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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

In re: ROYAL DUTCH/SHELL TRANSPORT SECURITIES LITIG.	Civ. No. 04-374 (JAP) (Consolidated Cases) Hon. Joel A. Pisano **RETURN DATE**: November 5, 2007 *(Document electronically filed)*

LEAD PLAINTIFF'S OBJECTIONS TO THE SPECIAL MASTER'S REPORT AND RECOMMENDATION CONCERNING THE EXISTENCE OF SUBJECT MATTER JURISDICTION OVER THE CLAIMS OF THE NON-U.S. INVESTORS

Lead Plaintiffs, the Pennsylvania State Employees' Retirement System and the Pennsylvania Public School Employees' Retirement System (together, "Lead Plaintiff"), pursuant to Fed. R. Civ. P. 53(g)(2), hereby submit their objections to the Report and Recommendation issued by the Special Master, the Honorable Nicholas H. Politan, on September 18, 2007. The Report and Recommendation is attached as Exhibit 1.

Because the parties have not stipulated under Fed. R. Civ. P. 53(g)(3) that the Special Master's findings of fact will be reviewed for clear error or will be final, the Court must decide Lead Plaintiff's objections to those findings *de novo*. Under Fed. R. Civ. P. 53(g)(4), the Court must resolve all objections to the Special Master's conclusions or recommendations of law *de novo*.

Although the Special Master repeatedly concluded that Lead Plaintiff had presented "no evidence" in support of its arguments, Lead Plaintiff's submission, which the Special Master himself described as "voluminous," speaks for itself to the contrary. The issue before the Court, therefore, is not whether Lead Plaintiff has submitted *any* evidence of U.S.-based conduct – for indeed Lead Plaintiff has submitted abundant such evidence – but whether that evidence is sufficient under the Third Circuit's articulation of the conduct test. Attached as Exhibit 2 is a chart setting forth the Special Master's conclusions about certain issues the parties fully briefed, and where the Court can find the evidence to the contrary. The record before the Special Master is being provided to the Court.

For all the reasons stated in its factual and legal submissions to the Special Master, as well as those presented to the Special Master at the hearing conducted on July 9, 2007, Lead Plaintiff respectfully requests the Court to reject the Special Master's

Report and Recommendation, and to hold that the Court has subject matter jurisdiction over the claims of non-U.S. purchasers of Shell securities on non-U.S. exchanges.[1]

DATED: October 9, 2007

Respectfully submitted,

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[1] "Shell" refers collectively to defendants Royal Dutch Petroleum Company and The "Shell" Transport & Trading Co., p.l.c.

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Exhibit 1

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE ROYAL DUTCH/SHELL TRANSPORT SECURITIES LITIGATION	:	Civil Action No. 04-374 (JAP) (Consolidated cases)

REPORT AND RECOMMENDATION OF SPECIAL MASTER NICHOLAS H. POLITAN

POLITAN, Special Master.

I. Introduction

This is a consolidated class action based upon alleged violations of the federal securities laws. The worldwide putative class (the "Class" or "Plaintiffs") is comprised of persons and entities who purchased, between April 8, 1999 and March 18, 2004 (the "Class Period"), securities issued by Defendants N.V. Koninklijke Nederlandsche Petroleum Maatschappij (a/k/a the Royal Dutch Petroleum Company), a Dutch corporation with headquarters in The Netherlands, and The "Shell" Transport and Trading Company, p.l.c., an English corporation with headquarters in England (collectively, these corporations are referred to as "Shell"). Lead Plaintiffs are the Pennsylvania State Employees' Retirement System ("SERS") and the Pennsylvania Public School Employees' Retirement

System ("PSERS"). On behalf of the Class, their claims arise from Shell's January and March 2004 announcements that it would recategorize approximately 21% of its proved oil and gas reserves.

After considering the parties' joint proposal to appoint me as a Special Master in these consolidated action, see Fed. R. Civ. P. 53, the Honorable Joel A. Pisano, U.S.D.J. so appointed me by order entered May 24, 2007, for the limited purpose of reporting on and making recommendations regarding a single issue: Do Plaintiffs have subject matter jurisdiction over the putative class members who, at all relevant times, (i) were residents, citizens of, incorporated in, or created under the laws of jurisdictions outside the United States and (ii) purchased Shell stock on foreign exchanges during the Class Period (hereinafter the "Non-U.S. Purchasers").[1] See Order Appointing Special Master entered May 24, 2007. The Special Master's task in advising on this particular jurisdictional question requires, as discussed below, an application of the "conduct test". Briefly, under the "conduct test," the Special Master must probe whether Plaintiffs have sufficiently established that Shell's activities within the United States were significant and material to the alleged fraud on the Non-U.S. Purchasers. See infra. Only if

[1] In a Declaration filed under Rule 53(b)(3) of the Federal Rules of Civil Procedure, I have detailed in the interests of full disclosure my earlier role as a mediator in this action. Assuming any of the terms of the Mediation Agreement governing my service might be construed to prevent my participation as a Special Master (and I am unaware of any that could be so read), the parties have agreed to waive such terms.

Plaintiffs sustain this weighty burden may the District Court exercise subject matter jurisdiction.

It is not hyperbole to state that the parties have inundated the Special Master and each other with briefs, fact statements, and a multitude of boxes overflowing with transcripts and other exhibits – all purportedly aimed at addressing this single legal issue. Having carefully reviewed the parties' voluminous submissions concerning the issue presented to me and having held a hearing on this matter on July 9, 2007, I find that the Plaintiffs have not satisfied the "conduct test" under the operative analysis and, accordingly, recommend that the District Court decline to exercise subject matter jurisdiction over the Non-U.S. Purchasers and exclude them from any class potentially certified in this action. Again, while the parties have created an abundantly comprehensive record in this case, I find that an overwhelming portion of such record relates to and deals with ultimate issues of liability under the federal securities laws. The Special Master shall not and can not decide or even comment on this issues. Thus, in the interests of topicality and efficiency, the Report and Recommendation that follows contains the Special Master's findings and conclusions **relevant only** to the conduct test as it applies to

the Non-U.S. Purchasers within the Class and the propriety of subject matter jurisdiction over them.[2]

II. Procedural History

While the case was pending before then Chief Judge Bissell, U.S.D.J. (now retired), Shell moved under Rule 12(b)(1) of the Federal Rules of Civil Procedure to dismiss the Non-U.S. Purchasers' claims for lack of subject matter jurisdiction. Though the parties disagree as to the exact percentage of shares the Non-U.S. Purchasers traded, they agree nonetheless that the Non-U.S. Purchasers traded a significant number of Shell securities during the Class Period. On its motion, Shell argued that Plaintiffs had failed to satisfy the requisite "conduct test" for jurisdictional purposes because any conduct allegedly committed in furtherance of Shell's alleged securities violations occurred outside of the United States and thus fell outside the scope of federal securities laws. Additionally, Shell argued that the Non-US Purchasers did not suffer any ramifications within the United States as a result of Shell's alleged violations. The District Court denied Shell's motion, holding that Plaintiffs satisfied their burden of proof in pleading subject matter jurisdiction. See In re Royal Dutch/Shell Transport, 380 F. Supp. 2d 509, 548, recons. denied, 404 F. Supp. 2d 605 (D.N.J. 2005).

[2] Nothing in this Report and Recommendation shall be construed to affect the claims of those Class members who either purchased their shares on the New York Stock Exchange or purchased their shares on foreign markets while living or being incorporated in the United States.

After the case was reassigned to Judge Pisano, the parties revisited the issue of subject matter jurisdiction. To reiterate, they have undertaken substantial, comprehensive efforts so as to resolve the question of whether Plaintiffs have demonstrated by a preponderance of the evidence that Shell engaged in material and substantial conduct within the United States to foster alleged securities violations.

