

**In The**  
***Court of Appeals***  
***Ninth District of Texas at Beaumont***

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**NO. 09-11-00040-CV**

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**IN RE VALERO ENERGY CORPORATION, THE PREMCOR REFINING  
GROUP INC. D/B/A VALERO PORT ARTHUR REFINERY,  
VALERO MARKETING AND SUPPLY COMPANY,  
AND PORT ARTHUR COKER COMPANY, L.L.P.**

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**Original Proceeding**

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**MEMORANDUM OPINION**

Valero Energy Corporation, The Premcor Refining Group Inc. d/b/a Valero Port Arthur Refinery, Valero Marketing and Supply Company, and Port Arthur Coker Company, L.L.P., joined by Foster Wheeler USA Corporation, Total Safety U.S., Inc., and Kinder Morgan Petcoke, L.P., seek to compel the trial court to require the plaintiff to submit to updated blood work, an MRI with and without contrast, and a 24-hour EEG. We deny the petition for writ of mandamus.

Relators requested a physical and mental examination of Juan Martinez after the real parties in interest filed an amended pleading that alleged that Martinez is in a persistent vegetative state. The trial court granted relators' request but limited the

examination to a noninvasive neurological and psychiatric examination without blood or laboratory testing. *See* Tex. R. Civ. P. 204. Relators' experts examined Martinez on September 24, 2010. Relators requested additional tests, consisting of blood testing, MRI's, and an EEG, on November 30, 2010, in order for their experts to have this additional information. At the hearing on relators' motion to compel, the real parties in interest complained that relators waited too long to request the tests. *See* Tex. R. Civ. P. 204.1(a). On January 14, 2011, the trial court denied relators' request for a supplemental medical examination but ordered that Martinez be weighed. Under the court's pre-trial discovery order, the discovery period ended December 7, 2010; further, the case is set for trial on March 7, 2011. The trial court has not rescheduled the trial from the March 7 setting.

In this case, the trial court allowed an independent medical examination, and the parties' dispute concerns whether supplemental testing is required. Mandamus will issue only to correct a clear abuse of discretion when that abuse cannot be remedied by appeal. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135-36 (Tex. 2004); *Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992). In light of the impending trial, we do not reach the issue of whether the trial court abused its discretion by denying the supplemental testing. After reviewing the mandamus record and petition, and in light of the March 7, 2011, trial setting, we conclude that the relators have not demonstrated that there is no adequate appellate remedy. Accordingly, we deny the petition for writ of mandamus.

PETITION DENIED.

PER CURIAM

Submitted on February 11, 2011  
Opinion Delivered February 18, 2011  
Before Gaultney, Kreger, and Horton, JJ.