

ENGLISH TRANSLATION

IN THE HIGH COURT OF MALAYA IN KUALA LUMPUR  
(CIVIL DIVISION)

SUIT NO. S2-23-41 OF 2004

BETWEEN

1. SARAWAK SHELL BHD. (71978-W)
2. SHELL MALAYSIA TRADING SENDIRIAN BERHAD (6078-M)
3. SHELL REFINING COMPANY (FEDERATION OF MALAYA) BHD. (3926-U)
4. SHELL TIMUR SDN. BHD. (113304-H)
5. SHELL EXPLORATION AND PRODUCTION MALAYSIA B.V. (993963-V)
6. SHELL OIL AND GAS (MALAYSIA) LLC (993830-X)
7. SHELL SABAH SELATAN SDN. BHD. (228504-T)
8. SABAH SHELL PETROLEUM COMPANY LTD. (993229-W)

..... PLAINTIFFS

AND

HUONG YIU TUONG

..... DEFENDANT

DEFENCE

1. Save that the 2<sup>nd</sup> Plaintiff has the company registration number 6087-M, paragraphs 1 to 5 and 7 to 8 of the Statement of Claim dated 22.6.2004 (hereinafter referred to as “the Statement of Claim”) are admitted.

2. Save that the 6<sup>th</sup> Plaintiff is a company incorporated in the Island of Nevis, paragraph 6 of the Statement of Claim is admitted.
3. Save that it is admitted that the Plaintiffs are part of the Shell group of companies which have had a presence in Malaysia for over 100 years, paragraph 9 of the Statement of Claim is denied.
4. The Defendant avers that by reason of the facts and matters pleaded hereafter and as a result of their own actions, the reputation and standing of the Plaintiffs and the Shell group of companies (the Royal Dutch/Shell group of companies and/or the recently unified Royal Dutch Shell plc and all its subsidiary and related companies worldwide, including the Plaintiffs, will be referred to collectively hereinafter as “the Shell Group”) as a leader in the oil and gas industry worldwide, including Malaysia, have been lowered in the estimation of right thinking members of society and have caused the Shell Group to be exposed to public hatred and/or contempt and/or ridicule.
5. Save it is admitted that the Defendant is a former employee of the 1<sup>st</sup> Plaintiff, paragraph 10 of the Statement of Claim is denied.
6. The Defendant avers that:
  - 6.1 he was in the Exploration Function/department of the 1<sup>st</sup> Plaintiff from 2.9.1974, when he commenced his employment with the 1<sup>st</sup> Plaintiff, to 31.5.1990;
  - 6.2 from 1.6.1990 to 31.3.1995, the Defendant was in the Production Function, Geology/Seismology sub-unit of the 1<sup>st</sup> Plaintiff’s Petroleum Engineering Department;
  - 6.3 from 1.4.1995 to approximately March 1998, the Defendant was in the Petroleum Engineering Department of the 1<sup>st</sup> Plaintiff;
  - 6.4 from approximately March 1998 to 31.8.1999, the Defendant was in the Corporate Affairs Unit of the 1<sup>st</sup> Plaintiff;

- 6.5 from 1.9.1999 to 7.2.2001, the Defendant was in the Exploration and Production Technology and Services Department (hereinafter referred to as "EPT") of the 1<sup>st</sup> Plaintiff and specifically in the Technical Services - Stratigraphical & Geochemical Services Unit as a Stratigrapher;
  - 6.6 from between February 2001 and 8.7.2001, the Defendant was also asked to work on umbrella contracts, benchmarking and studying engineering best practices for some 5 months and reporting directly to the General Manager of EPT;
  - 6.7 from 9.7.2001 to 31.10.2002, the Defendant was an Asset Integrity Engineer in EPT under the Asset Integrity Management Unit of the 1<sup>st</sup> Plaintiff;
  - 6.8 from 1.11.2002 to 28.5.2003, the Defendant was in EPT under the Technology Coordination Unit of the 1<sup>st</sup> Plaintiff.
7. Save that it is admitted that the Defendant's employment was terminated by the 1<sup>st</sup> Plaintiff on 28.5.2003, following a Domestic Inquiry, paragraph 11 of the Statement of Claim is denied.
  8. The Defendant avers that the facts and circumstances of his termination of employment by the 1<sup>st</sup> Plaintiff is the subject of the matter Industrial Court No. 8/4-1377/04 before the Industrial Court in Miri, Sarawak, which is presently in the process of being tried. The Defendant reserves the right to amend this Defence herein in the future to plead the findings of fact and the award made in the matter Industrial Court No. 8/4-1377/04 when the said trial has been concluded.
  9. Save that it is admitted that from April to May 2004, the Defendant had sent various emails to the following persons (hereinafter referred to as "the said Emails"), paragraph 12 of the Statement of Claim is denied:
    - 9.1 Jeroen van der Veer: the Chairman/Chief Executive Officer of the Shell Group;
    - 9.2 Malcolm Brinded: the Head of Exploration & Production of the Shell Group;