III. Factual Findings Relevant to "Conduct Test"

A. The Essence of Plaintiffs' Claims

Plaintiffs allege that Shell "engaged in material and substantial conduct in the United States that was part and parcel of the fraud" and that the "U.S. participants in this conduct acted with an awareness of the scheme to book or retain improper proved reserves." (Lead Pl.'s Proposed Findings of Facts & Conclusions of Law ¶¶ 391-92). According to Plaintiffs, Shell's fraud within the United States falls into three categories: (1) the estimation and calculation of proved reserves by a U.S.-based Shell service organization, Shell Deepwater Services ("SDS"); (2) services performed by Shell Exploration and Production Technology, Applications and Research ("SEPTAR"), another U.S.-based Shell service organization, so as to allow Shell operating units (OUs) to either maintain proved reserves bookings or book proved reserves additions; and (3) investor

relations activities. (E.g., Lead Pl.'s Proposed Findings of Facts & Conclusions of Law ¶ 393).

B. Corporate Structure and Background of the Shell Companies

The Special Master finds that the Shell Companies, their executives, and key employees are predominantly based in Europe. During the Class Period, Royal Dutch and Shell Transport were separate, distinct entities. Based in the Netherlands, Royal Dutch was led by a Board of Management with a Supervisory Board. Shell Transport was based in the United Kingdom and managed by a Board of Directors. (E.g., Capell Decl. Ex. B-106). Collectively, the management of Royal Dutch and Shell Transport created a foreign-based Committee of Managing Directors (the "CMD") to study the Shell companies' objectives and plans (E.g., Capell Decl. Ex. B-106). The CMD met only in Europe. (Dmitronow Decl. Ex. A-1, A-2, A-4, A-5).

Because Royal Dutch and Shell Transport listed shares, respectively, on the New York Stock Exchange, both were required to comply with federal securities laws; more specifically, their compliance mandated the filing of a joint Annual Report on Form 20-F with the Securities and Exchange Commission ("SEC"). (E.g., Capell Decl. Ex. B-106).

Neither Royal Dutch nor Shell Transport participated in operational functions. Rather, they owned the shares of two Group Holding Companies, Shell

Petroleum N.V. and The Shell Petroleum Company Limited (the "Group Holding Companies"). (E.g., Capell Decl. Ex. B-106; Haber Decl. Exs. 71 at MISC00004562 & Ex. 90 at RJW00890158). Management for Royal Dutch and for Shell Transport served also on the Board of Directors for the Group Holding Companies. (E.g., Capell Decl. Ex. B-106).

The Group Holding Companies owned the operating companies ("OUs") and the service companies within the Royal Dutch/Shell Group of Companies (the "Group"). While OUs performed the Group's operational activities, (e.g., Capell Decl. Ex. B-106), service companies served other Group companies. Each OU's management team was responsible for its own operations. (E.g., Capell Decl. Ex. B-106). The Group's operations were divided into five business components. (E.g., Capell Decl. Ex. B-106). Only one of the five, Exploration and Production ("EP"), which maintained a Netherlands headquarters, (Aalbers Decl. ¶ 5), is relevant here.

Through its OUs, EP located and produced crude oil and natural gas. Also via its OUs, EP designed and operated infrastructure needed to deliver hydrocarbons to the marketplace. (Capell Decl. Ex. B-106). Meeting monthly in the Netherlands, the EP Executive Committee ("ExCom") supervised EP's business operations, including its strategy, planning, expenditures, and finances. (Brass Decl. ¶ 12; Brass Dep. at 88:18-20). At all relevant times, ExCom's CEO

was based in Europe. (Brass Decl. ¶ 6). The Regional Business Directors, who supervised EP's OUs, were based in The Hague until the second half of 2003. They then moved to their particular regions. (Dmitronow Dec. Ex. A-3 at PBW0016403; Sidle Decl. ¶ 1). The Regional Business Advisors who assisted them were based at EP headquarters in The Hague. (Aalbers Dep. at 110:8-16; Graham Dep. at 57:9-25).

C. Class Period Trading and the Recategorization that Spurred Litigation

The Special Master finds that a great majority of the securities traded during the Class Period were traded on foreign exchanges and by the Non-U.S. Purchasers. Ordinary shares of Royal Dutch traded on both foreign exchanges and the New York Stock Exchange ("NYSE"). (E.g., Henry Decl. ¶ 6). Shell Transport's shares traded also on foreign exchanges. Only its American Depository Receipts ("ADRs") (each of which represented six ordinary shares) were listed on the NYSE. (E.g., Henry Decl. ¶ 7). In general, more than a majority of the combined shares of Royal Dutch and Shell Transport were registered in Amsterdam and London, not the United States. (E.g., Clark Decl. ¶ 10; Scaturro Decl. ¶ 4(c)). Significantly, most of the shares traded during the Class Period traded within Europe on foreign exchanges. (E.g., Clark Decl. ¶¶ 11-16). At most, U.S. Purchasers traded during the Class Period a minimal percentage of shares on foreign exchanges. (E.g., Clark Decl. ¶ 21; Scaturro Decl. ¶ 13(a)-(b)).

On January 9, 2004, Shell announced that it would recategorize 3.9 billion barrels of oil equivalent ("boe") that had been reported as "proved" for year-end 2002. (E.g., Capell Decl. Ex. B-30). Subsequently, Shell determined also that certain, additional proved reserves that had been reported for prior years or were to be reported for year-end 2003 did not comply with all technical aspects of SEC Rules. (E.g., Capell Decl. Ex. B-36). On March 18, 2004, the last day of the Class Period, Shell announced that it would recategorize an additional 250 million boe reported "proved" as of December 31, 2002, and would reduce by approximately 220 million boe the amount of proved reserves it had expected to report as of December 31, 2003. (E.g., Capell Decl. Ex. B-91).

C. Standards for Reporting "Proved" Reserves and Annual Review of Petroleum Resources ("ARPR") Process

Shell had external and internal protocol in reporting "proved reserves." First, Shell was required to annually report volumes of "proved" oil and gas reserves based on the Statement of Financial Accounting Standards ("SFAS") and SEC rules and regulations. See 17 C.F.R. § 210.4-10. Second, Shell maintained its own internal guidelines for logging its petroleum resources and preparing reports of its proved reserves for public disclosure (the "Shell Guidelines"). (Barendregt Decl. ¶¶ 8-9).

The Special Master finds that all meaningful steps taken in preparing and approving Shell aggregate proved reserves occurred outside the United States. The Special Master finds also that all key individuals involved in such steps were either based in Europe and/or performed their reserves-related functions in Europe. After receiving data from OUs worldwide, Shell compiled, reviewed, and approved its aggregate proved reserves in the Netherlands. The Group Reserves Coordinator (the "GRC"), who was based at EP headquarters in the Netherlands throughout the Class Period, spearheaded this entire process. (E.g., Roosch Decl. ¶ 8; Barendregt Decl. ¶ 32). The Group Reserves Auditor ("GRA") participated in the ARPR process by making recommendations to the GRC. The GRA also was based at EP headquarters in the Netherlands. (E.g., Pay Dep. at 21:22-22:8; Barendregt Decl. ¶¶ 5, 6, 11, 33; Barendregt Dep. at 579:5-12). Rod Sidle, the Reserves Manager for Shell Exploration and Production Company ("SEPCo"), assisted the GRC and GRA in reviewing and revising the internal Shell Guidelines. (Barendregt Decl. ¶ 12; Sidle Dep. at 139:3-23). Shell ultimately reported proved reserves to the investing public and the SEC from the Netherlands or the United Kingdom. The Special Master finds that Shell did not perform any of these functions within or from the United States.

