

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE CHARLES A. LEGGE, JUDGE

LARRY BOWOTO, BOLA OYINBO,)
 BASSEY JEJE, SUNDAY JOHNBULL) C 99-2506 CAL
 IRONWANINU, INDIVIDUALLY AND AS)
 ADMINISTRATOR OF THE ESTATE OF)
 HIS DECEASED BROTHER AROLIKA)
 IRONWANINU,)
)
 PLAINTIFFS,)
) SAN FRANCISCO, CALIFORNIA
) FRIDAY, MAY 12, 2000
 V.)
)
 CHEVRON CORPORATION,)
)
 DEFENDANT.)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR THE PLAINTIFFS: DAN STORMER, ESQ.
 HADSELL & STORMER, INC.
 128 NORTH FAIR OAKS AVENUE, SUITE 204
 PASADENA, CALIFORNIA 91103

CINDY A. COHN, ESQ.
 MCGLASHAN & SARRAIL
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(APPEARANCES CONT'D ON THE NEXT PAGE)

REPORTED BY: ROSITA FLORES, CSR 1715, RPR
 OFFICIAL COURT REPORTER
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 SAN FRANCISCO, CA 94102

1 APPEARANCES: (CONT'D)

2 FOR THE DEFENDANTS:

ROBERT A. MITTELSTAEDT, ESQ.
JOHN M. GRENFELL, ESQ.
PILLSBURY MADISON & SUTRO LLP
50 FREMONT STREET, 5TH FLOOR
SAN FRANCISCO, CALIFORNIA 94105

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1 FRIDAY, MAY 12, 2000

9:30 CALENDAR

2 THE CLERK: CIVIL ACTION 99-2406, BOWOTO VERSUS
3 CHEVRON CORPORATION.

4 YOUR APPEARANCES, PLEASE.

5 MR. GRENFELL: GOOD MORNING, YOUR HONOR.

6 JOHN GRENFELL AND ROBERT MITTELSTAEDT, FOR CHEVRON.

7 MR. STORMER: DAN STORMER, FOR PLAINTIFFS.

8 MS. GREEN: JENNIFER GREEN, FOR PLAINTIFFS.

9 MS. COHN: CINDY COHN, FOR THE PLAINTIFFS.

10 THE COURT: ALL RIGHT. WE'RE HERE ON THE DEFENDANT'S
11 MOTION TO DISMISS, AND THE PLAINTIFFS' MOTION FOR LEAVE TO FILE
12 A THIRD AMENDED COMPLAINT AND THE DEFENDANT'S CROSS-MOTION TO
13 THAT FOR SANCTIONS.

14 I'VE READ THE MOVING AND OPPOSING PAPERS HERE, AND
15 DOES EITHER SIDE HAVE ANYTHING FURTHER THAT YOU WOULD LIKE TO
16 ADD?

17 MR. STORMER: WE WOULD ONLY HAVE A RESPONSE TO
18 ANYTHING MORE THAT THEY WANTED TO ADD.

19 MR. GRENFELL: I THINK THE MATTER HAS BEEN ADEQUATELY
20 BRIEFED.

21 THE COURT: OKAY. AS I SAID, WE'RE HERE ON THREE
22 MOTIONS. THE FIRST IS THE DEFENDANT'S MOTION TO DISMISS.

23 THE COMPLAINT I'M DEALING WITH IS THE SECOND AMENDED
24 COMPLAINT, AND THIS IS A COMPLAINT WHICH IS ONLY AGAINST THE
25 PARENT CHEVRON AND NOT AGAINST THE SUBSIDIARY IN NIGERIA, CNL,

1 AND THERE IS A COMPLAINT UNDER THE ALIEN TORT CLAIMS ACT.

2 THE DEFENSE'S MOTION IS BASED ON FOUR GROUNDS. ONE IS
3 THAT THE COMPLAINT DOES NOT ADEQUATELY IDENTIFY FIVE OF THE
4 PLAINTIFFS. IT DOESN'T EXPLAIN HOW OTHER PLAINTIFFS WERE
5 HARMED.

