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ANDREW WEBER, Clerk
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IN THE SUPREME COURT OF TEXAS

Jim Wells, *et al.* v. El Paso Production Oil & Gas Co., *et al.*, 04-04-00725-CV,
Brooks County, *et al.* v. El Paso Production Oil & Gas Co., *et al.*, 04-04-00726-CV,
Duval County, *et al.* v. Conoco, Inc., *et al.*, 04-04-00729-CV,
Webb County v. Conoco, Inc., *et al.*, 04-04-00733-CV,
Zapata County, *et al.* v. Conoco, Inc., *et al.*, 04-04-00734-CV,
Hidalgo County v. Texaco Inc., *et al.*, 13-04-00542-CV,
Edinburg C.I.S.D., *et al.* v. American Coastal Energy, Inc., *et al.*, 13-04-00543-CV
Kleberg County, *et al.* v. El Paso Production Oil & Gas Co., *et al.*, 13-04-00554-CV,
Willacy County v. El Paso Production Oil & Gas Co., *et al.*, 13-04-00555-CV,
Kenedy County v. El Paso Production Oil & Gas Co., *et al.*, 13-04-00557-CV

REPLY TO RESPONSE TO
MOTIONS TO TRANSFER RELATED APPEALS

From the Fourth Court of Appeals and the Thirteenth Court of Appeals

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TO THE HONORABLE SUPREME COURT OF TEXAS:

I. Appellants do not dispute that the related cases should be heard in a single appellate proceeding.

Appellants have not disputed the first issue raised in El Paso and BP's motion to transfer: this Court's ability transfer of the related appeals for good cause as provided in Government Code section 73.001. *See* TEX. GOV'T CODE ANN. § 73.001 (West 1998). Appellants also have not challenged El Paso and BP's allegations of good cause to support the transfer to a single court of appeals. Appellants only argument in response to El Paso and BP's motion is that the related appeals should not be transferred to the Houston First or Fourteenth Courts of Appeal. Accordingly, the only issue for the Court to consider is the second issue raised by El Paso and BP: to which court of appeals should the related appeals be transferred.

The appropriate court of appeals to review Judge Christopher's orders is the First or Fourteenth Court of Appeals. Under Rule 13 of the Rules of Judicial Administration, the review of a judgment issued in cases coordinated for pretrial purposes is to be conducted by "the appellate court that regularly reviews order of the court in which the case is pending at the time review is sought." TEX. R. JUD. ADMIN. 13.9(b). Because Rule 11 "is to be construed so as to facilitate the implementation of Rule 13," the related appeals should be transferred to the First or Fourteenth Courts of Appeals, the courts that regularly review Judge Christopher's orders. Any other conclusion will result in identical trial court orders being reviewed by multiple appellate courts.

II. Benefits obtained by pretrial coordination will be defeated if coordination on appeal is not maintained.

Cases are coordinated for pretrial purposes because they involve common questions of law and fact. TEX. R. JUD. ADMIN. 11.4(b)(3). These common factors do not disappear on appeal. However, allowing pretrial coordination in the trial courts but not on appeal defeats the purposes and intent of pretrial coordination. This Court promulgated the Rules of Judicial Administration to promote the efficient administration of justice. TEX. GOV'T CODE ANN. § 74.024(a) (West 1998). Both Rule 11 and Rule 13 are designed to promote the “just and efficient conduct” of cases involving similar issues by assuring consistency in pretrial rulings among such “related cases” throughout the state. *See* TEX. R. JUD. ADMIN. 11.4(b)(4); 11.4(h); 13.3(a)(2); 13.3(l).

Transferring the related appeals will promote judicial economy and avoid wasting both the parties' and the courts' resources. Contrary to this Court's opinion in *Miles*, without transferring the related appeals, multiple appellate courts will decide the same jurisdictional issue. *See Miles v. Ford Motor Co.*, 914 S.W.2d 135, 137-38 (Tex. 1995). It is a virtual certainty that conflicting opinions will issue from multiple courts of appeal, which will trigger additional parallel proceedings. Conflicting decisions and the waste of resources thwart the express purposes of both Rule 11 and Rule 13: efficiency and consistency in similar cases. Accordingly, transferring the related appeals comports with the principle in *Miles* that challenges to the same trial court orders should be heard in a single appellate proceeding and promotes the intent and purpose of pretrial coordination. *Id.* at 137-38.

III. Rule 11 and Rule 13 and the policies underlying pretrial coordination compel review by the Houston First or Fourteenth Court of Appeals.