Though OUs are situated worldwide, each OU is responsible for estimating and categorizing its hydrocarbon volumes and for reporting them to the GRC in

Netherlands. (E.g., Brass Decl. ¶¶ 22, 25; Bichsel Dep. at 155:2-6; Newberry Dep. at 117:8-10; Kennett Dep. at 270:11-271:8; Aalbers Dep. at 61:22-62:7; Pay Dep. at 82:20-25, 262:25-263:9). Each OU signed its ARPR, submitted it to the GRC in Netherlands, and resolved directly any questions with the GRC. (Aalbers Dep. at 61:22-62:7; Pay Dep. at 82:20-25, 262:25-263:9; Brass Dep. at 234:15-19; Roosch Dep. at 36:13-18). The GRA periodically audited the OUs and, in so doing, reported to EP regarding each OU's compliance in estimating proved reserves as per Shell Guidelines. (Barendregt Dep. at 195:2-9; 98:5-99:16). The GRA reviewed the GRC's aggregate estimate of proved reserves and proved reserves estimates within each OU's ARPR submissions. (Barendregt Decl. ¶ 33). Then, Shell's external auditors, KPMG (based in the Netherlands) and Pricewaterhouse Coopers ("PwC") (based in England), ExCom, and the Deputy Group Controller (based in London) reviewed the GRA's Year-End Review, holding a "challenge session" to discuss and resolve all issues relating to the aggregate proved-reserves estimate. (Barendregt Decl. ¶ 35; van Poppel Decl. ¶¶ 6, 8, 12, 17-19, 20; van Poppel Dep. at 90:15-23, 91:2-5; Brass Decl. ¶ 30). Ultimately, EP ExCom reviewed and approved this proposed estimate (Brass Decl. ¶ 30); once it so approved, Shell disclosed that estimate to the public and included within Shell's SEC Annual Report on Form 20-F (Aalbers Dep. at 119:10-24; Roosch Dep. at 267:8-20; Brass Decl. ¶ 32; Capell Decl. Ex. B-106.)

D. Shell's Communications to the Investing Public

The Special Master finds that Shell's communications hub at all relevant times was London and, further, that the genesis of all original disclosures relevant to the investing public was Europe. Both Shell's Investor Relations ("IR") and External Affairs groups were based in London. (Henry Decl. ¶ 15). Though IR was based in London, Shell maintained separate IR offices in London, The Hague, and New York, each of which was responsible for communicating with analysts and investors in its respective regions. (Sexton Decl. ¶ 4). The manager of each of these offices reported to the Head of Group Investor Relations in London. (Henry Dep. 23:24-24:17). Also, Shell's External Affairs Department communicated with the media primarily from London and, at times, from The Hague. (Jacobi Dep. 20:18-24, 21:9-16, 22:3-8, 140:1-2; Henry Dep. at 55:13-16, 55:19-56:5).

During the Class Period, Shell communicated information about its proved reserves to the investment community. (van der Steenstraten Decl. ¶ 4). Shell's IR offices in London and The Hague prepared and approved these communications; the New York office did not participate. (Sexton Decl. ¶¶ 13-14). Shell's IR program was designed in such a way that presentations and communications with investors were generated in London or The Hague and, then, were often repeated later in the United States. (Sexton Decl. ¶ 16).

Additionally, the New York IR office was not involved in collecting data for or preparing Shell's Fourth Quarter and Full Year Results Announcements ("4th Quarter QRA"), which included, among other data, information on Shell's proved reserves replacement ratio ("RRR"). (Sexton Decl. ¶ 13(a)). The London and the Hague IR offices also handled SEC filings of the 4th Quarter QRA. (Henry Decl. ¶ 21). Shell held press conferences regarding its release of the 4th Quarter QRA were held in The Hague and London, but never in the United States. (van der Steenstraten Decl. ¶ 5(c); Sexton Dep. at 63:11-14, 63:18-22; Jacobi Dep. at 63:21-24, 68:20-69:4).

During the Class Period, Royal Dutch and Shell Transport released their respective Annual Reports in both a long-form version and a short-form summary. (van der Steenstraten Decl. ¶ 8). Both forms were prepared in the Netherlands and the United Kingdom and printed in the United Kingdom. (van der Steenstraten Decl. ¶ 8(a); Henry Decl. ¶ 24). Shell also posted on its European-based website from Europe its Annual Reports. (Henry Decl. ¶¶ 24-25; van der Steenstraten Decl. ¶ 8(a)).

Though Plaintiffs attempt to argue that Shell meetings and presentations within the United States promoted fraud, the Special Master finds that these infrequent contacts do not reveal any suspect communications involving proved reserves or a foreign audience. Shell communicated with investors and analysts

through meetings, field trips, and presentations. (van der Steenstraten Decl. ¶¶ 5(d), 7(b); Henry Decl. ¶¶ 37, 42, 44). For example, Shell executives participated in one-on-one meetings or "road shows" with large shareholders and analysts in the United Kingdom, Continental Europe, and the United States. (van der Steenstraten Decl. ¶ 5(d)). None of the meetings in the United States were with European-based investors or analysts. (Henry Decl. ¶ 38). While the evidence indicates that Shell made a 2002 field trip to its Houston offices that included a presentation by Shell's EP business (Henry Decl. ¶ 45), the evidence does not show that the presentation involved proved reserves (Henry Dep. at 220:5-11, 222:9-16, 228:18-20). Further, Shell's presentations within the United States for U.S.-based audiences did not reveal any new or previously undisclosed information regarding the market or proved reserves. (Henry Decl. ¶¶ 42-43).

Based on the facts presented, the Special Master finds that Shell's proved reserves information did not initially enter the worldwide market through U.S.-based conduct and that Shell's IR activities within the United States were directed at United States investors and analysts, not foreign investors or analysts.

E. Shell Deepwater Services ("SDS") & Shell Exploration and Production Technology, Applications and Research ("SEPTAR") – Conduct of U.S.-based Shell service organizations

The Special Master finds that while SDS and/or SEPTAR, U.S.-based service organizations, serviced through their respective specialties eight of the twenty-

seven foreign OUs that ultimately recategorized reserves, their actions were unrelated to either the ultimate reporting of proved reserves or maintaining allegedly overstated reserves. Thus, the Special Master rejects Plaintiffs' contention that either of these organizations acted so as to commit and/or further fraud on the Non-U.S. Purchasers.

SDS specialized in the field of deepwater exploration, appraisal, development, and production. (Sears Dep. at 27:7-17; Warren Dep. at 51:12-17, 52:2-6; Capell Decl. Ex. B-8A). Most of SDS's staff members were located in Houston, Texas, though some were located in New Orleans, Louisiana. (Bichsel Dep. at 106:7-10). SDS, with its deepwater technical expertise, provided services primarily to SEPCo (EP's U.S.-based OU), which operates certain deepwater assets in the Gulf of Mexico. (Platenkamp Dep. at 272:7-16). A service contract dictated the terms of SDS's work for each OU. (Bischsel Decl. ¶ 7; Kluesner Dep. at 83:15-20; Newberry Dep. at 170:10-16; Varley Dep. at 144:12-18; Bichsel Dep. at 156:5-20). One SDS division, the Evaluation and Development Planning Group, sometimes provided estimates of hydrocarbon resource volumes to an OU. (See Kennett Dep. at 270:11-271:8). But SDS never assumed any OU's obligation to estimate and report its proved reserves in its ARPR submission to the GRC in the Netherlands. (Bichsel Dep. at 155:2-6: Hines Dep. at 122:25-123:7.)

Like SDS, SEPTAR had its own area of expertise. SEPTAR focused primarily on research and development of technology. (Hoffman Dep. at 27:14-15; Percival ¶ 9; Capell Decl. Ex. B-5; Darley Dep. at 11:4-12:2). The majority of SEPTAR's staff was based in Rijswijk, while a minority worked in Houston. (Capell Decl. Ex. B-9; Percival Decl. ¶ 11; Henderson Decl. ¶ 7). Though SEPTAR consisted of five "clusters" (Capell Decl. Ex. B-9; Percival Decl. ¶ 9; Henderson Decl. ¶ 8), Plaintiffs argue that two of these five, Shared Earth Model ("SEM") and Geosciences and Integrated Services ("GIS") engaged in conduct relevant to Shell's alleged fraudulent conduct. The Special Master, based on the facts proffered, disagrees.