- 9.3 Rosli Lompoh: the Assistant Human Resource Manager of the 1<sup>st</sup> Plaintiff;
  - 9.4 Hee Len Hi: the former Head of Exploration/Production Technology and Services (EPT) of the 1<sup>st</sup> Plaintiff;
  - 9.5 Jon Chadwick: the Chairman/Chief Executive Officer of the Shell Group companies operating in Malaysia;
  - 9.6 Dominique Gardy: the Head of Exploration & Production of the Shell Group for the region of Asia-Pacific;
  - 9.7 Jakob Stausholm: the Chief Internal Auditor of the Shell Group and a member of the Shell Group's Audit Committee;
  - 9.8 Richard Wiseman: the General Legal Counsel of the Shell Group;
  - 9.9 Lim Haw Kuang: the President of the Shell Group companies operating in the Asia-Pacific region involved in refining and retailing operations and the former the Chairman/Chief Executive Officer of the Shell Group downstream companies operating in Malaysia.
10. The Defendant avers that:
- 10.1 all the persons in paragraphs 9.1 to 9.9 above, were persons in the employment and/or involved in the management of the Shell Group and/or the Plaintiffs;
  - 10.2 the intention of the said Emails were to highlight to the upper management of the Shell Group the problems and difficulties faced by the Defendant as a result of the management action of the 1<sup>st</sup> Plaintiff.
11. Save that it is admitted that the Defendant had on 14.5.2004 written and sent to the following individuals an email/letter entitled "Does Shell Management in Malaysia promote and support injustice, Lies, Deception, Cover-up and Conspiracy in the country they operate?" (hereinafter referred to as "the said Email/Letter"), paragraph 13 of the Statement of Claim is denied:

- 11.1 Jeroen van der Veer: the Chairman/Chief Executive Officer of the Shell Group;
- 11.2 Malcolm Brinded: the Head of Exploration & Production of the Shell Group;
- 11.3 Richard Wiseman: the Legal General Counsel of the Shell Group;
- 11.4 Jakob Stausholm: the Chief Internal Auditor of the Shell Group and a member of the Shell Group's Audit Committee;
- 11.5 Dominique Gardy: the Head of Exploration & Production of the Shell Group for the region of Asia-Pacific;
- 11.6 Jon Chadwick: the Chairman/Chief Executive Officer of the Shell Group companies operating in Malaysia;
- 11.7 Stephen Pang: the Human Resource Manager of the 1<sup>st</sup> Plaintiff;
- 11.8 Rosli Lompoh: the Assistant Human Resource Manager of the 1<sup>st</sup> Plaintiff;
- 11.9 Mohidin Sulaiman: the subordinate of Rosli Lompoh;
- 11.10 Thomas Kuud: the Capability Manager for Geology and Geophysics of the 1<sup>st</sup> Plaintiff;
- 11.11 Sivapragasam Mailvaganam: the Manager for Employee Services in the Human Resource Department of the 1<sup>st</sup> Plaintiff;
- 11.12 T Kandiah Pillai: the Legal Manager of the Shell Group companies operating in Malaysia;
- 11.13 Lily Rosita Kusari: a lawyer in the Legal Department of 1<sup>st</sup> Plaintiff;
- 11.14 Max Prins: Capability Manager for Petrophysics and at the same time was the Technology Coordinator of 1<sup>st</sup> Plaintiff;

- 11.15 Hee Len Hi: the former Head of Exploration/Production Technology and Services (EPT) of the 1<sup>st</sup> Plaintiff;
- 11.16 Lim Haw Kuang: the President of the Shell Group companies operating in the Asia-Pacific region involved in refining and retailing operations and the former the Chairman/Chief Executive Officer of the Shell Group downstream companies operating in Malaysia;
- 11.17 Larry Chung: the Facilitating Officer of the Domestic Inquiry convened by the 1<sup>st</sup> Plaintiff against the Defendant and a staff member of the Shell Group companies operating in Malaysia involved in refining and retailing operations;
- 11.18 Haji Abu Yusuf: the Chairman of the Domestic Inquiry convened by the 1<sup>st</sup> Plaintiff against the Defendant and an employee of the 1<sup>st</sup> Plaintiff;
- 11.19 Othman Marahaban: a panel member of the Domestic Inquiry convened by the 1<sup>st</sup> Plaintiff against the Defendant and an employee of the 1<sup>st</sup> Plaintiff;
- 11.20 Ko Tong Poh: a panel member of the Domestic Inquiry convened by the 1<sup>st</sup> Plaintiff against the Defendant and an employee of the 1<sup>st</sup> Plaintiff;
- 11.21 YB Lee Kim Shin: the Party Youth Chairman of the Sarawak United Peoples' Party, Malaysia;
- 11.22 Tan Sri Dr. George Chan: the President of the Sarawak United Peoples' Party Central Working Committee, Malaysia;
- 11.23 Tan Sri Dato Lee Lam Thye: a prominent Malaysian social worker;
- 11.24 Professor Dr. Chandra Muzzafar: a promoter of the Malaysian non-governmental organisation, JUST Society;
- 11.25 SM Mohd Idris: the Chairman of the Penang Consumer Association, Malaysia;

