

No. 09-0264

IN THE SUPREME COURT OF TEXAS
AUSTIN, TEXAS

In Re Allied Chemical Corporation, et al.

**REAL PARTIES IN INTERESTS' STATUS REPORT IN SUPPORT OF
MOTION TO ABATE**

ANDY TAYLOR &
ASSOCIATES, P.C.
Andy Taylor
State Bar No. 19727600
Amanda Peterson
State Bar No. 24032953
405 Main, Suite 200
Houston, Texas 77002
(713) 222-1817 [Telephone]
(713) 222-1855 [Facsimile]
Lead Appellate Counsel

LAW OFFICE OF RAMON GARCIA, PC
Ramon Garcia
222 West University Drive
Edinburg, Texas 78539

LAW OFFICE OF RAMON ROSALES, JR.
Ramon Rosales, Jr.
1001 N. Conway Avenue
Mission, Texas 78572

THOMAS & WAN, LLP
Linda Laurent Thomas
State Bar No. 12580850
Michelle W. Wan
State Bar No. 24033432
909B West Main
Houston, Texas 77006
(713) 529-1177 [Telephone]
(713) 529-1116 [Facsimile]

REICH & BINSTOCK
Dennis C. Reich
4265 San Felipe, Suite 1000
Houston, Texas 77027

MAURO REYNA
Post Office Box 969
Penitas, Texas 78578

No. 09-0264

IN THE SUPREME COURT OF TEXAS
AUSTIN, TEXAS

In Re Allied Chemical Corporation, et al.

**REAL PARTIES IN INTERESTS' STATUS REPORT IN SUPPORT OF
MOTION TO ABATE**

ANDY TAYLOR &
ASSOCIATES, P.C.
Andy Taylor
State Bar No. 19727600
Amanda Peterson
State Bar No. 24032953
405 Main, Suite 200
Houston, Texas 77002
(713) 222-1817 [Telephone]
(713) 222-1855 [Facsimile]
Lead Appellate Counsel

LAW OFFICE OF RAMON GARCIA, PC
Ramon Garcia
222 West University Drive
Edinburg, Texas 78539

LAW OFFICE OF RAMON ROSALES, JR.
Ramon Rosales, Jr.
1001 N. Conway Avenue
Mission, Texas 78572

THOMAS & WAN, LLP
Linda Laurent Thomas
State Bar No. 12580850
Michelle W. Wan
State Bar No. 24033432
909B West Main
Houston, Texas 77006
(713) 529-1177 [Telephone]
(713) 529-1116 [Facsimile]

REICH & BINSTOCK
Dennis C. Reich
4265 San Felipe, Suite 1000
Houston, Texas 77027

MAURO REYNA
Post Office Box 969
Penitas, Texas 78578

TO THE HONORABLE COURT:

I. INTRODUCTION

Shortly before oral argument was set to occur in this mandamus proceeding, all of the attorneys representing all of the remaining parties agreed in writing to settle all remaining claims. Because there are multiple Defendants who are represented by multiple attorneys, not every Defendant settled at the same time or by the same terms. Thus, separate settlement agreements were negotiated and ultimately reached between counsel for all of the Plaintiffs and counsel for all of the Defendants. These settlement agreements were reduced to writing for all parties in the form of Rule 11 Settlement Agreements and signed by counsel for the various parties. Plaintiffs thereafter filed all of the various Rule 11 Settlement Agreements with the Trial Court under seal. Moreover, Real Parties in Interest filed a Motion to Abate and a Supplemental Appendix with this Honorable Court under seal which included the various Rule 11 Settlement Agreements described above, as well as the November 10, 2009 transcript of a Rule 11 Settlement Agreement, along with two other court filings. Because approximately 1900 Plaintiffs have to sign releases, and because certain liens have to be quantified and resolved by a third party lien administrator before any of the settlement amounts will be paid, a significant period of time is still needed in order to fully and finally effectuate the above-referenced settlements. The Plaintiffs fully intend to settle all claims in conformity with the Rule 11 Settlement Agreements. An abatement of

this mandamus proceeding will facilitate and expedite the settlement process, so that all of the parties' resources may be devoted to resolution, rather than continuing to engage in discovery disputes about the merits of the underlying toxic tort claims.

