

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KEN WIWA, individually and as Administrator of the Estate of his deceased father, KEN SARO-WIWA; OWENS WIWA; BLESSING KPUINEN, individually and as the Administrator of the Estate of her late husband JOHN KPUINEN; KARALOLO KOGBARA; MICHAEL TEMA VIZOR; LUCKY DOOBEE, individually and as Administrator of the Estate of his late brother SATURDAY DOOBEE; FRIDAY NUATE, individually and as Administrator of the Estate of her late husband FELIX NUATE and their surviving children; MONDAY GBOKOO, individually and as Administrator of the Estate of his late brother DANIEL GBOKOO; DAVID KIOBEL, individually for harm suffered for the death of his father Dr. BARINEM KIOBEL; JAMES B. N-NAH, individually and as Administrator of the Estate of late brother UEBARI N-NAH and his surviving children,

Plaintiffs,

– against –

SHELL PETROLEUM, N.V., formerly ROYAL DUTCH PETROLEUM COMPANY; SHELL TRANSPORT AND TRADING COMPANY, LTD., formerly THE “SHELL” TRANSPORT AND TRADING COMPANY, p.l.c.,

Defendants.

96 Civ. 8386
(KMW)(HBP)

KEN WIWA, individually and as Administrator of the Estate of his deceased father, KEN SARO-WIWA; OWENS WIWA; BLESSING KPUINEN, individually and as the Administrator of the Estate of her late husband JOHN KPUINEN; MICHAEL TEMA VIZOR; LUCKY DOOBEE, individually and as the Administrator of the Estate of his late Brother, SATURDAY DOOBEE; FRIDAY NUATE, individually and as Administrator of the Estate of her late husband FELIX NUATE; MONDAY GBOKOO, individually and as Administrator of the estate of his late brother DANIEL GBOKOO; DAVID KIOBEL, individually for harm suffered for the death of his father Dr. BARINEM KIOBEL,

Plaintiffs,

– against –

BRIAN ANDERSON,

Defendant.

01 Civ. 1909
(KMW)(HBP)

KEN WIWA, individually and on behalf of his deceased father, KEN SARO-WIWA; OWENS WIWA; BLESSING KPUINEN, individually and on behalf of her late husband JOHN KPUINEN; KARALOLO KOGBARA; MICHAEL TEMA VIZOR; LUCKY DOOBEE, individually and on behalf of his late brother SATURDAY DOOBEE; FRIDAY NUATE, individually and on behalf of her late husband FELIX NUATE; MONDAY GBOKOO, brother of the late DANIEL GBOKOO; DAVID KIOBEL, individually and on behalf of his siblings STELLA KIOBEL, LEESI KIOBEL AND BARIDI KIOBEL and on behalf of his minor siblings, ANGELA KIOBEL and GODWILL KIOBEL for harm suffered for the wrongful death of their father Dr. BARINEM KIOBEL; JAMES B. N-NAH, individually and on behalf of his late brother UEBARI N-NAH,

04 Civ. 2665
(KMW)(HBP)

Plaintiffs,

– against –

SHELL PETROLEUM DEVELOPMENT COMPANY OF NIGERIA
LIMITED,

Defendant.

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Settlement Agreement") is made as of June 8, 2009, by and between the plaintiffs in the above-captioned litigations (the "Litigations"), as listed on Exhibit A hereto, on behalf of themselves, as well as any person or estate on whose behalf plaintiffs made any claim in the Litigations ("Plaintiffs"), and Shell Petroleum, N.V., formerly Royal Dutch Petroleum Company; Shell Transport and Trading Company, LTD., formerly The "Shell" Transport and Trading Company, p.l.c.; The Shell Petroleum Development Company of Nigeria Limited; and Brian Anderson (collectively, "Defendants");

WHEREAS, Plaintiffs initiated the Litigations against Defendants;

WHEREAS, Defendants denied the allegations of wrongdoing contained in the complaints in each of the Litigations and deny any wrongdoing or liability to Plaintiffs;

WHEREAS, the parties are entering into this Settlement Agreement to eliminate the uncertainties, burden and expense of further protracted litigation;

WHEREAS, the parties and their counsel conducted a course of negotiations;

WHEREAS, Plaintiffs are entering into a settlement of their own individual claims and do not purport to negotiate on behalf of the Ogoni people;

WHEREAS, Plaintiffs want the resolution of their individual claims to provide some benefit to the Ogoni people and thus Plaintiffs have agreed to the creation of the Trust contemplated by this Settlement Agreement;

WHEREAS, Plaintiffs will set up a trust for the purposes of education, health, community development and other benefits for the Ogoni people and their communities, including Educational Endowments, Skills Development, Women's

Programmes, Agricultural Development, Small Enterprise Support, and Adult Literacy (the "Trust"). Governance of the Trust will be independent from Plaintiffs and Defendants.