11.26 Abg. Razali B. Abg. Abdul Karim: the Head of Security for the 1<sup>st</sup> Plaintiff;

11.27 Joshua Betie: a Team Leader in the 1<sup>st</sup> Plaintiff and a subordinate of Abg. Razali B. Abg. Abdul Karim.

12. The Defendant avers that:

12.1 the persons in paragraphs 11.1 to 11.20 and 11.26 to 11.27 above, were persons in the employment and/or involved in the management of the Shell Group and/or the Plaintiffs;

12.2 the said Email/Letter did not refer to and was not understood to refer to all of the Plaintiffs;

12.3 in the alternative, the said Email/Letter could only be understood to refer to the 1<sup>st</sup> Plaintiff, which is the only Plaintiff that the Defendant had worked for;

12.4 the intention of the said Email/Letter was to highlight to the upper management of the Shell Group the irregularities in the conduct and decision of the Domestic Inquiry convened by the 1<sup>st</sup> Plaintiff against the Defendant.

13. Paragraph 14 of the Statement of Claim is denied, in particular the Defendant denies that the title and the contents of the said Email/Letter have the natural and ordinary meaning, mean or were understood to mean as pleaded in paragraph 14 of the Statement of Claim.

14. The Defendant avers that:

14.1 the said Email/Letter contained 16 questions addressed to T Kandiah Pillai, the Legal Manager of the Shell Group companies operating in Malaysia, and/or the upper management of the Shell Group (hereinafter referred to as “the said 16 Questions”);

14.2 the said 16 Questions relate to irregularities in the conduct and the decision of the Domestic Inquiry convened by the 1<sup>st</sup> Plaintiff against the Defendant;

- 14.3 the said 16 Questions were an opportunity for the said T Kandiah Pillai and/or the upper management of the Shell Group to respond to the grievances of the Defendant in relation to the conduct and the decision of the Domestic Inquiry convened by the 1<sup>st</sup> Plaintiff;
- 14.4 in any event, the said 16 Questions relate to certain named individuals employed by the 1<sup>st</sup> Plaintiff and not to the Plaintiffs.
15. In the alternative, if and so far as the said Email/Letter complained of have the natural and ordinary meaning, mean or were understood to mean as pleaded in paragraph 14 of the Statement of Claim, the Defendant avers that the said Email/Letter is true in substance and fact.

#### Particulars

- 15.1 the conduct and the decision of the Domestic Inquiry convened by the 1<sup>st</sup> Plaintiff against the Defendant were irregular;
- 15.2 the facts and circumstances of the termination of the Defendant's employment by the 1<sup>st</sup> Plaintiff, including the conduct and the decision of the Domestic Inquiry convened by the 1<sup>st</sup> Plaintiff against the Defendant, is the subject of the matter Industrial Court No. 8/4-1377/04 before the Industrial Court in Miri, Sarawak;
- 15.3 the matter Industrial Court No. 8/4-1377/04 is presently part heard. The Defendant reserves the right to amend this Defence herein in the future to plead the findings of fact and the award made in the matter Industrial Court No. 8/4-1377/04 when the said trial has been concluded.
16. Further, and in the alternative, by reason of the following facts and matters relating to actions by the 1<sup>st</sup> Plaintiff, the Defendant avers that if and so far as the said Email/Letter complained of have the natural and ordinary meaning, mean or were understood to mean as pleaded in paragraph 14 of the Statement of Claim, the



Defendant avers that the words complained about in paragraph 14 of the Statement of Claim are true in substance and fact.

