

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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WILLIAM T. WALSH - M
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IN RE ROYAL DUTCH/SHELL)
TRANSPORT SECURITIES)
LITIGATION)
_____)

Civ. No. 04-374 (JAP)
(Consolidated Cases)
Hon. Joel A. Pisano

(Document electronically filed)

~~PROPOSED~~ ORDER APPOINTING SPECIAL MASTER

WHEREAS, this consolidated class action based upon federal securities laws was filed in this Court on behalf of a worldwide putative class of all persons and entities who, between April 8, 1999 and March 18, 2004, purchased securities issued by defendants N.V. Koninklijke Nederlandsche Petroleum Maatschappij (a/k/a the Royal Dutch Petroleum Company), a Dutch corporation headquartered in The Netherlands, and The "Shell" Transport and Trading Company, p.l.c., an English corporation headquartered in England (collectively, "Shell"); and

WHEREAS, the proposed purchasers of Shell securities who would be included within the putative class definition are persons and entities (i) who purchased their securities on the New York Stock Exchange or who (x) purchased their securities on exchanges outside of the United States and (y) at the time of such purchase were residents or citizens of, or were incorporated in or created under the laws of, the United States (collectively, "US Purchasers") and (ii) who purchased their shares on exchanges outside of the United States and at the time of such purchase were residents or citizens of, or

were incorporated in or created under the laws of, any jurisdiction other than the United States (collectively, "Non-US Purchasers"); and

WHEREAS, pursuant to the Private Securities Litigation Reform Act of 1995, the Court appointed the Pennsylvania State Employees' Retirement System and the Pennsylvania Public School Employees' Retirement System as Lead Plaintiff and Bernstein Liebhard & Lifshitz, I.L.P as Lead Counsel, and both Lead Plaintiff and Lead Counsel have vigorously pursued the claims on behalf of the putative class of US Purchasers and Non-US Purchasers; and

WHEREAS, Peter M. Wood later sought and was granted permission to intervene as a named plaintiff, specifically to represent the Non-US Purchasers' interests; and

WHEREAS, Shell moved in December 2004 to dismiss the Non-US Purchasers' claims under Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction, arguing that (i) insufficient conduct in furtherance of defendants' alleged violation of the federal securities laws occurred in the United States to warrant the application of the federal securities laws to the Non-US Purchasers' claims (the "conduct test"), and (ii) the Non-US Purchasers did not experience any effect in the United States from defendants' alleged violation of the federal securities laws; and

WHEREAS, on August 9, 2005, the Court (former Chief Judge Bissell) denied Shell's motion, holding that plaintiffs had met the burden of proof that the Court held is required at the pleading stage to establish subject matter jurisdiction, *see In re Royal Dutch/Shell Transport Securities Litigation*, 380 F. Supp. 2d 509, 548 (D.N.J. 2005); and

WHEREAS, plaintiffs ultimately must establish subject matter jurisdiction by a preponderance of the evidence; and

WHEREAS, the Court scheduled a four-week hearing to make a final determination as to whether plaintiffs can prove by a preponderance of the evidence that sufficient conduct in furtherance of an alleged securities law violation occurred in the United States to warrant allowing the Non-US Purchasers to sue under the federal securities laws; and

WHEREAS, in preparation for this bench trial, the parties have engaged in very substantial discovery focusing on the conduct test issues, including the production of several hundred thousand documents (not including the production of millions of pages of documents relating to the overall merits of the case, but not specifically to the conduct test) and the taking of depositions of approximately 50 witnesses between December 2004 and May 2007; and

WHEREAS, during the course of this discovery, Lead Plaintiff and Shell also engaged in four days of mediation in 2006, under the auspices of retired United States District Judge Nicholas H. Politan, to try to resolve all or part of these consolidated class actions; and

WHEREAS, on April 11, 2007, Shell notified the Court and Lead Plaintiff that it had entered into a Settlement Agreement that would resolve all asserted and unasserted claims of Non-US Purchasers, and that Shell and the other parties to the Settlement Agreement (which parties are (i) a foundation specifically formed to represent the interests of all Non-US Purchasers (the "Foundation"), (ii) the Vereniging van

Effectenbezitters (“VEB”), a Dutch shareholder advocacy group, and (iii) two large pension funds that purchased hundreds of millions of shares of Shell stock during the putative class period and that previously had filed securities law actions in this Court) had filed the Settlement Agreement in the Amsterdam Court of Appeals with a joint request asking that court to declare the Settlement Agreement binding on all Non-US Purchasers pursuant to the Dutch Collective Financial Settlement Act (Wet Collectieve Afwikkeling Massaschade, Articles 907-910 of the Civil Code of The Netherlands and Articles 1013-1018 of the Code of Civil Procedure of The Netherlands); and

WHEREAS, the Settlement Agreement is conditioned, in part, on this Court’s deciding not to exercise subject matter jurisdiction over the Non-US Purchasers or to include the Non-US Purchasers in any class that might be certified in this action; and

WHEREAS, Shell has informed the Court that it intends to renew its motion to dismiss the Non-US Purchasers’ claims for failure to satisfy the conduct test, and Shell also has moved to sever and dismiss the Non-US Purchasers’ claims on grounds of *forum non conveniens* and comity; and

WHEREAS, Shell and Lead Plaintiff (individually and collectively) met by telephone and in person in mediation sessions with Judge Politan over the course of one and a half weeks starting on April 23, 2007, and they (as well as representatives of the Foundation and VEB) met with Judge Politan in a full-day, in-person mediation session on May 9, 2007; and