During the Class Period, SEM was in the early stages of developing software that enhanced seismic pictures by filtering out the "noises" created during seismic imaging of the subsurface, including noises associated with seismic bounces within the subsurface. (Hoffman Dep. at 19:11-15; 113:22-25). Because SEM's technology was undeveloped at all relevant times, the Special Master finds that the OUs could not have used meaningfully any of SEM's technology or capabilities for any purpose, let alone for some purpose connected with proved reserves. (See Henderson Dep. at 61:9-62:6).

GIS performed subsurface technical services for Shell OUs. (Henderson Decl. ¶¶ 8, 22; Percival Decl. ¶¶ 9, 25). GIS consisted of numerous sub-clusters

including AGI, its largest sub-cluster, and AGH, one of its smallest. (Capell Decl. Ex. B-22; Percival Decl. ¶ 12). All but four AGH employees were located in Houston, Texas. (Henderson Decl. ¶ 9). AGH performed technical services and field studies primarily for SEPCo, in Houston, but also for Shell OUs located abroad. (Warren Dep. at 50:15-22; Henderson Decl. ¶ 19: Barendregt Decl. ¶ 18). AGH and AGI did not perform studies **together** and generally did not perform studies for the same OUs. Moreover, their work fell far outside the field of reporting and/or maintaining proved reserves. (See Percival Dep. at 150:21-25, 68:24-69:8; Percival Decl. ¶ 17-20; Okon Decl. ¶6; Kluesner Dep. at 175:7-12; Darley Dep. at 22:23-23:4; Aalbers Dep. at 80:16-19; Platenkamp Dep. at 422:19-423:10; Warren Dep. at 50:15-22; Henderson Decl. ¶¶ 10, 20; Barendregt Decl. ¶ 18).

Accordingly, based on these facts, the Special Master finds that Plaintiffs have not demonstrated that SDS or SEPTAR serviced Shell in such a manner as to contribute to booked or maintained reserves that were ultimately recategorized.

i. SDS and SNEPCO

Additionally, though Plaintiffs allege that Shell Nigeria Exploration and Production Company ("SNEPCO") retained SDS to provide technical and economic services necessary to develop the deepwater fields in Nigeria and estimate or calculate proved reserves for SNEPCO, no evidence shows that SDS's

work with SNEPCO had any relation to the proved reserves ultimately recategorized in 2004. Moreover, the facts do no establish that SDS's work in general for SNEPCO fields was responsible for any later restated reserves. SNEPCO, with its headquarters in Nigeria, was responsible for estimating and reporting to the GRC its own proved reserves. (McFadden Decl. ¶¶ 13-14; Bichsel Decl. ¶ 10; Varley Decl. ¶ 12; Kennett Dep. at 270:11-271:8; McVeigh Dep. at 74:25-75:6, 109:7-12).

ii. SDS and SDAN

Further, Plaintiffs allege that Shell Development Angola ("SDAN") hired SDS in 2000 to perform the technical work that would "underpin" a reserves booking in SDAN's Block 18, a deepwater resource operated by a subsidiary of BP, p.l.c. ("BP") as part of a joint venture between BP and Shell. They allege as well that SDS participated in calculating 121 million boe in proved reserves that SDAN reported during the Class Period and that all of these were "de-booked" during the 2004 recategorization. Though the facts reveal that SDS gave preliminary input into SDAN's proved –reserves reporting in Angola (See Pl. Fact Stmt. at 39, 40), the Special Master finds no evidence to substantiate any additional SDS involvement. Moreover, SDAN solely controlled its proved reserves calculations and its ARPR submission to the GRC. (Inglis Decl. ¶ 8, Hines Dep. at 203:17-19; Parry Dep. at 184:7-15; Hines Decl. ¶ 13; Capell Decl. Ex. B-163A,

Ex. B-138). Thus, evidence is lacking that SDS ultimately estimated or reported any proved reserves for SDAN.

iii. SDS and Brunei

Plaintiffs also attempt to link SDS's service to proved reserves that Brunei Shell Petroleum ("BSP") reported. They claim that BSP hired SDS to study the maintenance of 48 million boe of "marginal reserves" that ultimately were restated for two BSP fields, the Merpati and Meragi fields. (Pl. Fact Stmt. at 4, 47-51.) Again, however, the Special Master finds no evidentiary proof that SDS and BSP engaged in any form of communications regarding any type of reserves. (Kennett Dep. 131:20-132:8 (Pl. Ex. V), 132:25-133:24; Kennett Supp. Decl. ¶¶ 6-8; Kennett Decl. ¶¶ 16-21, 25-26; Kennett Dep. at 132:16-133:24; Sears Dep. at 72:8-12).

iv. SDS and Brazil

Next, Plaintiffs seek to connect SDS to SBEP (Brazil) and the 15 million boe SBEP reserves restated as part of Shell's 2004 recategorization. (Pl. Fact Rebuttal at 28-29; Pl. Reply Mem. at 23-25). But they do so unsuccessfully because they have not introduced evidence that Shell ever booked proved reserves for SBEP, including the particular fields for which SDS provided technical services. (Sidle Decl. ¶ 29).

v. AGH (SEPTAR) and PDO

Additionally, Plaintiffs argue that Houston-based AGH performed for Petroleum Development Oman ("PDO") work relating to quantities of proved and expectation reserves on a number of PDO's oil fields and that this work influenced ultimately either PDO's decision to book reserves or to elect to not debook allegedly overstated proved reserves. (Pl. Fact Rebuttal 33-36; Pl. Reply Mem. at 27). AGH and AGI (both Rijswijk-based) serviced PDO, which had more than 125 oil fields in production at all relevant times. (Bramble Decl. Ex. B-8 at GC00011829; Percival Decl. ¶¶ 23, 28-29). In 2004, PDO restated previously booked proved reserves for 37 of its 125 fields. (Pl. Ex. 96). AGH had performed technical services on eight of those 37 fields between 2001 and 2003. (Percival Decl. ¶ 28; Henderson Dep. at 108:11-25, 142:13-143:8, 143:21-144:25). Though AGH assisted PDO representatives with investigating the scope for improved recovery for 18 of PDO's oil fields and editing a report on such, the ultimate report prepared did not include any recommendations for PDO to proved reserves on any PDO field. (Pl. Ex. 44; Henderson Decl. ¶ 22; Henderson Dep. at 126:20-23; Percival Decl. ¶ 25; Capell Decl. Ex. B-24; Pl. Ex. 44 at 6 & at attachments 1-3). Further, no evidence shows that AGH, as opposed to PDO, played any role or did any work regarding reserves or SFR volumes, which are referenced within the report. Thus, the Special Master finds that Plaintiffs have not shown that AGH

made any recommendation that PDO book proved reserves in connection with its work between 2001 and 2003. Moreover, though AGH performed enhanced oil recovery ("EOR") feasibility on five of PDO's fields, these studies do not estimate or report proved reserves. (Henderson Decl. 23). Rather, these studies test whether using a particular EOR technique is technically feasible on a specific field. (Henderson Decl. ¶¶ 23-24; Henderson dep. at 157:9-13). And, there is no proof that AGH influenced PDO's later decision to not debook allegedly overstated proved reserves.