6 THE SECOND IS A MOTION THAT THE COMPLAINT FAILED TO
7 ALLEGE THE ADEQUATE LIABILITY OF THE CHEVRON CORPORATION.

8 THE THIRD IS THAT THE COURT HAS NO JURISDICTION OVER
9 THE -- STILL STRUGGLING OVER THE PRONUNCIATION -- PARABE,
10 P-A-R-A-B-E, INCIDENT.

11 AND THE FOURTH IS THAT THE COMPLAINT IS BARRED AS TO
12 THE PARABE INCIDENT BY THE ACT OF STATE DOCTRINE.

13 NOW, I WANT TO EMPHASIZE THE LEGAL STANDARD WITH WHICH
14 I'M CONFRONTED HERE BECAUSE THAT GOES A LONG WAY TO DRIVING THE
15 RESULT. PART OF THE MOTION IS BASED UPON 12(B)(6) WHICH, OF
16 COURSE, MEANS THAT I HAVE TO ACCEPT AS TRUE THE ALLEGATIONS OF
17 THE COMPLAINT. THE 12(B)(1) MOTION TO CHALLENGE THE SUBJECT
18 MATTER JURISDICTION DOES ALLOW ME TO WANDER OFF THE PERIMETERS
19 OF THE COMPLAINT FOR AWHILE, BUT I'M STILL SOMEWHAT LIMITED
20 BECAUSE THE DETERMINATION THAT IF THERE'S A MATTER FOR RULING
21 ON THE JURISDICTIONAL MOTION INVOLVES FACT MATTERS THAT GO TO
22 THE MERITS, THAT I SHOULDN'T BE MAKING THOSE DECISIONS UNTIL
23 THERE HAS BEEN DISCOVERY AND INDEED, PERHAPS, TRIAL.

24 AND THE COROLLARY OF THAT IS THAT DISCOVERY MAY BE
25 NECESSARY AND PERMITTED WHERE PLAINTIFF CAN DEMONSTRATE THE --

1 COULD PROVE THE JURISDICTIONAL FACTS IF IT HAS THAT
2 OPPORTUNITY, AND THE CONCEPT ALSO THAT ONE OF THE
3 JURISDICTIONAL ISSUES IS SO INTERMESHED WITH THE MERITS, THEN,
4 THE DECISION ON JURISDICTION HAS TO BE POSTPONED.

5 SO I WANT TO STATE THAT IN MAKING THE FOLLOWING
6 DECISIONS, I AM MAKING THESE DECISIONS BASED UPON THE PLEADINGS
7 AND BASED UPON THE CONCEPTS OF JURISDICTION, AND THIS IN NO WAY
8 IS A RULING ON ANY ASPECT OF THE MERITS OF THE CASE AND
9 CERTAINLY EXPRESSES NO OPINIONS ON WHAT THE FACTS MAY OR MAY
10 NOT TURN OUT TO BE.

11 NOW, THE FIRST MOTION, THAT DEALING WITH DISMISSAL
12 BECAUSE OF THE UNIDENTIFIED PLAINTIFFS, THAT MOTION WAS
13 ORIGINALLY BASED ON THE FIRST AMENDED COMPLAINT, AND THE SECOND
14 AMENDED COMPLAINT DOES SEEM TO CURE THAT DEFECT, EXCEPT FOR THE
15 IDENTIFICATION OF FOUR PLAINTIFFS, AND THE PROPOSED THIRD
16 AMENDED COMPLAINT WILL CURE THAT DEFECT, AND THE DEFENDANT DOES
17 NOT OPPOSE A THIRD AMENDED COMPLAINT INSOFAR AS IT IDENTIFIES
18 THE FINAL FOUR PLAINTIFFS. SO I DON'T BELIEVE THAT THE
19 QUESTION -- I DON'T BELIEVE THAT THAT PORTION OF THE MOTION IS
20 REALLY PENDING AT THIS TIME.

21 THE SECOND MOTION IS THE ALLEGED FAILURE UNDER RULE
22 12(B) (6) TO ALLEGE THE PARENT CHEVRON CORPORATION'S LIABILITY.
23 NOW, FOR THE MOST PART, THE COMPLAINT JUST USES THE SINGLE NAME
24 "CHEVRON" AND RARELY, IF EVER, DISTINGUISHES BETWEEN CHEVRON,
25 THE PARENT, AND CNL, THE SUBSIDIARY, IN NIGERIA; BUT THE

1 COMPLAINT DOES ACTUALLY STATE, GOES ON TO STATE AT PARAGRAPH
2 37, THAT THE ALLEGATIONS AGAINST THE ONE SHOULD BE TAKEN AS THE
3 ALLEGATIONS AGAINST THE OTHER.