Appellants focus their response to defeat El Paso and BP's motion to transfer on the language of the orders appointing Judge Christopher as the pretrial judge and on the physical location of the cases. However, neither offers guidance on which court of appeals should hear appeals arising from identical orders in cases coordinated for pretrial purposes from multiple appellate districts. The Rules of Judicial Administration and the policies underlying those rules compel that the related appeals be transferred to the court of appeals that regularly reviews orders of the pretrial judge. Moreover, using the physical location of the cases to determine the appropriate court of appeals defeats the purpose of pretrial coordination and ignores the interplay between Rule 11 and Rule 13.

Appellants fail to acknowledge that the related appeals are governed by both Rule 11 and Rule 13. TEX. R. JUD. ADMIN. 11.7(a). Rule 11 "is to be construed and applied so as to facilitate the implementation of Rule 13 to the greatest extent possible." *Id.* Rule 11.7(a). While Rule 11 offers no specific guidance for appealing an order of a pretrial judge, Rule 13 expressly provides that a pretrial judge's order should be reviewed by the court of appeals "that regularly reviews orders of the court in which the case is pending at the time review is sought. . . ." *Id.* Rule 13.9(b). The language in the orders appointing the pretrial judge have no bearing on an appeal of a pretrial judge's orders. *See id.*

The physical location of the cases cannot be used to determine the court of appeals and still maintain the intent and policies of pretrial coordination. Under Rule 11, the pretrial

judge is assigned to the cases; the cases remain pending in the original counties where filed. *Id.* Rule 11.3(a). Under Rule 13, however, the cases are physically transferred to the assigned pretrial judge. *Id.* Rule 13.3(a). Thus, cases coordinated under Rule 13 necessarily will be in one trial court and be appealed to a single court of appeals.

This Court must construe Rule 11 and Rule 13 together. *Id.* Rule 11.7(a). Here, to use the physical location of the cases violates the principle in *Miles* that identical trial court orders should be heard in a single appellate proceeding and also conflicts with Rule 13.9. By providing that cases coordinated for pretrial purposes will be in one trial court, Rule 13.9 eliminates the problem of having multiple appellate courts hear appeals of coordinated cases. Accordingly, construing Rule 11 and Rule 13 together, and mindful of the intent of pretrial coordination, appeals of cases from multiple appellate districts coordinated for pretrial purposes must be heard by the court of appeals that regularly reviews orders of the pretrial judge.

IV. Judge Christopher is the only active judge in the related cases and continues to have jurisdiction over them.

Contrary to the assertion by Appellants, Judge Christopher had jurisdiction over the related cases when she signed the orders of dismissal and continues to have jurisdiction today. *See* TEX. R. JUD. ADMIN. 13.6(a) (pretrial judge has “exclusive jurisdiction over each related case”); 11.7(a). Under Rule 11, an appointed pretrial judge “will decide all pretrial motions.” *Id.* Rule 11.3(a-b). Once assigned, a Rule 11 pretrial judge presides over

all pretrial proceedings, and the “regular judge” can take no further action other than consulting on a trial date. *Id.* Rule 11.3(b).

Rule 11 requires that the assignment of a pretrial judge continue notwithstanding an appeal. Absent explicit resignation or termination, the pretrial judge retains jurisdiction until all pretrial proceedings have been completed. *Id.* Rule 11.3(f). An appealable order is not “complete” until all available appeals have been exhausted, and the order has become final. If the Appellants are successful on appeal, the cases will return to Judge Christopher for the continuation of pretrial matters, not to the trial courts from the Fourth and Fifth Regions. Thus, until the appellate process is complete and the orders become final, Judge Christopher continues as the active judge until all appeals have been exhausted; the regular judges have no authority during her assignment.

V. Appellants erroneously argue that if Rule 13 applied, San Antonio and Corpus Christi Courts of Appeals would be the appropriate courts.

If the underlying cases had been filed after September 1, 2003, the cases would have been transferred to Judge Christopher and an appeal of one of her orders would have been to the Houston First or Fourteenth Courts of Appeal. *See id.* Rules 13.5(a); 13.9(b).

El Paso and BP respectfully request that this Court grant their motion to transfer the related appeals to either the Houston First or Fourteenth Courts of Appeals.

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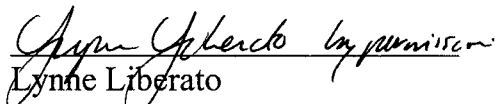
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