II. THIS COURT SHOULD NOT STAY THE TRIAL COURT PROCEEDINGS BECAUSE THAT COURT IS NEEDED TO FACILITATE AND FINALIZE THE PARTIES' SETTLEMENTS

Relators' request to stay the Trial Court from taking any further action in this case (except for signing a final judgment of settlement) is inappropriate and should be summarily denied by this Honorable Court. The Trial Court has a legitimate role in managing its docket and in ensuring the facilitation and finalization of the Parties' multiple Rule 11 Settlement Agreements. In addition to the serious legal question of whether such an order is within this Honorable Court's mandamus jurisdiction for a case that has settled, Real Parties in Interest further submit that this request makes absolutely no sense. This settlement involves over 1900 litigants. Ad litem are involved, and a Special Master was previously appointed by the Trial Court to determine allocations of settlement proceeds to particular Plaintiffs. Further, a lien resolution administrator has been retained, and that Firm is hard at work trying to quantify and resolve any and all Medicare and/or Medicaid liens in the case. Certain rulings and court orders may be needed in this case, such as amendment of pleadings, correction of misnomers in the names of certain parties, minors who are now of the age of majority, plaintiffs who have died, plaintiffs who no longer have mental capacity, affidavits

of heirship, and related issues, are but a few of the pending items which will require Trial Court involvement. Status conferences and hearings will be needed periodically to make progress on the hard work which has been and will continue to be performed. Should the Court accept Relators' invitation to stay the underlying proceedings, then Plaintiffs would have no choice but to burden this Honorable Court with multiple requests to lift the stay to allow progress to be made on the settlements.

The Parties' previous conduct has demonstrated the need for the Trial Court's continued involvement in order to effectuate the terms of the various Rule 11 Settlement Agreements. For example, when the Guadalupe Garza case settled on November 10, 2009-after multiple weeks of trial before a jury-the Plaintiffs had difficulty in getting one of the lawyers representing one of the Defendants to send a draft release for review and comment. After multiple attempts to obtain a draft settlement release became futile, the Plaintiffs resorted to filing a Motion to Compel Settlement Releases with the Trial Court, a copy of which is contained within the Supplemental Appendix filed under seal. The Trial Court thereafter ordered that attorney to submit a draft by a date certain, which was beneficial because it broke a logjam that had developed between the Parties at that particular time. Another example involves one of the Defendants asking the Trial Court to order one of the Plaintiffs' attorneys to produce all of his contingent fee agreements with the Plaintiffs to the Defendants. Although Plaintiffs felt this request was improper and could not rationally relate to any need for discovery

since the cases had settled, the Trial Court request nevertheless prompted the Plaintiffs to produce the contingency agreements to the defense attorney who demanded this information. Thus, both sides have made effective use of the Trial Court's authority and resources to facilitate the speedy resolution of various impasses experienced after the various Rule 11 Settlement Agreements were entered into.

Plaintiffs foresee that there is a potential that the Trial Court may need to be consulted in the near future, too. For example, one defense attorney has insisted-after the fact-on including certain indemnity language and terms in the releases that were simply not agreed to when the Rule 11 Settlement Agreements were signed and filed with the Trial Court. Even a cursory review of the Parties' Rule 11 agreement stated in open court and on the record on November 10, 2009 (see Supplemental Appendix filed under seal), reveals that indemnity was not agreed to when these cases settled. Despite that fact, this particular lawyer demanded indemnity, not only from each of the 1900 Plaintiffs, but also from all of the attorneys representing the Plaintiffs as well. In addition, this lawyer threatened to sue all of the Plaintiffs' lawyers. Indeed, the undersigned has been told by this lawyer on at least three occasions that he and his clients planned to sue the undersigned. These threats have been very disturbing, and put the undersigned in the unenviable position of analyzing whether such threats would give rise to a duty to report to malpractice insurance carriers for any of the attorneys representing the Plaintiffs. Simply put, threats like this have definitely impeded the progress of the

