorum pursuant to 28 U.S.C. § 46(c) and (d).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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has now answered. See *In re Deepwater Horizon, Relator*, --- S.W. 3d ---, 58 Tex. Sup. Ct. J. 330 (Tex. 2015). Among other things, the Texas Supreme Court's answer provides clarification regarding the court's previous holding in *Evanston Insurance Co. v. ATOFINA Petrochemicals, Inc.*, 256 S.W.3d 660 (Tex. 2008), a case that has been at the center of this dispute.

When deciding this case, the district court did not have the benefit of the Texas Supreme Court's answer to the certified questions posed in *In re Deepwater Horizon*. Accordingly, we VACATE the district court's judgment, and REMAND this case for further consideration in the light of the answer given by the Texas Supreme Court.

VACATED, and REMANDED.