

# NO. 07-0119

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*In the Supreme Court of Texas*

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**IN RE: BP PRODUCTS NORTH AMERICA, INC.,**

*Relator.*

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ORIGINAL PROCEEDING FROM THE 212<sup>TH</sup> JUDICIAL DISTRICT COURT OF  
GALVESTON COUNTY, TEXAS  
CAUSE NO. 05CV0337-A

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**REAL PARTIES IN INTEREST RESPONSE TO  
BP'S EMERGENCY MOTION TO STAY THE  
DEPOSITION OF JOHN BROWNE**

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TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF TEXAS:

The Real Parties in Interest, the BP Plaintiffs' Steering Committee<sup>1</sup> ("the Committee"), respond to the emergency motion to stay the deposition of John Browne filed by BP Products North America, Inc. ("BP"), as follows:

## **1. Introduction**

On October 11, 2006, after conducting two days worth of evidentiary hearings, the trial court denied BP's motion for protection and ordered that the deposition of John Browne could proceed. On February 9, 2007, the First Court of Appeals, after full briefing on a

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<sup>1</sup> The "BP Plaintiff's Steering Committee" represents the Plaintiffs in this case, who have combined for the purposes of discovery.

voluminous record, denied mandamus. On February 14, 2007, BP filed a petition for writ of mandamus in this Court to prevent Browne's deposition. Together with that petition, BP seeks an emergency motion to stay Browne's deposition.

BP's emergency motion to stay should be denied for the following reasons: (1) there is no "emergency" because BP has quashed the deposition; (2) there is no legitimate basis for the petition because BP has failed to show an abuse of discretion; and (3) a stay will permit BP to continue to avoid Browne's evidence for the upcoming trial. For those reasons, the Committee requests that this Court deny BP's emergency motion for stay.

## **2. Argument**

### **A. The Emergency Motion To Stay Should Be Denied Because There Is No "Emergency."**

BP has not been forthright with the Court. At the same time that BP filed its "emergency" motion to stay the deposition which was then scheduled for February 23, 2007, BP also filed a motion to quash the deposition in the trial court, pursuant to Rule 199.4. *See* TEX. R. CIV. P. 199.4. In that motion to quash (attached), BP advised the trial court that the filing of the motion to quash, within three days of service of the notice, stays the deposition until the motion to quash is heard. *See id.* Thus—although BP did not tell this Court about it—the deposition is already stayed until further order of the trial court. There is presently no deposition scheduled. There is nothing to stay. There is no "emergency." For that reason, BP's "emergency" motion to stay Browne's deposition should be denied.

**B. The Emergency Motion To Stay Should Be Denied Because There Is No Legitimate Basis For It.**

It is well settled that a trial court does not abuse its discretion if it orders the deposition of an apex official to proceed where it is “**arguably**” shown that the official “has **any** unique or superior knowledge of discoverable information.” *In re Alcatel USA, Inc.*, 11 S.W.3d 173, 175 (Tex. 2000). The First Court of Appeals conducted an extensive review of the record, after full briefing, and concluded that there was no basis for mandamus relief.

The court of appeals’ conclusion is amply supported by this record. In the well-developed record below, there is evidence that Mr. Browne has “unique or superior knowledge” about his personal visit to the accident site on the day after the explosion; his personal interviews with employees and witnesses about the accident; the meaning of his personal statements in his press conference in Texas City on the day after the incident; his personal discussions with the Mayor of Texas City about the incident on the day after; his personal reasons why, prior to the accident, he evaluated the Texas City Refinery (TCR) “separately” from the other BP refineries throughout the world; his personal reasons for ordering 25% budget cuts that are alleged to have caused the accident through lack of manpower; his personal reasons about why he appointed James Baker, who has direct financial ties with BP, to head up the investigation after the accident into the safety of BP; his reasons why he personally directed changes in the company’s safety policy prior to the accident and why he personally directed changes in the Corporate Code of Conduct two months following the accident; and so forth.

A trial judge does not abuse her discretion if some evidence supports her ruling. *See Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 211 (Tex. 2002)(“The trial court does not abuse its discretion if some evidence reasonably supports the trial court’s decision.”). Because there is evidence that John Browne has direct, personal knowledge of relevant, discoverable facts, there is no abuse of discretion and there is no basis for the mandamus. Because the motion to stay depends upon the sufficiency of the petition, the emergency motion should be denied.

**C. The Emergency Motion To Stay Should Be Denied Because a Stay Will Permit BP to Continue to Avoid Browne’s Evidence for the Upcoming Trial.**

In its petition for writ of mandamus, BP states that discovery has been “contentious.” Discovery **has been** contentious, not because of any thing that the plaintiffs have done, but because BP has either refused to produce relevant items or resisted production until it could no longer do so.<sup>2</sup>

BP now wants this Court to stay Browne’s deposition—even though it has been quashed—so that the information that Browne possesses cannot be used in the upcoming trial. Trial is now scheduled for March 5, 2007, with jury selection to begin February 26, 2007. If the Court grants a stay of the deposition, the Committee will be effectively foreclosed from using Browne’s testimony at trial. Thus, a stay will grant BP all the relief that it seeks in its petition for writ of mandamus. Because BP’s petition is without merit, that result should not be condoned.

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<sup>2</sup> A review of the First Court of Appeals’ docket reveals that, in this case alone, BP has filed at least seven mandamus petitions.

## CONCLUSION

The BP Plaintiffs' Steering Committee requests that BP's emergency motion to stay the deposition of John Browne be denied.

Respectfully submitted,

BP PLAINTIFFS' STEERING COMMITTEE

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on February 15, 2007, the foregoing has been served on the following via electronic mail, facsimile and/or Certified Mail-RRR:

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