

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

LILLY MARTIN, JEAN TOURVILLE, JANE
GOULD, and ALFREDO MENDOZA, individually,
and on behalf of all other similarly situated,

Plaintiffs,

v.

KCBX TERMINALS COMPANY, et al.

Defendants.

Civil Action No. 1:13-cv-08376

Judge John J. Tharp, Jr.

**KCBX TERMINALS COMPANY, KM RAILWAYS, LLC AND KOCH CARBON, LLC'S
RESPONSE TO PLAINTIFFS' MOTION TO
REASSIGN RELATED CASES PURSUANT TO LOCAL RULE 40.4**

Defendants KCBX Terminals Company ("KCBX"), KM Railways, LLC ("KMR") and Koch Carbon, LLC ("Koch Carbon") (collectively "Defendants") agree with the Plaintiffs that *Murphy, et al. v. BP Prods. North America, Inc. et al.*, No. 1:13-CV-04899 (N.D. Ill. Nov. 25, 2013) ("*Murphy*") and *Figueroa, et al. v. BP Prods. North America, Inc. et al.*, No. 1:13-CV-09038 (N.D. Ill. Dec. 18, 2013) ("*Figueroa*") should be reassigned to Judge Tharp's calendar pursuant to Northern District of Illinois Local Rule 40.4. Reassignment to Judge Tharp's calendar specifically is proper because the above captioned case was removed to federal court on November 20, 2013, Dkt. 1, before either *Murphy* or *Figueroa* was filed, and is therefore the earliest-numbered case under Local Rule 40.4(b).

FACTUAL BACKGROUND

Martin, *Murphy*, and *Figueroa* are separate class action lawsuits proceeding before three different judges in the Northern District of Illinois. The complaints' allegations against KCBX, KMR, and Koch Carbon¹ derive from KCBX's operation of two bulk material transfer facilities along the Calumet River in Chicago between East 100th Street and East 107th Street. KCBX has operated its North facility for more than 20 years, and its South Facility for approximately one year. At both facilities, KCBX transfers bulk products—including petroleum coke ("petcoke")—from one mode of transportation to another. In the interim, it stores the petcoke on-site in open air piles.

The classes defined in each complaint consist of property owners or persons located in the neighborhoods surrounding the Defendants' facilities. Dkt. 1, Ex. A at ¶ 52; Dkt. 44, Ex. 2 at ¶ 31; Dkt. 44, Ex. 3 at ¶ 33. The class Plaintiffs generally allege that Defendants' operations result in petcoke dust blowing onto Plaintiffs' property. Dkt. 1, Ex. A at ¶ 2; Dkt. 44, Ex. 2 at ¶¶ 29-30; Dkt. 44, Ex. 3 at ¶¶ 1-2.

ARGUMENT

Cases may be reassigned pursuant to Local Rule 40.4 if the cases are "related." Cases are related if *any* of the following conditions is met: "(1) the cases involve the same property; (2) the cases involve some of the same issues of fact or law; (3) the cases grow out of the same transaction or occurrence; or (4) in class action suits, one or more of the classes involved in the cases is or are the same." Local Rule 40.4(a). If the court determines that one or more cases is related, it may reassign the cases to the earliest-numbered case, if all of the following criteria is present: "(1) both cases are pending in this Court; (2) the handling of both cases by the same

¹ Koch Carbon is named as a Defendant in *Martin* and *Murphy*, but not *Figueroa*.

judge is likely to result in a substantial saving of judicial time and effort; (3) the earlier case has not progressed to the point where designating a later filed case as related would be likely to delay the proceedings in the earlier case substantially; and (4) the cases are susceptible of disposition in a single proceeding.” Local Rule 40.4(b).

