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April 13, 2009

VIA FEDERAL EXPRESS
Mr. Charles R. Fulbruge III
Clerk
U.S. Court of Appeals for the Fifth Circuit
600 S. Maestri Place
New Orleans, LA 70130-3408

Re: No. 08-20338, *Oceanic Exploration Co. et al., v. Phillips Petroleum Co. ZOC, et. al.*

Dear Mr. Fulbruge:

In Mr. Wachtell's letter of April 7, 2009, he cites, but does not quote, a footnote to a brief in the district court which he describes as "the concession by Plaintiff-Appellants below."

The full text of the footnote is as follows:

> "ConocoPhillips questions whether Australia would have allowed the rights to be rebid. *Australia's only arrangement in the area, however, was with Indonesia, through the Timor Gap Treaty, which lapsed upon East Timor's independence. At that point, East Timor held the trump card as it were, as to how the rights in the Timor Gap would be administered.* Of course Australia favored the status quo, that is why it was so important that ConocoPhillips co-opt East Timor officials to preserve the status quo at the expense of the people of East Timor. Far from an intervening cause, Australia's alignment of interests with ConocoPhillips' precluded any need for ConocoPhillips to "persuade" Australian authorities to change their position." *See* SAC ¶¶ 95, 120. R6639. (Emphasis supplied).

Far from being a "concession" that the newly-independent government of East Timor could not have abrogated the 1991 concession agreement without Australia's consent, the italicized language in the footnote states the *opposite*. *See also* Second Amended Complaint, ¶ 88. ("East Timor later adopted a Constitution that vitiated all prior interests, including those of ConocoPhillips, in East Timorese natural resources.")

The two cases cited by Mr. Wachtell were not cited previously by ConocoPhillips in its brief, and are not on point. Neither was a bribery case. Both cases merely held that employee health insurance plans failed to state a claim for damages under RICO for having been forced to pay increased health insurance claims of employees who were allegedly fraudulently induced by the tobacco companies to smoke cigarettes.

Finally, in *United States v. Kenneganti* (5th Cir. No. 07-40963, April 8, 2009), another panel of this Court held that even in a False Claims Act case governed by Rule 9(b), a plaintiff is not required to "plead [at a higher] level of detail," than would be "required to prevail at trial." Slip Op. 12.

Respectfully submitted,

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cc: All Counsel of Record