

Federal court turns back lawsuit to block Deer Park refinery sale to Pemex

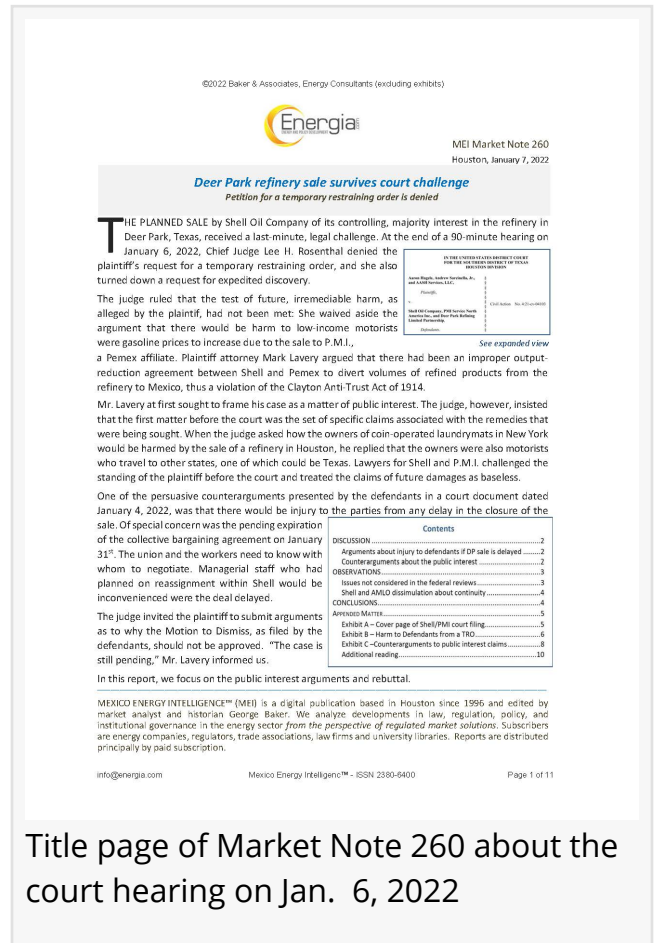
In a federal court in Houston, a petition against the sale of Shell's DP refinery to Pemex was denied but the public interest in the US & Mexico was not served

HOUSTON, TEXAS, UNITED STATES, January 9, 2022

/EINPresswire.com/ -- in the hearing in federal court, defendants [Shell](#) and PMI trashed the theories, claims and legal standing of the plaintiffs. The plaintiff's presentation was weak. The outcome was predictable.

"The public interest was not thereby served by the court's rulings," insists [George Baker](#), 80, who, since the announcement in late May, has characterized the acquisition as a mistake on the part of both buyer and seller.

"There were issues of public interest that were not reviewed by the Federal Trade Commission (FTC) and the Committee on Foreign Investment in the United States (CFIUS)," Baker believes.



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Energial MEI Market Note 260
Houston, January 7, 2022

Deer Park refinery sale survives court challenge
Petition for a temporary restraining order is denied

THE PLANNED SALE by Shell Oil Company of its controlling, majority interest in the refinery in Deer Park, Texas, received a last-minute, legal challenge. At the end of a 90-minute hearing on January 6, 2022, Chief Judge Lee H. Rosenthal denied the plaintiff's request for a temporary restraining order, and she also turned down a request for expedited discovery.

The judge ruled that the test of future, irremediable harm, as alleged by the plaintiff, had not been met. She waived aside the argument that there would be harm to low-income motorists were gasoline prices to increase due to the sale to P.M.I. *See expanded view*

Plaintiff attorney Mark Lavery argued that there had been an improper output-reduction agreement between Shell and Pemex to divert volumes of refined products from the refinery to Mexico, thus a violation of the Clayton Anti-Trust Act of 1914.

Mr. Lavery at first sought to frame his case as a matter of public interest. The judge, however, insisted that the first matter before the court was the set of specific claims associated with the remedies that were being sought. When the judge asked how the owners of coin-operated laundromats in New York would be harmed by the sale of a refinery in Houston, he replied that the owners were also motorists who travel to other states, one of which could be Texas. Lawyers for Shell and P.M.I. challenged the standing of the plaintiff before the court and treated the claims of future damages as baseless.

One of the persuasive counterarguments presented by the defendants in a court document dated January 4, 2022, was that there would be injury to the parties from any delay in the closure of the sale. Of special concern was the pending expiration of the collective bargaining agreement on January 31st. "The union and the workers need to know with whom to negotiate. Managerial staff who had planned on reassignment within Shell would be inconvenienced were the deal delayed.

The judge invited the plaintiff to submit arguments as to why the Motion to Dismiss, as filed by the defendants, should not be approved. "The case is still pending," Mr. Lavery informed us.