A. The Cases Involve the Same Issues of Fact and Law, Grow out of the Same Occurrence, and have Overlapping Class Members

Because three of the relatedness conditions under Local Rule 40.4 are present, the *Martin*, *Murphy*, and *Figueroa* cases are clearly related. First, the cases involve some of the same legal issues. Specifically, all three complaints allege a cause of action for private nuisance. Dkt. 1, Ex. A at 15; Dkt. 44, Ex. 2 at 14; Dkt. 44, Ex. 3 at 12. And at least two of the complaints allege causes of action in trespass, Dkt. 1, Ex. A at 17; Dkt. 44, Ex. 2 at 12, negligence, Dkt. 1, Ex. A at 18; Dkt. 44, Ex. 3 at 9, and strict liability. Dkt. 44, Ex. 2 at 11; Dkt. 44, Ex. 3 at 11. Further, the cases involve some of the same issues of fact. For example, each complaint contains allegations pertaining to Defendants’ operations, the presence of petcoke dust in the proximity of Plaintiffs’ property, and the characteristics of petcoke dust. *See, e.g.*, Dkt. 1, Ex. A at ¶¶ 1-6; Dkt. 44, Ex. 2 at ¶¶ 2, 29-30; Dkt. 44 Ex. 3 at ¶¶ 1-2, 11. Additionally, all three cases grow out of the same occurrence—specifically, Defendants’ operation of its facilities.

Further, the classes as defined in *Martin*, *Murphy*, and *Figueroa* are overlapping. *Martin*’s subclasses encompass persons and entities “in the South Deering and Elgin neighborhoods” who have been harmed by petcoke dust from Defendants’ facilities. Dkt. 1, Ex. A at ¶ 52. And *Figueroa*’s class is defined as property owners located within “the area surrounding the Storage Facilities where property has been contaminated by and/or coated with Petcoke emanating from such facilities.” Dkt. 44, Ex. 3 at ¶ 33. Because the area surrounding the facilities is the neighborhoods identified in *Martin*, the *Martin* and *Figueroa* classes are the

same. *Murphy*'s class is defined as "All persons who own real property that has been contaminated with petcoke waste produced from the Whiting Refinery." Dkt. 44, Ex. 2 at ¶ 31. Given that the *Murphy* Plaintiffs allege that the petcoke produced at the Whiting Refinery is transferred to Defendants' facilities, *Murphy*'s class is also the same as the *Martin* and *Figueroa* classes. Dkt. 44, Ex. 2 at ¶ 31. Because the cases involve some of the same factual and legal issues, grow out of the same occurrence, and involve the same classes, the cases are related.

B. The Cases Should Be Reassigned to Judge Tharp in the Interest of Judicial Efficiency

Not only are the cases related, but the four criteria for reassignment are also met. Therefore, the cases should be reassigned to Judge Tharp to promote the efficient use of judicial time and resources. First, all three cases are pending in the Northern District of Illinois. Second, all three cases remain in the pleading stage. Although motions to dismiss were filed in *Martin* on January 15, 2014, and responses to the complaints have yet to be filed in *Murphy* and *Figueroa*, no dispositive motions have been ruled upon in any of the cases to date. And in light of how recently the motions to dismiss were filed (and the fact that Plaintiffs' motion for reassignment was filed at the Court's direction), *Martin* has not advanced to the point where it would be "substantially" delayed by the reassignment of *Murphy* and *Figueroa* to Judge Tharp's docket. Further, the cases are susceptible to disposition in a single proceeding because of the overlapping claims and defenses. Even to the extent that the causes of actions are not identical, the causes of action are nonetheless based upon the same facts, and therefore amenable to resolution in a single proceeding.²

² Cases may be consolidated pursuant to Federal Rule of Civil Procedure 42(a) if the "actions before the court involve a common question of law or fact."

Lastly, the reassignment of the cases to Judge Tharp's calendar is likely to result in a substantial saving of the court's (and the parties') time and effort. Particularly, reassignment will eliminate duplicative discovery and motion practice, minimize inconsistent rulings on the same or substantially similar legal issues, and capitalize upon a single judge's knowledge of the facts. Reassignment is consistent with the efficient resolution of the claims and defenses in these cases.

CONCLUSION

Defendants respectfully request that this Court grant Plaintiffs' Motion to Reassign Related Cases Pursuant to Local Rule 40.4, and reassign *Murphy* and *Figueroa* to Judge Tharp's calendar.

Dated: January 27, 2014

Respectfully submitted,

/s/ Stephen A. Swedlow

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CERTIFICATE OF SERVICE

I, Stephen Swedlow, hereby certify that I caused a copy of the foregoing to be served on January 27, 2014 to all counsel of record via the Court's ECF notification system.

/s/ Stephen A. Swedlow

Stephen A. Swedlow

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