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U.S. COURT OF APPEALS
CLERK
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Via Federal Express

Mr. Charles R. Fulbruge III
Clerk of the Court
United States Court of Appeals for the Fifth Circuit
600 South Maestri Place
New Orleans, Louisiana 70130

Re: Oceanic Exploration Co., et al. v. ConocoPhillips, et. al, No. 08-20338
March 30, 2009 calendar before Judges Barksdale, Dennis and Elrod

Dear Mr. Fulbruge:

Very reluctantly, we feel compelled to respond to Plaintiffs' counsel's letter of April 13, 2009, purporting to respond to our previous letter to the Court of April 7, 2009.

In our April 7 letter, we assiduously avoided making any argumentation and merely provided the Court with citations to a record reference requested by the Court upon oral argument, as well as to two decisions that were referenced upon oral argument in response to Court questions, which decisions had not been included in the parties' briefs.

Oceanic's counsel has seized upon that letter as an excuse to file a post-argument mini-brief that unfortunately requires a response:

1) It is rather troubling that Plaintiffs' counsel continues to proffer the canard that the East Timor Constitution "vitiates all prior interests, including those of ConocoPhillips, in East Timorese natural resources" while omitting to state that the Constitution only vitiates those resources "which are not confirmed . . . after the Constitution enters into force." Second

Mr. Charles R. Fulbruge III

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Amended Complaint ¶ 88 (R4268). And, of course, the *very same day* that the Constitution entered into force, newly independent East Timor signed a treaty with Australia that *confirmed* existing concessions, including those held by ConocoPhillips. (R5916.)

2) Counsel advances argumentation as to why the concessions contained in a footnote in plaintiffs' brief below are supposedly not concessions at all. We prefer to let the language speak for itself but would simply note that — concessions or no — entirely absent from the Second Amended Complaint is any allegation of any nature that Australia would ever have gone along with any attempt by East Timor to abrogate the existing concessions and unilaterally embark upon some plan whereby Plaintiffs could obtain and exploit mineral rights in seabed waters that, according to Oceanic's own pleading, were claimed by Australia. Second Amended Complaint ¶ 49 (R4255).

3) Oceanic tries to distinguish the cases for which our letter provided citations on the ground that they did not involve bribery, but that distinction has no bearing upon the issue for which those cases were cited. Those cases were referenced in response to a question from the Court to illustrate that courts recognize that some injuries caused by illegal conduct in violation of the antitrust laws or RICO may be left unremedied in private treble-damage actions for "lack of a proper plaintiff." *E.g., Oregon Laborers v. Philip Morris*, 185 F.3d 957, 964 (9th Cir. 1999).

4) Finally, nothing in this Court's recent *Kanneganti* decision alters the proximate-cause requirements established by the Supreme Court in *AGC*, *Holmes*, and *Anza*.

Very respectfully submitted,

Herbert M. Wachtell / JFL

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