

United States Courts  
Southern District of Texas  
FILED

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**Legal action: David Netzer Consulting Chemical Engineer vs. Shell**

David J. Bradley, Clerk of Court

**Complaint:** David Netzer Consulting Engineer of Houston, Texas, is acting as his own attorney and filing this *Pro Se* complaint against the below parties for infringing Netzer's US Patent 6,677,496 titled: Process for the coproduction of benzene from refinery sources and ethylene by steam cracking (Appendix- M)

**The parties**

Plaintiff: David Netzer Consulting Engineer of Houston, prior to March 12, 2018  
David Netzer Consulting Engineer LLC

Defendant No-1: Shell Chemical LP, a Delaware Corp and principal place of business in Houston, Texas and Louisiana

Defendant No-2: Shell Oil Company, a Delaware Corp and a principle place of business in Houston, Texas and nation wide

Defendant No-3: Shell Oil Products Company, a Delaware Corp and principle place of business Houston Texas and nation wide

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## Introduction

This complaint is in reference to previous 4:14-CV-166, *Netzer LLC v. Shell* which was filed on April 27, 2017 in South District of Texas Houston Division under civic rule of procedures 60 b (6). This new complaint is filed under Federal Civil Rule of Procedures rule 60 b but as an **independent** cause of action for emergence of additional new evidences. The doctrine of *Res Judicata* is not applicable in this instance because the above April 27, 2017 petition, see appendix A, has never been ruled on the merit and the core of this instant petition is a set new evidences suggesting recusal and **vacating** Judge Lynn Hughes of Southern District of Texas, Houston Division.

## Proposed Venue and proposed Division

David Netzer Consulting Engineer recognizes that a valid argument could be made for Southern District of Texas, Houston Division, where all the defendants and plaintiff are having principal place of business. Nevertheless, David Netzer Consulting Engineer is requesting that the case be assigned to the Galveston Division of the Southern District of Texas for the following reasons;

- a. *The core of the case is pleading for the recusal and vacating Judge **Lynn Hughes** from Southern District of Texas and **Houston** Division*
- b. In the geographical area of Houston Division, Shell is a major employer, sponsoring all sorts of sport events, social service programs and as shown later for specific cause of action, sponsorship of **World Affairs Council** of Houston. Any assumed future jury in Galveston Division would be less

influenced by the name recognition and local influence of Shell within the geographical area of Houston Division, thus more impartial.

- c. The 50 miles distance of Galveston from Houston, and even more distant Divisions will not impose any excessive expenses or inconvenience to either plaintiff or defendants
- d. The presence of Shell's gasoline retailing stations in Galveston County would further enhance the merit for requesting the Galveston Division.
- e. All the above regarding proper division is further supported by pending case in Galveston Division of Robert, Reyes v. Shell and Garden Banks- Enbridge, case number 3:18-CV-20 where the defendants (Shell and Enbridge) are having a principal place of business in Houston and the cause of action is rooted in an off shore operation some 200 miles from Galveston and actually in closer proximity to Middle Louisiana District

In the event of case's load limitations in Galveston Division, other South District Divisions, such as Corpus Christie or Victoria would be acceptable by the plaintiff.

### **Jury trial is requested**

The plaintiff prefers a jury trial and as said above any assumed jury outside the boundary of Houston Division is more likely to be impartial. As shown below, Judge Lynn N Hughes who has presided over the duration of the litigations is being **assailed** by the plaintiff and blamed for being **biased**. Therefore, the avoidance of Judge Lynn Hughes in any future litigation and aside of prospective jury's issue , plays a key argument in suggesting that the case could be heard in the Galveston Division.

### **Brief history of the case**

1. Plaintiff is David Netzer Consulting Engineer, ("Netzer"); defendants are Shell Oil Company, Shell Chemical, LP, and Shell Products Company, LLC ("Shell") for infringing US Patent 6,677,496.
2. Plaintiff Netzer Consulting Engineer LLC sued defendants in Southern Texas District Court, Houston Division for patent infringement of US patent 6,677,496 and on Jan. 24, 2014.