#### Particulars

- 16.1 in 1997, the Defendant had highlighted to the 1<sup>st</sup> Plaintiff the problems in the design of the offshore platform in the Kinabalu Field Development Project, Sabah, rendering the said offshore platform unsafe and liable to sink at the material time. The Defendant discovered integrity issues of the conductors piled, which stopped short in the soft sediments, which he had disclosed in team meetings. When the first production well was drilled, the superficial sediments immediately below the conductors experienced total mud loss and the continuous pumping of seawater to remedy the loss resulted in the fluidisation of the remaining sediments, resulting in much drilling difficulties for the second well drilled. This problem was only remedied by costly cementation work;
- 16.2 the Defendant had also discovered and brought to the attention of the 1<sup>st</sup> Plaintiff that the second production well in the Kinabalu Field Development Project had been drilled outside the Kinabalu Field, that is at the back of the Kinabalu Main Fault. This was due to the operation engineer on duty having failed to fully and/or competently supervise the drilling work that he was assigned to do. Instead, blame was also placed on the Defendant by the 1<sup>st</sup> Plaintiff. It was the Defendant who had discovered the said problem on a Sunday, when he had gone to work on his own initiative to help with the said project. The Defendant had notified the team members to come together and the problems were rectified, preventing further losses of some RM1 to 2 million;
- 16.3 the Defendant had also raised important field development issues that needed to be addressed in the Kinabalu Field Development Project, namely relating to safety, geological, development and reserve matters. The Defendant's

concerns were ignored by the 1<sup>st</sup> Plaintiff and instead, received threats after being called to the Project Manager's room. The team leader in charge of the Kinabalu Field Development Project had not wanted to investigate into the Defendant's expressed concerns for the reason that the investigation may unearth findings that would be unfavourable to the issues of auditable data gathering, planning, design, execution and staff competence of the employees involved in the Kinabalu Field Development Project, which would negatively affect the department's/company's scorecard ratings, which dictate the bonuses and variable pay to be rewarded the persons involved in the Kinabalu Field Development Project;

- 16.4 the Defendant was punished with a poor staff rating report for the first time after more than 20 years of excellent to outstanding reports. As a result of highlighting the Kinabalu Field Development problems to the 1<sup>st</sup> Plaintiff, the annual staff appraisal of the Defendant by the 1<sup>st</sup> Plaintiff was laced with unfounded accusations and the Defendant was then sidelined to another job without any discussion or his consent;
- 16.5 as a result of the above events, the Defendant was transferred by the 1<sup>st</sup> Plaintiff to the Ketam Platform, which was then dormant and not carrying on any production of petroleum;
- 16.6 subsequently, an internal investigation was conducted and blame was apportioned to various persons who were involved in the Kinabalu Field Development Project, including the General Manager. However, the Defendant was not restored to his previous position as geologist for the Kinabalu Field Development Project;
- 16.7 subsequently, from approximately March 1998 to 28.5.2003, the Defendant was repeatedly transferred by the 1<sup>st</sup> Plaintiff from one unit and/or department to another, namely the Corporate Affairs Unit, the Technical Services - Stratigraphical & Geochemical Services Unit, the Asset Integrity Management Unit and the Technology Coordination Unit of the 1<sup>st</sup> Plaintiff. Despite having requested to be provided with a job description, the Defendant was not

provided by the 1<sup>st</sup> Plaintiff with a job description. Full particulars of the Defendant's transfers are pleaded in paragraph 6 above. Save for the Technical Services - Stratigraphical & Geochemical Services Unit, the Defendant was transferred to units and/or departments which were not related to his work experience and/or expertise. This resulted in the stagnation and/or the progressive destruction of the Defendant's career growth and progression with the 1<sup>st</sup> Plaintiff;

- 16.8 in 2002, as part of his duties, the Defendant had discovered from written feedback obtained from Offshore Installation Managers that the 1<sup>st</sup> Plaintiff had transported its employees in helicopters which were in bad repair and/or unsafe and that passengers were ordered to board helicopters which had just completed repair work as part of the testing of the repaired helicopters. Hee Len Hi was not happy with the Defendant for raising these said safety issues and had subsequently together with his team leader rated the Defendant poorly for a subsequent auditing assignment on helicopter services;
- 16.9 the Defendant was promised a job description by Hee Len Hi and when provided with one several months later, the draft job description required an engineering degree which the Defendant did not have;
- 16.10 in around May 1997, the Defendant was persuaded by the 1<sup>st</sup> Plaintiff to transfer his contributions to the Shell Sarawak And Sabah Retirement Benefit Fund to the Defined Contributory Scheme after the 1<sup>st</sup> Plaintiff had represented to the Defendant the alleged benefits of doing so;
- 16.11 on 20.9.2004, in the matter Suit No. 22-69-2002 (MR), the High Court In Sabah And Sarawak at Miri had found that the 1<sup>st</sup> Plaintiff and the 8<sup>th</sup> Plaintiff had made deductions from the Shell Sarawak And Sabah Retirement Benefit Fund and Shell Sarawak And Sabah Provident Fund relating to 399 of their employees, which were unlawful and void against the provisions of section 9(1) and 47(1) of the Employees Provident Fund Act 1951 and the Employees Provident Fund Act 1991;

