

NOT DESIGNATED FOR PUBLICATION

**STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT**

CA 12-1109 consolidated with CA 12-1110

ROWDY SMITH

VERSUS

HILCORP ENERGY CORPORATION, ET AL.

*****consolidated with*****

WYNN RUNG

VERSUS

HILCORP ENERGY CORPORATION, ET AL.

**APPEAL FROM THE
SIXTEENTH JUDICIAL DISTRICT COURT
PARISH OF ST. MARTIN, NO. 75502 & 75580
HONORABLE CHARLES LEE PORTER, DISTRICT JUDGE**

JAMES T. GENOVESE

JUDGE

Court composed of Elizabeth A. Pickett, James T. Genovese, and Shannon J. Gremillion, Judges.

MOTION TO STAY PROCEEDINGS DENIED.

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GENOVESE, Judge.

Appellants, Performance Wellhead & Frac Components, Inc.; Hookup and Pipeline Construction, Inc.; and First Mercury Insurance Company, filed a Motion to Stay Proceedings directly with this court. Specifically, Appellants seek an order staying the trial court proceedings pending resolution of the captioned consolidated appeals.

The underlying suits arise from a flash fire from which plaintiffs, Wynn Rung, Jr., and Rowdy Smith, sustained damages. The captioned appeals, however, arise from adverse judgments enforcing defense and indemnity demands against Appellants. Because the defense and indemnity issues before this court are separate and distinct from the liability issues before the trial court, we find that jurisdiction over the liability issues, as well as any other issues not raised in the instant appeals, remains with the trial court. La.Code Civ.P. art. 2088.

We find it significant to note that Appellants requested similar stays of the trial court proceedings in November of 2011 and May of 2012. In both instances, the trial court issued interlocutory judgments denying Appellants' motions. Appellants failed to seek supervisory review of these judgments. We further note that the trial judge, in denying Appellants' most recent request for a stay, stated that he was open to reconsidering Appellants' request to stay the trial court proceedings if a ruling had not been issued by this court when the trial date approached. The trial date of these consolidated matters has since been set for January 7, 2013. Thus, Appellants' have the available remedy to re-urge their motion to stay the proceedings with the trial court.

For the reasons assigned, we hereby deny Appellants' motion.

MOTION TO STAY PROCEEDINGS DENIED.

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION.
Rule 2-16.3 Uniform Rules, Court of Appeal.