3. The District Court as presided over by federal judge Lynn N Hughes granted Shell's motion for summary judgment and ruled non-infringement on August 26 2015; Defendant. Plaintiff Netzer LLC then appealed to CAFC (court of appeal federal circuit) and CAFC has affirmed District Court on May 27, 2016
4. Following the appeal and affirmation by CAFC, an affidavit supporting the petition for reconsideration of Summary Judgment was provided by James Storm to Netzer, and on March 3, 2017. James Storm is a recognized independent technical expert, former employee of Shell at a very senior position. Mr. James Storm has a Master's degree in Chemical Engineering and 40 years of experience in petroleum refining and chemicals. He is extremely familiar with specific operations of Shell as related to the patent 6,677,496 and more specifically to the disputed subject matter of benzene recovery and purification. Based on new testimonial evidences Mr. James Storm claimed that Shell **infringed** on US patent 6,677,496 and **misled** the District Court.
5. On April 27, 2017 plaintiff filed a motion for reconsideration and asked district court to alter or amend the Summary Judgment based on emergence of new evidences.
6. On May 16, 2017, federal judge Lynn N Hughes has dismissed the petition for reconsideration. In District Court ruling (**appendix B**) Judge Lynn Hughes has referred to Mr. James Storm as "**Netzer's Technician**"
7. Netzer appealed to 5<sup>th</sup> circuit court of appeal on the ground of admitting the new evidences not on merit of the case or issues of patent laws. The 5<sup>th</sup> circuit has denied the petition on ground of "lack of jurisdiction" (not the merit) but **declined** to transfer the case to an appropriate jurisdiction such as CAFC.
8. Certiorari petition to US Supreme Court pleading the US Supreme Court to order the 5<sup>th</sup> circuit to transfer the case to proper jurisdiction was denied Feb 23, 2018

## Pleading

The below pleading is an appeal to Southern Texas District Court, Galveston Division, is to order a new trial, with a new judge and based on new evidences as presented in this pleading and incorporate prior evidences as presented by Delphine James Law firm in a petition for reconsideration of April 27, 2017.

As shown in Appendix A, Delphine James law, brought the petition under rule 60 (b) (6) due to emergence of new evidences and sub rule (6) which imposes **no time limit** on presenting new evidences. The new evidences at the time, April 27, 2017 were:

1. Legal Declaration by James Storm formerly senior expert with Shell that Shell has **infringed** Netzer's US Patent 6,677,496 and misled the court.
2. New evidences based on public news release of Shell in Qatar that amounted to admission of guilt by Shell. (Appendix- A)

As said, the presiding Judge was Federal Judge Lynn N Hughes who dismissed the petition.

## Recusal issues

In this petition for a new trial, David Netzer Consulting Engineer is bringing a second set of **newly discovered evidences** and in addition for first set of new evidences as was brought by Delphine James Law before District Court on April 27 2017. These evidences are totally independent issue to the merit of the case (appendix A) and independent to prior evidences related to the declaration of James Storm (appendix D). This petition is filed in Southern Texas District Court, Galveston Division under any appropriate civic law including rule 60 b (6). Additional supporting experts opinions are added in this petition (see appendices E & F)

The following evidence requesting retroactive recusal and vacating of Judge Hughes are based on statutory law, case laws and as said **a recent factual discovery**. David Netzer Consulting Engineer claims

that Judge Lynn N Hughes who is and has been presiding over the case since initial filing on January 24, 2014 and including May 16, 2017 denial of motion for consideration of Summary Judgment, is and has been completely biased against David Netzer Consulting Engineer and in favor of Shell.

### **Arguments for retroactive recusal**

David Netzer, Consulting Engineer is dividing the pleading into three categories of arguments;

1. Intrinsic data , specifically suggesting a bias by Judge Lynn Hughes against David Netzer Consulting Engineer **(appendices B & C)**.
2. Perception of conflict of interests, in which statutory law USC-455 (a) and case laws as shown below are strongly suggesting retroactive recusal and vacating previous decisions made by the court.
3. Judicial findings, not directly related to the instant litigation of Netzer v. Shell, however suggesting a history of bias by Judge Hughes against legal opponents of Shell

Additional references from public source (see appendices K & L) are strengthening the above "perception" arguments of David Netzer, Consulting Engineer.