settlements. Nevertheless, the undersigned has taken opposing counsel's threats "with a grain of salt," and tried to keep an eye towards conflict resolution rather than conflict escalation. Thus, even though the indemnity demands were "out of bounds," the attorneys for the Plaintiffs stated their willingness for their clients to indemnify the Defendants, under certain reasonable conditions. Accordingly, the attorneys for the Plaintiffs have literally bent over backwards to accommodate this particular lawyer's demands for indemnity.

It remains to be seen if this indemnity conflict will be resolved, because unfortunately when the attorneys for the Plaintiffs announced their willingness to succumb to this particular opposing lawyer's demands regarding the particular issue under discussion, that same lawyer then raised multiple new issues and back peddled on previously resolved issues, such that the negotiation process over the final language of the release never seems to have an endpoint. The frustrating result of this situation is that the Plaintiffs do not have a document that they sign¹. This delay hurts the Plaintiffs, as the settlement amounts are not carrying interest and there are no consequences to the Defendants for the delay-the settlement amounts are liquidated and costs of defense have been extinguished because the underlying cases will not be pursued since the cases have settled.

¹ It is important to note that none of the other defense counsel has impeded the settlement process, and Plaintiffs are making substantial progress with those separate Rule 11 Settlement Agreements. If necessary, Plaintiffs will start the lengthy process of obtaining 1900 signatures for these separate settlement agreements even though the final settlement agreement reached on November 10, 2009 may not be ready for signature.

Another dispute with the single defense attorney involves the timing and sequence by which the releases will be signed. The Plaintiffs wish to sign their settlement agreements now, with only the gross amount of their respective share being known, but with **full** knowledge that some of them might ultimately receive a lesser amount because a lien may exist and will have to be liquidated, settled and subtracted from the gross amount of settlement. This particular defense attorney objects to this, insisting instead that the liens first be resolved and subtracted from the gross amounts, and then settlement releases will be signed. Because these multiple Rule 11 Settlement Agreements involve only an aggregate settlement amount, Rule 1.08 of the Texas Disciplinary Rules of Professional Conduct comes into play. Plaintiffs' ethics expert is confident that their proposal is ethically appropriate, but one lone defense attorney disagrees². Plaintiffs may need to seek Trial Court involvement on this issue.

Consequently, should these disputes over language and sequencing not be resolved quickly, Real Parties in Interest may need to go before the Trial Court and request summary judgment on the terms contained in the Parties' Rule 11 Settlement Agreements. Accordingly, it would not be proper for the powers of the Trial Court to be stayed. Further, it is not proper for the Relators to ask this Honorable Court to reset oral argument and decide a merits issue in a case that has been settled. The only possible disputes which remain are disputes about the

² Plaintiffs wonder why this sole defense lawyer has injected himself into this issue, given that the stated concern is one which would only impact the attorneys for the Plaintiffs, but not the enforceability of the release in favor of the Defendants. In any event, this is another example of why a stay of the Trial Court would be ill-advised.

terms and/or the language of the settlement itself. Those disputes are within the jurisdiction of the Trial Court, and would not be reviewable by this Court until after an appeal from any final trial court judgment.