16.12 meanwhile, the 1<sup>st</sup> Plaintiff had paid off their employees who had contributed to the Shell Sarawak And Sabah Retirement Benefit Fund in cash. As for the employees who had contributed to the Defined Contributory Scheme, these contributions were transferred to the Employee Provident Fund;

16.13 current employees and employees who had resigned after 1997 were paid an ex-gratia payment plus adjustments. Had these employees remained contributing to the Shell Sarawak And Sabah Retirement Benefit Fund, the benefits that they would have received would have been significantly higher;

16.14 as regards the Defined Contributory Scheme, the 1<sup>st</sup> Plaintiff had stated in a "question and answer" leaflet pertaining to this subject that employees who have been dismissed will not be entitled to receive any such ex-gratia payments nor the adjustment paid to the other employees. As such, the representation by the 1<sup>st</sup> Plaintiff to the Defendant of the alleged benefits of the Defined Contributory Scheme and the Defendant's subsequent dismissal by the 1<sup>st</sup> Plaintiff had caused him to be prejudiced and to suffer loss.

17. Paragraph 15 of the Statement of Claim is denied.

18. The Defendant avers that:

18.1 the said Email/Letter was sent to persons involved in the management and/or employees of the 1<sup>st</sup> Plaintiff and the Shell Group;

18.2 the said Email/Letter was only copied to 5 other individuals, from whom the Defendant was seeking help since all previous emails concerning work issues and/or the irregularities in the conduct and decision of the Domestic Inquiry convened by the 1<sup>st</sup> Plaintiff against the Defendant had been ignored by the 1<sup>st</sup> Plaintiff and as a reconciliation before the Labour officer in Miri on 29.8.2003 had failed because the 1<sup>st</sup> Plaintiff had refused to re-instate the Defendant, as was requested by the Defendant;

- 18.3 as such, it is denied that the said Email/Letter was published to the general public nor to any class of persons within the general public;
- 18.4 in the premises, it is denied that the publication of the said Email/Letter as aforesaid caused the Plaintiffs to suffer any hurt/injury to their reputation nor caused the Plaintiffs to be brought into public scandal, odium or contempt;
- 18.5 the Defendant repeats paragraphs 9 to 16 above.
19. Save that it is admitted that the Defendant has received the 1<sup>st</sup> Plaintiff's requests on 9.7.2003 and 17.5.2004, paragraphs 16 and 17 of the Statement of Claim are denied. The Defendant repeats paragraphs 9 to 16 above.
20. Paragraph 18 of the Statement of Claim is denied.
21. The Defendant avers that:
- 21.1 the alleged defamatory statements pleaded in paragraph 18(a), 18(b) and 18(c) of the Statement of Claim (hereinafter referred to as "the Alleged Defamatory Statements") were not published on an Internet website known as "Whistleblower No. 2";
- 21.2 the Alleged Defamatory Statements were published on an Internet website known as "www.shell2004.com" (hereinafter referred to as "the said Website");
- 21.3 at all material times, the said Website was operated from a computer server which was physically not within the jurisdiction of the High Court of Malaya;
- 21.4 at all material times, the said Website was operated by one Alfred Ernest Donovan and one John Alfred Donovan, both of the United Kingdom (hereinafter referred to as "AE Donovan" and "JA Donovan respectively);
- 21.5 AE Donovan and JA Donovan had sole control over the contents of the said Website and had the right to decide on the contributions that were to be posted

on the said Website and also to edit any contribution received before posting the same on the said Website;

- 21.6 the Defendant did not publish the Alleged Defamatory Statements on the said Website or any other Internet website;
- 21.7 the Alleged Defamatory Statements were published by AE Donovan and JA Donovan on the said Website;
- 21.8 the Alleged Defamatory Statements were the result of AE Donovan and/or JA Donovan having edited and added their own comments to the correspondences between the Defendant and AE Donovan and/or JA Donovan, before posting the same onto the said Website;
- 21.9 the Defendant had absolutely no control over the contents of the Alleged Defamatory Statements posted on the said Website;
- 21.10 the Plaintiffs have not pleaded that the Alleged Defamatory Statements were in fact published within the jurisdiction of the High Court of Malaya.