4 NOW, IF I SIMPLY ACCEPT THAT, THEN, IT'S CLEAR --
5 WELL, NOT CLEAR, BUT I THINK IT FOLLOWS THAT BECAUSE THE
6 ALLEGATIONS THAT THE CHARGES AGAINST ONE ARE ALSO THE CHARGES
7 AGAINST ANOTHER, THAT FOR PLEADING PURPOSES EVERYTHING THAT'S
8 STATED IN THE COMPLAINT, TRUE OR NOT, HAS TO BE TREATED AS AN
9 ALLEGATION OF THE DIRECT LIABILITY OF THE PARENT CHEVRON.

10 THE COMPLAINT DOES MAKE A COUPLE OF ALLEGATIONS THAT
11 LOOK LIKE DIRECT ALLEGATIONS OF LIABILITY ON THE PART OF
12 CHEVRON IN ADDITION TO THAT, AND THAT'S PARAGRAPHS 35 AND 38.
13 SO I THINK, TAKEN TOGETHER, AGAIN JUST RULING ON THESE
14 PLEADINGS, I THINK THERE IS AN ADEQUATE ALLEGATION OF THE
15 DIRECT LIABILITY OF CHEVRON. SO I THINK CHEVRON HAS TO STAY IN
16 THE CASE FOR THAT REASON.

17 NOW, THE PLAINTIFF HAS RAISED SOME ALTERNATIVE
18 THEORIES OF VICARIOUS LIABILITY, ALTER EGO, AGENT,
19 CO-CONSPIRATOR, BUT I THINK BECAUSE OF MY DETERMINATION THAT
20 THE COMPLAINT ADEQUATELY ALLEGES, IF NOT INARTFULLY ALLEGES,
21 DIRECT LIABILITY, THERE IS NO POINT IN MY GETTING INTO THE
22 ISSUES OF ALTER EGO LIABILITY OR AGENT LIABILITY OR
23 CO-CONSPIRATOR LIABILITY AT THIS TIME. AS LONG AS THE
24 DEFENDANT, THE PARENT CHEVRON, HAS TO STAY IN THE CASE ON
25 ALLEGED DIRECT LIABILITY, THOSE OTHER GROUNDS OF VICARIOUS

1 LIABILITY CAN BE ADDRESSED IF THEY HAVE TO BE AT A LATER TIME,
2 AND I WOULD IMAGINE THEY WILL HAVE TO BE, BECAUSE EVEN THOUGH
3 THE PLEADING DOES ALLEGE THIS DIRECT LIABILITY THAT ENCOMPASSED
4 ALL OF THE COMPLAINT, I REALLY DOUBT THAT THAT IS WHAT IS GOING
5 TO COME UP OUT OF THIS. I THINK WHAT WE'RE GOING TO GET IS
6 REALLY GOING TO COME DOWN LATER TO THE ISSUES OF WHETHER
7 CHEVRON KNEW ABOUT IT AND HAD ANYTHING TO DO ABOUT IT AND, IF
8 NOT THAT, ALTER EGO, AGENCY AND CO-CONSPIRACY, BUT THAT WILL
9 HAVE TO BE FOR ANOTHER DAY.

10 I THINK THE THEORIES OF VICARIOUS LIABILITY AS A
11 PLEADING MATTER HAVE BEEN ADEQUATELY ALLEGED ALTHOUGH REALLY
12 VERY THIN, BUT HOW MUCH HAS TO BE ALLEGED ON SUCH THINGS AS
13 ALTER EGO AT THE PLEADING STAGE IS A LITTLE AMBIGUOUS FROM LAW.
14 GENERALLY, THE ALTER EGO CONCEPT IS GETTING INTO THE FACTS AND
15 NOT JUST THE PLEADINGS.