III. THIS COURT SHOULD ABATE AND ALLOW THE SETTLEMENTS TO BE FINALIZED

Although progress has been slow with one defense attorney, progress has nevertheless been made. According to that defense attorney, there are only four (4) enumerated items which still need to be resolved before a final settlement document can be agreed-upon. Plaintiffs are working hard to reach resolution of those issues. As to all the other attorneys and Defendants, substantial progress has been made. It is Plaintiffs' estimation that final settlement papers will be ready this month, and the process for obtaining 1900 signatures may commence. Accordingly, Real Parties in Interest therefore request this Honorable Court to abate this mandamus proceeding until such time as the parties report back to the Court that one of two scenarios have occurred: 1) this proceeding should be dismissed because all of the parties' have complied with the terms and conditions of the various Rule 11 Settlement Agreements; or 2) this proceeding should be revived because one or more of either the Plaintiffs or the Defendants have failed to comply with the parties' Rule 11 Settlement Agreements and there is a need to conduct discovery in one or more of the Plaintiffs' cases such that trial on the merits may be conducted. Accordingly, Real Parties in Interest request the immediate abatement of this proceeding.

IV. SHOULD THIS HONORABLE COURT NEVERTHELESS WISH TO RESCHEDULE ORAL ARGUMENT, THEN SUCH SETTING SHOULD BE NO SOONER THAN MAY 2010

The undersigned counsel is lead counsel in a jury trial which commences March 22, 2010 in Hidalgo County. This case will take anywhere from three to six weeks to try. The case will not settle and will not be postponed, and the likelihood of the case going to trial is extremely high. Preparing for oral argument and presenting the position of the Real Parties in Interest on March 24, 2010 would be severely hampered by the fact that the undersigned will already be in trial in Hidalgo County. Accordingly, should this Honorable Court decide to reset oral argument, the undersigned respectfully requests that this matter not be argued until May 2010.

Respectfully Submitted,

ANDY TAYLOR & ASSOCIATES, P.C.

BY: 

Andy Taylor

State Bar No. 19727600

Amanda Peterson

State Bar No. 24032953

405 Main Street, Suite 200

Houston, Texas 77002

(713) 222-1817 [Telephone]

(713) 222-1855 [Facsimile]

LEAD APPELLATE COUNSEL FOR
REAL PARTIES IN INTEREST

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above has been delivered via facsimile, to the parties below on the 3rd day of March, 2010.

The Honorable Mario E. Ramirez, Jr.
Judge, 332nd Judicial District Court
Hidalgo County Courthouse
100 North Closner
Edinburg, Texas 78539
Respondent

Robert G. Newman
Lisa Horvath Shub
Rosemarie Kanusky
Fulbright & Jaworski, L.L.P.
300 Convent, Suite 2200
San Antonio, Texas 78210
Telephone: 210-224-5575
Facsimile: 210-270-7205

and

Edmundo O. Ramirez
Ellis, Koeneke & Ramirez, L.L.P.
1101 Chicago Ave.
McAllen, Texas 78501-4822
Telephone: 956-682-2440
Facsimile: 956-682-0820

Counsel for Relators, Allied Chemical Corporation, Aventis Crop Science USA, LP, Maxus Energy Corporation, and Shell Chemical, L.P.

Richard L. Josephson
Michael B. Bennett
Baker Botts, L.L.P.
One Shell Plaza
910 Louisiana
Houston, Texas 77002
Telephone: 713-229-1234
Facsimile: 713-229-1522

and

Edmundo O. Ramirez
Ellis, Koeneke & Ramirez, L.L.P.
1101 Chicago Ave.

McAllen, Texas 78501-4822

Telephone: 956-682-2440

Facsimile: 956-682-0820

Counsel for Relators, BASF Corporation, The Dow Chemical Company, Syngenta Corporation, Occidental Chemical Corporation, Union Carbide Corporation, Zeneca Ag Products, Inc., Stauffer Management Company, and ICI Americas, Inc.

Ricardo G. Cedillo

Richard Espey

Derick J. Rodgers

Davis, Cedillo & Mendoza, Inc.

755 E. Mulberry Ave., Suite 500

San Antonio, Texas 78212-3149

Telephone: 210-822-6666

Facsimile: 210-822-1151

and

John Mandler

DaraD. Mann

Faegre & Benson, LLP

2200 Wells Fargo Center

90 South Seventh Street

Minneapolis, Minnesota 55402

Telephone: 612-766-7000

Facsimile: 612-766-1600

Counsel for Relator, E.!. Du Pont De Nemours, Co.