#### **a. Recent intrinsic evidences, (see appendix C)**

As said, on May 16, 2017 Judge Hughes made a ruling as related to petition of a new trial based on new evidences and under civil rule 60 b (6). The sub rule (6) means that statutory time limit of one year since issuance of final judgment, for filing the petition of relief from judgment **does not apply**. In his ruling, Judge Hughes has dismissed the affidavit of Mr. James Storm and claimed filing out of the one year time limit.

Mr. James Storm retired as VP of Motiva Enterprises, a joint venture of Shell and prior to it with Shell and in year 2016. James Storm has claimed in his affidavit **(appendix D)** to be a recognized top technical expert within the Shell organization and having a an intimate knowledge of the disputed subject matter and policies of Shell. Also Mr. Storm was not available to testify prior to his retirement in year 2016 especially when adverse case to Shell was under litigation. Also it is worth noting that in initial disclosure by Shell on April 7, 2014, the name of James Storm was not on the list of people with relevant information on the subject matter.

The claim of Mr. James Storm's in his affidavit as to his expertise and knowledge on the subject matter has not been refuted or challenged by Shell and in 15 pages affidavit (appendix D), James Storm has testified that Shell **infringed the patent and misled the court**. It is worth noting Netzer LLC was not allowed any discovery and there was no claim construction hearing (Markman hearing) which is a common practice in patent litigations

As said, in Judge's opinion (<sup>B</sup>**appendix 2**) of May 16, 2017 Judge Hughes has referred to James Storm as "**Netzer's Technician**". This highly **biased and prejudicial** statement has no factual basis. Further, the legal declaration of James Storm was reviewed by two top experts, John Hardy a former director with Fluor Engineering, and a former employee of ABB Lummus (appendix E) and also Chris Wallsgrove, a globally recognized technical expert on the subject matter in dispute, and just like John Hardy a former employee of Lummus. ABB Lummus has licensed in the past relevant technologies of the disputed subject matter to Shell. Mr. Wallsgrove is also well versed in intellectual property (see appendices F) and acted as a technical expert witness in major litigations among competitors of Shell Chemical, and as related to intellectual property.

b. **Older intrinsic evidences** (see appendix <sup>C</sup>**B**)

In "Netzer's opinion" and in addressing Summary Judgment of August 26, 2015, in the introduction section, judge Hughes held: The engineer (that is David Netzer Consulting Engineer) **restricted** his claim to the production of benzene between 80-98 percent purity by weight. Because the oil company (that is Shell) produces benzene which is 99.9% pure, the engineer's company (that is Netzer) will take nothing.

Shell did not advocate this position on benzene purity at the district court or on appeal to CAFC, presumably because the holding is clearly incorrect and ignored the open ended claim language ("at least 80 weight % benzene). This **cardinal error** although corrected by CAFC has inhibited David Netzer Consulting Engineer from licensing his US patent 6,677,496 to others for 9 months. The above correction by CAFC of Summary Judgment, in the opinion of David Netzer Consulting Engineer, amounts to very significant **material change**, at least on technical level and business grounds.

Because Judge Hughes on his own accord (*sua sponte*) divined a new reason for Shell to prevail, that is **contrary** to horn-book patent law, an objective observer might reasonably question the judge's impartiality.



## The Statute for recusal

JUSTICE STEVENS delivered the opinion of the Court.

In 1974 Congress amended the Judicial Code "to broaden and clarify the grounds for judicial disqualification." 88 Stat. 1609. The first sentence of the amendment provides:

850\*850 "Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U. S. C. § 455(a), as amended.

In the present case, the Court of Appeals for the Fifth Circuit concluded that a violation of § 455(a) is established when a reasonable person, knowing the relevant facts, would expect that a justice, judge, or magistrate knew of circumstances creating an appearance of partiality, notwithstanding a finding that the judge was not actually **conscious** of those circumstances. Moreover, although the judgment in question had become final, the Court of Appeals determined that under the facts of this case, the appropriate remedy was to **vacate** the court's judgment. We granted certiorari to consider its construction of § 455(a) as well as its remedial decision. 480 U. S. 915 (1987). We now affirm.

