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## PLAINTIFF SEEKS MDL CONSOLIDATION IN PROPERTY TAX CASES

by MARY ALICE ROBBINS

**A**ccustomed to dealing with personal-injury suits, the state judicial panel on multidistrict litigation finds itself facing a taxing question.

Since its creation in 2003, the five-member panel has considered motions in cases involving toxic torts, a pain-killer, liens, tire-tread separations and even the front bumpers on Mercedes-Benz automobiles. But the latest motion to reach the panel involves a new issue:

challenges to property tax valuations.

Valero Energy Corp., a San Antonio-based refiner, filed a motion with the MDL panel Jan. 30, seeking to have a single judge decide pretrial matters in approximately 150 property tax appeals pending against 42 appraisal districts in 85 district courts. Lance Lubel, Valero's lead attorney, says a number of other plaintiffs in those appeals — including Valero affiliates and subsidiaries, as well as owners and lessees of Valero's retail outlets — joined Valero in filing the motion in *In Re: Ad Valorem Tax Litigation*.

The Rule 13 motion comes as a surprise to attor-

neys representing appraisal districts and appraisal review boards in the tax appeals.

"A motion of that type is unprecedented," says Anthony P. Brown, who has represented appraisal districts in tax cases for the past 20 years.

Brown, a shareholder in Galveston's McLeod, Alexander, Powell & Apffel, represents the Galveston Central Appraisal District and the Galveston Central Appraisal Review Board, two of the defendants in the tax appeals at issue in Valero's motion.

According to the motion, the plaintiffs allege in

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each of the related tax appeals that the appraisal districts valued the property above market value and/or unequally in relation to other comparable properties. As noted in the motion, the challenged valuations arise from the districts' use of a mass appraisal process. The plaintiffs seek a factual and legal determination of the value of the properties for ad valorem tax purposes in each tax year from 2002 through 2005.

After appraisal review boards rejected their protests of the property valuations, the plaintiffs filed suits in district courts around the state.

Texas Rule of Judicial Administration 13 — a mandate of H.B. 4, the major tort reform legislation the Legislature passed in 2003 — allows litigants to request that one judge hear all pretrial matters in cases filed in state courts across Texas, if the cases have common issues of fact and law.

"This is the mother of all mass civil cases," says Lubel, a partner in Heard, Robbins, Cloud & Lubel in Houston.

Lubel says multiple properties may be involved in each of the actions that Valero and the other plaintiffs brought against the appraisal districts. The defendant districts file identical pretrial motions in many of those cases, he says.

"We're essentially fighting the same pretrial motions over and over and over," Lubel says.

Members of the MDL panel considering Valero's motion are Judge David Peeples, administrative judge for the 4th Administrative Judicial Region, and Justices George Hanks of the 1st Court of Appeals, Bea Ann Smith of the 3rd Court of Appeals, Douglas Lang of the 5th Court of Appeals and Errlinda Castillo of the 13th Court of Appeals. The Texas Supreme Court appoints the panelists.

Since December 2003, the panel has granted four of the eight motions for transfer that it has considered. Pretrial consolidations occurred in cases involving asbestos- and silica-related claims, Vioxx claims and litigation stemming from SUV rollovers allegedly caused by tire-tread separations.