

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-1425

JAMES J. HAYES, on behalf of himself and all
others similarly situated; THOMAS BOOTS, on
behalf of himself and all others similarly
situated,

Plaintiffs - Appellants,

versus

CROWN CENTRAL LLC; MICHAEL F. DACEY; STANLEY
A. HOFFBERGER; BARRY L. MILLER; HENRY A.
ROSENBERG, JR.; FRANK B. ROSENBERG; JOHN E.
WHEELER, JR.; JACK AFRICK;
HAROLD RIDLEY; CREDIT SUISSE FIRST BOSTON
CORPORATION; ROSEMORE, INCORPORATED,

Defendants - Appellees.

No. 04-1505

JAMES J. HAYES, on behalf of himself and all
others similarly situated; THOMAS BOOTS, on
behalf of himself and all others similarly
situated,

Plaintiffs - Appellants,

versus

CROWN CENTRAL LLC; MICHAEL F. DACEY; STANLEY
A. HOFFBERGER; BARRY L. MILLER; HENRY A.
ROSENBERG, JR.; FRANK B. ROSENBERG; JOHN E.
WHEELER, JR.; JACK AFRICK; HAROLD RIDLEY;

CREDIT SUISSE FIRST BOSTON CORPORATION;
ROSEMORE, INCORPORATED,

Defendants - Appellees.

No. 04-1709

JAMES J. HAYES, on behalf of himself and all
others similarly situated; THOMAS BOOTS, on
behalf of himself and all others similarly
situated,

Plaintiffs - Appellants,

versus

CROWN CENTRAL LLC; MICHAEL F. DACEY; STANLEY
A. HOFFBERGER; BARRY L. MILLER; HENRY A.
ROSENBERG, JR.; FRANK B. ROSENBERG; JOHN E.
WHEELER, JR.; JACK AFRICK;
HAROLD RIDLEY; CREDIT SUISSE FIRST BOSTON
CORPORATION; ROSEMORE, INCORPORATED,

Defendants - Appellees.

Appeals from the United States District Court for the Eastern
District of Virginia, at Alexandria. Claude M. Hilton, Chief
District Judge. (CA-02-122; CA-02-122-A)

Submitted: February 23, 2005

Decided: May 11, 2005

Before LUTTIG, MOTZ, and SHEDD, Circuit Judges.

No. 04-1709 affirmed; Nos. 04-1425 and 04-1505 dismissed by
unpublished per curiam opinion.

Timothy D. Battin, Ian Otto, STRAUS & BOIES, LLP, Fairfax, Virginia; Edward M. Selfe, John F. Goodman, BRADLEY ARANT ROSE & WHITE LLP, Birmingham, Alabama, for Appellants. Anne Marie Whittemore, Elizabeth F. Edwards, Brian E. Pumphrey, MCGUIREWOODS LLP, Richmond, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

James Hayes and Thomas Boots ("Appellants") appeal from the district court's orders granting a motion filed pursuant to Fed. R. Civ. P. 12(b)(6), by Crown Central Petroleum Corp. and its directors, financial advisor, and majority shareholder ("Appellees") in this civil action alleging violations of the Securities and Exchange Act of 1934 (Nos. 04-1425 and 04-1505). Appellants also appeal from the district court's order rejecting the magistrate judge's decision and denying Appellants' motion to extend the appeal period under Fed. R. App. P. 4(a)(5) (No. 04-1709). We affirm in part and dismiss in part.

In No. 04-1709, Appellants assert that the district court applied an incorrect standard of review when considering the propriety of the magistrate judge's decision and that the court abused its discretion in denying their motion to extend the appeal period. We have thoroughly reviewed the parties' briefs, the joint appendix, and the materials filed by the parties pursuant to Fed. R. App. P. 28(j). We conclude that the district court applied the correct standard of review and did not abuse its discretion in finding that Appellants failed to demonstrate excusable neglect warranting an extension of the appeal period. Accordingly, we affirm for the reasons stated by the district court. See Hayes v. Crown Cent. Petroleum Corp., No. CA-02-122-A (E.D. Va. May 25, 2004).

Turning to the appeals in Nos. 04-1425 and 04-1505, we may now consider Appellees' motion to dismiss these appeals for lack of jurisdiction. We previously deferred action on Appellees' motion pending our consideration of the appeal in No. 04-1709.

Parties are accorded thirty days after the entry of the district court's final judgment or order to note an appeal, Fed. R. App. P. 4(a)(1)(A), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5), or reopens the appeal period under Fed. R. App. P. 4(a)(6). This appeal period is "mandatory and jurisdictional." Browder v. Dir., Dep't of Corr., 434 U.S. 257, 264 (1978) (quoting United States v. Robinson, 361 U.S. 220, 229 (1960)).

The district court's judgment granting Appellees' Rule 12(b)(6) motion was entered on the docket on February 12, 2004; the thirty-day appeal period expired on March 15, 2004.* The notices of appeal were filed on April 5 and 19, 2004. Because Appellants failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we grant Appellees' motion to dismiss and dismiss the appeals in Nos. 04-1425 and 04-1505 for lack of jurisdiction.

*The thirtieth day fell on Saturday, March 13, 2004. Appellants therefore had until Monday, March 15, to timely file a notice of appeal. See Fed. R. App. P. 26(a).

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

No. 04-1709 AFFIRMED
Nos. 04-1425 and 04-1505 DISMISSED