Plaintiffs further assert that AGH assisted PDO in creating reservoir models for the PDO employees studying and planning the development of three PDO fields. Though they claim that these reservoir models influenced PDO's estimates of proved reserves, Plaintiffs have not established that its reservoir models included reserves estimates or, more specifically, that PDO booked or maintained proved or expectation reserves because of those reservoir models. Further, PDO relied more upon the technical services of AGI than AGH at all relevant times. (Percival Decl. ¶ 24). In short, the Special Master finds that Plaintiffs have not sufficiently established that AGH's technical service work contributed to PDO's decisions to book proved reserves or to maintain allegedly overstated proved reserves on its fields.

vi. SEPTAR and SVSA

Next, Plaintiffs assert that Shell Venezuela S.A. ("SVSA") hired SEPTAR to perform field studies of the Urdaneta West field in Venezuela and that its work with SVSA staff between 1998 and 2002 is linked to 46 million boe of restated proved reserves. (Pl. Fact Stmt. at 61-63). First, as Shell observes, that SEPTAR could not have been involved with SVSA in 1998 because SEPTAR was not formed until July 1, 1999. (Capell Decl. Ex. B-16; Percival Dep. at 25:3-12; Percival Decl. ¶ 8; Henderson Decl. ¶ 7). Second, a critical AGH field study in 2002 did not take place until **after** SVSA had booked the 46 million boe for year-end 2000 and 2001 in question. (Pl. Ex. 146 at V00220021). And, any additional field studies for SVSA bear no demonstrated relationship to SVSA's recategorized proved reserves.

vii. AGH & SECL

Additionally, though Plaintiffs also try to create meaningful U.S.-based conduct between AGH and Shell Exploration China Limited ("SECL"), the Special Master finds that such link is absent based on the proofs. Plaintiffs claim that AGH was involved in approximately one million boe that SECL restated. The proofs show that while AGH performed "petroleum engineering work," its work for any operating unit never involved estimating or reporting proved reserves. (Percival Decl.¶ 30; Henderson Decl. ¶ 19). And, SECL, not AGH, was

responsible for estimating its oil and gas reserves and submitting those estimates to Shell EP in the Netherlands. (Barendregt Decl. ¶ 18).

Thus, the Special Master finds that U.S.-based service organizations SDS and SEPTAR (including their business segments, clusters, and sub-clusters) did not commit conduct that can be linked to the ultimate recategorization of proved reserves in 2004 and did not act in such a manner as to foster fraud on non-U.S. investors.

F. Plaintiffs' Additional Claims Regarding U.S.-Based Conduct

The Special Master finds that Plaintiffs' additional attempts to link actions and/or individuals within the Shell enterprise to alleged fraud within the U.S. on the Non-U.S. Purchasers are unsuccessful as well. Plaintiffs further claim that the GRA's audits within the United States during the Class Period evidence relevant U.S.-based actions for the conduct test. The GRA performed six audits in the United States during the Class Period. (Barendregt Decl. ¶ 17; Pl. Fact Stmt. at 4-5). Two of the six audits were for SNEPCO and SDAN. The GRA conducted those audits in Houston because SDS had SNEPCO's and SDAN's technical data. (Barendregt Decl. ¶¶ 19, 21). But there is no proof that these audits added to or furthered any alleged fraud. Significantly, as Shell observes, the GRA's SNEPCO audit in 2002 resulted in a recommendation that certain additions to proved

reserves be reduced and that other previously reported proved reserves be debooked. (Pl. Ex. 88).

Additionally, Plaintiffs attempt to link acts of Rodney Sidle, Reserves Manager at SEPCo from 1999 to 2004, to the alleged resulting fraud. (See, e.g., Pl. Fact Rebuttal at 9, 10, 12; Sidle Decl. ¶¶ 1, 7, 9). Given that SEPCo did not restate any proved reserves during the Class Period, (Cooper Decl. ¶ 72), Sidle did not approve any proved reserves bookings later restated. Moreover, he did not control proved reserves reporting of any Shell OU other than those that were part of SEPCo and did not have decision-making authority concerning any other OU's ARPR submissions. (Sidle Decl. ¶¶ 25-26). Overall, proof is lacking that Sidle violated or influenced others at Shell to violate SEC rules and regulations. Even though Plaintiffs claim that "Shell cites to no evidence showing that Sidle's comments and suggestions did not play an integral role in the revision of the [Shell] Guidelines, (Pl. Fact Rebuttal at 12), this is, indeed, not Shell's burden. Rather, Plaintiffs bear the burden to prove that Sidle's conduct played sufficient part in the allegedly fraudulent scheme that resulted, and Plaintiffs do not and can not otherwise dispute this burden.

Plaintiffs seek also to use Sidle's actions to satisfy their burden by pointing to Sidle's contacts with certain of the OUs that restated reserves. With regard to SDAN, though Sidle participated in November 2000 in technical discussions with

the SDS Angola Block 18 team, he played no part in the proposal for booking proved reserves for this field. (Sidle Decl. ¶ 28; Sidle Dep. at 355:20-356:7). Despite Plaintiffs' claim that Sidle was involved in proposing a proved reserves booking for one of SNEPCo's fields, the Bonga Southwest field, they concede, however, that Shell did not restate any proved reserves booked for this field. (Pl. Ex. 43; Sidle Decl. ¶ 31; Barendregt Decl. ¶ 20; Pl. Reply Mem. at 19). Lastly, Plaintiffs claim Sidle was involved in technical engineering discussions regarding Brazilian fields, but the evidence shows no proved reserves were booked or restated for these fields. (Sidle Decl. ¶¶ 29-30).

G. Summary of Factual Findings

In sum, assuming for the Special Master's limited purpose fraudulent conduct occurred, the Special Master finds that any such conduct took place outside the United States and that non-U.S. individuals and/or entities perpetrated that fraud.

IV. Conclusions of Law

i. Legal Framework

The Special Master makes the following conclusions of law relevant to the factual findings made above. The Lead Plaintiffs bear the burden of proving by a preponderance of the evidence that the Non-U.S. Purchasers satisfy the conduct

test; indeed Plaintiffs do not and can not dispute this burden. (E.g., Lead Pl.'s Proposed Findings of Fact & Conclusions of Law ¶ 378).

Section 27 of the Exchange Act vests federal courts with exclusive jurisdiction over actions involving violations of the Act and rules and regulations adopted under the Act. See 15 U.S.C. § 78aa. The Act is silent as to its extraterritorial reach. The parties agree that the "conduct test" is the operative test in deciding the extraterritorial reach of the federal securities laws in this case.[3] The "conduct test" examines whether conduct within the United States allegedly played a part in the perpetration of a securities fraud on foreign investors. See, e.g., Robinson v. TCI/US W. Communications, Inc., 117 F.3d 900, 905 (5th Cir. 1997). Indeed, if conduct in this country contributed to securities fraud on foreign investors, then courts should exercise subject matter jurisdiction over these investors' fraud claims.[4] See id.; Tri-Star Farms Ltd. v. Marconi, 225 F. Supp. 2d 567, 573 (W.D. Pa. 2002) (citing Robinson, 117 F.3d at 905). But not any domestic conduct suffices to establish jurisdiction. See Tri-Star Farms Ltd., 225 F.

[3] The "conduct test" is one of two tests courts apply in deciding questions regarding extraterritorial jurisdiction of the federal securities laws in transnational fraud cases. The second test is the "effects test," which examines whether conduct within foreign lands has had a substantial adverse effect on domestic investors or markets. See, e.g., Robinson v. TCI/US W. Communications, Inc., 117 F.3d 900, 905 (5th Cir. 1997). No party disputes that the "conduct test" is proper here.

[4] As at least one court has interpreted, a recent Supreme Court decision, Arbaugh v. Y&H Corp., 546 U.S. 500 (2006), calls into question whether the statutory limits on the extraterritorial scope of the Securities Exchange Act reflect "an element of a securities fraud claim . . . [as opposed to] a restriction on a court's subject matter jurisdiction." In re Parmalat Sec. Litig., ___ F. Supp. 2d ___, 2007 WL 2120279 at *1 (S.D.N.Y. July 24, 2007) (construing Arbaugh's "bright line rule" in the federal securities context). Though Parmalat comments on this issue, the court there did not resolve it. Similarly, the Special Master finds it unnecessary to decide the issue here.

