

Judith Brown Chomsky  
Attorney at Law

P.O. Box 29726  
Elkins Park, PA 19027

Fax: (215) 782-8368  
Telephone: (215) 782-8367

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October 6, 2008

The Honorable Kimba M. Wood  
Chief Judge  
United States District Court of the Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 1610  
New York, New York 10007-1312  
By fax

Re: Wiwa et al. v. Royal Dutch Petroleum Co. et al., No. 96 Civ. 8386 (KMW) (HBP);  
Wiwa et al. v. Anderson, No. 01 Civ. 1909 (KMW)(HBP)

Dear Judge Wood:

MEMO ENDORSED

I write to inform the Court that pursuant to the Court's Order of August 8, 2008, Jennifer M. Green is the "relevant counsel" familiar with the Surrogate Court petitions and as a New York resident is a co-petitioner in the pending petitions for letters. As will be detailed in the "questions for plaintiffs" forms that accompanied the Court's order of October 2, 2008, all papers have been filed.

Pursuant to the October 2, 2008 order, plaintiffs wish to clarify that they do not intend to call any witnesses. Plaintiffs note however, that by letter dated October 2, 2008, defendants announced their intention to cross-examine plaintiffs' counsel. Plaintiffs are concerned that such cross-examination might implicate the attorney-client privilege and the attorney work product doctrine. Clearly the privilege would preclude any examination into conversation between counsel, counsel's agent and any plaintiff. The work product doctrine work product doctrine prevents any "unwarranted inquiries into files and mental impressions of an attorney." *Hickman v. Taylor*, 329 U.S. 495, 510 (1947); see also, *In re Grand Jury Subpoenas Dated March 19, 2002 and Aug. 2, 2002*, 318 F.3d 379, 383 (2d Cir. 2003).

The work product doctrine permits discovery "only upon a showing that the party seeking discovery has substantial need of the materials ... and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means[.]" Fed.R.Civ.P. 26(b)(3). The Rule further provides that "[i]n ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation." *Id.*

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Because defendants haven't specified the subject of their anticipated cross examination, we respectfully request that the Court take steps to ensure that any cross examination by defendants not interfere with either attorney client privilege or work product. In keeping with the principles protected by the Rule, plaintiffs request that the Court require that defendants make a showing that they "have a substantial need" for the information to be solicited and further, that the Court should issue an Order precluding defendants from seeking disclosure of counsel's mental impressions, conclusions, opinions, or legal theories.

Respectfully submitted,

*Judith Brown Chomsky* k/  
Judith Brown Chomsky

Cc: All counsel (by fax)

*It is not the Court's  
intention to allow any  
invasion of attorney-client  
privilege or work product  
privilege.*

SO ORDERED, N.Y., N.Y. 10-3-08

*Kimba M. Wood*  

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KIMBA M. WOOD  
U.S.D.J.