

5th Circ. Slams Stubborn Judge, Revives \$19M FCA Suit Again

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Law360, Los Angeles (February 23, 2015, 9:41 PM EST) -- The Fifth Circuit on Monday ripped a district court for ignoring its ruling in tossing two federal auditors' False Claims Act suit alleging [Royal Dutch Shell PLC](#) siphoned off \$19 million in offshore drilling royalties, reviving the suit and ordering it reassigned to a different judge.

In an unpublished opinion, a three-judge panel revived for a second time the suit brought by auditors Randall F. Little and Joel F. Arnold, holding that their allegations were not publicly disclosed and chastising U.S. District Judge Lynn N. Hughes for ignoring the appeals court's 2012 opinion, which had remanded the case so that the district court could apply "more narrow" standards for public disclosure.

Circuit Judge W. Eugene Davis, writing for the panel, took Judge Hughes to task for failing to cite the previous opinion reviving the case in his ruling granting Shell's renewed motion for summary judgment, and questioned whether the judge even realized that the appeals court had addressed the public disclosure issue.

"Facing a lengthy and detailed summary judgment record, the district judge issued a five-page opinion with few citations to either record evidence or relevant legal authority — not surprising given that neither the summary judgment evidence nor the law support the conclusions he reached," the panel wrote. "The district judge reached the same conclusion he reached in his previous opinion by employing the same overly broad reasoning that we rejected before."

Plaintiffs' attorney Sean Connelly of [Reilly Pozner LLP](#) on Monday told Law360 that his team is happy with the "meticulous Fifth Circuit opinion that finally ensures our clients' fraud allegations will be heard fairly on their merits."

Little and Arnold claim they reported the findings to their superior, but the government didn't act, so in 2006 they brought an ex-relator action in Texas federal court, in which the government also declined to intervene, according to the complaint.

The auditors claim they found that Shell subsidiaries Shell Exploration & Production Company and Shell Deepwater Development had defrauded the [U.S. Department of the Interior](#) by \$19 million between 2001 and 2005 by improperly deducting expenses for gathering and storing oil on a dozen offshore drilling platforms. The company did so in order to reduce the royalties it would owe the federal government, the plaintiffs allege.

The trial court found that the two auditors lacked standing to bring the suit, however, and dismissed the case, adding that the allegations could have been pieced together from public documents.

In August 2012 the Fifth Circuit revived the suit, rejecting arguments made by both Shell and the U.S. government that the FCA barred federal officials who uncover fraud as part of their official duties from bringing a qui tam lawsuit and that the allegations had been publicly disclosed.

Both Shell and the government urged the Fifth Circuit to dismiss the lawsuit, arguing that allowing federal employees to be relators could create tension with the criminal conflict-of-interest statute and federal ethics regulations and could even be an implied repeal of those provisions.

But the Fifth Circuit **rejected those arguments**, saying that even if those provisions were implicated they would be addressed in another forum, and that to hold otherwise would interfere with the prerogatives of the legislative and executive branches.

The appeals court also ruled that the court had reached an erroneous finding that the allegations were publicly disclosed by failing to examine the complaint “at the appropriate level of detail.”

In March 2013, Shell again filed a motion for summary judgment, which remained on the docket for nearly a year before Judge Hughes again granted it on the grounds that the claims were precluded by the public disclosure bar, dismissing the suit with prejudice, according to Monday’s ruling.

On Monday, the Fifth Circuit again revived the case and ordered it reassigned to a different district judge, ruling that sending the case back to Judge Hughes would result in more wasted time.

“Reassignment would be advisable to preserve the appearance of justice, given the long delays, repeated errors, and cursory reasoning in the district court’s opinions to date,” the panel wrote.

Representatives for Shell did not immediately respond to requests for comment on Monday.

Circuit Judges W. Eugene Davis, Jacques L. Wiener Jr. and Catharina Haynes sat on the panel that issued Monday’s opinion.

The plaintiffs are represented by Sean Connelly and Eric Fisher of Reilly Pozner LLP, Michael S. Porter of the Law Firm of Michael S. Porter, Richard C. LaFond of Richard C. LaFond PC and Leif A. Olson of the Olson Firm PLLC.

Shell is represented by Daniel M. McClure and Matthew A. Dekovich of [Norton Rose Fulbright](#).

The case is U.S. ex rel. Randall L. Little et al. v. Shell Exploration & Production Co. et al., case number [14-20156](#), in the U.S. Court of Appeals for the Fifth Circuit.