

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

19

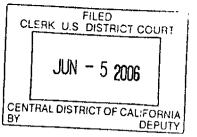
21

22

23

24

26



Priority Send Enter Closed JS-5/JS-6 JS-2/JS-3 Scan Only.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

UNION OIL COMPANY OF, CALIFORNIA, dba UNOCAL, a California Corporation,

Plaintiff,

v.

LEXINGTON INSURANCE COMPANY, a Delaware

Corporation; ZURICH RE

(UK) LTD., a UK Corporation; NEW

| HAMPSHIRE INSURANCE

COMPANY, a Pennsylvania

Corporation; and GERLING-KONZERN

ALLGEMEINE VERSICHERUNGS

AG, a German

Corporation,

Defendants.

AND RELATED COUNTER-CLAIMS

25

CV 05-1857 RSWL (VBKx)

ORDER DENYING UNOCAL'S MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING LEXINGTON'S DEFENSE OF CONCEALMENT

Plaintiff Union Oil ("Unocal")'s Motion for Partial

Summary Judgment on Defendant Lexington Insurance Company ("Lexington")'s Second Affirmative Defense of Concealment was originally set for hearing before this Court on May 15, 2006. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Central District Local Rule 7-15, this Court took the motion under submission. Having considered all materials submitted in the matter, THE COURT NOW FINDS AND RULES AS FOLLOWS:

Being mindful that on Unocal's motion for summary judgment Lexington's evidence is to be believed and all reasonable inferences drawn in Lexington's favor, Unocal has failed to establish that there is no genuine issue of material fact regarding concealment. Lexington has provided evidence showing that Unocal utilized the Myanmar military to provide security for the Yadana Pipeline project and that Unocal was aware that the military had committed human rights abuses prior to the project in proposed pipeline areas. Lexington has also provided evidence showing that Unocal disclosed only its business expansion into Myanmar and the Yadana Pipeline, not Unocal's security relationship with the Myanmar military.

Viewing this evidence in a light most favorable to Lexington, a reasonable fact finder may find that Unocal was required to disclose information regarding the likelihood of human rights abuses in connection with the Yadana Pipeline when it sought insurance coverage from Lexington. Further,

Unocal has not shown that there is no genuine issue of material fact as to whether Lexington could have discovered the relationship between Unocal and the Myanmar military; through the exercise of ordinary care.

In light of this evidence, and drawing all reasonable inferences in Lexington's favor, the Court finds that there is a genuine issue of material fact as to whether Unocal concealed material information from Lexington regarding the Myanmar military's involvement with the Yadana Pipeline.

Accordingly, Unocal's motion for summary judgment regarding Lexington's Second Affirmative Defense is DENIED.

IT IS SO ORDERED.

DATE: June 5, 2006

RONALD S.W. LEW

RONALD S.W. LEW
United States District Judge

26 (

(UnocalConcealmentMSJ.wpd)