

Revised October 21, 1998

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-30489 _____

JAMES E. ALLISON, et al.,

Plaintiffs-Appellants,

JONATHAN ANDERSON, et al.,

Intervenors-
Plaintiffs-Appellants,

VERSUS

CITGO PETROLEUM CORP.,

Defendant-Appellees,

Appeal from the United States District Court
for the Western District of Louisiana

October 2, 1998

ON SUGGESTION FOR REHEARING EN BANC
(Opinion 8/18/98, 5 Cir., 151 F.3d 402)

Before JOLLY, SMITH, and DENNIS, Circuit Judges.

PER CURIAM:*

* Judge Duhé is recused and did not participate in the consideration of the suggestion for rehearing en banc.

Treating the suggestion for rehearing en banc as a petition for panel rehearing, the petition for panel rehearing is DENIED. In denying rehearing, the panel majority makes the following observation: The trial court utilized consolidation under rule 42 rather than class certification under rule 23 to manage this case. We review that decision for abuse of discretion and we find no abuse in this case. We are not called upon to decide whether the district court would have abused its discretion if it had elected to bifurcate liability issues that are common to the class and to certify for class determination those discrete liability issues. Judge Dennis dissents from the denial of panel rehearing.

The court having been polled at the request of one of its members and a majority of the judges who are in regular active service not having voted in favor (see FED. R. APP. P. 35, 5TH CIR. R. 35), the suggestion for rehearing en banc is DENIED.