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CENTRAL DISTRICT OF CALIFORNIA
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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

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

1 Summary Judgment on Defendant Lexington Insurance Company
2 ("Lexington")'s Second Affirmative Defense of Concealment
3 was originally set for hearing before this Court on May 15,
4 2006. Pursuant to Rule 78 of the Federal Rules of Civil
5 Procedure and Central District Local Rule 7-15, this Court
6 took the motion under submission. Having considered all
7 materials submitted in the matter, **THE COURT NOW FINDS AND**
8 **RULES AS FOLLOWS:**

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

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

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

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

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

12 **IT IS SO ORDERED.**

13 DATE: June 5, 2006

RONALD S.W. LEW

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RONALD S.W. LEW
15 United States District Judge
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26 (UnocalConcealmentMSJ.wpd)