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Benzene Defendant's Efforts to Have Court Rehear Jurisdiction Dispute Are Denied

NEW ORLEANS -- A federal court in Louisiana has denied efforts by a benzene defendant to have the court rehear a jurisdictional dispute, concluding that the defendant had failed to offer new evidence that would support a rehearing of the issue. *Washington, et al. v. Baker Petrolite Corp., et al.*, No. 09-07926 (E.D. La.).

In a Feb. 10 ruling, the U.S. District Court for the Eastern District of Louisiana opted not to reconsider an earlier order in which it opined that it was "reasonable" for the defendant to anticipate a lawsuit may be filed against the company in Louisiana.

The complaint was filed by Charles Washington and his wife, Lynette Buggage Washington. The plaintiffs allege that Charles Washington's employment as a laborer and operator for nearly 30 years required him to work with benzene-containing products. The complaint specifically names AntiFoam Toluene Tote 500, Aerokroil, Kanokroil and Zep 2000 Heavy Duty Cleaner as products with which Washington worked.

In August, the federal court rejected El Paso Energy's efforts to dismiss the claims, ruling that it was "reasonable" for the defendant to anticipate a lawsuit may be filed against the company in Louisiana. The court specifically said that El Paso Energy was aware of its relationship with the state and "it is fair for El Paso to be haled into Court there." For more on El Paso Energy's motion and the court's ruling, Please See "Court Rejects Benzene Defendant's Motion to Dismiss for Lack of Jurisdiction," in the September 2010 issue of *Litigation Watch: Benzene*.

The defendant asked the court in September, however, to reconsider its motion, saying that it based on "erroneous factual findings."

"To find jurisdiction over the Trustee's person simply because it is the trustee of a trust created to resolve claims against a corporation which, 20 years ago, operated a refinery in Louisiana, with respect, ignores the fundamental premise of our law that the separateness of corporations is to be recognized and respected by our courts," the motion stated.

In an opposition brief, however, the plaintiffs claimed, "there is no question a successor corporation can be sued for the acts of its predecessor."

"It is also clear that a court may extend its long-arm jurisdiction to the successor corporation if the predecessor had engaged in business within the state, even if the successor had not itself engaged in business within the forum state," the opposition brief argued.

The court agreed, opining that the defendant had not presented new evidence that a change had occurred in controlling law.

"Movant seemingly attempts only to re-litigate issues previously decided by this Court without evidence sufficient to substantiate its claims of manifest error," the court said.

Counsel for the plaintiffs is L. Eric Williams Jr. of the Williams Law Office in Metairie, La.; and Tina H. Bradley of Hobson & Bradley in Beaumont, Texas.

El Paso Energy is represented by Gary A. Bezet, Barrye Panepinto Miyagi, Gayla M. Moncla, Robert E. Dille, Gregory M. Anding, Carol L. Galloway, Allison Benoit, Janice M. Culotta and Vionne M. Douglas of Kean, Miller, Hawthorne, D'Armond, McCowan & Jarman in Baton Rouge, La.

Documents are Available Call (800) 496-4319 or Search www.harrismartin.com February Order Ref# BEN-1102-11 Opposition Ref# BEN-1011-11 Motion for New Trial Ref# BEN-1010-19 August Order Ref# BEN-1010-01

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