

No. 14 Original

Office-Supreme Court, U.S.  
FILED

JUL 10 1963

JOHN F. DAVIS, CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

STATE OF LOUISIANA,

*Plaintiff,*

vs.

STATE OF MISSISSIPPI ET ALS.,

*Respondents.*

OPPOSITION TO MOTION OF STATE OF LOUISIANA  
FOR LEAVE TO FILE COMPLAINT

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**OPPOSITION TO MOTION OF STATE OF LOUISIANA  
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**I. QUESTIONS PRESENTED: SPECIFICATION  
OF GROUNDS OF OBJECTION**

The State of Mississippi and Joseph S. Zuccaro, Mrs. Marie K. Zuccaro, Anthony E. Zuccaro, Nell Kaiser Zuccaro, William S. Perkins, Marie Zuccaro Perkins and Fay Cade Zuccaro, citizens thereof, Respondents, appear herein through their attorneys duly authorized and oppose the motion filed by the State of Louisiana, respectfully submitting that the prayer thereof should not be granted because:



1. The State of Louisiana has herein no present justiciable controversy with the State of Mississippi;

2. Even if there be jurisdiction, since the Complaint discloses that the flowing and navigable Mississippi River now is and always has been the boundary, in the area involved, between the states of Louisiana and Mississippi, there is no cause of action stated;

3. Private rather than public rights are primarily and truly involved and, those being capable of adequate and just solution in pending litigation between the private litigants, this Court, in the exercise of sound judicial discretion, should deny the motion;

4. Alternatively, if the motion be not now denied, the hearing thereon should be "continued" until the litigation assigned Civil Action No. 1011 on the docket of the District Court of the United States in and for the Western Division of the Southern District of Mississippi is finally determined.

## **II. SUMMARY STATEMENT OF ALLEGATIONS OF COMPLAINT**

The Complaint of Louisiana charges:

(1) That the Mississippi River *in the area in question* (all located below the present Glasscock Cutoff) separates the States of Louisiana and Mississippi—the changing "thalweg" or "main channel of navigation" of that stream being the eastern boundary of Louisiana and the western boundary of Mississippi (Pars. II, III, IV, V and XVIII of Complaint).

(2) That the Glasscock Cutoff<sup>1</sup> was dug and opened between the years of 1933 and 1939, this being one of some 15 or more cutoffs determined upon and constructed by the United States Corps of Engineers in the overall public interest, thereby to eliminate bottlenecks, reduce danger of floods and stabilize the levee system in process of construction (Pars. XV and XVI).

(3) That on May 10, 1948, Louisiana leased to Carter Oil Company (hereinafter referred to as "Carter") a section of the bed of the Mississippi River, the eastern boundary within this navigable stream being described as being "downstream along the boundary between the States of Louisiana and Mississippi, following the meanderings thereof" (Par. VII, p. 10), the Complainant specifically asserting that the pertinent area "is located *in* the Mississippi River" and "*below* what is now known generally as the Glasscock Cutoff" (Par. XV, p. 14).

(4) That in February, 1954, Carter obtained a permit and, from a surface location on the Louisiana side of the River, directionally drilled a well "to a point *under the bed* of the Mississippi River" (Par. X, p. 11); and that while it is charged that the bottom hole location of this well was then and ever since has been within Louisiana, the gravamen of its cause of action—the basis for this conclusion—is the pleader's assertion that the movement of the Mississippi River below the Glasscock Cutoff after 1939 was "the direct result of the Glasscock Cutoff" and that, in effect, because this was a man-made avulsion as opposed to a natural one, Louisiana's eastern boundary

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1. Full and specific details of this Glasscock Cutoff appear in *Esso Standard Oil Company v. Jones* decided by Supreme Court of Louisiana on April 1, 1957, rehearing denied November 12, 1957—with opinions, including published diagrams, appearing 233 La. 915, 98 So.2d 236.

in the river below this cutoff became then fixed (Par. XVII, pp. 15-16)<sup>2</sup>.

(5) That, as the exhibits to Complaint reflect (this aspect being dealt with *post*), in November, 1953, before drilling this well, Carter and the Humble Oil & Refining Company (the latter hereinafter referred to as "Humble") arbitrarily agreed between themselves upon an arbitrary line as dividing their lease ownerships and operations—Carter having the lease from Louisiana and Humble having leases from the adjacent riparian Mississippi landowners, including the Zuccaros (see Exhibit C-4 in clasp envelope).