16 SO FOR ALL THOSE REASONS, I AM NOT MAKING ANY RULING
17 AT THIS TIME ON THE CHARGES OF ALTER EGO, AGENCY AND
18 CO-CONSPIRATOR. AS I SAID THAT WILL HAVE TO BE READDRESSSED AS
19 NECESSARY AFTER THERE HAS BEEN SOME DISCOVERY IN THE CASE.

20 SO THE DEFENDANT'S MOTION ON THE GROUND OF 12(B)(6),
21 NOT ALLEGING ADEQUATE LIABILITY ON DEFENDANT CHEVRON, IS
22 DENIED.

23 NOW, THE SUBJECT MATTER JURISDICTION MOTION, THAT IS,
24 THAT THIS COURT HAS NO JURISDICTION UNDER RULE 12(B)(1) IN THE
25 ALIEN TORT CLAIMS ACT OVER THE PARABE INCIDENT, FOR THIS WE'VE

1 GOT TO LOOK TO THE CAUSES OF ACTION IN THE COMPLAINT AND THE
2 TORT -- AND THE ALIEN TORT CLAIMS ACT CONFERS SUBJECT MATTER
3 JURISDICTION, IF, NUMBER 1, AN ALIEN SUES; AND, NUMBER 2, IT'S
4 A TORT; AND, NUMBER 3, IT IS COMMITTED IN VIOLATION OF THE LAW
5 OF NATIONS. AND IN MOST CASES THERE IS A VIOLATION OF
6 INTERNATIONAL LAW ONLY WHERE THE DEFENDANTS HAVE ALLEGEDLY
7 ACTED UNDER COLOR OF SOME OFFICIAL AUTHORITY.

8 NOW, HERE, BECAUSE THE HARMS ARE ALLEGED TO HAVE
9 OCCURRED AT THE HANDS OF THE NIGERIAN MILITARY OR THE NIGERIAN
10 POLICE, AND THE DEFENDANTS ALLEGEDLY TOOK PART WITH THEM, I
11 THINK THE DEFENDANTS HAVE CLEARLY ALLEGED ACTION UNDER COLOR OF
12 AUTHORITY. SO THE PRIMARY DISPUTE IS WHETHER THE CAUSES OF
13 ACTION THAT ARE ALLEGED ARE PROPERLY PLED AS A VIOLATION OF THE
14 SO-CALLED LAW OF NATIONS.

15 I AM TOLD BY THE AUTHORITIES THAT I HAVE GOT TO
16 DETERMINE WHETHER THERE IS ANY, QUOTE, APPLICABLE NORM OF
17 INTERNATIONAL LAW, WHETHER IT IS RECOGNIZED BY THE UNITED
18 STATES, WHAT ITS STATUS IS AND WHETHER IT HAS BEEN VIOLATED.
19 NOT EVERY VIOLATION OF INTERNATIONAL LAW SATISFIES THOSE
20 REQUIREMENTS.

21 NOW, THE PLAINTIFFS' CLAIMS HERE CONCERN -- ALLEGE, I
22 SHOULD SAY -- CHARGE SUMMARY EXECUTIONS, CRIMES AGAINST
23 HUMANITY, TORTURE, CRUEL AND INHUMAN AND DEGRADING TREATMENT,
24 ARBITRARY ARREST AND DETENTION, IN VIOLATION OF THE RIGHTS TO
25 LIFE, LIBERTY AND SECURITY AND PEACEFUL ASSEMBLY IN ITS

1 ASSOCIATION.

2 NOW, DO THOSE MATTERS FALL WITHIN THE APPLICABLE NORMS
3 OF INTERNATIONAL LAW? IT SEEMS TO ME SOME OF THEM CLEARLY DO.
4 TORTURE AND SUMMARY EXECUTION ARE TWO CATEGORIES OF CONDUCT
5 THAT UNQUESTIONABLY CONSTITUTE A VIOLATION OF MOST ANY NORMS OF
6 INTERNATIONAL LAW. I BELIEVE THAT THE CHARGE OF PROLONGED
7 ARBITRARY DETENTION MAY ALSO DO THAT.

8 I THINK THE U.S. COURTS ARE SOMEWHAT DIVIDED ON
9 WHETHER THE CATEGORY OF CRUEL AND INHUMAN AND DEGRADING
10 TREATMENT FALLS SHORT OF TORTURE AND ITS SEVERITY AND CAN
11 CONSTITUTE A CLAIM, BUT I DON'T THINK I NEED TO GET TO THAT.

