



**Fourth Court of Appeals**  
**San Antonio, Texas**

**OPINION**

No. 04-18-00418-CV

**IN RE WOOD GROUP PSN INC.,**

Miller Environmental Services L.L.C., Star Tex Gasoline & Oil Distributors Inc., Basic Energy Services Inc., Cameron Inc., Chacho's Vacuum Service Inc., Coastal Chemical Co. L.L.C., Flint Energy Services Inc., FTS International Services L.L.C., Helmerich & Payne International Drilling Co., Mission Petroleum Carriers Inc., Murphy Exploration & Production Company - USA, Murphy Oil Corporation, Plains All American Pipeline L.P.

Original Mandamus Proceeding<sup>1</sup>

**DISSENTING OPINION TO DENIAL OF EN BANC RECONSIDERATION**

Dissenting Opinion by: Rebeca C. Martinez, Justice

Sitting en banc: Sandee Bryan Marion, Chief Justice  
Karen Angelini, Justice  
Marialyn Barnard, Justice  
Rebeca C. Martinez, Justice  
Patricia O. Alvarez, Justice<sup>2</sup>  
Luz Elena D. Chapa, Justice<sup>2</sup>  
Irene Rios, Justice

Delivered and Filed: December 12, 2018

I dissent to the denial of en banc reconsideration without requesting a response. *See* TEX. R. APP. P. 49.2. Based on my review of the pleadings, I disagree that they entirely fail to assert the basis of a claim against these relators for purposes of surviving a 91a motion to dismiss. Again, "(i)t is not the court's role, in reviewing the granting of a Rule 91a motion, to determine prematurely the *merits*

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<sup>1</sup> This proceeding arises out of Cause No. 13-05-11980-DCVAJA, styled *County of Dimmit v. Murphy Exploration & Production Co., et al.*, pending in the 365th Judicial District Court, Dimmit County, Texas, the Honorable Amado J. Abascal, III presiding.

<sup>2</sup> Not participating.

of an alleged cause of action, but rather to recognize the *foundation* of one.” *Vasquez v. Legend Natural Gas III, LP*, 492 S.W.3d 448, 462 (Tex. App.—San Antonio 2016, pet. denied) (Martinez, J., dissenting); TEX. R. CIV. P. 91a.

I would therefore uphold the trial court’s decision to deny the defendants’ Rule 91a motion.

Rebeca C. Martinez, Justice