(6) That the well as drilled by Carter was completed as a producer in April, 1954, and since then Carter and Humble (the latter having taken over Carter by merger) have been paying royalties and taxes to Louisiana (Pars. X and XI).

(7) Then Complainant sets up the filing of suit by the Zuccaros against Humble, affirmatively recognizing that "The State of Louisiana was not and has not been made a party to said suit" (Par. XII, p. 13); but then, as a legal conclusion, the pleader charges that this suit, to which Louisiana is not even a party, directly places its rights in jeopardy (Par. XX, pp. 16-17).

(8) That, by way of relief, Louisiana prays that this Court, in the area below Glasscock Cutoff to Deadman's

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2. There is no charge (factual justification therefor being no doubt lacking) that the point to which this well was drilled was in 1954 or since west of the live thalweg or main navigation channel of the Mississippi River; and a section hereof is devoted to demonstrating that Louisiana is proceeding on a fallacious concept of the applicable law and that its complaint is patently without merit.



Bend, within the present and flowing Mississippi River, find and adjudicate where the boundary was as of May 10, 1948, and that such boundary "as of May 10, 1948, and since be fixed and determined" (Par. 3 of Prayer, p. 19); and then Complainant prays that the claim of the Zuccaros to the one and only oil well in that area be cancelled whereby to resolve in Humble's favor the suit which the Zuccaros have instituted against Humble alone (Par. 4 of prayer, p. 19)<sup>3</sup>.

### III. ARGUMENT

#### A. No Present Justiciable Controversy

To invoke the jurisdiction of this Court in an original action, more must appear than one state is the nominal Plaintiff and another state is listed as an adversary Defendant along with others; but there must indeed be a justiciable case or controversy within the accepted meaning of these terms. *New York v. Illinois*, 274 U.S. 488, 74 L. Ed. 1164; *Texas v. Florida*, 306 U.S. 398, 83 L. Ed. 817.

As held by this Court in *Massachusetts v. Missouri*, 308 U.S. 1, 84 L. Ed. 3:

"First.—The proposed bill of complaint does not present a justiciable controversy between the States. To constitute such a controversy, it must appear that the complaining State has suffered a wrong through the action of the other State, furnishing ground for judicial redress, or is asserting a right against the other State which is susceptible of judicial enforcement according to the accepted principles of the common law or equity systems of jurisprudence. *Florida v. Mellon*, 273 U.S. 12, 16, 17, 71 L. Ed. 511, 514, 515,

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3. Evidently Humble was made a Respondent to the proffered complaint so that it could join in the prayer thereof.

47 S. Ct. 265; *Texas v. Florida*, 306 U.S. 398, 405, 83 L. Ed. 817, 824, 59 S. Ct. 563, 121 A.L.R. 1179. Missouri, in claiming a right to recover taxes from the respondent trustees, or in taking proceedings for collection, is not injuring Massachusetts."

That such is true even in a boundary line dispute (and we propose to show that this complaint is deficient in stating a cause of action) appears from *Louisiana v. Mississippi*, 202 U.S. 1, 50 L. Ed. 913. In that case the Court recognized the necessity for an actual controversy, but found affirmatively that one existed. The Court detailed various attempts by official representatives of both states to agree on the boundary and the failure thereof, and the passage of legislation authorizing armed patrols of the disputed oyster beds. The Court then stated:

"In view of the danger of an armed conflict, the oyster commissions of both states, in September, 1902, adopted a joint resolution establishing a neutral territory between the two states 'pending the final decision by the Supreme Court of the United States in the boundary suit to be instituted', to remain a common fishing ground."

Upon these factual findings this Court held:

"The demurrer was overruled because the court was of opinion that the bill presented a prima facie case of justiciable controversy between the state of Louisiana and the state of Mississippi as to the boundary line between them, and we are clear that the proofs establish the existence of such a controversy as to fully sustain our jurisdiction.

"It is apparent that the enforcement of the oyster legislation of the two states led to a conflict between the authorities of both, which involved a dispute as to the true boundary line."

As will be more fully set forth below, we have here no such direct "conflict between the authorities" of the states involved.

Louisiana has been receiving and, according to her Complaint, is still receiving and will continue to receive from Humble all the royalties and taxes which Louisiana claims are due it, Par. XI, p. 12 of the Complaint so reciting; and then Louisiana, as Exhibit C, Par. XXI, p. 17 of its Complaint, attaches Humble's Answer, coupled with the exhibits thereto, as filed in the case of the *Zuccaros v. Humble*, assigned Civil Action No. 1011 on the docket of the United States District Court for the Southern District of Mississippi, Western Division; and the Court will find from these filings that Humble does not intend to cease, and is not threatening to quit, paying royalties and taxes to Louisiana.