## Case laws supporting recusal

- a. Dixie Carriers, Inc. v. Channel Fueling Serv., Inc., 669 F. Supp. 150, 152 (E.D. Tex. 1987)
- b. Health Services Acq. Corp. v. Liljeberg, 796 F.2d 796, 802–03 (5th Cir. 1986), aff'd, 486 U.S. 847 (1988)

## Newly discovered facts to support recusal/vacating

Federal Judge Lynn N Hughes and Norton Rose– Fulbright law, which is the law firm that represented Shell in litigation against Netzer, are all **board members** and occasional sponsors (and have been board members in year 2014) of WORLD AFFAIR COUNCIL of Houston. (See appendix G). Shell is one of the sponsors (see appendix H) and has been in year 2014 when litigation started.



This revelation would not have been possible under a “reasonable due diligence” at the time when the litigation has started in January 2014. None of the public disclosures by Judge Hughes have pointed toward his affiliations with World Affairs Council of Houston. Further, none of the disclosures by Shell have pointed to **Shell’s sponsorship** in World Affairs Council of Houston. All this was discovered recently, totally by a chance and not under the umbrella of a “reasonable due diligence”...

The World Affairs Council of Houston (**appendix- I**) enrolls some 7,000 members including at least 3,000 active members. Only some 45 of the members are board members and there are some 20 sponsors, means less than 2% of the members of World Affairs Council are in elevated positions. Based on investigation of David Netzer Consulting Engineer (Appendix H) all the 20 sponsors members are mostly large companies, for example large oil companies, like **Shell**. Most of the board members are lawyers representing law firms such as Norton-Rose-Fulbright Law. Judge Lynn Hughes (Appendix G) is the only Judge on the board, let alone the only Federal Judge. Judge Hughes according to financial report of World Affairs Council is also a significant DONOR to World Affairs Council, thus one could argue Judge Hughes may have a **financial interest** in World Affairs Council. Further, Judge Hughes, Norton Rose Fulbright and Shell (appendix- I) are occasionally sponsoring events of World Affairs Council. In short, a board’s members like Judge Hughes and Norton Rose Law firm are networking with legal adversarial of David Netzer Consulting Engineer, such as Shell and present major potential opportunities for conflict of interest to arise.. Further, it is reasonable to assume that sponsors through very high annual membership fee, perhaps as high as \$50,000 and possibly higher according to financial report as opposed to \$90 per year (appendix –I) for individual membership fee, are financially supporting the council and more specifically supporting the board members.

The following paragraph is extracted from website of World Affairs Council (appendix –I), to illustrate the intimate relationship among the above parties at elevated position, means not by a chance crossing paths with each other “while standing in the cashier’s line in the supermarket”, but having private dinners, exclusive receptions and **off the record** briefings”

## Council Cabinet Membership

*The Council Cabinet is composed of individuals, corporations, and foundations that share a commitment to furthering education in international affairs. They stand ready to lead and support the goals of the Council. Members of the Council Cabinet meet regularly with distinguished leaders from the United States and abroad. They enjoy private dinners as well as have access to exclusive receptions and off-the-record briefings.*

David Netzer Consulting Engineer fully recognizes that the Judge is entitled to his personal and professional life including being a board member of World Affairs Council. Saying that, given the circumstances of Netzer vs. Shell and having Norton-Rose-Fulbright Law in the middle of it could present to a neutral observer serious questions of conflict of interests and certainly a **perception** of conflict of interests as well defined in the statute. **28-USC 455 (a)**

Given the above, Judge Hughes should have advised the parties Netzer and Shell of his affiliation with World Affairs in ELEVATED position and give Netzer an opportunity to file a motion for recusing. Judge Hughes did not inform Netzer about his affiliation with World Affairs. Therefore Netzer believes it reasonable to plea under applicable statutory law 28-UCS 455 (a) to vacate all prior rulings of Judge Hughes and the succeeding Courts..

