

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF TEXAS
 HOUSTON DIVISION

KAREN McPETERS, individually, and on §
 behalf of those individuals, persons and entities §
 who are similarly situated §
 Plaintiff §

vs.

§ CIVIL ACTION NO. 4:10-CV-01103

§
 § JURY

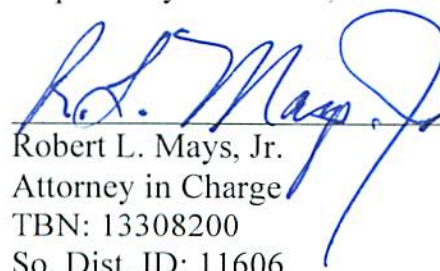
THE HONORABLE FREDERICK E. §
EDWARDS; BARBARA GLADDEN §
ADAMICK, DISTRICT CLERK; §
MONTGOMERY COUNTY, TEXAS, and §
REED ELSEVIER, INC. d/b/a LexisNexis §
 Defendants §

PLAINTIFF’S HEARING BRIEF No. 2 -
LECROY SHOWS COURT ACCESS IS A FUNDAMENTAL RIGHT

Plaintiff Karen McPeters submits the attached brief as the law and evidence
 in support of her request that Defendants’ Rule 12(b)(6) motions be denied.

Date: December 9, 2010

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that I hand delivered a copy of this "Plaintiff's Hearing Brief No. 2 – *LeCroy Shows Court Access is a Fundamental Right*" on December 9, 2010 to each counsel for Defendant present at the hearing.


Robert L. Mays, Jr.

LeCroy v. Hanlon, 713 S.W.2d 335 (Tex. 1986)

LeCroy Applied in McPeters III

1. *LeCroy* is still good law. It has been applied by the Attorney General in invalidating similar fees and charges.
2. *LeCroy* invalidated fees reviewed and enacted by the Legislature and collected by the State. In McPeters III we are dealing with charges reviewed by no one and collected by a foreign corporation.
3. *LeCroy* invalidated fees that did not go to the judiciary. In McPeters III we are dealing with fees that do not go to the judiciary.
4. *LeCroy* invalidated a one-time fee of \$50. In McPeters III we are dealing with an unlimited and unreviewed series of charges.
5. *LeCroy* recognized the legitimacy of a district clerk's charges for support services. In McPeters III we are dealing with filing fees for those services *and* numerous charges for every transaction thereafter.
6. The "balancing test" is illusory in this case since we are not dealing with a legislative enactment. If we agree that we are dealing with the equivalent of a legislative enactment, then separation of powers is implicated. In any event, the burden is on the government to demonstrate that the unreviewed charges levied and collected by a foreign corporation have a "legislative purpose" that outweighs the substantial rights affected by the charges.

Since the fee invalidated in *LeCroy* was far more valuable to the State than the charges collected by Reed Elsevier, it appears that the defendants in McPeters III have an impossible burden.

Facts

In 1985 the Legislature increased the district court filing fee by \$50, with \$10 going to the district clerk and \$40 going to the state general revenue fund. In this case the \$217.00 filing fee in Montgomery County in Case No. 07-09-09142 has been overwhelmed by the LexisNexis charges to-date of \$414.17. The blank invoice granted to LexisNexis still exists.

Issue

Whether the fee increase violates the open courts provision in the Texas Constitution, Art. I, Sec. 13?

Holding

"We hold that filing fees that go to state general revenues-in other words taxes on the right to litigate that pay for other programs besides the judiciary-are unreasonable impositions on the state constitutional right of access to the courts. Regardless of its size, such a filing fee is unconstitutional for filing fees cannot go for non-court-related purposes."

"In summary, we hold that the open courts provision invalidates the \$40 filing fee increase for state general revenues and that the caption defect voids the entire \$50 filing fee increase in sections 31 and 32 of H.B. 1593. We affirm the district court's judgment."

Reasoning

Fees and costs are usually constitutional.

Filing fees and court costs are usually constitutional. Charging litigants that are able to pay a reasonable fee for judicial support services does not violate the open courts provision. See *Farabee v. Board of Trustees, Lee County Law Library*, 254 So.2d at 5; *State v. Young*, 238 So.2d 589, 590 (Fla.1970); *343 *Crocker v. Finley*, 77 Ill.Dec. at 101-02, 459 N.E.2d at 1350-51; *Ali v. Danaher*, 47 Ill.2d 231, 265 N.E.2d 103, 106 (1970). Such fees interfere somewhat with access to the courts, but they are permitted because they go for court-related purposes.