The succeeding section hereof is devoted to demonstrating that a maintainable cause of action for a boundary line suit has not been adequately stated but we tarry here to point out:

(1) That Louisiana has, according to its Complaint (Par. XI), been receiving every benefit and payment to which it contends is its due with reference to this oil well which is bottomed in the bed of the Mississippi River—the *causa sine qua non* of this filing—and though Mississippi has not waived or relinquished any right or title, and does not hereby relinquish any right or title, there is no charge by Louisiana of any past or threatened actions on Mississippi's part which would serve as a direct challenge to or legal interference with the retention of the funds which Louisiana has collected or the continuance of Louisiana's collections from Humble.

(2) That the sole and only allegation as to any challenge to or interference with the sovereignty of the State of Louisiana in this area is limited to the charge that private citizens of Mississippi, the Zuccaros, as landowners therein, have filed a suit against Humble; and though Louisiana says its rights have been placed in jeopardy by the filing of this suit (Par. XX), such is not factually or legally correct.<sup>4</sup>

(3) That this Complaint states no true boundary line dispute; and if the single well in question is and has been west of the thalweg of the flowing Mississippi River, this well admittedly at all times being under the bed of that active and navigable stream, then Louisiana can readily and always protect itself by suit instituted against Humble alone in its courts or in the Federal courts within that state; and, if it be that Louisiana is here acting to assist Humble, then we suggest as apt the holding of this Court in *Arkansas v. Texas*, 346 U.S. 368, 98 L. Ed. 80, as follows:

“In determining whether the interest being litigated is an appropriate one for the exercise of our original jurisdiction, we of course look behind and beyond the legal form in which the claim of the State is pressed. We determine whether in substance the claim is that of the State, whether the State is indeed the real party in interest. *Oklahoma ex rel. Johnson v. Cook*, supra (304 U.S., pp. 392-396).”

Also, since other Courts are available for adequate redress, it is pertinent to note this Court's holding in *Massachusetts v. Missouri*, 308 U.S. 1, 84 L. Ed. 3:

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4. The Zuccaros, in the private litigation, seek to recover damages from Humble for taking their oil and not accounting to them therefor. The Zuccaros ask nothing of or from Louisiana; but Humble's Answer (Exhibit C-1) asserts that the United States District Court lacks jurisdiction because Louisiana is an indispensable party. If Humble is correct in this contention, then the suit filed by the Zuccaros will be dismissed.

“We have observed that the broad statement that a court having jurisdiction must exercise it (see *Cohen v. Virginia*, 6 Wheat. 264, 404, 5 L. Ed. 257, 291), is not universally true but has been qualified in certain cases where the federal courts may, in their discretion, properly withhold the exercise of the jurisdiction conferred upon them *where there is no want of another suitable forum*. *Canada Malting Co. v. Pater-son Steamships*, 285 U. S. 413, 422, 76 L. Ed. 837, 842, 52 S. Ct. 413, 422, 76 L. Ed. 837, 842, 52 S. Ct. 413; *Rogers v. Guaranty Trust Co.*, 288 U.S. 123, 130, 131, 77 L. Ed. 652, 656, 657, 53 S. Ct. 295, 89 A.L.R. 720.” (Italics ours).

Wherefore, we suggest that Louisiana has no present controversy with the State of Mississippi sufficient to justify the filing of an original action in this Court; and in so suggesting lack of jurisdiction, we emphasize that Louisiana’s rights will not be directly affected by the private litigation brought by the Zuccaros against Humble, and if indeed the oil in question is being extracted from a location west of the Louisiana-Mississippi state line, then without the necessity of having this Court convert the live and changing thalweg of the Mississippi River into a metes and bounds description (which would indeed be a difficult, needless and expensive undertaking) the State of Louisiana can fully protect itself and its rights against Humble and all comers in either its own courts or those of the Federal Government therein.

#### **B. Complaint Fails to State Cause of Action for Fixing of Boundary**

The Complaint is premised upon the contention that the state boundary line below Glasscock Cutoff became fixed, and Louisiana’s rights thereto were irrevocably vested with the finalizing of this cutoff in 1939 (Par. XVII). While inferentially Louisiana, as Plaintiff, admits

that there have since been movements of the Mississippi River and of the main channel therein, Louisiana predicates its stated cause of action upon the assertion, Par. XVII of its Complaint, that: "Any movement which may have occurred after the year 1939, could only have taken place as the direct result of the Glasscock Cutoff."

