

The Daily Journal, October 27, 2008, p.1

## **CHEVRON'S ALIEN TORT CASE OPENS IN SAN FRANCISCO**

### **Experts Ponder How a Liberal and Educated Jury Pool Will View The Nigerians' Case**

By Rebecca Beyer, Daily Journal Staff Writer

SAN FRANCISCO - Have you ever had a negative experience with someone from Nigeria or of Nigerian descent? Do you have any opinions about the conduct of oil companies doing business in Third World countries?

These are two examples of questions attorneys for Nigerian villagers and Chevron Corp., respectively, would like to ask potential jurors in a landmark human rights case starting today in San Francisco federal court.

After almost 10 years of litigation, nine jurors will have the opportunity to decide whether San Ramon-based Chevron violated the rights of Nigerian protesters or lawfully defended its workers when it engaged security forces to remove the protesters from an oil platform off the Nigerian coast in 1998. U.S. District Judge Susan Illston is presiding over the case. *Bowoto v. Chevron*, 99-2506.

Jury selection started last week and should be finished today in time for attorneys to give opening statements. At least one jury consultant thinks Chevron is starting out at "a big disadvantage," especially in a city known for its liberal attitudes.

"The defense has got to be concerned about multiple things," said Dr. J. Lee Meihls, of Trial Partners Inc. in Los Angeles. "San Francisco is one of the strongest pro-environment, anti-corporate venues in the country. That's a very dangerous combination for any corporate defendant."

Meihls and another jury consultant, Dr. Kathy Kellermann, noted that the questionnaire jurors were given last week is much closer to the one proposed by the Nigerian plaintiffs than the Chevron version because it leaves off extensive questions about exposure to the case and interest or experience in human rights and related work. Meihls and Kellermann said the absence of those questions gives defense attorneys little to follow up on in their voir dire.

Parties often agree on a jury questionnaire. Because they could not do so in this case, Illston came up with her own.

Lead trial counsel for the plaintiffs is Dan Stormer of Hadsell, Stormer, Keeny, Richardson & Renick in Pasadena. Robert A. Mittelstaedt of Jones Day in San Francisco is taking the lead for Chevron.

Jury selection is important in any case. But, although neither side would comment about the process in *Bowoto*, consultants and attorneys who have worked on similar cases say there are special concerns. First and foremost: addressing biases against foreigners and - a favorite target of public criticism lately - oil companies.

*Bowoto* is only the second case brought under the centuries-old Alien Tort Claims Act to reach a jury trial. Passed in 1789, the law was originally intended to right the wrongs committed by pirates at sea. Recently, plaintiffs have used it to try to hold U.S.-based multinational companies accountable for alleged human rights violations they commit overseas.

Meihls last year consulted with Dole Food Co. in a toxic tort case involving Nicaraguan plaintiffs in Los Angeles County Superior Court. She said she surveyed more than 100 San Franciscans last week in an

unrelated case. Fifty-eight percent characterized themselves as environmentalists, she said, and 80 percent said they agreed laws and regulations protecting the environment should be tougher.

Although Bowoto does not include environmental claims, those feelings will be weighing on jurors' minds, she said.

Kellermann, founder of Communication Consulting in Marina del Rey, said the plaintiffs have to watch out for biases as well.

"A lot of people think of Nigeria as a place where scams happen," she said, referring to Internet and e-mail frauds offering people hundreds of thousands of dollars upon receipt of a "processing fee."

Still, she said, the plaintiffs' biggest obstacle would be jurors who feel that foreigners should not bring their grievances to the U.S. court system.

"Here are the questions I think the defense wants [jurors to ask]," Kellermann said. "Why is this case in the U.S.? Why isn't the Nigerian military being sued? Why were Nigerian protesters on a privately-owned platform in the first place?"

Terry Collingsworth, executive director and general counsel of International Rights Advocates in Washington, D.C., agreed.

Collingsworth was co-counsel on the first Alien Tort Claims Act case to go to trial. Last year, a federal jury in the Northern District of Alabama rejected the claims of Colombian mineworkers who said they were tortured by paramilitary gunmen hired by Alabama-based Drummond Co. The plaintiffs have appealed the verdict. *Romero v. Drummond*, 03-0575.

"[The plaintiffs] are going to need to look for jurors who really understand that these crimes should be addressed here, because this is where the corporate headquarters are for Chevron, and this is one of the few places where such a large company can be held accountable," Collingsworth said.

He said the San Francisco jury pool would be "markedly different" from the one he faced in Drummond.

"With San Francisco, there's great diversity there," he said. "People in San Francisco will be largely familiar with West Africans. It won't be like they're from Mars."

An attorney for Drummond did not return a call seeking comment.

In Bowoto, the Nigerian plaintiffs claim they were peacefully protesting Chevron's environmental and economic policies on the platform and that the company called upon and assisted military forces in an attack against them. They claim two protesters were killed and two were injured by gunfire.

Chevron maintains the villagers illegally seized the platform and held its employees hostage. The company argues it had the right to report the seizure and provide assistance in the military's rescue attempt and cannot be held liable for the resulting use of excessive force by a third-party.

The case is a complicated web of international, Nigerian and California law and includes claims of wrongful death; torture; cruel, inhuman or degrading treatment; battery; assault; emotional distress; negligence and civil conspiracy.

Kellermann said it is crucial to get answers to questions like the ones above, even if people won't admit to their biases.

"It's important to bring it up," she said. "People put a brake on themselves. It reduces the influence [of the biases] in deliberations."

Meihls agreed some individuals may compensate for their biases after having them addressed in open court, but she said at least as many jurors would lie about their biases to be a "stealth juror."

"Those are the ones who would have an agenda to sock it to the big oil company," Meihls said.

Kellermann said the attorneys can't "pick people who are good for them." "They have to challenge people who are bad for them," she said. "They have to be focused on the ones who will never listen, whose ears are completely closed."