22. The Defendant further avers that:

22.1 as regards the parts of the Alleged Defamatory Statements contained in paragraphs 18(a) and 18(b) of the Statement of Claim:

22.1.1 they refer to the Shell Group and did not refer to and were not understood to refer to any of the Plaintiffs in particular;

22.1.2 in the alternative, they can only be understood to refer to the 1<sup>st</sup> Plaintiff, which is the only Plaintiff that the Defendant had worked for;

22.2 as regards the part of the Alleged Defamatory Statements contained in paragraph 18(c) of the Statement of Claim:

22.2.1 it refers to 2 individuals and not the Plaintiffs;

22.2.2 in the alternative, it can only be understood to refer only to the 1<sup>st</sup> Plaintiff, which is the only Plaintiff that the Defendant had worked for;

22.2.3 further in the alternative, the Defendant repeats paragraphs 13 to 16 above.

23. In the event that the Alleged Defamatory Statements, in their natural and ordinary meaning, mean or are capable of conveying the meanings pleaded in paragraph 19 of the Statement of Claim and are found to refer to the Plaintiffs and/or the Shell Group, the Defendant avers that the Alleged Defamatory Statements are true in substance and fact.

#### Particulars

- 23.1 the Defendant repeats the particulars pleaded in paragraph 16 above;
- 23.2 on 9.1.2004, the Shell Group disclosed to the public that in the period from 1997 to 2003, the Shell Group had deliberately and falsely made misleading statements by over declaring the quantities and/or values of their petroleum reserves. The Shell Group subsequently made 5 announcements on the devaluation of their petroleum reserves. The first announcement alone devalued the said petroleum reserves by at least 20%. As a result of the false and misleading declarations, the Shell Group was fined by the Securities & Exchange Commission in the United States of America and the Financial Services Authority in the United Kingdom (hereinafter referred to as "the Reserves Scandal");
- 23.3 as a result of the Reserves Scandal, shares of the Shell Group being publicly traded dropped in value substantially, thus causing their shareholders to suffer very considerable losses;
- 23.4 shareholders of Royal Dutch Petroleum, a company within the Shell Group, in the United Kingdom are threatening legal action in regards to tax penalties

arising from the unification of Shell Transport and Trading Company plc and Royal Dutch Shell, both companies within the Shell Group. This said unification was due to the restructuring of the Shell Group following the Reserves Scandal;

- 23.5 the Shell Group is faced with a continuing criminal investigation by the Justice Department, United States of America into the actions of former and current members of the senior executives of the Shell Group;
- 23.6 the Shell Group is faced with a public inquiry after the deaths of two workers in an accident on the Brent Bravo offshore platform in the United Kingdom, for which the Shell Group has already admitted liability and paid a record high fine;
- 23.7 the Shell Group has agreed to a proposal to pay a USD90 million settlement in respect of a class action lawsuit in relation to the Reserves Scandal, which was brought against the Shell Group by its own employees who were prejudiced by the materially false and misleading statements of the of the Shell Group on the reported proven oil and natural gas reserves;
- 23.8 on 31.8.2005, the Shell Group had announced a USD9.2 million dollar settlement of a shareholder derivative class action lawsuit in the United States of America, in relation to the Reserves Scandal. The lead plaintiffs therein are the Unite National Retirement Fund and the Plumbers and Pipefitters National Pension Fund. The action is against named individual defendants including current directors of the unified new company, Royal Dutch Shell plc – including its CEO Jeroen van der Veer, Executive Director Malcolm Brinded and Maarten van den Berg. The plaintiffs allege that the said persons acted in breach of their fiduciary duties owed to companies in the Shell Group, abused their control over the said companies, aided and abetted breaches by others, and/or committed gross mismanagement and/or constructive fraud;
- 23.9 the Shell Group is facing another class action in the United States of America in relation to securities fraud, which has been granted leave to proceed by a



Federal Judge, who has made a finding that the Shell Group and certain named directors including Jeroen van der Veer have a case to answer for alleged securities fraud in relation to the Reserves Scandal. The lead plaintiffs are the Pennsylvania State Employee Retirement System and the Pennsylvania Public School Employees Retirement System;

23.10 the Shell Group is also facing another class action lawsuit in the United States of America for alien tort, where 14 individual plaintiffs therein are suing the Shell Group for violations of customary international law in relation the Shell Group's petroleum producing operations in Ogoniland, Nigeria. The plaintiffs allege that the Shell Group engaged in militarised commerce in a conspiracy with the former Military Government of Nigeria and that the Shell Group knowingly instigated, planned, facilitated, and participated in unprovoked attacks by the Nigerian military against the unarmed residents of Ogoniland, resulting in extrajudicial murder, crimes against humanity, torture, rape, cruel, inhuman and degrading treatment, arbitrary arrest and detention, forced exile and the deliberate destruction of private property. The Shell Group had admitted after the leaking of an internal report that the corporate behaviour of the Shell Group in Nigeria fed a vicious cycle of violence and corruption;