There is nowhere in the Complaint a clear affirmative and factual assertion that when drilled in 1954 or since the bottom hole location of the oil well which is the cause and subject of the litigation was west of the live thalweg or main channel of the Mississippi River. The gravamen of Louisiana's action is found in the concluding sentence of Par. XVII of its Complaint, viz.: "The Glasscock Cutoff, being man-made as opposed to natural means, and avulsive in any event, could not destroy the vested right of the State of Louisiana to its eastern boundary or to its oil, gas and minerals lying under the bed of the river."

We therefore find Louisiana standing on the legal proposition or conclusion that no change in the Mississippi River from and after the year of 1939 in this area just south of the Glasscock Cutoff (no matter how gradual or imperceptible such change may have been) resulted to change the state boundary line. In other words, Louisiana contends that the boundary line became fixed and its rights thereto vested at the place where the thalweg of the stream was in the year 1939, with the consequence that future changes in the thalweg, or main channel, of this live stream resulted in no change in the boundary.

This legal conclusion of the State of Louisiana is contrary to the settled law and to Carter's and Humble's evaluation of that law. As basis for the latter statement, we refer to Plaintiff's Exhibits "C-4", "C-5" and "C-6". These



exhibits disclose that on November 25, 1953, Humble entered into an agreement with Carter, its then subsidiary, wherein it was recognized that, in the area here in question, Humble held leases from individual Mississippi property owners to the State boundary and that Carter held the lease of May 10, 1948, from the State of Louisiana to that portion of the bed of the Mississippi River within Louisiana adjacent to the riparian Mississippi lands. The agreement went on to recite and we quote from page 3 of Exhibit C-4:

“WHEREAS Humble and Carter recognize that the boundary between the State of Mississippi and the State of Louisiana, which is the community boundary between the leases owned by Humble above described and the lease of Carter above described, is the thalweg or thread of the stream of the Mississippi, which thalweg or thread of the stream is subject to change from time to time pursuant to the natural action of the river and the accretion or erosion resulting therefrom, in consequence whereof the boundary aforesaid separating said leasehold ownerships will be subject to change; and

WHEREAS Humble and Carter realize that the changes thus occurring by natural action of the river in the thalweg or thread of the stream, and consequently in the boundary between the States of Louisiana and Mississippi, may be sufficient in extent to disparage, disrupt and embarrass operations for the drilling, development and production of the leases and may give rise to operating problems that could impede efficiency and cause loss, confusion and uncertainty; and

WHEREAS, Humble and Carter are of the opinion that under these circumstances it is to the best interest of each to agree effectually, each with the other, upon an agreed boundary to separate their respective operational rights and ownerships so that

said operating and owning boundary between the parties shall remain fixed and determined, irrespective of the true boundary between the States of Louisiana and Mississippi at the present or any changes that may be wrought therein;"

Carter and Humble then proceeded to agree as between themselves upon an arbitrary, operational and fixed boundary line. Obviously, this arbitrary line was not binding upon Carter's and Humble's lessors in the absence of their knowledge and consent (and the Zuccaros who brought the action, until the filing of Humble's answer, never knew of this secret agreement between these two major oil companies); but the fact that these companies, through their lawyers, correctly therein concluded on the applicable law is clearly seen from the case of *Esso Standard Oil Co. v. Jones*, 233 La. 915, 98 So. 2d 236, and more particularly from the settled law as announced by this Court in the case of *St. Clair County v. Lovington*, 23 Wall. 46, 90 U.S. 46, 23 L. Ed. 59.<sup>5</sup>

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5. That the recitals in the agreement between Carter and Humble accord with the pertinent and established law is further supported by the following:

(1) When a navigable river forms the boundary separating one state from another, the thalweg or middle of the main navigable channel is to be taken as the true boundary line. *Iowa v. Illinois*, 147 U.S. 1, 13 S. Ct. 239, 37 L. Ed. 55; *Arkansas v. Tennessee*, 246 U.S. 158, 38 S. Ct. 301, 62 L. Ed. 638; *Louisiana v. Mississippi*, 202 U.S. 1, 26 S. Ct. 408, 50 L. Ed. 913; *New Jersey v. Delaware*, 291 U.S. 361, 54 S. Ct. 407, 78 L. Ed. 847.