12 AS I SAID, I THINK THERE ARE AT LEAST TWO CATEGORIES
13 OF ALLEGATIONS HERE THAT DO FALL WITHIN THE NORMS OF
14 INTERNATIONAL LAW, AND THAT IS THE TORTURE AND SUMMARY
15 EXECUTION AND THE PROLONGED ARBITRARY DETENTION.

16 NOW, WHILE THE OTHER CLAIMS THAT THE PLAINTIFFS MADE
17 WERE SOMEWHAT PROBLEMATIC AS TO WHETHER THEY DO OR DO NOT
18 CONSTITUTE VIOLATIONS OF INTERNATIONAL LAW, I DON'T NEED TO
19 WALK THROUGH THEM LIKE A LAUNDRY LIST AND MAKE DECISIONS ON
20 EACH ONE OF THEM AT THIS TIME. SINCE I AM DECIDING THAT THE
21 PLAINTIFFS HAVE ADEQUATELY ALLEGED CERTAIN VIOLATIONS WHICH ARE
22 COVERED BY THE ALIEN TORT CLAIMS ACT, AND SINCE THIS MOTION
23 CONCERNS THE QUESTION OF SUBJECT MATTER JURISDICTION, NOT THE
24 EFFICACY OF PARTICULARIZED CLAIMS, AND SINCE WHAT THE DEFENDANT
25 SEEKS HERE IS DISMISSAL OF THE ENTIRE COMPLAINT, AND SINCE THE

1 DISCOVERY THAT WILL HAVE TO BE DONE WILL BE ESSENTIALLY, AND
2 I'M NOT GOING TO SAY UNIFORMLY, BUT, ESSENTIALLY, THE SAME ON
3 ALL OF THE CAUSES OF ACTION AND BECAUSE IT APPEARS HIGHLY
4 INTERMESHED WITH THE MERITS, I DON'T THINK THERE'S ANY
5 NECESSITY FOR MY MAKING ANY OTHER DECISIONS AT THIS TIME AS TO
6 WHETHER SPECIFIC TYPES OF ALLEGATIONS ARE OR ARE NOT PART OF
7 THE INTERNATIONAL NORM. I'M ALREADY DETERMINING THAT THREE OF
8 THEM ARE: TORTURE, SUMMARY EXECUTION, AND PROLONGED ARBITRARY
9 DETENTION, AND SINCE THAT HAS BEEN ALLEGED, THEN, THE
10 PLAINTIFFS ARE OVER THE PLEADING HUMP WITH RESPECT TO 12(B)(1).

11 NOW, THE NEXT IS WHETHER THERE IS AN ACT OF STATE
12 DOCTRINE THAT BARS LITIGATION OVER THE PARABE INCIDENT. THE
13 ACT OF STATE DOCTRINE IS AKIN TO FEDERAL PREEMPTION
14 PRINCIPLES -- I'M SORRY ABSTENTION, NOT PREEMPTION, FEDERAL
15 ABSTENTION PRINCIPLES, AND IS BASED UPON A PREMISE OF DIVISION
16 OF GOVERNMENTAL AUTHORITY; THAT IS, CERTAIN DISPUTES INVOLVING
17 FOREIGN GOVERNMENT'S ARE MORE PROPERLY WITHIN THE REALM OF THE
18 FOREIGN POLICY FUNCTIONS OF THE EXECUTIVE BRANCH OF THE
19 GOVERNMENT AND NOT THE JUDICIAL BRANCH OF THE GOVERNMENT.

20 NOW, HOW DO I TEST THIS ONE? I THINK IT'S CLEAR UNDER
21 NINTH CIRCUIT LAW THAT THIS IS NOT TO BE TESTED UNDER THE 12(B)
22 (1) STANDARD FOR JURISDICTION BUT, REALLY, UNDER THE 12(B)(6)
23 STANDARD WHERE THE QUESTION IS WHETHER IT STATES A CLAIM AND,
24 HENCE, I TAKE THE FACE OF THE COMPLAINT.