NOW, THEREFORE, in consideration of the covenants and agreements contained in this Settlement Agreement and other good and valuable consideration, receipt of which is hereby acknowledged, and in full and complete release, discharge and final settlement of any and all claims that were or could have been asserted in the Litigations or that relate to the subject matter of the Litigations, the parties agree as follows:

1. In connection with this Settlement Agreement, counsel for Plaintiffs and counsel for Defendants shall execute a Stipulation of Dismissal with Prejudice in the form attached hereto as Exhibit B, dismissing with prejudice Plaintiffs' claims in the Litigations (the "Stipulation of Dismissal with Prejudice"), and counsel for Plaintiffs and counsel for Defendants shall execute a joint motion to expedite the issuance of the mandate in the form attached hereto as Exhibit C with respect to Plaintiffs' appeal in *Wiwa v. Shell Petroleum Development Company of Nigeria Limited*, No. 08-1803-cv (the "Appeal Motion").

2. Within three (3) business days following the filing of this Settlement Agreement, the Stipulation of Dismissal with Prejudice, and the Appeal Motion, in full and complete settlement of the Settled Claims as defined below, Shell Petroleum N.V. and Shell Transport and Trading Company, LTD. will pay a total of \$7,500,000 and The Shell Petroleum Development Company of Nigeria Limited will pay a total of \$3,500,000 (the "Settlement Amount") by wire transfer to an escrow account at JPMorgan Chase Bank, N.A. pursuant to Plaintiffs' counsel's instructions to be held in escrow by that bank (the "Escrow Account"). The escrow agent shall pay the Settlement Amount from the Escrow Account as follows:

(a) Plaintiffs will advise the escrow agent of the amount to be paid for attorneys' fees and disbursements and ex gratia payments to plaintiffs and to the estates they represent to be paid from the Settlement Amount and the method of payment, and such amount shall be paid pursuant to that advice promptly following such notice.

(b) Plaintiffs will advise the escrow agent of the method of payment for the balance of the Settlement Amount to the Trust created to meet the purposes described above, and such amount shall be paid to the Trust pursuant to that advice promptly following such notice.

3. This Settlement Agreement constitutes a full, final and mutual disposition, release and settlement with prejudice of any and all manner of actions, arbitrations, causes of action, claims, counterclaims, cross-claims, demands, or suits known or unknown that are, were, or could have been asserted in the Litigations or that relate to the subject matter of the Litigations (the "Settled Claims"). In particular:

(a) Each Plaintiff, his or her predecessors, administrators, successors and assigns, as well as any person or estate on whose behalf Plaintiff made any claim in the Litigations hereby releases, remises and forever discharges Defendants *and their respective shareholders, subsidiaries, affiliates, predecessors, successors,* assigns, along with their current and former officers, directors, employees and agents from any liability for the Settled Claims; and

(b) Each Defendant hereby releases, remises and forever discharges Plaintiffs, their predecessors, administrators, successors and assigns, as well as any person or estate on whose behalf Plaintiffs made any claim in the Litigations from any liability for the Settled Claims.

4. The parties all represent and warrant that they have the authority to *enter into this Settlement Agreement and all the releases, representations and warranties contained in this Settlement Agreement. In particular:*

(a) By executing and becoming a party to this Settlement Agreement, Plaintiffs represent that they (i) relied upon the legal advice of counsel, who is the attorney of Plaintiffs' choice; (ii) completely read the terms of the Settlement Agreement, the Stipulation of Dismissal with Prejudice attached as Exhibit B hereto, and the Appeal Motion attached as Exhibit C hereto; (iii) had the terms of the Settlement Agreement, the Stipulation of Dismissal with Prejudice attached as Exhibit B hereto, and the Appeal Motion attached as Exhibit C hereto explained by counsel; and (iv) fully understood and voluntarily accepted the terms of the Settlement Agreement, the Stipulation of Dismissal with Prejudice attached as Exhibit B hereto, and the Appeal Motion attached as Exhibit C hereto.