(2) The thalweg is defined as meaning the middle of the main navigable channel, the track taken by boats in their course down the stream, which is that of the strongest current. *New Jersey v. Delaware*, *supra*; *Iowa v. Illinois*, *supra*; *Louisiana v. Mississippi*, *supra*; *Arkansas v. Mississippi*, 250 U.S. 39, 39 S. Ct. 422, 63 L. Ed. 832; *Arkansas v. Tennessee*, 269 U.S. 152, 46 S. Ct. 31, 70 L. Ed. 206.

The State of Louisiana in Item XV, pages 14-15 of its Complaint recognizes that the United States Engineers dug the Glasscock Cutoff as well as fifteen or more thereafter after intensive study of the Mississippi River and its flood control problems and that "the general overall purpose of such cutoffs was to eliminate bottlenecks which hampered the run-off of the waters during flood stages and to speed up the flow, thereby reducing the danger of floods and also permitting additional stabilization of the levee system then in process of construction."

The Supreme Court of the State of Louisiana in the case of *Esso Standard Oil Co. v. Jones, supra*, expressly found that in dredging and opening the Glasscock Cutoff "there was no designed purpose whatsoever on the part of the Engineers to bring about any change in the property ownership". The Court in the Jones case pointed out that one of the expert witnesses testified "that the cut-off channel affects the river current as far as fifty miles upstream and ten miles downstream"—from page 241 of 98 So. 2d.

But the fact that this was an artificial avulsion rather than a natural one makes, under the law, no difference whatsoever; and therefore the accretive, gradual and imperceptible changes which may have followed, either upstream or downstream—whether the State of Louisiana gained or the State of Mississippi gained or lost through the processes of such erosion and accretion—is immaterial. *St. Clair County v. Livingston, supra*.

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(3) Where the course of the boundary stream changes through the operation of the natural and gradual process of erosion and accretion, the boundary follows the stream and remains the varying center of the channel. *New Orleans v. United States*, 10 Peters 662; *Nebraska v. Iowa*, 143 U.S. 359, 12 S. Ct. 396, 36 L. Ed. 186; *Missouri v. Nebraska*, 196 U.S. 23, 25 S. Ct. 155, 49 L. Ed. 372.

Since Louisiana's complaint is bottomed on the theory that its right to the boundary—the main channel or thalweg of the Mississippi River south of the Glasscock Cutoff—became vested and must be determined as of the time that that cutoff was finally opened in 1939, we assert that its complaint is predicated on a false premise, one which is not maintainable in law, with the consequence that no cause of action has been stated for the fixing of the boundary.

In *Arkansas v. Tennessee*, 62 L. Ed. 638, 246 U.S. 158, this Court held that even in the area within which the avulsion actually occurred, "So long as that channel remains a running stream, the boundary marked by it is still subject to be changed by erosion and accretion; but when water becomes stagnant the effects of these processes is at an end; the boundary then becomes fixed in the middle of the channel as we have defined it and the gradual filling of the bed that ensues is not to be treated as an accretion to the shores, but as an ultimate effect of the avulsion."

Since the Mississippi River in the very area in controversy south of Glasscock Cutoff is now and has always been a flowing and navigable stream, the boundary between the states by it marked is, to borrow from the words of this Court, "still subject to be changed by erosion and accretion". Louisiana is here attempting to proceed upon the theory that the boundary in the area in question is permanently fixed and, since that theory is clearly erroneous, we suggest that the cause of action stated is patently without merit.

Here applicable is the law announced in *Alabama v. Arizona*, 291 U.S. 286, 54 S. Ct. 399, 78 L. Ed. 798, as follows:

"Its jurisdiction in respect of controversies between States will not be exerted in the absence of absolute necessity. *Louisiana v. Texas*, 176 U.S. 1, 15, 44 L. Ed. 347, 353, 20 S. Ct. 251. A State asking leave to sue another to prevent the enforcement of laws must allege, in the complaint offered for filing, facts that are clearly sufficient to call for a decree in its favor."

### **C. In Exercise of Sound Judicial Discretion, Complaint Should Not Be Entertained**

Whether or not so intended, we believe it clear that Louisiana is here actually suing on behalf of private interests rather than as a sovereign entity. That when such is the result, this Court, as stated in *Arkansas v. Texas*, *supra*, will "look behind and beyond the legal form in which the claim of the State is pressed." Past precedents show that under such circumstances this Court will refuse to entertain the claim. *New Hampshire v. Louisiana*, 27 L. Ed. 656, 108 U.S. 76; *Massachusetts v. Missouri*, 308 U.S. 1, 34 L. Ed. 3.