25 NOW, I WON'T RAMBLE AROUND FURTHER INTO WHAT COURTS

1 HAVE SAID ABOUT THIS ACT OF STATE DOCTRINE, EXCEPT TO STATE
2 THAT THE CAUSES OF ACTION -- THE CAUSE OF ACTION HERE IS
3 ALLEGED, AND IT IS CHEVRON WHO IS RAISING THE ACT OF STATE
4 DOCUMENT -- DOCTRINE, AND THAT IS ONE THAT CHEVRON IS RAISING
5 AS A DEFENSE, AND THE QUESTION IS WHETHER CHEVRON HAS
6 ADEQUATELY DONE SO AT THIS PLEADING STAGE, AND I AGAIN I'M
7 TALKING ABOUT PLEADINGS HERE. I DO NOT BELIEVE THAT I CAN
8 DETERMINE FROM THE PLEADINGS THAT THE ACT OF STATE DOCTRINE
9 APPLIES.

10 AS YOU ALL KNOW FROM YOUR RESEARCH ON THIS, THERE
11 IS -- THERE ARE DISTINCTIONS THAT HAVE TO BE DRAWN BETWEEN
12 WHETHER CERTAIN ACTS ARE REALLY ACTS OF STATE OR WHETHER THEY
13 ARE MINISTERIAL.

14 THERE IS LAW AND CASES INVOLVING FOREIGN GOVERNMENTS,
15 EVEN WHEN THOSE ACTIONS ARE TAKEN BY THE MILITARY OF A FOREIGN
16 GOVERNMENT, THAT DO NOT NECESSARILY IMPACT OR BRING INTO FOCUS
17 THE POLICY-MAKING OF THE SOVEREIGN. AND, AGAIN, I HAVE TO TAKE
18 THIS PLEADING FROM ITS FACE; THAT IS, I HAVE TO GO OFF THE FACE
19 OF THE COMPLAINT, AND THERE REALLY IS JUST NOT ENOUGH OR
20 ANYTHING FOR ME TO RESOLVE AN ACT OF STATE DOCTRINE ON A
21 12(B) (6) PRECEDENT.

22 NOW, DEFENDANT MAY SAY, WELL, NO, I'M TAKING THE WRONG
23 STANDARD. I SHOULD BE TAKING THE 12(B) (1), SO I CAN GO ON TO
24 ALL OF THIS CASE BUT I THINK THAT THE SYDERMAN (PHONETIC)
25 VERSUS THE REPUBLIC OF ARGENTINA DECISION IN THE NINTH CIRCUIT

1 IN THE CASE OF 12(B)(6) IS THE STANDARD, AND IF THAT'S THE
2 STANDARD, THEN I CAN'T BE MAKING ACT OF STATE DECISIONS BASED
3 UPON THE FACE OF THE COMPLAINT, AND I HAVE TO LEAVE IT TO THE
4 DEFENDANT HERE AS AN ISSUE FOR THE FUTURE WHETHER THERE IS AN
5 ACT OF STATE DEFENSE, NOT THE PLEADING MATTER.

6 JUST PARENTHETICALLY, I NOTE THE ARGUMENT HERE, AND I
7 THINK THERE MAY BE SOMETHING TO IT, THAT THE ACT OF STATE
8 DOCTRINE IS A QUESTION OF WHETHER IT APPLIES WHEN THE
9 GOVERNMENT THAT DID THE ACT HERE, ALLEGEDLY DID THE ACT HERE,
10 IS NO LONGER IN POWER.

11 I MIGHT ALSO NOTE THAT, ULTIMATELY, I'M GOING TO HAVE
12 TO MAKE A DECISION ON BALANCING, AND WE GET THESE BALANCING
13 FACTORS FROM THE SABBATINO, S-A-B-B-A-T-T-I-N-O, AND
14 KIRKPATRICK DECISIONS ON WHAT SHOULD BE BALANCED. I WON'T
15 RECITE THOSE HERE, BECAUSE, AS I SAID, I BELIEVE I'M CONFRONTED
16 WITH A PLEADING DECISION, AND I CAN'T GET THE BALANCING FROM
17 JUST THE FACE OF THE COMPLAINT, AND THE BALANCING WILL HAVE TO
18 BE DONE WHEN THERE IS A RECORD.