In this report, we focus on the public interest arguments and rebuttal.

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Title page of Market Note 260 about the court hearing on Jan. 6, 2022

1. Liability of Pemex in case of a major safety or environmental incident

The State of Texas lost in federal court in its lawsuit against Pemex for damages from the Ixtoc-1 oil spill of 1978-80. The court ruled that Pemex was protected by the Foreign Sovereign Immunity Act of 1976. Pemex paid no damages from oil on the beaches of Corpus Christi.



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George Baker

2. Residual liability of Shell for the cost of decommissioning and environmental remediation

The liability of the parties for these expenses is "a confidential matter between the parties," Deer

Park manager Guy Hackwell told us in a telephone call in October. Documentary discovery, as requested by the plaintiffs, would throw light on this important matter of the public interest. Will the full cost be met by the current and prior owners or will some or all of the cost be passed on to taxpayers?

3. Qualifications of the buyer

Pemex is an unqualified buyer, operationally and financially. No institutional preparation has been made to prepare Pemex to operate a refinery in the U.S. The claim that P.M.I. has been Shell's "partner" in the [Deer Park refinery](#) for nearly thirty years is disingenuous: Pemex's refinery division never regarded the Deer Park as part of its portfolio. There was never a on-the-job training program for Pemex people in the operation of the refinery. Shell excluded Pemex from its trade secrets and patents. Pemex is technically bankrupt, and the PMI companies have no assets to respond to the costs of a major safety or environmental incident.

4. Pemex's de facto chairman is the activist President of Mexico.

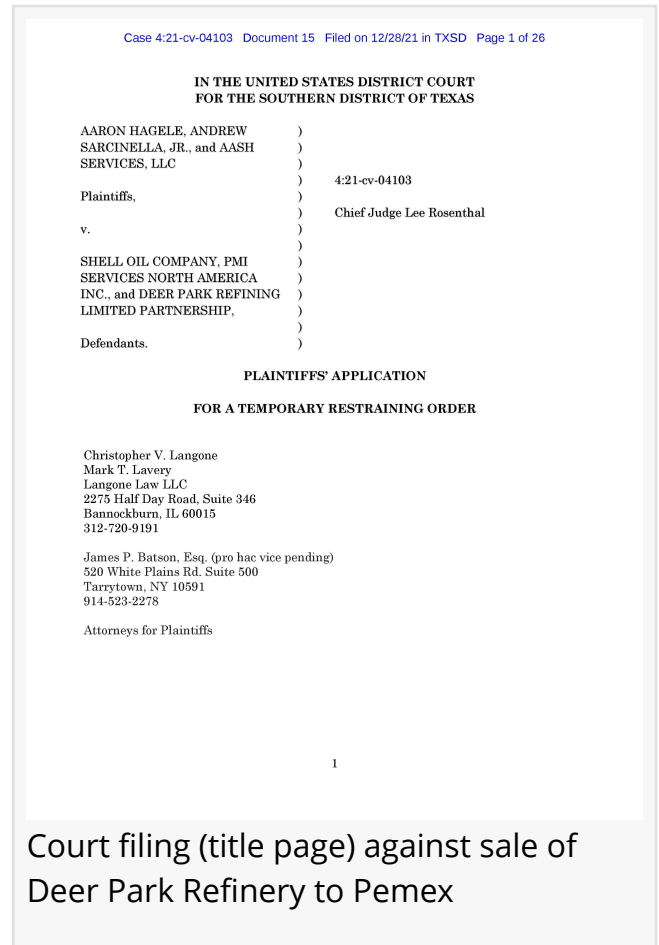
The president of Mexico has the power of executive and managerial appointment and dismissal. The current president has a history of putting unqualified loyalists in executive positions in Pemex. There is no reason to supposed that he would view Deer Park differently.

5. Future contractors would need AMLO loyalty credentials.

The motivation for this sale is political—to increase Mexico's "energy sovereignty—not commercial. Lowest price need not be the rule for awards when contractor political loyalty is a factor.

6. Pemex's long history of fires, explosions and unscheduled shutdowns of its six refineries at home.

This history does not portend safe operations at Deer Park. "It portends lower Deer Park property values, air quality and public health," predicts Baker, whose residence is 25 miles west of the refinery.



Court filing (title page) against sale of Deer Park Refinery to Pemex

Shell and Deer Park insisted, and Judge Lee H. Rosental agreed, that it is not the place of the courts to impose its will in one way with the executive branches having ruled in another.

7. No congressional oversight of CFIUS ruling about Deer Park

"It's unlikely that Congress will intervene, as by the Foreign Investment Risk Review Modernization Act of 2018, the Executive Branch is given full authority without congressional oversight," Baker says. "Congress should modify the law again to give it the power to challenge rulings by federal agencies regarding foreign investments in the United States."

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