

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

**U.S. COURT OF APPEALS
FILED**

No. 07-60756

FEB 26 2010

**CHARLES R. FULBRUGE III
CLERK**

NED COMER; BRENDA COMER; ERIC HAYGOOD, husband of Brenda Haygood; BRENDA HAYGOOD; LARRY HUNTER, husband of Sandra L Hunter; SANDRA L HUNTER; MITCHELL KISIELWESKI, husband of Johanna Kisielweski; JOHANNA KISIELWESKI; ELLIOTT ROUMAIN, husband of Rosemary Roumain; ROSEMARY ROUMAIN; JUDY OLSON; DAVID LAIN

Plaintiffs - Appellants

versus

MURPHY OIL USA; UNIVERSAL OIL PRODUCTS (UOP); SHELL OIL COMPANY; EXXONMOBIL CORP; AES CORP; ALLEGHENY ENERGY INC; ALLIANCE RESOURCE PARTNERS LP; ALPHA NATURAL RESOURCES INC; ARCH COAL INC; BP AMERICA PRODUCTION COMPANY; BP PRODUCTS NORTH AMERICA INC; CENERGY CORP; CONOCOPHILLIPS COMPANY; CONSOL ENERGY INC; THE DOW CHEMICAL COMPANY; DUKE ENERGY CORP; EON AG; E I DUPONT DE NEMOURS & CO; ENTERGY CORP; FIRSTENERGY CORP; FOUNDATION COAL HOLDINGS INC; FPL GROUP INC; HONEYWELL INTERNATIONAL INC; INTERNATIONAL COAL GROUP INC; MASSEY ENERGY CO; NATURAL RESOURCE PARTNERS LP; PEABODY ENERGY CORP; RELIANT ENERGY INC; TENNESSEE VALLEY AUTHORITY; WESTMORELAND COAL CO; XCEL ENERGY INC; CHEVRON USA INC; THE AMERICAN PETROLEUM INSTITUTE

Defendants - Appellees

Appeal from the United States District Court for the
Southern District of Mississippi

ON PETITIONS FOR REHEARING EN BANC

(Opinion October 16, 2009, 5 Cir., 2009, _____ F.3d _____)
(Revised Opinion October 22, 5 Cir., 2009, _____ F.3d _____)

(February 26, 2010)

BEFORE: JOLLY, DAVIS, SMITH, STEWART, DENNIS, CLEMENT, PRADO
OWEN and ELROD, Circuit Judges.¹

BY THE COURT:

A member of the court having requested a poll on the
petitions for rehearing en banc, and a majority of the circuit

¹Chief Judge Jones, and Judges King, Wiener, Garza, Benavides, Southwick and Haynes are recused and did not participate.

judges in regular active service and not disqualified having voted in favor,

It is ordered that this cause shall be reheard by the court en banc with oral argument on a date hereafter to be fixed. The Clerk will specify a briefing schedule for the filing of supplemental briefs.