19 SO I'M DENYING THE DEFENDANT'S MOTION TO DISMISS ON
20 THE GROUND OF THE ACT OF STATE DOCTRINE WITHOUT PREJUDICE.
21 THESE MATTERS ARE GOING TO HAVE TO BE ADDRESSED AT SOME POINT.

22 NOW, THAT HAVING BEEN SAID, I DO WANT TO CAUTION THE
23 PLAINTIFFS THAT I HAVE GIVEN YOU EVERY LEEWAY POSSIBLE HERE
24 THAT PLEADING PERMITS. THAT ISN'T GOING TO SOLVE YOUR PROBLEM
25 IN COMING UP WITH EVIDENCE AND TO REPLY TO DISCOVERY RESPONSES,

1 AND, ULTIMATELY, I'M SURE THE MOTIONS FOR SUMMARY JUDGMENT OR
2 PARTIAL SUMMARY JUDGMENT. SO YOU SHOULDN'T TAKE TOO MUCH
3 SOLACE IN THE DECISIONS THAT I AM MAKING HERE, BECAUSE THEY ARE
4 INDEED, AS I HAVE NOW REPEATED TOO MANY TIMES, PLEADING
5 DECISIONS, ADEQUACY OF PLEADING DECISIONS AND NOT IN ANY WAY
6 RULING ON THE MERITS OR WHAT THE LAW ULTIMATELY MAY TURN OUT TO
7 BE.

8 I AM LIFTING THE DISCOVERY STAY SO DISCOVERY MAY
9 COMMENCE.

10 THERE'S ONE POINT HERE, HOWEVER, WHERE I THINK
11 PLAINTIFFS HAVE CROSSED THE LINE, AND THAT IS IN THE PROPOSED
12 AMENDED COMPLAINT THE ATTEMPT TO BRING THIS INDIVIDUAL NEW
13 DEFENDANT, MR. SHAW. IT'S OBVIOUS TO ME FROM THE PAPER TRAIL
14 THAT THIS MOTION TO ADD HIM AS A DEFENDANT WAS BASED UPON HIS
15 DECLARATION IN SUPPORT OF THE MOTION TO DISMISS, AND, IN
16 ADDITION, I THINK THAT EVEN IF I APPLY LITERALLY ALL OF THE
17 ALLEGATIONS MADE AND TURN THOSE TOWARD MR. SHAW, THAT THERE'S
18 AN INSUFFICIENT BASIS TO ESTABLISH ANY INDIVIDUAL LIABILITY ON
19 HIS PART FOR ALL OF THE CAUSES OF ACTION THAT THE PLAINTIFFS
20 ALLEGE. IN FACT, I THINK IT'S JUST OUTRAGEOUS OF THE
21 PLAINTIFFS TO ATTEMPT TO SADDLE AN INDIVIDUAL PERSON WITH THOSE
22 KINDS OF CHARGES WITH NOTHING BUT BLANKET ALLEGATIONS.

23 NOW, WHAT THE PLAINTIFFS' MOTIVES FOR DOING THIS ARE,
24 I DON'T KNOW. YOU'VE GOT A LARGE CORPORATION HERE. IF YOU
25 ULTIMATELY ARE GOING TO KEEP JURISDICTION OVER IT, YOU DON'T

1 NEED MR. SHAW. IF YOU ARE GOING TO NOT BE SUCCESSFUL AGAINST
2 THE PARENT CORPORATION HERE, HAVING MR. SHAW IN ISN'T GOING TO
3 DO YOU ANY GOOD. BUT FROM STRICTLY A PLEADING POINT OF VIEW, I
4 THINK THAT WHAT YOU ARE ATTEMPTING TO DO DOES NOT, CANNOT STATE
5 AN INDIVIDUALIZED CAUSE OF ACTION AGAINST HIM.

6 YOU'RE GETTING TOO WOUND UP IN YOUR OWN WORDS. YOU'RE
7 GETTING TO REPEAT THESE THINGS IN YOUR BRIEFS AND IN YOUR
8 PLEADINGS, BUT JUST BY REPEATING THEM, YOU BELIEVE THEY HAVE
9 CERTAIN FORCES AND CERTAIN -- AND THEY MUST BE TRUE. BUT
10 YOU'RE GOING TO GET AT A TOUGHER STAGE NOW. YOU'RE OVER THE
11 PLEADINGS. DEFENDANTS ARE IN HERE. NOW, YOU HAVE GOT TO PROVE
12 THINGS. YOU'VE GOT TO MAKE THE EVIDENCE COME IN AND SATISFY
13 WHAT YOU HAVE CHARGED.