Supp. 2d at 576 (declining to interpret precedent as suggesting that **any** domestic conduct suffices to establish jurisdiction and rejecting plaintiffs' same argument). For example, "activities [that] are merely preparatory or take the form of culpable nonfeasance and are relatively small in comparison to those abroad" are insufficient. Bersch v. Drexel Firestone, Inc., 519 F.2d 974, 987 (2d Cir.), cert. denied, 423 U.S. 1018 (1975); see id. at 985 (requiring courts applying the conduct test to decide "whether Congress would have wished the precious resources of United States courts and law enforcement agencies to be devoted to [foreign transactions] rather than leave the problem to foreign countries"); see also Tri-Star Farms Ltd., 225 F. Supp. 2d at 574 (W.D. Pa. 2002) (quoting Bersch, 519 F.2d at 987). Indeed, courts have universally declined to apply federal securities laws in cases involving merely preparatory acts. See, e.g., Butte Mining PLC v. Smith, 76 F.3d 287, 291 (9th Cir. 1996) (concluding that foreign corporation did not meet conduct test where despite defendants purchase of corporation's assets situated in United States, alleged fraud took place outside United States during exchange of foreign stock shares among foreign parties; defendants' purchases in United States were merely preparatory to alleged fraud involved in exchange); IIT v. Vencap, Ltd., 519 F.2d 1004, 1018 (2d Cir. 1975) (declining to apply securities laws on basis of "preparatory activities . . . where bulk of the activities where performed in foreign countries.")

In other words, the federal securities laws do not apply to actions or a failure to prevent fraudulent actions "where the bulk of the activity was performed in foreign countries." IIT v. Vencap, Ltd., 519 F.2d 1001, 1018 (2d Cir. 1975). The conduct must be "significant" and "material" to the fraud. Tri-Star Farms Ltd., 225 F. Supp. 2d 567, 576 (W.D. Pa. 2002) (construing the language in SEC v. Kasser, 548 F.2d 109 (3d Cir. 1977)); see, e.g., Blechner v. Daimler-Benz AG, 410 F. Supp. 2d 366, 371 (D. Del. 2006) ("'the level of domestic conduct, at the very least, must be significant and material to the fraud. Merely preparatory or insubstantial conduct is not enough.") (quoting Tri-Star Farms Ltd., 225 F. Supp. 2d at 576) (internal citations and quotation marks omitted)). Put another way, in a predominantly foreign transaction, an application of this country's federal securities laws is justified if the wrongful actions occurred here and had a "substantial effect" here or upon our citizens. In re Parmalat Sec. Litig. ("Parmalat"), __ F. Supp. 2d __, 2007 WL 2120279 at *3 (S.D.N.Y. July 24, 2007). The conduct test does not simply focus on any conduct that occurred in the United States; rather, it probes whether a defendant committed "**culpable** conduct in furtherance of the fraud." Id. at * 4 (emphasis in original). Because no Third Circuit precedent has directly resolved the issue of whether direct causation is an element of the "conduct test" and because I need not decide the issue here, I make no further comment on it. See Tri-Star Farms Ltd., 225 F. Supp. 2d at 576 ("the

facts in . . . Kasser did not require the court of appeals to decide the issue of whether direct causation is a necessary element of the 'conduct test'".). But see, e.g., Parmalat, __ F. Supp. 2d __, 2007 WL 2120279 at *3 (requiring for subject matter jurisdiction: (1) more than merely preparatory acts that (2) "'directly caused'" damages to domestic residents or entities.) (citations and quotations omitted).

Moreover, the Third Circuit has used public policy to inform its analysis. The Third Circuit has applied sound policy reasons in making a ruling as to whether to grant jurisdiction in transnational securities cases. First, a ruling on jurisdiction should not "embolden those who wish to defraud foreign securities purchasers or sellers to use the United States as a base of operations" or, "in effect, create a haven for such defrauders and manipulators." SEC v. Kasser, 548 F.2d 109, 116 (3d Cir. 1977); see also IIT v. Vencap, Ltd., 519 F.2d at 1017 (2d Cir. 1975) (noting as a relevant consideration that Congress presumably did not "intend[] to allow the United States to be used as a base for manufacturing fraudulent security devices for export, even when these are peddled only to foreigners.") Next, a denial of subject matter jurisdiction should not "induce reciprocal responses on the part of other nations" and thus encourage a negative precedent. Kasser, 548 F.2d at 116. Lastly, an exercise of jurisdiction should comport with the overall purposes of the federal securities laws. These laws were

intended to "insure high standards of conduct in securities transactions within this country." Id. at 116.

The Third Circuit has not yet decided a case on all fours with this case. The closest case is Kasser, an SEC injunction proceeding in which the SEC sued to enjoin "a scheme to defraud foreign entities devised in this country by Americans who utilize[d] the means of interstate commerce to achieve their objections. SEC v. Kasser, 391 F. Supp. 1167, 1173 (D.N.J. 1975), rev'd, 548 F.2d 109 (3d Cir. 1977). There, the SEC alleged that U.S.-citizen defendants had used U.S.-corporate defendants, U.S. bank accounts, and facilities of U.S. commerce to effectuate a Ponzi scheme against a Canadian investor. The U.S. defendants had conducted face-to-face negotiations with the Canadian investor in the United States, used U.S. bank accounts to recycle the Canadian investor's money, used the U.S. mails and wires to make false misrepresentations to the Canadian investor, and had deposited the proceeds of fraud in U.S. bank accounts. Kasser, 391 F. Supp. at 1169-72. Though the district court dismissed the proceeding for lack of a domestic result from the U.S.-based fraud, id. at 1173, the Third Circuit reversed, id., 548 F.2d at 110, 112, 116. In so reversing, the Third Circuit held that the SEC could pursue injunctive relief against the U.S. defendants based on their allegedly fraudulent conduct within the United States, despite that the victim was a non-U.S. investor who had invested abroad. Id.

Significantly, while Kasser offers guidance on related cases, see id. at 113 (relying upon Bersch and IIT for its rationale), it did not articulate a general threshold for the type and/or amount of conduct sufficient to satisfy the conduct test. See also Tri-Star Farms Ltd., 225 F. Supp. 2d at 576 (noting that "the [U.S.]-based conduct in . . . Kasser was so extensive that jurisdiction was likely proper under any standard.") Nevertheless, the parties do not dispute that the U.S. conduct required to satisfy the conduct test here must be more than "merely preparatory" to the alleged fraud and be "significant and material" to the alleged fraud. (Pl. Mem. of Law at 10-11, 13). And, importantly, Plaintiffs concede that any U.S.-based conduct must have been designed to further fraud: "There would be no jurisdiction [if] there was no fraudulent conduct in the United States in furtherance of the fraud" and "[u]ltimately, the decision . . . come[s] down to whether the [U.S.-based] actions were fraudulent." (See July 9, Tr. at 21:20-22, 43:24-44:1). Thus, the parties agree that the case law has set forth that the conduct test centers on where the alleged fraud was either conceived, planned, or executed, or any combination thereof. See, e.g., Kauthar SDN BHD v. Sternberg, 149 F.3d 659, 662, 667 (7th Cir. 1998) (exercising jurisdiction over non-U.S. investor's foreign-based investment where United States residents allegedly committed fraud in soliciting through written and oral communications as well as through meetings held within the United States the plaintiff's investment in United States company);

