

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KEN WIWA, *et al.*,

Plaintiffs,

– against –

ROYAL DUTCH PETROLEUM COMPANY, *et al.*,

Defendants.

96 Civ. 8386 (KMW)(HBP)

ANSWER TO FIFTH AMENDED COMPLAINT

Defendants Shell Petroleum, N.V., as successor to Royal Dutch Petroleum Company; and Shell Transport and Trading Company, Ltd., formerly The “Shell” Transport and Trading Company, p.l.c. (“defendants”) answer the Fifth Amended Complaint as follows:

As and for its answers to paragraphs 1-6, 8, 10-11, 17-193 and “Prayer for Relief”, defendants incorporate by reference, as if fully set forth herein, defendants’ Answer to the Fourth Amended Complaint paragraphs 1-6, 8, 10-11, 17-193, “Prayer for Relief”, respectively, and “Affirmative Defenses”.

With respect to the remaining paragraphs of the Fifth Amended Complaint, defendants:

7. State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 7, except admit that plaintiff Ken Wiwa purports to bring this action individually and as administrator of the estate of Ken Saro-Wiwa, who is now deceased.

9. State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 9, except admit that plaintiff

Blessing Kpuinen purports to bring this action individually and as administrator of the estate of John Kpuinen, who is now deceased.

12. State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 12, except admit that plaintiff Lucky Doobee purports to bring this action individually and as administrator of the estate of Saturday Doobee, who is now deceased.

13. State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 13, except admit that plaintiff Friday Nuate purports to bring this action individually and as administrator of the estate of Felix Nuate, who is now deceased, and deny that Friday Nuate may bring a claim on behalf of “their surviving children”.

14. State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 14, except admit that plaintiff Monday Gbokoo purports to bring this action individually and as administrator of the estate of Daniel Gbokoo, who is now deceased.

15. State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 15, except admit that plaintiff David Kiobel purports to bring this action individually.

16. State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 16, except admit that plaintiff James N-nah purports to bring this action individually and as administrator of the estate of Uebari N-nah, and deny that Uebari N-nah may bring a claim on behalf of “the surviving children of Uebari N-nah”.

Defendants assert the following affirmative defense:

TWELFTH AFFIRMATIVE DEFENSE

At the time of filing the original Complaint in this action through the filing of the Fourth Amended Complaint, plaintiffs lacked capacity to assert some or all of the claims asserted in those complaints. Plaintiffs' Fifth Amended Complaint, which purports to join the real parties in interest, does not cure lack of capacity, which must exist at the time of filing.

WHEREFORE, defendants demand judgment dismissing the Fifth Amended Complaint and respectfully request that the Court award defendants reasonable attorneys' fees and expenses and the costs and disbursements of defending against the Fifth Amended Complaint, along with such other and further relief as the Court deems just and proper.

April 2, 2009

Respectfully submitted,

CRAVATH, SWAINE & MOORE LLP,

by 

Rory O. Millson
Rowan D. Wilson
Thomas G. Rafferty

825 Eighth Avenue
New York, NY 10019
(212) 474-1000
rmillson@cravath.com
rwilson@cravath.com
trafferty@cravath.com

Attorneys for defendants Shell Petroleum, N.V., as successor to the Royal Dutch Petroleum Company; and Shell Transport and Trading Company, Ltd., formerly The "Shell" Transport and Trading Company, p.l.c.