WHEREAS, during the course of the mediation sessions with Shell and Lead Plaintiff in 2006 and 2007, Judge Politan heard, among other things, Shell’s and Lead

Plaintiff's respective positions on the conduct test issues relating to Non-US Purchasers;
and

WHEREAS, as a result of the recent mediation session, Shell and Lead Plaintiff
have agreed to the following:

- a. continuation of the hearing currently scheduled on Shell's
motion to sever and dismiss based upon grounds of *forum non conveniens* and comity;
- b. withdrawal without prejudice of Lead Plaintiff's motion to
enjoin Shell, among others, from seeking to have the Amsterdam Court of Appeals
declare the Settlement Agreement binding on Non-US Purchasers;
- c. jointly proposing that the Court appoint Judge Politan as a
Special Master under Fed. R. Civ. P. 53, so he can consider and review the extensive
evidentiary record on the conduct test issues and report to the Court on his findings and
recommendations; and
- d. continuation of the bench trial currently scheduled to begin
on June 18, 2007; and

WHEREAS, Judge Politan has filed with the Court the affidavit required by
Fed. R. Civ. P. 53(b)(3), disclosing that there are no grounds for disqualification under
28 U.S.C. § 455 and that to the extent his service as a mediator for Shell and Lead
Plaintiff could be construed as a ground for disqualification (which neither he nor the
Court believes to be the case) Shell and Lead Plaintiff have agreed, with the Court's
approval, to waive any such disqualification; and

WHEREAS, none of the other defendants in this consolidated class action objects to the appointment of Judge Politan as a Special Master, or to the continuation of dates or withdrawal of motions as set out in this Order;

It is hereby ORDERED AND DECREED that:

1. All dates contained in the Second Amended Joint Scheduling Order pertaining to the June 2007 bench trial and evidentiary hearing are continued until after the Court's review of Judge Politan's report, and shall be withdrawn if the Court's order based on such report obviates the need for such trial.
2. The dates set out in the Second Amended Joint Scheduling Order for Shell to submit its reply brief in further support of its motion to sever and dismiss based upon grounds of *forum non conveniens* and comity and the hearing on such motion are continued until after the Court's review of Judge Politan's report, and shall be withdrawn if the Court's order based on such report obviates the need for the hearing.
3. Lead Plaintiff's motion to enjoin Shell, among others, from seeking to have the Amsterdam Court of Appeals declare the Settlement Agreement binding on Non-US Purchasers is deemed to be withdrawn without prejudice, and all dates contained in the Second Amended Joint Scheduling Order pertaining to that motion are voided. If the claims of Non-US Purchasers are ultimately dismissed from this action, Lead Plaintiff's motion shall be deemed to be withdrawn with prejudice.
4. Defendant Sir Philip B. Watts' Motion to Admit the United Kingdom Financial Service Authority's Notice of Discontinuance and the Securities and

Exchange Commission's Termination Letter Into Evidence is hereby deemed to be withdrawn without prejudice.

5. Upon consent of the parties, retired United States District Judge Nicholas H. Politan is appointed as a Special Master under Fed. R. Civ. R. 53. As Special Master, Judge Politan is directed to file such orders as are necessary to direct Shell and Lead Plaintiff to create and submit to him a full evidentiary record regarding the conduct test issues. Upon his review of this full evidentiary record and his consideration of Shell's and Lead Plaintiff's arguments in support of their positions, the Special Master shall make findings and recommendations to the Court respecting whether plaintiffs have met their burden of proving by a preponderance of the evidence that the Non-US Purchasers satisfy the conduct test and thus may pursue claims under federal securities laws.

6. The appointment of Judge Politan as a Special Master shall be governed by the following terms:

- a. Subject to the Court's reconsideration pursuant to Fed. R. Civ. P. 53(h)(1) and (3) after the Special Master's report is prepared, Shell and Lead Plaintiff shall equally share all fees and expenses incurred by Judge Politan in connection with his work as a Special Master.
- b. Judge Politan shall bill for his time at his customary rates.
- c. Shell and Lead Plaintiff shall provide (as an equally shared expense) any additional assistance that Judge Politan deems

necessary to review the evidentiary record developed on the conduct test, including, but not limited to, a videographer to assist him in reviewing those portions of the evidentiary record contained in videographed testimony.

7. The Special Master may communicate *ex parte* with the parties and the Court to the extent he deems appropriate.

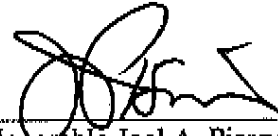
8. The Special Master shall file his report of his findings and recommendations with the Court by July 20, 2007 or as soon thereafter as possible with reasonable diligence, and shall provide a copy of such report to all parties at the same time as he files it with the Court.

9. After the Special Master has filed his report with the Court, either Shell or Lead Plaintiff may file objections to that report, or move that it be adopted or modified, in accordance with Fed. R. Civ. P. 53(g)(2). Should either party make any such submission, the Court shall afford Shell and Lead Plaintiff an opportunity to be heard in accordance with Fed. R. Civ. P. 53(g)(1).

10. This Court will consider the report of the Special Master pursuant to Fed. R. Civ. P. 53.

11. Nothing in this Order shall affect the US Purchasers' claims, which shall continue to be litigated in this Court unless the parties choose to resolve them.

SO ORDERED this 24th day of May, 2007.



The Honorable Joel A. Pisano
United States District Court