

STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT

04-1138

TERRY SIGLER

VERSUS

DRESSERS RAND/COASTAL CHEMICAL

DECUIR, J., dissenting.

I respectfully dissent. The majority would have Dresser Rand try Sigler's case. They acknowledge that Dresser Rand raised the issue of subject matter jurisdiction in a timely manner and yet contend, "Dresser Rand precluded Sigler's opportunity to present evidence on the issue at trial." This is patently incorrect. Subject matter jurisdiction is a critical element of the claimant's case where the employer and injury are both out of state. Sigler had every opportunity at trial to establish this critical element of his case. He failed to do so, and Dresser Rand had no obligation to raise an issue that, given the state of the law regarding what constitutes a "contract for hire," would almost inevitably confer jurisdiction upon the court. While the majority contends Dresser Rand "blind-sided" Sigler, in reality it exercised the only defense left out of state defendants wishing to have their case heard in a more convenient forum.

The majority finds the decision to reopen the record to be within the trial court's discretion. While I do not disagree that the better rule is that a trial court has discretion, I believe the rule should be applied uniformly. What is becoming apparent throughout the jurisprudence is that the distinction of importance in reopening the record is whether the request is made by a defendant or a claimant. Finding myself unconvinced by the majority's attempt to distinguish *Romero*, I would find the trial

court erred in reopening the record and, therefore, would vacate the judgment for want of subject matter jurisdiction. Accordingly, I respectfully dissent.