23.11 the Shell Group is also facing a class action in the United States of America by 26 plaintiffs, mostly Dutch pension funds, in relation to the Reserves Scandal, where the plaintiffs therein are suing in respect of losses suffered as a result of the purchase of shares in the Shell Group at artificially inflated prices and the subsequent drop in value of their investments when it was discovered that the Shell Group had deliberately and falsely over declared the quantities and/or values of their petroleum reserves;

23.12 legal proceedings have been commenced against the Shell Group and its senior executives in the District Court for the District of New Jersey, the United States of America for remedies under the Security Exchange Act of 1934 in relation to the Reserves Scandal, where the plaintiffs complain that the Shell Group had violated federal securities law by issuing material misrepresentations on the quantities and/or values of their petroleum reserves

and that the Shell Group had violated accounting rules and guidelines relating to the declaration of oil and gas reserves, resulting in a material over declaration of oil and gas reserves and causing its shareholders to suffer loss when the Reserves Scandal occurred and the value of publicly traded shares of the Shell Group fell;

- 23.13 the Shell Group is also facing various other legal proceedings in the United States of America in relation to the Reserves Scandal;
- 23.14 AE Donovan, JA Donovan and/or Don Marketing Limited had commenced 4 court proceedings against the Shell Group companies operating in the United Kingdom by in respect of breaches of confidence and/or breaches of contract in respect of 4 marketing proposals forwarded by Don Marketing Limited to the Shell Group companies operating in the United Kingdom, which the Shell Group companies operating in the United Kingdom had made use of without the consent or knowledge of Don Marketing Limited. The Shell Group companies operating in the United Kingdom eventually settled the said 4 court proceedings brought by AE Donovan, JA Donovan and Don Marketing Limited by making payments of substantial sums in respect of the claims and costs;
- 23.15 in or around 1994, AE Donovan, JA Donovan and Don Marketing Limited has commenced court proceedings against the Shell Group companies operating in the United Kingdom by in respect of the breach of the terms of a mediation agreement by the Shell Group companies operating in the United Kingdom. The Shell Group companies operating in the United Kingdom settled this court proceedings by making payments of substantial sums in respect of the claim and costs;
- 23.16 in or around 1994, AE Donovan had also sued the Shell Group companies operating in the United Kingdom for libel, which suit was also settled by the Shell Group companies operating in the United Kingdom by making payments of substantial sums in respect of the claim and costs;

- 23.17 JA Donovan had also sued the Shell Group companies operating in the United Kingdom for libel, which suit was also settled by the Shell Group companies operating in the United Kingdom by making payments of substantial sums in respect of the claim and costs;
- 23.18 the Shell Group companies operating in the United Kingdom had admitted to hiring a private security firm which engaged in undercover activities against AE Donovan, JA Donovan and Don Marketing during the course of the litigation between the parties;
- 23.19 the Shell Group companies operating in the United Kingdom had admitted to hiring a private security firm which engaged in undercover activities against environmental groups active in the United Kingdom and in other countries;
- 23.20 the Shell Group had been fined a substantial sum by the United Nations when it was found that an oil tanker chartered by the Shell Group had violated the international trade embargo against Iraq by transporting petroleum which had originated from Iraq;
- 23.21 a prosecution that was brought by the Department of Justice of the United States of America against the Shell Group in respect of the Shell Group having repeatedly and deliberately under declared the value of natural gas extracted in the Gulf of Mexico to avoid the payment of royalties, was settled by the Shell Group by making a substantial payment;
- 23.22 the Foundation for Taxpayer and Consumer Rights of Santa Monica of California, the United States of America has accused the Shell Group of deliberately taking action to reduce its production of petroleum fuel products during periods of high demand so as to cause a shortage of fuel in California;
- 23.23 while the Shell Group have at various times publicised that they operate and manage their businesses subject to their Statement of General Business Principles, the Shell Group has also subsequently denied that the said

Statement of General Business Principles were intended to be enforceable against the Shell Group;

23.24 the Shell Group had settled class actions in British Columbia and Ontario, Canada in respect of damage suffered by vehicles which had used petrol sold by the Shell Group which contained an additive that caused the said damage;

23.25 the Shell Group faced a claim in Florida, the United States of America in respect of damage suffered by vehicles which had used petrol sold by the Shell Group which contained sulphur that caused the said damage;

23.26 in or about December 2002 in Nicaragua, the Shell Group was ordered by a court to pay substantial compensation to banana plantation workers who had suffered permanent and serious injury and/or disease and/or death as a result of being exposed to a pesticide which was sold by the Shell Group in Nicaragua subsequent to the banning of the said pesticide in the United States of America in 1979, with full knowledge that the said pesticide would cause permanent and serious injury and/or disease and/or death to persons exposed to it;