(b) By executing and becoming a party to this Settlement Agreement, Defendants represent that they (i) relied upon the legal advice of counsel, who is the attorney of their choice; (ii) completely read the terms of the Settlement Agreement, the Stipulation of Dismissal with Prejudice attached as Exhibit B hereto, and the Appeal Motion attached as Exhibit C hereto; (iii) had the terms of the Settlement Agreement, the Stipulation of Dismissal with Prejudice attached as Exhibit B hereto, and the Appeal Motion attached as Exhibit C hereto explained by counsel; and (iv) fully understood and voluntarily accepted the terms of the Settlement Agreement, the Stipulation of Dismissal with Prejudice attached as Exhibit B hereto, and the Appeal Motion attached as Exhibit C hereto.

5. This Settlement Agreement and the terms of the settlement embodied in this Settlement Agreement represent a compromise of disputed claims, and the negotiations, discussions and communications in connection with or leading up to and including the settlement are not and shall not be construed as admissions or concessions by Plaintiffs or Defendants, either as to any liability or wrongdoing or as to the merits of any claim or defense.

6. This Settlement Agreement and its wording are the result of mutual arms-length negotiation, and in the event of a dispute concerning the meaning of any term contained herein, no adverse inference or presumption shall be drawn against the party who drafted such term.

7. This Settlement Agreement constitutes the entire and complete agreement between the parties, the terms and conditions contained herein are contractual and not a mere recital, and such terms and conditions shall not be amended, supplemented or abrogated other than by a written instrument signed by each party hereto or by the authorized representative of each party.

8. This Settlement Agreement and each and all of the representations, warranties and covenants of the parties made herein are binding upon the parties and each *and all of their respective predecessors, successors, assigns, heirs and representatives.*


9. This Settlement Agreement may not be modified except in writing signed by all parties.

10. Each party shall bear its own costs and attorneys' fees.

11. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Settlement Agreement.

Dated: June 8, 2009
New York, New York

 as attorney in fact for Ken Wiwa
KEN WIWA

 as attorney in fact for Owens Wiwa
OWENS WIWA


BLESSING KPUINEN


KARALOLO KOGBARA


MICHAEL TEMA VIZOR


LUCKY DOOBEE


FRIDAY NUATE


MONDAY GBOKOO

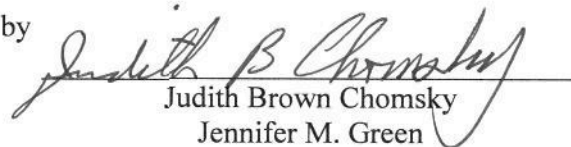
 as attorney in fact for David Kiobel
DAVID KIOBEL


JAMES B. N-NAH

Approved as to form:

CENTER FOR CONSTITUTIONAL RIGHTS

by


Judith Brown Chomsky
Jennifer M. Green

666 Broadway, 7th Floor
New York, NY 10012
(215) 782-8367


Attorneys for Plaintiffs

SHELL PETROLEUM, N.V., formerly
ROYAL DUTCH PETROLEUM COMPANY

By: 
Name:
Title: Director

By: 
Name: M.C.M. Brandjes
Title: Director

SHELL TRANSPORT AND TRADING
COMPANY, LTD., formerly THE "SHELL"
TRANSPORT AND TRADING COMPANY,
p.l.c.

By: 
Name: M.C.M. Brandjes
Title: Attorney for the Company

THE SHELL PETROLEUM DEVELOPMENT
COMPANY OF NIGERIA LIMITED

By: _____
Name:
Title:

BRIAN ANDERSON


SHELL PETROLEUM, N.V., formerly
ROYAL DUTCH PETROLEUM COMPANY

By: _____
Name:
Title:

SHELL TRANSPORT AND TRADING
COMPANY, LTD., formerly THE "SHELL"
TRANSPORT AND TRADING COMPANY,
p.l.c.

By: _____
Name:
Title:

THE SHELL PETROLEUM DEVELOPMENT
COMPANY OF NIGERIA LIMITED

By: 
Name: M. O. A. Summonu
Title: Managing Director

BRIAN ANDERSON

Approved as to form:

CRAVATH, SWAINE & MOORE LLP

by

Rory O. Millson
Rowan Wilson
Thomas G. Rafferty

825 Eighth Avenue
New York, NY 10019
(212) 474-1000

Attorneys for Defendants

SHELL PETROLEUM, N.V., formerly
ROYAL DUTCH PETROLEUM COMPANY

By: _____
Name:
Title:

By: _____
Name:
Title:


SHELL TRANSPORT AND TRADING
COMPANY, LTD., formerly THE "SHELL"
TRANSPORT AND TRADING COMPANY,
p.l.c.

By: _____
Name:
Title:

By: _____
Name:
Title:

THE SHELL PETROLEUM DEVELOPMENT
COMPANY OF NIGERIA LIMITED

By: _____
Name:
Title:


BRIAN ANDERSON

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by



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