There are other considerations which amplify upon the foregoing and in addition show that the particular claim is not sufficiently substantial to justify this Court entertaining jurisdiction of this original action:

(a) Since, under the law applicable to the facts alleged in the Complaint, there is no permanent line capable of establishment, the result will be temporary and could be inconclusive. Actually the issue—the focal point—is on what side of the thalweg (no matter how far distant therefrom) the bottom hole of this single oil well is located. There is every reason for this issue to be justly and properly solved in the pending private litigation. Surely the United States District Court in and for the Southern District of Mississippi will accord due process

of law to the parties and will reach a just and proper decision. Not only is this a legal and irrebuttable presumption but, in addition, any aggrieved party has the right to appeal from any such decision to the United States Court of Appeals for the Fifth Circuit, with opportunity to later either appeal to or to ask this Court to review upon certiorari should grounds therefor exist.

(b) If the decision in the private litigation should be to the effect that the bottom hole location is west of the thalweg (rather than east thereof as the Zuccaros have submitted), then that will serve to end the entire matter.

(c) There is another factor which should be considered. The well was completed as a producer more than nine years ago. Since then there have been no additional discoveries in the bed of the river in this area. This particular well may become dry, play out and be abandoned, before this Court could conclude the matter, assuming that this Court would entertain jurisdiction. In that event, Louisiana already having received the royalties and taxes which it claims are its due (and certainly Humble has estopped itself not to continue to pay these taxes and royalties during the course of the litigation), it may well be that the case would become moot—at least there would no longer exist any reason for the concern which Louisiana expresses in its Complaint. We do not suggest that this would cut off the private litigants, the Zuccaros, from continuing their suit with Humble; but the State of Louisiana does not have any concern with that suit and no reason to seek to prevent the Zuccaros from obtaining such, if any, award against Humble as they are by law entitled.

(d) As shown, in November, 1953, Humble, holding leases from Mississippi owners in interest, and its sub-



sidiary, Carter, holding the lease from Louisiana, agreed, *as between themselves*, as to which of these companies would take over the particular drilling “irrespective of the true boundary line between the States of Louisiana and Mississippi at the present or any changes that may be wrought therein”—quotation from Exhibit C-4 to Complaint, p. 12 hereof, *supra*. The private landowners did not know that Humble and Carter were not fulfilling their lease contracts on the basis of the true line; and it was not until the private Mississippi owners recently discovered facts leading to the conclusion that this subsurface oil well location was within the orbit of their ownership that they had occasion to bring, and did institute, suit for damages against Humble. Humble has now answered the complaint of the Zuccaros; and though nothing is sought by the Zuccaros from the State of Louisiana, and though Louisiana will not be directly affected by the outcome or judgment to be entered in the United States District Court for the Southern District of Mississippi, the State of Louisiana can nevertheless, if it so wishes, ask to intervene in that litigation.

In summary, we submit that there is no similar past instance where this Court has undertaken to have a temporary or changing boundary marked through litigation in an original action; and we suggest that the questions here raised are so insubstantial that this should not be the time for this Court to even consider a new precedent in this regard.

#### **D. Strictly Alternatively, Cause Should Be “Continued”**

If this Court does not unqualifiedly deny the motion, then the hearing should be “continued” until the litigation between the private litigants has been finally determined

as was done in the case of *Arkansas v. Texas, supra*, 346 U.S. 368, 98 L. Ed. 80. We emphasize that, should it be factually determined in said cause bearing Civil Action No. 1011 that the oil well which is the moving cause of Louisiana's present filing is located west of the main channel of the Mississippi River and has not been within the area owned by the Zuccaros, then the Zuccaros will be unable to recover from Humble. Indeed that would end this matter. On the other hand—and this is one of the injustices apparent from Louisiana's filing—should this Court entertain jurisdiction of Louisiana's complaint and it then be determined that the oil well in question is now or has been east of the thalweg, then the Zuccaros will thereafter be nevertheless confronted with the maze of other defenses which Humble in its Answer (Exhibit C-1) has elected to array against them and both the Zuccaros and the State of Mississippi will have been put to the great expense, as well as trouble and vexation, of unnecessarily defending this litigation as a prelude to asserting and maintaining any rights they may respectively have against Humble.

#### IV. CONCLUSION

Wherefore, it is respectfully submitted that this Court should deny the motion of the State of Louisiana.

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