Reagan W. Simpson

R. Bruce Hurley

J. Kevin Buster

C. Brannon Robertson

Sarah M. Frazier

King & Spalding, LLP

1100 Louisiana Street, Suite 4000

Houston, Texas 77002

Telephone: 713-751-3200

Facsimile: 713-751-3290

and

David G. Oliveira

Roerig, Oliveira & Fisher, LLP

885 West Price Road, Suite 9

Brownsville, Texas 78520-8786

Telephone: 956-542-5666

Facsimile: 956-542-0016
Counsel for Relator, Hercules Incorporated

Christopher A. Funk
Mark W. Walker
Walker & Twenhafel, L.L.P.
2424 N. 10th Street, Suite 200
McAllen, Texas 78502
Telephone: 956-687-6225
Facsimile: 956-686-1276
Counsel for Relator, Los Angeles Chemical Company

Edward M. Carstarphen
Ellis, Carstarphen, Dougherty & Griggs, P.C.
5847 San Felipe, Suite 1900
Houston, Texas 77002
Telephone: 713-647-6800
Facsimile: 713-647-6884

Lawrence P. Riff
Daniel Blakey
Steptoe & Johnson, LLP
633 W. Fifth Street Suite 700
Los Angeles, California 90071
Telephone: 213-439-9400
Facsimile: 213-439-9599
and
Jose E. Garcia
Garcia & Villarreal, L.L.P.
4301 N. McColl Rd.
McAllen, Texas 78501
Telephone: 956-630-0081
Facsimile: 956-630-3631
Counsel for Relators, Montanto Company and Pharmacia Corporation

Peter Thompson
Thompson & Reilley, P.C.
600 Travis Street, Suite 7350
Houston, Texas 77002
Telephone: 713-658-0880
Facsimile: 713-658-0330

Robert M. Howard

Christine G. Rolph
Latham & Watkins, LLP
600 West Broadway, Suite 1800
San Diego, California 92101
Telephone: 619-236-1234
Facsimile: 619-696-7419
and
Robert Scott
Abrams Scott & Bickley, L.L.P.
700 Louisiana, Suite 4000
Houston, Texas 77002-2727
Telephone: 713-228-6601
Facsimile: 713-228-6605
Counsel for Relator, Montrose Chemical Corporation of California

A. M. "Andy" Landry, III
J. 1. Hardig, Jr.
Kacal, Adams, & Law, P.e.
One Riverway, Suite 1200
Houston, Texas 77056
Telephone: 713-529-3392
Facsimile: 713-529-8161
and
David G. Oliveira
Roerig, Oliveira & Fisher, L.L.P.
885 West Price Road, Suite 9
Brownsville, Texas 78520-8786
Telephone: 956-542-5666
Facsimile: 956-542-0016
Counsel for Relator, PPG Industries, Inc.

O. Carl Hamilton, Jr.
Atlas & Hall, LLP
P.O. Drawer 3725
McAllen, Texas 78502
Telephone: 956-682-5501
Facsimile: 956-686-6109
Counsel for Relator, Tex-Ag Co.

Michael R. Klatt
Jeffrey R. Lilly
Clark, Thomas & Winters, P.e.
300 West 6th Street, Suite 1500

Austin, Texas 78701

Telephone: 512-472-8800

Facsimile: 512-474-1129

and

L.A. (Tony) Canales

Canales & Simonson

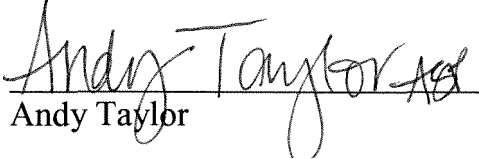
2601 Morgan Ave.

Corpus Christi, Texas 78465-5624

Telephone: 361-883-0601

Facsimile: 361-884-7023

Counsel for Relators, Wyeth and American Cyanamid Company


Andy Taylor