### **Judicial finding** (Extrinsic arguments)

Lynn Hughes has been removed by 5<sup>th</sup> circuit from case of Shell. Randall L Little vs. Shell Exploration Comp US DC 4:07-CV-871 Feb 23 2015, see below public news item:

For more than nine years, U.S. District Judge **Lynn Hughes** of Houston presided over a False Claims Act case in which two auditors from the U.S. Minerals Management Service accused Shell Exploration of improperly deducting transportation and storage costs from the royalties it owes the U.S. government on offshore oil and gas leases. Hughes didn't think much of the plaintiffs' claims. He granted summary judgment to Shell in 2012, and then, after the 5th U.S. Circuit Court of Appeals revived and remanded the suit in 2012, granted Shell's renewed summary judgment motion in 2014.

Hughes is now off the case. On Monday, a three-judge 5th Circuit panel ruled that in his 2014 summary judgment opinion, Hughes ignored its remand instructions and reached flawed conclusions. "Reassignment would be advisable to preserve the appearance of justice, given the long delays, **repeated errors** and cursory reasoning in the district court's opinions to date," wrote 5th Circuit Judge W. Eugene Davis for a panel that also included Judges Jacques Wiener and Catharina Haynes. The panel also **vacated Hughes**

### **Comments by David Netzer Consulting Engineer**

The above decision by 5<sup>th</sup> circuit was issued Feb 23, 2015, after all briefings and counter briefings were presented to the Judge Hughes and prior to Summary judgment. However Netzer was not aware of these judicial findings for several months and well after the summary judgment of August 2015

Based on the above, any neutral observer can reasonably conclude that this judicial finding and the above legal history demonstrates that Judge Hughes favors Shell over their legal opponents. Further, the reference of 5<sup>th</sup> circuit to "**repeated errors and cursory reasoning**" just keep repeating itself in the case of Netzer LLC vs. Shell. Based on above Judicial findings, Judge should have recused himself, and the case of Netzer v. Shell should have been reassigned to another judge

David Netzer Consulting Engineer recognizes that any legal case should stand on its own merit and with total disregard to legal history of either plaintiff or defendants (including legal history of Shell in similar litigations with others on patent infringement cases) . Saying that, since the **new** issues in this legal action are governed by statutory laws 28-USC-455(a) as related to **perception** by neutral observers it is totally appropriate to bring up appendices **K and L** dealing with public perception of Judge Hughes even if some of it comes from unanimous public sources.. This public perception (reference L) although not of a legal value on its own, however surely in line with the experience and the claim of David Netzer, Consulting Engineer.

Further, although not brought as a legal argument as such, it is worth noting that in District Court hearing prior to the Summary Judgment, (**appendix J page 2**) Judge Hughes has demonstrated a total lack of knowledge in science of chemistry as would be expected and relevant to the subject thus creating more issues of **perception**. The investigation of David Netzer Consulting Engineer is failing to find a particular technical background among the posted law clerks of Judge Hughes. Under this scenario , aside of perception, then David Netzer Consulting Engineer believes that the Judge should have resorted to expert opinion and allowing Netzer to cross examine the expert testimony of Shell. As noted previously, no discovery was allowed by the Judge.

#### **List of Appendices**

1. Appendix A pleading for reconsideration April 27<sup>th</sup> 2017
2. Appendix B Summary Judgment August 26, 2015
3. Appendix C denial a motion for reconsideration May 16, 2017
4. Appendix D legal declaration by James Storm March 3, 2017
5. Appendix E Expert opinion by John Hardy March 6, 2017
6. Appendix F Expert opinion by Chris Wallsgrove March 6, 2018
7. Appendix G Board members of World Affairs Council of Houston
8. Appendix H list of sponsors of World Affairs Council
9. Appendix –I General information about World Affairs Council
10. Appendix J Hearing of district court of year 2014
11. Appendix K Public information about Judge Hughes

12. Appendix L Public information from undisclosed source

13. Appendix-M , US Patent 6,677,496

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