Continental Grain (Australia) Pty. Ltd. v. Pacific Oilseeds, Inc., 592 F.2d 409, 412-13, 421 (8th Cir. 1979) (extending federal securities laws to foreign investor in large part because fraudulent omissions and misrepresentations had been "conceived in and directed from the United States" and led investor to execute and act upon investment contract in United States); Straub v. Vaisman & Co., Inc., 540 F.2d 591, 595 (3d Cir. 1976) (upholding jurisdiction over non-U.S. investor's purchases of U.S. securities on domestic markets where allegedly fraudulent scheme "was conceived in the United States against American citizens, involved stock in an American corporation traded on a domestic over-the-counter exchange, and an American securities broker from his office in New Jersey caused the wrongful omissions"); IIT v. Vencap, Ltd., 519 F.2d at 1004, 1018 (remanding for consideration of jurisdiction where "'literally hundreds of transactions and pieces of mail for [defendant] were initiated, directed and consummated from and received at'" U.S. address, "all of defendant's transactional records were maintained" in U.S., and defendant met with plaintiff's representatives in U.S. and made alleged misrepresentations to them in U.S.); Travis v. Anthes Imperial Ltd., 473 F.2d 515 (8th Cir. 1973) (finding jurisdiction where class consisted of U.S. plaintiffs, Canadian defendants made alleged misrepresentations to U.S. plaintiffs here, and plaintiffs sold their stock to defendants here); Leasco Data Processing Equip. Corp. v. Maxwell, 468 F.2d 1326, 1334-35 (2d Cir. 1972) (upholding

jurisdiction over U.S. investor's claim where "there were abundant misrepresentations" by defendant and his agent to U.S. investor "in the United States," but noting that, "if all the misrepresentations here alleged had occurred in England, we would entertain most serious doubt whether . . . § 10(b) would be applicable"); In re Alstom S.A. Sec. Litig. ("Alstom"), 406 F. Supp. 2d 346, 395-97 (S.D.N.Y. 2005) (allowing exercise of jurisdiction over those foreign class members' claims based exclusively on alleged fraudulent representations regarding understatement of losses at French defendant's U.S. subsidiary were "conceived of and executed within the United States and then sent abroad to be published and to thus mislead investors, but declining jurisdiction over other claims stemming alleged representations from foreign parent company's foreign headquarters); Paraschos v. YBM Magnex Int'l, Inc., 2000 WL 325945, at *4 (E.D. Pa. March 29, 2000) (affirming jurisdiction where "[m]ost, if not all, of defendants' conduct, [including misstatements and allegedly fraudulent audits] . . . took place in the United States"), dismissed on other grounds, 130 F. Supp. 2d 642 (E.D. Pa. 2000); In re Int'l Nesmont Sec. Litig. ("Nesmont"), No. 94-4202, slip op. at 31, 10 (D.N.J. Dec. 2, 1996) (unpublished) (upholding jurisdiction in large part because New York stock promoter made numerous press releases and other misrepresentations to the domestic marketplace and financial press).

Further, in properly applying the conduct test, courts have compared the relative significance of domestic versus foreign conduct in determining whether U.S. courts have jurisdiction. See, e.g., Kasser, 548 F.2d at 114 (holding that the conduct test is not met by "'preparatory activities or the failure to prevent fraudulent acts where the bulk of the activities were performed in foreign countries." (quoting IIT, 519 F.2d at 1018); IIT v. Cornfeld, 619 F.2d 909, 920-21 (2d Cir. 1980) (noting that conduct test determination "depends not only on how much was done in the United States but also on how much . . . was done abroad"); Tri-Star Farms Ltd., 225 F. Supp. 2d at 577-78 (concluding that conduct test not satisfied where alleged U.S. acts "are insubstantial in comparison to the conduct that purportedly occurred in the United Kingdom.")

Even where the fraud has occurred largely outside of the United States, some courts have still applied federal securities laws where actions within the United States were the final acts in a fraudulent scheme. See Psimenos v. E.F. Hutton & Co., 722 F.2d 1041, 1044 (2d Cir. 1983) (applying federal commodities laws where trades defendant executed on American markets constituted final act in defendant's alleged fraud and caused investor plaintiff to suffer substantial losses); cf. Parmalat, __ F. Supp. 2d __, 2007 WL 2120279 at *6-7 (distinguishing result in Psimenos because marketing to U.S. investors was not per se deceptive and neither completed not caused fraud).

This, the general rule, and the one the Special Master shall apply, is that courts are inclined to find that the conduct test is satisfied and exercise subject matter jurisdiction over foreign investors' foreign transaction only where the alleged fraud was contrived in or from the United States or arose from activities in the United States. See Kasser, 548 F.2d at 111, 115; see, e.g., Kauthar SDN BHD v. Sternberg, 149 F.3d at 662, 667; Continental Grain (Australia) Pty. Ltd. v. Pacific Oilseeds, Inc., 592 F.2d at 412-13, 421; Straub, 540 F.2d at 595; Travis, 473 F.2d at 524; Leasco Data Processing Equip. Corp. v. Maxwell, 468 F.2d at 1334-35; Alstom, 406 F. Supp. 2d at 395-97; Paraschos, 2000 WL 325945, at *4 (E.D. Pa. March 29, 2000); Nesmont, No. 94-4202, slip op. at 31, 10 (D.N.J. Dec. 2, 1996).

ii. Application of Legal Framework to Plaintiffs' Proofs

The Special Master finds that Shell's alleged U.S.-based conduct was, at best, merely preparatory to, and was insignificant and immaterial to any alleged fraud directed towards the Non-U.S. Purchasers. Assuming only for the Special Master's limited purpose here that the alleged fraudulent acts occurred, the overwhelming evidence presented to the Special Master reveals that it was planned and executed in Europe, not the United States. Nothing about the conduct in question suggests that Shell entities, employees, and/or representatives undertook actions that were allegedly fraudulent or even in furtherance of a fraudulent

scheme. The structure and organization of the Shell companies reveals the significance of foreign-based activities to the overall functioning and success of the Shell enterprise. Cf., e.g., Parmalat, __ F. Supp. 2d __, 2007 WL 2120279 at *8-10 (rejecting exercise of jurisdiction in part because, though Citigroup defendants performed certain administrative functions and occasional review or approval of foreign securitization program in New York office, "the European offices conducted the lion's share of these duties," and New York actions were probably unnecessary to perpetrate fraud). As discussed above, Shell's top executives were based in Europe. The EP division's management was based almost exclusively in Europe. EP's Executive Committee held all of its meetings in Europe. Any alleged fraud to artificially increase the company's proved reserves was directed purportedly from Europe. EP management in Europe influenced the worldwide operating units' practices in booking and/or maintaining proved reserves. The GRC and GRA were based in Netherlands and largely performed their functions in Europe with other European Shell employees and representatives. EP's Executive Committee in Europe reviewed and approved for external reporting the proved reserves estimates. Proved reserves information was disseminated to investors, analysts, and the SEC in and from Europe. And, all of the restated proved reserves were located outside the United States.

Moreover, the allegations regarding the conduct undertaken by SDS and SEPTAR and Shell's IR group do not suffice under the conduct test. With regard to SDS and AGH, they provided mere technical assistance that presumably aided non-U.S. operating units in booking or maintaining proved reserves. But that is the extent of their involvement. The non-U.S. operating units then reported to the Netherlands, where reserves estimates were reviewed, audited, compiled, challenged, and approved before they were included in financial statements and other public disclosures prepared in and disseminated from Europe. Further, the non-U.S. reserves allegedly affected by U.S. conduct comprised only a tiny amount of Shell's reported proved reserves and of the total recategorized amount. At best, this conduct was merely preparatory, but not significant or material in promoting the alleged fraud.

The same rings true concerning Sidle's alleged involvement with fraudulent conduct. The majority of Sidle's activities apparently involved helping Shell or specific OUs to comply with SEC rules and regulations, including SEC Rule 4-10. Additionally, Shell's alleged investor relations activities in the United States do not satisfy the conduct test. Virtually all of Shell's investor-relations activities in the United States were directed at and intended for a U.S. audience, not for the Non-U.S. Purchasers. Though Plaintiffs attempt to argue that Shell meetings, presentations, and "road shows" within the United States promoted fraud, nothing

pertaining to these contacts is meaningful to the ultimate alleged fraud. Cf. Alfadda v. Fenn, 935 F.2d 475, 479 (2d Cir. 1991) (focusing on "import of the United States meetings and negotiations which preceded" stock sales in exercising jurisdiction); Grunenthal GmbH v. Hotz, 712 F.2d 421, 423, 424-25 (9th Cir. 1983) (concluding that foreign investor had recourse under federal securities laws for foreign transaction where in-person meeting with key representative for defendant within United States yielded critical misrepresentation that induced investor to execute investment contract). Not only were none of the meetings in the United States with European-based investors or analysts, but also they, at best, repeated only information previously disclosed. Cf., e.g., Grunenthal GmbH v. Hotz, 712 F.2d at 423-25. And, Shell's U.S.-based communications with Non-U.S. Purchasers were minimal at best. Indeed, in large part, evidence is lacking that proved reserves was a topic of discussion between Shell representatives and its U.S. audience. Even assuming the topic arose, it involved only information that had been disclosed earlier to the public in and from Europe; indeed, the information was merely repeated to the U.S.-based investors. Furthermore, Plaintiffs have not demonstrated that anything Shell allegedly said in the United States to U.S. investors and analysts influenced in any way the Non-U.S. Purchasers in their investments.