14 NOW, AS FAR AS A SANCTION MOTION GOES WITH RESPECT TO
15 THIS PLEADING, I'M GOING TO DENY IT. PLAINTIFFS HAVE A FREEDOM
16 TO PLEAD. IT ONLY GOES SO FAR, AND I THINK THIS HAS EXCEEDED
17 THE BOUNDS OF THAT, BUT THE ONLY ASPECT OF THAT HERE IS A
18 MOTION TO DISMISS, WHICH IS NOT A MAJOR EXPENDITURE ON THE PART
19 OF THE DEFENDANTS.

20 NOW, THE DEFENDANTS, THEMSELVES, HAVE NOT SHOWN ME
21 THERE'S BEEN ANY COMPLIANCE WITH THE SAFE HARBOR PROVISION OF
22 RULE 11. THERE IS A FOOTNOTE, I NOTE, IN THE DEFENDANT'S REPLY
23 BRIEF BUT ONLY A FOOTNOTE, AND THAT'S REALLY NOT ENOUGH IN THE
24 RECORD.

25 SO I AM GOING TO DENY THE SANCTION MOTION, BUT I DO

1 CAUTION THE PLAINTIFFS THAT IT SHOULD BE SOME KIND OF WARNING
2 TO YOU THAT WHAT YOU ALLEGE YOU BETTER ALLEGE ADEQUATELY AND
3 BASED UPON SOME TRUTHS GROUNDED IN FACTS AND EVIDENCE IN THE
4 CASE AND NOT JUST GROUNDED IN YOUR OUTRAGE.

5 ALL RIGHT. WHEN ARE WE NEXT TOGETHER AGAIN HERE? DO
6 WE HAVE ANOTHER DATE SET?

7 MR. GRENFELL: I DON'T THINK WE DO, YOUR HONOR.

8 THE COURT: ALL RIGHT. I THINK WE BETTER GET A STATUS
9 CONFERENCE GOING HERE. NOW, CHEVRON KNOWS IT'S IN. THE
10 DISCOVERY STAY IS LIFTED. CAN WE COME BACK IN, SAY, TWO OR
11 THREE WEEKS AND SET SOME KIND OF A SCHEDULE?

12 MR. STORMER: THAT SEEMS APPROPRIATE, YOUR HONOR.

13 MR. GRENFELL: THREE WEEKS OR MORE WOULD BE BETTER FOR
14 ME.

15 THE COURT: ALL RIGHT. WELL, YOU CAN HAVE JUNE 2ND,
16 JUNE 9TH, JUNE 16TH, WHATEVER YOU LIKE.

17 MR. STORMER: JUNE 9TH -- I APOLOGIZE, CAN WE HAVE
18 JUNE 16TH?

19 THE COURT: OKAY: ALL RIGHT. JUNE 16TH FOR STATUS
20 AND SCHEDULING. OKAY. THANK YOU.

21 MR. STORMER: SHOULD WE PREPARE AN ORDER, YOUR HONOR?

22 THE COURT: WELL, I GUESS YOU BETTER. I THINK YOU'D
23 BE LOOKING BACK AT THIS AND ARGUING LATER ABOUT WHAT I DECIDED
24 AND WHAT I DIDN'T DECIDE. SO I IMAGINE YOU BETTER HAVE IT ON
25 THE RECORD, RATHER THAN RELYING ON YOUR MEMORY OR RELYING ON

1 THE REPORTER'S TRANSCRIPT.

2 AND I THINK IT SHOULD BE CLEAR THAT THE THIRD AMENDED
3 COMPLAINT MAY BE FILED TO THE EXTENT THAT IT CURES THESE PRIOR
4 PLEADING PROBLEMS WITH RESPECT TO THE PLAINTIFFS BUT IT'S
5 DENIED AS TO MR. SHAW.

6 ALL RIGHT. THANK YOU.

7 (THE MATTER WAS CONCLUDED).

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