Open courts guarantee is a substantial right in Texas

The open courts provision specifically guarantees all litigants the right to redress their grievances-to use a popular and correct phrase, the right to their day in court. *Nelson v. Krusen*, 678 S.W.2d at 923; *Sax v. Votteler*, 648 S.W.2d at 665; *Hanks v. City of Port Arthur*, 121 Tex. 202, 48 S.W.2d 944, 947 (1932). This right is a substantial state constitutional right. *Nelson v. Krusen*, 678 S.W.2d at 921. Because a substantial right is involved, the legislature cannot arbitrarily or unreasonably interfere with a litigant's right of access to the courts. *Neagle v. Nelson*, 685 S.W.2d 11, 12 (Tex.1985)...

The Balancing Test and Conclusion

Thus, the general open courts provision test balances the legislature's actual purpose in enacting a law against that law's interference with the individual's right of access to the courts. *Sax v. Votteler*, 648 S.W.2d at 665, 666. The government has the burden to show that the legislative purpose outweighs the interference with the individual's right of access. *Id.* at 666

The question here is whether a filing fee that goes to state general revenues is an arbitrary and unreasonable interference with the right of access to the court.

The major defect with the filing fee is that it is a general revenue tax on the right to litigate: the money goes to other statewide programs besides the judiciary.^{FN9} Nearly all states with similar open courts provisions have held that filing fees that go to fund general welfare

programs, and not court-related services, are unconstitutional. *Crocker v. Finley*, 99 Ill.2d 444, 77 Ill.Dec. 97, 459 N.E.2d 1346 (1984); *Farabee v. Board of Trustees, Lee County Law Library*, 254 So.2d 1 (Fla.1971). See also *Flood v. State*, 95 Fla. 1003, 117 So. 385 (1928); *Cook County v. Fairbank*, 78 N.E. 895 (Ill.1906); *Hayes v. C.C. & H. Min. & Mill Co.*, 126 S.W. 1051 (Mo.1910). Cf. *G.B.B. Investments, Inc. v. Hinterkopf*, 343 So.2d 899, 901 (Fla.Dist.Ct.App.-3rd 1977); *State v. Gorman*, 41 N.W. 948, 949 (Minn.1889).

Thirty-seven states, plus Texas, have in addition to their traditional due process clauses open courts provisions to specifically guarantee the right of access to the courts.

Barbara Gladden Adamick, District Clerk
Montgomery County

Civil Filing Fees

Effective October 18, 2010

I. Standard Fees Due At Time Of Filing New Suit:

District Clerk filing fee (A)	51.317(b) (GC)	01.01.04	1-10 Plaintiffs	\$50.00
(A-1) 11-25 Plaintiffs	75.00	(A-2)	26-100 Plaintiff	100.00
(A-3) 101-500 Plaintiffs	125.00	(A-4)	501-1000 Plaintiffs	150.00
(A-5) More than 1000 Plaintiffs	175.00	See II. Below for -Total Filing Fees		

Judicial Fund	Sec. 133.151 (LGC)	01.01.04		50.00
Indigent Legal Fee	Sec 133.152 (LGC)	01.01.04		10.00
Judiciary Fee (JSF)	Sec 133.154 (LGC)	01.01.08	(increase of \$5.00)	42.00
Law Library	Sec 323.0231 (LGC)	09.01.03	(Tax Suits Not Inc.)	35.00
Dispute Resolution Fund	152.004 (CPR)	09.01.05	(ADD. \$5.00)	15.00
Records Man & Pres Fund	51.317(b) (GC)	01.01.04		10.00
Security Service Fee	291.008 (LGC)	09.01.95		5.00
Court Reporters Serv. Fee	51.601(GC)	08.28.95		15.00
Appellate Judicial Fee (AJF)	Sec. 22.2101 (GC)	01.01.08		5.00
Digital Preservation Fee	51.708 (GC)	01.01.10		10.00
*Tech Preservation Fee	51.305	10.18.10		5.00