Though Plaintiffs seemingly reach for any U.S.-based conduct during the Class Period to warrant an exercise of subject matter jurisdiction, they fail overall to point to culpable conduct done to further the alleged fraud. See In re Parmalat Sec. Litig. ("Parmalat"), __ F. Supp. 2d __, 2007 WL 2120279 at *3-4. And, any of Plaintiffs' attempts to characterize Shell's U.S.-based conduct as culminating acts of a fraudulent scheme are without support and thus similarly unsuccessful. Cf. Psimenos, 722 F.2d at 1044.

Therefore, in applying the proper legal analysis to the facts presented, the Special Master concludes that Plaintiffs have not met their burden of demonstrating sufficient activity in the United States to meet the conduct test.

V. Conclusion

For all the foregoing reasons, the Special Master recommends that the District Court conclude that it lacks subject matter jurisdiction over the Non-U.S. Purchasers and must exclude them from the Class because the federal securities laws do not apply to their claims.

Date: 9/18, 2007

Nicholas H. Politan
Special Master

Exhibit 2

Exhibit 2

Special Master's Finding or Conclusion[1]	**Evidence in Lead Plaintiff's First Fact Submission**[2]	**Evidence in Lead Plaintiff's Second Fact Submission**[3]	**Discussion in Lead Plaintiff's First Memorandum in Support of Jurisdiction**[4]	**Discussion in Lead Plaintiff's Second Memorandum in Support of Jurisdiction**[5]	**Discussion in Lead Plaintiff's Post-Hearing Submission**[6]
The U.S.-based actions of SDS and SEPTAR "were unrelated to either the ultimate reporting or maintaining allegedly overstated reserves." *See* 14-15; *see also* 23.	Discussion re SDS: *see* 32-51 and evidence cited therein. Discussion re SEPTAR: *see* 51-63 and evidence cited therein.	Discussion re SDS: *see* 18-29 and evidence cited therein. Discussion re SEPTAR: *see* 18-21, 29-41, and evidence cited therein.	Discussion re SDS: *see* 16-28 and evidence cited therein. Discussion re SEPTAR: *see* 28-35 and evidence cited therein.	Discussion re SDS: *see* 15-25 and evidence cited therein. Discussion re SEPTAR: *see* 15-17, 25-28 and evidence cited therein.	Discussion re SDS: *see* 1-4, 7-8, 9-10, and evidence cited therein.
"[N]o evidence shows that SDS's work with SNEPCO [Shell Nigeria] had any relation to the proved reserves	*See* 41-46 and evidence cited therein.	*See* 26-27 and evidence cited therein.	*See* 21-25 and evidence cited therein.	*See* 18-20 and evidence cited therein.	*See* 9-10 and evidence cited therein.

[1] "Special Master's Report and Recommendation" refers to the Report and Recommendation of Special Master Nicholas H. Politan, dated September 18, 2007.

[2] "Lead Plaintiff's First Fact Submission" refers to Lead Plaintiff's Fact Statement in Support of Subject Matter Jurisdiction, dated June 13, 2007.

[3] "Lead Plaintiff's Second Fact Submission" refers to Lead Plaintiff's Rebuttal Fact Statement in Support of Subject Matter Jurisdiction, dated June 25, 2007.

[4] "Lead Plaintiff's First Memorandum in Support of Jurisdiction" refers to Lead Plaintiff's Memorandum in Support of Subject Matter Jurisdiction, dated June 29, 2007.

[5] "Lead Plaintiff's Second Memorandum in Support of Jurisdiction" refers to Lead Plaintiff's Reply Memorandum in Further Support of Subject Matter Jurisdiction, dated July 6, 2007.

[6] "Lead Plaintiff's Post-Hearing Submission" refers to Lead Plaintiff's Post-Hearing Submission in Further Support of Subject Matter Jurisdiction, dated July 17, 2007.

Special Master's Finding or Conclusion[1]	**Evidence in Lead Plaintiff's First Fact Submission**[2]	**Evidence in Lead Plaintiff's Second Fact Submission**[3]	**Discussion in Lead Plaintiff's First Memorandum in Support of Jurisdiction**[4]	**Discussion in Lead Plaintiff's Second Memorandum in Support of Jurisdiction**[5]	**Discussion in Lead Plaintiff's Post-Hearing Submission**[6]
ultimately recategorized in 2004." *See* 17-18.					
"[E]vidence is lacking that SDS ultimately estimated or reported any proved reserves for SDAN [Shell Angola]." *See* 19.	*See* 35-41 and evidence cited therein.	*See* 24-25 and evidence cited therein.	*See* 17-21 and evidence cited therein.	*See* 17-18 and evidence cited therein.	*See* 1-5 and evidence cited therein.
"[T]he Special Master finds no evidentiary proof that SDS and BSP [Shell Brunei] engaged in any form of communications regarding any type of reserves." *See* 19.	*See* 47-51 and evidence cited therein.	*See* 27 and evidence cited therein.	*See* 25-27 and evidence cited therein.	*See* 20-23 and evidence cited therein.	*See* 7-8 and evidence cited therein.
"[Plaintiffs] have not introduced evidence that Shell ever booked proved reserves for SBEP [Shell Brazil], including the particular fields for which SDS provided		*See* 28-29 and evidence cited therein.	*See* 27-28 and evidence cited therein.	*See* 23-25 and evidence cited therein.	

Special Master's Finding or Conclusion[1]	**Evidence in Lead Plaintiff's First Fact Submission[2]**	**Evidence in Lead Plaintiff's Second Fact Submission[3]**	**Discussion in Lead Plaintiff's First Memorandum in Support of Jurisdiction[4]**	**Discussion in Lead Plaintiff's Second Memorandum in Support of Jurisdiction[5]**	**Discussion in Lead Plaintiff's Post-Hearing Submission[6]**
technical services." *See* 19.					
"Plaintiffs have not sufficiently established that [SEPTAR's] technical work contributed to PDO's [Shell in Oman] decisions to book proved reserves or to maintain allegedly overstated proved reserves on its fields." *See* 21.	*See* 55-61 and evidence cited therein.	*See* 32-36 and evidence cited therein.	*See* 29-34 and evidence cited therein.	*See* 25-27 and evidence cited therein.	
"[F]ield studies [by SEPTAR] for SVSA [Shell Venezuela] bear no demonstrated relationship to SVSA's recategorized proved reserves." *See* 22.	*See* 61-63 and evidence cited therein.	*See* 36-38 and evidence cited therein.	*See* 34-36 and evidence cited therein.	*See* 27-28 and evidence cited therein.	
"Overall, proof is lacking that [Rod] Sidle violated or influenced others at Shell to violate SEC		*See* 9-18 and evidence cited therein.	*See* 36 and evidence cited therein.	*See* 28-30 and evidence cited therein.	

Special Master's Finding or Conclusion[1]	**Evidence in Lead Plaintiff's First Fact Submission[2]**	**Evidence in Lead Plaintiff's Second Fact Submission[3]**	**Discussion in Lead Plaintiff's First Memorandum in Support of Jurisdiction[4]**	**Discussion in Lead Plaintiff's Second Memorandum in Support of Jurisdiction[5]**	**Discussion in Lead Plaintiff's Post-Hearing Submission[6]**
rules and regulations." *See* 24.					