

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

**SHELL OIL COMPANY, UNION OIL COMPANY OF
CALIFORNIA, ATLANTIC RICHFIELD COMPANY,
and TEXACO, INC.,
*Plaintiffs-Appellees,***

v.

**UNITED STATES,
*Defendant-Appellant.***

2010-5034

Appeal from the United States Court of Federal
Claims in case no. 06-CV-141, Senior Judge Loren A.
Smith.

ON MOTION

Before RADER, FRIEDMAN, and GAJARSA, *Circuit Judges.*
GAJARSA, *Circuit Judge.*

O R D E R

The United States moves to remand this case to the
United States Court of Federal Claims so that the district
court may consider its RCFC 60(b) motion to vacate the

district court's judgment and for recusal. The United States also requests that this court direct the Court of Federal Claims to assign a new judge to rule on its Rule 60(b) motion. The United States moves to stay proceedings in this appeal. Shell Oil Company, et al. moves for an extension of time to respond and opposes the United States' motions.

The United States' Rule 60(b) motion asserts that the trial court judge should recuse and should vacate the underlying judgment. The United States states that the trial court judge indicated he will grant the motion, at least in part. However, the trial court indicated that it could not rule on the motion because this court presently has jurisdiction over the appeal of the judgment. In these circumstances, we deem the better course is to remand so that the trial court may rule in the first instance on the United States' motions. The United States' argument, that the Court of Federal Claims should assign a new judge to rule on its Rule 60(b) motion, should first be presented to the Court of Federal Claims and thereafter may be raised on appeal from a subsequent ruling, if appropriate.

Accordingly,

IT IS ORDERED THAT:

- (1) The motion to remand is granted.
- (2) The motion for an extension of time to file a response is granted.
- (3) All other motions are denied.
- (4) Each side shall bear its own costs.

FOR THE COURT

MAY 19 2010

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: Michael W. Kirk, Esq.
Stephen C. Tosini, Esq.

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Issued as a mandate: MAY 19 2010

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

MAY 19 2010

JAN HORBALY
CLERK