II. Total Filing Fee for New Civil Suit W/O Service: (See List Below)

(A)=\$252.00	(A-1)=\$277.00	(A-2)=\$302.00	(A-3)=\$327.00	(A-4)=\$352.00	(A-5)=\$377.00
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Bill of review	252.00
Civil Transfer into Montgomery Co.	252.00
Commission for Disposition or Letter Rogatory (add \$8.00 for ea. Subpoena)	252.00
Expunction of Records (add \$20.00 for ea. agency notice)	252.00
Petition for Order of Non Disclosure_ (411.081(d)-(h) (GC) 09.01.03 (252.00+ \$28.00)	280.00

III. Additional Filing Fees in Civil Suits:
 •Intervention •Interpleader •Cross-Action/Counterclaim •Third Party Action
 •Motion to Transfer • Motion for New Trial •Motion to Enforce/Contempt

(This includes \$10.00 State Bar Indigent Fee)-(133.152 LGC) -	01.01.04	
(This includes \$10.00 Records Man & Pres Fee)-(51.317(b) (GC)	01.01.04	
* (This includes \$5.00 Tech Preservation Fee)-(51.305 (b))	10.18.10	40.00

IV. Miscellaneous Fees:

•Abstract of Judgment	8.00
•Bill of Costs	10.00
•Bond Approval	4.00
•Certified Mail Service	65.00
•Copies: Certified/Non-Certified Copy (per page)	1.00
•Copies: Exemplified Copy / Cert. of No Appeal	2.00
•Citation by serving Comm of Insurance/Transportation (2 copies of petition)	12.00
•Citation by serving Sec of State (2 copies of petition)	12.00
•Citations •Non-Resident Citation • Citations by Posting/Publications	8.00
•Jury Fee	30.00
•Order of Sale	8.00
•Notices •Precept •Subpoena	8.00
•Record Search (to ascertain existence of an instrument, record, or docket number)	5.00
•Temporary Restraining Order • Injunctions	8.00
•Writs: (Execution, Possession, Attachment, Habeas Corpus, Garnishment, Injunction, Sequestration, Turnover)	8.00

* Revised & Effective Oct 18, 2010 w/Commissioners court approved Tech Fee *

Effective Date: 10/08/2006

LexisNexis[®] File & Serve <h1>PRICING SHEET</h1>	
TEXAS—JEFFERSON AND MONTGOMERY COUNTY DISTRICT COURTS	
Unless noted specifically below, all fees are subject to current list prices as reflected in the E-file Pricing and Optional Services pricing sheets posted online under the File & Serve Resource Center.	
FILING DOCUMENTS WITH THE COURT	
Filing into a single case Complex Litigation Mass Tort General Civil	\$11.00 per transaction \$9.00 per transaction \$7.00 per transaction
Multiple-case filing	Filing Fee from above, plus \$2.00 for each subsequent case
SERVICE TO CASE PARTIES	
Online delivery* Complex Litigation Mass Tort General Civil	\$13.00 per transaction \$13.00 per transaction \$8.00 per transaction See Optional Services pricing sheet for offline service fees and other pricing.
DELIVERY OF DOCUMENTS TO ADDITIONAL RECIPIENTS	
Online delivery* Complex Litigation Mass Tort General Civil	No charge when combined with online service—otherwise: \$13.00 per transaction \$13.00 per transaction \$8.00 per transaction
Email delivery** Complex Litigation Mass Tort General Civil	No charge when combined with online service—otherwise: \$13.00 per transaction \$13.00 per transaction \$8.00 per transaction

* To File & Serve Advanced users
 ** To File & Serve Basic users, and to non-subscribers

See *Optional Service Price Sheet* for additional pricing information for optional features and services

Prices do not include court fees, and are subject to change.

Effective Date: 06/25/2010

LexisNexis® File & Serve: OPTIONAL SERVICES PRICE SHEET

OPTIONAL DELIVERY METHODS (SERVICES):

U.S. Mail delivery to case parties (via 1st Class mail)	\$8.00 per transaction—plus \$0.30 per page, per firm and applicable postage and delivery fees (see table below).
Fax service delivery	\$8.00 per transaction—plus \$0.50 per page, per firm
U.S. Mail Cancellation Fee	2% of total fee, minimum \$250, plus costs for any U.S. Mail deliveries that cannot be stopped in time

OPTIONAL MAIL DELIVERY:

Number of pages:	Fee:
1-4	\$3.85
5-10	\$4.73
11-17	\$5.48
18-19	\$6.28
20-25	\$7.02
26-31	\$7.79
32-37	\$8.55
38-43	\$9.32
44-49	\$10.08
50-54	\$10.85
55-60	\$11.61
61-66	\$12.38
67-72	\$13.14
73-89	\$21.60
90-183	\$38.05
184-276	\$50.18
277-369	\$62.10
370-463	\$73.17

OPTIONAL SERVICE DELIVERY METHODS (SERVICES) RE: CASEFILING/RECORDS:

Online delivery	No charge when combined with online service
Email delivery	No charge when combined with online service
Fax delivery	\$8.00 per transaction—plus \$0.50 per page, per firm
Via Courier to a Court (where available)	\$25.00 per transaction +\$.10 per page
Courtesy Copy to a court via 1st class U.S. Mail	\$6.00 per transaction—plus \$0.30 per page and applicable postage and delivery fees

COURT AND PROJECT SPECIFIC FEES:

In all courts unless otherwise noted below or as listed on a court-specific price sheet:	
Maryland-Baltimore, Prince George's Filings in My Cases Filings in My Firms Cases Filings in All Cases	No Charge No Charge \$5.00 Per Search
All Other Courts or Projects	

Filings in My Cases Filings in My Firms Cases Filings in All Cases	No Charge No Charge \$10.00 Per Search
Case Specific Search Fees	
In all courts unless otherwise noted below or as listed on a court-specific price sheet: Maryland-Baltimore, Prince George's Filings in My Cases Filings in My Firms Cases Filings in All Cases All Other Courts or Projects Filings in My Cases Filings in My Firms Cases Filings in All Cases	No Charge No Charge \$5.00 Per Report No Charge No Charge \$10.00 Per Search
Additional Fees	
In all courts unless otherwise listed on a court-specific price sheet: Documents served by your firm Documents served to your firm All other documents Transcripts Delaware Superior Courts Delaware Court of Chancery Georgia Courts Louisiana Courts (Chinese Drywall Litigation) Maryland Courts West Virginia Courts	No Charge No Charge \$8.00 per document \$30.00 plus \$2.40 per page court reporter fee \$55.00 plus \$2.40 per page court reporter fee \$30.00 plus \$2.40 per page court reporter fee \$10.00 plus \$0.80 per page court reporter fee \$80.00 plus \$2.40 per page court reporter fee \$10.00 plus \$1.00 per page court reporter fee
Public Access Documents	
In all courts unless otherwise listed on a court-specific price sheet: Alerts Searches Reports Public Access Documents Documents from Delaware Courts Transcripts Delaware Superior Courts Delaware Court of Chancery Georgia Courts Louisiana Courts (Chinese Drywall Litigation) Maryland Courts West Virginia Courts All other Documents	\$16.00 per Alert \$10.00 per Search \$20.00 per Report \$40.00 per document \$80.00 plus \$2.40 per page court reporter fee \$80.00 plus \$2.40 per page court reporter fee \$80.00 plus \$2.40 per page court reporter fee \$10.00 plus \$0.80 per page court reporter fee \$80.00 plus \$2.40 per page court reporter fee \$10.00 plus \$1.00 per page court reporter fee \$20.00 per document

<p>Track when a recipient of an e-service transaction opens a transaction</p>		<p>\$2.00 per transaction</p>
<p>View or print a comprehensive, time-stamped snapshot of a transaction (one-time fee regardless of subsequent views to updates on Transaction Status)</p>		<p>\$10.00 per report</p>
<p>Online notification of case activity—and optional email notification</p>		<p>\$2.00 per Alert setup, per month—plus \$0.10 per notification generated (\$10.00 maximum)</p>
<p>Maryland – Baltimore, Prince George's County</p>	<p>All Other courts</p>	<p>\$15.00 per Alert setup, per month</p>
<p>Electronic Invoices</p>		<p>\$10.00 per Invoice per month Electronic Invoices are no charge</p>
<p>Orders called into LexisNexis Customer Support and completed on your behalf</p>		<p>\$95.00 plus applicable e-file or e-service transaction fees</p>
<p>Printing of documents</p>		<p>\$5.00 per trans + \$0.50 per page + std filing fee</p>
<p>Training</p>		<p>Varies; refer to specific court or project price list</p>
<p>2 Hour Customized Training</p>		<p>\$50 per participant, (\$250 minimum, \$500 maximum), plus travel expenses</p>
<p>2 Hour Customized Training</p>		<p>\$160 per session</p>

Prices are subject to change.