23.27 at various times, the Shell Group had caused and/or allowed petroleum producing and/or storage and/or transporting and/or processing and/or refining facilities, which are owned by the Shell Group and/or partly owned by the Shell Group, to cause wide spread pollution, resulting in damage to the environment and/or illness and disease to the local populations and/or destruction of property, in the following places:

23.27.1 Norco, Louisiana in the United States of America;

23.27.2 Port Arthur and Texas Deer Park, Texas in the United States of America

23.27.3 Rukpokwu and various petroleum production facilities in Nigeria;

23.27.4 Vila Carioca, Sao Paulo in Brazil;

23.27.5 Curacao;

23.27.6 Durban in South Africa;

23.28 at various times, the Shell Group, by their activities in petroleum producing and/or storage and/or transporting and/or processing and/or refining facilities, which are owned by the Shell Group and/or partly owned by the Shell Group, continued to put the local population at risk of damage to the environment and/or illness and disease and/or destruction of property, in the following places:

23.28.1 Pandacan, Manila in the Philippines;

23.28.2 Sakhalin Island in Russia.

24. In the alternative, the Defendant avers that the Alleged Defamatory Statements constitute fair comment on matters of public interest, namely that the Shell Group has been involved in numerous scandals and/or controversies and/or prosecutions worldwide, including the Reserves Scandal.

#### Particulars

24.1 the Defendant repeats the particulars pleaded in paragraph 16 above;

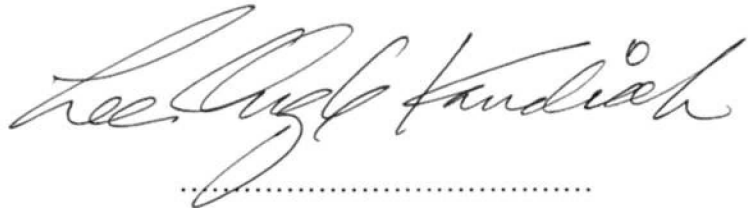
24.2 the Defendant repeats the particulars pleaded in paragraph 23 above.

25. Paragraph 21 of the Statement of Claim is denied. The Defendant avers that by reason of the facts and matters pleaded in paragraphs 9 to 24 above, the Alleged Defamatory Statements have not caused any further damage and/or injury to the reputations of the Plaintiffs and/or the Shell Group.

26. Paragraph 22 of the Statement of Claim is denied. The Defendant avers that:
- 26.1 AE Donovan and JA Donovan had sole control over the contents of the said Website and had the right to decide on the contributions that were to be posted on the said Website and also to edit any contribution received before posting the same on the said Website;
  - 26.2 the Defendant did not publish the alleged posting on 16.6.2004 on the said Website or any other Internet website;
  - 26.3 the alleged posting on 16.6.2004 was published by AE Donovan and/or JA Donovan on the said Website;
  - 26.4 the alleged posting on 16.6.2004 was the result of AE Donovan and/or JA Donovan having edited and added their own comments to the correspondences between the Defendant and AE Donovan and/or JA Donovan, before posting the same onto the said Website;
  - 26.5 the Defendant had absolutely no control over the contents of the alleged posting on 16.6.2004 on the said Website.
27. Paragraph 23 of the Statement of Claim is denied. The Defendant avers that by reason of the facts and matters pleaded in paragraphs 9 to 24 above, the Alleged Defamatory Statements have not caused any further damage and/or injury to the reputations of the Plaintiffs and/or the Shell Group and have not further caused the Plaintiffs and/or the Shell Group to be brought into any further public scandal, contempt nor odium.
28. Paragraph 24 of the Statement of Claim is denied. The Defendant repeats paragraph 26 and 27 above.
29. Paragraphs 25 to 29 of the Statement of Claim are denied. The Defendant avers that the Plaintiffs are not entitled to the remedies claimed therein.

30. Save as hereinbefore expressly admitted, the Defendant denies each and every allegation of fact contained in the Statement of Claim as if the same were specifically set forth seriatim herein and specifically traversed.

Dated this 25<sup>th</sup> day of January 2006.



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M/s Lee Ong & Kandiah

Solicitors for the Defendant

This DEFENCE is filed by M/s Lee Ong & Kandiah, solicitors for the Defendant, whose address for service is at Suites 2.07-2.10, 2<sup>nd</sup> Floor, Wisma Mirama, Jalan Wisma Putra, 50460 Kuala Lumpur.

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(Ref. No.: ES/50/7/04/JH)